IN THE CIRCUIT COURT OF ST. CHARLES COUNTRY, MISSOURI

DANNY ROBERSON, *Plaintiff,* *v.* RACHEL HOMOLAK, *et al.*, *Defendants.*	Case No. 2411-CC00522 Division 4

DEFENDANTS VANESSA HAGEDORN AND JANE PUSZKAR'S SPECIAL MOTION TO DISMISS PLAINTIFF'S COMPLAINT UNDER MISSOURI'S ANTI-SLAPP STATUTE, 537.528, R.S.Mo

Defendants Vanessa Hagedorn and Jane Puszkar move to dismiss Plaintiff's Complaint under Missouri Court Rule 55.27 and 537.528, R.S.Mo. In support of their motion, Ms. Hagedorn and Puszkar rely on the Memorandum in Support filed concurrently with this motion. Ms. Hagedorn and Puszkar respectfully request that this Honorable Court grant their Motion to Dismiss Plaintiff's Complaint against them with prejudice as it is wholly frivolous and a blatant attempt to strategically silence public participation at public hearings in violation of Missouri's Anti-SLAPP Statute. *See Diehl v. Kintz,* 162 S.W.3d 152 (Mo. App. 2005). Ms. Hagedorn and Puszkar should also be granted attorney fees and costs.

Dated: June 14, 2024

Respectfully submitted,

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The First Amendment protects our rights to freedom of expression through free speech and a free press. Due to the importance and the sensitivity of our First Amendment freedoms, Courts throughout time have protected a speaker against making a person civilly liable for exercising one of our most vital rights. Therefore, a defamation claim must fail, unless a Plaintiff in a defamation suit can overcome the numerous hurdles he faces in order to properly bring a valid claim before the court. Plaintiff has not met this legal obligation.

Plaintiff's Complaint is an assault on the First Amendment and a blatant attempt to silence anyone who voices an opposing viewpoint to the transgender agenda. Ms. Hagedorn and Puszkar appropriately spoke at public hearings to raise concerns that biological men with facial hair who wear make-up and women's clothing while working in the children's section of the library create gender confusion for children. Ms. Hagedorn and Puszkar were well within their First Amendment rights

to voice their opinions and concerns. Nothing these women said was defamatory to Plaintiff. Plaintiff's Complaint is frivolous and legally insufficient. This lawsuit is tailor-made for dismissal and the award of attorneys' fees under application of Missouri's anti-Strategic Lawsuits Against Public Participation ("SLAPP") statute, 537.528, R.S.Mo.

STATEMENT OF FACTS

Plaintiff was born a biological man. (Compl. at 3, ¶ 7). Plaintiff wears "masculine and feminine clothing" with "make-up (mascara and eye shadow)" and has a beard or goatee, referred to in Plaintiff's Complaint as "natural facial hair." (Compl. at 3, ¶ 9); *see also* (Compl. at 5, ¶ 7) (stating that Plaintiff is "gender non-forming" and "has facial hair and wears make-up."). Defendants Vanessa Hagedorn and Jane Puszkar spoke at public hearings before the St. Charles Library Board and the St. Charles City Counsel raising concerns about library policy and dress code. Their speeches are available at these hyperlinks: Exhibit E City Council.mp4 (Vanessa Hagedorn's speech begins at 26:39) and Exhibit H (1) Library.mp4 (Vanessa Hagedorn's speech begins at 52:01; Jane Puszkar's speech begins at 26:30). Nothing that Ms. Hagedorn or Ms. Puszkar said during these public hearings is defamatory—not even remotely so. For example, in Ms. Hagedorn's speech during the St. Charles City County Board, she clearly identifies her concern: adopting a neutral dress code because having a library employee dress in a gender non-conforming manner creates confusion in a young child's mind who is not mature or developed enough to process the experience. (Exhibit E City Council.mp4, Vanessa Hagedorn's speech at 27:24).

