Case No. 20-10115-HH

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

NATHANIEL BORRELL DYER,
Plaintiffs and Appellant

v.

ATLANTA INDEPENDENT
SCHOOL SYSTEM,
Defendant and Respondents

On Appeal from the
United States District Court for the
Northern District of Georgia Atlanta Division
1:18-cv-03284-TCB

APPELLANT'S OPENING BRIEF

Nathaniel Borrell Dyer
202 Joseph Lowery Blvd. Nw
Atlanta Georgia 30314
(404) 964-6427

Self-Represented Appellant

U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT (CIP)

Nathaniel Borrell Dyer *vs.* AISS Appeal No. 20-10115-HH

11th Cir. R. 26.1-1(a) (enclosed) requires the appellant or petitioner to file a Certificate of Interested Persons and Corporate Disclosure Statement (CIP) with this court within 14 days after the date the case or appeal is docketed in this court, and to include a CIP within every motion, petition, brief, answer, response, and reply filed. Also, all appellees, intervenors, respondents, and all other parties to the case or appeal must file a CIP within 28 days after the date the case or appeal is docketed in this court. **You may use this form to fulfill these requirements.** In alphabetical order, with one name per line, please list all trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates, parent corporations, any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party.

(please type or print legibly):

Atlanta Board of Education

Brandon Moulard

Courtney English

David Jernigan

Glenn D. Brock

Jason Esteves

Judge Timothy Batten

Laurence Joseph Warco

Marquenta Sands-Hall

MaryGrace Kathleen Bell

Meria Joel Carstarphen

Ronald Applin

STATEMENT REGARDING ORAL ARGUMENT

Plaintiffs-Appellants, pursuant to Federal Rule of Appellate Procedure 34 and Eleventh Circuit Rule 34(3)(c), respectfully request oral argument. This case presents important constitutional issues related to freedom of speech and the due process of law. Oral argument will assist this Court to analyze the complex record and to resolve these important legal issues.

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STATEMENT OF JURISDICTION

Jurisdiction is proper in this case under 28 U.S.C. § 1983, as this appeal arises from a judgment dismissing a civil action in the United States District Court for the Northern District of Georgia, alleging violations of 42 U.S.C. § 1983. This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291. The District Court entered a final judgment granting Atlanta Independent School District (AISS) Summary Judgment on December 5, 2019. Doc. 12. A notice of appeal was timely filed on August 8, 2020.

STATEMENT OF THE ISSUES

1. Whether the the court erred as a matter of law because the defendant altered and falsified evidence which is a violation of GA Code § 16-10-20.1 and ABA Model Rule of Professional Conduct Rule 3.3(A)(3)
2. Whether the court erred as a matter of law because the restrictions placed on Dyer's speech were not content-neutral
3. Whether the court erred as a matter of law because the restrictions placed on Dyer's speech were not narrowly tailored
4. Whether the court erred as a matter of law because the suspensions placed on Dyer deprived him of due process by instructing him not to have any communications whatsoever with any employee or representative of the [Board] or [AISS]
5. The court erred as a matter of law because taking offense is a viewpoint when it comes to ethnic slurs

STATEMENT OF THE CASE

Dyer is a graphic designer by trade but spends much of his time as a community advocate on issues related to children and their education. He has been attending board meetings at AISS since 2006. Since that time, AISS has not been a fan of Dyer's activism. Dyer maximizes his First Amendment rights to the fullest. Dyer has led numerous protest rallies utilizing his right to petition the government for a redress of grievances. He has created dozens of satirical flyers employing his freedom of press. In addition, Dyer has faithfully spoken at AISS board meetings during public

comment in full exercise of his freedom of speech. Not only has Dyer advocated on behalf of children, he has stood with teachers, bus drivers, custodial workers and even superintendents. The road hasn't been easy for Dyer's unique style of activism which have brought him to the crossroads of justice.

Dyer filed the civil suit in Superior Court of Fulton County Pro Se. The Defendant provided Notice of Removal to the U.S. District Court for the Northern District of Georgia. Dyer brought this suit under 42 U.S.C. § 1983 against AISS for violations of his right to free speech under the First Amendment (count 1) and right to procedural due process under the Fourteenth Amendment (count 2). He also alleged claims that the court construed as arising under state law for slander per se (count 3), discrimination and retaliation (count 4), and harassment (count 5). AISS had moved to dismiss all of Dyer's counts for failure to state a claim. The court order allowed AISS's motion [2] to dismiss for failure to state a claim be granted in part and denied in part. Dyer's § 1983 claims under the First Amendment (count 1) and the Fourteenth Amendment Due Process Clause (count 2) proceeded. Dyer's state-law claims (counts 3 through 5) were dismissed as barred by sovereign immunity. The court granted Defendants' motion [34] for summary judgment. In essence, the order stated that AISS's removal and suspension of Dyer from board meetings did not violate his right of free speech. Thus, an adequate state remedy existed to provide Dyer with an opportunity to contest the notices against trespass. Dyer submitted an application to appeal forma pauperis. The court denied the application and concluded Dyer's basis to be frivolous. Dyer filed the appeal on August 8, 2020.

SUMMARY OF THE ARGUMENT

The court erred as a matter of law because the Defendant altered and falsified evidence which is a violation of GA Code § 16-10-20.1 and ABA Model Rule of Professional Conduct Rule 3.3(A)(3). The court also erred as a matter of law because the Defendant violated Dyer's freedom of speech and due process rights. What began as a case of egregious constitutional violations against Dyer has morphed into the fabrication of evidence in federal court. The Defendant and their legal representatives, Nelson, Mullins, Riley and Scarborough, appear to have engaged in some specious activities. Once again, Dyer is in familiar territory with the Defendant and its cohorts.

The February 8, 2018 letter from AISS which banned Dyer for the third time possessed indispensable evidence to move his case forward. However, the Defendant and their attorneys at Nelson, Mullins, Riley and Scarborough introduced a different letter during Dyer's deposition. Dyer, representing himself Pro Se, was tricked into authenticating the altered document while under oath. Dyer caught the error in time for his cross motion for summary judgment but to no avail. The court claimed that the letter was authenticated at Dyer's deposition even though he had provided proof that the authentic document existed on both dockets of the Superior and Federal Courts.

