No. _____

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IN THE SUPREME COURT
of the
UNITED STATES

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ARTHUR G. JAROS, JR.	)
Plaintiff/Appellant/Petitioner	)
vs.	)
	)
THE VILLAGE OF DOWNERS GROVE,	)
an Illinois municipal corporation,	)
Defendant/Appellee/Respondent	)
et al.	)
	)

On Petition for Writ of Certiorari to the Illinois Supreme Court

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PETITION FOR WRIT OF CERTIORARI

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August 23, 2021

QUESTIONS PRESENTED

I. Notwithstanding its Home Rule Powers, did the Respondent Village of Downers Grove Violate Petitioner Jaros' First Amendment Right to Freedom of Speech by Engaging in a Retaliatory Removal of Jaros from his Statutory Six Year Term as Public Library Trustee Because Jaros, in such Official Capacity, Had Made Policy Statements Based on Illinois Statutory Law While Engaged in a Library Board Legislative Function Where, Under the State's Local Public Library Act, Library Board Trustees are Appointed by Elective Action of the Village Council of the Geographically Correlative Village Municipal Corporation?

II. Notwithstanding its Home Rule Powers, did the Respondent Village of Downers Grove Deprive Petitioner Jaros of a Liberty and/or Property Interest in his Statutory Position, including its Six Year Term, as a Trustee of a Public Library Governed by the Illinois Local Library Act Where Respondent Summarily Truncated that Term by Summary Action that Terminated Jaros' Service as Trustee without any Opportunity for him to be Heard and Therefore in Violation of his Federal Constitutional Right under the Fourteenth Amendment to Procedural Due Process of Law?

LIST OF ALL PARTIES

(1) Petitioner Arthur G. Jaros, Jr., a resident of the State of Illinois, was the Plaintiff-Appellant in the proceedings below in the courts of the State of Illinois and is a member of the bars of the States of Illinois and Michigan and of this Court.

(2) Respondent Village of Downers Grove is a municipal corporation and was a Defendant-Appellee in the proceedings below.

(3) Susan D. Farley, a resident of the State of Illinois, was a Defendant-Appellee in the proceedings below.

(4) League of Women Voters of Downers Grove, Woodridge and Lisle, is an unincorporated association and was a Defendant-Appellee in the proceedings below.

(5) Gregory W. Hosé, individually and in his official capacity as Commissioner of the Village of Downers Grove, Illinois was a Defendant-Appellee in the proceedings below.

(6 Robert T. Barnett, individually and in his official capacity as Commissioner of the Village of Downers Grove, Illinois was a Defendant-Appellee in the proceedings below.

(7) Martin T. Tully, individually and in his official capacity as Mayor of the Village of Downers Grove, Illinois was a Defendant-

Appellee in the proceedings below.

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TABLE OF CITED AUTHORITIES

CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THIS CASE

The opinion, as modified, of the Illinois Appellate Court, Second District, filed December 29, 2017 on an interlocutory appeal pertaining to home rule powers of the Village of Downers Grove, a municipal corporation, in relation to the Downers Grove Public Library and its trustees is officially reported at 2017 IL App (2d) 170758 and unofficially at 2107 Ill.App. LEXIS 832. Leave to appeal was denied by the Illinois Supreme Court on September 26, 2018 as reported at 2018 Ill. LEXIS 677, 424 Ill.Dec. 404, 108 N.E.3d 827.

The opinion of the Illinois Appellate Court, Second District, pertaining to all other issues and filed on June 25, 2020, is officially reported at 2020 IL App (2d) 180654 and unofficially reported at 2020 Ill.App. LEXIS 412. Leave to appeal was denied by the Illinois Supreme Court on March 24, 2021 as unofficially reported at 2021 Ill. LEXIS 318, 445 Ill.Dec. 645, 167 N.E.3d 653.

JURISDICTIONAL STATEMENT

On March 24, 2021, the Illinois Supreme Court entered its order denying Petitioner's Petition for Leave to Appeal, which had been timely filed on December 7, 2020 per that Court's Order of December 9, 2020, that sought review of the Opinion of the Illinois Appellate Court, Second District, filed on June 25, 2020 and its August 13, 2020 Order that denied Petitioner's Petition for Rehearing.

