

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

AMY FROGGE, JILL SPEERING, and §
FRAN BUSH, individually, and in their §
official capacities as members of the §
Metropolitan Nashville Board of §
Public Education, §

Plaintiffs, §

v. §

Case No.: _____

SHAWN JOSEPH, §

and §

THE METROPOLITAN GOVERNMENT §
OF NASHVILLE AND DAVIDSON §
COUNTY, acting by and through §
THE METROPOLITAN NASHVILLE §
BOARD OF PUBLIC EDUCATION, §

Defendants. §

COMPLAINT

I. INTRODUCTION

1. This case arises out of a 5-3 vote by the Metropolitan Nashville Board of Public Education to censor—under penalty of personal liability—the Plaintiffs’ truthful criticism of Defendant Shawn Joseph, Nashville’s former Director of Schools. The censorship at issue was effected through a content-based “disparaging or defamatory comments” clause in ex-Director Joseph’s severance agreement. Among other defects, the clause contravenes the First Amendment and deprives the Plaintiffs’ constituents of their right to hear and receive information from their elected representatives. The Plaintiffs thus seek a declaratory judgment that the offending clause is unconstitutional and an order permanently enjoining its enforcement.

II. PARTIES

2. Plaintiff Amy Frogge is an elected official who serves on the Defendant Metropolitan Nashville Board of Public Education (“the School Board”). She represents the constituents of Metro School District 9.

3. Plaintiff Jill Speering is an elected official who similarly serves on the School Board. She represents the constituents of Metro School District 3.

4. Plaintiff Fran Bush is an elected official who serves on the School Board as well. She represents the constituents of Metro School District 6.

5. Defendant Metropolitan Nashville Board of Public Education, an agent of the Defendant Metropolitan Government, is the elected school board that oversees public education for the Metropolitan Government of Nashville and Davidson County. “The school board represents the public’s voice in public education, providing oversight for what the public schools need and what the community wants.”¹ The School Board can be served at 1 Public Square Suite 108, Nashville, Tennessee, 37219.

6. Defendant Shawn Joseph (“Joseph”) is the former Director of Schools of Metropolitan Nashville and Davidson County. His employment was terminated by the School Board pursuant to the Severance Agreement attached hereto as **Exhibit #1**. Defendant Joseph can be served at his residence or wherever he may be found.

III. JURISDICTION, AUTHORITY, AND VENUE

7. This Court has jurisdiction over this action pursuant to Tenn. Code Ann. § 1-3-121, Tenn. Code Ann. § 29-14-102, and 42 U.S.C. § 1983.

¹ *The Metropolitan Nashville Board of Public Education*, METRO. NASHVILLE PUB. SCHS. <https://www.mnps.org/board-of-education> (last visited Oct. 10, 2019).

8. This Court is vested with the authority to issue a declaratory judgment and injunction with the force and effect of a final decree pursuant to Tenn. Code Ann. § 1-3-121, Tenn. Code Ann. § 29-14-102(c), Tenn. Code Ann. § 29-1-106, and 42 U.S.C. § 1983.

9. As the county where the causes of action giving rise to the Plaintiff's Complaint arise and where all Parties reside, venue is proper in Davidson County pursuant to Tenn. Code Ann. § 20-4-101(a) and Tenn. Code Ann. § 20-4-101(b).

IV. FACTUAL ALLEGATIONS

10. On May 31, 2016, the School Board entered into an employment contract with Defendant Shawn Joseph. The employment contract provided that Joseph would serve as Metro Nashville's Director of Schools for a term beginning in 2016 and ending on June 30, 2020.

11. Over the course of Joseph's tenure as Director of Schools, his relationship with the School Board and several elected School Board members became increasingly tumultuous due to several instances of alleged misconduct and poor performance.²

12. During his tenure as Director of Schools, Joseph's alleged failure to report instances of teacher misconduct led the State of Tennessee to recommend suspension of his educator's license.³

13. After the State of Tennessee recommended that Joseph's educator's license

² See generally Phil Williams, *What you need to know about Shawn Joseph's controversies*, NEWSCHANNEL5 (updated Apr. 05, 2019), <https://www.newschannel5.com/news/newschannel-5-investigates/what-you-need-to-know-about-shawn-josephs-controversies> (detailing, *inter alia*, alleged mishandling of sexual harassment claims, findings of low employee morale and pay disparities after outside legal counsel was hired to investigate, allegations involving no-bid contracts, and changes in student discipline policy that left teachers with fewer tools to manage their classrooms).