For two words and a satirical flyer, Dyer was banned for 2 years and 8 months consecutively. The first incident occurred during public comment at the January 15, 2016 AISS Board meeting where Dyer posed the question, "What's the definition of a nigger? The second incident took place at the board meeting on October 10, 2016 where he described an event sponsored by Superintendent Carstarphen in the words, "It was Samboed." Finally, the third incident occurred at the February 5, 2018 Board

meeting where Dyer passed out a satirical flyer which included billionaire Arthur Blank propping Superintendent Carstarphen up by puppet strings. While Dyer was giving public comment, he was abruptly interrupted by Glenn D. Brock, AISS General Counsel, who is a partner at Nelson, Mullins, Riley and Scarborough. *(video evidence available)* Brock stated that the flyer was inappropriate for the setting. Board Chair Esteves agreed and ordered Dyer to be removed from the podium because of the flyer. Over the years, Dyer has been constantly harassed, given bogus and unlawful trespass warnings and has had his name and character defamed by the Defendant. When Dyer inquired about how to contest the suspensions against him, the Defendant would casually utter "TAKE IT TO COURT." Well, here we are.

STANDARD OF REVIEW

In reviewing the findings of the lower courts, it must be determined whether the issues for review are factual, legal, or mixed, and in this case, the First Amendment issue is most appropriately considered an issue of law and thus reviewed *de novo. Chandler v. McMinnville Sch. Dist.,* 978 F.2d 524, 526 (9th Cir. 1992). Furthermore, in matters of First Amendment challenges, appellate courts have a duty to "make an independent examination of the whole record in order to make sure that the judgment does not constitute a forbidden intrusion on the field of free expression." *Bose Corp. v. Consumers Union,* 466 U.S. 485, 508 (1984). The *de novo* standard of review permits the appellate court to accept all the factual findings of the lower court and nevertheless hold as a matter of law that the record does not lend itself to the lower court's judgment. *Id.* at 513.

I. THE COURT ERRED AS A MATTER OF LAW BECAUSE THE DEFENDANT ALTERED AND FALSIFIED EVIDENCE WHICH IS A VIOLATION oF GA CODE § 16-10-20.1 AND ABA MODEL RULE OF PROFESSIONAL CONDUCT RULE 3.3(A)(3)

Laurence J. Warco and Brandon Moulard, attorneys at Nelson Mullins Riley & Scarborough, presented the altered letter which was dated February 6, 2018 during Dyer's deposition. Dyer had no idea that the letter was not authentic. However, the court order for summary judgment addressed the letter in this manner:

> There may be a dispute regarding APS's February 2019 letter(s) to Dyer. One letter, dated February 6, does not ban all forms of communication with APS officials. The other, dated February 8, does include such a ban. Though Dyer contends in his response to APS's motion for summary judgment that APS "submitt[ed] tampered evidence" and committ[ed] "perjury" by offering the February 6 letter into evidence, [35-2] at 25, he authenticated and acknowledged receipt of the February 6 letter during his deposition. (Doc. 42, Pg. 19).

Here, the court incorrectly dated the February letters 2019 as opposed to 2018. The court did not catch their error but Dyer caught his. Dyer had authenticated what he believed to be the original letter after being misled by the Defendant and their legal counsel. At Dyer's deposition, he was shown several familiar documents. Most of documents reviewed were the ones Dyer had submitted during discovery. The conversation concerning the February 6, 2018 letter with attorney Moulard was as follows:

Moulard Q Do you recognize this document?

Dyer A Yes, I do.

Moulard Q So this is a letter dated February 6, 2018, signed by Board Member Jason Esteves; correct?

Dyer A Correct (Doc. 34-6, Pg. 26)

1. Brief Extract of the Letters from February 2018

February 8, 2018

Via Personal Delivery

February 8, 2018 Letter
(Original)

Nathaniel B. Dyer
202 Joseph E. Lowery Blvd NW
Atlanta, GA 30314

Re: Suspension from Public Comment at Atlanta Board of Education Meetings

Dear Mr. Dyer:

This letter is to inform you that your privilege to speak at any meeting sponsored by the Atlanta Board of Education ("ABOE") is hereby suspended for one year beginning on February 6, 2018. In addition, this letter will serve as a trespass warning. You are instructed not to set foot on Atlanta Public Schools ("APS") property during this one-year suspension. If you do, you will be arrested for trespassing. You are further instructed not to have any communication whatsoever with any employee or representative of the ABOE or APS for the duration of this suspension. This prohibition on communication includes, but is not limited to, verbal, written, electronic, or in-person communication. These actions are a direct result of yet another instance of inappropriate and disruptive behavior by you at the February 5, 2018 ABOE meeting. This is your *third* violation of ABOE directives to you, and future occurrences will not be tolerated.

February 6, 2018

Via Personal Delivery

February 6, 2018 Letter

Nathaniel B. Dyer
202 Joseph E. Lowery Blvd NW
Atlanta, GA 30314

Re: Suspension from Public Comment at Atlanta Board of Education Meetings

Dear Mr. Dyer:

This letter is to inform you that, once again, your privilege to speak at any meeting sponsored by the Atlanta Board of Education ("ABOE") is hereby suspended for the remainder of my current term as a Board Member. In addition, this letter will serve as a trespass warning. You are also instructed not to set foot on Atlanta Public Schools ("APS") property for the remainder of my current term as a Board Member. If you do, you will be arrested for trespassing. These actions are a direct result of yet another instance of inappropriate and disruptive behavior by you at yesterday's February 5, 2018 ABOE meeting. This is your *third* violation of ABOE directives to you, and future occurrences will not be tolerated.

