UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LUIS SOUSA, Plaintiff, v. SEEKONK SCHOOL COMMITTEE; RICH DROLET, in his personal and official capacities; KIMBERLY SLUTER, in her personal and official capacities, Defendants.	Civil Action No. 1:22-cv-40120-IT **PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION** **REQUEST FOR ORAL ARGUMENT**

Plaintiff Luis Sousa files this motion for a preliminary injunction to enjoin Defendants from the enforcement of Seekonk Public Participation Policies Rule 2 and Rule 9. These Rules served as the clearly-stated basis by Defendant Drolet for Defendants' issuance of the unconstitutional no trespass order and the subsequent modified no trespass order issued against Sousa that are the subject of this suit. Plaintiff seeks a permanent injunction in his Amended Complaint, and a preliminary injunction is required until a permanent one can issue. As set forth in the accompanying memorandum, Rule 2 and Rule 9 are facially unconstitutional, and to whatever extent they could be interpreted to be constitutional on their face, they were unconstitutional as applied to Sousa. This motion is based on all the pleadings and papers on file herein and the attached Memorandum of Points and Authorities and any further argument and evidence as may be presented at hearing.

REQUEST FOR ORAL ARGUMENT

Pursuant to L.R. 7.1(d), Plaintiff hereby requests oral argument on this motion. A hearing may facilitate this Court's understanding of the factual and legal issues given the constitutional importance of the relief requested.

WHEREFORE, Plaintiff respectfully requests this Honorable Court issue a Preliminary Injunction:

1) Enjoining the enforcement of Rules 2 & 9 of the Seekonk Public Participation Policies as facially unconstitutional; and

2) To whatever extent the said Rules 2 & 9 are deemed constitutional on their face, enjoining their application in the manner they have been interpreted by the Defendants against Sousa.

Dated: December 16, 2022.

Respectfully Submitted,

/s/ Marc J. Randazza

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LOCAL RULE 7.1(a)(2) CERTIFICATION

I, Marc J. Randazza, counsel for Plaintiff in the above-captioned matter, hereby certify that, pursuant to Rule7.1(a)(2) of the Local Rules of the United States District Court of Massachusetts, I conferred in person with John Davis, counsel for the Defendants, on December 8, 2022, regarding this motion. I also conferred with Attorney Hamel, counsel for the Defendants, by phone on December 15, 2022. Counsel for Defendants intend to oppose this Motion.

/s/ Marc J. Randazza
Marc J. Randazza

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2022, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

/s/ Marc J. Randazza
Marc J. Randazza

UNITED STATES DISTRICT COURT
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LUIS SOUSA,

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v.

SEEKONK SCHOOL COMMITTEE; RICH DROLET, in his personal and official capacities; KIMBERLY SLUTER, in her personal and official capacities,

Defendants.

Civil Action No. 1:22-cv-40120-IT

MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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1.0 INTRODUCTION

Defendants justified banishing Sousa from all school grounds and all school related events for the rest of his life based on Rules 2 and 9 of the Public Speak Policy. After being sued, and on the eve of a TRO hearing, they pulled back some of the most egregious portions of this banishment, but specifically reserved the right to re-establish any and all of the prior punishments, should they deem it proper to do so – including by continued enforcement of Rules 2 and 9. However, the power to dole out these punishments is either nonexistent or rests on an unconstitutional foundation. That foundation, to the extent one exists, is an improper reading of the Open Meetings law and in those rules that the Defendants promulgated, but which are facially unconstitutional. To the extent they can be facially saved, they were unconstitutional as applied to Sousa.

2.0 FACTUAL BACKGROUND

2.1 Open Meetings Law G.L. c. 30A, §§ 18-25 and Public Participation Policy

The Seekonk School Committee ("Committee") is a public body under G.L. c. 30A, § 18. "Except as provided in section 21, all meetings of a public body shall be open to the public." G.L. c. 30A, § 20(a). The Committee Chair may request an attendee to be silent. G.L. c. 30A, § 20(g). If an attendee is disruptive, the Chair may provide a *clear warning* to the attendee and, if the person *continues* to be disruptive, the Chair may order the attendee to withdraw from the meeting. *Id.* If the attendee refuses to leave, then the Chair may authorize an officer to remove the disruptive person from that meeting. *Id.* The Open Meetings Law does not permit a school superintendent to

usurp the Chair's authority, nor does it permit the public body to issue "punishments" in the form of permanent, nor even limited, banishment from public property or future open meetings.[1]

Pursuant to the Public Participation Policy ("Policy"), "Public Speak" is a time for public comment during Committee meetings. *See* Policy, First Amended Complaint ("FAC") Ex. 12, Doc. No. 27-12. The Policy has two unconstitutional rules, facially and as-applied:

- Rule 2: "All speakers are encouraged to present their remarks in a respectful manner."
- Rule 9: "Disclaimer: Public Speak is not a time for debate or response to comments by the School Committee. Comments made at Public Speak do not reflect the views or the positions of the School Committee. *Because of constitutional free speech principles, the School Committee does not have the authority to prevent all speech that may be upsetting and/or offensive at Public Speak*. *Id.* (emphasis added)

In attempting to avoid relief applying against Rule 2, the Defendants claim that the word "encouraged" in this policy saves it, as it is merely a "suggestion". Doc. No. 41 at 14-15. However, this was not treated as a mere "suggestion" in Defendants' interactions with Sousa. To the contrary, Rule 2 was explicitly cited as one of the bases for the unconstitutional banishment the Defendants imposed. *See* Doc. No. 27-11 at 3:32 – 5:35, 6:50-7:40, & 10:10-10:17.

Defendants also argued that the third (italicized) sentence in Rule 9 saves Rule 9 as well as Rule 2. Doc No. 41 at 13. However, again, this is a brand-new interpretation of Rule 9 as a catch-all-provision for all First Amendment protected speech, including "upsetting" and "offensive" speech. *Id*. This belated interpretation comes only as an argument seeking to avoid this Court's review of the rule and its application—that was not how the rule was applied to Sousa and the Court cannot turn a blind eye to what Defendants did. Defendants applied this rule arbitrarily

[1] If the Open Meetings Law is interpreted by this Court to permit prior restraints, Sousa requests that the Court refer this question to the Supreme Judicial Court, and/or permit Sousa to amend his complaint to add a challenge to the constitutionality of G.L. c. 30A, § 20(g).

against Sousa, and the interpretation they actually *used* should be the one this Court enjoins, because unless the Court acts, nothing will stop them from reverting to the initial interpretation, especially where they do not acknowledge what they did to Sousa was unconstitutional or that they arbitrarily used two different interpretations—one to Sousa and one to this Court.

This Court suggested at oral argument on December 8, 2022, that Rule 2 was proper because it gives fair warning to anyone as to what it means. Sousa respectfully disagrees. To whatever extent the Court does find it to be constitutionally precise, it must be enjoined as applied. Sousa reasonably anticipates that it will be applied precisely the way Defendants applied it before, and he will then somehow be in violation of not only the Rule, but will offend the Court's findings.

The Court suggested at oral argument that Rule 9 was proper because it does not restrict conduct by citizens during Public Speak, but it only restrains Defendants or it merely explains that Defendants are not required to respond to citizens' inquiries or comments at Public Speak. However, this is not how Defendants have interpreted it, nor enforced it, and Rule 9 was a specific reason that the Defendants provided for the punishment they doled out to Sousa. If the rule only applies to Defendants, there is no possible way Sousa could have violated it. To the extent that this rule could be interpreted to restrict what citizens say at Public Speak, it must be enjoined, as Sousa's speech remains chilled as to what he can or can not say at Public Speak.

To the extent that the Court's preliminary interpretation of Rule 2 could control, it would then conflict with the plain language of Rule 9. Rule 9 explicitly warns everyone in attendance that there can be "upsetting" or "offensive" speech. However, most interpretations of the word "respectful" would exclude "upsetting" or "offensive" speech. Accordingly, the fact that the two rules are both vague *and* they conflict with each other creates an unconstitutional condition that requires an injunction against both.

