

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHRISTOPHER BROOKS,
KEN GONTARZ, and KATHERINE
RASH,

Plaintiffs,

v.

FRANCIS HOWELL SCHOOL DISTRICT;
MARY LANGE, President, Francis Howell
School Board, in her individual and official
capacities; MICHAEL HOEHN, Vice
President, Francis Howell School Board,
in his individual and official capacities;
JANET STIGLICH, Director, Francis
Howell School Board, in her individual
and official capacities; PATRICK LANE,
Director, Francis Howell School Board, in
his individual and official capacities;
CHAD LANGE, Director, Francis Howell
School Board, in his individual and official
capacities; DOUG ZIEGEMEIER, Director,
Francis Howell School Board, in his
individual and official capacities;
MICHELLE WALKER, Treasurer, Francis
Howell School Board, in her individual and
official capacities; and NATHAN HOVEN,
Superintendent, Francis Howell
School District, in his individual and
official capacities,

Defendants.

Civil Action No. 4:22-cv-169-SRC

FIRST AMENDED COMPLAINT FOR
DECLARATORY, INJUNCTIVE,
AND OTHER RELIEF

In accordance with Rule 15(a)(1)(B), Plaintiffs hereby amend their complaint as of right. Paragraph 1 was amended. Paragraphs 8-15 contain additional averments and two new paragraphs 37-38 were added, causing subsequent paragraphs to be re-numbered.

INTRODUCTION

“Believing that the democratic way of life contributes the most benefit and happiness to members of society generally,” Francis Howell School District’s Board of Education (“Board”) proclaims its “dedicat[ion] to the development, improvement, and preservation of all democratic ideals.” District Philosophy, Francis Howell Sch. Dist. Policy Manual § 0200. The Board, however, does not understand these ideals to include tolerance for dissenting views. Contrary to the First Amendment’s requirements, the Board censors speakers with whom it disagrees, on the pretense that disfavored political advocacy constitutes “advertising”—clever, but unconstitutional. A speaker referencing politically inconvenient information or ideas found in a book, magazine, or yes, website, cannot be silenced for allegedly “advertising” that book, magazine, or website.

School boards can exclude advertising as much as any other irrelevant speech from their meetings’ public comment period. But debate about public school operations is inherently political—and the government cannot prohibit viewpoints under the guise that disfavored speakers are “advertising” their political views, or anything mentioned in the course of their political speech. Advertising and political speech may both be persuasive, but they are not always the same thing.

At its meetings, the Board allows *some* people to carry political signs and wear political t-shirts, to speak on behalf of fundraising drives and legislative action, and to reference approved websites in their speech. But speakers who look to unapproved sources to support their views—including a PAC that opposes Board members—have their microphones cut off. The Board’s selective enforcement of its “advertising” prohibition, allowing some websites to be mentioned, but immediately terminating political speech that mentions websites organized to oppose the board members and their policies, is blatant unlawful viewpoint discrimination.

Instead of cherry-picking which sources of information are acceptable based upon subjective notions of what constitutes advertising, Defendants should uphold their commitment to democratic ideals, including the First Amendment rights to speech and petition at school board meetings. The Court should ensure they do by providing Plaintiffs' requested relief.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343, as this action challenges Defendants' violation of Plaintiffs' civil rights pursuant to 42 U.S.C. § 1983.

2. Venue lies in this Court pursuant to 28 U.S.C. § 1391, as a substantial part of the event and omissions giving rise to the claims occurred in this judicial district.

3. Venue is proper in the Eastern Division pursuant to E.D. Mo. L.R. 2.07(A)(1).

THE PARTIES

4. Plaintiff Christopher Brooks is a natural person and citizen of Missouri and of the United States, residing in St. Charles County, Missouri.

5. Plaintiff Ken Gontarz is a natural person and citizen of Missouri and of the United States, residing in St. Charles County, Missouri.