³ See Phil Williams, *State proposes one-year suspension of Shawn Joseph's license*, NEWSCHANNEL5 (updated Mar. 26, 2019), <https://www.newschannel5.com/news/newschannel-5-investigates/metro-schools/state-proposes-one-year-suspension-of-shawn-josephs-license>.

be suspended, Joseph announced that although he would not resign from his position as Metro’s Director of Schools, he also would “not seek an extension to his contract” and was “open to finding a mutual agreement with the school board to leave the district and transition power.”⁴

14. On April 9, 2019, the School Board voted 5-3 to terminate Joseph’s employment contract and approve the terms of a Severance Agreement with him. *See Exhibit #2*, p. 2 (School Board Minutes, Apr. 9, 2019). Each of the Plaintiffs voted against approving the Severance Agreement. *See id.* (“No: Jill Speering, Fran Bush, Amy Frogge.”).

15. The Severance Agreement became effective on April 17, 2019. The Severance Agreement also included mutual, content-based “disparaging or defamatory comments” clauses that purported to censor and prevent: (1) Joseph, (2) the School Board, and (3) the School Board’s individual members, including the Plaintiffs—all public officials with roles that carry significant public interest—from disparaging one another or making truthful statements about one another that would “tend[] to harm a person’s reputation by subjecting the person to public contempt, disgrace or ridicule, or by adversely affecting the person’s business.” *See Exhibit #1*, pp. 1–2, ¶ 1(f); pp. 2–3, ¶ 2(e).

16. The first “disparaging or defamatory comments” clause (the “School Board Censorship Clause”)—which purports to “be effective for the Board collectively and binding upon each Board member individually,” including the dissenting School Board Members who voted against adopting it, *see id.* at p. 2, ¶ 1(f)(2)—provides as follows:

⁴ Jason Gonzales & Nate Rau, *Nashville school board readies for fight over future of Director Shawn Joseph*, TENNESSEAN (updated Mar. 25, 2019), <https://www.tennessean.com/story/news/education/2019/03/25/nashville-schools-director-shawn-joseph-not-seek-contract-extension/3267200002/>.

f. (1) For purposes of the subsection (f), these terms have the following meanings:

“Disparaging” means a false and injurious statement that discredits or detracts from the reputation of another person.

“Defamatory” means a statement or communication tending to harm a person’s reputation by subjecting the person to public contempt, disgrace, or ridicule, or by adversely affecting the person’s business.

(2) The Board will not make any disparaging or defamatory comments regarding Dr. Joseph and his performance as Director of Schools. This provision shall be effective for the Board collectively and binding upon each Board member individually. Dr. Joseph does not waive any right to institute litigation and seek damages against any Board member in his/her individual capacity who violates the terms and conditions this [sic] Article of the agreement.

Id. at pp. 1–2, ¶ 1(f).

17. The School Board Censorship Clause effects a prior restraint upon the Plaintiffs’ right and ability to make a vast number of constitutionally protected “comments regarding Dr. Joseph and his performance as Director of Schools.”

18. The School Board Censorship Clause defines “defamation” in a way that forbids the Plaintiffs even from expressing truthful criticism of Joseph—a public figure—if such criticism would “harm [Joseph’s] reputation by subjecting [him] to public contempt, disgrace, or ridicule, or by adversely affecting [his] business.”

19. The School Board Censorship Clause is expressly content-based, forbidding only qualifying “comments regarding Dr. Joseph and his performance as Director of Schools,” while allowing any and all other commentary, whether tortious or otherwise, regarding any other person or subject.

20. The School Board Censorship Clause is expressly speaker-based, applying exclusively to “the Board collectively and [] each Board member individually.”

21. The School Board Censorship Clause censors and forbids, under penalty of

personal liability, a vast amount of constitutionally protected and non-tortious speech.

22. The School Board Censorship Clause forbids the Plaintiffs—three duly elected officials who have a duty and obligation to their constituents—from speaking candidly and honestly with their constituents and with other elected officials, including one another, about matters essential to their offices and their official duties.