2.2 The Two Incidents the Defendants Used to Justify Banishment

2.2.1 January 5 Protest

On January 5, 2022, Sousa arrived at the Committee meeting with the intention of addressing the Committee during Public Speak. *See* **Exhibit 1**, Declaration of Luis Sousa ("Sousa Decl." at ¶ 4. When Sousa arrived, the door was locked. *Id.* at ¶ 5; *see also* FAC, Doc. No. 27 at ¶¶ 8-16. Sousa observed that the Committee meeting was being held inside the Superintendent's office. Sousa Decl. at ¶ 6; *see also* Luis Sousa Dec., Doc. No. 57-2 at ¶ 5. Sousa turned on his cell phone to record his protest and began protesting. Sousa Decl. at ¶ 7. Sousa can be heard saying, "Why are we not allowed at the meeting? You canceled two meetings. Why can't we go?" *See* Recording of Jan. 5, 2022 Incident, FAC Ex. 3, Doc. No. 2-3 at 0:00 – 0:07; Sousa Decl. at ¶ 8. Sousa then walked up to the window and continued to record. Defendants then left the Superintendent's office. *Id.* at 0:09-0:41 *see also* Sousa Decl. at ¶ 9. As Defendants left the office, Sousa turned off his camera and walked to his car. *Id.* at 0:41-0:44; *see also* Sousa Decl. at ¶ 10.

Sousa wanted to know why the Committee meeting was canceled after two meetings had already been canceled. Sousa Decl. at ¶ 12. Having been excluded and unaware that the public meeting occurred and was recessed in an uncharacteristically rapid fashion (it was only 3 minutes long), *see* Jan. 5, 2022 Meeting Minutes, FAC Ex. 2, Doc. No. 27-2. Sousa stood on the public grounds and protested that he could not participate. Sousa Decl. at ¶¶ 11-12. That was his right under the First Amendment.[2]

[2] Sousa's misapprehension (a public meeting occurred, but he did not know and mistakenly protested the lack of a public meeting) does not affect his First Amendment rights. Every American is free to carry a protest sign saying "Kick George W. Bush Out of the Whitehouse" even though Bush has not been president for 14 years.

Soon thereafter, police officers arrived. *See* Jan. 5, 2022 Police Report, FAC Ex. 4, Doc. No. 27-4; *see also* FAC at ¶¶ 11-16. Defendant Kimberly Sluter falsely told police that Sousa was "banging on the windows" and "screaming." Doc. No. 27-4 at 3. No other Committee member corroborated these allegations. Sousa Decl. at ¶¶ 13-15. Officers asked if Sousa had threatened anyone. Doc. No. 27-4. "No one could recall any direct threats[.]" *Id.* The police reported Sousa as calm and respectful. The police report noted "No Crime Involved." Doc. No. 27-4 at 2; Sousa Decl. at ¶¶ 16-18. Sousa recorded his entire protest, and there was no "banging on windows" before the recording began. Sousa Decl. at ¶ 19; Doc. No. 57-2 at ¶ 5. There are security cameras that cover the area where the protest took place, and Sousa requested that the Defendants provide the footage from that camera. If this "banging on windows" occurred, Defendants would have eagerly entered it into evidence. Defendants claim the footage was deleted in March 2022.[3] **Exhibit 2**, Decl. of Marc J. Randazza ("Randazza Decl.") at ¶6.

On Jan. 10, 2022, Drolet wrote to Sousa threatening to issue a no trespass order because Sousa's "behavior on January 5" allegedly caused a "disturbance." *See* Jan. 10, 2022 No Trespass Order, Doc. No. 27-5 at 2; Doc. No. 57-2 at ¶ 6; Sousa Decl. at ¶ 20. On Jan. 18, Sousa and Drolet met. Sousa recorded that meeting. Sousa Decl. at ¶ 21. Drolet affirmed to Sousa that there was no banging on the windows. *See* Sousa Decl. at ¶ 22; *see also* Recording of Jan. 18, 2022, Meeting, FAC Ex. 6, Doc. No. 27-6 at 3:02 ("One thing I wanted to clarify, I made sure in the letter that it

[3] Defendants tried to initiative a criminal action by calling the police. Defendants issued a no trespass order that was still in effect at the time they destroyed the evidence. *See* Affidavit of Richard Drolet, Doc. No. 16-1 at ¶ 11. Defendants informed Plaintiff that they destroyed the footage 60 days after it was taken, on March 5, 2022. *See* Randazza Decl. at ¶ 6. *Hankey v. Town of Concord-Carlisle*, 136 F. Supp. 3d 52, 71 (D. Mass 2015) (Talwani, U.S.D.J.) ("This permissive negative inference springs from the commonsense notion that a party who destroys a document . . when facing litigation, knowing the document's relevancy to issues in the case, may well do so out of a sense that the document's contents hurt his position.") (internal citations omitted)

didn't say you were banging or screaming.")[4] In the Jan. 18 meeting, Drolet did *not* identify any statute, rule, or policy that Sousa's Jan. 5 protest violated. Sousa Decl. at ¶ 23. He simply decided, on his own, without any authority, that this lawful protest was not to his liking, and then used his position as a government official to punish Sousa for protesting, without due process.

2.2.2 September 26 Committee Meeting

On Sept. 26, 2022, Sousa's wife, Kanessa Lynn, was addressing the Committee regarding a book donation and why Seekonk Public School refused to accept the book into its library. *See* Audio Recording of September 26, 2022, Session, FAC Ex. 7, Doc. No. 27-7 at 1:14:04-1:18:14. After three minutes, the Committee strictly enforced the time limit, and the Chair told Lynn that her time was up. *Id.* at 1:16:50-1:17:12. Lynn continued speaking, and the Chair asked the attendees, "Is there any additional public comments this evening?" *Id.* at 1:17:40-1:17:45. In response to this question to the crowd, Sousa replied, "Yeah, I'll wait until my wife's done." *Id.*[5] Lynn continued addressing the Committee, and Committee members can be heard whispering "convene" and "make a motion to adjourn." *Id.* at 1:17:38 & 1:17:46. As Lynn continued speaking, the Chair twice asked Lynn to sit down. *Id.* at 1:17:48 & 1:17:58. A Committee member whispered "cut the camera" and then the Committee moved to recess. *Id.* at 1:18:03-1:18:10.

Admittedly, while the Committee deliberated on how to respond to Lynn continuing to speak, Sousa spoke, too. *See* FAC ¶¶ 34-40. Prior to the Committee calling a recess, Sousa

[4] Defendant Sluter, however, appears to continue to maintain that this is not true.

[5] To whatever extent anyone could deem Sousa's comment at that time to be "disruptive," that interpretation defies logic. If a member of the board asks a crowd if anyone wants to speak, and someone responds affirmatively, then it cannot be "disruptive" or even "speaking out of turn". "The meanings given for 'disrupt' include: to throw into disorder or turmoil; to interrupt to the extent of stopping, preventing normal continuance of or destroying." *Packer v. Bd. of Educ.,* 246 Conn. 89, 109 (1998) (citing Webster's 3rd New Int'l Dict.). Answering a question presented to the public is within the normal order, non-interruptive, and part of normal dialogue in a meeting.

followed up his first comment by loudly stating, "You should have had a meeting two weeks ago." *See* Audio Recording of Sept. 26, 2022, Session, FAC Ex. 7, Doc. No. 27-7 at 1:17:50. As the Committee moved for a recess, Sousa objected by saying, "No!" *Id.* at 1:18:05; Sousa Decl. at ¶ 24. After the Committee entered recess, Sousa loudly asked, "Who is checking on that child that is so distraught! … This meeting is a joke. *Id.* at 1:18:10.[6]

Despite the Chair inviting Sousa to speak, at no point did the Chair acknowledge Sousa's response. The Chair did not attempt to silence Sousa. The Chair did not warn Sousa that he was being disruptive. The Committee had *already* entered a recess because Lynn continued speaking despite the Chair asking her several times to take a seat. After the Committee entered its recess, Drolet asked Sousa to leave. *See* Affidavit of Richard Drolet, Doc. No. 16-1 at ¶ 14. While Sousa gathered his belongings, a resource officer entered the room to follow Sousa out. *See* Recording of Meeting October 3, 2022, FAC Ex. 11, Doc. No. 27-11 at 7:25-8:20; *see also* Sousa Decl. at ¶ 25. The Committee reconvened the meeting, and the Chair recited G.L. c. 30A, § 20(g).[7] *See* Audio Recording of September 26, 2022, Session, FAC Ex. 7, Doc. No. 27-7 at 1:18:40-1:19:13. The Chair then stated, "we really need everyone in here to be respectful", demonstrating the lack of Rule 2 being merely a suggestion. *Id.* at 1:19:17-1:19:20.

