

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JEFFREY T. WORTHLEY,	)	
Plaintiff,	)	
	)	
VS.	)	C.A. NO. 1:22-cv-12060-DJC
	)	
	)	
SCHOOL COMMITTEE OF GLOUCESTER;	)	
and BEN LUMMIS, in his official and personal capacities,	)	
Defendants.	)	

**ANSWER AND JURY DEMAND OF DEFENDANTS, SCHOOL COMMITTEE OF GLOUCESTER AND SUPERINTENDENT BEN LUMMIS**

**FIRST DEFENSE**

Plaintiff’s Complaint fails to state a claim against the Defendants, the School Committee of Gloucester and Superintendent Ben Lummis, upon which relief can be granted and, therefore, must be dismissed.

**SECOND DEFENSE**

The Defendants, the School Committee of Gloucester and Superintendent Ben Lummis, in his official and personal capacities (hereinafter “Defendants”), hereby respond to the allegations contained in the Plaintiff’s Complaint, paragraph by paragraph, as follows

**INTRODUCTORY STATEMENT**

The Defendants do not respond to the allegations contained in the Introductory Statement of the Plaintiff’s Complaint, because the allegations contained therein are prefatory assertions and/or conclusions or alleged statements of law not requiring a responsive pleading. To the extent a response is deemed necessary, the Defendants deny each and every allegation in the Introductory Statement of Plaintiff’s Complaint.

### **THE PARTIES**

1. Admitted that Plaintiff Jeffrey T. Worthley is a Councilor-at-Large on the Gloucester City Council. The Defendants are without information sufficient to admit or deny the remainder of the allegations in this paragraph and, therefore, call upon Plaintiff to prove same. Further answering, the Defendants do not respond to the allegations contained in Exhibit A of Plaintiff's Complaint, as Exhibit A is a written document which speaks for itself.
2. Admitted that the School Committee of Gloucester exercises control and management of the public schools of the City of Gloucester per state law. The Defendants neither admit nor deny the remainder of the allegations in this paragraph as it contains legal conclusions not requiring a responsive pleading. To the extent a response is deemed necessary, the Defendants deny the remainder of the allegations in this paragraph.
3. Admitted.

### **JURISDICTION AND VENUE**

4. The Defendants neither admit nor deny the allegations in this paragraph as it contains legal conclusions not requiring a responsive pleading.
5. The Defendants neither admit nor deny the allegations in this paragraph as it contains legal conclusions not requiring a responsive pleading.
6. The Defendants neither admit nor deny the allegations in this paragraph as it contains legal conclusions not requiring a responsive pleading.

### **FACTUAL BACKGROUND**

7. Admitted that Plaintiff is currently an elected Councilor-at-Large on the Gloucester City Council.
8. Admitted.

9. Admitted that Gloucester High School was not in session and that a bake sale was ongoing at the time alleged in paragraph 9. The Defendants are without information sufficient to admit or deny the remainder of the allegations in this paragraph and, therefore, call upon Plaintiff to prove same.
10. Admitted that Plaintiff communicated with the student, hereinafter referred to as Jane Doe. The Defendants are without information sufficient to admit or deny the remainder of the allegations in this paragraph and, therefore, call upon Plaintiff to prove same.
11. Admitted that Plaintiff communicated with Jane Doe. The Defendants are without information sufficient to admit or deny the remainder of the allegations in this paragraph and, therefore, call upon Plaintiff to prove same.
12. Admitted that Plaintiff communicated with Jane Doe. The Defendants are without information sufficient to admit or deny the remainder of the allegations in this paragraph and, therefore, call upon Plaintiff to prove same.
13. Admitted that Plaintiff communicated with Jane Doe. The Defendants are without information sufficient to admit or deny the remainder of the allegations in this paragraph and, therefore, call upon Plaintiff to prove same.
14. Admitted that Plaintiff communicated with Jane Doe. The Defendants are without information sufficient to admit or deny the remainder of the allegations in this paragraph and, therefore, call upon Plaintiff to prove same.
15. The Defendants are without information sufficient to admit or deny the allegations in this paragraph and, therefore, call upon Plaintiff to prove same.

