

IN THE CIRCUIT COURT OF ST. CHARLES COUNTY, MISSOURI

DANNY ROBERSON,

Plaintiff,

vs.

**RACHEL HOMOLAK, JW; VANESSA
HAGEDORN; GRACE CHURCH STL., JANE
PUSZKAR; and CHRIST BARRETT**

Defendants.

Case No.: 2411-CC00522

**DEFENDANT RACHEL HOMOLAK'S
SPECIAL MOTION TO DISMISS**

Division 4

DEFENDANT RACHEL HOMOLAK'S

SPECIAL MOTION TO DISMISS PLAINTIFF'S COMPLAINT

TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that as soon thereafter as the matter may be heard in this Court, located at 300 N 2nd St., Saint Charles, Missouri 63301, Defendant Rachel Homolak will move this Court for an order pursuant to Missouri Court Rule 55.27 and 537.528, RSMo dismissing Plaintiff's Complaint with prejudice on the ground that the Complaint arises from Defendant's exercise of the constitutional right of petition or free speech and fails to state a claim.

This motion is based on this Notice, the records and papers on file herein, the attached Memorandum of Law, and on such other evidence as may be presented at the hearing of this motion.

Dated: August 15, 2024 Respectfully submitted,

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Defendants.

Case No.: 2411-CC00522

**DEFENDANT RACHEL HOMOLAK'S
SPECIAL MOTION TO DISMISS**

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**DEFENDANT RACHEL HOMOLAK'S SPECIAL MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

I. INTRODUCTION

Plaintiff Danny Roberson ("Plaintiff" or "Roberson")¹ is a biological man who dresses as a woman while working in the children's section of a library. By wearing feminine clothing, make-up and natural facial hair to his workplace, Plaintiff expresses his gender identity and opinions on gender ideology in a public forum.

However, when Defendant Rachel Homolak ("Homolak") attempted to express the same in a public setting, Plaintiff attempted to silence her. Plaintiff filed this lawsuit after Ms. Homolak spoke out in various settings regarding Roberson's attire worn regularly in front of impressionable children. This lawsuit is an attempt to intimidate Ms. Homolak and others from speaking their opinions about new gender ideology – a right that is afforded by state and federal law. There is no proper purpose for this lawsuit, and it must be dismissed for the following reasons.

First, Missouri law provides defendants a way to quickly dismiss meritless lawsuits – known as strategic lawsuits against public participation ("SLAPP") – filed against them for exercising speech, press, assembly, petition, or association rights. This lawsuit is a clear attempt to strategically silence Ms.

¹ While Plaintiff's Complaint refers to Roberson as a "she" throughout the Complaint, this motion will refer to Roberson consistent with his biological sex.

Homolak’s public participation at public hearings in violation of Missouri’s Anti-SLAPP Statute and should thus be dismissed.

Second, Plaintiff fails to state a claim for defamation, as alleged in Counts 1 through 19 of the Complaint. It is a bedrock principle of law that only false statements may form the basis of a defamation claim. Truth and opinion are affirmative defenses to defamation. Each statement allegedly made by Ms. Homolak is non-actionable, either because it is truthful and/or opinion.

Third, Plaintiff fails to state an alternative claim for false light invasion of privacy, as alleged in Alternate Counts 1 through 19, because Missouri courts do not recognize such a claim. The Missouri Supreme Court has made clear that the proper claim for allegedly false statements is defamation. *See Farrow v. Saint Francis Med. Ctr.*, 407 S.W.3d 579, 600–02 (Mo. 2013).

Fourth, Plaintiff fails to state an alternative claim for prima facie tort, as alleged in Second Alternate Counts 1 through 19 of the Complaint. Prima facie tort cannot be pled in the alternative to salvage an otherwise meritless defamation claim. Prima facie tort claims are expressly precluded where the claim would circumvent the restrictions on traditional tort claims, such as the defenses which shield defendants from defamation liability. *See Nazeri v. Missouri Valley Coll.*, 860 S.W.2d 303, 317 (Mo. 1993) (*en banc*).

Finally, Plaintiff fails to state a claim for civil conspiracy. In Counts 29 and 30, Plaintiff alleges that Ms. Homolak “conspired” with the other defendants to defame Plaintiff. However, the Complaint provides no allegation regarding any “meeting of the minds” between Ms. Homolak and any other defendant. This is fatal to Plaintiff’s conspiracy claims.

Accordingly, the Court, as explained further below, must dismiss the Complaint against Ms. Homolak and award attorneys’ fees in defending this action.

II. STATEMENT OF FACTS

A. Plaintiff Danny Roberson

Plaintiff was born a biological male and self-identifies as “non-binary” and “trans-femme”. Plaintiff’s Complaint for Damages (“Compl.”), ¶¶ 7-8. Plaintiff wears masculine and feminine clothing, makeup-up (mascara and eye shadow) and has “natural facial hair”. *Id.*, ¶ 9. Plaintiff is an employee of

St. Charles County Library. *Id.*, ¶ 10. Plaintiff was wearing female clothing on the day Ms. Homolak entered the library, on May 22, 2023. Ms. Homolak never spoke with Plaintiff, nor directly interacted with Plaintiff in any fashion. *Id.*, ¶ 16.

