

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

DAVID WOOLSEY, individually,

Plaintiff,

vs.

Civil Action No. 2:18-cv-00745

RICHARD OJEDA, individually,

Defendant.

COMPLAINT

This complaint, brought pursuant to 42 U.S.C. Section 1983, the First Amendment to the United States Constitution, arises out of the defendants' commission of retaliation against the Plaintiff's First Amendment rights on or about April 20 and 23, 2018 in or about Logan County, West Virginia, within the Southern District of West Virginia, Charleston Division.

JURISDICTION

This Court has jurisdiction over this matter pursuant to 28 U.S.C. 1331 and 1343.

PARTIES

1. The Plaintiff, David Woolsey, was at all times relevant hereto a resident of Logan County, West Virginia.
2. The Defendant, Richard Ojeda was at all times relevant hereto a resident of Logan County, West Virginia, having a last known address of 511 Bungalow Woods Drive, Logan, West Virginia 25625. Defendant Ojeda was at all times relevant hereto a member of the West Virginia Senate. He is named herein in his individual capacity. The said address is the location Defendant Ojeda engaged in his retaliatory actions, as alleged below.

FACTS

3. On Friday, April 20, 2018, the Plaintiff, David Woolsey was employed by McCormick's Furniture Store in Logan, Logan County, West Virginia. He been employed by McCormick's for approximately 10 years. His wages were \$8.75 per hour. He worked as a laborer, moving furniture around; unloading furniture trucks and assisting with the delivery of furniture. He had a good personal relationship with his employer, David McCormick, who had previously trusted Plaintiff enough to co-sign a loan for him. Plaintiff was considered one of Mr. McCormick's best employees during that period, and was popular with McCormick's customers.

4. Mr. Woolsey never graduated from high school due to the fact that his father developed a brain tumor when he was in 11th grade. Mr. Woolsey was forced to immediately enter the workforce when his father began his treatment. He went to work in Charlotte, North Carolina instead of finishing his 12th grade year of school. His father passed away while Plaintiff was working. Plaintiff is now 50 years old, and has worked manual labor, or ministerial jobs, since that time. He is married and has three children. His goal in life has been to ensure that his children end up better-off. His oldest son is in college. His younger children are in 11th and 12th grade, and are straight-A students.

5 On Friday, April 20, 2018, the Plaintiff and a co-worker left McCormick's Furniture Store in Logan, West Virginia, heading to Huntington, West Virginia, with a furniture delivery. They began to drive their commercial box truck towards Huntington using Route 10, which runs between Logan and Huntington. Route 10 is a rural, two-lane road. It is an extremely curvy road, with few places to pass. It has a reputation as a very dangerous road, with frequent severe wrecks.

6. The speed limit is 55 mph on Route 10. The Plaintiff and his co-worker, John Miller, were traveling at close to the speed limit, possibly slowing some around curves as necessary. There were three or four cars in front of them traveling in the same direction. The Plaintiff was sitting in the front passenger seat. His co-worker, John Miller, was driving. They had worked together for approximately one year.

7. As they were driving towards Huntington on Route 10, the Plaintiff's coworker mentions that someone is coming up behind them driving extremely fast. At that point, a red two door Jeep Wrangler JK passed their truck in a no passing zone with double yellow lines, obviously speeding. As the Jeep speeds past, the Plaintiff sees "Ojeda for Congress" stickers covering the Jeep's hard-top windows, as well as a blue West Virginia Senate vanity plate which reads "SAPPER."¹ Plaintiff immediately stated to his coworker, "that's Senator Ojeda." The two men then observe Defendant Ojeda pass another three or four cars who were in front of them. That entire stretch of road was a no-passing zone with double yellow lines. No video was filmed by the Plaintiff at this time.

8. Initially the Plaintiff believed there was an emergency of some sort, or that Sen. Ojeda was heading to the hospital.

9. However, a short time later, the Plaintiff and his co-worker approach Harts Middle School near Harts, West Virginia. They then see Defendant Ojeda, and his red Jeep, on the side of the road putting one of his campaign signs in front of the school.

¹ In the U.S. Army, "Sappers" are combat engineers or other personnel who support the front-line infantry. See <https://www.goarmy.com/soldier-life/being-a-soldier/ongoing-training/specialized-schools/sapper-leader-course.html>

10. Plaintiff and his co-worker realized that Defendant Ojeda passed them, and other cars, illegally and recklessly, in order to put out political signs, and not in response to an emergency.

