

STATE OF MAINE
PENOBSCOT, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-2022-00056

HERMON SCHOOL DEPARTMENT)
)
 Plaintiff)
)
 v.)
)
 SHAWN MCBREAIRTY,)
)
 Defendant)

**MEMORANDUM OF THE HERMON
SCHOOL DEPARTMENT IN
OPPOSITION TO DEFENDANT'S
SPECIAL MOTION TO DISMISS**

INTRODUCTION

Defendant Shawn McBreairty's special motion to dismiss is a perversion of Maine's anti-Strategic Lawsuit Against Public Participation ("anti-SLAPP") law. The laudable purpose of that law is to protect and promote free speech by preventing "litigation instituted not to redress legitimate wrongs, but instead to dissuade or punish the defendant's First Amendment exercise of rights through the delay, distraction, and financial burden of defending the suit." *Pollack v. Fournier*, 2020 ME 93, ¶ 13, 237 A.3d 149 (quoting *Hearts with Haiti, Inc. v. Kendrick*, 2019 ME 26, ¶ 9, 202 A.3d 1189). It is not to provide protection for those who use their speech to defame and harass innocent, hardworking people. Indeed, it is axiomatic that such speech – speech that is false and defamatory – is not protected under the First Amendment, and that speech therefore, is entitled to no protection under Maine's anti-SLAPP law.

Defendant Shawn McBreairty disagrees with the Hermon School Department's inclusionary curriculum and that is his right. It is also his right to express his disagreement. For that reason, Mr. McBreairty has always been welcome to speak at Hermon School Committee meetings about his views and the School Committee will continue to welcome him to do so. But

in addition to expressing his views, Mr. McBreairty has also made numerous false and defamatory accusations against one of the School Department's employees, high school English teacher Mallory Cook. He has falsely accused her of being a sexual predator, of grooming children and of pushing hyper-sexualization of children. Mr. McBreairty has defamed and harassed Ms. Cook to the point where she has had to change the number of her classroom, miss work, seek counselling and even consider leaving her profession.

Contrary to the contentions in Mr. McBreairty's motion, the School Department does not seek "to silence Mr. McBreairty by asking this court to impose a prior restraint on his speech and petitioning activities – presumably because they believe that Mr. McBreairty's opinions on how government should function are contrary to how they wish for government to function." (Def.'s Mem. of L. in Supp. of Def.'s Mot. To Dismiss at 1). In fact, the School Department's prayer for relief is very specific. It only requests that this Court:

Enter a preliminary and permanent injunction prohibiting McBreairty from publishing further statements concerning Mallory Cook that are false and defamatory, or that place Ms. Cook in a false light, or otherwise constitute bullying or harassment under state law and Herman School Department Board policy.

(Complaint p. 9). It requests nothing pertaining to Mr. McBreairty's opinions on government but rather only seeks to protect its employee by preventing him from continuing to bully, defame and harass her.

As discussed more fully below and as supported by the accompanying Affidavits of Mallory Cook and Micah Grant, because Maine's anti-SLAPP law does not protect this type of speech, Mr. McBreairty's motion should be denied.

LEGAL STANDARD

Under Maine's anti-SLAPP law a party may bring a special motion to dismiss claims "based on the moving party's exercise of [its] right to petition under the Constitution of the

United States or the Constitution of Maine.” 14 M.R.S. § 556. Filing an anti-SLAPP motion stays any discovery proceedings, and the motion may be advanced on the docket and given priority over other pending cases. *Id. Pollack*, 2020 ME 93, ¶ 14, 237 A.3d 149 (quoting *Camden Nat'l Bank v. Weintraub*, 2016 ME 101, ¶ 9, 143 A.3d 788).

A Maine court’s review of an anti-SLAPP motion proceeds in two steps. At step one, the moving party must demonstrate, in a motion with accompanying affidavits, that the claims at issue are in fact “based on the moving party’s exercise of [its] right to petition,” and thus properly the subject of an anti-SLAPP motion. 14 M.R.S. § 556; *Desjardins v. Reynolds*, 2017 ME 99, ¶ 8, 162 A.3d 228. “If the moving party fails to meet this burden, then the special motion to dismiss must be denied.” *Hearts with Haiti, Inc.*, 2019 ME 26, ¶ 11, 202 A.3d 1189.

Furthermore, even if the moving party meets its burden in step one, the anti-SLAPP motion is not automatically granted. Instead, at step two, the burden shifts to the non-moving party to show, through its pleadings and accompanying affidavits, “prima facie evidence that at least one of the moving party's petitioning activities was ‘devoid of any reasonable factual support or any arguable basis in law and . . . caused actual injury to the [nonmoving party].”” *Thurlow v. Nelson*, 2021 ME 58, ¶ 19, 263 A.3d 494 (quoting *Nader v. Maine Democratic Party (Nader II)*, 2013 ME 51, ¶ 14, 66 A.3d 571; 14 M.R.S. § 556. Thus, an anti-SLAPP motion is granted only when the moving party meets its burden at step one and the non-moving party fails to meet its burden at step two.

