

6165 W, KY-146 :
Crestwood, KY 40014 :
 :
Defendants. :

**COMPLAINT FOR DECLARATORY, MONETARY, AND INJUNCTIVE
RELIEF**

Plaintiff Micah Cain states the following for his claims against Defendant Oldham County Board of Education:

I. INTRODUCTION

1. This is an Action brought under 42 U.S.C. § 1983 and 42 U.S.C. § 1988 for violations of the First Amendment and Fourteenth Amendment. Defendant Oldham County Board of Education unlawfully categorically banned Plaintiff Micah Cain from attending, and therefore also from speaking at, three public meetings without the due process of law because he expressed critical viewpoints during public participation at prior meetings. Plaintiff Cain has never threatened bodily harm to any board member, and he posed no threat of violence. Defendant Oldham County Board of Education was merely punishing what is perceived as personal attacks relating to its COVID mandates. Indeed, during this period, Defendant was engaged in a campaign to restrain criticisms of its Board members by sending threatening letters from Defendant's Counsel to other members of the public who criticized the Board's policies. This Court should enjoin Defendant from further violations of the First and Fourteenth Amendments, declare that Defendant acted unlawfully, and award Plaintiff Cain constitutional damages and attorney fees.

II. PARTIES

2. Plaintiff Micah Cain (“Cain”) is a resident of Oldham County, Kentucky, and he is a parent and taxpayer in Oldham County.
3. Defendant Oldham County Board of Education (“Board”) is a school board located in Oldham County, Kentucky.

III. JURISDICTION AND VENUE

4. Jurisdiction is proper in this Court because this Action is brought under 42 U.S.C. § 1983 and 42 U.S.C. § 1988.
5. Venue is proper in this Court because the events complained of occurred in Oldham County, Kentucky.

IV. BACKGROUND FACTS

6. The Board holds public meetings that are required to remain open to the public under the Kentucky Open Meetings Act.
7. The Board is comprised of five members.
8. Joyce Fletcher (“Fletcher”) is the Board’s chairperson, and she is the presiding officer of the Board’s meetings.
9. Like most Boards, the Defendant Board has a period of public participation where the community may address the Board.
10. Typically, each citizen receives three minutes during public participation to address the Board.
11. During the end of the summer in 2021, the Board was considering which COVID mandates and precautions to apply at the beginning of the 2021 school year.
12. The Board ultimately decided to mandate that students wear a mask while attending school.

13. This was a matter of great public concern, especially among parents of children in the school district.
14. As the Board should expect, there were parents in the community who supported the use of masks within the school, and there were parents within the district who did not.
15. The matter inspired much debate between the community members and the Board.
16. The Board was not receptive and ultimately hostile towards personal criticism of the Board's members and their decision to require students to wear masks.
17. Cain is a parent of two children within the Board's school district.
18. Cain was critical of the Board's decision, and he attended Board meetings to state his grievances during public participation.
19. Cain attended a Board meeting on July 26, 2021, where he was critical of the Board during public participation.
20. Cain attended another Board meeting on August 23, 2021.
21. During this meeting, the Oldham County Director of Student Services, Eric Davis ("Davis") spoke during public participation.
22. Davis is an employee of the Defendant Board, but he used public participation time to speak to the Board.
23. Davis spoke in fervent support of the Board's decision and in opposition to critics of the Board.¹

¹ A video of the meeting is available at <https://www.youtube.com/watch?v=hQ9fsvu1CJM>. Davis's remarks begin at [REDACTED].

24. After Davis finished his message, certain members in the audience, as well as the Board, broke out into applause for approximately sixteen seconds.² This round of applause disrupted the meeting.
25. The Board did not inform the audience that it was not permitted to react or cheer loudly in agreement with Davis.
26. Instead, the Board's presiding officer, Fletcher, merely uttered "well said, Mr. Davis" and praised her supportive employee.
27. When the next public speaker finished her statement, and the following speaker was about to begin, the Board's presiding officer made a negative statement about the audience.³
28. Cain was in that audience, and he booed in response.⁴
29. The Board immediately ordered Cain to be removed from the meeting.⁵
30. Thus, the Board permitted the audience to engage in applause that was sustained for an extended period of time when that applause showered its own supportive employee with praise.
31. However, the Board immediately removed Cain when he booed after Fletcher criticized the audience.
32. The Board's response to reaction from the audience therefore varied based on the viewpoint the audience was expressing. Simply stated, the audience was permitted to loudly applaud and cheer during public participation for extended periods of

² Id. at 12:20 – 12:45.

³ Id. at 16:45.

⁴ Id.

⁵ Id.

time in support of positive comments, but the audience was prohibited from expressing very brief negative responses.

33. Cain attended another Board meeting on September 27, 2021. He had prepared a three-minute speech for public participation.

34. During the September 27 meeting, the Board told the public that the normal three-minute time limit for public participation would be reduced to two-minutes.