6. Plaintiff Katherine Rash is a natural person and a citizen of Missouri and of the United States, residing in St. Charles County, Missouri.

7. Defendant Francis Howell School District is a school district that operates public schools within St. Charles County, Missouri. Francis Howell School District is managed by an elected seven-member board.

8. Defendant Mary Lange is the President of the Francis Howell School Board. She is sued in her individual and official capacities.

9. Defendant Michael Hoehn is the Vice President of the Francis Howell School Board. He is sued in his individual and official capacities.

10. Defendant Janet Stiglich is a director of the Francis Howell School Board. She is sued in her individual and official capacities.

11. Defendant Patrick Lane is a director of the Francis Howell School Board. He is sued in his individual and official capacities.

12. Defendant Chad Lange is a director of the Francis Howell School Board. He is sued in his individual and official capacities.

13. Defendant Doug Ziegemeier is a director of the Francis Howell School Board. He is sued in his individual and official capacities.

14. Defendant Michelle Walker is the Treasurer of the Francis Howell School Board. She is sued in her individual and official capacities.

15. Defendant Nathan Hoven is the Superintendent of the Francis Howell School District. He is sued in his individual and official capacities.

STATEMENT OF FACTS

Francis Howell's Policies 1455 and 1471

16. The Francis Howell Board of Education holds meetings open to patron comment on the third Thursday of every month. Board Meeting Schedule, Francis Howell Sch. Dist., <https://bit.ly/32SHMen> (last visited Feb. 9, 2022).

17. Board policy provides that “[a] period of thirty (30) minutes will be allotted to residents of the District and staff at the beginning of the meeting to give the Board of Education the opportunity to listen to citizens.” Meetings-Participation by Public, Francis Howell Sch. Dist. Policy Manual § 0412 (“Policy 412”).

18. “Any person wishing to address the Board must complete an electronic Patron Comment Request Form” that is available “24 hours prior to the start of a Board meeting.” Patron Comments, Francis Howell Sch. Dist., <https://bit.ly/3zzZHm9> (last visited Feb. 9, 2022). The Board President recognizes speakers “in the order they signed up online.” *Id.* “[R]emarks [are] limited to three minutes and to one appearance.” Policy 412.

19. “[E]xcept as allowed in this Policy or Regulation 1471, advertisement is prohibited on District property.” Public Solicitations/Advertising in District Facilities, Francis Howell Sch. Dist. Policy Manual § 1471 (“Policy 1471”). “[A]dvertisement includes, but is not limited to, in-person solicitation; signage; verbal announcements using communication equipment; pamphlets; handouts; distribution through District technology; other distribution of information regarding products or services available or for sale; or the solicitation of information including, but not limited to, political campaigning.” *Id.*

20. “Requests to distribute materials in the schools shall be submitted to the superintendent/designee for approval. Items that are approved shall contribute to the best interests of education and shall be of specific benefit to the program and operation of the District. Materials that seek or imply commercial support shall generally be rejected.” Distribution of Materials in Schools, Francis Howell Sch. Dist. Policy Manual § 1455 (“Policy 1455”). “Partisan political campaign materials shall not be distributed to students or patrons or posted within a District facility, except for appropriate educational use in the classroom.” *Id.*

Francis Howell Families PAC and its website

21. In July 2021, concerned with the direction in which the Francis Howell School Board was headed, district constituents formed the Francis Howell Families PAC. Plaintiff Gontarz is president of FHF. Plaintiff Brooks is a member of the FHF Executive Board and Plaintiff Rash is a former member of FHF’s Executive Board.

22. The PAC frequently finds itself opposing Board action and seeks to persuade the Board that they should be pursuing policies that “support academic excellence, transparent accountability, and fiscal responsibility while encouraging in students a strong work ethic, good character, and respect for our Nation’s founding principles.” About Us, Francis Howell Families, <https://bit.ly/3fCsrS4> (last visited Feb 9, 2022).