ARGUMENT

This Court should deny Mr. McBreairty’s anti-SLAPP motion for two reasons. First, as the moving party, he has failed to meet his burden of showing that the School Department’s claims against him are “based on [his] exercise of [his] right to petition.” Second, even if this

Court were to find that Mr. McBreairty's targeted and defamatory bullying of a public school teacher somehow constituted constitutionally-protected petitioning activity, his accusations lack any factual basis, and have caused actual harm to the School.

I. Mr. McBreairty has failed to establish that his targeted and defamatory bullying of Ms. Cook was petitioning activity.

Mr. McBreairty's motion and supporting affidavits do not show that the School Department's claims against him are "based on [his] exercise of [his] right to petition." The Maine anti-SLAPP law specifically defines "a party's exercise of its right of petition" as including five interrelated categories of statements:

[A]ny written or oral statement made before or submitted to a legislative, executive or judicial body, or any other governmental proceeding; any written or oral statement made in connection with an issue under consideration or review by a legislative, executive or judicial body, or any other governmental proceeding; any statement reasonably likely to encourage consideration or review of an issue by a legislative, executive or judicial body, or any other governmental proceeding; any statement reasonably likely to enlist public participation in an effort to effect such consideration; or any other statement falling within constitutional protection of the right to petition government.

14 M.R.S. § 556.

In his Memorandum of Law in Support of Defendant's Special Motion to Dismiss, Mr. McBreairty asserts that there is no Maine case law on point, and proceeds to draw on Massachusetts case law for the proposition that he need only establish a "plausible nexus" between his statements and a governmental proceeding to fall under this definition. (Def.'s Mem. at 6-7). Not only is he incorrect that there is no Maine case law on point, but the case law indicates quite clearly that while the definition of petitioning activity in the Maine anti-SLAPP statute is broad, it is not nearly as broad as Mr. McBreairty suggests.

For example, the Law Court recently held that "where a lawsuit alleges a string of tortious and defamatory conduct, only a small portion of which possibly includes petitioning

activity, the protections of the anti-SLAPP statute are not applicable.” *Hearts with Haiti, Inc.*, 2019 ME 26, ¶14, 202 A.3d 1189. One year later, in *Pollack*, the Court held that a party did not engage in petitioning activity when that party sent a notice of claim to another party, but did not subsequently file a claim against that party. *Pollack*, 2020 ME 93, ¶¶ 14-19, 237 A.3d 149.

In comparison, when the Law Court has found statements to constitute petitioning activity under the anti-SLAPP law there has been much more than just a “plausible nexus” between the statement and an issue under consideration by a government decision-maker, or an issue reasonably likely to be brought into consideration by that decision-maker. For example, in *Schelling v. Lindel*, a Maine case relied upon by Mr. McBreairty in his anti-SLAPP motion, the Court did hold that a letter to the editor was “reasonably likely to encourage consideration or review” of purchasing requirements by the Legislature. 2008 ME 59, ¶ 13, 942 A.2d 1226. However, the letter at issue was (1) written by a sitting state legislator; (2) responsive to a letter written about that legislator and his vote on a specific bill regarding purchasing requirements; and (3) addressed the legislator’s specific concerns with the bill. *Id.* at ¶ 3; *see also Desjardins*, 2017 ME 99, ¶ 11, 162 A.3d 228 (holding that statements to the Sheriff’s office accusing a town councilor of driving to meetings under the influence of alcohol constituted petitioning activity).

Mr. McBreairty’s targeted, defamatory bullying of Ms. Cook on —an English teacher with no decision-making authority over the statewide policies he claims to be lobbying against— which was made on social media and not to any legislative body, does not constitute petitioning activity under the anti-SLAPP law. Furthermore, his status as an activist and his contemporaneous petitioning activities do not transform his statements about Ms. Cook into petitioning activity.

- i. *Mr. McBreairty was not engaged in petitioning activity when he bullied Ms. Cook.*

As a general matter, Mr. McBreairty argues that his comments about Ms. Cook are petitioning activity because they are “reasonably likely to encourage consideration or review of an issue,” “enlist public participation in an effort to affect such consideration, and otherwise fell within the constitutional protection of the right to petition the government.” (Def.’s Mem. at 7-8). He then points to various news articles and legislative debates indicating that “LGBTQIA+ [issues are] a topic of national debate, and wide-spread, robust debate within Maine.” (Def.’s Mem. at 7-8 nn.4-5). That certainly may be true, but there is a world of difference between robust debate about LGBTQIA+ issues and falsely and very publically labeling an innocent high school teacher a sexual predator. Mr. McBreairty’s motion and supporting affidavits do not establish – nor could they -- how the targeted, defamatory bullying of an individual high school English teacher is related to this national and statewide policy debate.