B. Defendant Rachel Homolak

Ms. Homolak is a private citizen, who, at all times relevant to the Complaint, resided in St. Charles, Missouri. Consistent with her religious beliefs, Ms. Homolak does not subscribe to self-identifying gender ideology that is promoted in school and public libraries and other public settings. She does not believe gender or sex can be “self-identifying”. Rather she maintains a biblical view of sexuality, which includes the belief that God intentionally created people male or female and that biological reality cannot change based on subjective feelings. Ms. Homolak does not believe that children should be exposed to lasciviously dressed males or females in a public setting, particularly when the person is in a position to influence children.

Ms. Homolak is also the creator of two Facebook groups: “St. Charles Library Mama Bear” and “Bluey Memes.” Often through humor or satire, Ms. Homolak posts her opinions on governmental affairs, current events and politics. On or about May 24, 2023, when Ms. Homolak entered St. Charles County Library, she was astounded by Plaintiff’s sexually suggestive and confusing appearance. Plaintiff is a man, and yet dressed in women’s clothing. This can often be confusing to children (and adults alike). In response to Plaintiff’s sexually provocative appearance and conduct of dressing in drag at a children’s section of the public library, Ms. Homolak decided to express her Christian worldview on Plaintiff’s public display that expressed his own gender ideology. She did so by posting on Facebook, appearing on podcasts, and speaking at public hearings/meetings. Compl., ¶¶ 24-214. In every one of these posts/podcasts/public hearings, Ms. Homolak expressed her concerns with Plaintiff’s public display of his own gender ideology at his place of public employment (where children frequent), and how his conduct negatively influences and confuses children. In speaking up, Ms. Homolak’s intention was never to harm Plaintiff. *See* Compl., Exhibit A. Rather, Ms. Homolak’s advocacy focused on the library implementing a neutral and appropriate dress code that would preclude Plaintiff from dressing in drag while checking out books to children. *Id.*

III. LEGAL STANDARD

In 2004, the Missouri legislature enacted an anti-SLAPP statute. *See* RSMo § 537.528 (West). It states, *inter alia*:

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.

Under Mo. Ann. Stat. § 537.528(2), “the court shall award reasonable attorney fees and costs incurred by the moving party in defending the action” once the motion is granted. Missouri law also allows a defendant to bring a motion to dismiss for failure to state a claim under Missouri Court Rule 55.27. In Missouri, a motion to dismiss for failure to state a claim is a procedural mechanism used to test the legal sufficiency of the plaintiff’s petition *Adolphsen v. Hallmark Cards, Inc.*, 907 S.W.2d 333 (Mo. App. W.D. 1995). The primary question is whether the petition, when viewed in the light most favorable to the plaintiff, states a claim upon which relief can be granted. *Luethans v. Washington Univ.*, 838 S.W.2d 117 (Mo. App. E.D. 1992) *Sherrill v. Wilson*, 653 S.W.2d 661 (Mo. 1983). Under Missouri law, the standard for reviewing a motion to dismiss for failure to state a claim is well-established. The court must assume all facts alleged in the petition are true and grant the plaintiff all reasonable inferences therefrom. *Aaron v. Havens*, 758 S.W.2d 446 (Mo. 1988), *Long v. Cross Reporting Serv., Inc.*, 103 S.W.3d 249, 252 (Mo. App. W.D. 2003). The petition must invoke substantive principles of law that entitle the plaintiff to relief and must allege ultimate facts that inform the defendant of what the plaintiff will attempt to establish at trial. *Berliner v. Milwaukee Elec. Tool Corp.*, 501 S.W.3d 59 (Mo. App. E.D. 2016), *Derks v. Surface*, 189 S.W.3d 692 (Mo. App. W.D. 2006). Missouri courts apply a fact-pleading standard, which requires the petition to identify the facts upon which the plaintiff’s claim rests. *Berliner*, 501 S.W.3d 59, *Green v. Penn-Am. Ins. Co.*, 242 S.W.3d 374 (Mo. App. W.D. 2007). Conclusory allegations are insufficient; the petition must contain allegations of ultimate facts necessary for recovery

or allegations from which such ultimate facts can be inferred. *Thomas v. Denney*, 453 S.W.3d 325 (Mo. App. W.D. 2014); *Sides v. St. Anthony's Med. Ctr.*, 258 S.W.3d 811 (Mo. 2008).

IV. LEGAL ARGUMENT

A. Missouri's Anti-SLAPP Law Entitles Defendant To Immediate Dismissal

When citizens petition their government or engage in public debate, such activity embodies the ideal of participatory self-government at the heart of the First Amendment. Certain lawsuits – often called “strategic lawsuits against public participation” (“SLAPP”) – not only impose burdens on the First Amendment rights of their targets, but also threaten to chill citizen participation in government. SLAPPs are defined as suits brought mainly in retaliation for activity opposing the plaintiff's interests. *State ex rel. Diehl v. Kintz*, 162 S.W.3d 152, 157 (Mo. App. E.D. 2005) (citation omitted).

In 2004, Missouri joined the majority of states that have enacted anti-SLAPP legislation with the promulgation of Mo. Ann. Stat. § 537.528. It provides that “Any 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.* Thus, because it is undisputed that this is an “action against a person,” the only issue is whether it is an action “for conduct or speech undertaken or made in connection with a public hearing or public meeting” for dismissal to apply.