The September 26 Committee meeting minutes state that "[d]ue to a disruption of the meeting by a member of the public" the Committee entered a recess, but the minutes do not identify who caused a disruption. *See* September 28, 2022, Meeting Minutes, FAC Ex. 9, Doc. No. 27-9 at 5. Was it Lynn, Sousa, or someone else? The use of the singular in the official meeting minutes

[6] At oral argument on December 8, 2022, Plaintiff's counsel mistakenly argued that Sousa's additional comments were **all** after the Committee entered a recess. Upon re-review, it is clear that this statement was incorrect. We withdraw that inadvertent incorrect statement and apologize.

[7] The Chair, as a person of ordinary intelligence, knew she had not complied with the very law she was reciting, as there was no warning to Sousa before he was removed.

makes it clear that it was not both. And, these minutes have been reviewed and approved.[8] If the Defendants wish to change their story, they can not do so now.

Sousa did not threaten anyone. Sousa only spoke after the Chair addressed the audience with a question, inviting him to speak. He admittedly exclaimed, loudly, that the "meeting is a joke." *See* Recording of Sept. 26, 2022, Session, FAC Ex. 7, Doc. No. 27-7 at 1:18:10. Sousa was never silenced by the Chair nor warned by the Chair as required by the Open Meeting Law prior to removal. Defendants consistently acted *ultra vires*.

2.3 Drolet's Unconstitutional Conduct

On Sept. 27, 2022, Drolet issued a letter to Sousa fallaciously admonishing him for his "highly inappropriate and disruptive behavior that required the School Committee to temporarily enter into a recess [on Sept. 26, 2022]." *See* September 27, 2022, Notice of Intent, FAC Ex. 10, Doc. No. 27-10 at 2; *see also* Doc. No. 57-2 at ¶ 8; *see also* Sousa Decl. at ¶ 27. In the letter, Drolet threatened to issue a permanent no trespass order against Sousa for his conduct on September 26, 2022 and January 5, 2022. Doc. No. 27-10 at 2.

On October 3, 2022, Drolet met with Sousa. *See* Recording of Meeting October 3, 2022, FAC Ex. 11, Doc. No. 27-11; Sousa Decl. at ¶ 28. During the meeting, Drolet handed Sousa a copy of the Policy with Rule 2, 7, and 9 highlighted. *Id.* at 4:08-4:16; *see also* Sousa Decl. ¶ 29; Doc. No. 27-12 at ¶¶ 2, 7, and 9. Drolet falsely asserted that Sousa violated Policy Rule 2, 7, and 9 during the September 26, 2022, Committee meeting. Doc. No. 27-11 at 3:32–5:35, 6:50-7:40, & 10:10-10:17; Sousa Decl. at ¶ 30. "It is repeatedly disruptive, disrespectful and you're not following directions when you're asked to stop. That's the concern." Doc. No. 27-11 at 10:10-

[8] October 17, 2022 Seekonk School Committee Meeting Minutes, at 2, (accessed Dec. 14, 2022 at 2:05PM), https://drive.google.com/drive/folders/1_9SXd3D3vsZ2fkv851Y-IcKAD0BMtB_i. *See* **Exhibit 3**, Declaration of Robert J. Morris II ("Morris Decl.") at ¶¶ 4; Morris Decl. at Exhibit A.

10:17. As the evidence cited above shows, Sousa was not disruptive or not following directions or even asked to stop.[9] Sousa Decl. at ¶ 26. In addition to lying about what happened on September 26, Drolet also demonstrated shifting narratives by now claiming that Sousa was "screaming" during his January 5 protest. Doc. No. 27-11 at 1:17-2:23; Sousa Decl. at ¶ 31.

On Oct. 4, 2022, Drolet unilaterally banished Sousa from school property based on his January 5 protest and his speech during the September 26 Committee meeting. *See* Oct. 4, 2022, No Trespass Order, FAC Ex. 13, Doc. No. 27-13 at 2; *see also* Doc. No. 57-2 at ¶ 10; *see also* Sousa Decl. at ¶ 32. No other conduct was mentioned in the October 4 letter. The letter fails to provide any statute, rule, or policy that Sousa violated. Drolet banned Sousa from school property and attending school related functions or events as a punishment for protected speech. *Id.*

In an effort to evade legal review of his most egregious violations of substantive due process, Drolet modified the no trespass order to ban Sousa from attending Seekonk School Committee meetings, public meetings as defined under G.L. c. 30A, §§ 18-25, for one year. *See* November 23, 2022, Modified No Trespass Order, Doc. No. 41-1 at 2. However, he reserved the arbitrary power to re-impose any punishment he wants. *Id.*

3.0 LEGAL STANDARDS

Injunctive relief should be issued if: (1) the plaintiff is likely to succeed on the merits; (2) the plaintiff is likely to suffer irreparable harm if the injunction did not issue; (3) the balance of equities tips in plaintiff's favor; and (4) the injunction is in the public interest. *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008). "In the First Amendment context, the likelihood of success on the merits is the linchpin of the preliminary injunction analysis." *Sindicato Puertorriqueño de Trabajadores v. Fortuño*, 699 F.3d 1, 10 (1st Cir. 2012) (per curiam). At this stage, the "court need

[9] Mr. Sousa also does not believe he was disrespectful. Sousa Decl. at ¶ 26. However, that term is itself vague and unconstitutional, the subject of a separate argument.

not conclusively determine the merits of the movant's claim; it is enough for the court simply to evaluate the likelihood . . . that the movant ultimately will prevail on the merits." *Ryan v. U.S. Immigr. & Customs Enf't*, 974 F.3d 9, 18 (1st Cir. 2020).

4.0 LEGAL ARGUMENT

4.1 Plaintiff is likely to Prevail on the Merits of His Claims

For a preliminary injunction, the plaintiff must show the state action infringes on their First Amendment rights, at which point the state must then justify its actions. *Comcast of Maine/New Hampshire, Inc. v. Mills*, 435 F. Supp. 228, 233 (D. Me. 2019) (citing *Reilly v. City of Harrisburg*, 858 F.3d 173, 180 (3d Cir. 2017)). *See also United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 816 (2000) ("When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions."); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.,* 393 U.S. 503, 509 (1969) ("In order for the State . . . to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.").

The no trespass order was constitutionally repugnant. *See* FAC Ex. 13, Doc. No. 27-13, that has since been modified (with a full reservation of the power to reimpose it) to a one-year ban from attending Seekonk School Committee meetings, *see* MPI Opp Ex. 1, Doc. No. 41-1 , and threatening to enforce it against Plaintiff for his First Amendment protected speech. Sousa's January 5 protest was First Amendment protected activity. *Jones v. Parmley*, 465 F.3d 46, 56 (2d Cir. 2006) ("The Supreme Court has declared that the First Amendment protects political demonstrations and protests.") (citation omitted). Similarly, Sousa's September 26 speech, expressing displeasure (even rudely) during the Committee meeting, was First Amendment-protected. *See City of Madison, Joint Sch. Dist. No. 8 v. Wis. Emp. Rels. Comm'n,* 429 U.S. 167,

174–75 (1976) (holding that the First Amendment protects the rights of speakers at school board meetings that were opened for direct citizen involvement and permitted public participation).

Seekonk School Committee meetings are public meetings. *See* G.L. c. 30A, § 20(a). In the no trespass letters, Defendants do *not* provide a legal justification for barring Sousa from attending public meetings. *See* Doc. Nos. 27-10, 27-13, & 41-1. Further, the Open Meetings Law may authorize the removal of a citizen who is disruptive, and then warned, and then disruptive *again*. G.L. c. 30A, § 20(g). This is the opinion of the Massachusetts Attorney General, who has held "the chair may only order a person to withdraw from a meeting when a person continues to disrupt a meeting after having been clearly warned." OML 2019-123, 2019 Mass. AG LEXIS 166, *8-9. However, not a single word in the Open Meetings Law authorizes a prior restraint by banishment from future meetings.[10] Sousa was not disruptive, warned, or disruptive a second time.

