**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TENNESSEE**

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| THOMAS WILLIAM MORGAN,<br><br>Plaintiff,<br><br>v.<br><br>MARION COUNTY GOVERNMENT, LINDA MASON, RONNIE "BO" BURNETT, and DALE WINTERS,<br><br>Defendants. | ) | Case No: 1:24-cv-303<br><br>**JURY DEMAND** |

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR ALTERNATIVELY MOTION TO DISMISS**

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Defendants, pursuant to Rules 12(b)(6) and 56 of the *Federal Rules of Civil Procedure*, file with the Court their Memorandum of Law in Support of Motion for Summary Judgment or Alternatively Motion to Dismiss as follows:

## FACTS AND PROCEDURAL HISTORY

This case finds its origin in two (2) meetings of the Marion County Commission, same being on January 29 and June 24, 2024. See Complaint [Doc. 1]. Plaintiff has sued the former Chair of the Marion County Commission and current Commissioner, Linda Mason ("Mason"), Sheriff Ronnie Burnett ("Burnett"), Dale Winters ("Winters"), and Marion County. *Id.* Defendants have manually filed a flash drive containing video of the meetings. Despite the theatrics from the video, the substance of what took place at the meetings as more fully set forth below pursuant to party testimony determines the issues now under consideration. Raised voices or rude tone do not establish a constitutional violation.

The Marion County Commission meetings operate pursuant to an agenda. Mason depo. pp. 22 ln.23 to p. 23 ln.2; Affidavits of David Jackson and Linda Mason. The agenda includes the

topics that will be discussed by the Commission. *Id.* Citizens attend the commission meetings and can be added to the agenda to address the commission during the public comments portion of the meeting. If an individual speaks during the public comments portion, it must relate to an agenda topic. *Id;* Mason depo. p. 20 lns. 10-13. There is no complaint by Plaintiff that the limitation of public comments in that respect is improper or an infringement or deprivation of his rights under the First Amendment. Plaintiff depo. pp. 80 ln. 10 to 81 ln. 5.

For the January 29th meeting, "Pull Tight Road" was on the agenda. See Jan. 29th Agenda. There was no further indication on the agenda of what was to be discussed regarding Pull Tight Road. Donald Leonard brought the subject to the Commission. *Id.* and Jan. 29th Minutes. Mr. Leonard's presentation addressed concerns relating to criminal activity at or around Pull Tight Road, specifically involving guns and drugs. Jan. 29th Minutes; Plaintiff depo. pp. 88 ln. 19 to 89 ln. 3; Mason depo. p. 75; and Jan. 29th minutes. Plaintiff confirmed the substance of Mr. Leonard's presentation as just stated and does not dispute accuracy of the January 29th minutes. Plaintiff depo p. 91 ln.6; p. 93 lns. 12-14; p. 94 lns. 21-25; p. 99 lns. 10-13.

However, during the public comments portion of the meeting, Plaintiff attempted to raise different issues including the county road budget, a railroad crossing, and noise from the railroad. Plaintiff depo. p. 48 lns. 107; pp. 104-105. Plaintiff's issues were not on the agenda. Mason depo. p. 65 lns. 7-12; p. 68 lns. 3-15; p. 70 lns. 1018. It was only because Plaintiff attempted to address issues that were not on the agenda and discussed by Mr. Leonard that Mason as chairperson precluded Plaintiff from speaking. *Id.;* Mason depo. pp. 77-78. Mason testified and can be heard on the video as attempting to clarify what Plaintiff was attempting to discuss. Mason depo. p. 68 lns. 3-15 and video at 1 hr. 52 min. 1 sec. Mason was attempting to get Plaintiff on topic, but because of how he was acting and being disruptive to the order of the meeting, he was removed

by Mason because she has to maintain order at the meetings. Mason depo. p. 43 lns. 3-11, p. 44 ln. 2 to p. 45 ln. 1, and p. 51 lns. 5-25; and p. 59.

Mason and Plaintiff then engaged in an unfriendly exchange with Mason ultimately removing Plaintiff from the meeting. *Id.* Mason requested that Burnett remove Plaintiff, who was at that time not leaving, which is within her purview as chair. Burnett depo. p. 14; Mason depo. p. 52 lns. 1-9. It was not that Mason did not like what Plaintiff was saying; it was that Plaintiff was not addressing an agenda topic. Mason depo. p 60 and p. 70 lns. 1-18.

Mason further requested that Winters assist. Winters depo. pp. 59-61. Winters, a deputy, attended the January 29th meeting in his capacity as a citizen of Marion County, not as a police officer. Winters depo. p. 10 lns. 8-14. Plaintiff did not believe Winters was on the job at the time of the meeting. Plaintiff depo. p. 77 lns. 11-14. Winters walked towards Plaintiff and Burnett to assist as necessary. Winters testified that Burnett had recently had a surgical procedure, and he was there only to assist Burnett as necessary and, also to make sure matters did not escalate any further for the benefit of everyone. Winter depo. p. 29.

Although Plaintiff claims that Burnett and Winters committed assault and battery, the video of the meeting clearly does not reflect the same. Plaintiff confirmed that to the extent Burnett touched him, it was a light touch that resulted in no physical injury, and that Burnett merely touched the lapel area of Plaintiff's shirt to direct which way Plaintiff was to walk out of the room. This was a light touching that resulted in no physical injury. Plaintiff depo. p. 73 lns. 8-22 and p. 73 ln. 25 to p. 74 ln. 19. Burnett does not recall even touching Plaintiff, but to the extent he did, it was "very much soft hands." Burnett depo. p. 13. Plaintiff alleges Winters dragged him out of the meeting in his Complaint, but that certainly is not seen in the video, and Winters disputes the same and that he even touched Plaintiff. Winters p. 65 and p. 67. Plaintiff complains of no personal injury either way.