Ms. Hagedorn opines that "it is abusive" for children to be exposed to what "they're unable to comprehend." *Id.* Ms. Hagedorn goes onto say, "I truly cannot imagine the pain and confusion this individual must be feeling. My heart goes out to him, and there is absolutely no hate in my heart towards him. Just the opposite actually. And since public libraries serve the general public, we need to be able to have discussions about these things without [fear] of being labeled hateful for having a differing opinion. It is our job as parents to not place children in positions that cause them confusion. If an adult practices a drag way of presenting themselves, that is their business, but when this expression is brought to a public space where my children are influenced, then it becomes my business." *Id.* Ms. Hagedorn then advocates for St. Charles to adopt a "neutral dress code" in its public library. *Id.* Ms. Hagedorn and Ms. Puszkar never published or even knew Plaintiff's name prior to the filing of this lawsuit. They provided their opinion at public hearings to influence their local government. Plaintiff brought this lawsuit to end that discussion.

STANDARD OF REVIEW

In 2004, the Missouri legislature enacted 537.528, R.S.Mo. It states in pertinent part:

> Any action against a person for conduct or speech undertaken or made in connection with a public hearing or public meeting, in a quasi-judicial proceeding before a tribunal or decision-making body of the state or any political subdivision of the state is subject to a special motion to dismiss, motion for judgment on the pleadings, or motion for summary judgment that shall be considered by the court on a priority or expedited basis to ensure the early consideration of the issues raised by the motion and to prevent the unnecessary expense of litigation. Upon the filing of any special motion described in this subsection, all discovery shall be

> suspended pending a decision on the motion by the court and the exhaustion of all appeals regarding the special motion.

This lawsuit is (1) an action against a person; (2) for conduct or speech undertaken or made in connection with a public hearing; and (3) is thus subject to a special motion to dismiss. *Id.* This motion, under the statute, thus "shall be considered by the court on a priority or expedited basis" and all "discovery shall be suspended pending a decision" on the motion. Under 537.528(2), R.S.Mo., "the court shall award reasonable attorney fees and costs incurred by the moving party in defending the action" if motions such as this are granted. As shown below, and according to Plaintiff's own allegations, the Court must grant Ms. Hagedorn and Ms. Puszkar's Motion to Dismiss and award attorneys' fees and costs in defending this SLAPP case. Additionally, Plaintiff's claims against Ms. Hagedorn and Ms. Puszkar fail to state a claim and should be dismissed.

Missouri law allows a defendant to bring a motion to dismiss for failure to state a claim under Rule 55.27. "The counterpart to Rule 55.27 is Rule 12(b) of the Federal Rules of Civil Procedure." *Am. Drilling Serv. Co. v. City of Springfield*, 614 S.W.2d 266, 269 (Mo. Ct. App. 1981). Under Rule 55.27, mere conclusions of the pleader are not admitted. *See, e.g., Underwood v. Kahala, LLC*, 554 S.W.3d 485, 493–95 (Mo. Ct. App. 2018). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation and citation omitted). Although a complaint need not include detailed factual allegations, "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels

and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal quotations and alteration omitted). The court is "free to ignore legal conclusions, unsupported conclusions, unwarranted inferences and sweeping legal conclusions cast in the form of factual allegations." *Wiles v. Capitol Indem. Corp.*, 280 F.3d 868, 870 (8th Cir. 2002).

LEGAL ARGUMENT

I. Plaintiff's Defamation Claims Must Be Dismissed as a Matter of Law.

Plaintiff has failed to state a claim that Ms. Hagedorn and Puszkar defamed Plaintiff. "In a defamation action, a plaintiff must establish: '1) publication, 2) of a defamatory statement, 3) that identifies the plaintiff, 4) that is false, 5) that is published with the requisite degree of fault, and 6) damages the plaintiff's reputation.'" *Cockram v. Genesco, Inc.*, 680 F.3d 1046, 1050-51 (8th Cir. 2012) (quoting *Missouri ex rel. BP Prods. N. Am. Inc. v. Ross*, 163 S.W.3d 922, 929 (Mo. 2005)).