On Oct. 3, 2022, Drolet alleged that Sousa violated Policy Rule 2, 7,[11] and 9 during the Sep. 26 meeting. *See* Doc. No. 27-11 at 3:32 – 5:35, 6:50-7:40, & 10:10-10:17. Defendants have not even attempted to identify any statute, rule, or policy that Sousa's Jan. 5 protest violated.

4.1.1 Free Speech Claim

Content based restrictions are subject to strict scrutiny. Facially neutral restrictions receive intermediate scrutiny, meaning they must be "narrowly tailored to serve and significant government interest…" *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). A limited public

[10] Sousa understands that the Court at least initially seemed to disapprove of this interpretation of the Open Meetings Law. *See* Trans. Dec. 8 hrg., Doc No. 55 at 62:20-63:04. While the Court's interpretation might be a better theory, it is not the law that the Commonwealth passed. As a matter of statutory interpretation, the plain language of the statute controls. *See Summit Inv. & Dev. Corp. v. Leroux*, 69 F.3d 608, 610 (1st Cir. 1995) ("The plain meaning of statutory language controls its construction.") (citation omitted) (quotation marks omitted).

[11] Sousa does not challenge the Rule 7 facially. However, as applied, it seems to be erroneously applied against Sousa because he complained about other people getting extensions of time, but that he or his wife did not. Doc. No. 27-11 at 3:32-5:35.

forum exists "where the government opens a non-public forum but limits the expressive activity to certain kinds of speakers or to the discussion of certain subjects." *Hotel Emples & Rest. Emples Union, Local 100 v. City of N.Y. Dep't of Parks and Rec.*, 311 F.3d 534, 545 (2d Cir. 2002) (cleaned up). In such public forums, regulation of the designated subject matter of the forum receives strict scrutiny, but regulation of matters outside of that forum's purpose must only be "viewpoint neutral and reasonable." *Id. at 546*. We all agree, this is a limited public forum.

As a general matter, prohibiting someone from testifying at a public meeting because they have disrupted or otherwise interrupted the meeting is a "[r]easonable time, place and manner restriction[] on speech in limited public fora." *See Devine v. Village of Port Jefferson*, 849 F. Supp. 185, 190 (E.D.N.Y. 1994) (upholding the expulsion of an individual from a particular open public meeting for disruptive behavior that involved shouting, drowning out other members of the community from speaking and interrupting members of the Board as they attempted to proceed with the business at hand). Such exclusions are only constitutional if they are content-neutral, serve a significant government interest, and leave open alternative channels for expression. *Id.*

For time, place, and manner restrictions to be valid they must not delegate overly broad discretion to a government official, must be narrowly tailored to serve a substantial governmental interest, and must leave open ample alternatives for communication. *See Globe Newspaper Co. v. Beacon Hill Architectural*, 100 F.3d 175, 182 (1st Cir. 1996). In order for a time, place, and manner restriction to be narrowly tailored it must further a substantial government interest. *See Gay Students Org. of Univ. of N.H. v. Bonner*, 509 F.2d 652, 660 (1st Cir. 1974). Rules 2 and 7 fail these tests if they can be used the way Defendants used them.

4.1.2 Rule 2 is Unconstitutional, Both Facially and As-Applied

"[P]ublic bodies may confine their meetings to specified subject matter . . . ." *Madison Joint Sch. Dist. v. Wis. Emp't Relations Comm'n*, 429 U.S. 167, 175 n.8 (1976). But such confinement must be viewpoint neutral and clear. "The vagueness doctrine, a derivative of due process, protects against the ills of laws whose 'prohibitions are not clearly defined.'" *Nat'l Org. for Marriage v. McKee*, 649 F.3d 34, 62 (1st Cir. 2011) (citations omitted).

Rule 2 states that "[a]ll speakers are encouraged to present their remarks in a respectful manner." Rule 2 is vague as (1) "it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits" and (2) "it authorizes or even encourages arbitrary and discriminatory enforcement." *Hill v. Colorado*, 530 U.S. 703, 732 (2000). Out of concern for arbitrary suppression of speech, "the Constitution requires a 'greater degree of specificity' in cases involving First Amendment rights." *McKee*, 649 F.3d at 62.

In *Mama Bears of Forsyth County, et. al. v. Wesley McCall, et al.,* 2:22-CV-142-RWS, slip op. at 20-21 (N.D. Ga. Nov. 16, 2022), the court held a similar policy was a facially unconstitutional viewpoint-based regulation. There, the policy stated that "[m]embers of the public shall conduct themselves in a respectful manner that is not disruptive to the conduct of the Board's business." *Id.* at 8. The school board did not define "respectful". *Id.* at 17-18. The court looked to dictionary definitions and concluded that the policy required the plaintiffs to hold the board in high esteem. *Id.* at 18. The court ruled that the policy was viewpoint-based and impermissibly targeted speech unfavorable to or critical of the school board. *Id.* at 18-20. "[T]hat is exactly what the First Amendment is intended to prevent in a setting like a school board meeting." *Id.* at 20. "Members of the public must be able to provide their feedback and critiques, even if some people, Board members included, find that distasteful, irritating, or unfair." *Id.* This Court should view this case through the same prism and reach the same conclusion.

Seekonk's Rule 2 fails for the same reason. "Respectful" is not defined in the Policy, but the dictionary defines it as (1) "a feeling of admiring someone or something that is good, valuable, important, etc."; (2) "a feeling or understanding that someone or something is important, serious etc., and should be treated in an appropriate way"; or (3) "a particular way of thinking about or looking at somethingRule 2 expects the public to hold a certain viewpoint during Public Speak and is unconstitutional on its face. *Matal v. Tam*, 137 S. Ct. 1744, 1763 (2017) ("Giving offense is a viewpoint.") This bans sarcasm, it bans even "dirty looks" or rolling one's eyes. It means you can say to the chair "You're looking radiant today," but not "You disgust me." To the extent that "respectful manner" does not require a certain viewpoint, it fails to provide the public a reasonable opportunity to understand what is prohibited. The vagueness permits arbitrary and discriminatory enforcement, targeting speech that Defendants perceive as unfavorable or critical of their work.

Rule 2 is unconstitutional as-applied to Sousa. Defendants belatedly claim it is a mere "suggestion," this is not how the Defendants used it. If it were merely a *suggestion*, then they knew it was unenforceable. The Defendants treated Rule 2 as a mandate and an authorization to mete out punishments. Rule 2 may use the word "encourages" but Defendants punished Sousa for not taking the suggestion. If the government has a suggestion but uses it as a basis for punishment, then it is a *requirement*. For violating this "suggestion," Sousa was banished from a wide swath of public life. Had he not abided that punishment, he would have gone to jail. If that is a mere "gentle suggestion" then one must shudder to imagine what a "clear mandate" would do.

Drolet expressly stated that Sousa's speech at the September 26 Committee meeting violated Rule 2. *See* Recording of Meeting October 3, 2022, FAC Ex. 11, Doc. No. 27-11 at 3:32 – 5:35 & 10:10-10:17. During the October 3 meeting, Drolet told Sousa that "It is repeatedly

disruptive, *disrespectful* and you're not following directions when you're asked to stop. That's the concern." *Id.* at 10:10-10:17 (emphasis added).

In *Mama Bears*, plaintiffs challenged a "permissive" civility policy that stated part "[s]peakers are asked to keep their remarks civil." *Id.* at 8. This too was a "suggestion," but the defendants treated the civility policy as a mandate. *Id.* The defendants in that case did what Drolet did here – banished a citizen from future meetings because she violated an "aspirational" rule of civility. *Id.* at 8 & 24. In that case, the similar provision was unconstitutional as applied because of a lack of clarity as to what it prohibited and its selective enforcement – just like this case.

Why did Drolet find that Sousa violated Rule 2 during the September 26 Committee meeting, but Drolet was silent on whether Lynn violated Rule 2? Defendants selectively enforce and inconsistently apply Rule 2 to certain people, but not others. Nowhere in the Policy is *respectful* defined. But, the definition in the dictionary requires a certain, subjective viewpoint, a definition that Defendants are given wide and arbitrary room to determine on an *ad hoc* basis. It is impossible for Sousa to tailor his speech to satisfy the Defendants, when he cannot clearly know what their "suggestion" will turn on, and when he will face an armed response.

