

No. _____

In the Supreme Court of the United States

LAUREL D. LIBBY, RONALD P. LABEL, WENDY MUNSELL, JASON LEVESQUE,
BERNICE FRASER, RENE FRASER, AND DONALD DUBUC,

Applicants,

v.

RYAN M. FECTION, IN HIS OFFICIAL CAPACITY AS SPEAKER
OF THE MAINE HOUSE OF REPRESENTATIVES, AND ROBERT B. HUNT,
IN HIS OFFICIAL CAPACITY AS CLERK OF THE HOUSE,

Respondents.

ON APPLICATION FOR INJUNCTIVE RELIEF PENDING APPEAL
TO THE U.S. COURT OF APPEALS FOR THE FIRST CIRCUIT

**APPENDIX TO EMERGENCY APPLICATION FOR INJUNCTION
PENDING APPEAL**

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United States Court of Appeals For the First Circuit

No. 25-1385

LAUREL D. LIBBY; RONALD P. LABEL; WENDY MUNSELL; JASON LEVESQUE;
BERNICE FRASER; RENE FRASER; DONALD DUBUC,

Plaintiffs - Appellants,

v.

RYAN M. FECTEAU, in their official capacity as Speaker of the Maine House of
Representatives; ROBERT B. HUNT, in their official capacity as Clerk of the House,

Defendants - Appellees.

Before

Gelpí, Kayatta and Montecalvo,
Circuit Judges.

ORDER OF COURT

Entered: April 25, 2025

Appellants have filed an "Emergency Motion for Injunction Pending Appeal." "To be entitled to an injunction pending appeal, the appellants must make a strong showing that they are likely to succeed on the merits, that they will be irreparably injured absent emergency relief, that the balance of the equities favors them, and that an injunction is in the public interest." Together Emps. v. Mass Gen. Brigham Inc., 19 F.4th 1, 7 (1st Cir. 2021). "The first two factors are the most important." Id.

After careful consideration of the injunction papers filed in this court and relevant portions of the record, we conclude that appellants have failed to demonstrate a sufficient likelihood of success and, more generally, have failed to demonstrate that injunctive relief pending appeal is in order. See generally Cushing v. Packard, 30 F.4th 27 (1st Cir. 2022) (en banc); National Association of Social Workers v. Harwood, 69 F.3d 622 (1st Cir. 1995). Accordingly, the motion is **DENIED**.

Any party intending to seek expedited briefing of the merits of the appeal should file an appropriate motion as soon as practicable.

By the Court:

Anastasia Dubrovsky, Clerk

cc:

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

_____)	
Laurel D Libby, et al.,)	
Plaintiff,)	
)	
v.)	C.A. No. 25-cv-83-MRD
)	
Ryan M Fecteau, et al.,)	
Defendant.)	
_____)	

MEMORANDUM AND ORDER

Melissa R. DuBose, United States District Judge.*

Participation in sports by transgender students is one of many policies that lawmakers around the country are fiercely debating. In Maine, “individual[s] at . . . educational institution[s]” have an equal opportunity and civil right to “participate in all educational . . . programs . . . and all extracurricular activities [including athletic programs] without discrimination because of sex, sexual orientation or gender identity, a physical or mental disability, ancestry, national origin, race, color or religion.” Me. Rev. Stat. Ann. tit. 5, §§ 4601, 4602 (2021). Maine House Representative Laurel Libby self-identifies as “an outspoken critic of Maine’s state policy allowing boys who identify as transgender to compete in girls’ sports.” Compl. at ¶ 2 (ECF No. 1). As part of her advocacy against this policy, Representative Libby generates social media content that she posts across various social media platforms including but not limited to Facebook. One such post, described below, earned her a

* Of the District of Rhode Island, sitting by designation.

formal censure by her colleagues in the Maine House of Representatives and a corresponding sanction prohibiting her from speaking or voting on the House floor until she apologizes for her post. Aggrieved, she and six of her constituents filed suit in this court, claiming that the imposition of this sanction is a violation of their constitutional rights under the First, Fourth, and Fourteenth Amendments. The plaintiffs collectively moved for a preliminary injunction to prevent the enforcement of the sanction. The defendants, House Speaker Ryan Fecteau and House Clerk Robert Hunt, assert that legislative immunity shields them from liability for these claims. For the reasons explained in detail below, the court concludes that legislative immunity bars the claims in this case. In short, Speaker Fecteau's imposition of the sanction plainly identified in the House of Representatives Rule that governs when House members are found in breach of House rules is a legislative act that does not, according to binding caselaw and within the context of this censure, qualify for the narrow exception carved out for conduct of an extraordinary character. The court, therefore, denies the motion for preliminary injunction.

I. BACKGROUND

Before summarizing the sequence of events which led to this litigation, the court starts by setting the table with some additional details about the parties and laying out the relevant rules of procedure for Maine legislators. Plaintiff Laurel Libby represents House District 90 in the current session – the 132nd – of the Maine Legislature, her third consecutive term in this elected position. Compl. at ¶ 10; Libby Decl. ¶¶ 2-3 (ECF No. 34-1). Plaintiffs Ronald P. Lebel, Wendy Munsell, Jason

Levesque, Bernice Fraser, Rene Fraser, and Donald Duboc reside within Maine House District 90 and voted in the last state legislative election. Constituents' Decls. at ¶ 3 (ECF Nos. 8-1 – 8-6). Defendant Ryan Fecteau represents House District 132 in the 132nd Maine Legislature, his fifth term in this elected position, and serves as the elected Speaker of House. Fecteau Decl. at ¶¶ 2-3 (ECF No. 29). All the court knows about defendant Robert Hunt is that he is serving as the Clerk of the House. Compl. at ¶ 18.

Pursuant to *Mason's Manual of Legislature Procedure*, “[a] legislative body has the right to regulate the conduct of its members and may discipline a member as it deems appropriate, including reprimand, censure or expulsion.” Section 561(1) (2020). The Maine Constitution confers upon the State Legislature the sole authority to promulgate its own rules of procedure. Fecteau Decl. at ¶ 5. *See* Me. Const. Art. IV, Pt. 3, § 4 (“Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of 2/3, expel a member, but not a 2nd time for the same cause.”). Pursuant to this express authority, the 132nd Maine Legislature adopted its House Rules on December 4, 2024.¹ House Rule 401 details the “[r]ights and duties of members.” Fecteau Decl. Ex. A at 12 (ECF No. 29-1). Rule 401(11) covers “breach of rules” and states, in its entirety:

When any member is guilty of a breach of any of the rules and orders of the House and the House has determined that the member has violated

¹ The Rules adopted on this day were the same as those which governed the previous legislative session and were passed by consent of the entire House after no members requested a roll-call vote when provided with the opportunity to do so. Fecteau Decl. at ¶ 6.

a rule or order, that member may not be allowed to vote or speak, unless by way of excuse for the breach, until the member has made satisfaction.

Fecteau Decl. Ex. A at 13.² Members of the House are also governed by the Legislative Code of Ethics adopted by the 100th Legislature and amended by the 127th Legislature. The Code of Ethics, in its entirety, states:

Legislative service is one of democracy's worthiest pursuits. A Maine Legislator is charged with civility and responsible conduct inside and outside of the State House commensurate with the trust placed in that Legislator by the electorate.

In a free government, a Legislator is entrusted with the security, safety, health, prosperity, respect and general well-being of those the Legislator serves and with whom the Legislator serves.

To work well, government requires a bond of trust and respect between citizens and their Legislators. With such a trust, high moral and ethical standards producing the public's confidence, with the reduction to a minimum of any conflict between private interests and official duties, should be observed.

No Maine Legislators will accept any employment that will impair their independence and integrity of judgment nor will they exercise their position of trust to secure unwarranted privileges for themselves or for others. The Maine Legislator will be ever mindful of the ordinary citizen who might otherwise be unrepresented and will endeavor conscientiously to pursue the highest standards of legislative conduct inside and outside of the State House.

Fecteau Decl. Ex B (ECF No. 29-2).

With these details laid out, the following is the sequence of events which led to this cause of action and pending motion, as alleged in the complaint and declared by

² This particular rule seems to have been in place since at least 1820, when the rules governing the first session of the Maine House of Representatives included the same protocol with almost identical wording. Defs.' Opp'n Ex. 1 at 2, 8 (section XV) (ECF No. 28-1).

the parties in support of their respective positions. On February 17, 2025, Representative Libby used her official Representative Laurel Libby Facebook account to create a post which included the juxtaposition of two photos and some commentary. Compl. at ¶ 31. Each photo shows three adolescent student athletes standing side-by-side on a winner's podium, wearing athletic attire, and either holding a ribbon or a medal in their hand or wearing a medal around their neck. *Id.* ¶ 31. One student athlete in each photo is highlighted by way of double yellow lines encircling them from head to toe. *Id.* ¶ 31. In the right-side photo, the two student athletes not highlighted by circles have their faces blurred out; in the left photo, the faces of all three students are clearly visible. *Id.* ¶ 31. The text above the photos in the post states:

UPDATE: We've learned that just *ONE* year ago [athlete] was competing in boy's pole vault...that's when he had his 5th place finish. So all of this transpired in the last year, with the full blessing of the Maine Principals' Association.

Two years ago, [athlete] tied for 5th place in boy's pole vault. Tonight, "[athlete]" won 1st place in the girls' Maine State Class B Championship.

Id. ¶ 31.³

On February 18, 2025, Speaker Fecteau, "concern[ed] that publicizing the student's identity would threaten the student's health and safety," contacted Representative Libby twice (once by letter, once by phone call) to ask that she delete

³ The court sees no reason to repeat the name of the targeted student athlete here. Also, the original photographer or source of the photos is not clear, though the court understands each to have been published prior to Representative Libby's post.

the Facebook post. Fecteau Decl. at ¶¶ 13-14; Compl. at ¶ 42.⁴ At the next scheduled session of the House, February 25, 2025, Representative Matt Moonen presented “House Resolution Relating to the Censure of Representative Laurel D. Libby of Auburn by the Maine House of Representatives.” Fecteau Decl. at ¶ 17, Ex. D (ECF No. 29-4). The Resolution summarized the Facebook post, the national attention that Representative Libby received for her post, and her decision not to remove the post after hearing concerns about the minor’s safety as a result of the post. Fecteau Decl. Ex. D. The Resolution also cited excerpts from the Code of Ethics and pronounced Representative Libby’s actions as “in direct violation” of the Code of Ethics. *Id.* The Resolution resolves that Representative Libby is “censured by the House of Representatives for just cause” and “must accept full responsibility for the incident and publicly apologize to the House and to the people of the State of Maine.” *Id.*

House members engaged in debate over the introduced Resolution and then adopted it by a vote of 75-70.⁵ Fecteau Decl. ¶ 18. Speaker Fecteau called Representative Libby to the well of the House, “lectured her on the House’s ethics standards, and offered her an opportunity to apologize.” Compl. at ¶ 57. Representative Libby declined to apologize and Speaker Fecteau found her in violation of Rule 401(11), *id.*, announcing she would “not be able to cast a vote or

⁴ Speaker Fecteau’s letter articulated his concern with Representative Libby sharing the student’s name, school, and photo as a “risk[to] their health and safety” and as a “violat[ion of] one of the long held political traditions of ‘leaving kids out of it.’” Fecteau Decl. Ex. C (ECF No. 29-3).

⁵ *Archived Hearings & Meetings: House Chamber*, 5:57:35-7:03:40 PM, Me. Leg. (Feb. 25, 2025), <https://bit.ly/43tBMp4>.

speak on the floor until [she] comes back into compliance with House Rule 401 part 11,” *Archived Hearings & Meetings: House Chamber*, 7:11:02-7:11:11 PM, Me. Leg. (Feb. 25, 2025), <https://bit.ly/43tBMp4>. According to Speaker Fecteau, he “exercised [his] duty as Speaker to rule her in violation of House Rule 401(11), and therefore barred her from casting a vote or participating in debate on the House floor until she made satisfaction by coming into compliance with the Resolution.” Fecteau Decl. ¶ 20. “No member, including Rep. Libby, made any objection to [his] ruling.” *Id.* ¶ 21.