This petition for writ of certiorari is filed within one hundred fifty (150) days of March 24, 2021, per Supreme Court Rule 13(1), including especially its last sentence, as modified by this Court's COVID-19-related Order dated March 19, 2020. This Court's jurisdiction is invoked under 28 U.S.C.§ 1257(a).

CONSTITUTIONAL, STATUTORY AND ORDINANCE PROVISIONS INVOLVED

U.S. Constitution, Article I

Section 3

Clause 1

> The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Section 5

Clause 1

> Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Clause 2

> Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Section 6

Clause 1

> The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United

> States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

U.S. Constitution, First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Constitution, Fourteenth Amendment, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S. Code § 1983 - Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable

exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

75 ILCS 5/4-2

In villages under the commission form of government, the village council at its first regular meeting following the election establishing a public library, shall appoint a board of library trustees of 6 members who are village residents, 2 to hold until the first regular meeting of the next succeeding fiscal year, 2 to hold for one year thereafter and 2 to hold for 2 years thereafter. The respective successors of the initial appointees shall be appointed for 6 year terms and shall serve until their successors are appointed and qualified.

105 ILCS 5/27-9.1

All sex education courses that discuss sexual intercourse shall satisfy the following criteria:

(1) ***

(2) Course material and instruction shall teach honor and respect for monogamous heterosexual marriage.

(3) - (9) ***

105 ILCS 5/27-9.1

STATEMENT OF THE CASE

INTRODUCTION

This case involves, *inter alia*, defamation and constitutional claims arising out of a meeting of the Downers Grove Public Library Board of Trustees. (App. 123). Plaintiff-Petitioner Arthur Jaros, Jr. ("Jaros"), who was a Library Trustee, serving a six year statutory term[1] at the time of that Library Board meeting, as well as a licensed, private-practice Illinois attorney, was falsely accused in a Report by an observer of the meeting, Defendant Susan Farley ("Farley"), from the League of Women Voters for Downers Grove, Woodridge and Lisle ("the League"), as having stated during an official meeting of the Library's Board of Trustees that he wanted to exclude from the library any "people different from white straight people." (App. 124, ¶¶23-31).

As a result of that false accusation in the League's Report, Jaros was summarily removed without a hearing from his position as a Library trustee by the Village of Downers Grove (App. 132, ¶¶72-73; App. 134, ¶81; App. 137-138, ¶¶92-95; App. 263-267, Counts V and VI). Plaintiff sought relief in the courts of the State of Illinois (i) for wrongful termination – both as being *ultra*

[1]App. 122, ¶10.

vires (as discussed at p.17, *infra*) and as contravening constitutional protections, as more extensively discussed herein, of freedom of speech and of procedural due process of law in regards his liberty and property interests in his trusteeship and its statutory term of years – of his statutory term of office as trustee, (ii) for damage to his reputation in the community due to his termination as a Library trustee, and (iii) for damage to his reputation as an attorney. (App. 125, ¶¶ 33, 36).

The Illinois Appellate Court, citing cases from the 7th Circuit, the Appellate Court and other State courts but not the Illinois Supreme Court, claimed there is a dichotomy in a case like this. On one hand, statements that are defamatory *per se*, that implicate a Plaintiff's job performance duties, are actionable defamation. But statements that attack Plaintiff's "personal integrity and character" as a private practice attorney were held to be not defamatory at all. (App. 18- App. 27, ¶¶ 45-67).

After a discussion of all of the cases that allegedly add up to the dichotomy advanced in the Appellate Court Opinion, that Court acknowledged that Plaintiff may lose clients but it did not matter:

> "¶ 69 Nor is it manifest from the reported statement that plaintiff lacks ability or integrity as an attorney. Without doubt, a

> statement recommending the "reject[ion] [of] *** people different from white straight people" immediately strikes one as offensive. We cannot, however, base our analysis on the visceral impact of the statement but must analyze it dispassionately under the proper criteria. A statement is not defamatory simply because it paints the plaintiff as a bad character. More particularly, an attack on personal integrity becomes an actionable attack on professional integrity only when the statement is directly related to job skills or function. ... From all accounts of the August 23 meeting, plaintiff's preeminent concern was to insulate child patrons of the library from exposure to values and practices he considered personally offensive. Admittedly, his personal rejection of those values was—so Farley reported—expressed in odious terms. …
>
> Plaintiff may well be correct that the reported statement will discourage some from retaining his services as an attorney, but such detriment is not the touchstone of whether a statement is defamatory per se under categories (3) and (4). In the cases discussed above, allegations of such conduct as racially derogatory language, physical aggression, cyberhacking, and revengeful posting of obscenity were found not to be defamatory per se, because they did not relate to the plaintiff's ability or integrity in his specific occupation. If, as a result of the reported statement, some are discouraged from retaining plaintiff for legal services, the cause will be more about what the reported statement revealed about his general character than about his capacity to be a fair and competent counselor."