23. With that goal in mind, the PAC's website serves as a repository of information about matters of concern to the school board and parents, including critical race theory in curriculum, the elimination of middle-school advanced courses, budget expenditures, and sexualized content in schools. It primarily contains news articles discussing decisions made by the Board as well as opinion pieces on the damaging effects of those decisions. Much of the content is critical of district policy or Board actions.

24. People who come before the school board to present their political views on how the Board should govern often reference material included in online sources to bolster their argument. Plaintiffs occasionally find that the PAC's website, like other websites, offers information and viewpoints that they would like to share at board meetings. They wish to refer listeners to material included on the PAC's website, just as they and other speakers refer listeners to material included on other websites, that are less critical of the Board or district policy.

25. To help spread the word about crucial educational matters and where to find information about them, FHF started selling t-shirts prior to school board meetings during the summer of 2021.

26. In late September 2021, Defendant Nathan Hoven called Plaintiff Gontarz, claiming that selling the t-shirts on district property violated Policies 1455 and 1471, and that FHF would no longer be permitted to sell them at that location. FHF accordingly relocated its sales table across the street to private property, from which it continued selling its t-shirts.

Francis Howell's unlawful censorship at school board meetings

27. Declarations of organized intent by constituents for change in the school district are nothing new. At the May 20, 2021 board meeting, a constituent warned of the consequences if the Board did not adequately support the Francis Howell Education Association ("FHEA" or "the Union"), the local teachers union: "We as

alumni are paying attention. We are all of voting age. . . . I promise you, as I have in the past election, I will continue to push for a change of school board members if you do not support this position.” Francis Howell School District, Aug. 20, 2021 Board of Education Meeting video, <https://bit.ly/3eUDfKF>, Item 5 at 29:10–29:27.

28. At that same meeting, the Union’s president delivered a speech during which she advertised an upcoming GoFundMe account to support a diversity-oriented book drive the union was hosting. *Id.* at 45:24-45:41. During these speeches, several audience members wore shirts in support of the Union, and at least one audience member held a sign reading “FHEA Speaks for US.”

29. As an organization, FHEA has a history of engaging in political advocacy. Leading up to the November 2014 election, the Union campaigned for citizens to vote “no” on Amendment 3 by advertising that stance on its Facebook page as well as marching in the St. Louis Labor Day parade with opposition banners. The Union also promoted the passage of a Prop Y, a tax levy, on their Facebook page before the August 2015 election, advocated against right-to-work laws between 2016 and 2017, and sought to persuade the St. Charles County Council to institute a virtual return to school in August 2020.

30. The Union also participates in political campaigning. It posted recommendations for which school board candidates the public should vote for on its Facebook page leading up to school board elections in 2015, 2016, 2017, and 2022.

31. Francis Howell Families PAC and its website were mentioned at a board meeting as early as August 19, 2021. Plaintiff Rash referenced the website as a place to learn how to start helping build a better future for the school district. She received no communications from Defendants indicating that her mention of the PAC or website violated any Board policies.

32. Whether specifically promoting FHEA or Francis Howell Families, Defendants admonished no one that such comments violated an advertising or

political-campaigning-on-district-property prohibition and if repeated, that they would bar the individual from speaking at future board meetings.

33. At the October 21, 2021 Board meeting, eight of the ten community members who spoke during patron comments expressed their displeasure with the Board on a variety of issues such as critical race theory and sexualized content being introduced to school children.

34. Three speakers, including Plaintiffs Gontarz and Rash, mentioned francishowellfamilies.org as a resource to receive further information about those two topics when they individually addressed the Board:

Speaker: As I told the Board in my October 7th letter, I cannot draw the parallels between critical race theory and over 125 pages of curricular documents in a three-minute comment period. I did that in my October 7th letter to the Board which I have not yet received a response to and for those interested you can view that letter at francishowellfamilies.org.

...