On March 11, 2025, Representative Libby and six of her constituents from District 90 filed a verified complaint in this court pursuant to 42 U.S.C. § 1983 against Speaker Fecteau and Clerk Hunt, in their official capacities, claiming that barring Representative Libby from speaking on the House floor or voting on legislation violated fundamental rights protected by the U.S. Constitution. Compl. at 1. In Count I, Representative Libby alleges the sanction is an action taken in retaliation for her posts on social media and violates her First Amendment right to free speech. *Id.* ¶¶ 72-76. In Count II, Representative Libby (along with the six constituents from District 90) allege that the sanction is a result of arbitrary and disparate treatment, impinges on the “one person, one vote” principle, and effectively disenfranchises the constituents in violation of the Fourteenth Amendment’s Equal Protection clause. *Id.* ¶¶ 84-86. In Count III, all plaintiffs claim the sanction is also excluding Representative Libby from the office to which she was duly elected and depriving her constituents of a vote for state representative in violation of the Fourteenth Amendment’s Due Process clause’s protection against fundamental unfairness in the

electoral process. *Id.* ¶¶ 89-94. In Count IV, all plaintiffs allege that the sanction deprives Representative Libby of the privileges of her office and deprives her constituents of representation in the House in violation of Article IV, § 4 of the U.S. Constitution which “guarantees to every State . . . a Republication Form of Government. *Id.* ¶¶ 101-05. The plaintiffs seek a declaratory judgment that the sanction infringes their constitutional rights as alleged in each count, an injunction barring the enforcement of the sanction against Representative Libby, and attorneys’ fees and costs pursuant to 42 U.S.C. § 1988. *Id.* at 28.

In their Motion for Preliminary Injunction, the plaintiffs ask this court to preliminarily enjoin the defendants from enforcing the sanction Speaker Fecteau imposed while the parties litigate the merits of the plaintiffs’ claims. The defendants opposed the motion and the plaintiffs filed a reply to the defendants’ opposition. The court heard argument on April 4, 2025.⁶

II. LEGAL STANDARD

A preliminary injunction may be granted when a plaintiff demonstrates “four long-established elements.” *Santiago v. Municipality of Utuado*, 114 F.4th 25, 34-35 (1st Cir. 2024). First, “the probability of the movant’s success on the merits of their

⁶ The court is also in receipt of a letter the plaintiffs filed on Friday, April 11. ECF No. 38. The court reminds the plaintiffs that the briefing schedule entered by the court was requested by the plaintiff in a consent motion that the plaintiff filed two days after filing the motion for preliminary injunction. The court confirmed with the parties, during a chambers conference held on April 18, that the briefing timeline proposed in the consent motion was indeed satisfactory to all and the court scheduled the hearing on the earliest date suggested by the parties. The plaintiff’s letter, filed one week after the hearing, neglects to mention these details.

claim(s).” *Id.* (quoting *Rosario-Urdaz v. Rivera-Hernandez*, 350 F.3d 219, 221 (1st Cir. 2003)). Second, “the prospect of irreparable harm absent the injunction.” *Id.* (quoting *Rosario-Urdaz*, 350 F.3d at 221). Third, “the balance of the relevant equities (focusing upon the hardship to the movant if an injunction does not issue as contrasted with the hardship to the nonmovant if it does).” *Id.* (quoting *Rosario-Urdaz*, 350 F.3d at 221). Fourth, “the effect of the court’s action on the public interest.” *Id.* (quoting *Rosario-Urdaz*, 350 F.3d at 221). “The movant’s likelihood of success on the merits is the element that ‘weighs most heavily in the preliminary injunction calculus.’” *Id.* at 35 (quoting *Me. Forest Prods. Council v. Cormier*, 51 F.4th 1, 5 (1st Cir. 2022)).

III. DISCUSSION

As previewed above, the defendants contend that they are immune from this lawsuit under the doctrine of legislative immunity. Defs.’ Opp’n at 1 (ECF No. 28). The court must address this threshold issue before considering the parties arguments about the preliminary injunction factors. If legislative immunity applies, then the court must deny the motion for preliminary injunction because the plaintiffs will not meet the weighty likely-to-succeed-on-the-merits-of-their-claims element of the preliminary injunction standard. *See Santiago*, 114 F.4th at 42 (ending the preliminary-injunction analysis after concluding the plaintiff-appellant would not prevail on this factor).

For those readers not familiar with this form of immunity from suit, the Supreme Court has long considered legislators (and often, but not always, their staff)

absolutely immune from being sued for their legislative acts. *Cushing v. Packard*, 30 F.4th 27, 36-37 (1st Cir. 2022) (en banc). The immunity has some guardrails, however. It “protects ‘only purely legislative activities,’” *Nat’l Ass’n of Social Workers v. Harwood*, 69 F.3d 622, 630 (1st Cir. 1995) (quoting *United States v. Brewster*, 408 U.S. 501, 507 (1972)), and “does not attach to the activities that are merely ‘casually or incidentally related to legislative affairs,’” *Cushing*, 30 F.4th at 49 (quoting *Brewster*, 408 U.S. at 528), or to administrative actions that “fall outside the ‘legitimate legislative sphere,’” *Harwood*, 69 F.3d at 630, 631 n.9 (quoting *Eastland v. U. S. Servicemen’s Fund*, 421 U.S. 491, 503 (1975)). In addition to these limitations, immunity does not protect legislative activities that are deemed of an “extraordinary character,” *Cushing*, 30 F.4th at 50 (quoting *Kilbourn v. Thompson*, 103 U.S. 168, 204 (1880)), a vaguely defined but rarely applied concept to circumvent the immunity shield. The court will take a deeper dive into this immunity and its common law limitations after setting out the parties’ broad arguments about whether the defendants are entitled to legislative immunity from the plaintiffs’ claims.

According to the defendants, the action the plaintiffs challenge as violating their constitutional rights – barring Representative Libby from speaking or voting on the House floor – was a legislative act entitled to the protection of legislative immunity. Defs.’ Opp’n at 4, 6-7. The defendants assert that the “extraordinary character” exception is not met here because Speaker Fecteau imposed the sanction in strict adherence to a centuries-old rule of House procedure, and because Representative Libby has not been barred from performing all legislative work on

behalf of her district. Defs.’ Opp’n at 9 (citing Fecteau Decl. ¶¶ 27-38)). The defendants contend that for this court to apply the “extraordinary character” exception, thereby removing the legislative immunity shield, would result in this court taking an impermissible step into another branch of government’s jurisdiction and traversing into a political battle in which the court should not involve itself. Defs.’ Opp’n at 9-10.

The plaintiffs counter that this action was not legislative in nature but an administrative action that falls outside the sphere of protection conferred by legislative immunity. Pls.’ Reply at 1 (ECF No. 34). The imposition of the sanction stripping Representative Libby’s voice and vote from the House floor is not, according to the plaintiffs, an action that the courts would consider to be part of the legislative process. Pls. Reply at 1-2. During the hearing on the pending motion, the plaintiffs also argued that stripping a House representative of what they consider her core responsibilities to her district – speaking on the House floor and voting – is so blatantly unconstitutional that the Speaker’s imposition of this sanction must fall into the narrow exception for “extraordinary” conduct to which the courts have indicated legislative immunity will not apply. Apr. 4, 2025 Hearing Tr. (“Tr.”) at 5:15-21, 6:3-5, 6:14-19, 9:2-4 (ECF No. 37).

This threshold issue is a narrow one because the plaintiffs are clear that they are challenging the sanction imposed and “not the wisdom of the underlying censure,

as unwise as it may be.” Pls.’ Reply at 2.⁷ While the appellate courts have explored many contours of legislative immunity, the situation presented in this case does not fit squarely into any of these courts’ past discussions and applications of this absolute immunity. And so this court will start its deeper dive into the issue by describing some of the contours of this doctrine as it understands the Supreme Court and First Circuit to have defined them, beginning with the basic philosophy behind legislative immunity before moving onto the distinctions between legislative acts and nonlegislative (or administrative) acts and describing the amorphous exception for extraordinary conduct.

The original source of legislative immunity is the Speech and Debate Clause of the U.S. Constitution. *Cushing*, 30 F.4th at 36; *Harwood*, 69 F.3d at 629 (acknowledging that “state legislators and their surrogates enjoy a parallel immunity from liability for their legislative acts”); *see also Bogan v. Scott-Harris*, 523 U.S. 44, 49 (1998) (noting that “state and regional legislators are entitled to absolute immunity from liability under § 1983 for their legislative activities”). The First Circuit highlights this immunity as

serv[ing] an important democratic end notwithstanding that it insulates elected representatives from legal challenges for certain of their official actions. For that reason, we must be cognizant – as the [Supreme] Court has instructed us to be – of the risks associated with failing to respect the traditional scope of legislative immunity, bounded though it is, out

⁷ During the hearing on the pending motion, the plaintiffs repeated that their constitutional challenges are only to the imposition of the sanction – the “prohibition on her speaking on the floor and casting a vote to represent her constituents” – and not on the Resolution censuring Representative Libby for the Facebook post. Tr. at 11:9-16, 14:24-25.

of respect for legislative freedom and thus democratic self-government.

Cushing, 30 F.4th at 52; *see Harwood*, 69 F.3d at 630 (“absolute immunity . . . afforded . . . to protect the integrity of the legislative process by insuring the independence of individual legislators.”). “In reading the Clause broadly [courts] have said that legislators acting within the sphere of legitimate legislative activity ‘should be protected not only from the consequences of litigation’s results but also from the burden of defending themselves.’” *Eastland*, 421 U.S. at 503 (quoting *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967)). It is well-settled that legislative immunity may apply against claims (such as those we have here) which “seek only declaratory or prospective injunction relief.” *Cushing*, 30 F.4th at 37 (citing *Sup. Ct. of Va. v. Consumers Union of the U.S., Inc.*, 446 U.S. 719, 732 (1980)).

As mentioned above, the entitlement to legislative immunity is restricted in two ways and the court will consider each separately. First, immunity is reserved for actions that are legislative in nature. As Justice Thomas wrote on behalf of the unanimous Supreme Court, “[w]hether an act is legislative turns on the nature of the act, rather than on the motive or intent of the official performing it.” *Bogan*, 523 U.S. at 54. As an obvious example, “voting by Members’ itself constitutes a legislative act.” *Cushing*, 30 F.4th at 49 (quoting *Gravel v. United States*, 408 U.S. 606, 624 (1972)). The case law is clear that legislative acts include a broad swath of conduct, including “any act ‘generally done in a session of the House by one of its members in relation to the business before it.’” *Harwood*, 69 F.3d at 630 (quoting *Kilbourn*, 103 U.S. at 204); *Eastland*, 421 U.S. at 503 (holding that subpoenas issued pursuant to

an investigation related to a legitimate task of Congress fell within the “sphere of legitimate legislative activity”).

As already previewed, the plaintiffs’ position is that the challenged conduct is not part of the House’s “general policymaking” role but an administrative act because Representative Libby was “targeted . . . specifically for the content of her speech made on her own time outside the Legislature.” Pls.’ Reply at 2. The plaintiffs argue that “denying Representative Libby’s right to speak or vote in the House is not ‘an integral part’ of the House’s ‘deliberative and communicative processes’” and therefore outside the scope of acts that are considered legislative. Pls.’ Reply at 1 (quoting *Gravel*, 408 U.S. at 625). There is no immunity, say plaintiffs, “for acts not ‘essential to legislating’ even if undertaken under the auspices of a resolution” “nor [for] the House clerk’s act of counting (or not counting) votes.” Pls.’ Reply at 3 (first quoting *Gravel*, 408 U.S. at 621, and then citing *Powell v. McCormack*, 395 U.S. 486, 504 (1969)).

Common law does indeed instruct that “[a]cts undertaken by legislators that are administrative in nature do not ‘give rise to absolute immunity from liability in damages under § 1983.’” *Negron-Gaztambide v. Hernandez-Torres*, 35 F.3d 25, 26, 28 (1st Cir. 1994) (quoting *Forrester v. White*, 484 U.S. 219, 229 (1988)). “‘Employment decisions generally are administrative’ except when they are ‘accomplished through traditional legislative functions’ such as policymaking and budgetary restructuring that ‘strike at the heart of the legislative process.’” *Acevedo-Garcia v. Vera-Monroig*, 204 F.3d 1, 8 (1st Cir. 2000) (quoting *Rateree v. Rockett*, 852 F.2d 946, 950-51 (7th Cir. 1988)). In *Negron-Gaztambide*, the Circuit identified “two

tests for distinguishing between legislative and administrative activity.” 35 F.3d at 28 (quoting *Cutting v. Muzzey*, 724 F.2d 259, 261 (1st Cir. 1984)).

The first test focuses on the nature of the facts used to reach the given decision. If the underlying facts on which the decision is based are ‘legislative facts,’ such as ‘generalizations concerning a policy or state of affairs,’ then the decision is legislative. If the facts used in the decisionmaking are more specific, such as those that relate to particular individuals or situations, then the decision is administrative. The second test focuses on the ‘particularity of the impact of the state action.’ If the action involves establishment of a general policy, it is legislative; if the action ‘singles out specifiable individuals and affects them differently from others,’ it is administrative.