It is axiomatic that the Circuit Court was required to assume as true the allegations of the Complaint for purposes of these 735 ILCS 5/2-615 and 735 ILCS 5/2-619 motions to dismiss, and to construe those allegations in context while drawing all inferences in favor of plaintiff. That, however, did not happen. In addition to the above-quoted reasoning, these facts were not

given any consideration: On the evening of August 23, 2017 in the meeting room at the Downers Grove Public Library, the library's Board of Trustees ("Board") conducted its regular monthly meeting for the month of August. ("Meeting") (App. 123, ¶ 13). All six trustees including Plaintiff were present to discuss a long-range Plan for the library (App. 123, ¶ 14). Plaintiff was there to discuss that Plan as a library trustee. His comments that are in issue in this case occurred when Plaintiff was discussing that Plan, as a Library trustee, based upon the text of an Illinois School Code provision that he believed reasonably expressed the policy of the State of Illinois in regards the instruction of school age children by public institutions (including the children's department of the Downers Grove Public Library) (App. 142):

> All sex education courses that discuss sexual intercourse shall satisfy the following criteria:
>
> (1) ***
>
> (2) Course material and instruction shall teach honor and respect for monogamous heterosexual marriage.
>
> (3) - (9) ***
>
> 105 ILCS 5/27-9.1 (appearing at App. 148)

Yet the Appellate Court erroneously concluded that Plaintiff was not pursuing this case as a Library trustee, but was instead only suing for any damage caused to his law practice: "We decline to consider the reported statement in relation to plaintiff's position as library trustee, because his complaint alleges prejudice only to his livelihood as attorney." (App. 18, ¶44). This conclusion ignores the fact that Plaintiff's Complaint attached exhibits showing that he was terminated as a library trustee as a result of the statements he made as a library trustee discussing a library Plan at the library meeting at the library (C99-C102) (C 144, ¶¶ 33, 36). There is no doubt about the *context* in which this occurred, as the Appellate Court stated:

> There is no dispute that, on August 23, 2017, the library trustees debated a proposed strategic plan for the library that would require staff training in "equity, diversity, and inclusion." Farley reported that plaintiff expressed an objection to inclusiveness training. According to Farley, plaintiff remarked that the library should not "recognize homosexual marriage" but should "protect the children from homosexuals and exposure to homosexual life style." He then "proceeded to continue to express his personal views on how we should view straight people vs. gays and reject inclusion and people different from white straight people." ¶ 40 at app. 16.

Jaros' Verified Complaint and Verified Amended Complaint denied Farley's account as being almost entirely maliciously false. (App. 123-128).

It was clear what Plaintiff contended in the Appellate Court: "According to plaintiff, the reported statement harmed him both in his "calling as library board trustee" and in his occupation as attorney." (App. 12, ¶ 24). The Appellate Court nevertheless affirmed on the ground that only Plaintiff's job performance as an attorney was in issue, agreeing with the Circuit Court that the statements made did not amount to defamation *per se* as to Plaintiff's performance as an attorney. (App. 31, ¶ 76).

The foregoing reasoning also led the Appellate Court to conclude that "plaintiff has not established that his removal from the Board implicated his free-speech rights." (App. 36, ¶ 87). Since the *context* must be considered in a defamation/free speech case, this case squarely presents the question whether only politically-correct speech is allowed when a public official is speaking and, indeed, speaking on the basis of, and the implications for public officials arising from, an express state statute. Whatever one thinks of same-sex marriage and the Illinois School Code's statutory provision that relegated, by application of the maxim *expressio unius est exclusio alterius*, both polygamous and homosexual marriage to inferior status *in terms of the instruction of school age children*, the question is whether a public official can even discuss the subject by reference to the text of a state

statute without being terminated from his public office and whether such a public official is entitled to First Amendment free speech protections and Fourth Amendment procedural due process protections against summary removal from office?