Gontarz: Two weeks ago, a concerned parent wrote a, wrote and sent all of you a 17-page dissertation complete with footnotes, citations, references, YouTube links, sunshine request and many, many specifics. The document definitively shows that the courses in question not only teach critical race theory, but they are the epitome of it. The 17-page document can be found on francishowellfamilies.org. . . . We at Francis Howell Families join with the community and ask, what is it going to take to get this school board and the superintendent to listen, to respond, to rid this school of this agenda-driven curriculum?

...

Rash: Why are our schools and school libraries giving this graphic sexual content to our kids? And yes, they are. And if you want to see this, look at francishowellfamilies.org for this information.

Francis Howell School District, Oct. 21, 2021 Board of Education Meeting video, <https://bit.ly/3t76t18>, Item 6 at 36:13–36:34, 39:03–41:22, 43:02–43:13.

35. Unlike the references to Francis Howell Families on August 19, 2021 that drew no ire from the Board, Defendant Mary Lange emailed Rash on October 26, 2021 to inform her that her informational reference on October 21, 2021 now violated Board Policies 1455 and 1471. Lange stated that if Rash or anyone else referenced Francis Howell Families or its website during comments again, the microphone would be cut off and any remaining time forfeited. She also threatened Rash with a permanent speaking ban. “Future violations may also result in . . . no longer being allowed to speak during patron comments.”

36. That same day, Lange also threatened Gontarz stating that if he referenced Francis Howell Families or its website during comments again, he “will be immediately stopped and will forfeit the remainder of [his] time. [He] may also be prohibited from future opportunities to speak during patron comments.”

37. When drafting her emails, Lange sought the advice of Defendant Hoven regarding the wording to threaten Plaintiff Rash. She initially wrote that if Rash mentioned Francis Howell Families or its website again, “[f]urther violations may also result in your opportunities to speak being limited,” but Hoven suggested that Lange instead use the even more threatening wording: “Future violations may also result in you no longer being allowed to speak during patron comments.”

38. After Lange sent the emails to Rash and Gontarz, she forwarded them to all Board members to “keep them in the loop.” Defendant Lane responded that one email was “well written” and the other was a “great response,” indicating his agreement with their contents. The emails sent by Lange were also phrased in the collective “we,” indicating that they were sent on behalf of the Board and Defendant Hoven, who was copied on the emails.

39. While mentioning the Francis Howell Families PAC or its website allegedly violate Policies 1455 and 1471, the Board and the District’s Chief Operating Officer praised the Citizens for Francis Howell PAC after they successfully campaigned to secure a \$244 million bond issue for the district. Francis Howell School District, Aug. 20, 2020 Board of Education Meeting video, <https://bit.ly/3shwo4z> , 3:53–5:21, 57:29–57:47.

40. At the November 18, 2021 meeting, Lange tolerated Plaintiff Christopher Brooks’ mention of government websites, including defendant Board’s website, in addressing the Board, but immediately censored him and terminated his speech when he referenced francishowellfamilies.org:

Brooks: The board could try to pass a content neutral rule forbidding the mention of any websites, but this could be problematic if I want to reference NIH.gov for mask studies or FHSD schools for announcement or curriculum. It does not matter if the website is political in nature because public comment at a meeting is inherently political speech. Thus, a restriction on mentioning a particular website like francishowellfamilies.org during public comments would be . . .

Lange: We have asked you not to use that. Your time is up.

Francis Howell School District, Nov. 18, 2021 Board of Education Meeting video, <https://bit.ly/31vhs9w>, Item 6 at 22:41–23:16.

41. While it was clear that referencing Francis Howell Families in any capacity was now considered both an advertisement and political campaigning that would result in censorship, mentioning other organizations did not draw the same “advertisement” or “political campaigning” classification.

42. At the September 16, 2021 meeting, the Board permitted an individual to reference Black Voices Matter, a political movement that addresses race issues,

without repercussions. Francis Howell School District, Sept. 16, 2021 Board of Education Meeting video, <https://bit.ly/3IF1jhw> at 1:07:57-1:08:33.