Id. (quoting *Cutting*, 724 F.2d at 261). At first blush, the application of the plain language of these tests might indicate that the imposition of the sanction on Representative Libby is an administrative act because she was “single[d] out” and “affect[ed] differently than others.” *Id.* (quoting *Cutting*, 724 F.2d at 261). However, these two tests have been applied to situations readily distinguishable to the case before the court.

In *Negron-Gaztambide*, the challenged act was the head of the House of Representatives terminating a librarian who worked in the Legislative Library in the Commonwealth of Puerto Rico allegedly because of that employee’s political affiliation. 35 F.3d at 26, 28. In *Cutting*, the Circuit Court tacitly concluded (while remanding for further proceedings due to an insufficiently developed record) that a local planning board’s rejection of a developer’s plans for a subdivision was an administrative act. 724 F.2d at 260, 260 n.1, 261. And, in *Acevedo-Garcia*, the Circuit Court held that the execution of a layoff plan was an administrative act because the actions taken to implement the plan “targeted specific individuals” and “affected

particular individuals differently from others.” 204 F.3d at 9; *but see id.* at 8 (distinguishing the conduct at issue in *Bogan*, 523 U.S. at 55, where the Supreme Court held legislative immunity did apply when an employee’s termination was effected through the adoption of an ordinance which eliminated the department that employed the plaintiff and not through targeting specific individuals).

These cases demonstrate the application of the test first articulated in *Cutting* to causes of action in which the plaintiff was either a former employee of the legislature whose employment had been terminated after a turnover in political party majority or a public citizen before a local board seeking approval of a land development plan, but **not** where the challenged conduct occurred during a legislative session and the legislative body was applying a black-letter house rule. At no time do the plaintiffs explain to the court why any of the cases which applied the aforementioned tests are closer analogues to the plaintiffs’ situation than the cases in which the First Circuit considered challenges to procedural rules. After all, when the Circuit considered a challenge by groups of lobbyists to a house rule prohibiting lobbyists from sitting around the perimeter of the Rhode Island House of Representatives’ floor during session, it decided that when the court is

dealing with a procedural rule adopted by a house of the legislature as a whole for the management of its own business . . . [the court is] not concerned with whether the adoption of the rule comprises a legislative act – that is transparently clear – but, rather, with whether that act is more than ‘casually or incidentally related’ to core legislative functions.

Harwood, 69 F.3d at 631 n.9 (quoting *Brewster*, 408 U.S. at 528).

In this case, focusing as this court must on the nature of the action and not on the motivation or intent behind it, *Bogan*, 523 U.S. at 54, Speaker Fecteau was not terminating an employee or unilaterally deciding on a proposal for economic development. Rather, he executed the will of the body of the House of Representatives pursuant to the Resolution passed by a majority vote after full debate. The Resolution censured the Representative's conduct as a breach of the governing Code of Ethics and demanded that she issue an apology. When she did not, Speaker Fecteau imposed the precise sanction articulated in the Rule that governs members' conduct. There is, therefore, no doubt that these actions were "done in a session of the House by one of its members in relation to the business before it." *Harwood*, 69 F.3d at 630 (quoting *Kilbourn*, 103 U.S. at 204). As such, the nature of the Speaker's conduct falls "within the 'legitimate legislative sphere,'" *Eastland*, 421 U.S. at 503 (quoting *Kilbourn*, 103 U.S. at 204), and is not "merely 'casually or incidentally related to legislative affairs,'" *Cushing*, 30 F.4th at 49 (quoting *Brewster*, 408 U.S. at 528). Indeed, the Circuit Court has been clear that it is

beyond serious dispute that enforcing a duly enacted legislative rule which [affects conduct] on the House floor during House sessions is well within the legislative sphere [because] [s]uch a restriction necessarily affects the manner in which the House conducts its most characteristic legislative functions, *e.g.*, debating and voting. A rule that colors the very conditions under which legislators engage in formal debate is indubitably part and parcel of the legislative process, and the acts of House officials (whether or not elected members) in enforcing it are therefore fully protected against judicial interference by the doctrine of legislative immunity.

Harwood, 69 F.3d at 632 (concluding the enforcement of a House rule prohibiting lobbyists from seating on the perimeter of the House floor was a legislative act). The rule applied here affects one censured member of the House and not an entire class of non-legislators as in *Harwood*, but the sentiment expressed above applies with equal force because the sanction imposed does in fact affect debating and voting on measures before the House during full House sessions while the sanction is in place. The court’s conclusion that the plaintiffs are challenging a legislative act is also in line with the Circuit’s reasoning in *Cushing* that legislative acts include situations where “the injunctive relief that the plaintiffs seek is, on their own account, relief that must run against a legislator directly to be effective.” 30 F.4th at 49.

With this conclusion that the challenged conduct is to a legislative act, the court moves on to the second restriction on legislative immunity: the exception for conduct of an “extraordinary character.” The court starts with a close examination of the relevant cases and the parties’ arguments related to the application of these cases, and then considers the precise details provided by the parties about the process by which Speaker Fecteau imposed the sanction on Representative Libby.

As the Supreme Court has long recognized, “[l]egislative immunity does not, of course, bar all judicial review of legislative acts.” *Powell*, 395 U.S. at 503. The case law carves out an exception to the entitlement to legislative immunity for “things done, in the one House or of the other, of an extraordinary character, for which the members who take part in the act may be held legally responsible.” *Cushing*, 30 F.4th at 50 (quoting *Kilbourn*, 103 U.S. at 204). Broadly speaking, “[t]here may be some

conduct, even within the legislative sphere, that is so flagrantly violative of fundamental constitutional protections that traditional notions of legislative immunity would not deter judicial intervention.” *Harwood*, 69 F.3d at 634. The Supreme Court has not identified precisely what conduct would clear the “high bar” set by this exception, but suggests that a “perversion of [legislative] powers [for] a criminal purpose [such as ‘imitating the Long Parliament in the execution of the Chief Magistrate of the nation, or to follow the example of the French assembly in assuming the function of a court for capital punishment’] would be screened from punishment by the constitutional provision for freedom of debate.” *Cushing*, 30 F.4th at 51 (quoting *Kilbourn*, 103 U.S. at 204-05).⁸ The Circuit instructs that “the assessment of when a given act that, though seemingly legislative in nature, is nonetheless ‘of an extraordinary character’ that makes it unworthy of the immunity’s protection must be sensitive to context.” *Id.* at 52 (quoting *Kilbourn*, 103 U.S. at 204). This court must therefore “ensure that [its] focus is on the character of the legislative act being challenged.” *Id.*

⁸ The dissenting opinion in *Cushing* pointed out that the Supreme Court “has never addressed a case in which it has held the extraordinary-character exception to apply.” *Cushing*, 30 F.4th at 56 (Thompson, J., dissenting). “As examples of potentially extraordinary legislative acts, the Supreme Court has hypothesized a legislature that ‘execut[es] . . . the Chief Magistrate of the nation, or . . . assum[es] the function of a court for capital punishment.’” *Id.* at 57 (quoting *Kilbourn*, 103 U.S. at 204-05). The dissent further explained that “[w]e have similarly pondered a legislature that ‘votes to allow access to its chambers to members of only one race or to adherents of only one religion,’ suggesting these might veer into the orbit of the extraordinary-character exception.” *Id.* (quoting *Harwood*, 69 F.3d at 634).

The First Circuit closely examined the notion of the extraordinary-character exception in *Cushing*. 30 F.4th at 50-53. The plaintiffs – all members of the New Hampshire House of Representatives with “medical conditions and other limitations” and “disabilit[ies] plac[ing] them at greater risk than the general public for serious complications or death from COVID-19” – introduced a “proposal . . . to amend the House rules to permit virtual proceedings of the full House.” *Id.* at 32-33, 35. The House voted on the proposal and rejected it. *Id.* at 32-34. A few plaintiffs sent letters to the House Speaker (and others), requesting reasonable accommodations so that they could participate remotely in House proceedings, all to no avail. *Id.* at 34. The plaintiffs sued the Speaker, alleging that his refusal to allow them to participate remotely in official House sessions (which had the consequence of keeping them from voting on bills before the House) violated Title II of the Americans with Disabilities Act, § 504 of the Rehabilitation Act as well as the Fourteenth Amendment. *Id.* at 34-35, 49. The Circuit grappled with whether the Speaker’s denial of some legislators’ requests for accommodations to procedural rules were of such extraordinary character that the NH House Speaker would not be entitled to legislative immunity for the claims made against him. *Id.* at 52. The First Circuit, sitting en banc, concluded that the “extraordinary character” exception had not been met in part because the plaintiffs’ claims asserting a Fourteenth Amendment violation was “not in and of itself suffic[ient] . . . under the *Kilbourn* standard” to obliterate the shield of legislative immunity. *Id.* at 50-52. The Circuit cautioned that the Supreme Court’s jurisprudence on legislative immunity indicated that courts needed “to be wary of

construing *Kilbourn* in a manner that would deem even such a ‘quintessentially legislative act’ as the decision by the Speaker of the House to follow [its] rules . . . to be beyond the protection of the immunity that has been historically afforded to such an act.” *Id.* at 53 (quoting *McCarthy v. Pelosi*, 5 F.4th 34, 39 (D.C. Cir. 2021)).

Here, like in *Cushing*, the House took a vote on a formal request from a member. The Speaker then enforced the will of the majority of the body by enforcing the plainly written sanction articulated in the rule. As in *Cushing*:

[T]he plaintiffs [here] take aim at conduct by the Speaker that involves a decision to follow -- rather than depart from -- existing House rules that were overwhelmingly [here, unanimously] passed The challenged conduct by the Speaker . . . involves adhering to existing rules rather than making new ones.

Id. at 51. The court also sees similarities to the issue presented and reasoning expressed in *Harwood*: “[A] legislative body adopt[ed] a rule, not invidiously discriminatory on its face,” and Speaker Fecteau did “no more than carry out the will of the body by enforcing the rule as part of [his] official duties.” 69 F.3d at 631. The plaintiffs assert that these cases are inapposite because each “concerned a generally applicable procedural rule,” Pls.’ Reply at 3-4, but the plaintiffs fail to acknowledge that their case is also about the application of a procedural rule. The court agrees with the plaintiffs that neither *Cushing* nor *Harwood* foreclose a future case that could present extraordinary conduct to which immunity would not apply. Pls.’ Reply at 4. Neither case defined what that conduct would be, though the Circuit indicated that a category of such conduct would be met if “legislators engaged in conduct so clearly exceeding the powers delegated to them.” *Cushing*, 30 F.4th at 51.

The plaintiffs also assert that the sanction imposed on Representative Libby is “punitive enforcement” that disenfranchises her constituents and reflects “invidious viewpoint discrimination” which “so flagrantly violat[es] fundamental constitutional protections” that the immunity shield cannot protect the defendants from their suit. Pls.’ Reply at 4. The unconstitutional application of the sanction identified in Rule 401(11) to Representative Libby, according to the plaintiffs, must be reviewed by this court because the rule may not “trump the constitution” and Speaker Fecteau acted outside the scope of his power. Tr. at 14:16-18, 35:18-21. The appellate courts have, however, put to rest any notion that legislative immunity could be circumvented simply because a plaintiff alleges a claim for a constitutional violation. While the First Circuit has acknowledged it would draw the line at “flagrant violat[ions] of fundamental constitutional protections,” *Harwood*, 69 F.3d at 634 (implying a house rule excluding all members of one race or one religion would be so flagrantly violative as to qualify for the exception) (citing *Kilbourn*, 103 U.S. at 204), it has also relied on more recent discussions by the Supreme Court to generalize “that immunity is not forfeited simply because the activities, if unprotected, might violate a plaintiff’s constitutional rights,” *id.* (holding that a House Rule – and alleged selective enforcement – prohibiting lobbyists from sitting around the perimeter of the House floor did not “even closely approach” the border of the extraordinary character exception). Moreover, the Supreme Court has said that to believe the judiciary will intervene to protect First Amendment rights as soon as allegations are made that congressional action has infringed these rights “ignores the absolute nature of the

speech or debate protection and our cases which have broadly construed that protection.” *Eastland*, 421 U.S. at 509-510. The Supreme Court has also stated that immunity applies even if the legislators’ “conduct, if performed in other than legislative contexts, would in itself be unconstitutional or otherwise contrary to criminal or civil statutes.” *Doe v. McMillan*, 412 U.S. 306, 312-13 (1973) (holding congressional committee members immune from suit for alleged violations of, among other things, privacy rights when those defendants’ actions were limited to conducting hearings, preparing the report, authorizing its publication). Furthermore, the courts are not “to oversee the judgment of the [legislative body] . . . to impose liability on its Members if [it] disagree[s] with their legislative judgment.” *Id.* at 313. And, in a case specifically considering whether the application of a statute pertaining to legislator recusal rules (which had the effect of barring a legislator from voting on certain legislative proposals) was an infringement on the legislator’s First Amendment rights, the Court declared that “restrictions upon legislators’ voting are not restrictions upon legislators’ protected speech” because “a legislator’s vote is the commitment of [their] apportioned share of the legislature’s power to the passage or defeat of a particular proposal. The legislative power thus committed is not personal to the legislator but belongs to the people; the legislator has no personal right to it.” *Nevada Comm’n on Ethics v. Carrigan*, 564 U.S. 117, 125-26 (2011) (Scalia, J.).