Dyer never read the letter but truthfully answered the questions posed to him. Because in his mind, only one version of the letter existed. Dyer presumed that being under oath and telling the truth was a prerequisite for all parties involved including opposing counsel. The letters in question inarguably present more differences than similarities. For instance, the February 8, 2018 letter states in part, "This letter is to inform you that your privilege to speak at any meeting sponsored by the Atlanta Board of Education ("ABOE") is hereby suspended for one year beginning on February 6, 2018. In contrast, the Defendant's February 6, 2018 letter states, "This letter is to inform you that, once again, your privilege to speak at any meeting sponsored by the Atlanta Board of Education ("ABOE") is hereby suspended for the remainder off my current term as a Board Member. Dyer's February 8, 2018 letter is on the record in Superior and Federal Court's docket. Dyer's letter references (Exhibit C - February 5, 2018 Flyer) on page two. The Defendant's letter makes no reference to Exhibit C; however the Defendant acknowledges the existence of Exhibit A and Exhibit B in their letter but makes no reference to Exhibit C. Similarly, both letters proscribed to have been delivered Via Personal Delivery but Dyer had the February 8, 2018 letter.

2. Citations Referenced to the February 8, 2018 Letter by Dyer

On February 8, 2018, AISS issued a third "Suspension from Public Comment at Atlanta Board of Education Meetings" letter. This suspension is for a year as issued by current School Board Chairman Jason Esteves. (Doc. 1-1, Pg. 7) On February 8, 2018 the letter was hand delivered to Mr. Dyer while he was attending a community meeting at Perkinson Elementary concerning reconstitution. (Doc. 1-1,

Pg. 8) Mr. Dyer was never given information about how to contest the February 8, 2018 order. Furthermore, the suspension letter instructs Mr. Dyer not to set foot on Atlanta Public Schools property for one year. It states that Mr. Dyer is not to have any communication whatsoever with any employee or representative of the ABOE or AISS for the duration of the suspension. This prohibition on communication includes, but is not limited to, verbal, written, electronic, or in-person communication. (Doc. 1-1, Pg. 8) "You are instructed not to set foot on Atlanta Public Schools (APS) property during this one-year suspension. If you do, you will be arrested for trespassing. You are further instructed not to have any communication whatsoever with any employee or representative of the ABOE or APS for the duration of this suspension. This prohibition on communication includes, but not limited to, verbal, written, electronic, or in-person communication. (Doc. 1-1, Pg 50), (Doc. 8, Pg 31) You are further instructed not to have any communication whatsoever with any employee or representative of the ABOE or APS for the duration of this suspension. This prohibition on communication includes, but is not limited to, verbal, written, electronic, or in-person communication." (Doc. 1-1 at 52; Pl. Ex. J) (Doc. 10, Pg. 16). "Furthermore, he is not to have any communication whatsoever with any employee or representative of the ABOE or APS for the duration of the suspension. This prohibition on communication includes, but is not limited to, verbal, written, electronic, or in-person communication from February 6, 2018 through February 5, 2019". (Doc. 1 at Appx J) (Doc. 10, Pg. 12-13).

3. Citations Referenced to the February 8, 2018 Letter by Defendant

Having tried unsuccessfully for two years to prevent Plaintiff from disrupting Board meetings, AISS's decision to issue a trespass warning and prevent Plaintiff from communicating with AISS employees was narrowly tailored to achieve AISS's interest in having efficient, orderly meetings. (Doc. 1-2, Pg 16). Prior to its February 2018 decision to prevent Plaintiff from entering AISS property or speaking to AISS employees, AISS issued a series of suspensions to prevent Plaintiff from disrupting meetings. (Doc. 1-1 at ¶¶ 46 – 47; Pl. Ex. J). (Doc. 1-2, Pg 17) The first two occurred on February 2 and 29, 2016, when AISS alleged issued "criminal trespass orders" to Plaintiff. (Doc. 1-1 at ¶¶ 35, 36, p. 8,; Pl. Ex. F & G). The third incident took place on February 8, 2018, when AISS issued Plaintiff a letter instructing him "not to have any communications whatsoever with any employee or representative of the [Board] or [AISS] for the duration of the suspension." (Id. at ¶¶ 46-52) (Doc. 1-2, Pg 21). Plaintiff was prohibited from entering AISS property or communicating with AISS officials because of the offensive nature of his speech, not because of the content of the speech itself. (Doc. 1-2, Pg 14) Here, the Defendant acknowledges the correct date when the leter was delivered, "The third incident took place on February 8, 2018, when AISS issued Plaintiff a letter instructing him "not to have any communications whatsoever ..." (Id. at ¶¶ 46-52) (Doc. 1-2, Pg 21).

II. THE COURT ERRED AS A MATTER OF LAW BECAUSE THE RESTRICTIONS PLACED ON DYER'S SPEECH WERE NOT CONTENT-NEUTRAL

APS does not contest in its motion for summary judgment that Dyer's speech is protected, and the parties do not dispute that the school board meetings were limited public fora. The Defendant's introduction at the motion to dismiss phase eloquently scrutinizes the content of Dyer's satirical flyer. The Defendant wrote:

> This lawsuit is premised on the erroneous notion that the Constitution grants Plaintiff the right to utter racial slurs at community meetings and publicly demean AISS employees, including the superintendent, and AISS students. From January 15, 2016, to January 30, 2018, Plaintiff attended four public meetings of the Atlanta Board of Education ("Board") and other AISS officials. At each of these meetings, he uttered racist terms like the "n-word" and "coons." He called AISS officials "buffoons." He referred to AISS students with the racial epithet "sambos." He distributed a flyer featuring the words "unnigged coming soon" and an altered photo of AISS Superintendent Meria Carstarphen wearing a football jersey with the word "FALCOONS" emblazoned on the front. He even accused Dr. Carstarphen of helping to "destroy black children and their communities." AISS ultimately suspended Plaintiff from AISS meetings for one year because of his blatantly offensive speech. (Doc. 1-2, Pg 2-3).

Plaintiff attended a Board meeting and distributed to unsuspecting meeting attendees a two-page flyer that contained the phrase "unnigged coming soon" and a doctored image of Dr. Carstarphen wearing a football jersey with the name "FALCOONS," instead of "Falcons," on the back. (Pl. Ex. J). This flyer accused

Dr. Carstarphen of being a puppet to "help destroy BLACK children and their communities." *Id.* Following Plaintiff's distribution of the flyers at the February 5 meeting, current Board Chairman Jason Esteves sent Plaintiff a letter and a trespass warning notifying him that he may not enter AISS property or speak to AISS employees for one year as a result of his behavior. (Doc. 1-1 at ¶ 52; Pl. Ex. J). (Doc. 1-2, Pg 5-6).