43. At the December 16, 2021 meeting, an individual advocating for masking in schools referenced the St. Charles County Dashboard as the source for the COVID-19 data informing her opinion. The Board did not cut her microphone due to an advertising violation for the St. Charles County Dashboard. Francis Howell School District, Dec. 16, 2021 Board of Education Meeting video, <https://bit.ly/34dCdaA>, Item 6 at 29:50–31:50.

44. During the same meeting, Plaintiff Brooks cited to the Board’s eGovernance System as the source of documentation about the ever-increasing cost of a new school being built. *Id.* at 27:50. Even though Brooks was advertising the eGovernance System as a method of obtaining information, the Board did not cut his microphone or inform him that he was violating Policy 1471 with his speech.

45. Both prior to and after members of Francis Howell Families were rebuked by Defendant Mary Lange for allegedly violating Policies 1455 and Policy 1471, the Board has regularly presented political action videos created by the Missouri School Boards Association (“MSBA”). The videos address MSBA’s opposition to various Missouri legislative proposals such as expanding charter schools, tax-credit voucher programs, and school board recalls. MSBA advertises that more information can be found about legislative developments through its electronic newsletter, Twitter feed, Critical Issue Alerts, webinars—and the MSBA website. Francis Howell School District, Feb. 18, 2021 Board of Education Meeting video, <https://bit.ly/3nzRdpZ>, Item 7 at 27:20–28:14; Francis Howell School District, Mar. 18, 2021 Board of Education Meeting video, <https://bit.ly/3Kq9GPS>, Item F at 37:58–39:54; Francis Howell School District, Dec. 16, 2021 Board of Education Meeting video, <https://bit.ly/33Nw3h4>, Item 7 at 1:01:43–1:03:20.

46. By tolerating Defendant Lange’s threats to Plaintiffs Gontarz and Rash, and her censorship of Brooks during an open meeting, all other Defendants acquiesced to allowing Policies 1455 and 1471 to be selectively enforced against disfavored views, while not enforcing it against favored views.

The Continuing Impact of Defendants’ Censorial Policies on Plaintiffs’ Speech

47. Plaintiffs continue to speak regularly at Board meetings and express their views, regardless of Defendants’ disapproval. But the threats posed by Policies 1455 and 1471 do weigh on Plaintiffs, and at times impact their choice of words, the viewpoints they would discuss, and the frequency of their speech. In particular, they have avoided mentioning FHF or its website. Plaintiffs fear that at any time, an informational source they reference might be deemed an advertisement or political material and result in a permanent ban from speaking at Board meetings.

COUNT ONE

RIGHT OF FREE SPEECH, U.S. CONST. AMENDS. I, XIV, 42 U.S.C. § 1983
AS-APPLIED CHALLENGE TO FRANCIS HOWELL POLICY 1471

48. Plaintiffs reallege and incorporate by reference paragraphs 1 through 47.

49. The First Amendment embodies “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). The government may not silence speech because it criticizes the ideas of government officials or employees.

50. First Amendment protections extend to public speech at school board meetings, by operation of the Fourteenth Amendment.

51. “[A] public forum may be created by government designation of a place or channel of communication for use by the public at large for assembly and speech, for use by certain speakers, or for discussion of certain subjects.” *Cornelius v. NAACP*

Legal Def. & Educ. Fund, 473 U.S.788, 802 (1985) (citation omitted). A limited public forum exists where a government has reserved a forum for certain groups or for the discussion of certain topics. *See Gerlich v. Leath*, 861 F.3d 697, 705 (8th Cir. 2017).

52. A school board meeting at which the public is allowed to speak is a designated public forum limited to discussing school operation and governance. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 & n. 7 (1983). The patron comment period at Francis Howell school board meetings is a limited public forum for district residents to discuss matters of public concern related to the school district.