What all this means is that the court has no indication that the Circuit or Supreme Court would conclude that Speaker Fecteau’s imposition of the sanction pursuant to House Rule 401(11) is of such an extraordinary character that it would

decline to leave up the shield of legislative immunity. Recall that the plaintiffs are not challenging Rule 401(11) itself, but only the imposition of the sanction identified in this rule on Representative Libby. If the Circuit was not moved by the New Hampshire Speaker's enforcement of its procedural rule with the effect of forcing members to choose between their health and/or physical ability to be present in person for sessions and the ability to perform the responsibilities of their elected position, *see Cushing*, 30 F.4th at 50-52, then the court does not see how it can conclude that prohibiting an elected member of the House from speaking or voting on the House floor is of such an extraordinary character. The court takes the prudent course of exercising judicial restraint especially because the case law does not indicate this should be the first case to clear the high bar for applying this exception to a legislator's conduct.

The plaintiffs warn that if the court allows immunity to shield the defendants here, then the defendants could next "prohibit Asian-American representatives from making floor speeches or voting, silence those in same-sex marriages or interracial marriages, or prohibit voting by women." Pls.' Reply at 4. The Circuit Court in *Harwood* was also presented with a "parade of horrors" – there "a hypothetical legislature that votes to allow access to its chambers to members of only one race or to adherents of only one religion" – which prompted the reminder that there is a border past which immunity would not apply. *Harwood*, 69 F.3d at 634. But the court need not explore hypothetical scenarios and instead stays focused on the situation at hand.

Finally, the plaintiffs lean heavily on two Supreme Court cases which, they say, seal the deal here that immunity should not shield the defendants. Pls.' Reply at 4-5. The court, however, finds that neither case is as dispositive as the plaintiffs contend. In *Bond v. Floyd*, a duly elected candidate to the Georgia House of Representatives was not allowed to take his oath or his seat in the legislature because of comments he had made against the Vietnam war between election day and the first day of the legislative session. 385 U.S. 116, 118 (1966). Bond, an African American, alleged racial discrimination and violation of his First Amendment rights. The State of Georgia did not argue it was immune from suit and the Supreme Court did not explore (because it was not asked to) whether the situation presented in that case represented conduct of an extraordinary character that would not be entitled to immunity. Rather, the Supreme Court acknowledged that “[t]he State does not claim that it should be completely free of judicial review whenever it disqualifies an elected Representative; it admits that, if a State Legislature excluded a legislator on racial or other clearly unconstitutional grounds, the federal (or state) judiciary would be justified in testing the exclusion by federal constitutional standards.” *Id.* at 130. This is not the same as the Court concluding that the conduct alleged against defendants met the extraordinary character exception. While the plaintiffs insist this case is on point because here there is also an “exclusion of an elected legislator” in “flagrant violation of Supreme Court precedent barring exclusion of an elected legislator because of their protected speech espousing a viewpoint that majority rejects,” Pls.' Reply at 4, the court agrees with the defendants that this case is

factually distinguishable because Representative Libby has not been disqualified, excluded, or expelled from her elected seat. *Bond* is about a member-elect being prevented from taking his seat at all and not about a sanction imposed on a seated member of the House for violations of the Code of Ethics pursuant to a democratically passed censure. Defs.' Opp'n at 6 n.6.

Next, in *Powell*, the Supreme Court held that certain legislative employees were not entitled to the protection of legislative immunity for their roles in enforcing a resolution which excluded a member-elect from his seat in the U.S. House of Representatives. 395 U.S. at 489, 506. The Court affirmed the proposition that legislators were completely immune from suit, but a House clerk, sergeant-at-arms, and doorkeeper were not protected by immunity even though their conduct was pursuant to an express order of the House. *Id.* at 504-05. The Court relied on *Kilbourn*, where the Court had allowed a lawsuit against a sergeant-at-arms for his execution of an illegal arrest warrant resulting in an alleged false imprisonment to go forward. *Id.* at 503-04 (citing *Kilbourn*, 103 U.S. at 204). Like with *Bond*, however, the court considers Representative Libby's situation to be readily distinguishable from *Powell* because Representative Libby has not been disqualified or expelled from her seat.⁹

⁹ The plaintiffs do not include any allegations against Clerk Hunt or provide any indication or argument in their motion about how or why any actions he has taken would qualify as extraordinary for purposes of getting around legislative immunity and so the court does not provide a separate analysis for this defendant. The law, however, is clear that, "as long as [a legislative employee's] conduct would be covered by legislative immunity were the same conduct performed by the legislator

Despite the court's take on the applicable law, especially that the appellate courts have been clear that simply alleging claims for constitutional violations does not automatically meet the high bar set for the extraordinary-character exception, the appellate courts also instruct that context is an important consideration. *See Cushing*, 30 F.4th at 52 (instructing that the court must be "sensitive to [the] context" in which the legislative act arose and must focus on the "character of the legislative act being challenged"). The court is also mindful of the serious effect the imposed sanction has on Representative Libby's ability to fulfill her duties as an elected representative of District 90, so the court will closely examine the context surrounding the imposition of the sanction to determine whether the details known at this time about the defendants' conduct will reach the high bar of this exception.

The Resolution introduced by Representative Moonen included a "resolve[]" that Representative Libby "must accept full responsibility for the incident and publicly apologize to the House and to the people of the State of Maine." Fecteau Decl. Ex. D. Representative Libby was on notice of the potential consequence if the Resolution passed because the consequence is clearly identified in Rule 401(11). The Resolution was deeply debated on the floor of the House. Throughout the hour-long debate, Speaker Fecteau repeatedly refocused the comments from the members on the precise Resolution before the House, redirecting members on both sides of the aisle when another member raised a point of order or on his own when the comments

himself, the [legislature's employee] shares the immunity." *Harwood*, 69 F.3d at 631, 631 n.10.

strayed from the merits of the censure for Representative Libby’s conduct. *See, e.g., Archived Hearings & Meetings: House Chamber*, at 6:17:10 PM. None of the comments discussed the precise sanction allowed by Rule 401(11) or questioned what the consequence might be if Representative Libby refused to comply with the Resolution. None of the comments raised concerns about the effect of imposing the sanction articulated in Rule 401(11). After the Resolution passed, Speaker Fecteau provided Representative Libby with an opportunity to make the satisfaction demanded by the Resolution – the apology – but she declined. Speaker Fecteau then proceeded to announce the precise sanction identified in Rule 401(11), without objection from any member of the body.

As the parties brought to the court’s attention, this is not the first time that Rule 401(11) has been invoked or applied in the Maine House.¹⁰ But this is the first time a censured Representative has refused to apologize and so the first time the

¹⁰ Two censures passed in April 2024 pursuant to violations of House Rule 401(11) where the body found two members in “egregious violation of the decorum of the House” when they made statements on the House floor “claiming that the 2023 Lewiston mass shooting was God’s response to a recent abortion law that took effect the same day.” Compl. at ¶ 53 (citing to the Resolutions). The Speaker for the 131st Legislature summoned the members to the well of the House, announced the censure, and “await[ed] an assurance and an issuance of a formal apology, to be read on the House floor, to make satisfaction.” Journal and Legislative Record – House, Apr. 11, 2024 at 2 [<https://perma.cc/BG6W-SVTU>]. Both members apologized to the House and to the public, Journal and Legislative Record – House, Apr. 11, 2024 at 3 [<https://perma.cc/BG6W-SVTU>], which obviated the need for any further sanction.

The parties also point this court to the first censure imposed on a House member. In 2001, the House voted to adopt a Resolution censuring a member who had “verbally abused a female Senator in the hallway outside the chamber of the House of Representatives.” Journal and Legislative Record – House, Feb. 8, 2001 at 10 [<https://perma.cc/GL5C-FVY7>]. That member also apologized immediately following the vote to adopt the Resolution to censure him. *Id.* at 14.

Speaker imposed the consequence of the censure when satisfaction has not been made. This “first” does not in and of itself make the act extraordinary, however, because the consequence is plainly stated in the rule.

The effect of the sanction, as clearly known by now, is that Representative Libby is prohibited from speaking on the House floor during the debate of proposed legislation and voting on proposed legislation and other matters up for a vote by the full House. Fecteau Decl. at ¶ 24. Representative Libby considers the suspension of these privileges to be indefinite, but the sanction remains in place only until Representative Libby apologizes, the House votes to dispense with Rule 401(11), or the 132nd Legislature session ends. *Id.* ¶ 25. As indicated by Speaker Fecteau, a House member may move to dispense with or suspend the Resolution and a majority vote will pass the motion. *Id.* ¶¶ 41-42. At least two attempts since February 25 to do so have failed. On March 20, a member of the House made such a motion so Representative Libby could speak during the debate on the State’s proposed budget, but the motion did not receive a majority vote. *Id.* ¶¶ 39-41. On March 25, a similar motion was made and failed. *Id.* ¶ 42. Of course, pursuant to Rule 401(11), Representative Libby may also choose to make satisfaction.

Representative Libby considers “speaking and voting on behalf of her District 90 constituents to be “[t]he two most critical responsibilities of a duly elected legislator.” Libby Decl. at ¶ 10. This court hears the predicament but notes that the sanction does not render her unable to represent her constituents or speak in favor of or in opposition to policies and legislation in all ways. As Speaker Fecteau points

out in his declaration (and Representative Libby does not challenge), Representative Libby can:

- Fully participate on committees to which she is assigned, including voting, debating, and testifying at public hearings.
- Sponsor and co-sponsor bills and resolutions.
- Lobby other members for support or opposition to proposed legislation.
- Participate in legislative caucus meetings.
- Testify at public hearings about any pending legislation.
- Be present on the House floor during debates and votes.
- Engage in procedural actions on the House floor such as make a motion to amend or postpone a bill or raise an objection thereto.
- Use all legislative staff and offices without any restrictions.
- Be fully compensated, including travel-related expenses and meal allowances.

Fecteau Decl. at ¶¶ 28-31, 34-38. At the time of the briefing on this motion, Representative Libby had introduced several amendments to a measure regarding the State's biennial budget. *Id.* ¶ 39.

After carefully considering the case law, the details presented by the parties about the House governing rules, and the process by which the House adopted the Resolution and imposed the censure on Representative Libby, the court concludes that the suspension of Representative Libby's privilege to speak or vote on the House floor is not of such an extraordinary character that this exception to absolute legislative immunity for legislators will apply. That said, the ability to suspend an elected representative's privileges to either speak on the House floor or enter a vote on legislation pending before the entire House until the representative apologizes for censured conduct is a weighty sword to wield. However, the process Speaker Fecteau followed when he imposed the sanction ultimately reflected the will of the majority of the House members. The court must carefully heed the caution from the First Circuit

that federal judges should not “improperly intrud[e] into internal state legislative affairs [or] warring sides in partisan state legislators’ battles.” *Cushing*, 30 F.4th at 52. The censure and its sanction on Representative Libby is, at bottom, an internal Maine House affair. “As a rule, a legislature’s regulation of the atmosphere in which it conducts its core legislative activities—debating, voting, passing legislation, and the like—is part and parcel of the legislative process, and, hence, not subject to a judicial veto.” *Harwood*, 69 F.3d at 635 (citing *Eastland*, 421 U.S. at 509). And so, in this context (and with the plaintiff’s plain instruction that they are challenging the application of Rule 401(11) to Representative Libby and not the Rule itself firmly rooted in mind), the imposition of the sanction plainly identified and authorized by the House Rule is not of such extraordinary character as to obliterate the formidable shield the courts have provided to legislative acts. The defendants are, therefore, immune from the plaintiffs’ claims against them.