Board Chairman Courtney English sent Plaintiff a letter referring to his comments as "abusive," "abhorrent," and "hate-filled," and stating that he would not allow members of his staff and children attending Board meetings to be subjected to such language. (Pl. Ex. E). (Doc. 1-2, Pg 5). The flyer depicted various images, including an image of Arthur Blank holding marionette strings attached to Dr. Carstarphen. (Dyer Depo. at 152:11-22, Ex. 13.). On one side of the flyer, the word "UNNIGGED" appeared at the bottom, right-hand corner. *(Id.)* Dyer created the word "unnigged," which, according to his deposition testimony, means "never been a nigger." (Dyer Depo. at 153:25, 154:1-15, Ex. 13.) The other side of the flyer featured a photoshopped image of Dr. Carstarphen wearing football pads and a football jersey with the word "FALCOONS" emblazoned on the front. (Dyer Depo. at 155:17-25, 156:1-5, Ex. 13.) (Doc. 34-1, Pg. 7)

III. THE COURT ERRED AS A MATTER OF LAW BECAUSE THE RESTRICTIONS PLACED ON DYER'S SPEECH WERE NOT NARROWLY TAILORED

In fact, Nathaniel Dyer has spoken at numerous community meetings, often making disparaging remarks about AISS's policy decisions and the performance of various AISS officials and Board members. (Doc. 34-3, Pg. 4) Upon being called to the podium, the speaker must then identify himself/herself and make his or her comments "as briefly as the subject permits."(Id.). (Jern Dec 34-3, Pg 3). For clarification, Board Policy BC-R(1) clearly states that community members who signed up to speak will be given up to (2) two minutes. At the end of the two-minute limit, individuals will be asked to end their comments and leave the podium. (Doc. 34-6, Pg 38) Dyer has always adhered to the time restraints and the record will reflect that he was cut off during his alloted time to speak. Participants at public comments may not use certain types of speech. (Doc. 42, Pg 15-17). AISS concedes that Dyer's speech, although patently offensive, does not fall into any of the narrow categories of speech that the First Amendment does not protect. (Doc. 34-1, Pg 11) AISS does not favor one viewpoint over another; but it does insist that participants at public comment refrain from using degrading racial slurs. In addition, the Board Policy Manual under Operation Procedures states that Board members will also refrain from making statements in public meetings that have the direct and intended effect of impugning another person's motives or intelligence, attacking others on a purely personal basis, or disparaging anyone's racial, sexual, social, or religious background. (Doc. 34-4, Pg 2)

AISS never stops or impedes individuals from leveling criticism during public comment. Before and after the three meetings in question, AISS permitted Dyer to speak critically of AISS without restriction. (Jernigan Dec at ¶¶ 12, 13, 48, 49.) (Jern Dec 34-3, Pg 4). As soon as he used those racial slurs, Mr. Dyer's microphone was turned off and police officers escorted him from the meeting. (Jern Dec 34-3, Pg 5) Upon his utterance of "sambo," Mr. Courtney English, the Board chair at the time, directed Mr. Dyer to leave the podium. (Jern Dec 34-3, Pg 6). Soon after he began, the Board's general counsel directed his microphone to be shut off because Dyer's flyer contained racial slurs and other offensive language. (Jern Dec 34-3, Pg 7). To prevent Dyer from disrupting other meetings, AISS needed to stop him from even entering the room in which these meetings occurred because Dyer was equally disruptive at the podium as he was when sitting in the audience. (Doc. 34-1, Pg 19). When he was prevented from speaking during a subsequent meeting, he passed out flyers containing racial slurs. Because Dyer continued to disrupt meetings when he was on school property, regardless of whether he was permitted to speak or enter the meeting room, his suspensions were necessary to preserve meeting decorum. (Doc. 42, Pg 6). The Defendant's interruptions caused more of a disruption than Dyer. The Defendant went against Board Policy and impugned the messenger because they were offended. Time and time again, Dyer was cut off because of an utterance and suspended. AISS removed Mr. Dyer from the meeting not because of views he communicated, but because his use of racial slurs disrupted the meeting and offended the Board, staff, and audience members. (Jern Dec 34-3, Pg 5).

IV. THE COURT ERRED AS A MATTER OF LAW BECAUSE THE SUSPENSIONS PLACED ON DYER DEPRIVED HIM OF DUE PROCESS OF LAW

Dyer alleged sufficient facts, which APS has not rebutted, to make it at least plausible that a pre-deprivation remedy was practical before he was suspended. APS's suspensions were not issued immediately or as an emergency measure to stop a live disruption. E.g., [1-1] at 45 (suspending Dyer on October 11 for conduct at an October 10 meeting). APS was able to predict that a hearing was required before suspending Dyer because it took the time to create a letter that applied prospectively to him. To sum up, Dyer's allegations make it plausible that he was entitled to a hearing before APS deprived him of his liberty interest. (Doc. 22, Pg. 30-31).

AISS issued a series of suspensions to prevent Plaintiff from disrupting meetings. (Doc. 1-1 at ¶¶ 46 – 47; Pl. Ex. J). (Doc. 1-2, Pg 17) The first two occurred on February 2 and 29, 2016, when AISS alleged issued "criminal trespass orders" to Plaintiff. (Doc. 1-1 at ¶¶ 35, 36, p. 8,; Pl. Ex. F & G). The third incident took place on February 8, 2018, when AISS issued Plaintiff a letter instructing him "not to have any communications whatsoever with any employee or representative of the [Board] or [AISS] for the duration of the suspension." (Id. at ¶¶ 46-52) (Doc. 1-2, Pg 21). Plaintiff was prohibited from entering AISS property or communicating with AISS officials because of the offensive nature of his speech, not because of the content of the speech itself. (Doc. 1-2, Pg 14) Having tried unsuccessfully for two years to prevent Plaintiff from disrupting Board meetings, AISS's decision to issue a trespass warning and prevent Plaintiff from communicating with AISS employees

was narrowly tailored to achieve AISS's interest in having efficient, orderly meetings. (Doc. 1-2, Pg 16). Even if Plaintiff's speech was protected, AISS was still authorized to place reasonable restrictions on it. (Doc. 1-2, Pg 11) The First Amendment did not protect Plaintiff's racially insensitive, demeaning speech. Even if it did, his one-year suspension was a reasonable restriction on his speech. (Doc. 1-2, Pg 3).