Mo. Ann. Stat. § 537.528 provides an efficient method of disposing of a plaintiff's meritless claims early in a lawsuit. *See Cedar Green Land Acquisition, L.L.C. v. Baker*, 212 S.W.3d 225, 227 (Mo. App. S.D. 2007) (in enacting statute authorizing special motion to dismiss SLAPP, Legislature recognized importance of expedited judicial consideration and prevention of unnecessary litigation expenses for actions seeking money damages from person for conduct or speech undertaken or made in connection with public hearing or public meeting). Thus, § 537.528 is a “procedural statute with remedial provisions” so that a defendant can seek to have a SLAPP action dismissed prior to discovery. *Jiang v. Porter, Jiang v. Porter*, 4:15-CV-1008 (CEJ), 2015 WL 9459943, at *2 (E.D. Mo. Dec. 28, 2015). Mo. Ann. Stat. § 537.528 applies in this case as it concerns Defendant's First Amendment right to comment on matters of public interest. Plaintiff's lawsuit seeks to punish Ms. Homolak for publicly expressing her opinions on gender ideology so as to chill the views of those with a differing opinion than Plaintiff.

Plaintiff expressed his gender identity by choosing to wear certain clothing, makeup, and natural facial hair to the public library where he is employed. His chosen attire was the expression of his beliefs on gender ideology that is presently being debated in public and political settings. Gender ideology is a complex topic that includes a variety of disagreements and controversies in today's political climate. Debates over whether biology or individual perception determine gender exist all over the world, as well as disputes over whether children should be exposed to such ideology in a public setting.

Thus, it is unsurprising that Ms. Homolak who was exposed to Plaintiff's public expression, would respond with her own religious worldview in a public forum. Just as Plaintiff expressed his beliefs on gender ideology with his chosen clothing, makeup, and natural facial hair in a public setting, Ms. Homolak expressed her corresponding view.

However, Plaintiff filed this lawsuit to deprive Ms. Homolak of her ability to express her views regarding the appropriateness of his attire worn in the children's section of a public library. Allowing Plaintiff's lawsuit to go forward inevitably chills such public participation in the future.

1. This is an action “for conduct or speech undertaken or made in connection with a public hearing or public meeting” of a “political subdivision of the state”

It is undisputed that the conduct or speech that offended Plaintiff was related to, and made in connection with the June 12, 2023, St. Charles City-County Council meeting (SCCCM); the June 20, 2023, St. Charles County Public Library Board Meeting; and the July 31, 2023, St. Charles City-County Council meeting. These are articulated in Plaintiff's Complaint, Counts 4, 5, 9, 10, and 11.

Count 4: Public Participation at St. Charles County Council Meeting on June 12, 2023

In Count 4, Plaintiff alleges that Ms. Homolak spoke at the St. Charles City-County Council meeting June 12, 2023 (Exhibit E), falsely accusing Plaintiff of sexual misconduct and having a sexualized intent behind wearing such clothing Compl., ¶ 321. Plaintiff alleges that these statements were false and defamatory, or alternatively painted Plaintiff in a false light. Compl., ¶¶ 324, 330.

Count 5: Public Participation at St. Louis Library Board Meeting on June 20, 2023

In Count 5, Plaintiff alleges that Ms. Homolak spoke at the Library Board Meeting on June 20, 2023 (Exhibit H), falsely accusing Plaintiff of sexual misconduct, wearing “BDSM-like kink drag to work around children,” and that Plaintiff is “sexualizing children by dress the way [he] does around children.” Compl., ¶ 346. However, Plaintiff openly admits that his name was not specifically mentioned, but rather a dress code was discussed. Compl., ¶ 347. Plaintiff alleges that these statements were false and defamatory, or alternatively painted Plaintiff in a false light. Compl., ¶¶ 348, 355.

Count 9: Public Participation at SCCCM on July 31, 2023

In Count 9, Plaintiff alleges that Ms. Homolak spoke at a Saint Charles County Council meeting July 31, 2023 (Exhibit M), accusing Plaintiff of “sexual misconduct by calling [him] a sexual predator and stating Plaintiff is pushing [his] sexual agenda onto children.” Compl., ¶ 445. Plaintiff alleges that these statements were false and defamatory, or alternatively painted Plaintiff in a false light, or alternatively painted Plaintiff in a false light. Compl., ¶¶ 447, 454.

Count 10: Reposting of Public Participation Meeting on July 31, 2023

In Count 10, Plaintiff alleges that Ms. Homolak reposted Chris Barret’s and her speeches from the SCCC meeting on July 31, 2023 (Exhibits N, O), in which Chris Barrett “published false accusation of sexual misconduct were attributed to Plaintiff” (Compl., ¶ 470). Plaintiff alleges that these statements were false and defamatory, or alternatively painted Plaintiff in a false light. Compl., ¶¶ 471, 478.

Count 11: Reposting of Public Participation Meeting on July 31, 2023

In Count 11, Plaintiff alleges that Ms. Homolak reposted the St. Charles City Council meeting to her Bluey Memes Facebook blog on August 1, 2023 (Exhibit P), in which Defendant speaking before the council “accused Plaintiff of sexual misconduct by spreading her message calling Plaintiff a sexual predator further through social media.” Compl., ¶ 494. Plaintiff alleges that these statements were false and defamatory, or alternatively painted Plaintiff in a false light. Compl., ¶¶ 496, 503.