It should also be noted that Plaintiff confirmed that during this same public comment presentation, he also attempted to discuss issues related to Brow Trail Road, specifically agenda topic #9. Plaintiff depo. p. 104 ln. 12 to p. 107 ln.1; Meeting agenda. Again, Plaintiff attempted to do so regarding a subject matter that was not discussed or included with the agenda presentation relating to spending on that road. Plaintiff simply mentions a road that was on the agenda, but addressed an issue unrelated to the agenda matter that the commission was considering. Plaintiff depo. p. 107. Jan. 29th minutes, ¶ 4.

Plaintiff has further asserted claims for violation of his First Amendment rights regarding his attendance at a June 24th meeting by Mason during which he testified he was speaking during the public comments portion of the meeting. However, Plaintiff was not denied his right to speech. In fact, Plaintiff was permitted to use the time he needed to present his topic in full to the Commission. He in fact made a full presentation as he intended. Plaintiff depo. p. 116 lns. 18-24; p. 117 lns. 2-6, and lns. 8-10. Plaintiff was not denied the opportunity and time to present in full his subject matter topic to the Commission on June 24th.

What is Plaintiff's complaint? During his June 24th presentation, Plaintiff can be heard addressing directly Mason because Plaintiff did not believe that she was being attentive enough to his presentation. Plaintiff noted that Mason was looking down at her telephone, which prompted Plaintiff to ask what she was doing. Mason responded and referred to texting the police, although she did not make any references to why or what was she was doing. Plaintiff depo. p. 117 lns. 8-10. Mason further did not make any specific threats to Plaintiff should he continue to speak. After receiving Mason's response, Plaintiff continued with his presentation, completed the same, and no adverse action was taken against him during that meeting. Obviously, the June 24th meeting occurred after the January 29th meeting and despite Plaintiff's claims that he was removed from

that meeting based on his viewpoint, he was afforded a full opportunity during the June 24th meeting to address the Commission.

Plaintiff also asserts claims for damages for intentional infliction of emotional distress ("IIED"). However, Mason's, Burnett's, and Winter's actions during the January 29th meeting were not so outrageous that they would not be tolerated by a civilized society as that term is defined for IIED claims. Although Mason's tone may have been rude, as was Plaintiff's tone, her conduct did not rise to the level of outrageous as that term is defined by law.

Further regarding IIED claims, Plaintiff has confirmed that he cannot quantify any injury, emotional or otherwise, that was proximately caused by the January or June 2024 meeting. Plaintiff depo. p. 124 lns. 1-9. Plaintiff has no evidence of a serious mental injury proximately caused by either meeting at issue in this case.

Plaintiff has sued Marion County. The issues in this case, however, are unique to the extent that Plaintiff is the only person who has been removed from a commission meeting since at least 1980. Burnett depo. p. 20 ln. 16 to p. 21 ln. 3. As such, there is no history of a policy or custom to deny citizens the right to address the commission in violation of the First Amendment, and certainly no actions with the necessary and required deliberate indifference sufficient to do so. Marion County is not liable or responsible for the actions of individuals based on the traditional principles of agency, including *respondeat superior*. Plaintiff's Complaint does not even include any claims or allegations that it was the policy and custom of Marion County to deny or deprive individuals of their right to free speech at County Commission meetings and the evidence does not support that conclusion. Plaintiff's complaint in this respect relate to his belief that the commission does not address or respond to citizen complaints as he thinks they should. Plaintiff depo. p. 128 lns. 16-24.

Plaintiff's other stated causes of action will be discussed below.

## STANDARD OF REVIEW

Summary judgment is proper when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Rule 56(c), *Federal Rules of Civil Procedure*. A material fact is one that matters—i.e., a fact that if found to be true, might affect the outcome of the litigation. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The applicable substantive law provides the frame of reference to determine which facts are material. *Id.* A genuine dispute exists with respect to a material fact when the evidence would enable a reasonable jury to find for the non-moving party. *Id.*; *Jones v. Sandusky Cnty*, 541 Fed. Appx. 653, 659 (6th Cir. 2013). In deciding whether a dispute is genuine, the Court cannot weigh the evidence or determine the truth of any matter in dispute. *Anderson*, 477 U.S. at 249. Instead, the Court must view the facts and all inferences that can be drawn from those facts in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Nat'l Satellite Sports v. Eliadis Inc.*, 253 F.3d 900, 907 (6th Cir. 2001).

The moving party bears the initial burden of demonstrating no genuine issue of material fact exists. *Celotex Corp., v. Catrett*, 477 U.S. 317, 323 (1986); *Jones*, 541 F. App'x at 659. The moving party discharges its burden by either producing evidence that demonstrates the absence of a genuine issue of material fact, or by simply showing—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case. *Celotex Corp.* 477 U.S. at 325. To refute such a showing, the non-moving party must present some significant, probative evidence to support his or her claim. *Id.* at 322. The mere existence of a scintilla of evidence is not enough; there must be evidence on which a fair-minded jury could reasonably find for the non-moving party. *Anderson*, 477 U.S. at 251-52.

