IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

JOHN DOE, A MINOR,	)	
THROUGH HIS PARENT	)	
AND GUARDIAN,	)	
MARY DOE.	)	
	)	
	)	
PLAINTIFF.	)	
	)	
VS.	)	**NO. _____**
	)	**JURY DEMANDED**
MARION COUNTY, TENNESSEE;	)	
MARION COUNTY SCHOOL DISTRICT	)	
	)	
DEFENDANT(S).	)	

COMPLAINT

COMES THE PLAINTIFF, JOHN DOE, through his parent, Mary Doe, and counsel, submitting this Complaint and showing:

I. PARTIES, JURISDICTION, AND VENUE

1. The Plaintiff is John Doe who is a citizen and resident of Marion County, Tennessee, where he attends public school. His case is brought through his natural parent, Mary Doe.

2. The Defendant(s), Marion County, Tennessee, and its school district, the Marion County School District, (hereafter collectively "MCSD"), is a county government and its related school district, organized under the laws of the State of Tennessee, providing public education to students of Marion County. It receives federal funds.

3. 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.

4. Venue is appropriate in this Court under 28 U.S.C. §1391(b) as the cause of action arose in Marion County and the Defendant may be found in Marion County.

II. INTRODUCTION

5. This case involves suppression of middle-school speech based upon a word *regardless of its context*.

6. The word "bomb" has many meanings. Certainly, "bomb" can refer to an explosive device capable of causing mass violence. To "bomb" a test is to fail it. Referring to another as "the bomb" is a compliment. Intoxicated persons get "bombed." And, in this case, "bomb" can be used for hyperbole or exaggeration to make a point, as when Doe said to a classmate, "stop tapping that pencil before I bomb you."

7. MCSD expelled John Doe because the word "bomb" appeared in his sentence. The context was obviously not a true bomb threat. Doe had no bomb. He had no bomb plan. He had no history of bombs. No one even took it as such. He was exaggerating to make a point while trying to understand a lesson.

8. The problem for Doe—and now MCSD—is that Doe used the *word* "bomb." Through a series of overreactions and woefully failed training, MCSD believed, as its disciplinary hearing officer put it, "the *use* of the word 'bomb' is now just a zero-tolerance thing in the state of Tennessee."

9. 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.

III. FACTS

"Stop Tapping that Pencil Before I Bomb You"

10. On August 20, 2024, while working on an assignment in Mr. Pelphrey's middle school English class, John Doe, age fourteen, told his friend and fellow football player to "stop tapping that pencil before I bomb you." Doe's teammate was not afraid.

11. Mr. Pelphrey heard the remark and sent Doe to the principal's office. "We have to take things like this seriously," Mr. Pelphrey wrote on his office referral form, as if the context did not matter. He documented Doe's words as "bomb threat."

12. Doe's statement was *hyperbole* between friends. He had no literal bomb, as a search would soon obviously reveal. He had no history of bombing, no knowledge, tools, or plans whatsoever to detonate any bomb. Here was a 14-year-old boy simply using an exaggerated word to his teammate about aggravating noises while trying to focus on schoolwork.

13. Mr. Pelphrey was not afraid of Doe. In fact, he told Doe to walk unescorted to the principal's office. He did, and Mr. Pelphrey carried on his class as normal.

14. Administration was not put on any high alert either. Having strolled to the principal's office, Doe then waited fifteen or so minutes for Principal Nelson to arrive with a School Resource Officer. They asked Doe what he had said. Doe repeated that he had told his friend to "stop tapping that pencil before I bomb you."

15. Just because he used the word "bomb," Doe was then arrested and charged with making a threat of mass violence on school property. Principal Nelson unilaterally delivered a 180-day expulsion. No threat assessment was completed before Principal Nelson expelled Doe.[1]

[1] See T.C.A. § 49-6-3401(g)(5).

Tennessee's "Mass Violence" Law Demands Context to Avoid What MCSD Did to Doe

16. Last year, 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]

17. 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]

18. "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]

19. 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

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

[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 innumerous 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."

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.