16. Admitted that Plaintiff provided his phone number to Jane Doe. The Defendants are without information sufficient to admit or deny the remainder of the allegations in this paragraph and, therefore, call upon Plaintiff to prove same.
17. The Defendants are without information sufficient to admit or deny the allegations in this paragraph and, therefore, call upon Plaintiff to prove same.
18. The Defendants are without information sufficient to admit or deny the allegations in this paragraph and, therefore, call upon Plaintiff to prove same.
19. The Defendants are without information sufficient to admit or deny the allegations in this paragraph and, therefore, call upon Plaintiff to prove same.
20. The Defendants are without information sufficient to admit or deny the allegations in this paragraph and, therefore, call upon Plaintiff to prove same.
21. Admitted that Plaintiff communicated with Jane Doe via text message. The Defendants are without information sufficient to admit or deny the remainder of the allegations in this paragraph and, therefore, call upon Plaintiff to prove same.
22. Admitted that Plaintiff communicated with Jane Doe via text message. The Defendants are without information sufficient to admit or deny the remainder of the allegations in this paragraph and, therefore, call upon Plaintiff to prove same. Further answering, the Defendants deny that the cited portion of Plaintiff's communications with Jane Doe constitute the entirety of their communications.
23. The Defendants are without information sufficient to admit or deny the allegations in this paragraph and, therefore, call upon Plaintiff to prove same.
24. Admitted that Plaintiff communicated with Jane Doe via text message. The Defendants are without information sufficient to admit or deny the remainder of the allegations in this

paragraph and, therefore, call upon Plaintiff to prove same. Further answering, the Defendants deny that the cited portion of Plaintiff's communications with Jane Doe constitute the entirety of their communications.

25. Admitted that Plaintiff communicated with Jane Doe via text message. Denied that the cited portions of Plaintiff's response to Jane Doe constitutes the entirety of Plaintiff's response. The Defendants are without information sufficient to admit or deny the remainder of the allegations in this paragraph and, therefore, call upon Plaintiff to prove same.

26. The Defendants do not respond to the allegations contained in this paragraph, as this paragraph refers to written documents attached as Exhibits to the Complaint, and said documents speak for themselves. The Defendants are without information sufficient to admit or deny the remainder of the allegations in this paragraph and, therefore, call upon Plaintiff to prove same.

27. Admitted that Plaintiff communicated with Jane Doe's father via phone. The Defendants are without information sufficient to admit or deny the remainder of the allegations in this paragraph and, therefore, call upon Plaintiff to prove same.

28. The Defendants do not respond to the allegations contained in this paragraph, as this paragraph refers to written documents attached as Exhibits to the Complaint, and said documents speak for themselves. To the extent a response is deemed necessary, the Defendants admit that Plaintiff communicated with Jane Doe's father via phone. The Defendants are without information sufficient to admit or deny the remainder of the allegations in this paragraph and, therefore, call upon Plaintiff to prove same.

29. Admitted that Gloucester City Attorney Suzanne Egan called Plaintiff on November 14, 2022, and asked plaintiff to attend a meeting with her, Human Resources Director Holly

Dougwillo, and Police Chief Ed Conley. The Defendants are without information sufficient to admit or deny the remainder of the allegations in this paragraph and, therefore, call upon Plaintiff to prove same.

30. Admitted that Gloucester City Attorney Suzanne Egan referenced the subject matter of the meeting. Otherwise denied.

31. Denied.

32. Admitted.

33. Admitted that Police Chief Ed Conley informed Plaintiff that the meeting was not in reference to a criminal matter. Otherwise denied.

34. Admitted that a lawful No Trespass Order was issued to the Plaintiff at the November 14, 2022 meeting. Otherwise denied. To the extent the remainder of the allegations in this paragraph reference the contents of the No Trespass Order, the Defendants neither admit nor deny such allegations as the No Trespass Order is a written document which speaks for itself.

35. Denied.

36. Admitted that a conversation occurred at the November 14, 2022 meeting regarding Plaintiff's rights relative to the No Trespass Order. Otherwise denied.

37. Admitted that a conversation occurred at the November 14, 2022 meeting regarding Plaintiff's rights relative to the No Trespass Order. Otherwise denied.