## ARGUMENT AND CITATION OF AUTHORITY

*i. Defendants are entitled to summary judgment on all First Amendment Claims.*

The First Amendment generally protects speech and access to public proceedings. *United States v. Kincaide*, 119 F.4th 1074, 1077 (6th Cir. 2024). However, the rights afforded by the First Amendment are not without limits. *Id.* at 1078 (referring to the right of access as a "qualified right"). When assessing if a restriction on speech is constitutional, courts first consider the nature of the forum. *Youkhanna v. City of Sterling Heights*, 934 F.3d 508, 518-19 (6th Cir. 2019). A city council meeting or a county commission meeting is considered a *limited public forum*. *Id.* at 519. (Emphasis added). In that setting, the government may impose restrictions on speech so long as the restrictions do not "discriminate against speech on the basis of viewpoint" and are "reasonable in light of the purpose served by the forum." *Good News Club v. Milford Cent. Sch.,* 533 U.S. 98, 106-07 (2001) (internal quotation marks omitted). Similarly, the government may place "limitations upon access" that "serve a legitimate governmental purpose" and are "rationally related to the accomplishment of that purpose." *S.H.A.R.K. v. Metro Parks Serving Summit Cnty.*, 499 F.3d 553, 560 (6th Cir. 2007) (quotation omitted). One such purpose is ensuring that official proceedings are "conducted in a quiet and orderly setting." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 581 n.18 (1980).

The instant case involves county commission meetings and actions during the public comments portion of the same. The Sixth Circuit generally refers to public comment periods as limited public forums. See, *Lowery v. Jefferson Cnty. Bd. of Educ.*, 586 F.3d 427, 432 (6th Cir. 2009) (the public-comment period of a school board meeting is a limited public forum). In a limited public forum, the government opens its property "for the discussion of certain topics." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). However, in such a limited public forum, the government may regulate the time, place, and manner of speech—so long as the regulation is content neutral, narrowly tailored to serve a significant government interest, and leaves open ample alternative channels to communicate. *Oswald v. Lakota Loc. Sch.*

*Bd.*, 2025 U.S. App. LEXIS 14722, *3 (6th Cir. June 13, 2025). Stated another way, "[i]n a limited public forum, the government can impose reasonable restrictions based on speech content, but it cannot engage in viewpoint discrimination." *Youkhanna v. City of Sterling Heights*, 934 F.3d 508, 519 (6th Cir. 2019).

*a. January 29, 2024 Meeting.*

As discussed above, the January 29, 2024 meeting and the issues raised by Plaintiff as it relates to his First Amendment claims (speech and assembly) occurred during the public comments section and portion of the commission meeting. It is not an unconstitutional infringement on an individual's First Amendment right for the commission, and in this case, Mason, Marion County or Burnett and Winters, to regulate the time, place and manner of speech providing such limitations meet with the confines of the above-stated case law. The limitation in this case as explained by Mason in her testimony cited above, was because Plaintiff was not limiting his statements during the public comments section of the January 29th meeting to an agenda matter. Again, it should be noted that Plaintiff is not complaining in this case about the limitation imposed on the public as it relates to speaking only on matters that were on the Commission's agenda.

Mason was not denying or preventing Plaintiff from addressing the commission without proper reason. Rather, Mason was instead only precluding Plaintiff from getting into a subject matter and/or topics that were not on the commission's agenda for that meeting. It should be noted that the recording of the January 29th meeting includes presentations by others during the public comments section of the same with Mason advising not just Plaintiff, but others in attendance that any subject matter brought up during the public comments portion of the meeting must relate to an agenda topic. An exchange between Mason and an attendee at the January 29th meeting immediately before the interaction with Plaintiff establishes this. See 1-29 meeting video at approx. 1 hr. 49 min. 55 sec; Mason depo. p. 20 lns. 10-13.

Therefore, Mason's actions were not based on viewpoint discrimination, but rather based on the conduct of the commission meetings. Mason confirmed in her deposition that her actions were not based on her not wanting to hear what Plaintiff had to say about his raised topic. Mason depo. p. 60 and p. 70 lns. 1-18. It is important to maintain order during commission meetings, which is why public comments are limited in this respect. Mason depo. p. 59. This is not viewpoint discrimination and therefore not a violation of Plaintiff's constitutional rights.

Plaintiff is attempting to expand the limited nature of the commission agenda by claiming that because a particular road was listed in name on the agenda, any topic or any matter pertaining to that road was before the commission. That, however, is not the case. Plaintiff confirmed in his deposition testimony cited above that the issues relating to Pull Tight Road and Brow Trail Road, did not pertain to the subject matter that Plaintiff brought up, or attempted to bring up. These matters are captured in the minutes of the January 29th meeting. He was not on an agenda topic as it relates to road expenditures contrary to what Plaintiff may want for the purposes of this case. Mason depo. p. 65 lns. 7-12.

Because Plaintiff was not on an agenda topic, it was not a violation of his First Amendment right for Mason to refuse to permit Plaintiff to speak in this limited forum. Plaintiff's right to address the commission is not unfettered or unrestricted as he may claim and/or want it to be for the purposes of this case. Rather, the limited restriction is that the public address matters that the County Commission is addressing from the agenda. Otherwise, the commission would be presented with a myriad of topics for which they were not prepared, and for which they would not have expected, thereby resulting in a lack of control of the public meeting.

This limitation is not an unreasonable restriction on the First Amendment, and similarly is not in violation of Plaintiff's First Amendment right. Although Plaintiff may claim that the actions would kill the right to free speech or assembly, it is important to, of course, note that Plaintiff has

since the January 29th meeting appeared and addressed the County Commission on other dates, including June 24, 2024 as discussed below.

Plaintiff has not been denied his rights to address the commission. Rather, Plaintiff is appropriately and narrowly limited in addressing the commission during the public comments portion of a meeting on agenda topics only, which is a narrowly tailored restriction with legitimate purposes. See Affidavits of David Jackson and Linda Mason.