As an initial matter, a plaintiff in a suit for libel *must* specifically set forth, *in haec verba*, the exact words alleged to be defamatory. Merely stating plaintiff's interpretation of a statement and failing to quote the full statement in context does not sufficiently state a cause of action for defamation. *Mo. Church of Scientology v. Adams*, 543 S.W.2d 776, 777 (Mo. 1976); *Dilliard Dep't. Stores v. Muegler*, 775 S.W.2d 179 (Mo. App.1989); *see also Tindall v. Holder*, 892 S.W.2d 314, 327 (Mo.App.S.D. 1994) (holding trial court did not err when it dismissed a cause of action for libel for "[f]ailure to quote the defamatory statement."). This the Plaintiff has not done.

Plaintiff seems to cherry-pick statements and questions and then simply provide Plaintiff's unreasonable interpretation of them in the Complaint without quoting the full statements to the Court.

Plaintiff's allegations against Ms. Hagedorn only include one actual quotation from her speeches. (Compl. at 8-9, ¶¶ 61-67). This quotation is "children's safety should never be compromised due to a grown man's feelings." (Compl. at 8, ¶ 64). This is protected speech under the First Amendment, as it is opinion. Plaintiff's allegations against Ms. Puszkar fair no better. Plaintiff again provides an interpretation of Ms. Puszkar's statements and fails to quote the statements precisely. (Compl. at 10-11 ¶¶ 77-96). Plaintiff's Complaint is rich with his interpretation of the alleged statements and questions without alleging the exact words of which he complains, as required. This is fatal to his defamation claim.

1. Statements Alleged by Plaintiff are Incapable of Defamatory Meaning as a Matter of Law.

Whether alleged libelous or slanderous words, when given their natural meaning, are capable of defamatory meaning is a question of law for the court to decide on a motion to dismiss. *Brown v. Kitterman*, 443 S.W.2d 146 (Mo. 1969).

a) Statements Alleged are Reasonably Truthful in Substance.

Truth is always a complete defense to defamation and renders a statement incapable of defamatory meaning. *Moritz v. Kan. City Star Co.*, 258 S.W.2d 583 (Mo. 1953). Slight inaccuracies of expression are immaterial if the defamatory charge is true in substance. *Brown v. Biggs*, 569 S.W.2d 760, 762 (W.D. Mo. 1976). A Court must determine whether the "gist" or "sting" of the statements was false. *Cockram*

v. Genesco, Inc., 680 F.3d 1046, 1051 (8th Cir. Mo. 2012) (quoting *Turnbull v. Herald Co.*, 459 S.W.2d 516, 519 (Mo. Ct. App. 1970)). A statement is not considered false for purposes of defamation simply because it contains an erroneous fact." *Thurston v. Ballinger*, 884 S.W.2d 22, 26 (Mo. Ct. App. 1994) ("A person is not bound to exact accuracy in his statements about another, if the statements are essentially true.").

Here, while Plaintiff complains that the statements at issue are false, the statements are derived from a truthful statement of fact, as Plaintiff has described in the Complaint. Plaintiff's Complaint explains that Plaintiff was born a biological man. (Compl. at 3, ¶ 7). Plaintiff wears "masculine and feminine clothing" with "make-up (mascara and eye shadow)" and has a beard or goatee, referred to in Plaintiff's Complaint as "natural facial hair." (Compl. at 3, ¶ 9); *see also* (Compl. at 5, ¶ 7). Plaintiff then argues that labeling him as a "transvestite" or as dressing in "drag" is defamation. Merriam-webster defines "transvestite" as "a person who wears clothes designed for the opposite sex." (https://www.merriam-webster.com/dictionary/transvestite, last visited June 14, 2024). Dictionary.com defines "in drag" as "wearing clothes normally worn by the opposite sex." (https://www.dictionary.com/browse/in-drag#:~:text=Wearing%20clothes%20normally%20worn%20by,1870%5D, last visited June 14, 2024). Both characterizations, which truly are opinion statements, reasonably portray what Plaintiff has alleged in the Complaint. (Compl. at 3, ¶ 9); *see also* (Compl. at 5, ¶ 7). The statements should be considered reasonably truthful under the law and should not provide the basis of a defamation suit.