11. Plaintiff was not involved in any political campaign at this time. At one time, several years ago, Plaintiff had personally known Defendant Ojeda. However, they had a falling out over personal issues involving the friendship of their daughters, which culminated in Defendant Ojeda threatening to travel to Plaintiff's home and "beat him up." They never spoke again. The Plaintiff was not involved in any political campaigns after that time. His political activities mostly consisted of merely placing political yard signs in his own yard. Plaintiff was not engaged in actively campaigning for the 2018 elections. He was not searching out Defendant Ojeda in any way or attempting to catch him on video. Plaintiff did however, have a personal dislike for Mr. Ojeda stemming from his last conversation with him several years prior. Based on experience, Mr. Woolsey held a personal opinion that Mr. Ojeda was unfit for public office.

12. Plaintiff's opinion was reinforced now that he saw Sen. Ojeda flagrantly violating traffic and safety laws on a dangerous stretch of road in the course of placing campaign signs along the highway.

13. At all relevant times, Defendant Ojeda was a sitting member of the West Virginia Senate, as well as a candidate for West Virginia's 3rd U.S. Congressional District.

14. Plaintiff and his co-worker continued their journey down Route 10.

15. A short time later, Defendant Ojeda appeared behind the Plaintiff and John Miller again. Again, Defendant Ojeda was approaching them very quickly. At that time, Plaintiff

pulled out his smart phone and turned it on so that he could film Defendant Ojeda illegally passing them for a second time.

16. The phone's camera was initially turned to Plaintiff's face, and Plaintiff stated, "He's back and he's gonna pass us like a bat out of hell on a double line in a curve . . ." then he panned the camera to show Defendant Ojeda's Jeep indeed passing the box truck on a double yellow line, in a curve, on Route 10.

17. The Plaintiff stated, "That, is your State Senator, folks . . ." as the camera showed Ojeda speeding away down the road, through a curve.

18. Ojeda's Jeep then disappears from sight, driving quickly towards Huntington.

19. At the time Defendant Ojeda's Jeep was filmed, the McCormick's box truck was traveling at approximately the speed limit of 55 miles per hour. The Plaintiff's video does not indicate any braking or acceleration above, or below, the speed limit. It only shows Sen. Ojeda disappearing from sight, driving much faster than the speed of the truck.

20. The box truck driven by the Plaintiff's coworker did not brake or accelerate in any way to attempt to elicit a reaction from Defendant Ojeda. They were merely driving as they normally would drive. They were not following, or seeking Sen. Ojeda out in any way. They were on their way to a delivery in Huntington. The Plaintiff's coworker, John Miller, who was driving the box truck, had no political interest in Defendant Ojeda one way or the other.

21. After arriving at Huntington, when the Plaintiff had a cell phone signal again, Plaintiff posted the video to his personal Facebook page, where it would have been immediately seen by all of his Facebook friends. Plaintiff meant the video as a political expression: he wanted

people to know that their state senator, Defendant Ojeda, was a reckless driver who flouted traffic and safety laws, and that he was therefore unfit for political office.

22. The Plaintiff then went about his day and continued to do his job.

23. Later that night, after 11:00 p.m., the Plaintiff was at home in bed. He received a message from a friend that he needed to wake up and take a look at Sen. Ojeda's official Facebook page.

24. The Plaintiff did so and observed a live Facebook video being filmed by Sen. Ojeda and published to the "OjedaForCongress" Facebook page, a page with over 50,000 followers. In the video, Sen. Ojeda was filming himself sitting in his home office in Logan, Logan County, West Virginia, discussing the Plaintiff. As with many of his videos, Defendant Ojeda positioned himself with the backdrop of his military decorations.

25. In the video, Defendant Ojeda tells the audience "Let me go ahead and tell you all, that you're gonna see a video coming out from some absolute oxygen thief . . .," referring to the Plaintiff (presumably stating that the Plaintiff doesn't deserve to live), ". . . showing me passing him on a double yellow line."