4.1.3 Rule 9 is Unconstitutional, Both Facially and As-Applied

Rule 9 is unconstitutional facially and as-applied. Rule 9 states "Public Speak is not a time for debate or response to comments by the School Committee" Doc. No. 27-12 at ¶ 9. Rule 9 prohibits Sousa from addressing the Committee, and the Committee from responding to Sousa. While the Defendants may have every right to restrain their own right to speak back to members of the public, they may not restrain the public's right speak to them. And, Rule 9 on its face prohibits "debate" or "respon[ding] to comments by the School Committee." The Court expressed

a different interpretation, but this is not how Defendants interpreted it. And, the Court must preclude Defendants from holding fast or reverting to their unconstitutional interpretation.

Restrictions against personally directed comments are vague and overbroad. *See, e.g., Ison v. Madison Local Sch. Dist. Bd. of Educ.*, 3 F.4th 887, 893-95 (6th Cir. 2021) (policy's restriction on personally directed speech violated the First Amendment); *Marshall v. Amuso*, 571 F. Supp. 3d 412, 422-26 (E.D. Pa. 2021) (provision allowing for the interruption or termination of public comments deemed "personally directed" facially unconstitutional); *Moore v. Asbury Park Bd. of Educ.*, 2005 U.S. Dist. LEXIS 18372, at *30-36 (D.N.J. 2005) (concluding that plaintiffs were substantially likely to succeed on their challenge to the "personally directed" provision as "an unconstitutional restraint on speech," while also noting that the provision was "not essential to the Bylaw's goal of permitting the fair and orderly expression of public comments, and numerous other provisions in the Bylaw contribute toward that end.").

On Oct. 3, Drolet told Sousa that he violated Rule 9 for debating and arguing. *See* Recording of Meeting FAC Ex. 11, Doc. No. 27-11 at 6:50-7:40. Defendants do not read Rule 9 the way the Court does. The enforcing body, the Court, and the Plaintiff all interpret the language differently. What better sign of vagueness can there be?

Defendants interpreted Rule 9 to mean that Sousa is not allowed to debate or respond to comments by the Committee, despite this being common-place. If Rule 9 is constitutional on its face, then Rule 9 is unconstitutional as-applied because it was used to punish him for personally directed comments—it applied directly to the content of his statements. Rule 9 is also selectively enforced and arbitrarily applied. On May 23, 2022, during a committee meeting, a member of the public engaged in discussion with the Chair and Drolet for more than 6 minutes about using the school tennis court for pickle ball. Doc. No. 27-16 at 52:38-59:10; FAC at ¶¶ 69-71. On June 27,

2022, an individual engaged with Drolet, the Chair, and a committee member during Public Speak twice, both for longer than 5 minutes. Doc. No. 27-17 at 27:45-33:08 & 56:45-1:03:15; FAC at ¶¶ 72-74. On August 22, 2022, Sousa and Drolet, himself, engaged in debate during Public Speak. Doc. No. 27-18 at 37:27-40:08 & 1:33:10-1:36:36; FAC at ¶¶ 75-76. But, on September 26 when Drolet decided that he had been treated with "disrespect" in violation of Rule 2, then this Rule 9 came into play as a justification to punish Sousa.

Rule 9 is an unconstitutional content-based restriction on speech and petition. Drolet's issue with Sousa's argumentativeness is an admission that Drolet disagrees with Sousa's viewpoints and seeks to silence him. As such Rule 9 is unconstitutional as-applied to Sousa.

Moreover, Sousa was not truly a speaker participating in "Public Speak" under the Policy during the September 26 Committee meeting—recess was called before he could take to the lectern. During the October 3 meeting, Drolet did not identify any examples of Sousa being argumentative during Public Speak at the September 26 Committee meeting. *See* Doc. No. 27-11 at 6:50-7:13. Despite not providing any examples, Drolet claimed that Sousa's argumentativeness was "disruptive." *Id.* at 7:07-7:09. However, it is not Drolet's role to determine whether Sousa is being disruptive. The *Chair* may dismiss an attendee from a public meeting after clear warning that a person is being disruptive, and the person refuses to stop. *See* G.L. c. 30A, § 20(g). Drolet overstepped his authority and usurped the Chair's role. 2019 Mass. AG LEXIS 166, *8-9 ("[T]he chair may only order a person to withdraw from a meeting when a person continues to disrupt a meeting after having been clearly warned."). Further, it is the Committee's responsibility to enforce its own Policy, not the superintendent's job. Nonetheless, Drolet has used his government position to impose a prior restraint on Sousa. As such, Rule 9 is unconstitutional as-applied.

4.2 Sousa Will Suffer Irreparable Injury Without an Injunction

The "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). If the plaintiff demonstrates a likelihood of success on the merits of its First Amendment claim, they necessarily also establish irreparable harm. *Sindicato Puertorriqueño de Trabajadores v. Fortuño*, 699 F.3d 1, 15 (1st Cir. 2012).

The Defendants deprived Sousa of his First Amendment rights by banning him from public meetings and preventing him from petitioning his government. These restrictions are neither narrowly tailored nor rationally related to any purported government policies. When the temporary restraining order is lifted, Defendants will continue to use their unconstitutional policy to deprive Sousa of his First Amendment rights. Further, even if the TRO is converted to a preliminary injunction, Sousa's speech remains chilled – because he is still under the control of Rules 2 and 9.

4.3 The Balance of Equities Tips in Plaintiff's Favor

When a government regulation restricts protected speech, the balance of hardships tilts to the plaintiff. *See Firecross Ministries v. Municipality of Ponce*, 204 F. Supp. 2d 244, 251 (D.P.R. 2002) (holding that "insofar as hardship goes, the balance weighs heavily against Defendants, since they have effectively silenced Plaintiffs' constitutionally protected speech").

After this Court's temporary restraining order is lifted, the Defendants will continue to violate Sousa's First Amendment right through their unconstitutional rules. Defendants will suffer no harm if Sousa is granted the requested injunctive relief. They can still warn him if he is disruptive under the Open Meetings Law and then remove him if he is disruptive again at the same meeting (so long as he is actually disruptive, rather than Defendants pretending he is). The "hardship" to the government is that the officials will have to craft constitutionally sound policy. A citizen's exercise of his rights is no hardship to the government at all.

4.4 Injunctive Relief is in the Public Interest

The public interest is served by issuing an injunction where "failure to issue the injunction would harm the public's interest in protecting First Amendment rights in order to allow the free flow of ideas." *Magriz v. union do Tronquistas de Puerto Rico, Local 901*, 765 F. Supp. 2d 143, 157 (D.P.R. 2011) (citations omitted). Moreover, the unconstitutional regulations enforced by Defendants in this case will harm nonparties to the case because it will limit the rights granted to them by the First Amendment as well. *See Wolfe Fin. Inc. v. Rodgeres*, 2018 U.S. Dist. LEXIS 64335, at *49 (M.D. N.C. April 17, 2018) (*citing McCarthy v. Fuller*, 810 F.3d 456, 461 (7th Cir. 2015). Others will be afraid to speak lest they be banned as well.

Defendants ban was based on shifting narratives that make it clear that is the Rules are viewpoint based. *See, e.g., McBreairty v. Sch.l Bd. of RSU22*, 2022 U.S. Dist. LEXIS 128353 (D. Me. July 20, 2022) (in a similar case court enjoined banishment). "Protecting rights to free speech is ipso facto in the interest of the general public." *Cutting v. City of Portland*, 802 F.3d 79 (1st Cir. 2015). The public interest favors the issuance of the injunction.

4.5 No Bond Should Be Required

A bond should only be required if the enjoined party will suffer harm from the issuance of the injunction. *See Scotts Co. v. United Indus. Corp.*, 315 F.3d 264, 285 (4th Cir. 2002). The relief sought will simply allow the type of speech permitted at every other meeting in Massachusetts governed by the Open Meetings Law. Sousa requests that the injunction issue with no bond required. If a bond is required, Sousa requests that it be minimal and no more than $100.00.