IV. CONCLUSION

For the reasons stated above, the plaintiffs’ Motion for a Preliminary Injunction (ECF No. 8) is DENIED.

IT IS SO ORDERED.



Melissa R. DuBose
United States District Judge

April 18, 2025

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

LAUREL D. LIBBY, State Representative of
Maine House District 90, RONALD P.
LEBEL, WENDY MUNSELL, JASON
LEVESQUE, BERNICE FRASER, RENE
FRASER, and DONALD DUBUC

Plaintiffs,

v.

RYAN M. FECTIONEAU, in his official capacity
as Speaker of the Maine House of
Representatives, and ROBERT B. HUNT, in
his official capacity as Clerk of the House,

Defendants.

Civil Action No. 1:25-cv-83-MRD

DECLARATION OF LAUREL LIBBY

I, Laurel Libby, pursuant to the provisions of 28 U.S.C. §1746, declare the following:

1. I am a resident of Auburn, Maine.
2. I am the elected representative of Maine House District 90, which covers parts of Auburn and Minot.
3. I was first elected in 2020, to the 130th Legislature. I was re-elected in 2022 and again in 2024 to the current Legislature.
4. Since the imposition of the censure by the majority of the Maine House of Representatives, I have been barred from voting or speaking in support or opposition to any matter on the floor of the Maine House.
5. Although I have not been barred from committee proceedings, committee work is only a fraction of the work on a fraction of the topics we have to cover for the more than 2,200 bills that come before the House. The committees do only the preliminary work on

legislation before it comes in front of the full Legislature for a vote to determine if it will become law. The committee process is no substitute for my ability to make my constituents' voices heard by speaking and voting on the House floor for the 2,200-plus bills that come before the House.

6. I have always maintained exceptional attendance for House floor sessions, with the exception of when a child was hospitalized or for unavoidable travel. That continues following my censure, though I am unable to speak or vote.

7. My vote on legislation pending before the House represents the voice of 9,000 Maine citizens. When I push my red or green button in a roll call, I do so on behalf of all my constituents. It is the vote on the House floor that determines the ultimate passage or failure of any given legislation, and without the ability to vote my constituents are disenfranchised.

8. It is my honor and privilege to be my constituents' voice on the issues that come before the House, and if my vote risked my office during the next election, it would be my constituents' right to elect a new representative they felt better represented them. I value the trust my constituents have placed in me, and I take my responsibility to represent them via my vote very seriously. Those constituents deserve to have my vote on the record as frequently as possible, ideally with a roll call on every possible bill.

9. Serving in the minority for my third term, I have come to understand that speaking on behalf of my constituents, even if my vote is in the minority, is a primary responsibility. That is why (until my censure) I spoke so often on matters that come before the floor. It's particularly critical to speak as a member of the minority; without the ability to persuade other legislators, my party lacks the votes to achieve any legislative change.

10. The two most critical responsibilities of a duly elected legislator are to speak and vote on behalf of those they represent, and it is those two responsibilities that have been stripped from me.

11. My district did not have a vote for the State's biennial budget legislation. No bill has more of an impact on Maine citizens than our biennial budget. With a fiscal note of \$11.3 billion as of this year, the budget dictates policy in many ways. The Legislature voted on the biennial budget two weeks ago, and I was unable to speak to it or vote on it, marking the first time in my three terms that I haven't done both in regard to a budget. We anticipate additional supplemental budgets this year and next, and it's critical that my constituents have a voice in those votes.

12. I also have no voice or vote on bills or amendments that I have sponsored that are critically important to my constituents, such as my bill to increase the availability and lower the cost of mental healthcare.

13. I have no voice or vote on hundreds of other bills and amendments that will come before the House during the 132nd Legislature, not the least of which includes a bill about girls' sports.

Per 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 3, 2025

/s/ Laurel Libby

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

LAUREL D. LIBBY, State Representative of
Maine House District 90, RONALD P.
LEBEL, WENDY MUNSELL, JASON
LEVESQUE, BERNICE FRASER, RENE
FRASER, and DONALD DUBUC,

Plaintiffs,

v.

RYAN M. FECTION, in his official capacity
as Speaker of the Maine House of
Representatives, and ROBERT B. HUNT, in
his official capacity as Clerk of the House,

Defendants.

Civil Action No. _____

VERIFIED COMPLAINT

INJUNCTIVE RELIEF SOUGHT

INTRODUCTION

1. Along a strict party-line vote, led by the Speaker of the Maine House of Representatives, the House unconstitutionally stripped a duly elected Republican member of her right to speak and vote on the House floor—disenfranchising the 9,000 Mainers in her district—in retaliation for protected speech on a highly important and hotly debated matter of public concern.

2. Rep. Laurel Libby (R-Auburn) represents Maine’s House District 90. A mother of five, including three girls, Rep. Libby has been a staunch advocate of protecting the rights of Maine girls in athletics. She is an outspoken critic of Maine’s state policy allowing boys who identify as transgender to compete in girls’ sports.

3. Rep. Libby recently posted on social media to call attention to the Maine high school girls indoor track and field state championship. A Greely High School student who competed as a boy last year but now identifies as transgender took first place in girls’ pole vault. That first-place finish propelled the Greely girls’ team to win the team girls track and field state championship by a single

point. The championship was a public event, was streamed online, and the names, schools, and photographs of the winners were all posted publicly.

4. Rep. Libby's social media posts went viral, garnering national media attention and placing Maine's policy under the microscope. Rep. Libby made several appearances on national television and radio broadcasts to bring further attention to the issue. The posts even captured the attention of the White House, prompting President Donald Trump to threaten Maine's allocation of federal education funding in a highly publicized exchange with Maine Governor Janet Mills. Three federal agencies have launched investigations into the Maine Department of Education and its compliance with Title IX's prohibition on sex-based discrimination in federally funded education programs.

5. Nothing is particularly surprising about this reaction; strong majorities of Americans oppose allowing boys to compete in girls' sports. The obvious physical advantage of boys on average allows them to jump higher, run faster, and throw harder than girls. Indeed, permitting boys to compete against girls can present a serious threat to girls' physical safety. It also severely distorts the fairness of the competition.

6. The Maine Democrat-controlled House took swift retaliatory action against Rep. Libby for shining a light on the State's controversial policy. By a party-line vote of 75-70, the House passed a resolution censuring Rep. Libby, declaring her posts to be "reprehensible," unethical, and "incompatible with her duty and responsibilities as a Member of th[e] House." The censure resolution provides that Rep. Libby "must accept full responsibility for the incident and publicly apologize to the House and to the people of the State of Maine." When Rep. Libby refused to apologize, the House Speaker prohibited her from speaking or voting on the House floor.

7. Whatever one thinks of males who identify as transgender competing in girls' and women's sports, the issue and Maine's policy is of public importance and subject to ongoing debate.

As Governor Mills recently put it: “If [lawmakers] wish to change [Maine’s policy], they have the authority to change it.” **“It’s worthy of a debate, a full, democratic debate.”**¹ But the House is actively barring one of its staunchest advocates on the issue from participating as a full member of the House. Just last week, a representative introduced a bill that would reverse Maine’s policy. Yet Rep. Libby is barred from speaking or voting on that proposed legislation—or any other issue, large or small, that may come before the House for the rest of her elected term.

8. While legislatures have authority to discipline their members, stripping them of their voting rights is another matter. The U.S. House of Representatives, for example, believes it violates the Constitution to deprive sitting members of their right to vote. And the reason why is illustrated here: the Speaker’s actions have effectively disenfranchised Rep. Libby and her 9,000 constituents in House District 90, some of whom are plaintiffs here.

9. The heavy-handed, partisan actions violate the First Amendment and the Equal Protection, Due Process, and Guarantee Clauses of the U.S. Constitution. This Court should grant injunctive relief and protect Rep. Libby’s constituents’ representation in the House.

PARTIES

10. Plaintiff Laurel D. Libby is a duly elected representative of the 132nd Maine Legislature. Rep. Libby represents Maine House District 90, composed of parts of the City of Auburn and the Town of Minot. She is currently serving her third term as a state representative. Rep. Libby meets all the state constitutional requirements to serve in the Maine House: she is over the age of 21, she has been a U.S. citizen for over five years, she has resided in Maine and House District 90 for more than one year, and she continues to reside in House District 90. *See* Me. Const. Me. Const. Art. IV, Pt. 1, §4.

¹ Michael Shepherd, *Janet Mills says Maine’s transgender athlete policies are ‘worthy of a debate,’* Bangor Daily News (Mar. 3, 2025), <https://perma.cc/6L9Y-PV6B> (emphasis added).

11. Plaintiff Ronald P. Lebel is a resident of Auburn, Maine. He resides in Maine House District 90. Lebel voted in the 2024 state legislative election.

12. Plaintiff Wendy Munsell is a resident of Auburn, Maine. She resides in Maine House District 90. Munsell voted in the 2024 state legislative election.

13. Plaintiff Jason Levesque is a resident of Auburn, Maine. He resides in Maine House District 90. Levesque voted in the 2024 state legislative election.

14. Plaintiff Bernice Fraser is a resident of Minot, Maine. She resides in Maine House District 90. Fraser voted in the 2024 state legislative election.

15. Plaintiff Rene Fraser is a resident of Minot, Maine. He resides in Maine House District 90. Fraser voted in the 2024 state legislative election.

16. Plaintiff Donald Duboc is a resident of Minot, Maine. He resides in Maine House District 90. Duboc voted in the 2024 state legislative election.

17. Defendant Ryan M. Fecteau (D-Biddeford) is Speaker of the Maine House of Representatives. He is a resident of this district for purposes of this action because he performs his official duties here. He is sued in his official capacity only.

18. Defendant Robert B. Hunt is the clerk of the House. He is a resident of this district for purposes of this action because he performs his official duties here. He is sued in his official capacity only.

JURISDICTION AND VENUE

19. The Court has subject-matter jurisdiction under 28 U.S.C. §§1331 and 1343 because this action arises under the Constitution and laws of the United States.

20. The Court has authority under 28 U.S.C. §§2201 and 2202 to issue the relief sought.

21. Venue lies in this district under 28 U.S.C. §1391(b)(1) and (2).

STATEMENT OF FACTS

Males Who Identify as Transgender Competing in Female Sports Is a Hotly Debated Issue That Has Prompted Responses by States and the Federal Government

22. The issue of males who identify as transgender competing in female sports has been at the forefront of public debate for the past several years.

23. Americans have grown increasingly against males participating in female sports in recent years. A January 2018 PRRI survey found that 43% of Americans were opposed to allowing male students who identify as transgender to compete against female classmates. Daniel Cox et al., *Americans Differ on Participation of Male, Female Transgender Students in Team Sports*, PRRI (Jan. 25, 2018), <https://perma.cc/SJQ5-A7Y2>. A June 2022 NPR/Ipsos poll found that 63% of Americans were opposed to allowing males who identify as transgender to compete on sports teams that align with their gender identity. Melissa Block, *Americans are deeply divided on transgender rights, a poll shows*, NPR (June 29, 2022), <https://perma.cc/4WGF-XV8S>. A May 2023 Gallup poll found that 69% of Americans said transgender athletes should only be allowed to compete on sports teams that “conform with their birth gender,” up from 62% in 2021. Jeffrey M. Jones, *More Say Birth Gender Should Dictate Sports Participation*, Gallup (June 12, 2023), <https://perma.cc/ZYS4-QN37>. And a January 2025 New York Times/Ipsos poll found that 79% of Americans, including 67% of people who identify as Democrats or leaning Democrat, believe biological males who identify as women should not be allowed to participate in women’s sports. Jackson Thompson, *NYT poll finds majority of Democrats oppose transgender athletes in women’s sports*, Fox News (Jan. 18, 2025), <https://perma.cc/TVD3-MGJY>.

24. Many who oppose boys and men competing in girls’ and women’s sports recognize the obvious, inherent physical advantages males have over females, which can present a serious risk to girls’ and women’s safety. In 2014, a transgender MMA fighter Fallon Fox brutally defeated her female opponent Tamikka Brents in just two minutes, leaving Brents with a concussion, a fractured orbital bone inside her skull, and seven staples in her head. Bhavesh Purohit, *When transgender fighter*

Fallon Fox broke her opponent's skull in MMA fight, Sportskeeda (Sept. 30, 2021), <https://bit.ly/4i8k2Ey>. In 2022, North Carolina volleyball player Payton McNabb suffered serious injury after a transgender-identified male player spiked a ball at her head, rendering her unconscious and causing her partial paralysis. Ashley McClure, *After a Male Caused Her Partial Paralysis, Female Volleyball Player Payton McNabb Now Fights to Protect Women's Sports*, Indep. Women's Forum, <https://perma.cc/CX43-9WZG>. In 2023, a Massachusetts female high school field hockey player was hospitalized for significant facial injuries, including loss of teeth, after being hit in the face by a ball struck by a male opponent. *Massachusetts school calls for change after female field hockey player hurt by boy's shot*, CBS News (Nov. 6, 2023), <https://perma.cc/CLJ4-TUB7>.