35. The public members who wanted to speak during public participation had no advance notice that the Board would reduce their time in this manner.

36. Cain did not speak out of turn or otherwise interrupt anyone's statements during public participation on September 27.

37. Instead, when it was his turn to speak, Cain peacefully approached the lectern, and he began reading from his prepared statements.

38. He immediately noted that he would try to fit his prepared statement into his two-minute reduced time slot.⁶

39. Cain read from his statement quickly in order to comply with the reduced time.

40. Towards the end of his prepared speech, Cain intended to finish with a quote from C.S. Lewis.⁷

41. In finishing the quote, Cain went a little over his time limit for approximately 20 seconds.

42. Thus, after hearing his time was up, he rapidly wrapped up his quote within twenty seconds.

43. Cain never threatened the Board, and he spoke no fighting words.

⁶ <https://www.youtube.com/watch?v=BIal6VPnomg> at 1:52:33

⁷ Id.

44. Later in that same meeting, a woman stepped up to the lectern to address the Board, and her comments were critical of the Board.⁸

45. A couple members of the public heckled this woman during her public address, and there were interruptions during her public address.⁹ The Board did not silence the hecklers.

46. After his speech, Cain was again forced to leave the meeting by the Board. The officer who required him to leave told him that he was being ejected from the meeting for going over his allotted two minutes of time. However, on information and belief, other members of the public who exceeded the time limit, but who spoke in favor of the Board, were not required to leave.

47. After the September 27 meeting, the Board sent Cain a letter banning him from Board meetings until January of 2022, through its employee, Eric Davis. (See Exhibit 1).

48. The Board letter stated that it was banning Cain from Board meetings because he failed to “follow expectations outlined for speakers and spectators.” (Id.)

49. This ban threatened to charge Cain with trespassing and menacing if he attended these public meetings.

50. Because Cain did not want to face such serious criminal charges, he was not able to attend the following three Board meetings. As a result, he also could not continue speaking during public participation time, as he had done at the previous three meetings.

⁸ Id. at 2:25:40

⁹ Id. at 2:27.

51. However, based on information and belief, the Board has not banned members of the audience who applauded or cheered for its supporters.
52. Based upon information and belief, the Board did not ban the audience members who were blurting out and heckling a critical speaker during the September 27, 2021, meeting.
53. Instead, the Board banned a vocal critic for engaging in the same or similar conduct other audience members engaged in.
54. And the Board treated him differently than more supportive members of the public, who are more supportive of the Board's decisions.
55. The Board restrained Cain's presence and criticism at future meetings because his expression was in opposition to the Board, as opposed to in support of it.
56. Cain was not the only critic that the Board decided to intimidate at this time.
57. The Board sent another threatening letter to another critic named Abbie Springer ("Springer"). (Exhibit 2).
58. The Board had its Counsel send Springer this threatening letter. (Id.)
59. This letter detailed that Springer was forbidden from expressing "personal insults" and "disparaging remarks" about the Board's members. (Id.)
60. This letter informed Springer that she would not be permitted to address her Board members unless she was "civil." (Id.)
61. The Board utilized categorical bans and threatening letters to restrain critical speech from the public members on matters of great public concern.

V. CLAIMS FOR RELIEF

Count I – Violation of First Amendment – Free Speech and Access

62. Cain restates all previous paragraphs.

63. The Board's decisions regarding safety and student mandates are matters of great public concern.

64. Critical speech, including speech that criticizes the Board members personally, is protected speech under the First Amendment of the United States Constitution.

65. The Board's public participation constitutes a limited public forum.

66. Although the Board can enforce content-neutral time, place, and manner restrictions, it cannot enforce those restrictions unequally in a manner that discriminates against certain viewpoints.

67. In addition, the Board cannot ban a critic from future meetings for past conduct in order to restrain his speech.

68. The Board cannot use threats in order to restrain personal criticisms and critical viewpoints.

69. Because the public further has a First Amendment right to receive information and to access the government, the Board may not ban members of the public from future meetings based upon past conduct.

70. The Board here unlawfully banned Cain from multiple meetings because of his past conduct, and it unlawfully restrained his critical speech on matters of public concern.

71. The Board intentionally restrained Cain's speech because the Board was hostile to critical viewpoints, personal criticisms, and behavior it decided was not "civil."

72. Cain did not engage in fighting words or the incitement of violence.

73. Cain's criticisms and viewpoints are protected under the First Amendment.

74. The Board additionally applied its public participation rules differently to Cain than other members of the audience.

75. The Board permits supportive members to engage in long periods of applause during public participation, but it removed Cain for a very brief negative utterance.

76. Thus, the Board permits, and even encourages positive audience reactions, but it retaliates against negative audience reactions.