Public libraries in Missouri are established and maintained under state laws and are primarily supported by public funds, designed to serve the general public. Given that public libraries are political subdivisions and serve public functions, they would be covered under the protections afforded by the

anti-SLAPP statute. Based on the classification of public libraries as political subdivisions and the broad application of anti-SLAPP protections to public entities, it is reasonable to conclude that anti-SLAPP protections would apply to public libraries in Missouri. *Impey v. Clithero*, 553 S.W.3d 344 (Mo. App. W.D. 2018). The meetings alleged in Counts 4, 5, 9, 10, and 11 are the very public meetings/hearings protected by Missouri's Anti-SLAPP Statute. Ms. Homolak has every right to voice her concerns about gender ideology and its effect on children at public meetings, and Missouri's anti-SLAPP statute requires dismissal of these counts. "Short of a gun to the head, a greater threat to [the] First Amendment expression can scarcely be imagined [than a lawsuit brought to silence public speech]." *Gordon v. Marrone*, 155 Misc. 2d 726 (N.Y. Sup. Ct. 1992).

In sum, the conduct or speech that offended Plaintiff was related to, and made in connection with the June 12, 2023, St. Charles City-County Council meeting (SCCCM); the June 20, 2023, St. Charles County Public Library Board Meeting; and the July 31, 2023, St. Charles City-County Council meetings. Therefore, all of these causes of action are protected speech under Missouri's Anti-SLAPP Statute and Plaintiff's Counts 4, 5, 9, 10, and 11 must be summarily dismissed with prejudice, and costs awarded to the Defendant.

2. Courts have granted Anti-SLAPP motions in analogous situations

Given the relative newness of the Missouri anti-SLAPP statute compared to other states' similar statutes, the breadth of case law interpreting it is slim. Other courts, however, have addressed similar situations and granted the defendants' anti-SLAPP motions to dismiss, including a nearly identical case in California concerning defamation and speech involving the protection of children.

In *Terry v. Davis Cmty. Church*, 131 Cal. App. 4th 1534 (2005), the plaintiffs, employees of Davis Community Church, sued the church and others for defamation and emotional distress, alleging that church officials falsely accused them of having an inappropriate sexual relationship with a minor in the course of their church work. The trial court granted defendants' anti-SLAPP motion.

The *Terry Court* specifically found:

The issue as to whether or not an adult who interacts with minors in a church youth program has engaged in an inappropriate relationship with any of the minors is clearly a matter of public interest. The public interest is society's interest in protecting minors from

predators, particularly in places such as church programs that are supposed to be safe. It need not be proved that a particular adult is in actuality a sexual predator in order for the matter to be a legitimate subject of discussion.

Id. at 1547. The court concluded, “Here, we have seen that plaintiffs’ actions gave rise to an ongoing discussion about protection of children, which warrants protection by a statute that embodies the public policy of encouraging participation in matters of public significance.” *Id.*

Terry is conceptually and procedurally similar to the instant case. Plaintiff here is inappropriately dressed in sexually provocative attire at the library and works in the children’s section. Ms. Homolak, at public hearings/public meetings, voiced her opinion. Thus, the statutory language and prerequisites to dismissal under Missouri’s anti-SLAPP statute are satisfied, requiring dismissal of Counts 4, 5, 9, 10, and 11.

B. Plaintiff’s Defamation Claims Against Ms. Homolak Fail As A Matter Of Law

To prove defamation, 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 State ex rel. BP Products N. Am. Inc. v. Ross*, 163 S.W.3d 922, 929 (Mo. 2005)). Plaintiff’s defamation claims are legally deficient in several respects.

As a preliminary matter, the Court should dismiss the defamation counts against Ms. Homolak because each count fails to set forth the allegedly defamatory statements with sufficient specificity. “Federal courts favor specific pleading of defamation claims because knowledge of the exact language used is necessary to form responsive pleadings.” *Glenn v. Daddy Rocks, Inc.*, 171 F. Supp. 2d 943, 947 (D. Minn. 2001). “Under Missouri law, a plaintiff complaining of defamation must specifically set forth in the complaint the words which are alleged to be defamatory.” *Mitan v. Osborn*, 10-3207-CV-S-SWH, 2011 WL 4352550, at *3 (W.D. Mo. Sept. 16, 2011) (citation omitted). In each count, Plaintiff fails to specifically set forth the exact words alleged to be defamatory. Rather, Plaintiff has presented mere conclusory statements regarding his unreasonable interpretations of Ms. Homolak’s statements.

For example, in Count 12, Plaintiff alleges that “Homolak accused Plaintiff of sexual misconduct by alleging Plaintiff indoctrinates and grooms children as a sexual predator.” Compl., ¶ 520. Yet, Plaintiff

never sets forth the exact words allegedly spoken by Ms. Homolak that support Plaintiff's interpretation. Ms. Homolak is left uncertain as to the charged defamatory words. This is true for nearly all counts of defamation asserted against Ms. Homolak. Attaching the entirety of various recordings as exhibits, and then generally drawing insinuations from those recordings, is not sufficient. It is Plaintiff's burden to specifically set forth the words which are alleged to be defamatory, and Ms. Homolak and the Court are under no obligation to scour hours of transcripts for allegedly defamatory statements. *Mitan*, 2011 WL 4352550, at *3. However, even if Plaintiff's Complaint specifically sets forth Ms. Homolak's exact words alleged to be defamatory, Plaintiff fails to state a claim for defamation--requiring dismissal. Plaintiff's Complaint frivolously alleges nineteen counts of defamation against Ms. Homolak (Counts 1-19). Each statement allegedly made by Ms. Homolak is non-actionable, either because the statement is truthful or the expression of a lawful opinion and thus incapable of defamatory meaning or because Plaintiff fails to allege the requisite degree of fault. Thus, the Court should dismiss Counts 1 through 19.