25. Scrutiny of the issue and public debate has led to action in state legislatures across the country. Since 2020, more than half the States have prohibited transgender individuals from participating in interscholastic athletics consistent with their gender identity. Movement Advancement Project, *LGBTQ Youth: Bans on Transgender Youth Participation in Sports* (2025), <https://perma.cc/C69P-2CNS>.

26. Maine went in the opposite direction. In 2021, the Maine Legislature passed and Governor Mills signed LD1688 into law. *See generally* P.L. 2021, Ch. 366. The bill enshrined protections across Maine law for “gender identity,” defined as “the gender-related identity, appearance, mannerisms or other gender-related characteristics of an individual, regardless of the individual’s assigned sex at birth.” 5 MRS §4553(5-C).

27. Maine law “recognize[s] and declare[s] to be a civil right” the “opportunity for an individual at an educational institution to participate in all educational ... and all extracurricular activities without discrimination because of ... gender identity.” *Id.* §4601. Maine law makes it “unlawful educational discrimination” to “[e]xclude a person from participation in, deny a person the benefits of, or subject a person to, discrimination in any academic, extracurricular, research,

occupational training or other program or activity” or “[d]eny a person equal opportunity in athletic programs” based on “gender identity.” *Id.* §4602(1)(A)-(B).

28. Transgender sports were at the forefront of the 2024 presidential election. The *Wall Street Journal* identified it as a “2024 sleeper issue.” Editorial Board, Opinion, *Transgender Sports Is a 2024 Sleeper Issue*, Wall St. J. (Oct. 13, 2024), <https://perma.cc/25Z6-HF95>. President Trump campaigned aggressively to “keep men out of women’s sports.” *Trump: ‘We will of course keep men out of women’s sports,’* Wash. Post. (Nov. 3, 2024), <https://bit.ly/41n2mxC>. That platform resonated with voters. *E.g.*, Rob Harris, *Donald Trump’s trans athletes rhetoric resonated with voters concerned about sporting fairness*, Sky News (Feb. 6, 2025), <https://bit.ly/4h4EXH5>. A national exit poll found that 70% of voters saw President Trump’s opposition to boys in girls’ sports (and bathrooms) as important to them. Macy Petty, *New Exit Polls Confirm the Surprising Key Issue in the 2024 Election*, Concerned Women Am. (Nov. 18, 2024), <https://perma.cc/35XV-WSUF>.

29. Shortly after taking office, President Trump signed an executive order to rescind federal funds from educational programs that permit males who identify as transgender to compete against females. Exec. Order No. 14,201, 90 Fed. Reg. 9,279 (2025). The executive order drew praise from countless female athletes and parents.



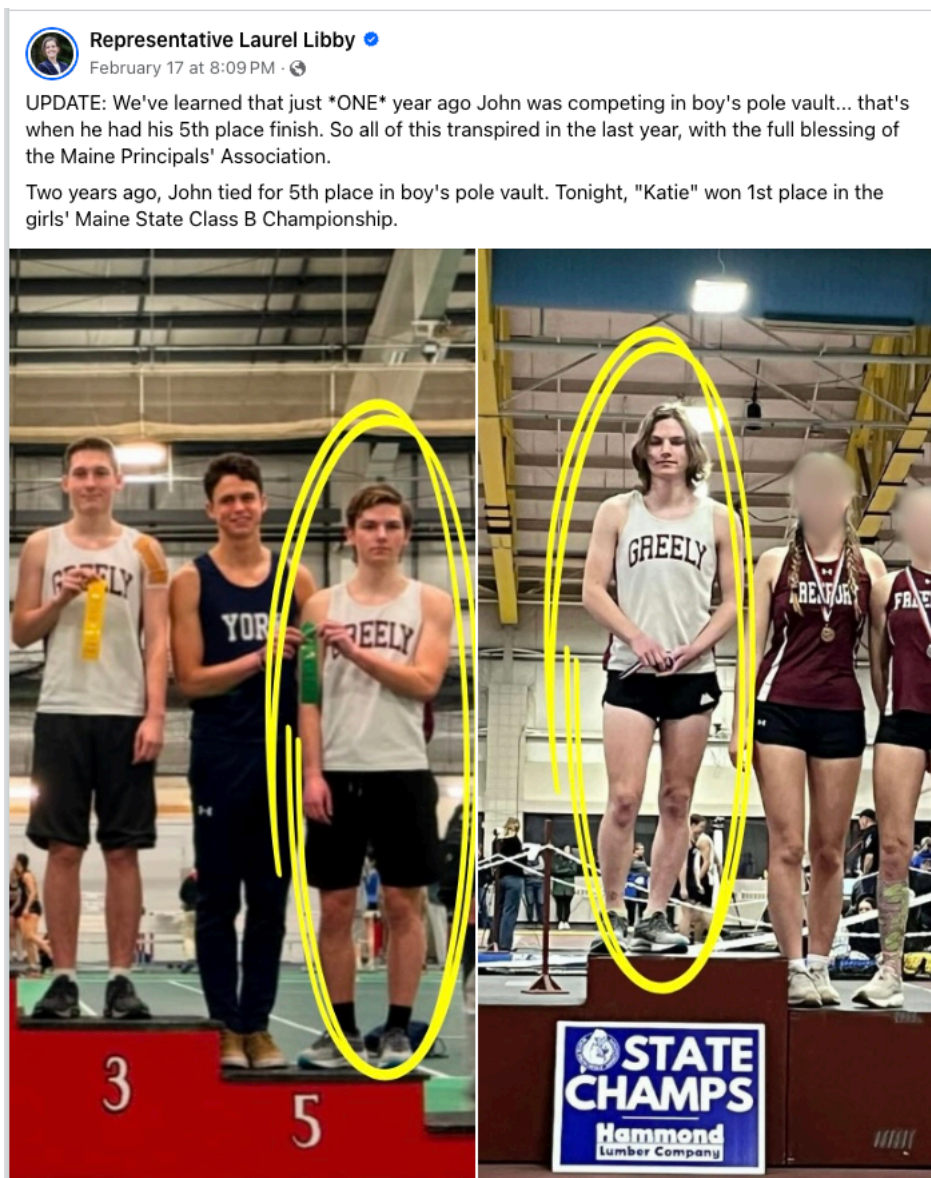
Trump signs executive order banning transgender athletes from women's sports, ABC News (Feb. 5, 2025), <https://bit.ly/4bHj3sB>.

30. The next day, the NCAA banned transgender athletes from competing in women's sporting competitions. Kiara Alfonseca, *NCAA changes transgender participation policy in response to executive order*, ABC News (Feb. 6, 2025), <https://perma.cc/P6S9-CLUA>. But several state-level associations signaled they would continue to follow state law. Steve Karnowski, *For high school sports, decisions loom: Follow Trump or state law on transgender athletes*, AP (Feb. 7, 2025), <https://bit.ly/4i5LClQ>. The Maine Principal's Association said it would continue to allow boys who identify as transgender to compete in girls' sports, notwithstanding President Trump's executive order. Patty Wright, *Transgender female athletes can still compete under state law, Maine sports governing body says*, Me. Pub. (Feb. 7, 2025), <https://perma.cc/5RAN-8MWH>.

Rep. Libby's Public Advocacy and the Federal Government's Response

31. On February 17, 2025, Rep. Libby posted on Facebook about a high school student who won the Maine girls class B pole vault state championship. *See* Representative Laurel Libby,

Facebook (Feb. 17, 2025), <https://perma.cc/CL35-A558>. Libby observed that the student previously “was competing in boy’s pole vault” and “had [a] fifth place finish.” *Id.* “So all of this transpired in the last year, with the full blessing of the Maine Principals’ Association.” *Id.* The post showed the athlete on the boys’ medal podium side-by-side with the athlete on the girls’ podium this year.



Id. Rep. Libby also posted about the matter on X (formerly Twitter). *See, e.g.,* @laurel_libby, X (Feb. 18, 2025, 5:45 PM), <https://perma.cc/UB86-PHJD>.

32. The state championship results were publicly reported online with students' full names, schools, and photos. See *Class B State Meet 2025: Girls Pole Vault Finals*, MaineTrackXC, <https://perma.cc/22SA-T99Q>.

33. Coverage of the event and photographs of the first-place winner and other participants are publicly accessible on the internet and social media. See, e.g., Dan Zaksheske, *Trans-Identifying Male Athlete Wins Maine State Title In Girls' Pole-Vaulting*, OutKick (Feb. 19, 2025), <https://bit.ly/3F23GOR> (identifying student's current and prior names and school); Hudson Crozier, *Male Athlete Sweeps Women's Event Days After State Refused To Enforce Trump's Rule*, Daily Caller (Feb. 18, 2025), <https://perma.cc/P6ZM-3V5N> (same and noting with hyperlinks that “[p]hotos posted online and media coverage of the event confirm [the male student's] identity”); @bourne_beth2345, X (Feb. 18, 2025, 12:50 PM), <https://perma.cc/7JNV-6N6Z> (identifying student by name with photo of student on the medal podium); @icons_women, X (Feb. 18, 2025, 1:32 AM), <https://perma.cc/QH67-5QWG> (identifying student by name with photo of student holding “STATE CHAMPS” poster and the caption “[Name] with 1st in pole vault!!”); @mainerunningphotos, flickr (Feb. 17, 2025), <https://perma.cc/XJ3G-RMNC> (photo of student pole vaulting identified by name); @mainerunningphotos, flickr (Feb. 17, 2025), <https://perma.cc/2FG2-BJXA> (photo of student pole vaulting); @mainerunningphotos, flickr (Feb. 17, 2025), <https://perma.cc/63VS-F2VX> (same).

34. The male student's first-place pole vault finish propelled the Greely High School's girls' team to win the overall state championship. The school edged out runner-up Freeport—whose two pole vaulters finished tied for second—by a one-point margin. Derek Veilleux, *Greely Edges Freeport By 1 Point to Win Class B Girls Title*, MaineTrackXC (Feb. 21, 2025), <https://perma.cc/TU6F-Q426> (including team photo with pole vaulter and results). The male student's victory won Greely the overall class B indoor track and field state championship.

35. Rep. Libby's social media posts about the girls' state championship went viral. Her initial Facebook post generated over 100,000 reactions, 60,000 comments, and 18,000 shares. Her initial X post generated over 686,000 views. As one media outlet reported, "Maine state lawmaker Laurel Libby drew attention to the controversy." Amanda Prestigiacomo, *Boy Wins Girls' Pole Vault Championship In Maine Days After State Pledged To Defy Trump Order*, DailyWire (Feb. 18, 2025), <https://perma.cc/H7BY-H2KY>.

36. Over the next few days, Rep. Libby appeared on several national television and radio broadcasts and continued to post on social media, highlighting and criticizing Maine's policy permitting boys who identify as transgender to compete in girls' sports and the "Maine Democrat Majority" and calling on the federal government to act, consistent with President Trump's executive order. *E.g.*, @laurel_libby, X (Feb. 19, 2025, 10:23 PM), <https://perma.cc/AKT2-ZTEY> ("Honored to serve as the voice for our girls in this fight—they deserve so much better leadership than what the Maine Democrat Majority is offering!"); Representative Laurel Libby, Facebook (Feb. 19, 2025), <https://bit.ly/3D5c2oB> ("Maine's Democrat Majority is openly defying President Trump's Executive Order designed to keep biological males out of girls' sports. ... [O]ur girls deserve better.").

37. On February 20, three days after Rep. Libby's initial post, President Trump during public remarks called out Maine for its transgender sports policy and threatened to withhold federal funding. Fredrick Placey, *Trump threatens to withhold federal money over transgender students*, WMTV (Feb. 20, 2025), <https://perma.cc/SJ8Y-G9RZ>. Rep. Libby shared President Trump's remarks on social media and commented, "President Trump pledges to step in to protect girls' sports in Maine and clean up the failure by both the Maine Principals' Association and the Maine Democrat Majority!" Representative Laurel Libby, Facebook (Feb. 20, 2025), <https://bit.ly/4bvtL55>. Another post stated, "With \$280M+ per year on the line in federal funding, this shouldn't be a hard choice for Maine

Democrats. It's time to restore girls' sports and protect the funding for our schools." @laurel_libby, X (Feb. 21, 2025, 12:34 PM), <https://perma.cc/S9SM-2F6V>.