STATEMENT OF FACTS

On September 5, 2017, Plaintiff filed a Verified Complaint for Declaratory and Injunctive Relief and Money Damages against defendants seeking: (i) money damages for defamation (Count I - III); (ii) declaratory relief re: threatened *ultra vires* removal action by the Village (Count IV); (iii) emergency and permanent injunctive relief to prevent removal action that evening by scheduled action of the Village (Count V) based on Illinois constitutional protections–expressly pleaded to be analogous to those afforded by the U.S. Constitution--of his liberty and property interest in serving a statutory term as library trustee; and (iv) money damages for impairment and conspiracy to impair his Right of Freedom of Speech under Illinois constitutional protections alleged to be broader than those afforded by the U.S. Constitution (Count VI and VII).

The Court declined to enter a temporary restraining Order but directed Jaros to file an amended complaint by noon on September 7, 2017

(Appendix J) supplementing the allegations of the original complaint with whatever proved to be the results of the Village Council meeting conducted on the evening of September 5. Jaros did so, adding within the short time allowed, paragraphs 72 and 73 to Count IV and Complaint Exhibit 6. (Appendix K).

Because this appeal arises out of motion-based dismissals without any evidentiary hearings, Petitioner summarizes below the allegations of his pleadings.

Plaintiff-Appellant Jaros is an Illinois Attorney who in August, 2015 had become a Library Trustee, serving a six year statutory term, on the Downers Grove Public Library ("Library") Board of Trustees by elective action of the Downers Grove Village Council that appointed him to such position per 75 ILCS 5/4-2 in a statutory process akin to that of the election of United States Senators by state legislatures, rather than direct popular election, prior to the adoption of the Seventeenth Amendment to the U.S. Constitution. (App. 122).

The circumstances giving rise to Mr. Jaros' removal from the Board of Trustees for the Library occurred on August 23, 2017. (App. 123, ¶ 13). On

that date the Board of Trustees held its regular monthly meeting for the month of August. *Id*.

Present at the meeting was Defendant-Appellee Susan Farley, ("Farley") as an observer for the League of Women Voters for Downers Grove, Woodridge and Lisle ("League"). (App. 123, ¶ 17). A subject for that meeting was the formulation of a "Strategic Plan 2017-2020," for the Library ("Plan") developed by the trustees and library staff (App. 123, ¶ 20). A revised version of the Plan was on the meeting's agenda for approval by the Board of the Library. (App. 123, ¶ 21). During the deliberations concerning the final version of the Plan, Jaros made no reference whatsoever to race or skin color. (App. 124, ¶ 24). Jaros instead-- during deliberative discussion by the library's board of trustees over broad language of equity, diversity and inclusion inserted into the plan's draft by library staff-- made express reference to the text of Illinois School Code's provision on marriage as regards instruction of school age children. The Board unanimously agreed to modify the staff's draft language (App. 124-125, ¶32) to address Jaros' concern that the state's policy preference as regards school age children not be offended.

Farley, after the meeting had adjourned, composed an "Observer's

Report" ("Report") dated August 26, 2017, and disseminated the report on the League's website. (App. 124,¶ 25, 26). The Report alleged that Jaros in the meeting stated that "[h]e proceeded to continue to express his personal view on how we should . . . reject any . . . people different from white straight people." (App. 124¶ 28). Jaros' verified pleading asserted that he never rejected any people, or made in statements regarding race. (App. 124, ¶¶ 29, 30). Indeed, Jaros and the other trustees unanimously approved the Plan which included language that the Library's objective was "[t]o be inclusive in providing services to the community." (App. 124-125, ¶ 32). The Plan further states that the Library should "reflect the diversity of our community" and "evolve with our changing community." (*Id.*).

After Farley and the League's publication of the Report, Jaros received significant abuse claiming he was a bigot, racist, and homophobic. (App. 125, ¶ 34). The claim made in the Report caused damage to Jaros' reputation in the community of Downers Grove. (App. 125, ¶ 33). The claim further injured Jaros' reputation in the legal community. (App. 125,¶ 36). By August 31, 2017, the allegation had spread sufficiently that the President of the Library Wendee Greene was aware of the Report, and the false portrayal of Jaros as a racist. (App. 125, ¶ 35).