*b. June 24, 2024 Meeting.*

As it relates to the June 24th meeting, Plaintiff testified he spoke during the public comments portion of the meeting. Plaintiff depo. p. 114 lns. 24-25 and p. 116 lns. 12-14. Plaintiff complains of Mason telling him he is just "bitching" (Plaintiff depo. p. 115 lns. 15-20) and of a deprivation of free speech. However, Mason's actual language was "fussing" (see 6-24 video at 5 minutes and 6 seconds). Moreover, it is undisputed that Plaintiff was not precluded from addressing the commission in full and was able to say everything he wanted to say at that time. Plaintiff depo. p. 116 lns. 18-24. Plaintiff was not removed from this meeting and voluntarily left the meeting (See 6-24-24 video, 6 min. 13 sec.), did not have his speech limited, spoke to the commission until his presentation was complete, and suffered no adverse consequences as a result. Plaintiff appears to complain of Mason's lack of attentiveness to what he was saying and her tone to which he reciprocated (See 6-2424 video, 4 min. 47 sec. and 2 min. 45 sec. respectively); however, that is not a constitutional deprivation. The evidence simply does not support Plaintiff's claim for damages under the First Amendment for the June 24th meeting and therefore summary judgment is proper.

*ii. Defendants are entitled to summary judgment as to all Assault and Battery and IIED Claims.*

Plaintiff has included within his Complaint a state law claim for assault and battery against Burnett and Winters, and a state law claim for intentional infliction of emotional distress ("IIED") against Defendants Burnett, Winters, and Mason.

In Tennessee, battery is defined as "any intentional, unlawful and harmful (or offensive) contact by one person with the person of another." *Raines v. Shoney's, Inc.,* 909 F. Supp. 1070, 1083 (E.D.Tenn.1995). However, "not every physical contact that is unconsented to is so offensive that it amounts to a battery." *Runions v. Tennessee State University*, 2009 Tenn. App. LEXIS 420, 2009 WL 1939816 at *4 (Tenn. Ct. App. 2009). "[O]ffensive contact" is "contact that infringes on a reasonable sense of personal dignity ordinarily respected in a civil society." *Doe v. Mama Taori's Premium Pizza*, 2001 Tenn. App. LEXIS 224, WL 327906 at *4 (Tenn. Ct. App. 2001).

The Tennessee Supreme Court has held that "if a defendant intends to create an apprehension of harm in the plaintiff, he or she has committed the intentional tort of assault." *Hughes v. Metro. Gov't of Nashville & Davidson Cnty.,* 340 S.W.3d 352, 371 (Tenn. 2011). The same court described the elements of assault as "(1) acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such contact, and (2) the other is thereby put in such imminent apprehension." *Id.* (Citing 1 Dobbs, The Law of Torts § 33, at 63).

In *Smythe v. Easy Quick Stores, Inc.,* 754 S.W.2d 57 (Tenn. Ct. App. 1988), the court addressed whether a proprietor's act of grabbing an individual to eject them from the premises constituted assault and battery. The trial court instructed the jury that a proprietor has the right to expel or restrain a person who engages in abusive conduct and refuses to leave, provided the expulsion or restraint is carried out using reasonable force and further defined reasonable force as that which a reasonably prudent person would use under similar circumstances. *Id.* at 60.

Regarding Plaintiff's IIED claim, the necessary elements for that claim are "that the defendant's conduct was (1) intentional or reckless, (2) so outrageous that it is not tolerated by civilized society, and (3) resulted in serious mental injury to the plaintiff." *Rogers v. Louisville Land Co.*, 367 S.W.3d 196, 205 (Tenn. 2012).

As discussed in *Muhammed v. Durham Sch. Servs., L.P.,* 666 S.W.3d 355, 362-63 (Tenn. Ct. App. 2022), the Tennessee Supreme Court has repeatedly and unwaveringly held that to satisfy the outrageousness element, the defendant's alleged conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency and to be regarded as atrocious, and utterly intolerable in a civilized community." *Medlin v. Allied Inv. Co.,* 217 Tenn. 469, 398 S.W.2d 270, 274 (Tenn. 1966) (quoting Restatement (Second) of Torts § 46 cmt. d (1965)); see also, *Doe 1 ex rel. Doe 1 v. Roman Catholic Diocese of Nashville*, 154 S.W.3d 22, 39 (Tenn. 2005); *Lourcey v. Est. of Scarlett*, 146 S.W.3d 48, 51 (Tenn. 2004); *Miller v. Willbanks*, 8 S.W.3d 607, 614 (Tenn. 1999); *Bain v. Wells*, 936 S.W.2d 618, 623 (Tenn. 1997); *Moorhead v. J. C. Penney Co.,* 555 S.W.2d 713, 717 (Tenn. 1977). Put another way, "[G]enerally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous.'" Restatement (Second) of Torts § 46 cmt. d.

By contrast, conduct consisting of "'mere insults, indignities, threats, annoyances, petty oppression, or other trivialities'" is not sufficient to support liability under this tort. *Medlin*, 398 S.W.2d at 274 (citation omitted). Given this high threshold, courts have a duty to determine in the first instance "whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery." *Id.* at 275 (citation omitted).

Plaintiff is not making a claim for physical injury based on the events of the January or June meetings. Neither Burnett nor Winters attended the June meeting and took no action that led

to any claim in this case. Plaintiff has no claim in this case except for what occurred at the January 29th and June 24th meetings. Plaintiff cannot though quantify any serious mental injury from either the January 29th or the June 24th meeting. Plaintiff depo. p. 124 lns. 1-11.

Plaintiff has disclosed no expert to testify in that respect. Plaintiff further takes no medications for any serious mental injury because of the meetings at issue. Plaintiff depo. p. 118 lns. 8-12. Because a serious mental injury is a necessary element of an IIED claim, Defendants are entitled to summary judgment on the same.