38. The next day, during a governors' event at the White House, President Trump called out Governor Mills over Maine's transgender sports policy in a tense exchange. Trump asked, "I understand Maine—is Maine here, the governor of Maine?" "I'm here," Mills replied. "Are you not going to comply with it?" Trump asked. Mills answered, "I'm complying with state and federal laws." "Well, we are the federal law," Trump said. "You better do it. You better do it, because you're not going to get any federal funding at all if you don't. And by the way your population ... doesn't want men playing in women's sports. So you better comply," Trump continued. Mills then replied, "See you in court." Trump concluded the exchange, "Good, I'll see you in court. I look forward to that. That should be a real easy one. And enjoy your life after governor, because I don't think you'll be in elected politics." Lexie Schapitl, *'See you in court': Trump and Maine's governor spar over trans athlete order*, NPR (Feb. 21, 2025), <https://bit.ly/4i4Olfa>. The heated exchange made endless headlines.

39. President Trump again called out Governor Mills the next day during his remarks at the Conservative Political Action Conference. "You saw Maine yesterday, right? The governor of Maine," Trump said, eliciting boos from the audience. "She's fighting to keep men in women's sports. ... Let her do that fight. Let them all do that fight, because I think that's about a 90/10 issue, and I can't figure out who the 10% are." @TheMaineWire, X (Feb. 22, 2025, 3:15 PM), <https://bit.ly/3Xt76k2>.

40. Federal agencies have since announced investigations into Maine's policy. The U.S. Department of Education's Office of Civil Rights launched a self-initiated probe into the Maine Department of Education and Maine the Maine School Administrative District #51, which has jurisdiction over Greely High School, for potentially violating Title IX, which bars sex-based discrimination in federally funded education programs. Press Release, U.S. Dep't of Educ., *Office for*

Civil Rights Launches Title IX Violation Investigations into Maine Department of Education and Maine School District (Feb. 21, 2025), <https://perma.cc/9QYG-YYRT>. The U.S. Department of Health and Human Services' Office of Civil Rights likewise initiated a Title IX compliance review of the Maine Department of Education, including the University of Maine System. Press Release, U.S. Dep't Health & Hum. Servs., *HHS' Civil Rights Office Acts to Keep Men out of Women's Sports* (Feb. 21, 2025), <https://perma.cc/WXM4-HGEW>. The United States Department of Agriculture also initiated a compliance review of the University of Maine. Press Release, U.S. Dep't of Agric., *USDA Launches Compliance Review of University of Maine for Title IX Violations* (Feb. 22, 2025), <https://perma.cc/5QLJ-MDN4>.

41. U.S. Attorney General Pam Bondi also sent Governor Mills a letter, putting Maine “on notice” that “if these or other federal investigations show that the relevant Maine entities are indeed denying girls an equal opportunity to participate in sports and athletic events by requiring them to compete against boys, the Department of Justice stands ready to take all appropriate action to enforce federal law.” Letter from Pam Bondi, U.S. Att’y Gen., to Janet Mills, Governor of Maine (Feb. 25, 2025), <https://perma.cc/8HJM-77GV>.

The Maine House Retaliates Against Rep. Libby

42. After Rep. Libby’s advocacy went viral, Maine House Speaker Ryan Fecteau (D-Biddeford) asked Rep. Libby to take down her initial Facebook post. Rep. Libby refused.

43. Speaker Fecteau then publicly responded to Rep. Libby by urging Mainers to “reject hateful rhetoric from divisive politicians.” “All kids, including transgender students, deserve better than to be used as political fodder for internet bullies.” Speaking to transgender students, he added, “I see you and I stand with you.” “You deserve to be your true self at home, at school and when participating in sports.” Susan Cover, *Mainers should ‘reject hateful rhetoric,’ Maine House speaker says in*

response to GOP post opposing transgender student participation in sports, Spectrum News (Feb. 20, 2025), <https://perma.cc/JL3C-EDEN>.

44. The next day, Speaker Fecteau penned an op-ed in the *Bangor Daily News*, framing Rep. Libby's social media activity as an issue of "privacy of Maine kids" that can "be downright dangerous for the young person involved" and "impact their health and their safety, at school, and in their communities." He added, "Kids shouldn't have to worry about a politician sharing images of them online without their consent." He pledged "to stand up to elected officials who violate the privacy of youth for cheap political stunts." Ryan Fecteau, Opinion, *Maine kids should never be political fodder for internet bullying*, *Bangor Daily News* (Feb. 21, 2025), <https://perma.cc/KD4Y-E7KZ>.

45. As explained, the student's name, school, and image were widely disseminated online, separate from Rep. Libby's initial post. *Supra* ¶¶32-33.

46. Indeed, the photos Rep. Libby posted were taken at a public forum on the victory podium at state track meets. The entire point of the victory podium is to publicize the winner of the event.

47. Moreover, the photos themselves make the very point that Governor Mills concedes is "worthy" of a "full, democratic debate." They illustrate that the winner had an obvious physical advantage in terms of height and development over the female competitors in the pole vault.

48. The complaint that Rep. Libby's speech somehow threatened child safety is irreconcilable with the fact that her speech addresses what occurred at a public competition with publicly available photos already on the internet. There is nothing illegal or threatening about Rep. Libby's posts, and at no point has she enabled or encouraged any attacks on any individual student. Instead, she has focused on the state government's unfair policy and the rights of girls to compete fairly and safely in high school athletics.

49. Rep. Libby kept the pressure on Maine Democrats on social media: “The people of Maine (especially our girls) deserve so much better than the ‘leadership’ that @GovJanetMills and the Maine Democrat Majority are currently offering.” @laurel_libby, X (Feb. 23, 2025), <https://bit.ly/41vkCEY>. “@GovJanetMills and Maine’s Democrat Majority are knowingly and willingly allowing the erasure of Maine girls, by continuing to allow biological males to compete in (and dominate) girls’ sports.” @laurel_libby, X (Feb. 24, 2025), <https://perma.cc/Z35L-ARGD>.

50. On February 25, 2025, Maine’s Democrat-controlled House passed a resolution along strict party lines (75-70) censuring Libby for her initial Facebook post with the photos of the transgender student on the medal podium. H.R. Res. 1, 132nd Leg., 1st Reg. Sess. (Me. 2025), <https://perma.cc/JU85-VNTS> (Resolution). The resolution provides that Rep. Libby “posted a statement criticizing the participation of transgender students in high school sports”; the “post has received national attention that she has amplified by appearing on national television and radio broadcasts to discuss”; and the “post named the minor and used photos of the minor without that minor’s consent, in an effort to advance her political agenda.” *Id.* The resolution found Rep. Libby’s conduct “to be reprehensible and in direct violation of our code of ethics,” which requires legislators to “be ever mindful of the ordinary citizen who might otherwise be unrepresented” and “endeavor conscientiously to pursue the highest standards of legislative conduct inside and outside of the State House.” *Id.* It further found that Rep. Libby “conducted herself in a manner incompatible with her duty and responsibilities as a Member of this House and the public trust and high standards incumbent in that office.” *Id.* The resolution provides that Libby “must accept full responsibility for the incident and publicly apologize to the House and to the people of the State of Maine” and “must comport herself in a manner that pursues the highest standards of legislative conduct.” *Id.*

51. In introducing the resolution, Majority Leader Rep. Matt Moonen (D-Portland) accused Rep. Libby of “creat[ing] an intentionally inflammatory post on social media about a Maine

high school athlete, who is a minor, at a recent track event.” *Archived Hearings & Meetings: House Chamber* 5:57:35-6:01:06 PM, Me. Leg. (Feb. 25, 2025, 10:00 AM), <https://bit.ly/43tBMp4> (Hearing). He emphasized that “[t]he post then went viral online and generated tens of thousands of comments,” and then Rep. Libby “continued to bring national media attention” to the issue. *Id.* In other words, it was the favorable coverage Rep. Libby generated that was the problem.

52. In response, Minority Leader Rep. Billy Bob Faulkingham (R-Winter Harbor) argued “the legislative code of ethics has no guidelines referring to online or social media posts” and “[t]he post in question does not even violate Facebook’s community standards.” *Id.* at 6:01:13-6:03:48 PM. He characterized the resolution as “a mockery of the censure process,” “set[ting] a standard that says that the majority party, when they’re displeased with a social media post that upsets them, can censure a member of the minority party and by a majority vote, censure them and, without them giving an apology, keep them out of the Legislature.” *Id.* He observed none of the three prior censures in the history of the Maine Legislature targeted speech or conduct outside the statehouse. *Id.*

53. Two of the three prior censures came last year, again by the Maine Democrat Majority against Republicans for disfavored speech. But all involved speech on the House floor, in the statehouse, or to other legislators, not a duly elected representative’s speech on a matter of public concern directly to her constituents. The House censured two Republicans over statements on the House floor claiming that the 2023 Lewiston mass shooting was God’s response to a recent abortion law that took effect the same day, which violated “the decorum of the House.” H.R. Res. 1, 131st Leg., 2d Reg. Sess. (Me. 2024), <https://perma.cc/8YC3-6RY3>; H.R. Res. 2, 131st Leg., 2d Reg. Sess. (Me. 2024), <https://perma.cc/S63W-3XJF>; *see* Legis. Rec. H-1723-1724, 131st Leg., 2d Reg. Sess. (Me. 2024), <https://perma.cc/BG6W-SVTU>. The third prior censure came in 2001 when a male representative who “verbally abused a female Senator in the hallway outside of the chamber of the House,” “followed her to the Senate offices where he continued to verbally abuse the Senator,” and

“verbally abused” “another female Senator [who] attempted to intervene.” Legis. Rec. H-145-49, 120th Leg., 1st Reg. Sess. (Me. 2001), <https://perma.cc/GL5C-FVY7>.

54. Rep. Jennifer L. Poirier (R-Skowhegan), who opposed the resolution, raised free-speech concerns and emphasized that the student’s identifying information and image were publicly available on the internet before Rep. Libby ever posted on Facebook. *Id.* at 6:06:53-6:09:23. She observed that Rep. Libby would not have been censured had she posted the student’s photograph and name with sentiments of congratulations. *Archived Hearings & Meetings: House Chamber, supra*, at 6:07:37-6:07:52.

55. Rep. Poirier also requested clarification for other representatives “who may have reposted Representative Libby’s social media post,” asking whether they can “expect censures to come forth on them as well.” *Id.* at 7:11:58-7:12:12. Speaker Fecteau responded, “I’m not aware of any other censures.” *Id.*

56. Members repeatedly interrupted Rep. Libby as she attempted to speak on the House floor in defense of herself and her post. *Id.* at 6:15:45-6:21:36. Rep. Libby emphasized that the track and field state championship “was a public event” and the male student’s “photos are posted publicly on multiple websites.” *Id.* at 6:27:27-6:28:15. She explained that “folks are upset about this post” because it “exposed truth” that “there are boys participating in girls’ sports” and “taking the place of girls.” *Id.* at 6:28:17-6:30:00.

57. After the House passed the censure resolution, Speaker Fecteau summoned Rep. Libby to the well of the chamber, lectured her on the House’s ethics standards, and offered her an opportunity to apologize. Rep. Libby declined. Speaker Fecteau then found Rep. Libby in violation of House Rule 401(11). *Id.* at 7:08:20-7:11:15.

58. Under Rule 401(11), a member who “is guilty of a breach of any of the rules and orders of the House ... may not be allowed to vote or speak, unless by way of excuse for the breach, until the member has made satisfaction.” H.R. Rule 401(11), 132nd Leg. (Me.).

59. The censure of Rep. Libby thus deprives her of the ability to speak or vote on the House floor on behalf of her 9,000 constituents in House District 90.