Further fuel to the online fire was stoked by the republication of the claim by Gregory W. Hosé ("Hosé") a commissioner sitting on the Village of Downers Grove Village Council. (App. 121, ¶ 5). Hosé republished on his personal Facebook page the accusation made in the Report. (App. 127, ¶ 44). Hosé called for the immediate removal of Jaros from the Board of Trustees. (App. 187). Hosé also claimed that he had investigated the matter and spoken to people who attended the August 23, 2017 meeting. (*Id.*) Despite his claim to have allegedly made an investigation prior to republishing the accusation, Hosé never contacted Jaros, the Library Board President Wendee Greene, the Library Board's recording secretary Katelyn Vabalaitis, or Library Director Julie Milavec to determine whether the Report was accurate. (App. 127-128,¶52-55). Indeed Plaintiff-Appellant was unable to identify any members of the library staff or trustee board having spoken to Hosé about the matter. Hosé's claimed investigation put his authority behind the League's claims, and bolstered the Report's credibility by claiming he had investigated the matter confirming the truth of the accusation. No evidence of this alleged investigation or the persons interviewed by Hosé were ever disclosed prior to the dismissal by the circuit court. As a result of the publication of the Report and Hosé's "investigation" and republishing of the accusation, the

Village Council proceeded with a removal action against Jaros on September 5, 2017. (Ap. 131-132, ¶ 69). The Village Council on September 5, 2017 unanimously voted to remove Jaros a trustee under the "Mayor's Report" portion of the agenda where Jaros was given no opportunity to be heard. (App. 132, ¶ 72; App. 266-269).

Count IV of the original and amended Complaint that sought a declaration that the Village's government's home rule powers did not extend to the power to truncate a public library trustee's statutory six year term. The Circuit Court decided that Count adverse to Jaros (Appendix G) and interlocutory appeal to the Illinois Appellate Court ensued (docketed as 2-17-0758). After issuance of an Opinion of affirmance, Jaros petitioned for rehearing (Appendix L) and the Appellate Court thereupon modified its Opinion (Appendix H) but refused to rehear the appeal and did not withdraw its affirmance.

Defendants then moved to strike and dismissing the remaining counts of the Amended Complaint (Appendix K). On April 4, 2018, the Circuit Court entertained oral argument on those motions and made an oral ruling dismissing the remaining counts (Appendix C). A companion short-form

written Order was filed (Appendix D).

The Court ruled as follows with respect to the two free speech counts:

> With respect to Counts 6 and 7, those are also going to be dismissed. Again, Mr. Jaros was expressing his views as a member of the library board, and those view as expressed, they're not protected by the Illinois or U.S. Constitution based on the Village's reaction to that speech. (App. 78).

With respect to Count V for preliminary and permanent injunctive relief and which count specifically alleged Jaros' liberty and property interests in his trusteeship position (App. 134), Jaros pointed out to the Circuit Court that only the request for preliminary relief had been ruled upon and that the request for permanent relief remained unadjudicated (App. 43-44). Jaros also specifically made reference to both the "denial of due process for my liberty and property interest" (App. 44) and the comment contained in the Opinion of the Illinois Appellate Court at App. 116,[2] explaining to the Circuit Court that his claim of denial of due process was, in fact, able "to be further developed" and therefore going beyond the allegation of the Verified Amended Complaint of the Village board defendants having "catered to and

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[2]"Plaintiff develops no constitutional argument independent of his contention that the Village exceeded its constitutional home-rule powers." Given the limited scope of Count IV and the narrow scope of the interlocutory appeal, such development remained for the future course of the case in the Circuit Court.

catering to mob mentality" (App. 138) and depriving Jaros of his liberty and property interests (App. 134).

The Circuit Court ruled that it would, in fact, have allowed Jaros to replead but for the Court's ruling that the entire case including all constitutional grounds could not survive the defendants' dismissal arguments. (App. 74 at lines 14 - 18). The Court did not expressly respond to Jaros' observation that the portion of Count V for permanent injunctive relief had not yet been ruled upon but instead dismissed it "to make the record clear" without affording other reasons (App. 79).