Further, even if the Court finds that the statements could be defamatory in nature (although they are not as a matter of law), Missouri recognizes the existence of a qualified privilege for such references. *Lami v. Pulitzer Pub. Co.*, 723 S.W.2d 458, 459 (Mo. App. 1986). "Missouri has adopted the rule that publication of an allegedly defamatory statement is privileged under Restatement (Second) of Torts § 611: The publication of defamatory matter concerning another in a report of an official action or proceeding or of a meeting open to the public that deals with a matter of public concern is privileged if the report is accurate and complete or a fair abridgement of the occurrence reported." *Id.* "To be accurate, the publication need not be 'exact in every immaterial detail' or 'conform to that precision demanded in technical or scientific reporting,' but must convey 'a substantially correct account of the proceedings' to the reader. To be fair, the publication cannot edit a report so as 'to convey an erroneous impression to those who hear or read it.'" *Hinkle v. St. Louis Post Dispatch*, 2011 U.S. Dist. LEXIS 145445 (E.D. Mo. Dec. 19, 2011) (quoting Restatement (Second) of Torts § 611 (1977)). Here, there can be little dispute that any recitation of information from Ms. Hagedorn and Ms. Puszkar regarding the "gender non-conforming" dress of Plaintiff is a fair and accurate account of the information otherwise contained within the public record, and therefore subject to privilege. The allegations in Plaintiff's Complaint itself establishes this. (Compl. at 3, ¶ 9); *see also* (Compl. at 5, ¶ 7). Plaintiff's allegations then take a giant leap, and—without quoting what Ms. Hagedorn and Ms, Puszkar said that would establish it—accuse Ms. Hagedorn and Ms. Puszkar of accusing Plaintiff of "sexual misconduct."

This is not a reasonable interpretation of their statements. *See, e.g.*, *Ava v. NYP Holdings, Inc.*, 64 A.D.3d 407, 414, 885 N.Y.S.2d 247, 253 (2009) ("That some readers might draw this inference does not render it reasonable. In light of the context in which the allegedly defamatory words appeared, those words, as a matter of law, are not reasonably susceptible of a defamatory connotation.").

b) Statements Alleged by Plaintiff are Opinion.

Plaintiff complains that opinion statements regarding his manner of dress, and the effect it may have and the response it may invoke from children depending on their level of development and maturity, give rise to a defamation suit. This is simply not the case; Ms. Hagedorn and Ms. Puszkar's statements are protected opinion.

"Statements of opinion are protected by an absolute privilege which is rooted in the First Amendment to the United States Constitution." *Pape v. Reither*, 918 S.W.2d 376, 380 (Mo. Ct. App. 1996) (quoting *Diez v. Pearson*, 834 S.W.2d 250, 253 (Mo. App. E.D. 1992). Opinion cannot form the basis of a viable defamation claim. *Nigro v. St. Joseph Med. Ctr.*, 371 S.W.3d 808, 820 (Mo. Ct. App. 2012). Opinion is protected by absolute privilege, "even if made maliciously or insincerely, are afforded absolute privilege." *Hammer v. City of Osage Beach*, 318 F.3d 832, 842 (8th Cir. Mo. 2003) (internal quotations and citations omitted). The test for determining whether a statement is an opinion is "whether a reasonable factfinder could conclude that the statement implies an assertion of objective fact." *Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 314 (Mo. 1993). The court considers "the totality of the

circumstances to determine whether the ordinary reader would have interpreted the statement as an opinion." *Diez*, 834 S.W.2d at 252.