In fact, nowhere in his motion or supporting affidavits does Mr. McBreairty meet his burden to establish how public accusations that Ms. Cook is a “sexual predator,” (Compl. at ¶ 38); that she has a secret Twitter account and leads a “hyper-sexualization movement” (Compl. at ¶ 39); that she is “grooming children” and “running a shadow organization by pushing hyper-sexualization of minors” (Compl. at ¶¶ 39, 44); or that she is “attempt[ing] to co-parent the children of Hermon High School, while not concentrating on the very basics of education” (Compl. at ¶ 31) are in any way “reasonably likely to encourage consideration or review of” LGBTQIA+ issues by a government decision-maker, or to “enlist public participation in an effort to effect such consideration.”

Ms. Cook is a high school English teacher. Cook Aff. ¶ 1. She does not set policy for Hermon Schools or the Maine DOE. Nor does she serve in the Legislature. She is not a “groomer” or “sexual predator,” Cook Aff. ¶¶ 17, 26, 30, 36 and those false allegations have

nothing to do with statewide education policy. It is targeted bullying directed at teacher who is just trying to do the best job she can for all of her students. To the extent that Mr. McBreairty's accusations are reasonably likely to enlist public participation of any kind, it is simply public participation in the continuing ridicule, harassment, bullying, (or worse) of Ms. Cook. His accusations against Ms. Cook therefore do not meet any of the explicit categories of conduct mentioned in the definition of petitioning activity in the anti-SLAPP statute.

Mr. McBreairty also invokes that definition's catch-all provision, arguing that his accusations "otherwise fell within the constitutional protection of the right to petition the government."¹ (Def.'s Mem. at 8, 12-13). However, this provision also does not apply to Mr. McBreairty's statements about Ms. Cook.

The Law Court has explicitly held that "[t]he use of speech as part of conduct designed to threaten or harm other individuals will not find protection in either the Maine or the federal constitution." *Childs v. Ballou*, 2016 ME 142, ¶ 15, 148 A.3d 291. Similarly, speech about a private individual that meets the elements of defamation under state law is not protected by the First Amendment. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 347 (1974) ("[S]o long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a . . . defamatory falsehood injurious to a private individual"). In Maine, common law defamation consists of . . .

- (a) a false and defamatory statement concerning another;
- (b) an unprivileged publication to a third party;
- (c) fault amounting at least to negligence on the part of the publisher; and
- (d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.

¹ "Although the right to petition and the right to free speech are separate guarantees, they are related and generally subject to the same constitutional analysis." *Wayte v. United States*, 470 U.S. 598, 612 n.11 (1985); see also *State v. Armen*, 537 A.2d 1143, 1145 n.2 (Me. 1988) (citing to *Wayte* for the same proposition in the context of a claim brought in part under Art. 1 §§ 4, 15 of the Maine Constitution).

Lester v. Powers, 596 A.2d 65, 69 (Me. 1991).

Here, Mr. McBreairty launched a targeted, public campaign of false accusations against Ms. Cook that have disrupted her job duties and impacted her mental and physical health. *E.g.* Cook Aff. ¶¶ 46 – 50. His accusations against Ms. Cook are categorically false, and were made with reckless or intentional disregard for the truth. Cook Aff. ¶¶ 17, 26, 30, 36. They were published on his podcast, social media, the radio, and in email communications, and they caused her to miss work and seek counseling. Cook Aff. ¶¶ 13 – 22, 23 – 27, 28 – 31, 42 – 44, 46 – 50. In addition to being actionable defamation, Mr. McBreairty’s continued communications about Ms. Cook have caused her to suffer serious emotional distress, likely violating Maine’s stalking law, 17-A M.R.S. § 210-A(1) (“A person is guilty of stalking if . . . [t]he actor intentionally or knowingly engages in a course of conduct directed at or concerning a specific person that would cause a reasonable person . . . [t]o suffer serious inconvenience or emotional distress”), and of course, violate the School’s anti-bullying policy. For these same reasons, Mr. McBreairty’s assertion that the School is requesting an unconstitutional prior restraint of his speech is meritless. *See Childs*, 2016 ME 142, ¶ 24, 148 A.3d 291 (holding that a defendant may not “use the First Amendment as a sword to disrupt [the plaintiff’s] life through behavior that the court concluded met the definitions of abuse and criminal stalking,” and thus the extension of a protection from abuse order did not violate the defendant’s First Amendment rights).

Because Mr. McBreairty’s conduct is does not “otherwise [fall] within the constitutional protection of the right to petition the government,” it therefore does not meet any part of the definition of petitioning activity.

- ii. *Neither Mr. McBreairty’s status as an activist nor his contemporaneous petitioning activities transform his statements about Ms. Cook into petitioning activity.*

Mr. McBreairty also attempts to cast his bullying of Ms. Cook as an inseparable component part of his ongoing activism against LGBTQIA+ rights in Maine schools, and argues that the School Department is not trying to protect its staff, but instead attempting silence him altogether because of a disagreement with his point of view. This argument expands the scope of the conduct and statements at issue well beyond those which form the basis of the complaint against Mr. McBreairty. The School's action here is directed only at a narrow category of statements made by Mr. McBreairty about Ms. Cook which fit the definitions of "bullying" and "cyber-bullying" in its anti-bullying policy. It does not concern any of the other portions of Mr. McBreairty's extensive activism concerning the School or education policy in Maine, and there can be no dispute that the School has done nothing to prevent or discourage Mr. McBreairty from appearing before it and expressing his opinions. *See generally*, Affidavit of Micah Grant.