The Tennessee Supreme Court in *Eskin v. Bartee*, 262 S.W.3d 727, 739 (Tenn. 2008), reiterated that "severe emotional injury" occurs when "a reasonable person, normally constituted, would be unable to adequately cope with the mental stress engendered by the circumstances of the case." *Id.* at 735. Further illustration regarding what constitutes a "severe mental injury" is provided by Section 46 of the Restatement (Second) of Torts:

> The rule stated in this Section applies only where the emotional distress has in fact resulted, and where it is severe. Emotional distress passes under various names, such as mental suffering, mental anguish, mental or nervous shock, or the like. It includes all highly unpleasant mental reactions, such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea. It is only where it is extreme that the liability arises. Complete emotional tranquility is seldom attainable in this world, and some degree of transient and trivial emotional distress is a part of the price of living among people. The law intervenes only where the distress inflicted is so severe that no reasonable man could be expected to endure it. The intensity and the duration of the distress are factors to be considered in determining its severity. Severe distress must be proved; but in many cases the extreme and outrageous character of the defendant's conduct is in itself important evidence that the distress has existed.

Restatement (Second) of Torts § 46 cmt.; see also, *Miller v. Willbanks*, 8 S.W.3d 607, 615 (Tenn. 1999) (quoting *Id*). The reason for the rule imposing liability "only when extreme and outrageous conduct causes serious or severe emotional distress is apparent—to avoid the judicial system being flooded with potentially fraudulent, manufactured, or overstated claims arising from the "transient

and trivial" emotional distresses of daily life, recognizing that "[i]f the plaintiff is to recover every time that [his or] her feelings are hurt, we should all be in court twice a week." *Rogers v. Louisville Land Co.,* 367 S.W.3d 196, 208-09 (Tenn. 2012).

Although Plaintiff has made a claim for IIED and complains of his treatment at the commission meetings, it was only after the January 2024 meeting that Plaintiff moved to Marion County to become a full-time resident. Plaintiff depo. p. 15 lns. 4-8. This is certainly inconsistent with him being unable to function as a result of his treatment in Marion County at the commission meetings. Plaintiff has additionally attended multiple commission meetings since January 2024 (Plaintiff depo. pp. 136-137), including presenting at such meetings, continues to own and operate businesses and has no claim for lost income (Plaintiff depo. p. 118 ln. 18 to p. 119 ln. 1), has no limitation in doing what he did before the meetings (Plaintiff depo. p. 118 ln. 13-17) and cannot establish proximate cause for a serious mental injury to either the January or June meeting as referenced earlier. Additionally, and although the seriousness of the allegations in this matter is evident, after the event upon which Plaintiff makes his complaint, he started a parody website regarding Marion County Government and officials because Plaintiff thinks it is funny. Plaintiff depo. pp. 138-142 and copy of website from Plaintiff depo. The evidence simply does not support the IIED claim.

Furthermore, it can hardly be said that the actions of Mason, and certainly Burnett and Winters, were outrageous as required for an IIED claim. Mason, as discussed above, precluded Plaintiff from addressing matters that were not on the commission's agenda during the limited forum commission meeting. Plaintiff's own testimony supports the same. Because Mason acted in accordance with the established law during the limited forum portion of the January 29th meeting, her conduct cannot be considered outrageous. Although Plaintiff certainly wants to rely upon and highlight the nature of Mason's comments toward him, which Plaintiff clearly

reciprocated, the law is clear that insults, indignities, threats, or annoyances are not sufficient to establish outrageous conduct.

As it pertains to Burnett and Winters, they simply assisted with the directions of the commission chair and did not manhandle or act inappropriately in that respect, but rather escorted Plaintiff out of the meeting. Plaintiff acknowledged a light touching by Burnett on the lapel area of his shirt to merely direct which way to go. Winter denies even touching Plaintiff. Defendant Winters even had a conversation with Plaintiff about getting on the agenda to again address the commission following the January 24th meeting upon existing the meeting room and shook his hand. Winters depo. p. 65 lns. 4-25. Winters is likewise entitled to summary as to Plaintiff's battery claims. The only evidence Plaintiff has is his testimony and a video that Plaintiff claims show Winters raising his arm toward Plaintiff. Winters denies making physical contact with Plaintiff. However, for the same reasons discussed above, to the extent there was any contact, it was merely for the purpose of walking out of the meeting room. Plaintiff was not handcuffed or pulled out of the meeting. Rather, Plaintiff walked out of the meeting of his own accord.

For the June 24th meeting, Plaintiff was in fact permitted to complete his presentation, and the only interruption during the same related to Plaintiff confronting Mason, not the other way around. Mason did not engage in any outrageous conduct or other activity sufficient to constitute a claim for IIED based on the law discussed above. To the contrary, Mason responded to a question by Plaintiff and, at worst during that meeting, was trying to keep Plaintiff on point or to make a point regarding his presentation. Whether Plaintiff approves of her response to him, or how she participated in the meeting is insufficient to establish outrageous conduct for the purposes of an IIED claim.

Therefore, Mason, Burnett, and Winters are entitled to summary judgment as to Plaintiff's IIED claims.

Regarding the assault and battery claim against Burnett and Winters, the undisputed facts do not support the necessary elements sufficient for the same. There is no claim for any physical injury and Plaintiff has no evidence that the events of the January 24th meeting proximately caused him any physical injury for assault and battery.