26. Defendant Ojeda continued:

Yes, well I did do that . . . I sometimes speed a little. I know that's probably not right. I'm traveling all across the 3rd congressional district and sometimes find myself going a little faster than I should. Think about this ladies and gentlemen, this guy posts this video and he says, 'oh, this is your Senator speeding like this You know what, first off, why did he have his camera ready? The reason why he had his camera ready, and the reason why I passed him over a double yellow line, is because he was doing - with the way he was driving - he knew I was behind him, and he was speeding up, slowing down; he was doing what he was doing specifically to make me either hit him in the rear of his vehicle, or make me go around him, which is what I did. As soon as I saw an opportunity, I went around him and I took off. I did everything in my power to get away from that guy. But he had his camera ready. And the reason he had his camera ready is

because he knew he knew what he was doing what he was doing specifically to get me to pass him on that double line so he could say 'look at Ojeda out here doing these horrible things.

Let me tell you something: McCormick's. McCormick's. This guy works for you. He's out there driving your truck, and he's out there driving like that. So I will tell you right now, I'm gonna go to McCormick's and I'm gonna let them know point blank. You know, that is unacceptable. If that guy's got a problem with me, he can deal with it. He knows exactly where I live. Okay?

But make no mistake. This guy's mad at me because I beat his person in the last political race. I beat the guy that had his favorite flavor of shoe polish. Is that's exactly what it is. So that's exactly what happened right there.

I'm gonna be honest with you ladies and gentlemen, I'm not gonna put up with nobody's garbage. I'm trying to run for Congress. Yes I am. But that doesn't mean I gotta sit and let people do stupid things.

That guy right there was jeopardizing my safety on the road, and he did it, once again; remember this people, why on Earth did he have his camera ready . . . when I drove by him? Because he knew. He was trying to figure out how he could get me to do something he could video to say, 'oh look at this.' And it was really . . . the way he did it - 'look guys, look at the way your state senator drives. Imagine how he's gonna drive when he gets to Congress.' Really, really? That's kind of an idiotic statement to make. Do congressman ram people off the roads? I don't know.

Once again, that's the caliber of person that this is. It's absolutely sickening. This guy's mad because obviously, he hasn't exactly made his parents proud in life. So he wants to do everything in his power to throw stones at someone like myself. That's the kind of garbage that goes on in these places where politics is sometimes as dirty as it gets. So that's what I wanted to do. I wanted to get on here and let people know, that you're gonna see a video of Richard Ojeda speeding past someone on a double line. Yes I did it. But that was because the person driving, and recording the video, was being a complete jackass on the road, and I'm not gonna put up with that garbage.

So I wanted to make sure that got out. I hope he sees this video. And make no mistake about it, I hope the people that are running McCormick's, that's letting this guy drive their truck all over the place, sees this video as well. Airborne. Sappers clear the way. Airborne all the way.

27. Thus, in the span of a four-minute video, in retaliation and in response to the Plaintiff's Facebook video, Defendant Ojeda called the Plaintiff out publicly on his official Facebook page:

- a. calling him an "oxygen thief;"
- b. calling him a partisan political operative who was seeking him out that day in order to videotape him;
- c. calling him a "shoe-licker" for an opposing political candidate;
- d. naming his place of employment, directly and indirectly calling for him to be fired and for pressure to be applied to his employer;²
- e. bringing up the Plaintiff's deceased parents in a dishonorable, disrespectful, and hurtful way;
- f. accusing the Plaintiff of committing crimes, while simultaneously admitting that he had committed crimes.

28. Defendant Ojeda's allegation that the Plaintiff was driving the box truck was false. Plaintiff was a passenger.

29. Defendant Ojeda's allegation that the Plaintiff was slowing down, then speeding up, in the box truck in order to elicit him to pass on a double yellow line was false. The video clearly shows the box truck maintaining a constant speed, which appears to be consistent with the speed limit. Moreover, the Plaintiff was not the driver of the truck. The actual driver of the truck, John Miller, was subsequently determined by his employer to have driven properly that day, and remains employed by McCormick's Furniture Store.

² At least one of Defendant Ojeda's Facebook followers immediately called for a boycott of McCormick's Furniture Store on social media.