Furthermore, the fact that some of the statements at issue were made contemporaneously with a public records request, which does constitute petitioning activity, does not transform those bullying statements into petitioning activity. Filing a public records request is not a license to ignore the common law of defamation, criminal prohibitions on stalking, or school policy. As the Law Court stated in *Hearts with Haiti, Inc.*, "where a lawsuit alleges a string of tortious and defamatory conduct, only a small portion of which possibly includes petitioning activity, the protections of the anti-SLAPP statute are not applicable." 2019 ME 26, ¶14, 202 A.3d 1189. Such is the case here.

Therefore, Mr. McBreairty has failed to meet his burden to show that the claims against him are "based on [his] exercise of [his] right to petition," and the court should deny his anti-SLAPP motion.

II. Even if Mr. McBreairty's targeted and defamatory bullying of Ms. Cook constitutes petitioning activity, his allegations against her are wholly devoid of any factual basis, and have caused actual injury to the School District.

Even if Mr. McBreairty could meet his burden at step one, his anti-SLAPP motion should still be denied, because his allegations against Ms. Cook have no factual basis, and have caused actual injury to the School.

At step two of the anti-SLAPP analysis, the non-moving party need only show prima facie evidence that one of the petitioning activities at issue was both devoid of a factual basis and caused actual injury. *Thurlow*, 2021 ME 58, ¶ 26, 263 A.3d 494 (quoting *Gaudette v. Davis (Gaudette I)*, 2017 ME 86, ¶ 12, 160 A.3d 1190). If that burden is met, the anti-SLAPP motion must be dismissed. *Id.* at ¶¶ 25-32.

Ms. Cook and the School has specifically denied each of the allegations Mr. McBreairty has made against her, and offered facts which, if proved, would establish that the allegations lacked any reasonable factual support. Furthermore, as a result of Mr. McBreairty's bullying campaign against Ms. Cook, the School has suffered the legal injury of being unable to enforce its anti-bullying policy as required by state law; and has incurred damages in the form of costs to accommodate Ms. Cook's absences and counseling.

i. Mr. McBreairty's statements about Ms. Cook lack any factual basis.

Mr. McBreairty argues that his statements about Ms. Cook were not statements at all, but rather opinions. This is categorically untrue. Mr. McBreairty alleged that Ms. Cook was engaged in specific acts, (Compl. at ¶¶ 38-39, 41, 44), and went so far as to post a definition of the terms he used, to ensure there was no doubt about what he meant. (Compl. at ¶ 45). As set forth above, his statements are categorically false and Ms. Cook and the School have denied them.

For those reasons, the School has met its burden of showing prima facie evidence that Mr. McBreairty's allegations against her lack any factual basis.

ii. Mr. McBreairty's bullying campaign against Ms. Cook caused actual injury to the School.

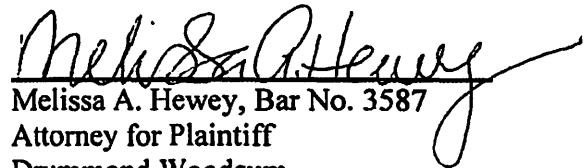
Furthermore, the School has met its burden to show that Mr. McBreairty's bullying campaign against Ms. Cook has caused actual injury to the School. While the Law Court has previously held that "the record must contain evidence from which damage in a definite amount may be determined with reasonable certainty" in order to establish actual injury, this reasoning has only been applied in cases where damages were sought by a plaintiff against a tortfeasor. *Camden Nat. Bank v. Weintraub*, 2016 ME 101, ¶ 12, 143 A.3d 788 (quoting *Schelling*, 2008 ME 59, ¶ 17, 942 A.2d 1226); *see also Desjardins*, 2017 ME 99, ¶¶ 20-21, 162 A.3d 228; *Gaudette I*, 2017 ME 86, ¶ 24, 160 A.3d 1190; *Thurlow*, 2021 ME 58, ¶¶ 29-30, 263 A.3d 494.

This case presents a novel situation where Mr. McBreairty's defamatory statements are against a third party, not the School Department. The injury to the School Department is nonetheless multifaceted. First, Mr. McBreairty's targeted and defamatory bullying campaign against Ms. Cook, a School employee, prevents the School Department from meeting its obligation to "ensure the safety of employees and an inclusive environment for all employees and students in the public school." 20-A M.R.S. § 1001(22). In addition to the harm his conduct has caused already, it could also result in employment claims by Ms. Cook against the School Department. Second, Ms. Cook had to miss work and seek counselling because of the allegations Mr. McBreairty made against her. (Compl. at ¶ 50). As her employer, the School had to find a substitute to accommodate those absences. Finally, failure to adequately protect its employees from bullying of the type Mr. McBreairty has inflicted upon Ms. Cook may result in

the loss to the School Department of top quality employees – a clear and serious injury to a School Department charged with educating the students in Hermon.