V. THE COURT ERRED AS A MATTER OF LAW BECAUSE TAKING OFFENSE IS A VIEWPOINT WHEN IT COMES TO ETHNIC SLURS

Plaintiff has disrupted multiple meetings by attacking AISS students and employees with offensive, racially-charged language. (Doc. 1-2, Pg 15-16). Plaintiff disrupted four separate Board meetings by directing a variety of racial slurs and insults at AISS employees and students (including "the 'N' word," "coons," "buffoons," and "sambos") and then refusing to peaceably leave the meeting when directed to do so. (Pl. Ex. E, H, J). Plaintiff's repeated use of racial slurs, epithets, and abusive remarks would be offensive in any context. However, Plaintiff's use of those words in public meetings in reference to AISS students and Dr. Carstarphen is beyond the pale. Plaintiff's incendiary, demeaning speech meets the definition of offensive speech, which the Constitution does not protect. (Doc. 1-2, Pg 10). The letter warned Dyer that if he spoke at a future meeting and used similar offensive language, the Board might permanently suspend him. (Dyer Depo. at 142:2-5, Ex. 10.) (Doc. 34-1, Pg 5).

He used the racial slur "sambo" during the public comment portion of the meeting. (Jern Dec 34-3, Pg 6) On October 11, 2016, Mr. English sent Dyer another letter informing him of his suspension from attending Board meetings from October

11, 2016, through December 31, 2017. (Dyer. Depo. at 142:20-25, 143:1-15, Ex. 11.) The letter explained that AISS suspended Dyer because of his "inappropriate and disruptive behavior" at the Board meeting on October 10, 2016. (Dyer Depo. Ex. 11.) The letter specifically cited Dyer's use of the term "sambos" at the meeting as the basis for his suspension. *(Id.)* (Doc. 34-1, Pg 6)

Mr. Dyer attended another Board meeting on February 5, 2018. There, he distributed flyers that featured racial slurs and epithets, including the words "unnigged" and "falcoons. (Jern Dec 34-3, Pg 6) On February 6, 2018, Board Chair Jason Esteves sent Dyer a third letter, which suspended him from attending Board meetings until February 6, 2019. (Dyer Depo. at 150:5-19, Ex. 12.) The letter explained that AISS had suspended Dyer for a third time because of his "inappropriate and disruptive behavior" at the meeting on February 5, 2018. *(Id.)* The letter highlighted Dyer's distribution of the flyer, which contained "racist and hate-filled epithets." *(Id.)* That language, the letter continued, was "offensive to the Board, our Superintendent, and our staff and community." (Dyer Depo. Ex. 12.) (Doc. 34-1, Pg 7-8) Dyer was again escorted from the meeting for his offensive, disruptive behavior. (Jern Dec 34-3, Pg 7). AISS removed Dyer from each of those meetings and suspended him from speaking at future meetings. AISS did so not because it disagreed with Dyer's message, but because it regarded his use of racially-insensitive language to be highly offensive and disruptive to the meeting. Plaintiff disrupted meetings not only through his spoken and written speech, but also through his refusal to leave without being escorted by law enforcement officers. (Doc. 1-1 at ¶¶ 25, 32, 40, 49). (Doc. 1-2, Pg 17).

ARGUMENT

I. THE COURT ERRED AS A MATTER OF LAW BECAUSE THE DEFENDANT ALTERED AND FALSIFIED EVIDENCE WHICH IS A VIOLATION OF GA CODE § 16-10-20.1 AND ABA MODEL RULE OF PROFESSIONAL CONDUCT RULE 3.3(A)(3)

In the United States, if the prosecution obtains a criminal conviction using evidence that it knows is false, the conviction violates the defendant's constitutional right to due process (e.g., *Napue v. Illinois,* 1959).

1. ABA Model Rule of Professional Conduct Rule 3.3(a)(3)

In the case of *Moncrief Oil International, Inc. v. OAO Gazprom,* Moncrief's counsel was apparently unaware of the altered document and acknowledged it as a "tragic mistake" by one of their senior executives. Upon awareness of the fabricated document, the attorneys were required to disclose it to the court. ABA Model Rule of Professional Conduct Rule 3.3(a)(3) prohibits a lawyer from "offer[ing] evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal." The defendant must act intentionally with knowledge that he is violating the law. *See United States v. Simpson,* 460 F.2d 515, 518 (9th Cir. 1972). The specific intent requires that the defendant know that the documents involved are public records. *See United States v. DeGroat,* 30 F. 764, 765 (E.D.Mich. 1887).

2. Georgia Code: GA Code § 16-10-20.1 (2014)

(a) As used in this Code section, the term "document" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form and shall include, but shall not be limited to, liens, encumbrances, documents of title, instruments relating to a security interest in or title to real or personal property, or other records, statements, or representations of fact, law, right, or opinion.

(b) Notwithstanding Code Sections 16-10-20 and 16-10-71, it shall be unlawful for any person to:

(1) Knowingly file, enter, or record any document in a public record or court of this state or of the United States knowing or having reason to know that such document is false or contains a materially false, fictitious, or fraudulent statement or representation; or

(2) Knowingly alter, conceal, cover up, or create a document and file, enter, or record it in a public record or court of this state or of the United States knowing or having reason to know that such document has been altered or contains a materially false, fictitious, or fraudulent statement or representation.

(c) Any person who violates subsection (b) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment of not less than one nor more than ten years, a fine not to exceed $10,000.00, or both. (d) This Code section shall not apply to a court clerk, registrar of deeds, or any other government employee who is acting in the course of his or her official duties.