30. Defendant Ojeda's allegation that the Plaintiff was a partisan political operative, seeking him out that day, and attempting to catch him on video, was false. Plaintiff was merely doing his job and happened to observe Defendant Ojeda, a government official driving a very high-profile vehicle (with a State Senate license plate and vanity tag), driving recklessly. Plaintiff was, and is, a legitimate constituent of Sen. Ojeda who chose to speak-out on Facebook about the behavior he had witnessed.

31. In his video, Defendant Ojeda accuses the Plaintiff of not making his parents proud in life. That claim is false, outrageous, malicious and despicable. The Plaintiff was forced to essentially replace his father in his last year of high school in order to help support his family, including his mother. He made his family very proud. Plaintiff is confident that his father was looking down on him with pride for the way he has supported his family, and continues to support his family.

32. In his video, Defendant Ojeda accuses the Plaintiff of supporting one of his opponents in the last election, because that candidate had Plaintiff's "favorite flavor of shoe polish." This statement is false. Plaintiff's prior participation in Defendant's last election was very limited, consisting mostly of putting an opposing candidate's sign in his own yard. That a sitting state senator and congressional candidate would keep track of persons who are displaying his opponent's signs, and then identify and insult them publicly for doing so, is harmful not only to the Plaintiff, but to the electoral process itself. Ojeda's actions qualify as a retaliation against the Plaintiff for the most basic political expression utilized by everyday working West Virginians: merely putting out a sign in their yard.

33. In his video, Defendant Ojeda attacks the Plaintiff for posting the video on Plaintiff's own personal Facebook page. He viciously attacks him personally. He tears him apart emotionally. He uses his Facebook page, and 50,000 followers, to pressure Plaintiff's employer to take adverse action against the Plaintiff, including for the false accusation of reckless driving. In reality, Sen. Ojeda was unquestionably the reckless driver that day, as demonstrated by the video evidence.

34. The next day, on Saturday April 21, 2018, Sen. Ojeda personally called McCormick's Furniture Store, the Plaintiff's employer, and spoke with the owner, David McCormick, as he had threatened to do in his retaliatory video.

35. The following Monday morning, on April 23, 2018, which was the next business day, the Plaintiff arrived at work like always, and began to unload several furniture trucks. He was called into Mr. McCormick's office around noon. Mr. McCormick, the owner of the store, tells the Plaintiff, "you shouldn't have posted the video." He tells him, "you are interfering in a federal election." He fires the Plaintiff.

36. Defendant Ojeda then continued to attack the Plaintiff on Facebook. For example, one concerned citizen stated, "With all due respect, you wait until you have a passing lane." Sen. Ojeda responded, again on his official Facebook page, "I understand that. But that guy (referring to the Plaintiff) is garbage."

37. Other citizens have since come forward, who have observed Sen. Ojeda flagrantly violating traffic laws consisting with his behavior on April 20, 2018. One individual stated, "the man passed me going to Charleston on 119 during the last senate session, I was going 68 and he

went around me like I was doing 28, he doesn't have the right to drive on West Virginia roads contrary to law just because he is a politician.”

38. Another individual, commenting directly to Sen. Ojeda on Facebook, stated, “You passed us one Friday night (I believe it was the Friday of the week the teachers strike ended) weaving amongst the cars on 199 south of Charleston WV. We live in PA but visit Mingo County about twice each month to visit children. You passed us on the right (we would have moved over had we had time to get out of your way) at a high rate of speed almost hitting us and running the car in the right lane off the road. Didn't know it was even you until we investigated the blue congressional plate with “Sapper” on it. If you are gonna drive like an arse you might want to do it “incognito.”

39. The Plaintiff has had an outpouring of support from the community, and from people across the country. However, he is still without a job. Jobs are difficult to find in Logan County, West Virginia. Especially for someone who is 50 years old without a high school or college education. He is a West Virginia “working man” who was viciously attacked and bullied by his own state senator.

COUNT ONE - CIVIL RIGHTS VIOLATION UNDER 42 U.S.C. 1983

FIRST AMENDMENT VIOLATION

40. Plaintiff incorporates by reference all of the previous paragraphs.

41. “Discussion of public issues” and “debate on the qualifications of candidates” for public office have always been “integral to the operation of the system of government established by our Constitution.” Buckey v. Valeo, 424 U.S. 1, 14, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (quoted by Rossignol v. Voorhaar, 316 F.3d 516, 521-522 (4th Cir. 2003)).