20. 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]

21. 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.

The Disciplinary Appeal

22. MCSD has officially adopted a "Student Code of Conduct," Board Policy 6.313, with an issued date of July 8, 2024. Under Policy 6.313, a "Category IV" offense is "zero tolerance," with a penalty of "expulsion," and it includes "4. Bomb threat." The policy does not address context.

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[7] T.C.A. § 39-16-517(a)(1).

[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).

23. On August 23, 2024, MCBE convened a disciplinary hearing authority ("DHA") to hear Doe's appeal of his expulsion. Neither Principal Nelson nor Mr. Pelphrey appeared.[11]

24. Doe did appear. He repeated to the DHA what he had said to his friend, "stop tapping that pencil before I bomb you." Referring to Tennessee's mass violence law, the presiding officer, David Smith, told Doe: "Basically, if you say something like that in today's society and today's culture, the school *has* to take that as a threat. The use of the word 'bomb' is now just a zero-tolerance thing in the state of Tennessee." Putting it in football terms, Smith said, "it's like in football when they want to make sure there's no hand checking by defensive backs, they want to focus on that. It's a new focus." That "new focus," Mr. Smith reiterated, meant that Doe's "s*aying* the word 'bomb' automatically set off the radar."

25. That's wrong. Context still matters. In fact, Doe's mother, scared of the situation for her son, and having actually read the statute, stated: "That is *not* what the law states."

26. Mr. Scott Evans, a Tennessee Homeland Security agent who initiated, but did not complete, a threat assessment, arrived at the hearing. Evans stated that *no determination had been made about whether Doe posed any threat*. Then Evans talked about a different student who watched cartoons and murder shows, prompting Doe's mother to state the obvious: "That's a different kid."

27. Listening to the absurdity that Doe's statement could be considered mass violence, with Doe beginning to cry about having been arrested and expelled, one of the board members blamed the *legislation* for Doe's situation: "This is our legislature's kneejerk reaction," and it is just "how the law is written out."

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[11] Pelphrey submitted a statement saying: "student shouted I'm going to bomb this place if you don't stop in response to a student tapping a pencil on the desk."

28. That too is incorrect. The kneejerk reaction is *the school district's*. The school district criminalized a *word* where the statute criminalizes a *context* in which the word is used.

29. Despite the absurdity, the DHA did not void all discipline. It instead reduced Doe's expulsion to a one-semester placement at the Marion County Alternative School.

30. The alternative school is a vastly inferior education. It is a small, separate building consisting of two rooms ("long term" and "short term") where "lessons" consist of the students logging onto a computer. Assigned to "long term," a monitor sits in the room while the students sleep and/or work on the computerized lessons. There is no peer interaction on lessons and there is no live instruction.

31. Additionally, due to being placed in the alternative school, MCSD stripped Doe of participating in any extracurricular programs including sports. He is banned from all school property other than alternative school, meaning he is removed from sports, extracurriculars, school functions, and all school events. This harm Doe both educationally, as well as emotionally, stigmatizing him, and causing him to suffer deep humiliation and embarrassment.

32. On August 29, 2024, Doe timely appealed the DHA decision to MCSD's director of schools, Dr. Mark Griffith. As the DHA had instructed, Doe submitted his appeal to MCSD's Director of Schools, Dr. Mark Griffith. Doe's parent requested "to review in writing the procedures for this appeal."

33. On September 5, 2024, Griffith advised by email that after his review, "I am *going to* uphold the recommendation of the committee." (emphasis added). Doe's parent asked whether an in-person appeal could occur before any decision—that way, he could hear directly from Doe himself. Dr. Griffith obliged, hearing from Doe himself on September 9, 2024.

34. At the September 9 meeting, Doe and his representatives pointed out the issue of context, including how he was not escorted to the office because no one really believed he had an explosive device.

35. Unfortunately, just like the principal and the DHA, Dr. Griffith operated under the misconception that words—regardless of their context—are now criminalized. Dr. Griffith said: "this young man said the *word* "bomb." Doe's mother said that students are unaware that MCSD has criminalized certain words regardless of context—emphasizing that Doe is a musician at the church, a devotional leader. Doe spoke too—again through tears, he said: "I've never been in trouble like this. I am a good kid….I hope some people can see that I am…I just want to go back to school."