3. 1663. Protection of Public Records and Documents - Title 18

Title 18 contains two other provisions, of somewhat narrower application, which relate to public records. Section 285 prohibits the unauthorized taking, use and attempted use of any document, record or file relating to a claim against the United States for purposes of procuring payment of that claim. Section 1506 prohibits the theft, alteration or falsification of any record or process in any court of the United States. Both of these sections are punishable by a $5,000 fine or imprisonment for five years. [cited in JM 9-66.400]

II. THE COURT ERRED AS A MATTER OF LAW BECAUSE THE RESTRICTIONS PLACED ON DYER'S SPEECH WERE NOT CONTENT-NEUTRAL

Section 1983 creates no substantive rights. *See Baker v. McCollan,* 443 U.S. 137, 144 n.3 (1979). Rather, it provides a vehicle through which an individual may seek redress when his federally protected rights have been violated by an individual acting under color of state law. *Livadas v. Bradshaw,* 512 U.S. 107, 132 (1994).

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

APS does not contest in its motion for summary judgment that Dyer's speech is protected, and the parties do not dispute that the school board meetings were limited public fora. The operative question is whether APS's regulation of Dyer's speech was reasonable. To be reasonable, restrictions on speech in limited public fora must

be "content-neutral conditions for the time, place, and manner of access, all of which must be narrowly tailored to serve a significant government interest." *Crowder v. Hous. Auth. of Atlanta,* 990 F.2d 586, 591 (11th Cir. 1993). The restrictions must also "leave open ample alternative channels for communication." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n,* 460 U.S. 37, 45 (1983).

According to the Defendant, Dyer uttered racist terms like the "n-word" and "coons." He called AISS officials "buffoons." "The restriction of speech is content-neutral if it is justified without reference to the content of the regulated speech." *Harris v. City of Valdosta, Ga.,* 616 F. Supp. 2d 1310, 1322 (M.D. Ga. 2009) (internal quotation marks and citation omitted). By constitutional standards, this is a textbook case of content neutral violations.

The Defendant sent Dyer a third letter suspending him until February 6, 2019 because of a satirical flyer. The Defendant claimed it contained "racist hate-filled epithets." The letter warned Dyer that if he spoke at a future meeting and used similar offensive language, the Board might permanently suspend him. Just as the First Amendment protects freedom of expression, it prohibits actions by state officials to punish individuals for the exercise of that right. *Bennett v. Hendrix,* 423 F.3d 1247, 1255 (11th Cir. 2005) (This Court and the Supreme Court have long held that state officials may not retaliate against private citizens because of the exercise of their First Amendment rights.); *Georgia Ass'n of Educators v. Gwinnett County Sch. Dist.,* 856 F.2d 142, 145 (11th Cir. 1988);

III. THE COURT ERRED AS A MATTER OF LAW BECAUSE THE SUSPENSIONS PLACED ON DYER BECAUSE OF SATIRE IS A VIOLATION OF HIS CONSTITUTIONAL RIGHTS

The Defendant says Dyer distributed a flyer featuring the words "unnigged coming soon" and an altered photo of AISS Superintendent Meria Carstarphen wearing a football jersey with the word "FALCOONS" emblazoned on the front. *Hustler Magazine, Inc. v. Falwell,* 485 U.S. 46, 108 S. Ct. 876, 99 L.Ed.2d. 41 (1988): Hustler Magazine published a parody of a liquor advertisement in which Rev. Jerry Falwell described his "first time" as a drunken encounter with his mother in an outhouse. The Court held that political cartoons and satire such as this parody "have played a prominent role in public and political debate. And although the outrageous caricature in this case "is at best a distant cousin of political cartoons," the Court could see no standard to distinguish among types of parodies that would not harm public discourse, which would be poorer without such satire. The key distinction between satire and defamation is that satire is not meant to be believed by the audience. Satire is biting, critical, and designed to attack, often with malice. It is almost always false. Chief Justice William H. Rehnquist, writing for a unanimous court, stated that a parody depicting the Reverend Jerry Falwell as a drunken, incestuous son could not be defamation since it was an obvious parody, not intended as a statement of fact. To find otherwise, the Court said, was to endanger First Amendment protection for every artist, political cartoonist, and comedian who used satire to criticize public figures.

AISS concedes that Dyer's speech, although patently offensive, does not fall into any of the narrow categories of speech that the First Amendment does not protect. *See United States v. Stevens,* 559 U.S. 460, 468–69 (2010) (limiting categories of

unprotected speech to obscenity, defamation, fraud, incitement, and speech integral to criminal conduct). Defendant states to prevent Dyer from disrupting other meetings, AISS needed to stop him from even entering the room in which these meetings occurred because Dyer was equally disruptive at the podium as he was when sitting in the audience. Prior restraints, which we have characterized as "the most serious and least tolerable infringement on First Amendment rights," carry a heavy presumption of invalidity. *Nash v. Nash,* 232 Ariz. 473, 481-82, ¶ 32, 307 P.3d 40, 48-49 (App. 2013).

IV. THE COURT ERRED AS A MATTER OF LAW BECAUSE TAKING OFFENSE IS A VIEWPOINT WHEN IT COMES TO ETHNIC SLURS

Plaintiff's repeated use of racial slurs, epithets, and abusive remarks would be offensive in any context. However, Plaintiff's use of those words in public meetings in reference to AISS students and Dr. Carstarphen is beyond the pale. Plaintiff's incendiary, demeaning speech meets the definition of offensive speech, which the Constitution does not protect. Writing for a unanimous three-judge panel, Judge Susan Carney added that *Tam* "is clear that '[g]iving offense is a viewpoint' when it comes to ethnic slurs." *Id.* at 32 (*quoting Tam,* 137 S. Ct. at 1763) (alteration in original).

At the February 2018 Board meeting, Plaintiff further escalated his behavior by not only speaking at the podium, but by distributing offensive and racially-charged flyer mocking Dr. Carstarphen to meeting attendees. In other words, as Judge Sam Sparks put it, censoring speech because of its "ostensibly mocking tone" equates to "viewpoint discrimination as a matter of law." *Id.* at *18. First Amendment jurisprudence, as Justice Ruth Bader Ginsburg crisply explained in 2014, "disfavors viewpoint-based discrimination[,]" *Wood v. Moss,* 572 U.S. 744, 748 (2014).