42. The First Amendment therefore “affords the broadest protection to such political expression in order ‘to assure [the] unfettered interchange of ideas,’” since “[i]n a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential.” Buckley, 424 U.S. at 14-15, 96 S.Ct. 612 (citations omitted).

43. When the Plaintiff posted his April 20, 2018 Facebook video to his personal Facebook page showing Senator Ojeda driving recklessly, and commenting “This is your Senator, folks,” he was expressing his First Amendment political expression about the fitness, or unfitness of Defendant Richard Ojeda for political office. Such an expression isn’t just “some attenuated or penumbral First Amendment right,” but rather “its heart.” See Rossignol at 522.

44. When Senator Richard Ojeda posted his four minute video on his official Facebook account on April 20, 2018, and when Ojeda personally called Plaintiff’s employer on April 21, 2018, in response to the Plaintiff’s video, Defendant Ojeda’s actions were taken in retaliation against the Plaintiff’s political expression and criticism, including the placing of a yard sign in his yard.

45. “Retaliation by public officials against the exercise of First Amendment rights is itself a violation of the First Amendment.” Fraternal Order of Police Hobart Lodge #121, Inc. v. Hobart, 864 F.2d 551, 553 (7th Cir. 1988); see also Reichert v. Draud, 701 F.2d 1168, 1170 (6th Cir. 1983); Perry v. Sindermann, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972) (quoted by Davison at 364).

46. Defendant Ojeda’s retaliatory video and phone call were perpetrated under color of state law. Section 1983 includes within its scope apparently private actions which have a “sufficiently close nexus” with the State to be “fairly treated as that of the State itself.” Rossignol

at 524 (off duty police officers out of uniform found to be acting under color of law; *see also* Davison v. Loudoun County Board of Supervisors, Memorandum of Decision, 1:16-cv-932 (July 25, 2017 E.D. Va.) (finding legislator’s Facebook page censorship was First Amendment retaliation under color of law).

47. Facebook is a popular social media website, *see* Packingham v. North Carolina, 137 S. Ct. 1730, 1735 (U.S. 2017), that permits public figures to create “pages” through which they may interact with the interested public.

48. Senator Ojeda maintains a Facebook page entitled “OjedaForCongress,” over which he exerts plenary control. He uses it as his official Facebook account, both as a member of the West Virginia Senate, and as a candidate for the 3rd congressional district. He uses the Facebook page to share information with his constituents, as well as for campaign purposes. In the “About” section of the OjedaForCongress Facebook page, the page mentions both that he is a West Virginia State Senator for District 7, and that he is currently running for the U.S. House of Representatives for West Virginia District 3. In numerous posts on the OjedaForCongress Facebook page, it features quotes signed “WV Sen. Richard Ojeda.” In hundreds of posts on the said Facebook page, Defendant Ojeda discusses political issues both in his capacity as a sitting state senator, as well as a congressional candidate, and invites discussion from members of the public on the page. Numerous posts on the page promote and invite attendance at events related to Defendant Ojeda’s work as a senator. In some posts, he films himself on the floor of the legislature, or posts live videos from the floor of the legislature. Many of the posts are expressly addressed to the constituents of his district. Ojeda frequently, if not constantly, uses the comments section of his posts to engage with his constituents. Moreover, upon information and

belief, Defendant Ojeda engages in the practice of censoring the discussions by way of blocking those who disagree or criticize him.³

49. Defendant Ojeda also has a personal Facebook page. The retaliatory video was not posted on his personal page, but rather on his official Facebook page.

50. The “totality of the circumstances” show that the retaliatory video and subsequent phone call can be traced to the conduct of a government official. There exists a “requisite nexus” with Ojeda’s “public office” to be fairly attributable to the government. *See* Rossignol at 523. Ojeda’s identity as a state senator played a role in the retaliation against the Plaintiff insofar as his actions were facilitated by his apparent authority and status as a legislator. As in Rossignol, Ojeda’s actions “arose out of public, not personal, circumstances.” Rossignol at 524; *see also* Davison at 17 (“the Facebook page was self-evidently for the purpose of Defendant’s election to public office”). The said Facebook page has been the primary and preferred means by which Defendant Ojeda holds back and forth constituent conversations. Ojeda has further used the page to solicit participation in various constituent issues and political issues and events. Defendant Ojeda has used the page to keep his constituents abreast of his activities as state senator and of important events in local government, such as the West Virginia teacher’s strike, as well as the Frontier employees’ strike. Defendant Ojeda has gone through great efforts to swathe the OjedaForCongress Facebook page in the trappings of his office as state senator.