1. Ms. Homolak's alleged statements are incapable of defamatory meaning, as they are reasonably truthful in substance or constitute protected opinion

In determining the sufficiency of a defamation claim on a motion to dismiss, courts engage in a two-step analysis. *McClanahan v. Anti-Defamation League*, 23-05076-CV-SW-JAM, 2023 WL 8704258, at *3 (W.D. Mo. Dec. 15, 2023) (citation omitted). First, courts determine "whether a statement is capable of defamatory meaning." *Id.* (citation omitted). If a statement is capable of defamatory meaning, courts next determine whether a defense such as truth or opinion "shields the defendant from legal action." *Id.*

As to the first step, whether alleged words 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, 149-50 (Mo. 1969). Defamatory meaning is defined as a meaning that "tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him" *Id.* (internal quotations and citation omitted). In determining whether a statement is defamatory, courts must strip words of "any pleaded innuendo" and construe the words "in their most innocent sense." *Castle Rock Remodeling, LLC v. Better Bus. Bureau of Greater St. Louis, Inc.*, 354

S.W.3d 234, 239 (Mo. App. E.D. 2011) (citation omitted). Courts must also consider the alleged defamatory words “in context” and must give the words their “plain and ordinarily understood meaning.” *Id.* If a statement is capable of nondefamatory meaning, the statement is nonactionable. *Id.*

Additionally, to be defamatory, a statement must be clear as to the person addressed. *Saffaf v. Ally Fin., Inc.*, 4:20-CV-276-SPM, 2021 WL 3089039, at *5 (E.D. Mo. July 22, 2021) (citation omitted) (“Statements about a matter related to the plaintiff, but not actually about the plaintiff himself, cannot support a defamation claim.”); *see also Chastain v. Kansas City Star*, 50 S.W.3d 286, 289 (Mo. App. W.D. 2001) (dismissing a defamation claim based on the publication of false statements regarding the plaintiff’s light rail plan; stating, “the statements are about the plan and the initiative, and not about [plaintiff]. Because the statements were not about [plaintiff], his petition fails to state a claim for defamation”).

If a statement is capable of defamatory meaning, the second step of the inquiry requires courts to determine whether a defense “shields the defendant from legal action.” *Castle Rock Remodeling, LLC*, 354 S.W.3d at 239. Missouri courts have adopted several categorical defenses that prevent claimed defamations from being actionable, at least two of which independently control this case.

First, truth is always a complete defense to defamation and renders a statement incapable of defamatory meaning. *Moritz v. Kansas City Star Co.*, 364 Mo. 32 (1953). Slight inaccuracies of expression are immaterial if the defamatory charge is true in substance. *Brown v. Briggs*, 569 S.W.2d 760, 762 (Mo. App. 1978). A Court must determine whether the “gist” or “sting” of the statements was false. *Cockram*, 680 F.3d at 1051 (quoting *Turnbull v. Herald Co.*, 459 S.W.2d 516, 519 (Mo. 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. App. W.D. 1994) (“A person is not bound to exact accuracy in his statements about another, if the statements are essentially true”).

Second, “[s]tatements 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. App. E.D. 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. App.

W.D. 2012). Statements of opinion are protected “even if made maliciously or insincerely.” *Hammer v. City of Osage Beach, MO*, 318 F.3d 832, 842 (8th Cir. 2003) (internal quotations and citations omitted).

Courts consider statements, including statements which identify a person alongside a statement of opinion, as being incapable of holding defamatory meaning. *Covino v. Hagemann*, 165 Misc. 2d 465, 470 (N.Y. Sup. Ct. 1995); *Stevens v. Tillman*, 855 F.2d 394 (7th Cir. 1988); *Hopkins v. Lapchick*, 129 F.3d 116, 117 (4th Cir. 1997); *Telnikoff v. Matusевич*, 347 Md. 561 (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). Words that knowingly “misgender” a person constitute protected speech. *Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2021); *Taking Offense v. State*, 66 Cal. App. 5th 696 (2021). Speech pertaining to or questioning sexual identity are protected under the First Amendment. *Meriwether v. Hartop*, 992 F.3d 492, 512 (6th Cir. 2021) (“[T]he premise that gender identity is an idea embraced and advocated by increasing numbers of people is all the more reason to protect the First Amendment rights of those who wish to voice a different view.” (internal citations omitted)); *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). Similarly, 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).

In *State ex rel. Diehl*, 162 S.W.3d 152, the Missouri Court of Appeals provided guidance in determining whether statements should be considered “opinion” as opposed to an assertion of fact.

The test for an ostensible opinion is whether a reasonable factfinder could conclude that the statement implies an assertion of objective fact. The issue of falsity relates to the defamatory facts implied by a statement – in other words, whether the underlying statement about the plaintiff is demonstrably false. Furthermore, neither “imaginative expression” nor “rhetorical hyperbole” is actionable as defamation. In addition, a statement may only suggest to the ordinary reader that the defendant disagrees with the plaintiff’s conduct and used pejorative statements or vituperative language to express this

disapproval. Courts should also examine the statements themselves to determine whether they are too imprecise.

Id. at 155 (internal citations and punctuation omitted). The court found that the defendant’s use of the phrase “trash terrorist” in referring to the plaintiff on a handbill distributed at a public meeting was considered rhetorical hyperbole. As such, it did not support a claim for defamation. This decision highlights the protection of free speech, particularly in the context of public discourse, where certain exaggerated statements are not deemed defamatory. *Id.* at 156.