Therefore, the School can meet its burden of showing that Mr. McBreairty's targeted campaign of bullying and harassment against Ms. Cook caused actual injury to the School. Mr. McBreairty's anti-SLAPP motion should therefore be denied.

Dated: August 11, 2022



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**AFFIDAVIT OF
MALLORY COOK**

I, Mallory Cook, being duly sworn, depose and state as follows:

1. I am an English teacher at Hermon High School.
2. Hermon High School is part of the Hermon School Department, and serves students from Hermon, Carmel, Levant, and Glenburn.
3. It is the mission of the Hermon School Department to prepare students for personal success in college, career, and community.
4. The Hermon School Department has a policy that encourages the study of controversial issues in high school, when most students are mature enough to study the significant controversial issues facing our society. A copy of that policy, IMB, is attached as Exhibit A.
5. As an English teacher at Hermon High School, it is my responsibility to allow students the opportunity to study controversial issues of political, economic or social significance in an objective and scholarly manner, and in an atmosphere free from bias and prejudice.
6. As a teacher at Hermon High School, it is my responsibility to foster a learning environment where all students feel safe and welcome, regardless of their identity, beliefs, or any

other factor.

7. In addition to my duties as an English teacher, I also serve as an advisor for the Hermon High School Gender and Sexuality Alliance (“GSA”).

8. The GSA is a student-run organization that unites LGBTQ+ and allied students to build community and organize around issues impacting their school.

9. As an advisor for the Hermon High School GSA, I ensure that the club stays in compliance with all school rules and policies, and supervise the student members as they carry out the work of the club.

10. In my role as advisor of the Hermon High School GSA, and as teacher at the school, I have personally witnessed the GSA have a strong positive impact on the academic performance and overall well-being of its student members.

11. I have never met the defendant Shawn McBreairty, and he does not have any children in my classroom.

12. Nonetheless, I am aware from my conversations and observations at the school, and my conversations with my colleagues, that Mr. McBreairty is a frequent participant at school board meetings both in Hermon and in other nearby towns.

February 16, 2022 Statements on Legacy 1160

13. On February 16, 2022, Mr. McBreairty appeared on Legacy 1160, a radio station that broadcasts throughout Central Maine.

14. This broadcast is on Mr. McBreairty’s Soundcloud page:
<https://soundcloud.com/shawnmcbreairty/sets/shawns-legacy-1160-interviews>.

15. On the February 16 radio broadcast, Mr. McBreairty stated that I intended to distribute a “book of pronouns” in my class, and that I wanted to conduct a survey of student

pronouns in my classroom. Mr. McBrairty also suggested I was in “hot water” for violating school policies because I participated in a political event remotely from my classroom after school hours.

16. On the February 16 radio broadcast, Mr. McBrairty identified me as an advisor of the GSA, and announced that we held our meetings in Room 101, which was my classroom. He also stated that the GSA “appears to be a group to normalize sexual deviancy within Hermon students.”

17. The accusations Mr. McBrairty made about me in the February 16 radio broadcast are false. I have never distributed a book of pronouns in my class nor have I conducted a survey of student pronouns in the classroom. Also, my participation in the campaign event Mr. McBrairty referenced did not violate school policies, and I was not disciplined for my participation in that event.

18. Mr. McBrairty’s accusation about the GSA is also false. The GSA’s purpose is to unite LGBTQ+ and allied students to build community and organize around issues impacting their school, it has nothing to do with “normaliz[ing] sexual deviancy.”

19. Mr. McBrairty’s false accusations in the February 16 radio broadcast damaged my professional reputation, and my personal reputation in the community. His comments were broadcast widely to the general public, and concerned my performance as a teacher. Several people I know in both a personal and professional capacity heard that broadcast, and mentioned it to me directly. I have also seen and heard others discussing it on social media and at the school.

20. Mr. McBrairty’s false accusations during the February 16 radio broadcast also caused me to fear for my safety while at work. Because Mr. McBrairty identified me

specifically as the advisor of the GSA in the radio broadcast, and the room in which the GSA met, which was also my classroom, I was very concerned that he or members of the community would follow up on his accusations by confronting me or dropping into a GSA meeting.

21. As a result, I was forced to change the location of GSA meetings and building administration change the room number of my classroom..

22. Finally, I submitted a formal complaint to Hermon High School Principal Brian Walsh regarding Mr. McBrairty's statements on the February 16 radio broadcast, which I believe violate the Hermon School Department's Workplace Bullying Policy (GBGB).

March 10, 2022 Statement on Twitter.com

23. Mr. McBrairty operates the @ShawnMcBrairty handle on Twitter, under the screenname "Shawn McBrairty." Mr. McBrairty has about 880 followers on Twitter.