38. Admitted that a conversation occurred at the November 14, 2022 meeting regarding Plaintiff's rights relative to the No Trespass Order. Otherwise denied.

39. Denied.

40. Denied. Further answering, the Defendants deny the allegations contained in Footnote 2 of Plaintiff's Complaint.
41. Admitted that Plaintiff emailed Gloucester City Attorney Suzanne Egan on the evening of November 14, 2022 and that on November 14, 2022, a lawful No Trespass Order issued. Otherwise denied.
42. The Defendants do not respond to the allegations contained in paragraph 42 of Plaintiff's Complaint as paragraph 42 refers to Exhibit D, which is a written document which speaks for itself.
43. Denied.
44. The Defendants do not respond to the allegations contained in paragraph 44 of Plaintiff's Complaint as paragraph 42 refers to Exhibit D, which is a written document which speaks for itself.
45. The Defendants admit that Plaintiff and Gloucester City Attorney Suzanne Egan conversed via phone. The Defendants deny that the alleged summary of their conversation constitutes a fully accurate and complete summary of their conversation and, therefore, call upon Plaintiff to prove same.
46. The Defendants are without information sufficient to admit or deny the allegations in this paragraph and, therefore, call upon Plaintiff to prove same.
47. The Defendants admit that Plaintiff and Gloucester City Attorney Suzanne Egan conversed via phone. The Defendants deny that the alleged summary of their conversation constitutes a fully accurate and complete summary of their conversation and, therefore, call upon Plaintiff to prove same. Otherwise denied.

48. Admitted that Superintendent Ben Lummis issued a statement. Otherwise denied. Further answering, the Defendants do not respond to the allegations contained in paragraph 48 of Plaintiff's Complaint as Paragraph 48 refers to Exhibit E, which is a written document which speaks for itself. Further answering, the Defendants deny the allegations contained in Footnote 3 of Plaintiff's Complaint.

49. Denied.

50. Denied.

51. Denied.

52. The Defendants neither admit nor deny the allegations in this paragraph as it contains legal conclusions not requiring a responsive pleading. To the extent a response is deemed necessary, the Defendants deny the remainder of the allegations in this paragraph. The Defendants are without information sufficient to admit or deny the allegations in this paragraph and, therefore, call upon Plaintiff to prove same.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. The Defendants do not respond to the cited portions of the No Trespass Order as the No Trespass Order is a written document which speaks for itself. Further answering, the Defendants deny the allegations contained in Footnotes 4 – 8.

58. Denied.

59. Denied.

60. Denied.



61. Denied.

**COUNT I**

**Violation of the First Amendment to the United States Constitution  
(42 U.S.C. § 1983 – First Amendment)**

62. The Defendants repeat and reallege their answers to the preceding paragraphs of the Complaint as stated above.

63. Denied.

64. The Defendants are without information sufficient to admit or deny the allegations in this paragraph and, therefore, call upon Plaintiff to prove same.

65. Denied.

66. Denied.

67. Denied.

68. Denied.

69. The Defendants do not respond to the allegations in this paragraph as the allegations therein are legal conclusions not requiring a responsive pleading.

70. Denied.

71. Denied.

72. Denied.

**COUNT II**

**Violation of the Fourteenth Amendment to the United States Constitution  
(42 U.S.C. § 1983 – Procedural Due Process)**

73. The Defendants repeat and reallege their answers to the preceding paragraphs of the Complaint as stated above.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. Denied.

79. Denied.

**COUNT III**  
**(G.L. c. 12, § 11I – Retaliation)**

80. The Defendants repeat and reallege their answers to the preceding paragraphs of the Complaint as stated above.

81. Denied.

82. Denied.

83. The Defendants do not respond to the allegations in this paragraph as the allegations therein are legal conclusions not requiring a responsive pleading.

84. Denied.

85. Denied.

**COUNT IV**  
**(G.L. c. 12, § 11I – Procedural Due Process)**

86. The Defendants repeat and reallege their answers to the preceding paragraphs of the Complaint as stated above.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. Denied.

