

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

JERRY L. EARNEST,)	
)	
Plaintiff,)	
)	
v.)	CASE NO.: 17-CV-01380-JPG-SCW
)	
BOARD OF EDUCATION OF JASPER)	
COUNTY COMMUNITY UNIT SCHOOL)	
DISTRICT NO. 1, ANDREW D. JOHNSON,)	
Superintendent; Board of Education Members:)	
JON FULTON, President; GORDON MILLSAP,)	
Vice President; HOLLY FARLEY, Secretary;)	
MANDY RIEMAN, MELISSA STANLEY,)	
and ROB STREET,)	
)	
Defendants.)	

PLAINTIFF’S FIRST AMENDED COMPLAINT

The Plaintiff, JERRY EARNEST, by his attorney, Greg Roosevelt, for his First Amended Complaint against the Defendants, BOARD OF EDUCATION OF JASPER COUNTY COMMUNITY UNIT SCHOOL DISTRICT NO. 1, its superintendent, ANDREW D. JOHNSON, Board of Education Members JON FULTON, GORDON MILLSAP, HOLLY FARLEY, MANDY RIEMAN, MELISSA STANLEY, and ROB STREET and states as follows:

Count I
Claim for Deprivation of a Liberty Interest

1. The Plaintiff, Jerry Earnest is as resident of Jasper County Illinois and a citizen of the U.S. District Court for the Southern District of Illinois.
2. The Board of Education of Jasper County Community Unit School District No. 1 is a governmental entity located in Jasper County, Illinois and is a citizen of the Southern District of Illinois. Its Superintendent, Andrew D. Johnson, is a citizen of the Southern District of

Illinois as well as its individual members of the Board of Education including Jon Fulton, Gordon Millsap, Holly Farley, Mandy Rieman, Melissa Stanley, and Rob Street.

3. On the 7th day of April, 2015, JERRY EARNEST was elected to the Board of Education of the Jasper County Community Unit School District No. 1 in an election in Jasper County, Illinois and Jerry Earnest was sworn in to the office as a member of the Board of Education of the Defendant School District on the 20th day of April, 2015 for a four year term.

4. Subsequently, on February 23, 2017 the Board of Education and the President of the Board of Education communicated a notice to Jerry Earnest dated February 23, 2017 in which the President of the Board of Education, Jon Fulton and Superintendent, Andrew D. Johnson, and its attorney notified Board Member, Jerry Earnest that he would no longer have access to confidential board information.

Members of the Board of Education have the following duties, among other:

A. The duties of a school board member include, but are not limited to, formulating, adopting and modifying school board policy, at its sole discretion.

B. Employing a superintendent and other personnel, making employment decisions, dismissing personnel, and establishing an equal employment opportunity policy that prohibits unlawful discrimination.

C. Directing, through policy, the superintendent, in his or her charge of the district's administration.

D. Approving the annual budget, tax levy's, major expenditures, payment of obligations, annual audit, and other aspects of the district's financial operation; and making available a statement of the financial affairs as provided in state law.

E. Entering contracts using the public bidding procedure when required.

F. Providing, constructing, controlling, and maintaining physical facilities; making school buildings available for use as civil defense shelters; and establishing a resource conservation policy.

G. Establishing an equal education opportunities policy that prohibits unlawful discrimination.

H. Approving the curriculum, text books, and educational services.

I. Evaluating the educational program and approving school improvement and district improvement plans.

J. Hear student disciplinary matters.

All of the above are required under the Illinois School Code.

5. This Board of Education and Defendants have attempted to impugn the integrity of the Plaintiff as a member of the Board of Education by seeking his discharge and publicly censuring him and most importantly by striking and inhibiting his access to certain documents and information of the District regarding personnel, records and financial information. Said acts of the Defendants have materially and significantly defeated the ability of Plaintiff to perform his duties as a member of the Board of Education denying the Plaintiff his liberty interest in serving as a member of the Board of Education.

