

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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LUIS SOUSA, )  
*Plaintiff,* )  
)  
VS. )C.A. NO. 1:22-cv-40120-IT  
)  
SEEKONK SCHOOL COMMITTEE, )  
RICH DROLET, in his personal and official capacities & )  
KIMBERLY SLUTER, in her personal and official capacities )  
*Defendants.* )

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**DEFENDANTS’ PRELIMINARY OPPOSITION TO PLAINTIFF’S RENEWED  
EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND  
A PRELIMINARY INJUNCTION (ECF Doc. No. 28)**

Defendants, Seekonk School Committee and Superintendent Dr. Richard Drolet, hereby oppose plaintiff’s Renewed Emergency Motion for a Temporary Restraining Order and a Preliminary Injunction (ECF Doc. No. 28) filed on Friday, November 11, 2022 (a state and federal holiday) at 3:50 p.m.<sup>1</sup> Defendants frame this Opposition as “Preliminary” in the hope this Court will allow defendants to later supplement this Opposition (if any) once undersigned counsel has had an opportunity to fully review the Memorandum and voluminous materials submitted in support of plaintiff’s Renewed Emergency Motion and confer with his clients.<sup>2</sup> As grounds for this Preliminary Opposition, defendants state as follows:

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<sup>1</sup> Seekonk Public Schools were closed on Veterans’ Day.

<sup>2</sup> As plaintiff knows, undersigned counsel cannot legally confer with one of his clients, the Seekonk School Committee, prior to November 14, 2022. As a public body, the Seekonk School Committee can only meet in compliance with the provisions of M.G.L. c. 30A, §§ 18 – 25 (the “Open Meeting Law” or “OML.”) Under the OML, a public body must conduct all business only in the context of lawful meetings. Further, “[e]xcept in an emergency, a public body shall post notice of every meeting at least 48 hours prior to the meeting, excluding Saturdays, Sundays and legal holidays.” M.G.L. c. 30A, § 20(b). As of the filing of this Preliminary Opposition, the Seekonk School Committee has not posted a notice of meeting with undersigned counsel in executive session to discuss plaintiff’s Renewed Emergency Motion, nor could it reasonably do so.

1. On October 20, 2022, plaintiff filed a two-Count Complaint against defendants for the alleged violation of his rights to free speech as guaranteed under the First Amendment. (ECF Doc. No. 1). On the same date, plaintiff also filed an Emergency Ex Parte Motion for a Temporary Restraining Order and a Preliminary Injunction. (ECF Doc. No. 2). In support of his Emergency Motion for injunctive relief, plaintiff filed a Memorandum of Points and Authorities (ECF Doc. No. 3) and Exhibits 1 – 7. (ECF Docs. No. 1-1 – 1-7).
2. On October 31, 2022, undersigned counsel filed his Notice of Appearance in this action. (ECF Doc. No. 14).
3. On Monday, November 7, 2022, defendants filed a Memorandum in Opposition to plaintiff’s Emergency Motion (ECF Doc. No. 16), together with an Affidavit of defendant, Superintendent Dr. Richard Drolet, and Exhibits “A” – “F.” (ECF Doc. No. 16-1).
4. On Tuesday, November 8, 2022, plaintiff filed a Motion for Leave to File a Reply Brief to defendants’ Opposition.<sup>3</sup> (ECF Doc. No. 17). Together with the Motion for Leave, plaintiff filed a proposed 11-page Reply Brief together with thirteen (13) Exhibits. (ECF Doc. No. 17-1).
5. On Tuesday, November 8, 2022, at 5:00 p.m., plaintiff filed a List of Witnesses and Exhibits (ECF Doc. No. 19), listing witnesses expected to testify and exhibits expected to be introduced into evidence at the hearing on his Emergency Motion.
6. On Tuesday, November 8, 2022, at 7:08 p.m., this Court denied plaintiff’s Motion for Leave to File a Reply Brief.<sup>4</sup> (ECF Doc. No. 20). In its Order, the Court ruled that if plaintiff wished the Court to consider additional evidentiary material, he may withdraw his Emergency

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<sup>3</sup> Plaintiff mistakenly filed the Motion for Leave to File a Reply Brief as “assented to.” To be accurate, defendants did not assent to plaintiff’s Motion for Leave, but rather advised plaintiff’s counsel, during the LR 7.1 conference, that defendants would “not object” to the Motion. Defendants will assume there was a miscommunication.

<sup>4</sup> The Court, nevertheless, allowed plaintiff to file the document identified as Exhibit 13.

Motion “and file a new motion for a preliminary injunction with supporting material.” (Id.) In this way, “Defendants will be provided an opportunity to respond to the new motion, and the court will set a new hearing date.” (Id.) This Court also ruled that it did not anticipate conducting an evidentiary hearing on November 10, 2022. (Id.)

7. On Wednesday, November 9, 2022, at 3:50 p.m., approximately eighteen (18) hours before the scheduled hearing on his Emergency Motion, plaintiff filed a Request for Judicial Notice. (ECF Doc. No. 22). Plaintiff did not hold a LR 7.1 conference with undersigned counsel before doing so. In his Request for Judicial Notice, plaintiff asked this Court to take judicial notice of the same twelve (12) Exhibits that were attached to the proposed Reply Brief that plaintiff was denied leave to file. The twelve exhibits consisted of two audio files, seven video files and three sets of School Committee meeting minutes.

8. On Wednesday, November 9, 2022, at 6:10 p.m., this Court denied plaintiff’s Request for Judicial Notice. (ECF Doc. No. 23). In its Order, the Court found plaintiff’s effort to expand the record in connection with his Emergency Motion “untimely.” Further, the Court observed that the Request “appears to be seeking to introduce the same material addressed in yesterday’s order ....”