5.0 CONCLUSION

For the foregoing reasons, the Court should enter a preliminary injunction against the Defendants striking Public Participation Policies Rule 2 and 9 as facially unconstitutional. In the alternative, they should be enjoined as applied.

Dated: December 16, 2022.

Respectfully Submitted,

/s/ Marc J. Randazza
Marc J. Randazza, BBO# 651477
mjr@randazza.com, ecf@randazza.com
Jay M. Wolman, BBO# 666053
jmw@randazza.com
Robert J. Morris II (*pro hac vice*)
rjm@randazza.com
RANDAZZA LEGAL GROUP, PLLC
30 Western Avenue
Gloucester, MA 01930
Tel: (978) 801-1776

Attorneys for Plaintiff
Luis Sousa

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2022, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

/s/ Marc J. Randazza
Marc J. Randazza

Exhibit 1

Declaration of Luis Sousa

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LUIS SOUSA,

Plaintiff,

v.

SEEKONK SCHOOL COMMITTEE; RICH DROLET, in his personal and official capacities; KIMBERLY SLUTER, in her personal and official capacities,

Defendants.

Civil Action No. 1:22-cv-40120-IT

DECLARATION OF LUIS SOUSA

I, Luis Sousa, hereby declare:

1. I am over 18 years of age and have never been convicted of a crime involving fraud or dishonesty. I have knowledge of the facts set forth herein, and if called as a witness, could and would testify thereto.

2. I am the Plaintiff in the above-captioned matter.

3. I submit this declaration in support of Plaintiff's Motion for a Preliminary Injunction and Memorandum in Support of Motion for a Preliminary Injunction, filed herewith.

4. On January 5, 2022, I arrived at the Committee meeting. My intention was to address the Committee during Public Speak.

5. When I arrived, the door was locked.

6. I saw that the meeting was being held inside the Superintendent's office.

7. I began recording on my phone and began protesting outside. A true and correct copy of the full video of my protest appears at Doc. No. 27-3. This is a complete record of my protest. There was no banging on windows nor screaming prior to the recording beginning.

8. During my protest, I stated "Why are we not allowed at the meeting? You canceled two meetings. Why can't we go?"

9. While continuing to record, I walked up to the window where the Committee was meeting. The Committee then left the Superintendent's office.

10. As the Committee left the Superintendent's office, I stopped recording and walked to my car.

11. I was unaware that the public meeting on January 5, 2022, had already occurred and was recessed after only three minutes.

12. I protested because I wanted to know why the Committee meeting was cancelled after two meetings had already been cancelled prior, and because I could not participate.

13. Soon after I returned to my car, police officers arrived on the scene.

14. Upon information and belief, Ms. Sluter told police officers that I was "banging on the windows" and "screaming."

15. Upon information and belief, no other Committee member corroborated Ms. Sluter's allegations.

16. The police report states that "no one could recall any direct threats" and also notes "No Crime Involved."

17. The police reported that I was calm and respectful.

18. I made no threats, and I was calm and respectful.

19. The video I recorded of my protest is a full record of my entire protest. At no time, before, during, or after my video recording, did I bang on windows.

20. On January 10, 2022, I received a Temporary No Trespass Order from Superintendent Drolet and the police report from the January 5, 2022 protest incident via hand delivery to my home in Seekonk, Massachusetts by School Resource Officer Kevin Nagle. True

and correct copies of the Temporary No Trespass Order and police report appear at Doc. No. 27-4 and Doc. No. 27-5.

21. On January 18, 2022, I had a meeting with Mr. Drolet. I recorded the entirety of the meeting. A true and correct copy of that recording has been filed as Doc. No. 27-6.

22. During that January 18, 2022, meeting with Mr. Drolet, he affirmed that I did not bang on the windows, and stated "One thing I wanted to clarify, I made sure in the letter that it didn't say you were banging or screaming."

23. During that January 18, 2022, meeting Mr. Drolet did not identify any statute, rule, or policy that I violated during my January 5 protest.

24. During the September 26, 2022, Committee meeting, I responded to the Chair's question and answered affirmatively that I wanted to speak after my wife was done by saying "Yeah, I'll wait until my wife's done." Before the Committee entered a recess, I stated that the Committee should have had a meeting two weeks ago. When the Committee moved to enter a recess, I stated "No!" After the Committee entered a recess, I asked if anyone was checking on a distraught child and called the meeting a joke.

25. After the September 26, 2022, Committee meeting entered a recess, I was asked to leave by Mr. Drolet. I complied. While gathering my belongings, a resource officer entered the room to follow me out.

26. During the September 26, 2022, Committee meeting, I was not disruptive, and I was following directions. I was not asked to stop talking by anyone. If I had been warned, I would have abided that warning. I did not threaten anyone. I only spoke after the Chair invite me to speak. I do not feel that I was being disrespectful.

27. On September 27, 2022, I received a Notice of intent to issue Permanent No Trespass Order from Superintendent Drolet via hand delivery to my home in Seekonk, Massachusetts by School Resource Officer Kevin Nagle. A true and correct copy of the letter appears at Doc. No. 27-10.

28. On October 3, 2022, I had a meeting with Mr. Drolet. I recorded the entirety of the meeting. A true and correct copy of that recording has been filed as Doc No. 27-11.

29. During that October 3, 2022, meeting with Mr. Drolet, he handed me a copy of the Public Participation Policy (Doc. No. 27-12) with rules 2, 7, and 9 highlighted.

30. Mr. Drolet asserted that I violated Policy rules 2, 7, and 9 during the September 26, 2022, Committee meeting and stated "It is repeatedly disruptive, disrespectful and you're not following directions when you're asked to stop. That's the concern."

31. Also, during that October 3, 2022, meeting, Mr. Drolet stated that I was "screaming" during my January 5, 2022, protest. This is not something that he claimed previously. This led me to believe that Mr. Drolet's narrative of the events on January 5, 2022, had shifted.

32. On October 4, 2022, I received a Permanent No Trespass Order from Superintendent Drolet via hand delivery to my home in Seekonk, Massachusetts by School Resource Officer Kevin Nagle. A true and correct copy of the letter appears at Doc. No. 27-13.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 12-15-22.

Luis Sousa

Exhibit 2

Declaration of Marc J. Randazza

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LUIS SOUSA, Plaintiff, v. SEEKONK SCHOOL COMMITTEE; RICH DROLET, in his personal and official capacities; KIMBERLY SLUTER, in her personal and official capacities, Defendants.	Civil Action No. 1:22-cv-40120-IT **DECLARATION OF MARC J. RANDAZZA**

I, Marc J. Randazza, hereby declare:

1. I am over 18 years of age and have never been convicted of a crime involving fraud or dishonesty. I have knowledge of the facts set forth herein, and if called as a witness could and would testify thereto.

2. I am an Attorney with the law firm Randazza Legal Group, PLLC ("RLG"), and I am lead counsel for Plaintiff in the above-captioned matter.

3. I submit this declaration in support of Plaintiff's Motion for Preliminary Injunction and Memorandum in Support of Motion for Preliminary Injunction.

4. On December 12, 2022, I sent an email to Defendants' counsel regarding security camera footage outside the door where Sousa's January 5 protest occurred. I requested the security camera footage of my client's January 5, 2022, protest or an explanation for why the footage was destroyed. A true and correct copy of that, e-mail is filed herewith as Exhibit A.

5. On December 13, 2022, I sent a follow up email regarding the requested security camera footage. A true and correct copy of that e-mail is filed herewith as Exhibit A.

6. On December 13, 2022, having received no reply from anyone, I filed a motion for early discovery, Doc. No. 58.

7. On December 15, 2022, I received a call from Attorney Matthew Hamel, counsel for Defendants. In that conversation, I was told that the footage was deleted in March 2022.

8. I informed Attorney Hamel that it was our intention to file a Motion for Preliminary injunction, and that we considered that deletion to be spoliation of evidence, and I would seek an adverse inference. Counsel for Defendants disagreed that it was spoliation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 16, 2022.