77. The Board violated Cain's First Amendment rights and unlawfully restrained critical speech.

78. The Board further violated Cain's First Amendment right to receive information and access the government.

79. Cain is entitled to damages, injunctive relief, a declaratory judgment, costs, and attorney fees.

Count II – Violation of Fourteenth Amendment – Due Process

80. Cain restates all previous paragraphs.

81. A government body may not deprive a citizen of a property or liberty interest without due process of law.

82. Procedural due process requires notice and an opportunity to respond.

83. Under Ky. Rev. Stat. § 61.810, a government "shall" keep all meetings open to all members of the public.

84. The First Amendment also protects access to school board meetings.

85. The Kentucky public has a vested interest in attending public meetings and receiving information from observing those meetings.

86. Thus, the Board may not lawfully ban a member of the public from attending open meetings without the due process of law.

87. Here, the Board banned Cain from multiple open meetings without any opportunity to respond or appeal its decision.

88. The Board consequently violated Cain's due process rights under the Fourteenth Amendment because it deprived him of a vested statutory interest without the due process of law.

89. Cain is entitled to damages, injunctive relief, a declaratory judgment, costs, and attorney fees.

WHEREFORE, Cain respectfully requests that this Court find for him and awards him the following relief:

- a. An order enjoining Defendant Board from further violations of his First and Fourteenth Amendment rights;
- b. An order declaring that the Defendant Board violated Cain's First and Fourteenth Amendment rights;
- c. Compensatory damages;
- d. Nominal damages;
- e. Costs;
- f. Attorney fees pursuant to 42 USC 1988; and
- g. Any other relief this Court deems proper.

Respectfully submitted,

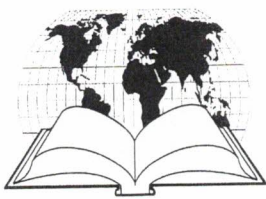
/s/ Matt Miller-Novak

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Attorneys for Plaintiff



Oldham
COUNTY SCHOOLS

Continuing the Tradition of Excellence

October 12, 2021

Mr. Micah Cain
1736 Bass Cir.
LaGrange, KY 40031

Mr. Cain,

The Oldham County Board of Education welcomes civil interaction with its constituents and sets aside a portion of each regular business meeting to hear public comments. The Board has adopted rules for attendance and public expression to provide a safe and inviting environment. At the Board's Monday September 27, 2021 meeting, you were removed from the Arvin Education Center by an Oldham County Police Officer due to your behavior.

During the meeting, you refused to follow the expectations outlined for speakers and spectators. Your outbursts during the board meeting were unacceptable and detracted from a safe environment for everyone. The Board of Education must maintain a safe environment for all attendees and employees during its public meetings.

Due to your actions at the last Board of Education meeting, you are prohibited from attending meetings of the Board until January 2022. In addition, during this time, you are not permitted on the campus of the Arvin Education Center one (1) hour prior to the start of the scheduled meeting through one (1) hour after its adjournment.

*** Violating these conditions may result in legal action for trespassing, harassment, and/or menacing.**

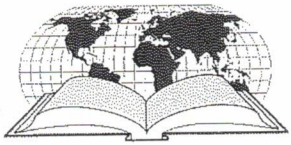
I understand that parents are passionate about topics related to managing the pandemic during school. However, we cannot allow guests and speakers to create a hostile or unsafe environment for the Board members, employees, and other audience members. The above measures are necessary to ensure the safety of all attendees and the orderly operation of the school board. I trust this information is sufficient for your purposes. Should you have any questions, please notify me personally.

Sincerely,

Eric A. Davis
Director of Student Services

cc: Hon. Anne Coorssen, General Counsel
Mr. Brent Deaves, Assistant Superintendent for Support Services
Dr. Jason Radford, Superintendent





Oldham
COUNTY SCHOOLS

Continuing the Tradition of Excellence

November 5, 2021

Abbie Springer
4648 Grand Dell Drive
Crestwood, KY 40014

Dear Mrs. Springer,

The Board of Education encourages parents and community members to share their opinions on important matters affecting education. You have expressed your views both in-person and through emails to board members. While messages through email are welcomed, communications that include personal insults and disparaging remarks leveled at individual board members are not productive and will not be tolerated.

Engaged parents are a vital component for building strong schools. You are clearly passionate about issues currently affecting students, and have been a supporter of the district and Board in the past. The Board embraces the respectful exchange of differing opinions while working toward common goals. In the future, interaction with any Board member must be civil. If you will not comply with this minimal standard of societal conduct, please refrain from contacting the Board members.

Please be advised that emails addressed to one or more board members through their official email accounts are directed to the entire Board as a governmental body. Correspondence to individuals in their capacity as board of education members are public records under the Kentucky Open Records Act, and may be subject to disclosure to the public.

Very truly yours,

A handwritten signature in black ink, reading "Anne Courtney Coorssen".

Anne Courtney Coorssen
General Counsel