Here, many of the statements put at issue by Plaintiff "have no meaning which is readily understood ... and the statements are not capable of being proven true or false." *Covino v. Hagemann*, 165 Misc.2d 465, 470 (N.Y. Sup. Ct. 1995). Courts consider statements, such as statements which identify a person with a statement of opinion as being incapable of holding defamatory meaning. *Id.*, *Stevens v. Tillman*, 855 F.2d 394 (7th Cir. 1988); *Hopkins v. Lapchick*, 129 F.3d 116, 117 (4th Cir. 1997); *Gillis v. Landmark Communications Inc.*, 25 Med. L. Rep. 1382, 1383 (5th Cir. 1996); *Telnikoff v. Matusevitch,* 702 A.2d 230, 249 (Md. 1997); *see also Smith v. Humane Soc'y of United States*, 519 S.W.3d 789 (Mo. 2017) (labeling the kennel at the humane society as one of the "worst puppy mills in Missouri" was not a factual statement capable of supporting a defamation claim but was protected opinion). For example, "[m]ost states do not consider words of bigotry or racism to constitute actionable defamation, thus protecting the freedom to express even unpopular, ugly and hateful, political, religious and social opinions." *Ward v. Zelikovsky*, 643 A.2d 972, 982 (N.J. 1994). Words that knowingly "misgender" a person constitute protected speech. *Meriwether v. Hartop,* 992 F.3d 492 (6th Cir. 2021); *Taking Offense v. State,* 281 Cal. Rptr. 3d 298 (Cal. Ct. App. 2021). Speech pertaining to or questioning sexual identity are protected under the First Amendment. *Obergefell v. Hodges*, 576 U.S. 644 (2015) (holding, *inter alia*, that religious organizations and individuals are allowed under the First Amendment to adhere to their principles and exercise their right to free

speech to voice those principles). Likewise, statements which reflect a personal opinion of another's character are not actionable under defamation. *Klein v. Victor*, 903 F.Supp. 1327, 1335 (E.D. Mo. 1995).

2. Plaintiff Fails to Allege Actual Malice.

Even if the Plaintiff has passed the high hurdles of sufficiently pleading a claim for defamation with the exact words of the challenged defamatory statements, sufficiently pleading that the statements are false as a matter of law, are not opinion statements—which it should be clear from the face of the Complaint that he has not, then the Plaintiff must still sufficiently establish through factual allegations in his complaint that Ms. Hagedorn and Puszkar spoke at the public meetings with the requisite degree of fault. Plaintiff has not satisfied this requirement.

The Supreme Court in *New York Times v. Sullivan*, 376 U.S. 254 (1964), held that a public official may not recover damages in a defamation action unless he can prove from clear and convincing evidence that the publisher acted with "actual malice." Actual malice requires that the statements at issue were published with knowledge of the statement's falsity or with reckless disregard for the truth. *Id.* at 279-80. The rationale being that a certain amount of defamatory material must be tolerated to remove "the pall and fear of timidity" which the threat of libel actions casts "upon those who give voice to public criticisms." *Id.* at 276. Since their decision in *New York Times*, the Supreme Court has only expanded its First Amendment protection from defamation suits beyond just "public officials." *Curtis Publishing Company v. Butts*, 388 U.S. 130 (1967) (broadening this protection to include "public

figures"). "Public figures," non-public plaintiffs who are "nevertheless intimately involved in the resolution of important public questions or, by reason of their fame, shape events in areas of concern to society at large." *Id.* at 164; *see also Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29 (1971) (extending the *New York Times* privilege to defamatory falsehoods relating not only to public officials and public figures but also *private persons*). The Court explained that "if a matter is a subject of public or general interest, it cannot suddenly become less so merely because a private individual is involved, or because in some sense the individual did not 'voluntarily' choose to become involved." *Id.* at 43; *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 337 (1974). Missouri recognizes a "limited purpose public figure." *Warner v. Kan. City Star Co.*, 726 S.W.2d 384, 385 (Mo. Ct. App. 1987). The Eighth Circuit has defined a limited public figure as a person who "voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a *limited* range of issues." *Stepnes v. Ritschel*, 663 F.3d 952, 963 (8th Cir. 2011) (quoting *Gertz*, 418 U.S. at 351) (interpreting Minnesota law, but true under Missouri law as well) (emphasis added).