As part of his May 4, 2018 effort to have the trial court vacate its April 4, 2018 ruling (Appendix M), Jaros proffered a proposed Second Amended Complaint. (Appendix N-1) While the motions to vacate and to amend were pending, the proposed Second Amended Complaint was revised on June 26, 2018 (Appendices N-2 and N-3). In that revised form, it contained the following ten counts that, *inter alia*, contained additional detailed allegation regarding malice within Count I, added federal constitutional grounds (already noted, as set forth above, by the Circuit Court at App. 78 to be present) and made express the violations of procedural due process, as

follows:

I	Defamation against Defendant Farley
II	Defamation against the Defendant League of Women Voters of Downers Grove, Woodridge and Lisle (Respondeat Superior)
III	Defamation against Defendant Gregory W. Hosé (Republication)
IV	Section 2-701 Action in Chancery for Declaratory Judgment Re: Lack of Legal Power of defendant Village of Downers Grove's Village Council to Remove Plaintiff as Trustee of the Downers Grove Public Library
V (new)	Section 2-701 Action in Chancery for Declaratory Judgment Re: Failure of the Defendant Village to Afford Plaintiff Due Process of law During Removal Process
VI	Impairment of Right of Freedom of Speech under Illinois and U.S. Constitutions (adding federal grounds)
VII (new)	Impairment without Due Process of Law of federal and Illinois Constitutional Right to Liberty and Property
VIII	Conspiracy to Deny Plaintiff His Civil Rights (revision to original Count VII)
IX (f/k/a V)	For Preliminary Injunctive Relief
X (f/k/a V)	For Permanent Injunctive Relief

The Motion to Vacate and Motion for Leave to File a Second Amended Complaint that sought, *inter alia*, to develop the due process argument already raised were summarily denied. (Appendices E and F).

On appeal, the Illinois Appellate Court refused to recognize that the Circuit Court already was cognizant of the fact that Jaros was raising not just Illinois but federal constitutional grounds (App. 78) and refused to find a First Amendment violation committed against Jaros as urged by him on the basis of *Bond v. Floyd,* 385 U.S. 116 (1966). (App. 34 -36). The Illinois Appellate Court also refused to follow its own prior guidance on Jaros' development of his due process claim and the Circuit Court's assurance that it would allow Jaros so to do unless affirmative matter barred such a due process claim as a matter of law. Jaros' Petition for Rehearing addressed the Appellate Court's finding that "there is no allegation as to how the removal procedure was lacking in due process." (App. 338-339). That Petition was denied without explanation. (Appendix I).

Jaros then petitioned to the Illinois Supreme Court for leave to appeal. (Appendix P). That petition pointed out the federal and Illinois constitutional claims raised in the Circuit Court below, both for First Amendment free speech violations (Point C at App. 368- 370 and for procedural due process violations (Point D at App. 370 - 371). That Petition for Leave to Appeal was denied without comment on March 24, 2021. (Appendix A).

ARGUMENT AMPLIFYING REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

Introduction

Due to Illinois' peculiar state statutory scheme under which public libraries are governed by Illinois' Local Public Library Act (75 ILCS 5/1-0.01 *et seq.*) and villages are a form of municipal corporation governed by the Illinois Municipal Code (65 ILCS 5/1-1-1, *et seq.*) but library trustees are appointed to their statutory six years terms by elective action of the village's Village Council, this case appears to present important federal constitutional questions of first impression, especially given the wide-spread "cancel culture" resembling mob action that is undermining the nation's foundations that are rooted in representative democracy, deliberative free speech and debate on matters of public policy, and fair governmental processes. To wit, decided case law has dealt with free speech and due process issues of government employees and of popularly elected public officials, including legislators and judges. Here, Jaros, as a public library trustee, took office in a statutory process akin to that of United States Senators prior to the adoption of the Seventeenth Amendment to the U.S. Constitution. Under the U.S. Constitution as originally enacted, it appears that a state's legislature, once having appointed the state's U.S. Senator by elective action of either or both of its

legislative chambers, was powerless to terminate a U.S. Senator's six year term of office given the power of the U.S. Senate itself, under Article I, §5, to "expel a member" and its exclusive §6 power to "question" a member.

Petitioner respectfully submits that Rule 10(c) of this Court is applicable because the courts of the State of Illinois have determined that a public library trustee has no protectible free speech, liberty and/or property interest in a six-year statutory term as a public library trustee against retaliatory, summary discharge by the appointing body for engaging in the legislative process of a different unit of local government, namely, the public library.