Defendant has operated the OjedaForCongress Facebook page while “purporting to act under the

³ Censorship of an official Facebook page, at least according to one recent U.S. District Court in the Fourth Circuit, may result in violations of the First Amendment rights of the censored Facebook posters. *See Davison v. Loudoun County Board of Supervisors*, Memorandum of Decision, 1:16-cv-932 (July 25, 2017 E.D. Va.) (finding legislator’s Facebook page censorship was First Amendment retaliation under color of law).

authority vested in him by the state.” Hughes v. Halifax Cnty. Sch. Bd., 855 F.2d 183, 186-87 (4th Cir. 1988). Defendant Ojeda at all relevant times acted as a state official who is cloaked with official power, whether or not his actions were in fact in excess of the authority actually delegated to him under state law. Ojeda attempted to cloak himself in the power of state law as a state senator when he threatened the Plaintiff and called for action against Plaintiff’s employment, both of whom were constituents in Ojeda’s district. Defendant Ojeda maintained the said official Facebook page even before he declared his candidacy for Congress, and will maintain and operate the page following the election.

51. The retaliatory video posted to Ojeda’s Facebook page “arose out of public, not personal, circumstances.” Rossignol at 524. In Davison, the retaliation was related to a question asked at a town hall, and subsequently taken up on a Facebook page. The Court found a First Amendment retaliation violation following a bench trial, merely for an hour-long Facebook ban. Here, Sen. Ojeda posted a four minute video insulting and humiliating the Plaintiff and calling for action against, or by, Plaintiff’s employer, in response to Plaintiff’s political expression. Just to be sure the message was sent, Defendant Ojeda followed that up with a personal phone call to the employer the following day. McCormick’s Furniture Store has been in business in Ojeda’s district for 70 years, and did not want to suffer retaliation and economic harm due to Plaintiff’s political expression.

52. Clearly the Plaintiff’s video was protected by the First Amendment. “Criticism of official conduct is not just protected speech, but lies at the very heart of the First Amendment.” Rossignol at 522. If the Supreme Court’s First Amendment jurisprudence makes anything clear, it is that speech may not be disfavored by the government simply because it offends. *See* Matal v.

Tam, 137 S. Ct. 1744, 1763 (2017) (quoted by Davison at 29). The suppression of critical commentary regarding elected officials is the quintessential form of viewpoint discrimination against which the First Amendment guards. *See* Rossignol at 521-22 (quoted by Davison at 29). Such retaliation is considered a “cardinal sin under the First Amendment.” *See* Davison at 29-30. Also protected is the Plaintiff’s actions of placing political yard signs in his personal yard, which was also the subject of Defendant Ojeda’s retaliation.

53. As the Supreme Court has recently noted, social media – and Facebook in particular – has become a vital platform for speech of all kinds. *See* Packingham, 137 S. Ct. at 1735-36. Indeed, social media may now be “the most important” modern forum “for the exchange of views.” *Id.* at 1735. The First Amendment applies to speech on social media with no less force than in other types of forums. *See, e.g., Bland v. Roberts*, 730 F.3d 368, 386 n.14 (4th Cir. 2013), as amended (Sept. 23, 2013) (quoted by Davison at 30-31).

54. The First Amendment right of free speech was “clearly established” for qualified immunity purposes. The law is well settled in the Fourth Circuit that retaliation under color of law for the exercise of First Amendment rights is unconstitutional, and “retaliation claims” have been asserted in various factual scenarios. Meyers v. City of Cincinnati, 979 F.2d 1154 (6th Cir. 1992) (firemen dismissed); Boger v. Wayne County, 950 F.2d 316 (6th Cir.1991) (county employee in Medical Examiner's Office transferred); Draud, 701 F.2d at 1170 (change in public school teacher's duties); Hildebrand v. Board of Trustees, 662 F.2d 439 (6th Cir.1981) (university professor denied tenure), *cert. denied*, 456 U.S. 910, 102 S.Ct. 1760, 72 L.Ed.2d 168 (1982); Johnson v. Avery, 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed.2d 718 (1969) (prisoner retaliated against for seeking access to courts). No reasonable official could possibly believe that it is

constitutionally permissible to retaliate against a political opponent with public physical threats, economic threats, bullying on social media, and personal insults. Because officials "of reasonable competence could [not] disagree on this issue, immunity should [not] be recognized." Mumford v. Zieba, 4 F.3d 429, 432 (6th Cir.1993) (quoted by Davison at 365).