The Plaintiff here has voluntarily chosen public employment at the public library in the children's section and to express what Plaintiff considers to be "gender non-conforming" dress in that public space. (Compl. at 3, ¶ 9); *see also* (Compl. at 5, ¶ 7). Therefore, Plaintiff voluntarily injected himself into the public eye for the limited issue which was the subject of the discussion of the public meeting: the dress code in the children's section at the library. Plaintiff should be deemed a "limited public figure" for purposes of this litigation.

Since the Plaintiff in this case is a limited public figure, the Plaintiff must allege that the statements at issue were published with "actual malice." *McQuoid v. Springfield Newspapers*, 502 F. Supp. 1050, 1053-1054 (W.D. Mo. 1980). "Actual malice as defined by the Supreme Court, is either knowledge of the falsity of the published statement or reckless disregard for its truth." *Id*. at 1057. Mere "[p]roof of falsity is not proof of *malice*" and "malice is not shown by either the defamatory nature of the charges or the failure to investigate alone." *Lami,* 723 S.W.2d at 459 (internal citation omitted); *see also* Franklin & Bussel, "The Plaintiff's Burden In Defamation: Awareness a Falsity," 25 William & Mary L.Rev. 825 (1984); Smolla, "Let the Author Beware: The Rejuvenation of the American Law of Libel," 132 U.Pa.L.Rev. 1, 67 n. 316, 88 (1983); Wade, "The Communicative Torts and the First Amendment," 48 Miss.L.J. 671, 698 (1977); Note, "Fact and Opinion After '*Gertz v. Robert Welch, Inc.,*': The Evolution of a Privilege," 34 Rutgers L.Rev. 81 (1981); Note, "The Fact-Opinion Distinction in First Amendment Libel Law: The Need for a Bright-Line Rule," 72 Geo.L.J. 1817 (1984).

Plaintiff has not alleged, because he cannot without proffering a misrepresentation to the Court, that Ms. Hagedorn and Puszkar expressed their opinions and concerns at the public hearings at issue with the requisite degree of fault to establish a well-plead defamation claim. Ms. Hagedorn makes clear that she has no hate or malice in her heart, "in fact just the opposite." (Exhibit E City Council.mp4, Vanessa Hagedorn's speech at 27:24). Both women spoke at the public hearings out of concern for public policy at the library and to protect children from

gender confusion who are too young to process such confusion. What Ms. Hagedorn and Puszkar did not do, and what Plaintiff has failed to plead as a matter of law—that their conduct meets the required elements to plead a defamation claim. Plaintiff has failed to state a claim upon which relief may be granted against Ms. Hagedorn and Ms. Puszkar.

II. Plaintiff fails to State a Claim for False Light.

Plaintiff's claims for Invasion of Privacy under the theory of False Light must be dismissed as a matter of law. Missouri law simply does not recognize a cause of action for false light invasion of privacy for Plaintiff's allegations. *Farrow v. St. Francis Med. Ctr.*, 407 S.W.3d 579, 600 (Mo. 2013); *Sullivan v. Pulitzer Broadcasting Co.*, 709 S.W.2d 475 (Mo. banc 1986); *Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 317 (Mo. banc 1993); *State ex rel. BP Products North America Inc. v. Ross*, 163 S.W.3d 922, 926 (Mo. banc 2005); *Cockram v. Genesco, Inc.*, 680 F.3d 1046 (8th Cir. 2012) (same). Plaintiff's Complaint never alleges that Ms. Hagedorn and Ms. Puczkar invaded Plaintiff's privacy. They did not even know of or mention Plaintiff's name in their comments. Instead, they made public statements on a matter of public concern at a public hearing, seeking to influence public policy. Ms. Hagedorn and Puszkar provided their opinions and concerns pertaining to matters occurring at the public library to the proper authority, the library board and the city council. Missouri law has never recognized an invasion of privacy under such circumstances. Additionally, Plaintiff's allegations, as they are framed against Ms. Hagedorn and Puszkar in his Complaint, seek to recover for "untrue statements that cause[d] injury" to Plaintiff