53. Accordingly, content-based restrictions on speech at school board meetings are only permissible to the extent they are “reasonable in light of the purpose served by the forum, . . . [and do not] discriminate against speech on the basis of . . . viewpoint.” *Gerlich*, 861 F.3d at 714 (internal quotations omitted) (quoting *Christian Legal Soc’y Chapter of the Univ. of Cal. v. Martinez*, 561 U.S. 661, 685 (2010)).

54. The government may not regulate speech at school board meetings when “the rationale for its regulation of speech is specific motivating ideology or the opinion or perspective of the speaker.” *Gerlich*, 861 F.3d at 705. (internal quotations omitted).

55. It is axiomatic that criticism of school policies, rules, regulations, and curricula are germane to the business of school boards— regardless of whether school board members want to hear such criticism. The First Amendment prohibits the exclusion of these viewpoints from public speech at Board meetings.

56. All of Plaintiffs’ public speech at Board meetings is fully protected by the Free Speech Clause of the First Amendment.

57. At no point did Defendants terminate or censor Plaintiffs' speech on the basis of time, obscenity, or lack of decorum. Rather, Defendants censored Plaintiffs' speech because they disagreed with their viewpoints. Defendants did so by forbidding Plaintiffs from referencing sources that support their viewpoints, even though Defendants routinely allow the expression of other views, and the citation to other websites.

58. As-applied against Plaintiffs, the Board's prohibition on mentioning Francis Howell Families or its affiliated website under the guise of Policy 1471's advertising restrictions violated and continues to violate Plaintiff's First Amendment right of free speech on its face by impermissibly discriminating against their viewpoint.

59. By enforcing Policy 1471 against Plaintiffs, Defendants, under color of law, deprived and continue to deprive Plaintiffs of the right to free speech in violation of the First and Fourteenth Amendments to the United States Constitution. Accordingly, Plaintiffs are damaged in violation of 42 U.S.C. § 1983, and, therefore, are entitled to nominal damages, declaratory and preliminary and permanent injunctive relief against continued enforcement and maintenance of Defendants' unconstitutional customs, policies, and practices; and attorney fees and expenses pursuant to 42 U.S.C. § 1988.

COUNT TWO

RIGHT TO PETITION, U.S. CONST. AMENDS. I, XIV, 42 U.S.C. § 1983 AS-APPLIED CHALLENGE TO FRANCIS HOWELL POLICY 1471

60. Plaintiffs reallege and incorporate by reference paragraphs 1 through 47.

61. "The right to petition . . . is implicit in the very idea of government, republican in form." *McDonald v. Smith*, 472 U.S. 479, 482 (1985) (brackets, internal quotation marks, and citation omitted). It is "integral to the democratic process The right to petition allows citizens to express their ideas, hopes, and

concerns to their government and their elected representatives.” *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 388 (2011).

62. The public comment period at school board meetings is a forum that enables people to exercise their fundamental First Amendment right to petition their elected government officials.

63. All of Plaintiffs’ public speech at Board meetings is fully protected by the First Amendment right to petition the government for a redress of grievances.

64. As applied against Plaintiffs, Policy 1471’s prohibition on political speech, classified as an advertisement by the Board, suppresses petitions for redress, respecting matters properly before the school board, when Defendants disagree with the dissenting viewpoints in the petitions and do not want their judgment challenged. The prohibition violated and continues to violate Plaintiffs’ First Amendment right to petition by impermissibly discriminating against their petitions on the basis of their viewpoint.

65. By enforcing this provision against Plaintiffs, Defendants, under color of law, deprived and continue to deprive Plaintiffs of the right to petition in violation of the First and Fourteenth Amendments to the United States Constitution. Accordingly, Plaintiffs are damages in violation of 42 U.S.C. § 1983, and, therefore, are entitled to nominal damages, declaratory and preliminary and permanent injunctive relief against continued enforcement and maintenance of Defendants’ unconstitutional customs, policies, and practices; and attorney fees and expenses pursuant to 42 U.S.C. § 1988.

