



October 17, 2024

Via email

Charles Broughton
Superintendent
Daviess County Public Schools
1622 Southeastern Parkway
Owensboro, KY 42303
[REDACTED]

Wendy Duvall
Superintendent
Owensboro Public Schools
450 Griffith Avenue
Owensboro, KY 42301
[REDACTED]

RE: Cease and Desist Unlawful Use of Taxpayer Resources for Political Advocacy and First Amendment Violations

Superintendents Broughton and Duvall:

I am writing on behalf of concerned community members who believe that the Daviess County and Owensboro Public Schools' joint board meeting scheduled for tonight at 6 p.m. regarding the Amendment 2 ballot measure will be in violation of Kentucky law, and that certain restrictions on speech and expression have been imposed on attendees and on social media in violation of the First Amendment.

We write to let you know that the meeting has been reported to the Attorney General as a potential violation of Kentucky law, and to demand that you lift the content and viewpoint-based speech restrictions at the meeting and on related social media posts.

Background

The events in question were announced on social media by both Districts. Public comments were turned off on both posts.



Improper Use of Public Resources for Political Advocacy

As you are already aware, Kentucky’s Attorney General has explicitly stated that “the use of school resources to advance a political viewpoint—even one viewed by its proponents as pro education—violates Kentucky law,” emphasizing “the legislative intent to divorce politics from the public schools.”¹ The KSBA has taken a clear position in opposition to Amendment 2. Therefore, hosting a publicly funded meeting to feature a presentation from KSBA on this issue inherently constitutes the use of taxpayer resources to oppose a political ballot measure.

The meeting is being reported to the Kentucky Attorney General’s office. Daviess County and Owensboro County residents concerned with this action will also be referred to Kentucky’s Office of Educational Accountability, where complaints can be filed against any school board member who “[w]illfully misuses, converts, or misappropriates public property or funds[.]” KRS160.180(3)(a)(6).²

First Amendment Violations

Your Facebook post announcing the event states that “those in attendance will not be permitted to have signs, shirts, etc. promoting any position related to this ballot measure.” Such restrictions are a clear violation of your constituents’ free speech rights, as “[i]t is well-established that the First Amendment’s hostility to content-

¹ <https://www.ag.ky.gov/Press%20Release%20Attachments/08.13.2024%20Amend%20%20Advisory.pdf>

² <https://apps.legislature.ky.gov/LRC/OEA/Complaints/>

based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic.” *Reed v. Town of Gilbert*, 576 U.S. 155, 169 (2015).

The decision to ban expressions of opinion on shirts or signs based solely on their content constitutes a content-based speech restriction that will not withstand constitutional scrutiny. We are prepared to represent any individual—whether for or against Amendment 2—who is denied entry or forced to remove clothing or non-disruptive signs based on these arbitrary restrictions.

Similarly, the Districts’ handling of public comments on social media violates the First Amendment. Government officials may be held liable when they suppress free expression on social media. *Lindke v. Freed*, 144 S. Ct. 756, 765 (2024) (recognizing, among other things, that “public schools” engage in state action when they operate social media pages). This is because official social media pages are “public forums” for purposes of the First Amendment.³

Both Districts turned comments off on the Facebook posts announcing this meeting—an act that appears to be unprecedented, at least for any recent posts. We demand that the comments be re-enabled on the Facebook posts in question to ensure the public’s right to free expression is preserved.

Cease and Desist

We urge Daviess County Public Schools and Owensboro Public Schools to immediately cease the use of public resources for political advocacy, rescind the unconstitutional speech restrictions for the October 17 meeting, and re-enable public comments on your social media posts.

I encourage you or your legal counsel to contact me directly if you have any questions.

³ *People for the Ethical Treatment of Animals v. Tabak*, 2024 WL 3573661 (D.C. Cir. July 30, 2024) (citing *Garnier v. O’Connor-Ratcliff*, 41 F.4th 1158, 1178–79 (9th Cir. 2022), *vacated and remanded on other grounds*, 144 S.Ct. 717 (2024); *Davison v. Randall*, 912 F.3d 666, 682 (4th Cir. 2019); *Knight First Amend. Inst. at Columbia Univ. v. Trump*, 928 F.3d 226, 237 (2d Cir. 2019), *judgment vacated on other grounds*, 141 S. Ct. 1220 (2021).

Sincerely,

A handwritten signature in black ink, appearing to read 'Dean McGee', with a long horizontal flourish extending to the right.

Dean McGee