Finally, the Court reiterated:

[I]f Plaintiff seeks to include additional evidentiary material, he may withdraw his motion, and file a new motion for a preliminary injunction with supporting material, and in that event, Defendants will be provided an opportunity to respond to the new motion, and the court will set a new hearing date.

(Id.)

9. On Wednesday, November 9, 2022, at 7:22 p.m., plaintiff’s counsel advised undersigned counsel via text message of his plans to withdraw the Emergency Motion and “re-file it with a more complete record.” At 8:03 p.m. (the eve of the scheduled hearing), plaintiff filed a Notice of Withdrawal of Emergency Motion. (ECF Doc. No. 24). In his Notice of Withdrawal, plaintiff

stated, in part, that “[t]wo of the school events that Plaintiff wished to attend have now passed, slightly lessening the urgency of Plaintiff’s Emergency Motion.” (Id.) Nonetheless, plaintiff expressed his intent to re-file his motion “in the near future.” (Id.) At 9:19 p.m., this Court cancelled the hearing on plaintiff’s Emergency Motion scheduled for the following morning. (ECF Doc. No. 25).

10. On Friday, November 11, 2022 (Veterans’ Day), at 3:23 p.m., plaintiff filed an Amended Complaint (ECF Doc. No. 27) together with twenty (20) Exhibits. (ECF Docs. No. 27-1 – 27-20). In his Amended Complaint, plaintiff adds Kimberly Sluter, Chair of the Seekonk School Committee, as a named defendant in her individual and official capacities, as well as claims for relief under Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132 (“ADA”) (Count III), and the Equal Protection Clause of the Fourteenth Amendment (Count IV).

11. On Friday, November 11, 2002 (Veterans’ Day), at 3:50 p.m., plaintiff filed a Renewed Emergency Motion for a Temporary Restraining Order and Preliminary Injunction. (ECF Doc. No. 28). In his Renewed Emergency Motion, plaintiff asks this Court to enjoin the enforcement of defendants’ No Trespass Order so that he can attend the Monday, November 14, 2022 School Committee meeting scheduled to be held at 6:00 p.m. In support of his Renewed Emergency Motion, plaintiff filed a 20-page Memorandum of Points and Authorities. (ECF Doc. No. 29).

12. For numerous reasons, this Court should deny plaintiff’s Renewed Emergency Motion. First, the timing of the filing of plaintiff’s Renewed Emergency Motion (on the Friday afternoon of a holiday weekend) was expressly calculated and designed to prejudice defendants (a public body and public official) in their ability to review plaintiff’s voluminous submissions and meaningfully respond to same. No “emergency” justifies the late filing of the Motion, except for the alleged exigency created by plaintiff’s own prior missteps.

13. Second, in its Orders of November 8, 2022 (ECF Doc. No. 20) and November 9, 2022 (ECF Doc. No. 23), this Court stated, then reiterated, that if plaintiff withdrew his Emergency Motion and refiled a “new motion for a preliminary injunction,” it would provide defendants “an opportunity to respond to the new motion” and set a new hearing date. In defiance of such Orders, plaintiff has instead renewed his Emergency Motion for a Temporary Restraining Order (not a preliminary injunction) in a way that effectively *deprives* defendants of any meaningful opportunity to respond. As set forth above (see footnote 2), undersigned counsel cannot legally meet with and/or confer with his client, the Seekonk School Committee, prior to November 14, 2022, the date of the meeting plaintiff wishes to attend.

14. Third, plaintiff’s Renewed Emergency Motion is not the “new motion for a preliminary injunction” this Court encouraged plaintiff to file, and which plaintiff expressly *agreed* to file. Rather, it is nothing more than a brazen attempt to circumvent this Court’s prior Orders.

15. Fourth, plaintiff’s Memorandum of Points and Authorities (ECF Doc. No. 29) submitted in support of his Renewed Emergency Motion fails to comply with this Court’s Standing Order Regarding Motion Practice (revised Feb. 8, 2022) in that it fails to include a table of contents and table of authorities.

16. Fifth, in further Opposition to plaintiff’s Renewed Emergency Motion, defendants repeat and incorporate herein the reasons and grounds set forth in defendants’ Opposition to plaintiff’s Emergency Motion (ECF Doc. No. 16), and the Affidavit of defendant, Superintendent Dr. Richard Drolet, and Exhibits “A” – “F” thereto. (ECF Doc. No. 16-1).

WHEREFORE, defendants, Seekonk School Committee and Superintendent Dr. Richard Drolet, hereby request that this Honorable Court deny plaintiff’s Renewed Emergency Motion for a Temporary Restraining Order and a Preliminary Injunction (ECF Doc. No. 28). This Court

should not tolerate litigation by ambush, especially after warning plaintiff of the need to give defendants a timely and meaningful opportunity to respond to his requests for injunctive relief.

The Defendants,  
SEEKONK SCHOOL COMMITTEE &  
RICH DROLET, in his personal and official capacities,  
By their Attorneys,

**PIERCE DAVIS & PERRITANO LLP**

/s/ John J. Davis

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John J. Davis, BBO #115890  
10 Post Office Square, Suite 1100N  
Boston, MA 02109  
(617) 350-0950  
[jdavis@piercedavis.com](mailto:jdavis@piercedavis.com)

Dated: November 14, 2022

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing, filed through the Electronic Case Filing System, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and that a paper copy shall be served upon those indicated as non-registered participants on November 14, 2022.

*/s/ John J. Davis*

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John J. Davis, Esq.