6. Further, these actions have defeated the Plaintiff's ability to act in the future as a member of the Board of Education by the Board's purposeful effort to subvert and defeat Plaintiff's ability to seek and win reelection to the Board of Education. In fact, when the Board of Education acted upon the censure and request for Plaintiff's discharge, public discussion included the suggestion that Plaintiff not be relected.

7. Plaintiff also holds directly or indirectly an interest in real estate in Jasper County which Plaintiff is involved in developing and is finding the action of the Board of Education in censuring him and impugning his integrity has significantly, negatively impacting his business interest in real estate making it difficult for him to obtain the cooperation of governmental units in Jasper County.

8. Board members are to access an internet account where a Dropbox is found for the Defendant District's use. Six board members have a Dropbox which each board member can access. Plaintiff has been denied by Defendant access to the link for the Dropbox folder for the Board of Education. In the instance of the Board meeting materials, each document is labeled so that the board member can quickly determine the topic or agenda item the documents apply to. In the Dropbox the board member will find the agenda for the board meeting as well as all documents which are relevant to the meeting including contract proposals, reports of the superintendent and other educational officials, budgetary and financial information, student discipline records, and any other types of records that the board is being asked to consider in taking board action on the matters which are described above under the Illinois School Code. The Plaintiff has been denied access to the Dropbox link and then cannot access the Board of Education Dropbox. Instead, the District will, at random, and on no set schedule provides the various documents by emails. As an example, in the instance of the board meeting of May 17, 2018 the Plaintiff began receiving emails on May 15, 2018, with the first being received at 3:03 p.m. and received four separate emails with the last two being received at 10:33 a.m. and 11:37 a.m. on the day of the board meeting. Multiple documents are attached to these emails. There is no order to the documents. Plaintiff is left to figure out what agenda item or items each document may apply to. In the instance of the May, 2018 board meeting, there were 17 separate

attachments of documents of over 75 pages. By making it administratively burdensome for the Plaintiff to catch the emails, try to organize the documents, and review the same in a timely manner, it becomes impossible to so do. The District does state it will make the documents available to the Plaintiff, but those are typically available two days prior from 3:00 to 4:00 p.m. and the day prior to the day of the meeting, and unless the Plaintiff is in town and available to travel to the District office to pick up a copy, they are unavailable to him. It is common for the Plaintiff to be out of the community for his business.

9. Further, even assuming the Plaintiff were to have access to documents, the District refuses to provide any student records of any sort. One of the duties of board members is to hear appeals from students regarding disciplinary and other matters. Students have a right to appear with their families and counsel before the Board of Education on any such matters. Records and documents are regularly shared with board members when they contemplate actions on issues. The Plaintiff is denied access to the same and therefore cannot act upon the same.

10. The District also, in the past, has mailed documents to the Plaintiff prior to board meetings regarding board meetings. In one instance the documents were not mailed until after the board meeting or at such a time that they would arrive on the day of the board meeting. Newton is a small rural community and Plaintiff due to the mail service will not get the mail until the late afternoon of the meeting date. If the Plaintiff is out of town on business, this makes it impossible to have access to his information.

11. The Plaintiff is treated disparately from the other board members. Access to information is necessary. The Plaintiff is then denied the opportunity to speak intelligently to issues concerning the Board of Education where the Plaintiff is purposely left in the dark on the necessary information to act. The Board of Education attempted to have the Plaintiff removed

from his position by the Regional Superintendent. Failing that, this pattern of denying ready open access to school records and documents has been the fallback strategy of the Defendant's administration to neutralize and render ineffective an elected member of the Board of Education in discharging his duties under the Illinois School Act. There have been instances where Plaintiff has not voted or voted no for the sole reason that he could not make an informed vote on the pending matter.

12. The Plaintiff has been elected to serve as a school board member and that status has not changed even though the Board attempted to cause the Regional Superintendent of Education to remove him as a member and the Regional Superintendent refused to do so. With the Regional Superintendent having refused to remove, and the school board having no authority to remove, restrict, or otherwise dismiss one of its own members, the Plaintiff holds the responsibilities and duties as a member of the Board of Education unfettered.