not an invasion of privacy. *Nazeri,* 860 S.W.2d at 317. As repeatedly held by Missouri courts, such allegations do not provide a cause of action for false light. *Id.*; *BP Products,* 163 S.W.3d at 926; *Farrow,* 407 S.W.3d at 601–02. The Court need not conduct further analysis: these claims are meritless.

III. Plaintiff's Conspiracy Claim Against Ms. Puszkar is Frivolous.

Plaintiff alleges that Ms. Puszkar conspired by allegedly listening to speech by a Senior Pastor of Grace Church, who encouraged his congregation to speak the truth and evangelize by bringing Biblical teachings to the public square. (Compl. at 24, ¶¶ 220-21; at 25, ¶ 230). Plaintiff alleges that Ms. Puszkar was a "congregant[ ] who heard Tucker's sermon." (Compl. at 24, ¶ 221). Plaintiff also alleges that "Puszkar attended" a church service that "harkened to the pastor/speaker's call to action against LGBTQ and specifically transgender persons." (Compl. at 25, ¶ 230). These allegations do not support a claim for civil conspiracy.

In Missouri, the claim of civil conspiracy has its own elements that must be proven, but it is also not a separate and distinct action. *Breeden v. Hueser,* 273 S.W.3d 1, 13 (Mo.App. W.D.2008). "[R]ather, it acts to hold the conspirators jointly and severally liable for the underlying act." *8000 Maryland, LLC v. Huntleigh Fin. Services Inc.,* 292 S.W.3d 439, 451 (Mo.App. E.D.2009). "The gist of the action is not the conspiracy, but the wrong done by acts in furtherance of the conspiracy or concerted design resulting in damage to plaintiff." *Id.* (quoting *Royster v. Baker,* 365 S.W.2d 496, 499 (Mo.1963)).

To establish a claim for a civil conspiracy, Plaintiff must show: (1) two or more persons; (2) with an unlawful objective; (3) after a meeting of the minds; (4) committed at least one act in furtherance of the conspiracy; and (5) that Plaintiff sustained damages due to the unlawful conspiracy. *Oak Bluff Partners, Inc. v. Meyer,* 3 S.W.3d 777, 781 (Mo. banc 1999). "[I]f tortious acts alleged as elements of a civil conspiracy claim fail to state a cause of action, then the conspiracy claim fails as well." *Id.* "The term unlawful, as it relates to civil conspiracy, is not limited to conduct that is criminally liable, but rather may include individuals associating for the purpose of causing or inducing a breach of contract or business expectancy." *Lyn–Flex West, Inc. v. Dieckhaus,* 24 S.W.3d 693, 700–01 (Mo.App. E.D.1999).

As explained, Plaintiff's allegations fail to establish any claim for defamation. Further, Plaintiff's allegations do not establish Ms. Puszkar ever conspired and engaged in a "meeting of the minds" to embark upon unlawful conduct. (Compl. at 128-131, ¶¶ 953-71). Plaintiff's Complaint is entirely devoid of any specific factual allegations that demonstrate damages for all of his claims, including the unfounded claim of conspiracy. Plaintiff alleges no economic or pecuniary damages. Plaintiff's Complaint seems to allege that engaging in services at Church and speaking at public meetings can serve as the basis for a conspiracy claim. These activities, however, are protected Free Speech and Free Association under the First Amendment. The First Amendment protects a person's right to associate with others and to engage in hyperbole. *Brandenburg v. Ohio*, 395 U.S. 444 (1969); *Scales v. United States*, 367 U.S. 203, 229; (1961); *Healy v. James*, 408 U.S. 169, 185-86 (1972). The First

Amendment protects language that can even be characterized as "vituperative, abusive, and inexact." *Watts v. United States*, 394 U.S. 705, 707-08 (1969). Under the First Amendment, it is necessary to allow "uninhibited, robust, and wide-open" discussion "on public issues." *Id.*; *see also Snyder v. Phelps*, 562 U.S. 443 (2011).