24. I operate the @teachmaine handle on Twitter, under the screenname "Mallory Cook."

25. On March 10, 2022, Mr. McBrairty posted on Twitter that I have a "secret" Twitter account, and that I run a "hyper-sexualization movement"

26. Mr. McBrairty's accusations are false. My account on Twitter is private, meaning that people who I haven't approved to follow me can't see what I tweet. It is not "secret" in any way, I am clearly identified as the person running the account. I also do not lead any hyper-sexualization movement.

27. By broadcasting these false accusations to his followers on Twitter, Mr. McBrairty has harmed my personal and professional reputation.

March 18, 2022 Statements on the "Maine Source of Truth" Podcast

28. Mr. McBrairty hosts a podcast called "the Maine Source of Truth" where he

shares his thoughts with likeminded listeners.

29. On March 18, 2022, Mr. McBreairty called me a “sexual predator” on his podcast, because of my work with LGBTQ+ students.

30. Mr. McBreairty’s accusation is false. I am not a sexual predator. My work with LGBTQ+ students is part of my duty as a teacher to ensure a safe and welcoming learning environment for all students, and to provide opportunities for all students to succeed.

31. By broadcasting this false accusation to his podcast audience, Mr. McBreairty has harmed my personal and professional reputation.

April 1, 2022 Letter to the Superintendent

32. On April 1, 2022, Mr. McBreairty submitted a letter to the Superintendent of the Hermon School Department seeking information about a training I conducted at other schools, in my free time.

33. Mr. McBreairty’s April 1 letter made vague references to issues related to LGBTQ rights and racism.

34. In his April 1 letter, Mr. McBreairty stated that I “appear[] to be grooming children.” I understood this to be an accusation that I was behaving in a sexually explicit or similarly inappropriate manner with students.

35. In his April 1 letter, Mr. McBreairty stated that I was “attempting to co-parent the children of Hermon High School, while not concentrating on the very basics of education.”

36. The accusations Mr. McBreairty made against me in his April 1 letter are false. I have never behaved in a sexually explicit or similarly inappropriate manner with students. I have never attempted to “co-parent” any of my students. Furthermore, “the basics of education” for high school students includes the study of controversial subject matter of political, economic and

social significance, including issues related to LGBTQ+ rights and racism.

37. By making false accusations about me to the Superintendent of the school district I work for, Mr. McBreairty has harmed my professional reputation and caused me significant distress.

Early April, 2022 Emails

38. In early April, 2022, Mr. McBreairty sent out emails to several people in the community, including law enforcement officers.

39. In his Early April emails, Mr. McBreairty accused me of “grooming children,” and “running a shadow organization by pushing hyper-sexualization of minors in the Gay Sexuality Alliance (GSA) club’s faculty sponsor.”

40. Mr. McBreairty’s accusations in his early April emails are false. Again, I have never behaved in a sexually explicit or similarly inappropriate manner with students. I am not “pushing hyper-sexualization” or anything else in my role as GSA advisor. My job is to ensure students follow school rules and supervise the students. Furthermore, the GSA club is not a “shadow organization,” it’s listed on the school’s website.

41. By publishing these false statements about me and the club I run to members of the community, including law enforcement, Mr. McBreairty has harmed my personal and professional reputation and caused me distress.

May 2, 2022 Twitter Message

42. On May 2, 2022, Mr. McBreairty posted a message to Twitter accusing me, and two of my colleagues, of being “groomers.” I again understood this to be an accusation that I was behaving in a sexually explicit or similarly inappropriate manner with students.

43. Mr. McBreairty’s accusation was false. Again, I have never behaved in a sexually

explicit or similarly inappropriate manner with students.

44. By publishing this false accusation on Twitter, Mr. McBreairty has harmed my personal and professional reputation and caused me distress.

Pattern of Bullying and Harassment

45. Mr. McBreairty's repeated, false, and salacious accusations against me, including his February 16 accusations against me that were broadcast on Legacy 1160, his March 10 accusations about me that he posted on Twitter, his March 18 accusation about me that he shared on his podcast, his April 1 accusations against me that were contained in the letter he sent to the Superintendent, the early April accusations he made about me via email, and his May 2 accusation made over Twitter, constitute a pattern of targeted harassment and bullying against me.

46. Mr. McBreairty's continued harassment and bullying has negatively impacted my job performance, made me feel unsafe, and put me and my students at risk of further harassment and bullying by others in the community.

47. Mr. McBreairty's continued harassment and bullying has made it more difficult for me to fulfill my professional responsibility to provide for the study of controversial issues. Specifically, I fear that discussions of controversial issues in my classroom, particularly those related to LGBTQ+ rights or racism, will cause Mr. McBreairty to make more false accusations about me through his various media channels or directly to administrators in the Hermon School Department.

48. Mr. McBreairty's continued harassment and bullying has made it more difficult for me to fulfill my role as an advisor for the GSA. Specifically, I believe my role as an advisor to the GSA is part of the reason why Mr. McBreairty has singled me out to begin with. I am

concerned that if I continue to serve as an advisor to the GSA, Mr. McBrairy will make more false accusations about me on his various media channels or directly to administrators in the Hermon School Department.

49. As a result of the emotional toll that Mr. McBrairy's continued harassment and bullying had on me, I missed several days of work during the past school year and had to start counselling.