Applying these standards to the present case, this Court should dismiss Plaintiff’s claims for defamation against Ms. Homolak, which are included in Counts 1 through 19 of the Complaint. Counts 6, 8, 10, 11, 15, and 16 do not refer to Plaintiff at all, but rather address a matter related to the Plaintiff, i.e. transgenderism. *See Saffaf*, 2021 WL 3089039, at *5 (To be defamatory, a statement must be clear as to the person addressed); *Chastain*, 50 S.W.3d at 289 (“Statements about a matter related to the plaintiff, but not actually about the plaintiff himself, cannot support a defamation claim”). These counts are thus not actionable as defamation.

Counts 1, 2, 3, 4, 5, 7, 12, 14, and 17-19 all concern statements made by Ms. Homolak which address Plaintiff’s clothing at the library and then provide her broader opinion on cross-dressing and its effect on children and the library’s need for a stricter dress code. These statements are reasonably truthful based on Plaintiff’s own admission that he is a biological male who wears “masculine and feminine clothing” with “make-up (mascara and eye shadow).” Compl., ¶ 9; *see also* Compl., ¶ 7. Additionally, every statement allegedly made by Ms. Homolak expresses her protected opinion regarding gender ideology, and thus her statements are not cognizable as false statements. For example, Counts 7, 8, 13, 14, and 15 specifically demonstrate that Ms. Homolak’s statements were reasonably truthful and expressions of her opinion.

Count 7: Talk Show Appearance on July 10, 2023 (Exhibit J)

In Count 7, Plaintiff alleges that Ms. Homolak defamed him when she spoke on a Christian radio show and described Plaintiff’s manner of dress. Compl., ¶ 395. Later in the show, Ms. Homolak stated,

“They are pushing sex and sexual ideology on children. Sex and children do not mix. That’s how you get pedophilia.” Compl., ¶ 106.

When viewed in context, Ms. Homolak’s statement is an unfalsifiable opinion – an expression of caution regarding the transgender movement. There was nothing in Ms. Homolak’s opinion to suggest an implicit defamatory fact. Plaintiff disagrees with Ms. Homolak’s opinions on this matter rather than her statement itself. For example, Plaintiff alleges that the statement “falsely accus[es] Plaintiff of sexually expressing [himself] in front of children through [his] clothing and further falsely claim[s] that Plaintiff is a pedophile.” Compl., ¶ 395. However, Ms. Homolak’s statement does not refer to Plaintiff and cannot be definitively read to accuse Plaintiff of being a pedophile. Rather, Plaintiff mischaracterizes Ms. Homolak’s opinion and presents his chosen insinuation of Ms. Homolak’s words. Count 7’s allegations (and other allegations discussed below) are a quintessential example of an inference that could not objectively and realistically be proven true or false, are imprecise, and therefore cannot serve as the basis of a defamation action. *See Diez*, 834 S.W.2d at 250–51; *State ex rel. Diehl*, 162 S.W.3d at 155–56 (“given the imprecise nature of the phrase, it is uncertain how the truth or falsity of being a “trash terrorist” could be determined”).

Count 8: Facebook Post on July 19, 2023 (Exhibit L) and Count 13: America’s Mom Talk Show Appearance on August 11, 2023 (Exhibit T)

In both Count 8 and Count 13, Plaintiff alleges that Ms. Homolak defamed him when she referred to him as “Danny the drag librarian” in a Facebook post and on a talk show. Compl., ¶¶ 122, 182. This statement is derived from a truthful statement of fact. Plaintiff’s Complaint explains that Plaintiff was born a biological man (Compl., ¶ 7) but wears “masculine and feminine clothing” with “make-up (mascara and eye shadow)” and has a beard or goatee (Compl., ¶ 9). Plaintiff is also admittedly an employee at the local library. Compl., ¶ 10. 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 August 7, 2024). Ms. Homolak’s characterization reasonably portrays what Plaintiff has alleged in the Complaint and portrays her opinion on Plaintiff’s appearance and role. Compl., ¶¶ 7, 9, 10. Furthermore, even

statements which identify a person alongside a statement of opinion, as Ms. Homolak did here, are incapable of holding defamatory meaning. *See Covino*, 165 Misc. 2d at 470; *Stevens*, 855 F.2d 394; *Hopkins*, 129 F.3d at 117; *Telnikoff*, 347 Md. 561; *see also Smith*, 519 S.W.3d 789. Ms. Homolak’s statement is reasonably truthful in substance and cannot serve as the basis of a defamation claim.

Count 14: Rosary Rally Flier (Exhibit U)

In Count 14, Plaintiff alleges that Ms. Homolak distributed an event flier stating, “A man in our library dressed as an overly sexualized woman is part of the LGBTQ agenda in their attempt to groom and sexualize our young, innocent children.” Compl., ¶ 189. Plaintiff alleges that in doing so “Homolak falsely accused Plaintiff of sexual misconduct by claiming Plaintiff dressed as an over sexualized woman who is attempting to groom and sexualize children.” Compl., ¶ 570.

Notably, Plaintiff has not alleged that Ms. Homolak drafted, printed, or otherwise aided in the flier’s publication. Ms. Homolak did not publish the relevant statements and therefore cannot be held liable for them. *Laun v. Union Elec. Co. of Mo.*, 350 Mo. 572 (1942) (“Liability attaches to one who requests, aids or procures another to publish the defamatory matter”).