On April 26, 2021, this Court granted the Petition for Writ of Certiorari sought by Houston Community College in #20-804 (David Buren Wilson, Respondent) and for which briefing is presently in progress. In that case, the Fifth Circuit U.S. Court of Appeals held that a former member of a college system board of trustees had stated a viable Section 1983 claim based on that board's mere censure (rather than expulsion) of him for engaging in speech that involved a matter of public concern. Briefing on the Petition for Writ submitted in that case demonstrates a split among the U.S. Courts of Appeal. However and as is far more

common, trustees in that case are "elected by the public from single-member districts to serve a six-year term without remuneration."

In the instant case, public library trustees including Jaros likewise serve six-year terms per statute and likewise serve without remuneration but, instead of being directly elected by the public, are, as noted, appointed by elective action of the village council (whose members are elected by the public) for the village municipal corporation whose boundaries coincide with those of the public library.

The sanction imposed on Jaros, as a public official, far exceeded the severity of the sanction imposed on Wilson in #20-804. Therefore, Jaros respectfully requests that this Court take this Court with #20-804.

In addition and by way of analogy to Article I, Sections 5 and 6 of the U.S. Constitution, the expulsion power and the power to "question: a legislator" resides only with the legislative body on which the legislator is serving, here, the Downers Grove Public Library Board of Trustee–not the Village of Downers Grove.

A) Illinois Courts Erred When They Dismissed and Affirmed the Dismissal of Counts Alleging an Infringement of Jaros' Free Speech Rights

The circuit court's April 4, 2018 ruling stated in relevant part:

> With respect to Counts 6 and 7, those are also going to be dismissed. Again, Mr. Jaros was expressing his views as a member of the library board, and those views as expressed, they're not protected by the Illinois or U.S. Constitution based on the Village's reaction to that speech. (C 663, emphasis added).

However, in *Bond v. Floyd*, the Georgia House of Representatives sought to prevent Bond, an elected African American representative, from taking a seat in the Georgia House of Representatives on the basis that Bond had made anti-Vietnam statements which "gave aid and comfort to the enemies of the United States and Georgia, violated Selective Service laws, and tended to bring discredit and disrespect on the House." 385 U.S. 116, 123 (1966). The Georgia House of Representatives voted 184 to 12 to deny Bond from taking the oath of office and taking his seat in the chamber. *Id.* at 125. Bond brought a legal action against Georgia in federal court, arguing his rights under the First Amendment had been violated. *Id.* This Court held "that the disqualification of Bond from membership in the Georgia House because of his statements violated Bond's right of free expression under the First Amendment." *Id.* at 137.

As analyzed by the Defendants, Bond's exclusion from the Georgia House of Representatives would have stood, and an elected body, if it

voted to do so, could violate constitutional protections afforded under the U.S. Constitution as long as that violation was put to a vote by a municipal entity. The *Bond* case illustrates the problem arising from the broad immunity espoused by Defendants, enabling legislative immunity to grow beyond the means to shield legislative decision-making and instead becoming a sword to violate the constitutional rights of political opponents.

Plaintiff-Appellant Jaros expressed his opinion on a subject of public interest. The Village of Downers Grove, in retaliation for statements allegedly made by Jaros, removed Jaros from his non-partisan position as a library trustee, a position for which Jaros had been appointed by elective action of the Village Council for six years. (C 154 at ¶ 84). This removal from his position as library trustee should be seen as an unlawful abridgement of Plaintiff-Appellant's freedom of speech. *Id.* This removal violated the First Amendment of the U.S. Constitution guaranty of freedom of speech. As was the case in *Bond,* Defendants sought to hide behind legislative immunity by taking a vote on the decision. The removal

of Jaros however was an administrative decision which was not protected by legislative immunity.

B) The Defendant Village and its Actors including Defendants Hosé, Barnett and Tully Abridged, contrary to the federal and Illinois Constitutions, Jaros' Right Not to Have his Liberty and/or Property Interest in his Six Year Statutory Term to Hold Public Office as Library Trustee Denied without Procedural Due Process of Law.

Paragraph 81 of the Verified Amended Complaint made express reference to Jaros' property and liberty interest in and to his public office as library trustee for a statutory six year term provided for by 75 ILCS 5/4-2. (C 153). Paragraph 92 thereof referred to making Jaros' removal by the Village government perfunctory action as part of the Mayor's Report rather than as a deliberative item of "New Business." (C 156). Paragraph 95 alleges that the Village government and its official catered to "mob mentality" in removing Jaros from public office. (C 157). The Verified Amended Complaint was filed the day after the removal action by the Village Council as required by the Circuit Court's September 5, 2017 Order. (C 139).