13. Jerry Earnest had not been afforded any hearing or due process prior to the action of the Defendant School District. As a direct result, the Board Member, Jerry Earnest, has been denied substantial and important access to financial and other personnel matters which require board action from time to time and board member capacity as a member of the Board of Education.

14. The actions of the Defendant School District by its superintendent and president of the board have denied Jerry Earnest his ability to make informed decisions on important board matters, denying the citizens who reside in the Jasper County Community Unit School District No. 1, who pay substantial taxes, who have children in the district, and who have an interest in their community and its schools being well represented, denying then a board member from the

basic information that is needed for him to discharge his duties as a member of the Board of Education.

15. Such action has been taken without process of law or without any due process and was announced for an indeterminate time solely in the discretion of the board president and superintendent if and when they ever would choose to deem to allow its board member, the Plaintiff, Jerry Earnest, access to whatever information the school district by its superintendent determined that Mr. Earnest should not have access to.

16. Mr. Earnest has been irreparably harmed and denied the powers, authority, and information necessary to effectively discharge his duties as an elected member of the Board of Education of the Defendant School District.

17. Jerry Earnest has taken the time, effort, and interest to run for and be elected to the position. The Plaintiff possesses a liberty interest in his service to the citizens as a member of the Board of Education his right and duty to hold such an elective office and has been denied that interest by the unlawful action of the Defendants.

18. Further, Mr. Jerry Earnest has suffered embarrassment, humiliation, and emotional distress as a result of being expected to vote on matters that are crucial to the citizens he represents by being consistently denied crucial information that would inform his decision making on best to represent not only the citizens but most importantly the students who are being educated in the school district.

WHEREFORE, Plaintiff, Jerry Earnest, requests the U.S. District Court award damages to Jerry Earnest and enter appropriate orders against the Defendants to force the Defendants to allow Mr. Earnest to have full and complete information as needed to discharge his duties and

restore him to his full responsibility and authority as a duly elected member of the Board of Education and grant such other relief as allowed by law.

**Count II
Declaratory Relief**

The Plaintiff, JERRY EARNEST, for his action for Declaratory Relief under F.R.C.P. 57 and 28 U.S.C. 2201 realleges paragraphs 1 through 18 of Count I and further states:

19. There exists a substantial and concrete controversy between the parties.

20. Sufficient reason exists to require declaratory relief. Plaintiff has been improperly stripped by governmental action of his liberty interest under the U.S. Constitution to hold a public office to which he was duly elected and pursue his public service as a member of the Board of Education. A real federal question exists here over government action depriving a liberty interest of an elected public official in serving and the public who elected him to serve.

WHEREFORE, Plaintiff requests this Court to enter declaratory relief restoring Plaintiff fully to his elected position. Since the will of the voters is being frustrated by government action, it is requested that this matter be accelerated for an early hearing.

Respectfully submitted,

/s/Greg Roosevelt
Greg Roosevelt, #02375427
Roosevelt Law Office
610 St. Louis Street
Edwardsville, IL 62025
618-656-9160
618-692-9718 Fax
gregroosevelt@gmail.com

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I electronically filed **Plaintiff's First Amended Complaint** on the 25th day of May, 2018 with the Clerk of the Court using the CM/ECF system and notification of the same will be sent by email to the following:

Stanley B. Eisenhammer
Pamela E. Simaga
Hodges, Loizzi, Eisenhammer,
Rodick & Kohn LLP
3030 Salt Creek Lane, Suite 202
Arlington Heights, IL 60005
(847) 670-9000
(847) 670-7334 (fax)
seisenhammer@hlerk.com
psimaga@hlerk.com

/s/ Greg Roosevelt
Greg Roosevelt, #02375427
Roosevelt Law Office
610 St. Louis Street
Edwardsville, IL 62025
618-656-9160 / 618-692-9718 Fax
gregroosevelt@gmail.com