36. Seemingly moved, Dr. Griffith asked the status of Doe's juvenile court proceedings. The family advised that an appearance would occur September 12, 2024. Dr. Griffith then stated that he would "talk with the court officials" and make his decision "in writing" on the Friday after that hearing. This decision would be delivered to Doe's mother, reiterated Dr. Griffith, in writing, on that Friday.

37. But Dr. Griffith did not deliver his decision that Friday and, to date, still has not. Nor did Dr. Griffith tender the appeal to MCSD's school board. As a result, Doe's appeal was never heard by the Board. Doe remains stuck in alternative school, all extracurricular activities lost, no live teachers, a vastly inferior education, banned from school property. In short, MCSD stigmatized him as a violent threat even though it knew full well he was not – all because of his word choice.

IV. LEGAL CLAIMS

First Amendment and Section 1983

38. 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.')."[12] Doe's speech was exactly that kind of hyperbole. His speech was not a "true" threat.

39. Nor did Doe's speech "*substantially and materially disrupt*" the learning environment.[13] And he was not indecent, lewd, or vulgar with his speech.

40. Doe's teacher sent him to the office unescorted and immediately continued teaching. Doe waited more than 15 minutes for his administrator and the school resource officer to meet him. There was no evacuation, no instructional breaks, no material and substantial disruption.

41. MCDE's decision to harshly penalize Doe for use of the word "bomb" is a deliberate choice arising from its policies and procedures, violating the First Amendment. Additionally, under Section 1983, MCDE 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.

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

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

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

Fourteenth Amendment and Section 1983

43. 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.[14] The defendants' actions violated Doe's rights to both.

i. Procedural Due Process

44. On August 29, 2024, following the DHA hearing, Doe's parent made a timely written appeal. She addressed this, as instructed by the disciplinary hearing official, to the director of schools, Mark Griffith.

45. Under Tenn. Code Ann. §49-6-3401(c)(6), after a disciplinary hearing authority hears an appeal, its decision may be appealed to the board of education who "may affirm or overturn the decision of the hearing authority with or without a hearing before the board." A local school board policy may require an appeal to the director of schools first.

46. Here, Doe made the appeal to the Director of Schools as instructed by the DHA. The Director held an in-person meeting and advised that *he* would make a decision, in writing, by a date certain. However, a decision *not* given by Dr. Griffith. And MCSD's school board either did not receive the appeal or, if Dr. Griffith did forward it, MCSD's school board ignored it. Either way, Doe remains captive to a vastly inferior education at the alternative school, lacking even live teachers, while banned from school property, extracurriculars, and events.

[14] *Seal v. Morgan*, 229 F.3d 567 (6th Cir. 2000).

ii. Substantive Due Process

47. 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 the school's actions are rationally related to a legitimate state interest.[15] But here, MCDE's actions *were* arbitrary and irrational, and therefore unconstitutional.

48. No one believed Doe's words were truly threatening. Again, Doe was expelled simply because his words contained a magic word, "bomb." Expelling a student for making a threat that no one perceived as threatening is not rationally related to any legitimate state interest.

49. For relief, Plaintiff seeks:

a. Declaratory relief of the Constitutional violations.

b. Injunctive relief to include return of Plaintiff to his regular school, removal of the alternative school discipline, and training for school officials on handling context-specific language in schools consistent with T.C.A. § 39-16-517(b)(1) and the "true threat" doctrine.

c. Compensation for humiliation, mental anguish, and damage to his reputation.[16] for which he seeks recovery.

d. Nominal damages for the Constitutional violations.[17]

e. Attorneys' fees and costs. 42 U.S.C. §1988(b); 42 U.S.C. §1983.

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[15] *Id.*

[16] 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.").

[17] *Carey v. Phiphus*, 435 U.S. 247, 266-67 (1978).

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

Respectfully submitted,

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