

4. The Defendant may be properly served with process at their registered agent, Prep Public Schools, at 1849 Union Ave, Finance Office, Chattanooga, TN 37404.
5. This action arises from Section 1983 and the First Amendment to the United States Constitution along with the Fourteenth Amendment to the United States Constitution. The Court's jurisdiction is invoked pursuant to 28 U.S.C. §1331.
6. Venue is appropriate in this Court under 28 U.S.C. §1391(b) as the cause of action arose in Hamilton County and the Defendant may be found in Hamilton County.

II. INTRODUCTION

7. This case involves suppression of middle-school speech based upon a word or phrase regardless of its context. In short, Doe, a middle school student with intellectual and emotional impairments recognized by the school, stated "yes" when asked if another student was going to "shoot up" the school.
8. Doe did not make any credible threat to the school, and was merely joking with friends. Nonetheless, Doe was later arrested at a restaurant off school grounds, expelled from school, and charged with making threats of mass violence to a school under T.C.A. § 39-16-0517.
9. Administrators deemed this a "mass threat" and therefore triggered the "zero-tolerance policy" under Tennessee law, which necessitated reporting the incident to the School Resource Officer, and resulted in Doe, a middle school student with autism, being forcibly taken into custody, and expelled from school.
10. The zero-tolerance policy for even uttering the words "shoot" or "gun" is an unconstitutional kneejerk reaction by the legislature, and has led school administrators to make rash decisions concerning student discipline. In either instance, context is key.

11. Chattanooga Prep expelled Doe and allowed him to be placed into police custody because the phrase “shoot up” appeared in his sentence or another student’s sentence. The context was obviously not a true threat of mass violence. Doe had and has no access to weapons. Doe does not have a history of such statements or behavior. He had no plan. He had no history of violence. No one even took it as a true mass threat, except school administrators. He was exaggerating to make a point while trying to regulate his emotions.
12. The problem for Doe—and now Chattanooga Prep—is that Doe or another student near him used the phrase “shoot up.” Through a series of overreactions and woefully failed training, Chattanooga Prep believed, as its disciplinary hearing administrators put it, the use of such phrase is now just a zero-tolerance scenario in the state of Tennessee.
13. It is not. Context still matters. Doe was punished for using a word, not for how he used it in context, a violation of the First Amendment.
14. To make matters worse for Chattanooga Prep, Doe’s intellectual and emotional impairments were fully known to the school, its employees, and administrators. Furthermore, the actions of the school were in direct violation of Tennessee Code Title 49 which prohibits the use of isolation or restraint against students receiving special education in non-emergency situations.
15. The actions of Chattanooga Prep employees constituted not only a violation of Doe’s Constitutional rights, but also false imprisonment, intentional infliction of emotional distress, and battery.

III. FACTS

16. On September 25, 2024, Doe was attending class. Doe has autism, which the school is aware of, and receives special education and other support resources from the school.

17. On the day in question, Doe was speaking with friends when another student asked another student, “Is he going to shoot up the school” to which Doe replied “Yeah.”
18. Doe was merely joking, although in bad taste, it was certainly not a true threat of mass violence.
19. Despite the innocuous interaction between the other students and Doe, with serious intellectual impairments which the teacher and other school staff were completely aware of, the teacher decided to inform the School Resource Officer (“SRO”) and take statements from other students.
20. The SRO outrageously determined the interaction constituted a “mass threat” and that the school was required by law to report the incident and charge Doe.
21. Despite the clear absence of any true threat, and in the context of a student with Doe’s intellectual and emotional impairments, Doe was isolated, handcuffed by the SRO, and transported to juvenile detention.
22. As a consequence of HCDE’s actions, Doe missed significant time at school.
23. Doe’s statement was hyperbole. Here was a 14-year-old boy simply using an exaggerated statement with no understanding of any perceived severity which might occur.
24. Just because he used or acquiesced to the phrase “shoot up,” Doe was arrested and charged with making a threat of mass violence on school property.¹

Tennessee’s “Mass Violence” Law Demands Context to Avoid What Chattanooga Prep Did to Doe.

