

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BONNIE WALLACE,
Plaintiff,

v.

HOUSTON INDEPENDENT SCHOOL
DISTRICT et al.,

Defendants.

Case No. 4:26-cv-03501

**DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES**

Defendants Houston Independent School District ("HISD") and Angela Lemond Flowers ("Flowers") (collectively, "Defendants") file this reply in support of their motion to dismiss the First Amended Complaint (Dkt. 4) filed by Plaintiff Bonnie Wallace ("Plaintiff").

I. INTRODUCTION

According to Plaintiff's own allegations, the passages she chose to read out loud in the limited public forum of an HISD board meeting are so graphic that the books containing the passages should not be available to HISD high school students. At the same time, Plaintiff bases her claims on the concept that under the First Amendment, the presiding officer was required to permit the recitation of these passages from the limited public forum podium at the board meeting.

Plaintiff has not stated an actionable First Amendment claim. This case concerns the administration of a limited public forum during a school board meeting. Plaintiff identifies no authority requiring the presiding officer to permit the live oral recitation of sexually graphic passages in such a forum under those circumstances. Understandably, given the lack of such authority, Plaintiff also does not identify clearly established law placing the constitutional question beyond debate, for purposes of qualified immunity analysis.

II. ARGUMENT

A. Count 1: Plaintiff Applies the Wrong First Amendment Framework.

1. Limited-Public-Forum Doctrine Governs the Public-Comment Period.

Plaintiff's response analyzes this case principally through decisions involving facial content restrictions, prior restraints, and licensing schemes, including *Reed v. Town of Gilbert*, 135 S.Ct. 2218 (2015); *City of Lakewood v. Plain Dealer Publishing Co.*, 108 S. Ct. 2138 (1988); and *Chiles v. Salazar*, 146 S. Ct. 1010 (2026). Those authorities do not govern whether Plaintiff has stated an actionable claim here.

The public-comment portion of a school board meeting is undeniably a limited public forum. It is well established that in such forums, governmental bodies may adopt reasonable, viewpoint-neutral rules governing participation and may reserve the forum for its intended purposes. *E.g.*, *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 103 S.Ct. 948, 957 (1983); *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 105 S.Ct. 3439, 3451 (1985); *Chiu v. Plano Indep. Sch. Dist.*, 260 F.3d 330, 346-47 (5th Cir. 2001). The Fifth Circuit has applied this principle specifically to a Texas school board meeting, upholding rules that limited discussion of individual employees and channeled personnel disputes into separate procedures because those rules were viewpoint neutral and reasonable in light of the forum's purpose. *Fairchild v. Liberty Indep. Sch. Dist.*, 597 F.3d 747, 759-61 (5th Cir. 2010).

Plaintiff's response never meaningfully engages this framework that actually governs claims arising from limited-forum presentations. Instead, Plaintiff has responded to the motion to dismiss with cases concerning challenges to generally applicable prohibitions on speech or laws conditioning speech on advance governmental approval. This case does not involve any such allegations. Under her own allegations—as well as the plain record of the meeting that Plaintiff incorporates into her claims—this case does not concern a general prohibition on speech content,

but instead only the presiding officer's administration of a well-established, content-neutral guideline on limited public forum presentations during a single HISD board meeting.

B. Count II: Plaintiff Does Not Plausibly Allege Retaliatory Motive.

Count II fails to state a claim for an independent reason. Even assuming Plaintiff engaged in protected activity, the Complaint still does not plausibly allege that protected activity was a substantial or motivating factor in the presiding officer's decision to remove Plaintiff from the meeting. *See Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 97 S.Ct. 568, 576 (1977).

Plaintiff invokes *Mt. Healthy's* burden-shifting framework, but that framework presupposes a plaintiff has already established that protected conduct was a substantial or motivating factor in the challenged action. *Mt. Healthy* does not answer the antecedent Rule 12(b)(6) question presented here: whether the Complaint plausibly alleges retaliatory motive. It does not.

Plaintiff's reply does not adequately address the plain fact that her own allegations undermine any inference that the presiding officer (Flowers) acted in retaliation, because of Plaintiff's viewpoint. As addressed in the motion to dismiss, the speaker who followed Plaintiff on the podium (Dr. Scarborough) immediately thereafter expressed the same substantive criticism of HISD's library policies without interruption. Compl. ¶ 28. The Complaint therefore fails to plausibly allege that Plaintiff's protected opposition to HISD's library policies—as opposed to the particular manner in which Plaintiff chose to present that opposition—was a substantial or motivating factor in the challenged action.