/s/ Marc J. Randazza
Marc J. Randazza

Exhibit A

Emails to Defendants' Counsel
December 12 – 13, 2022

RANDAZZA
LEGAL GROUP

Marc Randazza <mjr@randazza.com>

Re: Security Cameras / Motion for Early Discovery / Service - Meet and Confer

1 message

Marc Randazza <mjr@randazza.com> Tue, Dec 13, 2022 at 12:09 PM
To: John Davis <jdavis@piercedavis.com>, Matthew Hamel <mhamel@piercedavis.com>
Cc: RLGNE@randazza.com

John and Matthew,

I would really rather neither delay this nor feel compelled to file it. However, would you agree that I at least gave this a meaningful attempt at a meet and confer?

On Mon, Dec 12, 2022 at 3:07 PM Marc Randazza <mjr@randazza.com> wrote:

> John and Matthew,
>
> **Motion for Early Discovery**
>
> My client reports to me that there are security cameras outside the doors where his January 5, 2022 protest took place.
>
> It would seem that if Mr. Sousa was banging on the windows, the security cameras could show that. However, we are unclear as to whether the Defendants continue to maintain that this occurred.
>
> If the Defendants have, indeed, come to the conclusion that Ms. Sluter's claim was unsupported by the facts, then I propose that we all stipulate to the fact that there was no banging.
>
> If the Defendants insist that it did occur, then it is our intent to file a motion for early discovery, seeking the limited discovery of the production of the security footage from that incident.
>
> If the Defendants claim that they destroyed that footage, then naturally we would not wish for discovery on that, since what's the point of seeking discovery of vapor, but we would wish to take early discovery as to a simple interrogatory as to please explain the process by which it was deleted, who deleted it, why, and naturally a stipulation that if it comes into existence at some future point, there will be some explaining to do, as well as a bar from the Defense using it.
>
> **Service on Sluter**
>
> Would you accept service for Sluter, or is there a preference that we serve her in person?
>
> Given the fact that the hearing is in 10 days, I suggest that:
>
> **Timing**
>
> We have your position on the video footage by noon, tomorrow. We are going to file our motion at that time, if necessary.
>
> However, It does occur to me that the parties *could* stipulate to extend the TRO for an additional 14 days, and then we could see if Judge Talwani would move out the date of the hearing, thus giving you a bit more time to respond.
>
> I was unaware of the existence of the cameras until today, when I requested an investigation of the site. This information literally came into my possession at 14:58 Eastern Time.
> --
>
> _____
>
> **Marc John Randazza, JD, MAMC, LLM*** | **Randazza Legal Group**
> 4974 South Rainbow Boulevard, Suite 100, Las Vegas, NV 89118
> 30 Western Avenue, Gloucester, MA 01930
> 2 S Biscayne Boulevard, Suite 2680, Miami, FL 33131
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> Firm Offices - Las Vegas | Miami | New England
>
> _____
>
> * Licensed to practice law in Arizona, California, Florida, Massachusetts, and Nevada.

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_____

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Exhibit 3

Declaration of Robert J. Morris II

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LUIS SOUSA, Plaintiff, v. SEEKONK SCHOOL COMMITTEE; RICH DROLET, in his personal and official capacities; KIMBERLY SLUTER, in her personal and official capacities, Defendants.	Civil Action No. 1:22-cv-40120-IT **DECLARATION OF ROBERT J. MORRIS II**

I, Robert J. Morris II, hereby declare:

1. I am over 18 years of age and have never been convicted of a crime involving fraud or dishonesty. I have knowledge of the facts set forth herein, and if called as a witness, could and would testify thereto.

2. I am an Attorney employed at the law firm of Randazza Legal Group, PLLC ("RLG"), counsel for Plaintiff in the above-captioned matter, and I am admitted as an attorney *pro hac vice* in this matter.

3. I submit this declaration in support of Plaintiff's Motion for a Preliminary Injunction and Memorandum in Support of Motion for Preliminary Injunction, filed herewith.

4. On December 10, 2022, at 3:04PM eastern time, while at my home and using the Safari browser on a MacBook Air laptop, I visited the Seekonk Public School's PDF file titled "10-17-22 regular session minutes.pdf" at the URL: https://drive.google.com/drive/folders/1_9SXd3D3vsZ2fkv851Y-IcKAD0BMtB_i. Immediately after visiting this page, I used the Google Drive download feature. A true and correct copy of this PDF file is herewith as Exhibit A.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: December 16, 2022.

/s/ Robert J. Morris II
Robert J. Morris II

Exhibit A

Committee Meeting Minutes
October 17, 2022

Regular Session – October 17, 2022
Seekonk High School Library /Media Center, 261 Arcade Avenue, Seekonk, MA 02771

Mission Statement	*Our mission is to provide a quality education through shared responsibility in a safe, supportive environment for all students to become responsible citizens and meet the challenges of a global community.*

I. Call to Order

Ms. Brouillette called the regular session to order at 7:04 PM. Committee members present were Ms. Sluter, Ms. Field, Ms. Mahoney and Mr. Escaler.

Others in attendance were:
Dr. Rich Drolet, Superintendent of Schools
Jill Brilhante, School Business Administrator
George Kelleher, Director of Student Services
Zachary Waddicor, Assistant Superintendent for Teaching and Learning
Colleen Terrill, Director of Technology & Digital Learning
Andrew Waugh, Esq., School Legal Counsel
Dr. William V. Whalen III, Seekonk High School Principal
Alexis Bouchard, Hurley Middle School Principal
Jennifer McKay, Martin Elementary School Principal
David Graf, Aitken Elementary School Principal
John Moran, Seekonk High School Athletic Director

II. Public Comment

A. Jackie Proulx, [redacted] expressed her concerns about the recent display of verbal abuse, personal attacks and character assaults on committee members, administrators and staff adding that the committee has the support of a vast majority of residents. She expressed her support for policies that are in place and for the ongoing commitment of the school department to the Mass Safe Schools Program. She encouraged all to stay strong and dedicated.

B. Kanessa Lynn [redacted] expressed her concerns related to the no-trespass order issued to her husband.

C. Sharon Ahern, [redacted] SEA President stated that the constant negativity expressed at the school committee meetings is demoralizing for teachers and she wishes parents would place more trust in Seekonk's educators.

D. Kyle Juckett, [redacted] expressed his ongoing concern that a policy is not yet in place related to the potential for library materials to be used as curriculum and parent notification.

E. Danielle Margarida, [redacted] expressed her support for school libraries and librarians and thanked administrators and teachers for supporting them.

III. Approval of Minutes

A. September 26, 2022

1. Work Session

Ms. Sluter made a motion to approve the work session minutes of September 26, 2022 which was seconded by Ms. Mahoney and approved by a 5-0-0 vote.

2. Regular Session

Ms. Mahoney made a motion to approve the regular session minutes of September 26, 2022 which was seconded by Ms. Field. Ms. Sluter requested a few revisions to the information contained in item "D" on page 3. The motion was approved with Ms. Sluter's requested revisions by a 5-0-0 vote.

B. September 28, 2022 Quad-Board Meeting

Ms. Mahoney made a motion to approve the quad-board meeting minutes of September 28, 2022 which was seconded by Ms. Field and approved by a 5-0-0 vote.

IV. Reports

A. Chairperson's Update

There were no updates from Ms. Brouillette at this time.

B. Assistant Superintendent's Update

Mr. Waddicor made a presentation to the Committee regarding the 2022 MCAS results. He noted that there are comparison's being made between pre-pandemic results and post-pandemic results which is why this presentation looks different than it has in previous years.

Ms. Sluter asked if any of the data was a surprise to Mr. Waddicor who responded that he was expecting a slightly more significant learning loss and that Seekonk did not regress as much as the state averages probably in part due to providing more face-to-face learning time than in other parts of the state. He added that there are still deficits to overcome in the next couple of years. Dr. Drolet noted that from 2019 to the spring of 2022, there is a drop which mirrors the state data in some cases but in other cases, Seekonk's data was not as bad as the state data. Ms. Brouillette commented that she hopes the Committee will review this in more detail and perhaps discuss the results in more depth at a future meeting.

C. School Business Administrator Update

Ms. Brilhante provided the Committee with the following updates:

- 28% of the budget has been expended or encumbered
- The Martin School Playground Project went out to bid on October 5th and the bid deadline is set for October 27th at 10:00 AM
- The school department received a low settlement offer of $45,000 from the insurance company to address the flooding in the middle school basement which was rejected by the school department and a second review was requested
- The town has accepted the Committee's request to be placed on the November town warrant for the SPED stabilization fund.