25. In 2023, in response to a school tragedy in Nashville, the Tennessee legislature made it a felony for a student to threaten “mass violence” on “school property.”²

¹ See T.C.A. § 49-6-3401(g)(5)

² T.C.A. § 39-16-517(b)(1)(addressing threat assessment).

26. The law contains important contextual limitations. It criminalizes speech that “a reasonable person would conclude could lead to the serious bodily injury...or death of two or more persons” on a school campus.”³ And to be consistent with the First Amendment, the legislature required school principals, law enforcement, and other government actors to make reasoned judgments about what is, and what is not, a threat.⁴
27. “We’re looking for someone serious about blowing up Second Avenue,” State Senator Farrell Haile, the bill’s sponsor, told reporters shortly before its passage.⁵ “We’re talking about a patient making threats to kill a physician. We’re talking about someone plotting to shoot up a school...If you’ve got a 14- or 15-year-old kid spouting off, we don’t want them arrested. We don’t want that on their record.”⁶
28. Context is key—true threats versus kids “spouting off.” In fact, Tennessee’s statute instructs government agents how to distinguish off-hand comments from genuine threats of mass violence. First, government agents must look objectively at the context to determine whether “a reasonable person” would conclude that the student’s speech could lead to the “serious bodily injury” or “death of two or more persons.”⁷ If a reasonable person would hear the speech as bluster, hyperbole, slang, or a joke, the speech is not a threat.

³ T.C.A. § 39-16-517(a)(1)

⁴ Tennessee’s statute closely tracks the U.S. Supreme Court’s framework for distinguishing Constitutionally protected speech from unprotected “true threats.” See *Counterman v. Colorado*, 600 U.S. 66 (2023).

⁵ “Tennessee youth advocates concerned about bill to criminalize threats of mass violence.” *Wadhwani, Anita. Tennessee Lookout, August 21, 2023.*

⁶ Context always has mattered under the First Amendment. Examples are innumerable including the proverbial shout of “Fire!” in the safety-related confines of a theater. Obscenities shouted at the TV are protected but the same obscenities in a stranger’s face may be “fighting words.”

⁷ T.C.A. § 39-16-517(a)(1).

29. Second, the speaker's intention must be considered. The speaker must "recklessly" threaten mass violence.⁸ A student is "reckless" if they are aware of "a substantial and unjustifiable risk" that others may perceive their speech as a threat of mass violence, but they "consciously disregard" that risk.⁹ Doe lacks the intellectual and emotional understanding to meet this definition.
30. Third, when a student has been the subject of a threat investigation, the Director of Schools shall require the student "to submit to a threat assessment" to determine whether the speech was "a valid threat."¹⁰ The threat assessment must include school personnel and law enforcement personnel who have been specifically trained "to assess individuals exhibiting threatening or disruptive behavior and develop interventions for individuals exhibiting such behavior." Clearly, such assessment requires contextual analysis.

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31. Doe was terrified and humiliated by the school's conduct. Significant to Doe was the school's questioning of him. Furthermore, Doe now has an extreme distrust and fear of law enforcement due to his mistreatment. Any child of Doe's age would have felt similarly. These consequences are exacerbated given Doe's cognitive conditions, which again the school was fully aware of.
32. Tennessee Code Title 49 (§ 49-10-1304) states that a student receiving special education services shall not be isolated or physically held unless there is an emergency situation. The staff at Chattanooga Prep, an SRO, and law enforcement all violated this protective statute.

⁸ T.C.A. § 39-16-517(b)(1).

⁹ T.C.A. § 39-11-302(c).

¹⁰ T.C.A. § 49-6-3401(g)(5).

33. Chattanooga Prep and their employees violated Doe's Constitutional rights by depriving him of liberty in an ill-advised knee-jerk reaction to Doe's statement. Such conduct is outrageous. Such conduct not only wrongfully deprived Doe of his liberty, but also subjected him to severe emotional distress.

IV. LEGAL CLAIMS

First Amendment and Section 1983

34. The First Amendment protects the right to free expression. A key exception concerns "true threats" of violence. "[T]he 'true' in that term distinguishes [true threats] from jests, 'hyperbole,' or other statements that when taken in context do not convey a real possibility that violence will follow (say, 'I am going to kill you for showing up late.')." ¹¹ Doe's speech was exactly that kind of hyperbole. His speech was not a "true" threat.