23. The Plaintiffs have thus commenced this action to secure a judgment invalidating the offending School Board Censorship Clause, which not only unlawfully restrains their own constitutionally protected speech, but which also infringes upon their constituents’ concomitant right to hear and receive information from their elected representatives.

V. CAUSES OF ACTION

1. Violation of U.S. CONST. amends. I and XIV

24. The Plaintiffs reincorporate and reallege the foregoing allegations as if fully set forth herein.

25. The School Board Censorship Clause effects a content-based and speaker-based prior restraint of the Plaintiffs’ constitutionally protected free speech rights in both their official and individual capacities.

26. The School Board Censorship Clause prohibits the Plaintiffs from truthfully criticizing Defendant Joseph or commenting upon official proceedings and other matters regarding him if their truthful commentary would “harm [Joseph’s] reputation by subjecting [him] to public contempt, disgrace, or ridicule” or “adversely affect[] [his] business.”

27. The School Board Censorship Clause allows the School Board and its

members to make laudatory false statements about Defendant Joseph while simultaneously forbidding them from making false statements that would “discredit[] or detract[]” from his reputation.

28. The School Board Censorship Clause is expressly speaker-based, purporting to be effective only “for the Board collectively and [] each Board member individually,” but censoring no other person or entity.

29. The School Board Censorship Clause prohibits the Plaintiffs from truthfully communicating with their constituents, with one another, and with other elected officials about matters essential to their offices and their duties as elected representatives.

30. The School Board Censorship Clause forbids a vast amount of constitutionally protected and non-tortious speech and is unconstitutionally overbroad.

31. The School Board Censorship Clause contravenes the First Amendment rights of the Plaintiffs’ constituents to hear and receive information and ideas from their elected representatives.

32. The School Board Censorship Clause contravenes the First and Fourteenth Amendments to the United States Constitution, and it is unenforceable and should be declared a nullity as a consequence.

2. Violation of TENN. CONST. art. I, § 19, Tenn. Code Ann. § 1-3-121, and Tenn. Code Ann. § 8-50-602

33. The Plaintiffs reincorporate and reallege the foregoing allegations as if fully set forth herein.

34. The School Board Censorship Clause violates the more expansive protections of TENN. CONST. art. I, § 19.

35. The School Board Censorship Clause constitutes illegal and

unconstitutional governmental action that is subject to declaratory and injunctive relief under Tenn. Code Ann. § 1-3-121.

36. Tennessee Code Annotated § 8-50-602(a) provides that “[n]o public employee shall be prohibited from communicating with an elected public official for any job-related purpose whatsoever.”

37. Notwithstanding Tennessee Code Annotated § 8-50-602(a), the School Board Censorship Clause prohibits the Plaintiffs from communicating with other elected public officials and one another for job-related purposes regarding Defendant Joseph.

38. The School Board Censorship Clause inhibits the flow of information between the Plaintiffs and public officials and prevents the Plaintiffs from doing the jobs that they were elected to do.

39. The School Board Censorship Clause contravenes Tennessee public policy to the extent that it prohibits the Plaintiffs from carrying out the full measure of their duties as elected officials and engaging truthfully with their constituents, with other elected officials, and with one another.

40. The School Board Censorship Clause is unlawful and contrary to Tennessee law to the extent that it prohibits the Plaintiffs from reporting crime, cooperating with official investigations, providing truthful testimony, or making constitutionally protected statements in their official and individual capacities regarding matters of public concern.

41. The School Board Censorship Clause thus violates Tennessee law and is unenforceable.

VI. CLAIMS FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

1. Issue a final judgment declaring that the School Board Censorship Clause violates the First and Fourteenth Amendments to the U.S. Constitution, article I, section 19 of the Tennessee Constitution, and Tenn. Code Ann. § 8-50-602(a);
2. Enter an order permanently enjoining enforcement of the School Board Censorship Clause;
3. Award Plaintiffs their reasonable costs and attorney's fees pursuant to 42 U.S.C. § 1988(b);⁵ and
4. Grant Plaintiffs all other relief to which they are entitled.

Respectfully submitted,

By: /s/ Daniel A. Horwitz
Daniel A. Horwitz, BPR #032176
1803 Broadway, Suite #531
Nashville, TN 37203
daniel.a.horwitz@gmail.com
(615) 739-2888

Counsel for Plaintiffs

⁵ Any fee award obtained as a result of this action shall be donated to a charitable purpose.