In fact, Nathaniel Dyer has spoken at numerous community meetings, often making disparaging remarks about AISS's policy decisions and the performance of various AISS officials and Board members. "[S]peech on 'matters of public concern' . . . is 'at the heart of the First Amendment's protection.'" *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.,* 472 U. S. 749, 758–759 (1985) (opinion of Powell, J.) (*quoting First Nat. Bank of Boston v. Bellotti,* 435 U. S. 765, 776 (1978)). The First Amendment reflects "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co. v. Sullivan,* 376 U. S. 254, 270 (1964). That is because "speech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison v. Louisiana,* 379 U. S. 64, 74–75 (1964). Accordingly, "speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." C*onnick v. Myers,* 461 U. S. 138, 145 (1983) (internal quotation marks omitted). Speech deals with matters of public concern when it can "be fairly considered as relating to any matter of political, social, or other concern to the community," *Connick,* supra, at 146, or when it "is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public," San Diego, supra, at 83–84. *See Cox Broadcasting Corp. v. Cohn,* 420 U. S. 469, 492–494 (1975); *Time, Inc. v. Hill,* 385 U. S. 374, 387– 388 (1967). The arguably "inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern." *Rankin v. McPherson,* 483 U. S. 378, 387 (1987).

The Court wrote: How is one to distinguish this from any other offensive word? ... For, while the particular four-letter word being litigated here is perhaps more distasteful than most others of its genre, it is nevertheless often true that one man's vulgarity is another's lyric. Indeed, we think it is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual. *Id.* The Court also rebuffed the notion that California could censor the word "fuck" simply to police norms of civil communication and maintain "a suitable level of discourse within the body politic." *Id.* at 23. Board Chairman Courtney English sent Plaintiff a letter referring to his comments as "abusive," "abhorrent," and "hate-filled," and stating that he would not allow members of his staff and children attending Board meetings to be subjected to such language. Justice John Marshall Harlan II explained that "[s]urely the State has no right to cleanse public debate to the point where it is grammatically palatable to the most squeamish among us." *Id.* at 25. Only if "substantial privacy interests are being invaded in an essentially intolerable manner" *Id.* at 21. can speech be squelched "solely to protect others from hearing it." Otherwise, the "emotive function" of speech served by offensive words like Paul Robert Cohen's must prevail. *Id.* The remedy for those who take offense in public places at messages such as Cohen's is simply to avert the eyes. *Id.* at 26.

Cohen's dialectic between the cognitive and emotive functions of speech taps into the difference between censoring speech because of its substantive viewpoint (cognitive) and censoring speech because it causes emotional upheaval (emotive). The Court wrote that "much linguistic expression serves a dual communicative function:

it conveys not only ideas capable of relatively precise, detached explication, but otherwise inexpressible emotions as well. In fact, words are often chosen as much for their emotive as their cognitive force." *Id.* at 26. In other words, while viewpoint-discrimination cases are about what substantive idea is being said and censored, offensive-speech cases are about the emotional impact (rather than the cognitive meaning) of speech. *See id.* at 18, 22. The latter is an insufficient reason, standing alone, for squelching expression. *See Hustler Magazine, Inc. v. Falwell,* 485 U.S. 46, 55 (1988) (observing the Court's "longstanding refusal to allow damages to be awarded because the speech in question may have an adverse emotional impact on the audience"). *See Cohen,* 403 U.S. at 18.

Tam, in essence, equated offensive name-calling with viewpoint discrimination. *See supra Introduction, Part I*. There, Dyer distributed flyers that featured racial slurs and epithets, including the words "unnigged" and "falcoons. As Justice Alito explained in *Tam,* "[s]peech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express 'the thought that we hate.'" *Matal v. Tam,* 137 S. Ct. 1744, 1764 (2017) (*quoting United States v. Schwimmer,* 279 U.S. 644, 655 (1929) (Holmes, J., dissenting)).

As a general matter, government may not regulate speech "because of its message, its ideas, its subject matter, or its content." *Police Dep't of Chicago v. Mosle,* 408 U.S. 92, 95 (1972). *See also Erznoznik v. City of Jacksonville,* 422 U.S. 205, 208–12 (1975); *First National Bank of Boston v. Bellotti,* 435 U.S. 765 (1978); *Carey v. Brown,* 447 U.S. 455 (1980); *Metromedia v. City of San Diego,* 453 U.S. 490

(1981) (plurality opinion); *Widmar v. Vincent,* 454 U.S. 263 (1981); *Regan v. Time, Inc.,* 468 U.S. 641 (1984) "It is rare that a regulation restricting speech because of its content will ever be permissible." *United States v. Playboy Entertainment Group, Inc.,* 529 U.S. 801, 818 (2000). First, a government regulation of speech is content-based if the regulation on its face draws distinctions based on the message a speaker conveys. *See Ward v. Rock Against Racism,* 491 U.S. 781, 791 (1989); *see also Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 48 (1986) (holding that content-neutral "speech regulations are those that are justified without reference to the content of the regulated speech.") (internal quotations and citations omitted). Laws that facially draw distinctions based on the subject matter of the underlying speech, there is no need for a court to look into the purpose of the underlying law being challenged under the First Amendment; instead, that law is automatically subject to strict scrutiny. *See Reed v. Town of Gilbert,* 576 U.S. ___, No. 13–502, slip op. at 8 (2015) ("But Ward's framework applies only if a statute is content-neutral.") (internal citations and quotations omitted).