It is undisputed for the purposes of this case that to the extent there was any contact between Plaintiff and Burnett, it was very brief (seconds) and very light. Burnett has no recollection of even touching Plaintiff, but if he did, then it was minimal/light. Plaintiff claims Burnett touched him briefly for the purposes of directing which way Plaintiff was to leave the room. It can hardly be said, therefore, that the touching by Burnett, to the extent it occurred, could be considered so offensive as to constitute a battery.

For Burnett and Winters, Plaintiff's assault claim likewise fails. There was no conduct intending to cause an imminent apprehension of offensive contact. Burnett and Winters were requested by Defendant Mason to assist, which they did in a reasonable manner. As Defendant Winters described, his actions were to prevent matters from escalating. Winters depo. pp. 59-61. There is no evidence of threats or actions of imminent offensive contact. The entire encounter with these Defendants was brief, resulted in no offensive touching, and the facts do not support any recovery in this respect. As such Burnett and Winters are entitled to summary judgment as to Plaintiff's assault and battery claims.

iii. *There was no unreasonable seizure.*

Plaintiff claims damages for unreasonable seizure as to Burnett and Winters. However, summary judgment is proper as to this cause of action.

As recently as this year, the Sixth Circuit has reiterated what constitutes a seizure under the Fourth Amendment. See, *Lawson v. Creely*, 137 F.4th 404, 416-17 (6th Cir. 2025). A Fourth Amendment seizure occurs "when, 'in view of all of the circumstances surrounding the incident, a

reasonable person would have believed that he was not free to leave.'" *United States v. Knox,* 839 F.2d 285, 289 (6th Cir. 1988) (quoting *United States v. Mendenhall*, 446 U.S. 544, 554 (1980)); see also *Florida v. Bostick*, 501 U.S. 429, 434, 437 (1991) (reframing the inquiry as whether "a reasonable person would feel free 'to disregard the police and go about his business'" or "ignore the police presence" (first quoting *California v. Hodari D.*, 499 U.S. 621, 628 (1991); and then quoting *Michigan v. Chesternut*, 486 U.S. 567, 569 (1988)).

Much of the language used by the courts is framed around stopping an individual to restrain/restrict their movement or ordering an individual to move to a particular location from where movement will then be limited. That is not the case here. Burnett and Winters were not restricting Plaintiff's movement; in fact, quite the opposite. Plaintiff was asked to leave the premises, but not restricted from moving elsewhere thereafter.

The Sixth Circuit addressed this issue in *Youkhanna v. City of Sterling Heights*, 934 F.3d 508, 523 (6th Cir. 2019). In that case, the plaintiff was removed from a city council meeting after being disruptive. The mayor asked the police to escort her out, and at least two police officers complied. *Id.* at 522. While leaving the Council chamber, plaintiff stopped, turned around, and started yelling at the council. *Id.* At some point during the process, one of the officers "'grabbed [her] arm so [she] could leave,' 'tapped [her],' 'held [her] hand all the way till [sic] [she] got to the doors,' and 'was pushing [her] out the door basically. That's how [she] felt.'" *Id.* The plaintiff was removed from the building, but not otherwise detained. *Id.* at 523. The plaintiff asserted that she did not feel "free to leave at [her] own will" during this encounter. *Id.* The Sixth Circuit, however, and in accordance with Second Circuit precedent, disagreed.

In circumstances where the person being asked to leave is not privileged to remain in the space, either because the space is no longer open to the public or because the person's behavior

violated a rule, ordinance, or law (for example, by causing a disturbance), such direction did not constitute a seizure. In *Youkhanna,* the Court held as follows:

> Ms. Rrasi lost her privilege to remain in the otherwise-public meeting. Her description of the force used by officers to escort her out—holding her hand or arm, tapping her—does not exceed guiding force, especially in light of her mid-exit refusal to leave the Council chambers. There was certainly no painful force, and Ms. Rrasi's freedom was unrestricted once she exited the building. Because there was no seizure, Ms. Rrasi's Fourth Amendment rights were not violated…

*Id.* at 524.

In our case, and by Plaintiff's own deposition testimony, there was light guidance and certainly no excessive physical force used by Burnett or Winters, who acted at the request of the commission chair. Upon exiting the premises, Plaintiff's movement was entirely unencumbered, and he was free to move where he pleased. At no point in the January 2024 meeting was Plaintiff's Fourth Amendment right against unreasonable seizure violated. Defendants therefore are entitled to summary judgment.

*iv. There was no civil conspiracy.*

Plaintiff has included a claim for civil conspiracy to violate constitutional rights as to Defendants Mason, Burnett, Winters, and Marion County. However, Plaintiff is not entitled to any recovery for such cause of action.

For recovery for civil conspiracy, "the plaintiff **must** first establish that they suffered a constitutional violation in order to prove a conspiracy to violate their constitutional rights." *Scott v. Stone*, 254 F. App'x 469 (6th Cir. 2007) (emphasis added) (citing *Torres-Rosado v. Rotger-Sabat*, 335 F.3d 1, 14 (1st Cir. 2003) ("To demonstrate conspiracy under § 1983, plaintiff must show an actual abridgement of some federally-secured right." (internal quotation marks omitted)).