V. New Business (votes may be taken)

A. Presentation of 2022-2023 Building-Based Strategies for Student Success

Dr. Whalen, Ms. Bouchard, Ms. McKay and Mr. Graf provided the Committee with overviews of their plans.

Mr. Escaler asked whether the plans are considered working documents as he would like to provide some input to Martin School's plan at the next school council meeting. Dr. Drolet responded that it is a working document in a sense which is published only once per year but administrators remain open to feedback for future revisions.

Ms. Mahoney stated she appreciates the alignment between the two elementary schools and asked whether a timeline column can be added to their documents to be able to measure goals that have been achieved.

Ms. Sluter asked Dr. Whalen whether the information regarding the master schedule will satisfy the NEASC recommendation to which he responded yes adding that a Tier I intervention will be offered to all students at the school and the draft plan for this is called the Warrior Block.

B. Consider Approval of 2022-2023 Seekonk High School Coaches' Handbook

Mr. Moran and Dr. Whalen provided the Committee with an overview of the handbook. Dr. Drolet noted that the handbook will require all coaches whether paid or volunteer to undergo both a CORI background check as well as a fingerprint background check.

Mr. Escaler asked why Unified Basketball is listed as a fall sport. Mr. Moran responded that Unified Basketball is assigned to the fall while Unified Track is assigned to the spring and added that there are no unified sports during the winter months. Dr. Whalen noted that the unified offerings are the same for all of the schools in the South Coast Conference. Mr. Escaler asked why there are unlimited rosters for some sports such as cross country and track to which Mr. Moran responded that those sports do not turn away any athletes. Mr. Escaler asked why then there are tryouts at the middle school level for cross country. Dr. Whalen stated that the high school sports run differently than the middle school sports and that the middle school principal is considered to be the athletic director for the middle school.
Ms. Brouillette suggested that middle school be removed from "athletic offerings" on page 6.
Ms. Mahoney noted that the middle school is mentioned on page 7 as well. Dr. Drolet suggested that a similar handbook can be created for the middle school.

Ms. Sluter asked about publicity and press releases as she could not locate any section regarding social media use as it relates to the district's acceptable use policy and coaches adhering to that. Mr. Moran responded that sometimes social media accounts for the teams are managed by students and coaches are aware that those accounts have to be registered with the high school. Ms. Sluter suggested that perhaps policy IJNDB-E, *Technology Responsible Use and Internet Safety* policy be included and/or referenced.

Ms. Brouillette asked what an acceptable manner of communication from a coach would be. Mr. Moran stated he discourages coaches from communicating through social media and most used a platform called *Remind* to get the word out.

C. Consider Approval of 8th Grade Field Trip to Philadelphia, PA/Washington, DC for the Dates of May 23, 2023 to May 26, 2023

Ms. Bouchard provided the Committee with an overview of the trip and explained that it is still very much in the planning stages but should be finalized within the next few weeks. Ms. Sluter stated she is excited to see the return of this trip for 8th graders and asked whether the pricing is in line with what they have seen in the past. Ms. Bouchard responded that pricing has increased, mainly due to the cost for busing but they will offer multiple fundraising opportunities for students to defray the cost.

Ms. Sluter suggested the middle school consider allowing students to begin their fundraising efforts as early as 6th grade to give them more of a head start.

Ms. Brouillette asked Ms. Bouchard when she plans to share this information with families. Ms. Bouchard responded that if the trip is approved tonight, she plans to share it with students during lunch tomorrow followed by the sharing of an itinerary and a parent night in November.

Mr. Escaler made a motion to approve the trip as drafted which was seconded by Ms. Mahoney and approved by a 5-0-0 vote.

D. First Reading of *Animals in School* Policy, IMG

Ms. Sluter explained that this is the first draft of this policy and is being reviewed so that the district can have something in place now that therapy dogs are planned to visit the schools on a regular basis. She encouraged Committee members to email her and Erin with feedback after taking some time to look it over.

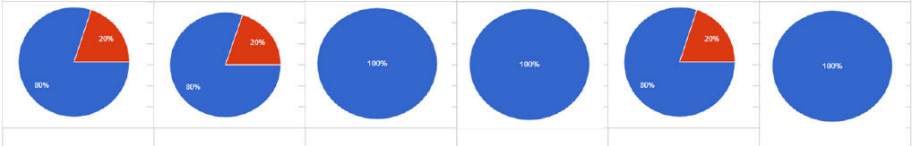
Dr. Drolet recommended inclusion of wording that the district require certification for all animals entering the buildings. He also shared that there has been so much positive feedback from staff and students since Mac has begun his school visits. Mr. Escaler asked whether the proposed policy opens the door for animals other than dogs. Ms. Sluter noted that embedded in the policy is language which states dogs only. Ms. Mahoney commented that she appreciates the explanation in the policy of the difference between service animals and comfort animals.

Ms. Sluter made a motion to waive the first reading of the policy which was seconded by Ms. Mahoney and approved by a 5-0-0 vote.

E. Discussion of Committee Responses to 2022 MASC Resolutions and Consider Selection of Delegate for MASC Delegate Assembly on November 2, 2022

Ms. Brouillette provided the final results of the Committee votes on the 2022 MASC Resolutions which were as follows:

Sanctuary Laws for Transgender Students	To Increase the Maximum Balance Allowed by the SPED Reserve Fund	Membership of the Board of ESE	Preserving Local Governance of Massachusetts Schools	Personal Financial Literacy Education	Establishment of a Regional School Assessment Reserve Fund
No	No	Yes	Yes	Yes	Yes
Yes	Yes	Yes	Yes	Yes	Yes
Yes	Yes	Yes	Yes	No	Yes
Yes	Yes	Yes	Yes	Yes	Yes
Yes	Yes	Yes	Yes	Yes	Yes
YES	YES	YES	YES	YES	YES



Following a brief discussion, Ms. Brouillette offered to be delegate at the assembly. Ms. Field offered to be the alternate delegate.

VI. Other Business

There were no other topics discussed.

VII. Upcoming Meetings

A. November 14, 2022, 6:00 PM Regular Session (this meeting will not be televised)

B. December 5, 2022, 7:00 PM Regular Session
C. December 19, 2022, 7:00 PM Regular Session

Ms. Sluter reminded the group that a special town meeting is scheduled for the Seekonk Public Library vote on October 24th at 7 PM at Seekonk High School.

VIII. Public Comments

A. Kyle Juckett, [redacted] clarified his position that he is just looking to get more information on parent notification when materials are being brought into the classroom and the related procedures for opting out of those materials.

B. Tanisha Perona, [redacted] expressed her concern about being categorized as a parent and shared her opinion that human sexuality is different from sexual orientation.

C. Kanessa Lynn [redacted] expressed her concern about school safety and the paperwork associated with book challenges.

D. Michele Graf, [redacted] thanked the staff of the Martin School and for their continued support of her children and their different learning styles. She encouraged people to not lose focus on what is most important and stated that children are in good hands in this district.

E. Kurt McLoud, [redacted] expressed his gratitude for recent family events held at Aitken to bring people together and stated he appreciates the conversations and dialogue around important topics. He noted that learning about the Vision of Success initiative is exiting. He stated he trusts Seekonk's educators, appreciates the volunteers and stressed the importance of recognizing the positive things that happening in the district.

Mr. Escaler stated that it is important to respect all sides of a discussion and to respect individual decisions.

IX. Adjourn

At 8:35 PM, Ms. Sluter made a motion to adjourn the regular session which was seconded by Ms. Mahoney and approved by a 5-0-0 vote.

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bkm

Documents reviewed/referred to:

- *Draft of minutes of 09/26/22 work session, 09/26/22 regular session and 09/28/22 quad-board meeting (III-A&B)*
- *2022 MCAS Presentation prepared by Z. Waddicor (IV-B)*
- *2022-2023 Strategies for Student Success (V-A-1)*
- *Proposed 2022-2023 Seekonk High School Coaches' Handbook prepared by J. Moran (V-A-2)*
- *Draft Itinerary of 8th Grade Field Trip for May 2023 (V-A-3)*
- *Proposed draft of Animals in School Policy, IMG (V-A-4)*
- *2022 MASC Resolutions and Committee Vote Tally prepared by B. McNamara (V-A-5)*