50. I still need to attend counselling on a regular basis and believe I will have to continue for the foreseeable future.

51. If the Hermon School Department cannot keep me safe at work, I will be forced to find employment elsewhere.

Dated: August 11, 2022

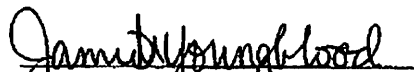

Mallory Cook

STATE OF MAINE
COUNTY OF PENOBSCOT, ss.

August 11, 2022

Personally appeared before me the above named Mallory Cook and being duly sworn made oath that the foregoing statements by her are true and correct and based upon her own personal knowledge.

Before me,


Notary Public/Attorney at Law

Jamie M. Youngblood
My Commission Expires
May 7, 2024

STATE OF MAINE
PENOBSCOT, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-2022-00056

HERMON SCHOOL DEPARTMENT,)
)
 Plaintiff)
)
 v.)
)
)
 SHAWN MCBREAIRTY,)
)
 Defendant)

**AFFIDAVIT OF
MICAH GRANT**

I, Micah Grant, being duly sworn, depose and state as follows:

1. I am the Superintendent of the Hermon School Department (“Department”).
2. Brian Walsh is the Principal of Hermon High School, one of the Department’s schools.
3. Mallory Cook is an English teacher at Hermon High School.
4. The Department is a school administrative unit that serves students from Hermon, Carmel, Levant, and Glenburn.
5. The Department’s mission is to prepare students for personal success in college, career and community.
6. The Department maintains a Workplace Bullying Policy (GBGB), as required by 20-A M.R.S. § 1001(22).
7. The defendant Shawn McBreairty has made approximately seven requests for Department records since November 26, 2021 pursuant to Maine’s Freedom of Access Act (“FOAA”). Of these, five related to LGBTQ+ issues.
8. The Department has responded to all FOAA requests made by Mr. McBreairty in

the past and will continue to do so in the future.

9. A copy of the Hermon School Committee policy BEDH relating to public participation at School Committee meetings is attached hereto as **Exhibit A**.

10. As provided in that policy, members of the public are welcome to participate and speak at School Committee meetings about matters of public concern. The policy does not permit speakers to make defamatory or abusive comments or use vulgar language and it also prohibits complaints about specific employees or students as such complaints are confidential by law.

11. Mr. McBreairty is a frequent attendee at Hermon School Committee meetings. He regularly speaks, often addressing topics related to LGBTQ+ issues.

12. On December 6, 2021, in response to his request, he was invited to address the Hermon School Committee about his concerns regarding a “transgender display” at one of our schools.

13. In addition to this instance, Mr. McBreairty has always been permitted to participate and speak as permitted under policy BEDH and he will continue to be welcome to make comments to the Hermon School Committee in compliance with that policy.

14. Mr. McBreairty will continue to be free to speak on these issues, and to take advantage of any other forum held open by the Department for such purposes, regardless of the outcome of this litigation.

15. Ms. Cook has submitted two complaint to the Department alleging that Mr. McBreairty had used intimidation, defamation, and hyperbole to create a divisive and harmful climate, in violation of the Department’s Workplace Bullying Policy.

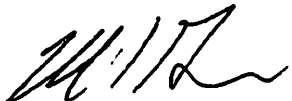
16. Under Maine law and our policies, the Department has an obligation to address

Ms. Cook's complaint.

17. Because Mr. McBreairty is not a school employee or even a member of this community, I believe that the District is unable to take any action to enforce our policy, without a court order.

18. Mr. McBreairty's repeated harassing and bullying of Ms. Cook has harmed the Department in several ways. First, we have had to find a substitute to fill in for her on days she has missed. Both finding and paying for the substitute has been burdensome. Second, we have had to deal with the administrative burden of making changes to her classroom to ensure her safety at school. Finally, we are concerned that, if we cannot effectively enforce our anti-bullying policy, we may be subject to employment claims by her and even more concerning we will not be able to retain Ms. Cook and possibly others as employees, and will have to hire a replacement.

Dated: August 4, 2022



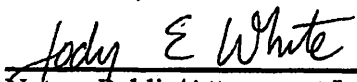
Micah Grant

STATE OF MAINE
COUNTY OF PENOBSCOT, ss.

August 4, 2022

Personally appeared before me the above named Micah Grant and being duly sworn made oath that the foregoing statements by him are true and correct and based upon his own personal knowledge.

Before me,



Notary Public/Attorney at Law

JODY E. WHITE
NOTARY PUBLIC, STATE OF MAINE
MY COMMISSION EXPIRES ON SEPTEMBER 12, 2023

Code: BEDH
Adopted: 3/21/94
Amended: 9/30/96
Amended: 10/30/01
Amended: 3/08/04

Hermon School Department

Public Participation at School Committee Meetings

In order to provide for full and open communication between the Public and the School Committee, the School Committee authorizes several avenues for the exchange of information, ideas and opinions. All of the following operate within the framework of the School Committee's scheduled meetings.