COUNT THREE
RIGHT OF FREE SPEECH, U.S. CONST. AMENDS. I, XIV, 42 U.S.C. § 1983
AS-APPLIED CHALLENGE TO FRANCIS HOWELL POLICY 1455

66. Plaintiffs reallege and incorporate by reference paragraphs 1 through 47.

67. As-applied against Plaintiffs, the Board's prohibition on mentioning Francis Howell Families or its affiliated website under Policy 1455's prohibition on the distribution or posting of partisan political material violated and continues to violate Plaintiff's First Amendment right of free speech on its face by impermissibly discriminating against their viewpoint.

68. By enforcing Policy 1455 against Plaintiffs, Defendants, under color of law, deprived and continue to deprive Plaintiffs of the right to free speech in violation of the First and Fourteenth Amendments to the United States Constitution. Accordingly, Plaintiffs are damaged in violation of 42 U.S.C. § 1983, and, therefore, are entitled to nominal damages, declaratory and preliminary and permanent injunctive relief against continued enforcement and maintenance of Defendants' unconstitutional customs, policies, and practices; and attorney fees and expenses pursuant to 42 U.S.C. § 1988.

COUNT FOUR
RIGHT TO PETITION, U.S. CONST. AMENDS. I, XIV, 42 U.S.C. § 1983
AS-APPLIED CHALLENGE TO FRANCIS HOWELL POLICY 1455

69. Plaintiffs reallege and incorporate by reference paragraphs 1 through 47.

70. As applied against Plaintiffs, Policy 1455's prohibition on the distribution or posting of partisan political campaign material, violated and continues to violate Plaintiffs' First Amendment right to petition by impermissibly discriminating against their petitions on the basis of their viewpoint.

71. By enforcing this provision against Plaintiffs, Defendants, under color of law, deprived and continue to deprive Plaintiffs of the right to petition in violation of the First and Fourteenth Amendments to the United States Constitution. Accordingly, Plaintiffs are damages in violation of 42 U.S.C. § 1983, and, therefore, are entitled to nominal damages, declaratory and preliminary and permanent injunctive relief against continued enforcement and maintenance of Defendants'

unconstitutional customs, policies, and practices; and attorney fees and expenses pursuant to 42 U.S.C. § 1988.

COUNT FIVE

VAGUENESS, U.S. CONST. AMENDS. I, XIV, 42 U.S.C. § 1983
FACIAL AND AS-APPLIED CHALLENGE TO FRANCIS HOWELL POLICY 1471

72. Plaintiffs reallege and incorporate by reference paragraphs 1 through 47.

73. Because notice is the first element of due process, the Fourteenth Amendment's Due Process Clause prohibits the enforcement of vague laws. The First Amendment likewise forbids the enforcement of laws that are so vague as to chill protected speech.

74. Policy 1471's prohibition of speech deemed to be an advertisement is unduly vague, thus authorizing Defendants' arbitrary censorship of speech they dislike.

75. By enforcing this provision, Defendants, under color of law, deprive Plaintiffs of the right to free speech in violation of the First and Fourteenth Amendments to the United States Constitution. Accordingly, Plaintiffs are damaged in violation of 42 U.S.C. § 1983, and, therefore, are entitled to nominal damages; declaratory and preliminary and permanent injunctive relief against continued enforcement and maintenance of Defendants' unconstitutional customs, policies and practices; and attorney fees and expenses pursuant to 42 U.S.C. § 1988.

COUNT SIX

OVERBREADTH, U.S. CONST. AMENDS. I, XIV, 42 U.S.C. § 1983
CHALLENGE TO FRANCIS HOWELL POLICY 1471

76. Plaintiffs reallege and incorporate by reference paragraphs 1 through 47.

77. The First and Fourteenth Amendment prohibit the enforcement of overbroad laws that would punish protected speech.

78. Policy 1471's prohibition of speech deemed to be an advertisement is overly broad, sweeping in protected political speech.