The meeting record speaks for itself. Plaintiff apparently takes issue with Defendants' description of the Board meeting from Plaintiff's allegations and the recording of the meeting,

which is incorporated into her complaint.¹ The recording reflects that Plaintiff announced her intention to read passages from the challenged books, received multiple warnings from the presiding officer, continued her presentation, and was ultimately removed.

C. Count III: BED(LOCAL) Is Not the Unconstitutional Policy Plaintiff Describes.

Plaintiff's municipal liability theory ultimately depends upon her assertion that the HISD board policy related to decorum and disruption of board meetings, BED(LOCAL), is itself facially unconstitutional. Any such challenge to the policy governing decorum and disruption of board meetings is a legal non-starter. Governing First Amendment authorities expressly recognize that governmental bodies may adopt reasonable, viewpoint-neutral procedures to administer such forums. Plaintiff nevertheless argues that BED(LOCAL) is analogous to the licensing ordinance invalidated in *City of Lakewood*. It is not.

Lakewood involved a classic prior restraint. There, speakers could not engage in protected expression without first obtaining governmental permission, and the ordinance vested the licensing official with broad, standardless discretion to grant or deny that permission. *Lakewood*, 108 S.Ct. at 2145-46. BED(LOCAL) does neither. The policy on conduct of board meetings does not require advance governmental permission to criticize the Board or address matters within the scope of public comment. Plaintiff herself registered to speak, was recognized by the presiding officer, and began presenting her remarks before any intervention occurred. The policy governs the administration of an ongoing public meeting, not whether speech may occur in the first instance.

Nor does BED(LOCAL) confer the sort of unbridled discretion condemned in *Lakewood*. The policy establishes procedures governing the conduct of public comment, including recognition of speakers, warnings, and removal when necessary to administer the meeting. The First

¹ Plaintiff does not dispute that the Court may consider the recording of the March 19, 2026 Board meeting.

Amendment does not prohibit governmental officials from exercising judgment in administering a limited public forum.

Because Plaintiff has not plausibly alleged that BED(LOCAL) is facially unconstitutional, Count III ultimately reduces to an effort to impose municipal liability based upon Flowers' alleged conduct during a single Board meeting. But Section 1983 does not impose respondeat superior liability upon municipalities. *Monell v. Department of Social Services*, 98 S.Ct. 2018, 2035 (1978).

D. Count IV: Plaintiff Challenges the Administration of Public Comment, Not a Violation of TOMA.

Count IV attempts to transform Plaintiff's disagreement with the presiding officer's administration of public comment into a violation of the Texas Open Meetings Act ("TOMA"). Plaintiff has not alleged an actionable claim under TOMA, much less one that would be within this Court's jurisdiction. Texas courts have consistently explained that the Act protects the public's interest in open governmental deliberation and decision-making, not the asserted rights of individual participants in a public meeting. *See, e.g. Cox Enters., Inc. v. Bd. of Trs. of Austin Indep. Sch. Dist.*, 706 S.W.2d 956, 960 (Tex. 1986) ("The Act is intended to safeguard the public's interest in knowing the workings of its governmental bodies."); *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762, 765 (Tex. 1991) ("The intended beneficiaries of the Act are not individual citizens ... but members of the interested public.").

Consistent with that purpose, TOMA's remedies focus on governmental action taken through meetings conducted in violation of the Act. *See* TEX. GOV'T CODE § 551.141 ("An action taken by a governmental body in violation of this chapter is voidable."). Plaintiff challenges only the administration of public comment during an otherwise open meeting. She does not challenge any Board vote, resolution, or other governmental action that TOMA authorizes a court to declare void.

E. Count V: Amendment Would Be Futile Because Plaintiff Identifies No Underlying Constitutional Violation.

Plaintiff does not defend Count V as presently pleaded. Instead, Plaintiff requests leave to amend to assert an official-capacity ultra vires claim against the meeting's presiding officer (Flowers). That request effectively concedes the defect identified in the motion to dismiss: neither HISD nor Flowers in her individual capacity is a proper ultra vires defendant.²

However, any such amendment would be futile. Plaintiff does not allege that Flowers lacked authority to preside over the meeting, administer public comment, issue warnings, or remove speakers under appropriate circumstances. Rather, Plaintiff contends that Flowers exercised that authority unconstitutionally in this particular instance. For the reasons discussed above, the Complaint does not plausibly allege that Flowers engaged in unconstitutional viewpoint discrimination or retaliation. Because the proposed ultra vires claim would rise or fall with those same constitutional theories, amendment would be futile.