By further way of definition, a civil conspiracy under § 1983 is "an agreement between two or more persons to injure another by unlawful action." *Hensley v. Gassman*, 693 F.3d 681,

695 (6th Cir. 2012). See also, *Blick v. Ann Arbor Pub. Sch. Dist.*, 105 F.4th 868, 887 (6th Cir. 2024) and *Hardy v. Fisher*, 618 F. Supp. 3d 671, 692 (M.D. Tenn. 2022). To prove such a conspiracy, a plaintiff must establish three things. First, at least two people must have agreed to a "single plan" to deprive the plaintiff of rights protected by § 1983. *Robertson v. Lucas*, 753 F.3d 606, 622 (6th Cir. 2014)(citation omitted). Second, each alleged co-conspirator must have subjectively "shared" the plan's illegal objective. *Id.* And, third, one of the co-conspirators must have taken an "overt act" to carry out the plan. *Id.* See also, *Rudd v. City of Norton Shores*, 977 F.3d 503, 517 (6th Cir. 2020); *Hooks v. Hooks*, 771 F.2d 935, 944 (6th Cir. 1985). To even get past the pleading stage on a conspiracy claim, the operative pleading/complaint must assert "specific allegations" that plausibly suggest each of the foregoing elements. *Rudd,* 977 F.3d at 511-12. A plaintiff cannot proceed with vague and conclusory allegations of the existence of a conspiracy. *Id.* at 517.

In the case *sub judice*, Plaintiff has not sufficiently plead the elements to support a claim for civil conspiracy. See Count Six of Plaintiff's Complaint, ¶¶ 76 and 77. Plaintiff fails to allege an agreement to a "single plan" and fails to allege that Defendants subjectively shared the illegal objective of the plan. Plaintiff has not even included within his Complaint facts sufficient to support a claim for civil conspiracy to violate civil rights. There is no reference even to what Marion County is claimed to have done wrongly as Plaintiff fails to include claims and fact sufficient to support recovery against the municipality pursuant to *Monell*. Marion County is not vicariously liable for Section 1983 claims and causes of action.

Therefore, Defendants pray that Count Six of Plaintiff's Complaint for Civil Conspiracy to Violate Civil Rights be dismissed for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the *Federal Rules of Civil Procedure* and the precedent above.

Additionally, neither Defendant Burnett nor Defendant Winters were aware of Plaintiff before the January 29th meeting and were not aware that Plaintiff was going to address the commission at the same. See Affidavits of Ronnie Burnett and Dale Witners. There similarly were no conversations between Defendants Burnett, Winters, and/or Mason regarding Plaintiff prior to the January 29th meeting such that a plan could be formulated to violate Plaintiff's constitutional rights. Rather, the events that unfolded on January 29th did so in the moment and without a "single plan," much less a plan that was subjectively shared by Defendants. See Affidavits of Burnett, Winters, and Mason.

Therefore, the essential elements for a claim for civil conspiracy do not exist and Defendants are entitled to summary judgment for the same.

*v. Defendants are entitled to qualified immunity.*

Mason, Burnett, and Winters, have pled qualified immunity. See Defendants' Answer. To determine the applicability of qualified immunity, courts use a multi-step test. First, and viewing the facts most favorable to the plaintiff, has the plaintiff shown that a constitutional violation has occurred? Second, was the constitutional right clearly established at the time of the violation? *Phillips v. Roane County*, 534 F.3d 531, 538-39 (6th Cir. 2008). If a right is found to have been clearly established, a third step is necessary to determine whether it was ***objectively reasonable*** for the defendant to believe that his or her actions did not violate those rights. *Anderson v. Creighton*, 483 U.S. 635, 638 (1987). *(Emphasis added).* It is critical to understand that because qualified immunity is clearly established law, it is not to be defined "at a high level of generality." *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011). See also, *White v. Pauly*, 137 S. Ct. 548, 552 (2017). It is established law that qualified immunity must be "particularized" to the facts of the specific case under consideration. *Anderson,* 483 U.S. at 640.

The doctrine of qualified immunity protects government officials from liability for civil

damages unless the complaint plead facts showing that (1) the official violated a statutory or constitutional right and (2) that right was clearly established. *Wood v. Moss,* 572 U.S. 744, 757 (2014). The doctrine provides for qualified immunity for government officials "when their decision was reasonable, even if mistaken." *Castro v. United States*, 34 F.3d 106, 112 (2nd Cir. 1994). It must therefore be clear to a reasonable government official that his/her conduct was unlawful in the situation confronted for the immunity not to apply. *Soloman v. Auburn Hills Police Department*, 389 F.3d 167, 173 (6th Cir. 2004). Qualified immunity protects public officials and those serving the public from "the time, expense and risk of money-damages actions" if they did not violate the individuals clearly established federal constitutional rights. *Moore v. Oakland County,* 126 F.4th 1163, 1167 (6th Cir. 2025) (quotation omitted). Lawsuits against "individual government officials" in their personal capacities, generally speaking, implicate the defense. *Nugent v. Spectrum Juv. Just. Servs.,* 72 F.4th 135, 143 (6th Cir. 2023) (quotation omitted). As such, qualified immunity is applicable for Mason, Burnett, and Winters and has been asserted by them in this case.

Mason took the actions she took at the January 24th because Plaintiff was argumentative with her and because Plaintiff was not discussing an agenda topic. Plaintiff's deposition testimony as cited herein confirms that he was in fact not on an agenda topic. It must be "sufficiently clear that every reasonable official would have understood" that by limiting Plaintiff as was done in this case, Mason was violating the First Amendment. *Reichle v. Howards*, 566 U.S. 658, 664 (2012). The evidence does not support that conclusion. Mason's testimony confirms the basis for why she acted and the evidence filed with the instant motion supports that it was not clearly established that Plaintiff had a First Amendment right to address the commission on the issues he raised, which were not agenda topics. Again, this is a limited forum and Plaintiff does not have unrestricted speech.

Mason was not refusing to permit Plaintiff to address the commission without proper reason. There was therefore no clearly established constitutional right as Plaintiff was addressing the commission in a limited forum subject to limitations on his speech. Mason is therefore entitled to summary judgment as to all claims for deprivation of Plaintiff's First Amendment rights during the January 24th meeting pursuant to qualified immunity.