However, even assuming arguendo that Ms. Homolak can be held liable for statements she did not publish, the statement cannot be definitively read to accuse Plaintiff of grooming and sexualizing children. Rather the statement accuses the LGBTQ+ agenda of attempting to do so. Ms. Homolak and others are free to express their opinion on this issue of public importance, particularly when Plaintiff is exposing children to his remarkable display of gender ideology in the children’s section of the public library. Once again, Plaintiff mischaracterizes and presents his chosen insinuation of Ms. Homolak’s alleged words. This is insufficient to support a claim of defamation.

Count 15: Facebook Post on August 30, 2023 (Exhibit V)

In Count 15, Plaintiff alleges that Ms. Homolak defamed Plaintiff when she commented on a Facebook post, “any grown man who wants to sexually express himself in front of children, seems like a pedophile to me.” Compl., ¶ 198. Ms. Homolak’s statement does not refer to Plaintiff and cannot be reasonably read to accuse Plaintiff of being a pedophile. Rather, Ms. Homolak expresses her opinion and concern regarding men who dress as provocative women in front of children. The word “seems” further

notes that the statement is merely Ms. Homolak’s opinion. Nothing in Ms. Homolak’s opinion suggests an implicit defamatory fact. Instead, Plaintiff mischaracterizes and presents his chosen insinuation of Ms. Homolak’s alleged words. Such insinuation is insufficient to support a claim of defamation.

In sum, the Court should dismiss all defamation claims against Ms. Homolak based on Plaintiff’s mischaracterization of Ms. Homolak’s statements and unreasonable conclusions drawn therefrom. The affirmative defenses of truth and opinion shield Ms. Homolak from any finding of defamation. By Plaintiff’s own admission, he is a biological man dressed as a woman in the children’s section of the library. Compl., ¶¶ 7, 9-10. Ms. Homolak merely expressed her opinion on Plaintiff’s dress and the transgender movement at large. This is not actionable defamation.

2. Plaintiff is a limited purpose public figure and cannot show actual malice as required to survive dismissal.

Even if Plaintiff has sufficiently pled that Ms. Homolak made defamatory statements, Plaintiff’s Complaint fails to establish that these statements were made with the requisite degree of fault. The First Amendment prohibits public officials or public figures from recovering damages for defamatory falsehoods concerning issues of public interest and concern unless they prove “that the statement was made with ‘actual malice’ -- that is, with knowledge that it was false or with reckless disregard of whether it was false or not.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 279–80 (1964). Missouri courts also recognize a “limited purpose public figure.” *Warner v. Kansas City Star Co.*, 726 S.W.2d 384, 385 (Mo. App. W.D. 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 v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974)) (interpreting Minnesota law, but true under Missouri law as well).

When a plaintiff in a defamation case is a limited public figure, the plaintiff must allege that the statements at issue were published with “actual malice.” *McQuoid v. Springfield Newspapers, Inc.*, 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 v. Pulitzer Pub. Co.*, 723 S.W.2d 458, 459 (Mo. App. E.D. 1986) (internal citation omitted).

Here, the Plaintiff has voluntarily chosen public employment at the children’s section of a public library, accepted public money, and chosen to express what Plaintiff considers to be “gender non-conforming” dress in that public space. Compl., ¶ 9; *see also* Compl., ¶ 7. Therefore, Plaintiff voluntarily injected himself into the public eye for the limited issue which was the subject of discussion of Ms. Homolak’s statements – i.e., the dress code in the children’s section at the library. It can reasonably be inferred that Plaintiff intended for his employment to influence the outcome of the controversial issue relating to where the limits to decency fall in relation to a transgender biological male’s attire, or for that matter any public employee’s attire, when working in the children’s section of a public library.

Because Plaintiff in this case is a limited public figure, he must allege that the statements at issue were published with “actual malice.” Plaintiff has not done so, nor can he. Ms. Homolak makes clear that she is “not asking for [Plaintiff] to be removed from his position.” *See* Compl, Ex. A. Ms. Homolak spoke up on these issues out of concern for the children who are being unwillingly exposed to drag at the public library and to call for the implementation of a dress code for library employees. Ms. Homolak’s conduct does not meet the required elements to plead a defamation claim. Therefore, Plaintiff’s defamation claims against Ms. Homolak (Counts 1-19) must be dismissed.

C. Plaintiff’s Alternative False Light Invasion Of Privacy Claims Fail As A Matter Of Law

Plaintiff’s alternative claims for false light invasion of privacy (Alternative Counts 1-19) must be dismissed because Missouri courts do not recognize such a claim. *See, e.g., Sullivan v. Pulitzer Broad. Co.*, 709 S.W.2d 475, 480–81 (Mo. 1986) (*en banc*); *Nazeri*, 860 S.W.2d at 317 (*en banc*); *Farrow*, 407 S.W.3d at 600; *State ex rel. BP Products North America Inc.*, 163 S.W.3d at 926; *Cockram*, 680 F.3d 1046. In *Sullivan*, 709 S.W.2d 475, the court refused to recognize false light invasion of privacy claims because false light claims undermine the restrictions which have kept defamation claims in check for decades. *Sullivan*, 709 S.W.2d at 478–79. The Missouri Supreme Court has made clear that claims for false light invasion of privacy are not cognizable when based on allegedly false statements, as the proper

claim is defamation. *See Farrow*, 407 S.W.3d at 600–02. Plaintiff’s attempt to bring a claim that Missouri Courts have never recognized is futile.