F. Plaintiff Still Does Not Allege a Real and Immediate Threat of Future Injury.

Plaintiff attempts to cure the standing defect identified in the motion to dismiss by submitting a declaration stating that Plaintiff intends to attend future HISD Board meetings. Even if the Court considers Plaintiff's declaration submitted in response to Defendants' motion, the declaration alleges only a general intent to attend future meetings. Attending future board meetings is different than repeating the same conduct that the presiding officer, in her discretion, found to be disruptive to the meeting. Plaintiff does not allege facts establishing a real and

²Plaintiff likewise does not meaningfully respond to Defendants' argument that damages are unavailable under Article I, Sections 8 and 27. *Bouillion* therefore provides an independent basis for dismissal of any claim for monetary relief under Count V.

immediate threat that the circumstances giving rise to the March 19 meeting are likely to recur. *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983), therefore continues to bar prospective relief.

G. Existing Law Did Not Place Flowers’ Conduct Beyond Debate.

Plaintiff’s response reinforces Defendants’ qualified immunity argument. Plaintiff no longer frames the case as involving the general right to criticize school library policies. Instead, she contends that clearly established law prohibited Flowers from intervening after Plaintiff chose to criticize those policies through the live oral recitation of sexually explicit passages during a school-board public-comment period. Plaintiff identifies no Supreme Court or Fifth Circuit decision placing that specific constitutional question beyond debate.

Plaintiff principally relies on *Heaney v. Roberts*, 846 F.3d 795 (5th Cir. 2017). But *Heaney* did not hold that every dispute arising from the removal of a speaker at a public meeting violates clearly established law. Rather, the Fifth Circuit accepted the district court’s determination that a genuine factual dispute existed as to whether the official acted from an impermissible viewpoint-discriminatory motive and dismissed the interlocutory appeal for lack of jurisdiction. *Id.* at 802. *Heaney* therefore reaffirmed the settled principle that viewpoint discrimination is unconstitutional. It does not clearly establish the highly specific constitutional question presented here.

Biggers is likewise distinguishable. There, the Fifth Circuit emphasized that the plaintiff had “squarely alleged” that the presiding officer invoked the meeting’s decorum rule as “a mere pretext to silence his views.” *Biggers v. Massingill*, No. 23-11023, 2025 WL 429974, at 2 (5th Cir. Feb. 7, 2025). Here, by contrast, Plaintiff has not plausibly alleged that Flowers invoked HISD’s rules as a pretext for suppressing Plaintiff’s viewpoint. Indeed, Plaintiff’s own allegations establish that another speaker immediately expressed the same substantive criticism of HISD’s library policies without interruption.

Plaintiff's authorities are also notable for what they do not address. Plaintiff identifies no historical tradition recognizing a First Amendment right to present political criticism during governmental proceedings through the live oral recitation of sexually graphic material. By contrast, the Supreme Court has repeatedly recognized longstanding governmental authority to preserve order in deliberative proceedings and substantial governmental interests relating to sexually explicit material and minors. *See Free Speech Coalition, Inc. v. Paxton*, 145 S. Ct. 2291, 2317 (2025); *Bethel School Dist. No. 403 v. Fraser*, 106 S. Ct. 3159, 3164 (1986) ("The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board."); *Ginsberg v. New York*, 88 S. Ct. 1274, 1280-81 (1968) (recognizing the State's substantial interest in protecting minors from exposure to sexually explicit material).

Qualified immunity protects officials unless existing precedent makes the unlawfulness of the challenged conduct apparent in the particular circumstances confronting the official. Plaintiff's response confirms that the relevant circumstances here are highly specific; a school board meeting, a limited public forum, and a speaker who chose to criticize library policies through the live oral recitation of sexually explicit passages. Plaintiff identifies no Supreme Court or Fifth Circuit authority addressing those circumstances. Flowers is therefore entitled to qualified immunity.

III. CONCLUSION

For the foregoing reasons, Defendants Houston Independent School District and Angela Lemond Flowers respectfully request that the Court grant Defendants' Motion to Dismiss in its entirety and dismiss Plaintiff's Complaint. Defendants further request all other relief to which they may be justly entitled.

Respectfully submitted,

BUTLER SNOW LLP

By: /s/ Eric J.R. Nichols
Eric J.R. Nichols
State Bar No. 14994900
Eric.Nichols@butlersnow.com
J.R. Johnson
Texas Bar No. 24070000
JR.Johnson@butlersnow.com
1400 Lavaca Street, Suite 1000
Austin, Texas 78701
Tel: (737) 802-1800
Fax: (737) 802-1801

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that on July 27, 2026, a true and correct copy of the foregoing document was served on all counsel of record by filing with the Court's CM/ECF system.

/s/ J.R. Johnson
J.R. Johnson