79. By enforcing this provision, Defendants, under color of law, deprive Plaintiffs of the right to free speech in violation of the First and Fourteenth Amendments to the United States Constitution. Accordingly, Plaintiffs are damaged in violation of 42 U.S.C. § 1983, and, therefore, are entitled to nominal damages; declaratory and preliminary and permanent injunctive relief against continued enforcement and maintenance of Defendants' unconstitutional customs, policies and practices; and attorney fees and expenses pursuant to 42 U.S.C. § 1988.

COUNT SEVEN

VAGUENESS, U.S. CONST. AMENDS. I, XIV, 42 U.S.C. § 1983
FACIAL AND AS-APPLIED CHALLENGE TO FRANCIS HOWELL POLICY 1455

80. Plaintiffs reallege and incorporate by reference paragraphs 1 through 47.

81. Because notice is the first element of due process, the Fourteenth Amendment's Due Process Clause prohibits the enforcement of vague laws. The First Amendment likewise forbids the enforcement of laws that are so vague as to chill protected speech.

82. Policy 1455's prohibition of speech deemed to be the posting or distribution of partisan political campaign material is unduly vague, thus authorizing Defendants' arbitrary censorship of speech they dislike.

83. By enforcing this provision, Defendants, under color of law, deprive Plaintiffs of the right to free speech in violation of the First and Fourteenth Amendments to the United States Constitution. Accordingly, Plaintiffs are damaged in violation of 42 U.S.C. § 1983, and, therefore, are entitled to nominal damages; declaratory and preliminary and permanent injunctive relief against continued enforcement and maintenance of Defendants' unconstitutional customs, policies and practices; and attorney fees and expenses pursuant to 42 U.S.C. § 1988.

COUNT EIGHT
OVERBREADTH, U.S. CONST. AMENDS. I, XIV, 42 U.S.C. § 1983
CHALLENGE TO FRANCIS HOWELL POLICY 1455

84. Plaintiffs reallege and incorporate by reference paragraphs 1 through 47.

85. The First and Fourteenth Amendment prohibit the enforcement of overbroad laws that would punish protected speech.

86. Policy 1455's prohibition on the posting or distribution of partisan political campaign material is overly broad, sweeping in protected political speech.

87. By enforcing this provision, Defendants, under color of law, deprive Plaintiffs of the right to free speech in violation of the First and Fourteenth Amendments to the United States Constitution. Accordingly, Plaintiffs are damaged in violation of 42 U.S.C. § 1983, and, therefore, are entitled to nominal damages; declaratory and preliminary and permanent injunctive relief against continued enforcement and maintenance of Defendants' unconstitutional customs, policies and practices; and attorney fees and expenses pursuant to 42 U.S.C. § 1988.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against Defendants as follows:

- A. An order permanently enjoining Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing Francis Howell School Board Policies 1455 and 1471 to prohibit Plaintiffs reference to websites or other sources of information, or to any organization, including references to Francis Howell Families PAC and its website, in the course of patron comment at the Board's meetings.
- B. Declaratory relief consistent with the injunction, to the effect that Francis Howell School Board Policies 1455 and 1471's prohibition on referencing

websites or other sources of information, or organizations, including Francis Howell Families PAC and its website, is unconstitutionally void and unenforceable because it violates the First Amendment's guarantee of free speech and petition, and the First and Fourteenth Amendments' guarantee against vague laws;

- C. An award of nominal damages to Plaintiffs in the amount of \$17.91;
- D. Costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and
- E. Any other relief as the Court deems just and appropriate.

Dated: March 22, 2022

Respectfully submitted,

s/ Endel Kolde
Stacy Hanson, #73738(MO)
Endel Kolde, (*pro hac vice*)
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