V. THE COURT ERRED AS A MATTER OF LAW BECAUSE NARROW TAILORING SHOULD NOT ENTIRELY FORECLOSE ANY MEANS OF COMMUNICATION

This prohibition on communication includes, but not limited to, verbal, written, electronic, or in-person communication. In addition to proscribing certain conduct by the Visors, the injunctions also prohibited "mak[ing], post[ing] or distribut[ing] comments, letters, faxes, flyers or emails regarding [Hansen or Streeter] to the public" at large. This broad restriction expressly forbidding future speech is a

classic example of a prior restraint. *See Alexander v. United States,* 509 U.S. 544, 550 (1993). Similarly to Dyer's Trespass Warning, the injunctions at issue against Visors were not narrowly tailored and were overbroad because they prohibited all public speech regarding Hansen or Streeter. Similar to the order in Visors' reversal, the prohibition against any public speech regarding Hansen or Streeter sweeps well beyond permissible restrictions on time, place, or manner of expression and is thus unconstitutionally overbroad. Because of the dangers of prior restraints, even content-neutral injunctions should not burden more speech than necessary to serve a significant government interest. *Madsen v. Women's Health Ctr., Inc.,* 512 U.S. 753, 765 (1994).

First, a categorical ban on speech is not tailored at all, as it entirely forecloses a means of communication. *Cf. Hill v. Colo.,* 530 U.S. 703, 726 (2000) ("when a content-neutral regulation does not entirely foreclose any means of communication, it may satisfy the tailoring requirement even though it is not the least restrictive or least intrusive means of serving the statutory goal"). In order to be narrowly tailored, a time, place, or manner restriction must not "burden substantially more speech than is necessary to further the government's legitimate interests." *Ward,* 491 U.S. at 799. *See Mills v. Alabama,* 384 U.S. 214, 218-19 (1966) (stating, "[A] major purpose of that Amendment was to protect the free discussion of governmental affairs. This of course includes discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes."); *Piscottano v. Town of Somers,* 396 F. Supp. 2d 187, 200 (D. Conn., 2005) (citation omitted) ("The First Amendment's protection of free speech ...

extends to a broad range of speech and expressive conduct. Speech on public issues and political matters lies at the heart of protected speech.") (internal citations omitted). *See Garcetti v. Cebballos,* 54.

The letter highlighted Dyer's distribution of the flyer, which contained "racist and hate-filled epithets." That language, the letter continued, was "offensive to the Board, our Superintendent, and our staff and community."The Court does not doubt that at least some Defendants and AISS employees could be offended by the Plaintiff's presentation. But to justify the exclusion of Plaintiff from a limited public forum on grounds of being offended, Defendants' apprehension of harm must be reasonable, not merely subjectively genuine. But the reality is that the First Amendment protects much speech that is obnoxious, offensive and repugnant. Justice William Brennan captured this principle eloquently in his majority opinion in the flag-burning decision *Texas v. Johnson (1989)*: If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. "Listeners' reaction to speech is not a content neutral basis for regulation ... Speech cannot be ... punished or banned[ ] simply because it might offend a hostile" member of the *Santa Cruz City Council. Forsyth Cnty., Ga. v. Nationalist Movement,* 505 U.S. 123, 134–35 (1992). The council members should have known that the government may never suppress viewpoints it doesn't like. *See Rosenberger v. Rector & Visitors of the Univ. of Va.,* 515 U.S. 819, 829, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995).

VI. THE COURT ERRED AS A MATTER OF LAW BECAUSE THE SUSPENSIONS PLACED ON DYER DEPRIVED HIM OF DUE PROCESS OF LAW

AISS issued a series of suspensions to prevent Plaintiff from disrupting meetings. (Doc. 1-1 at ¶¶ 46 – 47; Pl. Ex. J). (Doc. 1-2, Pg 17) The first two occurred on February 2 and 29, 2016, when AISS alleged issued "criminal trespass orders" to Plaintiff. (Doc. 1-1 at ¶¶ 35, 36, p. 8,; Pl. Ex. F & G). The third incident took place on February 8, 2018, when AISS issued Plaintiff a letter instructing him "not to have any communications whatsoever with any employee or representative of the [Board] or [AISS] for the duration of the suspension." (Id. at ¶¶ 46-52) (Doc. 1-2, Pg 21). Having tried unsuccessfully for two years to prevent Plaintiff from disrupting Board meetings, AISS's decision to issue a trespass warning and prevent Plaintiff from communicating with AISS employees ... (Doc. 1-2, Pg 16).

Generally, "some kind of a hearing" is required "before the State deprives a person a liberty or property interest." *Zinermon v. Burch,* 494 U.S. 113, 127 (1990). The suspensions were issued without due process of law as required by the Fourteenth Amendment. A procedural due process claim requires a showing of (1) a deprivation of a constitutionally protected liberty or property interest; (2) state action; and (3) constitutionally inadequate process. *Grayden v. Rhodes,* 345 F.3d 1225, 1232 (11th Cir. 2003). Dyer had a liberty interest in engaging in public comment at school board meetings. Dyer was entitled to some process before, rather than after, the alleged deprivation. APS was able to predict that a hearing was required before suspending Dyer because it took the time to create a letter that applied prospectively to him. Moreover, as APS has presumably been clothed with the state's authority to suspend

persons from attending public meetings, it is its "duty ... to provide pre-deprivation process." *Burch,* 840 F.2d at 802 n.10.

First, "[p]rocedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." *Carey v. Piphus,* 435 U.S. 247, 259 (1978). "[P]rocedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases." *Mathews v. Eldridge,* 424 U.S. 319, 344 (1976) Thus, the required elements of due process are those that "minimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis upon which a state proposes to deprive them of protected interests. *Fuentes v. Shevin,* 407 U.S. 67, 81 (1972). "Parties whose rights are to be affected are entitled to be heard." *Baldwin v. Hale,* 68 U.S. (1 Wall.) 223, 233 (1863) Thus, the notice of hearing and the opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo,* 380 U.S. 545, 552 (1965) It is beyond peradventure that a citizen has a First Amendment right to criticize government officials. *Trulock v. Freeh,* 275 F.3d 391, 404 (4th Cir. 2001) ("The First Amendment guarantees an individual the right to speak freely, including the right to criticize the government and government officials.").

CONCLUSION

For the foregoing reasons, Appellant respectfully request that the district court's order granting summary judgment to the Defendant be reversed and this case be remanded.

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(s) Pro Se

Attorney for Nathaniel Borrell Dyer

Dated: September 11, 2020

U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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