Counts V and VII of Jaros' Verified Second Amended Complaint proffered on June 26, 2018, more specifically pleaded denial of procedural

due process of law in regard to the deprivation of his constitutionally protected liberty and property interests.

1) Jaros's Six Year Statutory Term of Office as Library Trustee Constituted a Property Interest.

Under Section 4-2 of the Illinois Local Library Act (75 ILCS 5/4-2), Jaros became a trustee of the Downers Grove public library not my unilateral mayoral appointment but rather by vote of the Village Council. Section 4-2 states library trustees "shall be appointed" by village council action. As explained below, the taking of a vote to select a person for public office constitutes an "election."

Whereas unilateral mayoral action to select a person for public office involves an "appointment" without an "election" (for example, as provided in 75 ILCS 5/4-1.1 with respect to local public libraries situated in cities, not villages), village council action to select a person for public office involves both an "appointment" and an "election" even though the "election" is not a "*general* or *primary* election" at which the village's entire electorate is permitted to vote. In this regard, *Black's law Dictionary* (Revised Fourth Edition) provides these definitions:

ELECTION:

The act of choosing or selecting one or more from a greater number of persons ... *** With respect to the choice of persons to fill public office ... the term means in ordinary usage the expression by vote of the will of the people or of a somewhat numerous body of electors. *** ***But this is not necessarily so, for the term may apply to the selection by a city council of one of their number as mayor.***

APPOINT:

"Appoint" is used where exclusive power and authority is given to one person, officer ***or body*** to name person to hold certain offices. *** It is usually distinguished from "elect," meaning to choose by a vote of the qualified voters of the city. *** ***But the distinction is not invariably observed.*** (emphases added)

Dictionary.com defines "Election" as follows:

1. the selection of a person or persons for office ***by vote***. (emphasis added)

In summary, a trustee of a local public library situated in a village is chosen by *appointment* through *elective* action of the village council.

Where a public official is chosen by elective action to serve a statutory term of years, his office constitutes a constitutionally-cognizable "property interest."

East St. Louis Federation of Teachers, Local 1220 v. East St. Louis School District No. 189 Financial Oversight Panel, 178 Ill. 2d 399, 417-418, 687 N.E.2d 1050, 1061 (1997).

2) Jaros's Six Year Statutory Term of Office as Library Trustee Also Constituted a Liberty Interest.

Plaintiff, as a government official, also has a federal constitutionally protected liberty interest from being removed from his office motivated by false and defamatory allegations made against him. (*Velez v. Levy*, 401 F.3d 75, 87-90 (Second Cir. 2004), reversing dismissal of constitutional claim for deprivation of liberty interest: "When government actors defame a person and –either previously or subsequently - deprive them of some tangible legal ... status, *see Abramson v. Pataki,* 278 F.3d 93, 101 (2d Cir. 2002), a liberty interest may be implicated, even though the 'stigma' and 'plus' were not imposed at precisely the same time. *** Velez alleges that the board members made, and sought to publicize in local news

sources, highly stigmatizing statement that explicitly requested her removal . . ..").

Thus, Plaintiff stated a cause of action for constitutional denial of his liberty interest. Such a cause of action exists even if, as this Court ruled in Jaros' prior related appeal, the Defendant Village possessed home rule power under the Illinois Constitution to truncate a library trustee's six-year statutory term of office at will. *Jannetta v. Cole*, 493 F.2d 1334, 1338 (Fourth Cir. 1974).

3) Jaros' Sufficiently Pleaded Denial of Procedural Due Process

Under federal constitutional law of procedural due process, the "fundamental requirement is the opportunity to be heard at a meaningful time and in a meaningful manner." *East St. Louis Federation of Teachers, Local* 1220, 178 Ill. 2d at 419, 687 N.E.2d at 1062. Here, Paragraphs 91 and 102 of Jaros' Verified Second Amended Complaint allege denial of any opportunity to be heard. (C 698; C 701). Therefore, the circuit court erred in dismissing the civil action without permitting Jaros to proceed on his

claim to have been denied procedural due process in regards the protection (and unlawful taking away) of his constitutionally protected property and/or liberty interests in and to his six-year statutory term to the holding of public office.

CONCLUSION

Wherefore, Petitioner prays that the Court issue a writ of certiorari to the Illinois Supreme Court for the reasons aforesaid.

Respectfully submitted,

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