55. Defendant Ojeda is not entitled to legislative immunity since he was not engaged in a legislative function authorized by state law. Legislative immunity is based on the Speech or Debate Clause of the U.S. Constitution, and only applies to a legislator's actions "in the sphere of legitimate legislative activity." Tenney v. Brandhove, 341 U.S. 367, 71 S.Ct. 783. The determination of legislative immunity is based on the function being fulfilled-not the title of the actor claiming immunity. Kensington Volunteer Fire v. Montgomery Cnty., 684 F.3d 462, 470 (4th Cir. 2012). Actions which qualify as legislative "typically involve the adoption of prospective ... rules that establish a general policy affecting the larger population. They also generally bear the outward marks of public decisionmaking." E.E.O.C. v. Wash. Suburban Sanitary Comm'n., 631 F.3d 174, 184 (4th Cir. 2011). Actions such as private meetings by legislators, and illegal acts are "obviously not in aid of legislative activity and legislators can claim no immunity" for such acts. Bruce v. Riddle, 631 F.2d 272, 279 (4th Cir. 1980). Moreover, it has long been the law that corrupt actions are exempted from legislative immunity. "Malicious legislative action or actions taken with a specific intent to inflict injury would be subject to liability." Id. at FN 28; *citing* Village of Hicksville v. Blakeslee, *infra*; Annot. 22 A.L.R. 125 (1923). Likewise, executive or administrative actions by legislators are also not afforded legislative immunity. Alexander v. Holden, 66 F.3d 62, 65 (4th Cir. 1995).

56. Defendant Ojeda's actions singled out a specific individual, the Plaintiff, who had criticized him in a form of political expression by posting a video on Facebook and by putting political signs in his yard. If a legislator's retaliatory actions "relate to particular individuals or situations" and the decision impacts specific individuals or "singles out specifiable individuals," the decision is administrative, and thus not subject to legislative immunity. *Id.* at 66.⁴ Since Defendant Ojeda's actions were directed specifically at the Plaintiff, in an open attempt to damage the Plaintiff, Defendant Ojeda cannot claim legislative immunity in defense of the allegations herein.

57. The Plaintiff suffered damage following the retaliatory actions taken by Defendant Ojeda in response to Plaintiff's Facebook post, including but not limited to, the loss of his job at McCormick's Furniture Store, emotional injuries, and damage to his reputation.

58. Plaintiff is entitled to recover for his injuries.

PRAYER

WHEREFORE, based on the above stated facts, the Plaintiff respectfully requests that this Honorable Court award:

1. Damages against the Defendants in an amount to be determined at trial which will fairly and reasonably compensate the Plaintiff for:

a. Past, present and future pain and suffering;

⁴ On the other hand, the action is legislative if the facts involve "generalizations concerning a policy or state of affairs" and the "establishment of a general policy" affecting the larger population. *Id.*; *see also Trevino By and Through Cruz v. Gates*, 23 F.3d 1480, 1482 (9th Cir. 1994) (noting that some courts define a legislative act as one "which applies generally to the community," as opposed to "one or a few individuals"); *Acierno v. Cloutier*, 40 F.3d 597, 610 (3rd Cir.1994) (one factor to be considered in determining whether an act is legislative or administrative is whether the decision affects a "single individual or a small number of people").

- b. Loss of enjoyment of life;
- c. Psychological and emotional distress;
- d. economic damages, including the loss of wages;
- e. Any other compensatory damages to be proven at trial;
- f. Punitive damages against the individual Defendants in an amount to be determined at trial;
- g. Reasonable attorney fees and costs;
- h. Any other relief that this Court deems is just and fair;
- i. All other damages provided by law;

PLAINTIFF DEMANDS A TRIAL BY JURY

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