Burnett and Winters merely responded to a request of the commission chair, Mason, to assist with Plaintiff. Mason has confirmed the reasons for requesting Burnett and Winters to act. Their actions were objectively reasonable under the circumstances and certainly not clear that their conduct was unlawful as they were not refusing Plaintiff any opportunity to speak or address the commission. Neither Burnett nor Winters were responsible for the decision for Plaintiff to be asked to leave the meeting and they did so based on that decision being made by Mason. Winters depo. p. 61 lns. 6-16; Burnett depo. p. 12 ln. 19 to p. 13 ln. 4. As such, Burnett and Winters are entitled to qualified immunity.

*vi.* *Lack of Monell liability.*

It is unclear from the Complaint filed the basis of liability of Marion County as it relates to Plaintiff's constitutional claims. As the Court knows, Marion County is not responsible simply by virtue of alleged actions of employees or agents resulting in constitutional deprivations. Rather, a plaintiff must clearly and specifically identify the policy, plead that it caused the injury complained of, and plausibly allege that the adequately identified policy was the moving force behind the deprivation of the plaintiff's constitutional rights. *Savoie v. Martin,* 673 F.3d 488 (6th Cir. 2012). Broad, generic, and unspecific allegations of the existence or effect of a policy or custom are "woefully inadequate" to meet a plaintiff's burden of establishing the required policy or custom at trial and likewise insufficient to overcome a motion for summary judgment. *Petty v. County of Franklin,* 478 F.3d 341, 348 (6th Cir. 2007). Plaintiff has failed to do that in this case

and therefore the claims against Marion County for alleged constitutional violations must be dismissed.

To the extent the Court does not dismiss the claims for failure to allege appropriate facts supporting the claims against Marion County, Plaintiff must point to some "policy" or "custom" of the municipal defendant causing the complained-of constitutional violation. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691, 98 S. Ct. 2018, 2036, 56 L.Ed.2d 611, 636 (1978). The Supreme Court has held that "municipal liability under § 1983 attaches where—and only where—a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." *Id.* at 483. "[W]hether a particular official has final policymaking authority is a question of *state law*." *Crosby v. Pickaway Cnty. Gen. Health Dep't*, 303 F. App'x 251, 256 (6th Cir. 2008) (quoting *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989)). The Court's consideration of such a question requires reference to "statutes, ordinances, and regulations, and less formal sources of law such as local practice and custom." *Rowell v. Madison Cnty., Tenn.*, WL 1918078, at *6 (W.D. Tenn. July 2, 2009)(quoting *St. Louis v. Praprotnik*, 485 U.S. 112, 124 (1988)).

In this case, the evidence establishes that Marion County has no policy of removing individuals from addressing the county commission or attending commission meetings. Affidavit of David Jackson. Additionally, there is no ongoing issue relating to individuals being removed from commission meetings and no history of that occurring since at least 1980. Burnett depo. *infra.* Marion County has an established procedure for how commission meetings are set, agendas issued, and public comments permitted. Affidavit of David Jackson. The fact that on a singular incident Plaintiff was removed for not being on topic and being disruptive as determined by the commission chair does not establish a policy or custom of violating First Amendment rights by Marion County during commission meetings.

Furthermore, the commission chairperson is not vested with any policy making authority beyond casting votes as a county commissioner. Affidavits of David Jackson and Linda Mason. Presiding over procedural matters for commission meetings does not make a commissioner a final policymaker. It rather permits the commission chair to conduct the order and process of a meeting, not make a policy determination that is binding on the county. See Affidavits of David Jackson and Linda Mason. The events giving rise to this litigation relate to the conduct of a meeting only and as such does not determine the policy of Marion County. Therefore, Marion County is entitled to summary judgment.

## CONCLUSION

Based on the facts set forth above and the arguments set forth below, Defendants pray that their motion for summary judgment be granted and Plaintiff's Complaint dismissed. Plaintiff cannot establish the necessary elements to support a violation of his First Amendment rights as to any party in this case. Plaintiff attempted to improperly expand the subject matter of the January 29th meeting by addressing matters that were no on the agenda. As such, his right to free speech was not improperly restricted. Regarding the June 2024 meeting, Plaintiff was not precluded from speech and had no violation. Defendants likewise are entitled to summary judgment as to Plaintiff's claims in this respect pursuant to the doctrine of qualified immunity as discussed above.

Defendants likewise are entitled to summary judgment as to Plaintiff's state law claims for assault and battery and IIED. Plaintiff cannot satisfy the necessary elements of such causes of action and therefore the same must be dismissed.

There likewise was no unreasonable seizure. Plaintiff was subjected to light guidance at the request of the commission chair and certainly no painful force.

Plaintiff's claims for civil conspiracy fail as a matter of law. Plaintiff did not properly plead civil conspiracy and the undisputed facts of the case as discussed above entitle Defendants

to summary judgment on this claim. Similarly, Plaintiff did not properly plead his *Monell* theories of liability as to Defendant Marion County such that the same must be dismissed. Alternatively, the evidence supports summary judgment in this respect as it relates to a lack of evidence sufficient to support recovery pursuant to *Monell* against Defendant Marion County.

**WHEREFORE,** Defendant prays that the instant Motion for Summary Judgment or in the Alternative Motion to Dismiss be granted and the above case dismissed with prejudice.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of December, 2025, I electronically filed this document along with any exhibits with the Clerk of the Court using CM/ECF system which will automatically send e-mail notification of such filing to the following attorney of record:

Robin Ruben Flores
4110-A Brainerd Road
Chattanooga, TN 37411

**SPICER RUDSTROM, PLLC**

By: */s/ B. Thomas Hickey, Jr.*
B. Thomas Hickey, Jr.