35. Nor did Doe's speech "substantially and materially disrupt" the learning environment. ¹² And he was not indecent, lewd, or vulgar with his speech.

36. Doe's teacher sent him to the office and immediately continued teaching. There was no evacuation, no instructional breaks, no material and substantial disruption.

37. Chattanooga Prep's decision to harshly penalize Doe for use of or acquiescence to the phrase "shoot up" is a deliberate choice arising from its policies and procedures, violating the First Amendment. Additionally, under Section 1983, Chattanooga Prep was deliberately indifferent by failing to train its decision-makers about application of context-dependent words and penalties for what was obviously not a true threat. This caused Doe both educational and emotional harm.

¹¹ *Watts v. United States*, 394 U.S. 705, 708 (1969) in *Counterman v. Colorado*, 600 U.S. 66, 74 (2023).

¹² *Tinker v. Des Moines Indep. Comm. Sch. Dist.*, 393 U.S. 503 (1969).

38. Defendant, under color of state law, infringed on Doe's First Amendment rights and did so with deliberate indifference.

Fourteenth Amendment and Section 1983

39. The Fourteenth Amendment guarantees the right to due process. Due process has two components: a substantive component, and a procedural component. Substantive due process is, in essence, the right to a "right" result. Procedural due process is the right to a fair procedure before the government deprives a person of liberty or property. The defendants' actions violated Doe's right to due process.

Doe's rights to both.

i. Procedural Due Process

40. Here, there was not adequate due process as there was a complete absence of any process which would have afforded Doe an opportunity to explain the events, and had a substantial likelihood of alerting Chattanooga Prep staff and law enforcement that no true threat of mass violence had occurred.

ii. Substantive Due Process

41. Turning to substantive due process, in the context of school discipline, substantive due process violations are admittedly rare. Education is not a fundamental right, and therefore the school's interference with Doe's education—"property"—will be upheld so long as the school's actions are rationally related to a legitimate state interest. But here, Chattanooga Prep's actions were arbitrary and irrational, and therefore unconstitutional.

42. No one believed Doe's words were truly threatening. Again, Doe was expelled, and then suspended simply because his words or acquiescence to the words of others contained a

magic phrase “shoot up.” Expelling a student for making a statement that no one perceived as threatening is not rationally related to any legitimate state interest.

Intentional Infliction of Emotional Distress

43. Plaintiff hereby incorporates all preceding paragraphs as if specifically restated herein.

44. Defendant’s actions constituted outrageous conduct which could foreseeably cause a reasonable person severe emotional distress.

45. Defendant’s actions have damaged the Plaintiff.

False Imprisonment and Battery

46. Plaintiff hereby incorporates all preceding paragraphs as if specifically restated herein.

47. Defendant’s actions constituted an unlawful and offensive contact with the Plaintiff which was not consented to.

48. Defendant’s actions of isolating the Plaintiff not only violated Tennessee Code Title 49 but constituted common law false imprisonment and battery.

PRAYER FOR RELIEF

For relief, Plaintiff seeks:

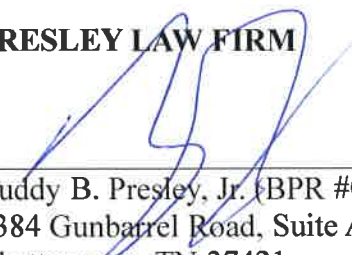
- A. Declaratory relief of Constitutional violations.
- B. Compensation for humiliation, mental anguish, and damage to his reputation for which he seeks recovery.
- C. Nominal damages for Constitutional violations.
- D. Attorneys’ fees and costs. 42 U.S.C. §1988(b); 42 U.S.C. §1983.¹³

¹³ *Id.* A plaintiff who establishes liability for deprivations of constitutional rights actionable under 42 U.S.C. § 1983 is entitled to recover compensatory damages for all injuries suffered as a consequence of those deprivations. *Smith v. Wade*, 461 U.S. 30, 52 (1983) (“Compensatory damages ... are mandatory.”). See also *Carey v. Phiphus*, 435 U.S. 247, 266-67 (1978).

49. A jury is demanded for all claims triable by jury.

Respectfully submitted, this 13th day of January 2025.

PRESLEY LAW FIRM



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