1. Written correspondence may be directed to the School Committee through the superintendent/chairperson for consideration at a meeting.
2. During a School Committee meeting, members of the community may speak with time limitations on matters of immediate concern within the jurisdiction of the committee. The open forum period will be listed on the agenda. The following guidelines shall apply to public participation at School Committee meetings:
 - A. Citizens and employees of the Hermon School Department are welcome to participate as provided in this Policy. Others may be recognized to speak at the chair's discretion. Individual employees and or/employee groups will not be permitted to discuss matters for which complaint or grievance procedures are provided.
 - B. The chair may limit the time allotted for comments on a particular topic as well as the time each individual may speak.
 - C. In the event of a sizable audience the chair may require persons interested in speaking to sign up so they may be called on in a fair and consistent manner.
 - D. During the time set aside for public participation, the chair will be responsible for recognizing all speakers, who must identify themselves as they begin talking.

E. Speakers are not permitted to share gossip, make Defamatory comments or use abusive or vulgar language.

F. All speakers are to address the chair and direct questions sor comments to particular School Committee members or the superintendent only with approval of the chair. Requests for information or concerns that require further research may be referred to the superintendent to be addressed at a later time.

G. Members of the School Committee and the superintendent may ask questions of any person who addresses the School Committee but are expected to refrain from arguing or debating issues. Questions must be addressed through the chair.

H. No complaints or allegations will be allowed at School Committee meetings concerning any person employed by the school department or against particular students.

I. In order to make efficient use of meeting time, the School Committee discourages duplication or repetition of comments to the School Committee. The School Committee requests that groups or organizations be represented by designated spokespersons.

J. The chair has the authority to stop any presentation that violates these guidelines or the privacy rights of others.

K. Persons who disrupt the meeting may be asked to leave, and the chair may request law enforcement assistance as necessary to restore order.

Code: BEDH

3/08/04

Page 3 of 3

3. A citizen who wishes to have an item placed on the agenda will present the request in writing to the superintendent/ chairperson. To be considered, the request must be received by noon on the Thursday preceding the meeting.
4. All speakers must observe rules of common etiquette. The School Committee will allow ten minutes for deliberation. Personalities or complaints about specific individuals must not be injected. A speaker in violation of these rules may be required to leave in order to permit the orderly consideration of the matters for which the meeting was called.
5. Except in an emergency, the School Committee will not attempt to decide upon any question before full examination and an opportunity for the superintendent to research the matter and make his/her recommendation to the School Committee.

EXHIBIT A

Code: IMB
Adopted: 9/26/67
Reviewed: 4/73
Amended: 6/17/91
Amended: 4/8/02

Hermon School Department

Teaching About Controversial Issues

American academic tradition stresses the free contest of ideas as a vital element both in the development of curriculum and in classroom teaching.

Teaching Controversial Issues

Training in reflective and responsive thinking may be incorporated in course offerings at all grade levels. This training is impossible, or at least severely hampered, if the community does not respect the principles of freedom and recognize that dissent does not necessarily mean disloyalty. However, one form of dissent which is incompatible with freedom is that which attempts to end freedom. Irrational fears do just this and thereby may block the school in its efforts to handle controversial issues in an atmosphere of freedom and thoroughness.

- A. It is the responsibility of the schools to make provision for the study of controversial issues.
 1. The policy on controversial issues should be defined in terms of the rights of students rather than in terms of the rights of teachers.
 2. The study should be emphasized in the high school, when most students are mature enough to study the significant controversial issues facing our society.
 3. The study should be objective and scholarly with a minimum emphasis on opinion and a maximum emphasis on facts.
- B. In the study of controversial issues the students have the following rights:
 1. The right to study any controversial issue which has political, economic or social significance and concerning which (at the appropriate level) he/she should begin to have an opinion.

2. The right to have free access to all relevant information;
 3. The right to form and express opinions on controversial issues without thereby jeopardizing relations with the teacher or the school; and
 4. The right to study under competent instruction in an atmosphere free from bias and prejudice.
- C. The teacher employs the same methods in handling controversial issues as characterize the best teaching at any time.
1. The teacher, in selecting both the content and the method of instruction, is mindful of the maturity level of the students.
 2. The teacher has assured him/herself that the controversial subject to be discussed belongs within the framework of the curriculum to be covered, that the subject is significant as well as meaningful for the students, and that through the discussion, students will have the opportunity to grow.
 3. The teacher handles the classroom presentation in ways which will ensure a wide range of information and interpretation for the students' consideration and strives to present a balance among many points of view.
 4. The teacher does not use the classroom as a personal forum. He/she does not employ the techniques of the demagogue or the propagandist for attention, for control, or simply for color. The teacher has the right to identify and express his/her own point of view in the classroom as long as he/she indicates clearly that it is his/her own.
 5. The teacher emphasizes keeping an open mind, basing one's judgment on known facts, looking closely at facts to evaluate them in terms of the subject under discussion, and being ready to change one's opinion should new facts come into light.
 6. The emphasis always is on the method of forming an opinion s much as on the opinion formed.