D. Plaintiff’s Alternative *Prima Facie* Tort Claims Fail As A Matter Of Law

Missouri severely limits its recognition of prima facie torts. Prima facie tort “is not a duplicative remedy for claims that can be sounded in other traditionally recognized tort theories, or a catchall remedy of last resort for claims that are not otherwise salvageable under traditional causes of action.” *Nazeri*, 860 S.W.2d at 315. Although Missouri recognizes such causes of action, it does not allow prima facie tort claims where (1) the factual basis for the prima facie tort claim would also support a traditional tort claim, or (2) where the prima facie tort claim would circumvent the restrictions on traditional tort claims. *See Nazeri*, 860 S.W.2d at 315–16; *see also Bandag of Springfield, Inc. v. Bandag, Inc.*, 662 S.W.2d 546, 554 (Mo. App. S.D. 1983) (*citing Tufts v. Madesco Inv. Corp.*, 524 F. Supp. 484, 486 (E.D. Mo. 1981)). As an example of the second situation, suppose that a defendant can defeat a defamation claim via a truth defense. *Rice v. Hodapp*, 919 S.W.2d 240, 243 (Mo. 1996) (*en banc*) (showing that truth is an absolute defense to defamation). The plaintiff cannot use a prima facie tort claim as a cause of action in the alternative, because such a claim would function as a defense to a successful defense, thus rendering the truth defense completely worthless. *Nazeri*, 860 S.W.2d at 315. Therefore, Missouri courts prohibit plaintiffs from raising prima facie tort claims in situations where a traditional tort claim is possible under the same facts, and where the prima facie claim would undermine the restrictions on a relevant traditional tort claim.

Here, Roberson’s alternative prima facie tort claims (Second Alternate Counts 1 through 19) are based entirely on Ms. Homolak’s allegedly defamatory statements. Plaintiff cannot use prima facie tort as a cause of action in the alternative to overcome Ms. Homolak’s defenses of truth and opinion. The correct cause of action for Plaintiff’s allegations is defamation, and Plaintiff cannot alternatively plead prima facie tort as a last-ditch effort to save his legally deficient defamation claims. The Court should dismiss Plaintiff’s prima facie tort counts.

E. Plaintiff's Civil Conspiracy Claims Fail On The Merits

A civil conspiracy claim cannot stand if there is no viable underlying tort. *Oak Bluff Partners, Inc. v. Meyer*, 3 S.W.3d 777, 781 (Mo. 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.”). As demonstrated above, all of Plaintiff’s underlying claims against Ms. Homolak are legally insufficient. Thus, his civil conspiracy claims fail as well. *See also, State ex rel. Diehl*, 162 S.W.3d at 156–57.

However, even if the Court sustains any of Plaintiff’s claims, Plaintiff cannot establish the elements required to support a viable conspiracy claim. 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. *Id.* Plaintiff’s Complaint is devoid of any specific allegations that Ms. Homolak engaged in a meeting of the minds with either Defendant Puszkur, Defendant Grace Church Saint Louis, or Defendant Barret. This is fatal to Plaintiff’s conspiracy claim.

Additionally, Ms. Homolak, Defendant Puszkur, and Defendant Grace Church had no unlawful objective when they engaged in services at the Church. ¶ 956. Nor did Ms. Homolak and Barrett have any unlawful objective when they spoke at the July St. Charles City-County Council meeting. ¶¶ 972-983. In fact, the First Amendment unequivocally protects these activities. The First Amendment protects a person’s right to expressive associate with others and to engage in the free exercise of religious beliefs. *Brandenburg v. Ohio*, 395 U.S. 444 (1969); *Scales v. United States*, 367 U.S. 203, 229 (1961); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 523 (2022). Additionally, “[t]he First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths,” (*Obergefell*, 576 U.S. at 679–80), including those views which some may find “offensive ... disagreeable ... misguided, or even hurtful” (*Snyder v. Phelps*, 562 U.S. 443, 458 (2011)).

“[T]he premise that gender identity is an idea embraced and advocated by increasing numbers of people is all the more reason to protect the First Amendment rights of those who wish to voice a different view.” *Meriwether v. Hartop*, 992 F.3d 492, 510 (6th Cir. 2021). Rather than recognizing Ms. Homolak’s

right to express a view different than his own, Plaintiff has instead alleged that Ms. Homolak is not permitted to engage in expressive association with her church or at public meetings and is guilty of conspiracy for doing so. This is erroneous and Plaintiff's conspiracy claim must be dismissed.

V. CONCLUSION

For the reasons stated above, the Court should dismiss the claims against Defendant Rachel Homolak and grant her attorneys' fees and costs as permitted under Missouri's Anti-SLAPP law.

Dated: August 15, 2024

Respectfully submitted,

GRAVES GARRETT GREIM LLC

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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2024, I caused the above and foregoing to be filed with the Court's electronic CM/ECF filing system, which automatically served counsel for all parties with a notice of filing the same. Pursuant to Missouri Supreme Court Rule 55.03, the undersigned hereby verifies that the attorney submitting this document signed the original Answer and shall maintain the original for a period of not less than the maximum allowable time to complete the appellate process.

/s/ Katherine Graves
Attorney for Defendant Rachel Homolak