**PRAYER FOR RELIEF**

- A. The Defendants deny all liability to the Plaintiff and further deny that the Plaintiff is entitled to any of the relief prayed for.
- B. The Defendants deny all liability to the Plaintiff and further deny that the Plaintiff is entitled to any of the relief prayed for.
- C. The Defendants deny all liability to the Plaintiff and further deny that the Plaintiff is entitled to any of the relief prayed for.
- D. The Defendants deny all liability to the Plaintiff and further deny that the Plaintiff is entitled to any damages.
- E. The Defendants deny all liability to the Plaintiff and further deny that the Plaintiff is entitled to any of the relief prayed for.
- F. The Defendants deny all liability to the Plaintiff and further deny that the Plaintiff is entitled to any of the relief prayed for.

**THIRD DEFENSE**

The Defendant, Superintendent Ben Lummis, is protected from suit and liability under the doctrine of qualified immunity.

**FOURTH DEFENSE**

The Defendant, Superintendent Ben Lummis, did not deprive the Plaintiff of any rights secured by the United States Constitution, the Massachusetts Declaration of Rights, or by the laws of the United States and/or Massachusetts. Therefore, the Plaintiff cannot recover. In the alternative, if the Defendant, Superintendent Ben Lummis, deprived plaintiff of any constitutional or statutory rights, such rights were not clearly-established at the time of the alleged deprivation.

**FIFTH DEFENSE**

The Defendants' actions and conduct are protected by law and/or legal process and, therefore, plaintiff cannot recover.

**SIXTH DEFENSE**

Plaintiff's injuries and damages were caused by someone for whose conduct, acts, and omissions the Defendants cannot be held responsible.

**SEVENTH DEFENSE**

The School Committee of Gloucester is not a "person" subject to suit under the Massachusetts Civil Rights Act. Howcroft v. City of Peabody, 51 Mass. App. Ct. 573, 592 (2001). Therefore, Counts Three and Four, brought under the Massachusetts Civils Rights Act, must be dismissed as against the School Committee of Gloucester.

**EIGHTH DEFENSE**

Plaintiffs' Complaint fails to allege sufficient facts to support a claim that plaintiffs' rights were interfered with by means of threats, intimidation or coercion. Therefore, Counts Three and Four, brought under the Massachusetts Civil Rights Act, must be dismissed.

**NINTH DEFENSE**

The No Trespass Order, issued pursuant to M.G.L. c. 266, § 120, was not aimed at regulating speech or communication in any form. Hurley v. Hinckley, 304 F. Supp. 704, 708 (D. Mass. 1969), *aff'd sub nom*, Doyle v. O'Brien, 396 U.S. 277 (1970) (per curiam). Therefore, plaintiff cannot recover.

**TENTH DEFENSE**

Even if the No Trespass Order sought to regulate plaintiff's speech under the First Amendment (which the Defendants deny), the Defendants had adequate justification for restricting Plaintiff's speech and, therefore, Plaintiff cannot recover.

**ELEVENTH DEFENSE**

The Plaintiff had adequate post-deprivation remedies and, therefore, cannot recover for the alleged violation of his procedural due process rights.

**TWELFTH DEFENSE**

The Defendant, School Committee of Gloucester, is not a separate legal entity subject to suit.

**THIRTEENTH DEFENSE**

The Plaintiff's Complaint fails to allege any unconstitutional policy, practice or custom on the part of the Defendant, School Committee of Gloucester. Further, no unconstitutional policy, practice or custom was either adopted, followed or adhered to by the Defendant, School Committee of Gloucester. Therefore, Plaintiff's claims as against the Defendant, School Committee of Gloucester and the Defendant, Superintendent Ben Lummis, in his official capacity, must be dismissed.

**FOURTEENTH DEFENSE**

A direct violation of law does not involve threats, intimidation or coercion and, therefore, does not support a claim under the Massachusetts Civil Rights Act. Longval v. Commissioner of Corrections, 404 Mass. 325, 333 (1989).

**JURY DEMAND**

The Defendants demand a jury trial on all issues so triable.

The Defendants,  
SCHOOL COMMITTEE OF GLOUCESTER &  
BEN LUMMIS, in his official and personal capacities,  
By their Attorneys,

**PIERCE DAVIS & PERRITANO LLP**

*/s/ Matthew J. Hamel*

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Dated: December 12, 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 December 12, 2022.

*/s/ Matthew J. Hamel*

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Matthew J. Hamel, Esq.