IV. Plaintiff's Complaint Violates Missouri's Anti-SLAPP Statute.

The elements of Missouri's Anti-SLAPP statute are satisfied and require dismissal of the claims against Ms. Hagedorn and Ms. Puszkar. When citizens such as Ms. Hagedorn and Ms. Puszkar petition their government or engage in public debate at a public hearing, such activity embodies the ideal of participatory self-government at the heart of the First Amendment.

Certain lawsuits, called "strategic lawsuits against public participation," or "SLAPPs"—not only impose burdens on the First Amendment rights of their targets, but also threaten to chill citizen participation in government. SLAPPs have been defined as suits brought primarily in retaliation for activity in opposition to the interests of the plaintiff. *State ex rel. Diehl v. Kintz*, 162 S.W.3d 152, 157 (Mo. App. 2005) (citation omitted). In 2004, Missouri joined the majority of states that have enacted anti-SLAPP legislation with the promulgation of 537.528 R.S.Mo. The statute provides that "[a]ny action against a person for conduct or speech undertaken or made in connection with a public hearing or public meeting … is subject to a special motion to dismiss …." *Id.* Here, Plaintiff's allegations establish that this is "any action against a person," and is due to "conduct or speech undertaken or made in connection with a public hearing or public meeting." Plaintiff's allegations focus on

Ms. Hagedorn and Puszkar's speech at a library board and city council hearing, made to influence public policy at those meetings. Plaintiff's allegations strike to the very heart of why Missouri enacted its anti-SLAPP statute, to protect free speech made to influence public policy at a public hearing. Plaintiff has brought this Complaint to chill citizens' First Amendment rights in connection with public hearings by forcing them to defend expensive lawsuits over such statements. Given Plaintiff's lawsuit, a citizen might think twice about exercising his/her First Amendment rights if his/her speech in any way involves gender non-conforming dress or behavior and the societal or public policy implications of said dress or behavior, even when voicing opinions and concern about the effects that decisions and policies of public bodies in this area have on young children. This is particularly clear here with these allegations, which seek to provide establish a cause of action for sharing opinions and voicing concerns about dress code at the public library and for asking public boards to consider how gender non-conforming dress effects young children. Citizens should be able to address public bodies who hold decision making authority with their opinions and concerns about public policy without being forced to defend lawsuits, to retain counsel at great expense and prejudice, and effectively have his or her First Amendment rights curtailed. Without statutory dismissal and the statutory award of fees granted to Ms. Hagedorn and Ms. Puszkar, First Amendment rights of other victims and those who speak for them may be chilled, upon fear of facing lawsuits such as this. Accordingly, this case is tailor-made for the application of Missouri's anti-SLAPP statute, dismissal, and the award of fees to Ms. Hagedorn and Ms. Puszkar. *See Terry*

v. Davis Community Church, 131 Cal. App. 4th 1534 (3rd Dist. 2005); *Diehl v. Kintz,* 162 S.W.3d 152 (Mo. App. 2005).

CONCLUSION

For the reasons stated above, this Honorable Court should dismiss the frivolous claims against Defendants Ms. Hagedorn and Ms. Puszkar and grant their Anti-SLAPP motion and award them their attorneys' fees and costs.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Dismiss was sent through the Missouri e-Filing system to the registered attorneys of record and to all others by First Class U.S. mail to their last known address as follows:

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