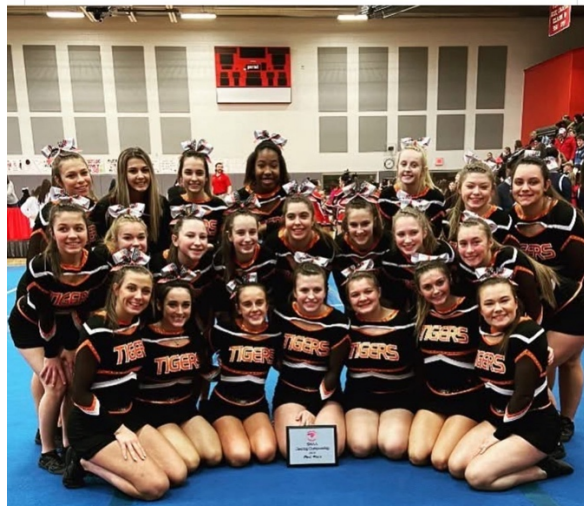
60. The censure served no legitimate legislative purpose. The censure of Libby concerned speech that occurred *outside the statehouse* to her constituents on social media. *See* Nat’l Conf. of State Legis., *Mason’s Manual of Legislative Procedure* §561(3) (2010) (“Whatever is spoken *in the house* is subject to the censure of the house.” (emphasis added)). Thus, unlike the three prior censures in the nearly 200-year history of the Maine House, Libby’s speech did not disrupt the order or decorum of the House. *Cf. id.* §123(4) (providing for censure under section titled “Use of Disorderly Words in Debate”).

61. Speaker Fecteau posted about the censure on Facebook: “Tonight the House held a vote to censure Representative Laurel Libby. Sharing images of kids online without their consent is a clear violation of the bond of trust and respect between citizens and their Legislators.” Speaker Ryan Fecteau, Facebook (Feb. 25, 2025), <https://perma.cc/9WXN-2SQK>.

62. Yet Speaker Fecteau is guilty of the very conduct he criticized and found worthy of censure. He has posted many photos of minors on Facebook to score political points. On information and belief, Speaker Fecteau did so without the minors’ consent.

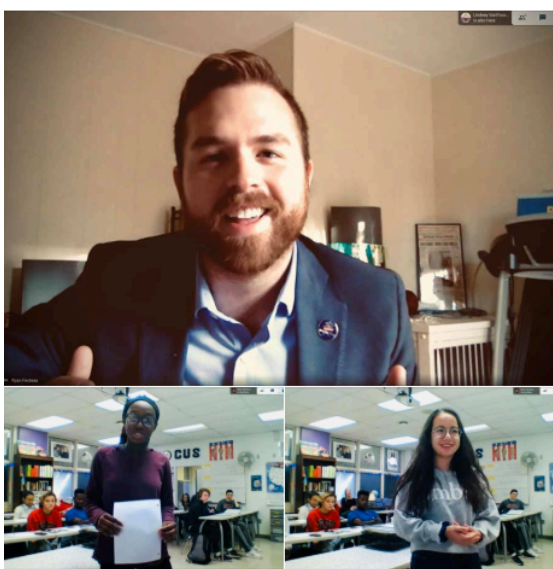


Speaker Ryan Fecteau, Facebook (Feb. 9, 2019), <https://perma.cc/G956-KWKL>.



Speaker Ryan Fecteau, Facebook (Jan. 18, 2020), <https://perma.cc/SU2G-9VMA>.

Speaker Ryan Fecteau
November 7, 2019
I started my day with a 7:50 am discussion with 11th grade AP Government students at [Thomas Worthington High School](#) in Columbus, OH.
I'm not sure I would want to start my school day with a conversation with me, but the students were great. They asked well-researched questions about the legislative process.
Thanks to [DreamWakers](#) for inviting me to be apart of their program!



Speaker Ryan Fecteau, Facebook (Nov. 7, 2019), <https://perma.cc/9FWD-56TC>.

Speaker Ryan Fecteau
February 14, 2019
Last week I read a story with 1st graders at Biddeford Primary School. It was the 100th day of their school year. So, they dressed up as 100 year old ladies and gents. I had to read the story a little louder so they could hear. #ReadToMe Challenge



Speaker Ryan Fecteau, Facebook (Feb. 14, 2019), <https://perma.cc/RPG4-KKMG>.

Public Backlash

63. The censure of Rep. Libby drew swift condemnation in media across the country. *E.g.*, Carine Hajjar, Opinion, *A new low for free speech: Democrats strip voting rights from Maine state representative over post on trans athletes*, Bos. Globe (Feb. 28, 2025), <https://perma.cc/9QVJ-8CLU>; Editorial Board, Opinion, *Maine's Transgender Madness*, Wall St. J. (Feb. 28, 2025), <https://perma.cc/PV8B-MTFQ>.

64. Congressmembers, national free-speech organizations, and other prominent figures criticized the censure and expressed support for Rep. Libby. *E.g.*, @tedcruz, X (Feb. 26, 2025, 1:09 AM), <https://perma.cc/352E-7N42>; @Speech_First, X (Feb. 26, 2025, 11:44 AM), <https://perma.cc/4CN4-PXPQ>; @Riley_Gaines_, X (Feb. 25, 2025, 8:03 PM), <https://perma.cc/9FP7-Z397>; @Liz_Wheeler, X (Feb. 25, 2025, 9:17 PM), <https://perma.cc/LUT7-NGKL>; *see also* Daniel Ortner, *Maine's censure of lawmaker for post about trans student-athlete is an attack on free speech*, FIRE (Mar. 7, 2025), <https://perma.cc/3ZU4-DBLU>.

65. On March 1, the first day of women's history month, hundreds of Mainers descended on Augusta to march in protest of Maine's transgender sports policy, some holding signs in support of Rep. Libby. *See* Jacob Murphy, *Hundreds rally in Augusta to oppose Gov. Mills, transgender athletes in women's sports*, WMTW (Mar. 1, 2025), <https://perma.cc/4MC7-2G7G>; *March Against Mills' Draws Large Protest to Augusta*, Me. Wire (Mar. 3, 2025), <https://perma.cc/DW3L-RCGD>; @TheMaineWire, X (Mar. 1, 2025, 11:11 AM), <https://bit.ly/41Ip9oY>.

66. On March 3, 2025, in her first comments to reporters after her tense exchange with President Trump, Governor Mills refused to take a stance on Maine's transgender sports policy. "If [lawmakers] wish to change it, they have the authority to change it, but you don't change it by executive order or by wishing it differently," she said. "It's worthy of a debate, a full, democratic debate." Shepherd, *supra* note 1.

Disenfranchisement of Rep. Libby's Constituents in House District 90

67. The House's censure excludes Rep. Libby from any further "democratic debate" over Maine's transgender sports policy. The day after Rep. Libby's censure, Rep. Liz Caruso (R-Caratunk) announced a bill to reverse Maine's transgender sports policy. *Maine Republican introduces bill to ban transgender athletes from girls' sports teams*, Spectrum News (Feb. 26, 2025), <https://perma.cc/33LT-CJAL>. Titled "An Act to Ensure Equity and Safety in Athletics, Restrooms, Changing Rooms and Housing at Elementary, Secondary and Postsecondary Schools," the bill would require "[i]nterscholastic or intramural athletic teams and sports ... must be expressly designated ... based on sex" and provides that "[a]thletic teams or sports designated as 'females,' 'women,' or 'girls' may not allow participation by students who are male." L.D. 868, 132nd Legis., 1st Reg. Sess. (Me. 2025), <https://perma.cc/UVH3-XNGA>. But because of the censure, Rep. Libby, one of the House's staunchest advocates on the issue, is barred from speaking on the floor or voting on the bill.

68. In addition, on March 4, 2025, Rep. Reagan Paul (R-Winterport) presented a joint order and moved its passage for "the Joint Standing Committee on Education and Cultural Affairs shall report out, to the House, a bill that prohibits an educational institution in this State that receives state funds from being a member of or paying dues or fees to an organization that does not prohibit biological males from participating on teams in sports designated for 'girls' or 'females.'" H.P. 500, 132nd Legis., 1st Reg. Sess. (Me. 2025), <https://perma.cc/H3TB-BRMM>; see *Media Streaming: House Chamber* 11:45:29-11:51:56 AM, Me. Legis. (Mar. 4, 2025), <https://bit.ly/3Dmgpvt> (Rep. Paul: "This is not just about women's sports; it's about protecting fairness, reality, and the very foundation of competition. Truth isn't optional, and biology is not just an obstacle to be ignored, or dare I say pole-vaulted over."). Because of the censure, Rep. Libby and her constituents in House District 90 will be deprived of any voice or vote on any such bill.

69. In addition to the above, the ongoing Maine legislative session features votes on numerous issues of public importance, including the State budget and the availability of funding for mental and other health services.

70. Rep. Libby has sponsored or cosponsored resolutions proposing constitutional amendments concerning state elections and bills concerning Sunday closing laws, tobacco taxes, paid family and medical leave, public records requests, and consumer energy and electricity costs. The Defendants' unlawful actions deprive her of her ability to vote on these issues, should they come to the House.

CLAIMS FOR RELIEF

COUNT I

Free Speech

42 U.S.C. §1983; U.S. Const. Amends. I, XIV

Rep. Libby against Defendants

71. Plaintiffs repeat and reallege each of their prior allegations.

72. The Free Speech Clause of the First Amendment to the U.S. Constitution, applicable to the States through the Fourteenth Amendment, prohibits the government from "abridging the freedom of speech." U.S. Const. amend. I; *see Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

73. "[T]he First Amendment prohibits government officials from subjecting an individual to retaliatory actions for engaging in protected speech." *Nieves v. Bartlett*, 587 U.S. 391, 398 (2019) (cleaned up).

74. Rep. Libby's social media posts about the Maine girls indoor track and field state championship and the intrusion of men and boys in women's and girls' sports is constitutionally protected speech on a matter of public concern.

75. Barring Rep. Libby from speaking or voting on the House floor is a materially adverse action that prevents Rep. Libby from doing her job, interferes with her ability to adequately perform

her elected duties, and denies her privileges of the office to which she was duly elected by the people of Maine.

76. Rep. Libby was retaliated against because of her speech and would not have been censured but for her speech.

77. The proffered reasons for censuring Rep. Libby—minor students’ privacy and safety concerns—are false and a sham to cover the unlawful motive to retaliate against her because of her speech about men and boys who identify as transgender participating women’s and girls’ sports, her criticisms of Maine’s transgender sports policy, and the national media attention she attracted.

78. Rep. Libby has suffered and will suffer irreparable harm absent injunctive and declaratory relief against Defendants.

COUNT II
Equal Protection
42 U.S.C. §1983; U.S. Const. Amend. XIV
All Plaintiffs against Defendants

79. Plaintiffs repeat and reallege each of their prior allegations.

80. “[T]he right to vote—the wellspring of all rights in a democracy—is constitutionally protected.” *Bonas v. Town of N. Smithfield*, 265 F.3d 69, 74 (1st Cir. 2001).

81. The Constitution “protects the right of all qualified citizens to vote” in state elections, and the Equal Protection Clause requires that “all who participate in the election are to have an equal vote.” *Reynolds v. Sims*, 377 U.S. 533, 554, 557-58 (1964).

82. Equal protection applies to “the initial allocation of the franchise” and “the manner of its exercise.” *Bush v. Gore*, 531 U.S. 98, 104 (2000) (per curiam).

83. Plaintiffs voted in the 2024 election for House District 90.

84. Barring Rep. Libby from speaking or voting on the House floor dilutes Plaintiffs’ 2024 election votes in violation of the Equal Protection Clause’s “one person, one vote” principle.

85. Barring Rep. Libby from speaking or voting on the House floor disenfranchises Plaintiffs and the 9,000 Mainers in House District 90.

86. Barring Rep. Libby from speaking or voting on the House floor dilutes Plaintiffs' vote and disenfranchises them through "arbitrary and disparate treatment." *Bush*, 531 U.S. at 104-05.

87. Plaintiffs have suffered and will suffer irreparable harm absent injunctive and declaratory relief against Defendants.

COUNT III
Due Process
42 U.S.C. §1983; U.S. Const. Amend. XIV
All Plaintiffs against Defendants

88. Plaintiffs repeat and reallege each of their prior allegations.

89. "[T]he due process clause of the fourteenth amendment prohibits action by state officials which seriously undermine the fundamental fairness of the electoral process." *Duncan v. Poythress*, 657 F.2d 691, 700 (5th Cir. Unit B Sept. 1981).

90. Electors have a "right ... to vote and to have their votes counted." *Marks v. Stinson*, 19 F.3d 873, 889 (3d Cir. 1994). Thus, "rejection of a ballot where the voter has been effectively deprived of the ability to cast a legal vote implicates federal due process concerns." *Id.* Due process is denied where "the election process itself reaches the point of patent and fundamental unfairness." *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978). Where "organic failures in a state or local election process threaten to work patent and fundamental unfairness, a colorable claim lies for a violation of substantive due process." *Bonas*, 265 F.3d at 74. A "total and complete disenfranchisement of the electorate as a whole is patently and fundamentally unfair" and thus "constitute[s] a violation of due process." *Id.* at 75. It necessarily follows that an ex post deprivation of representation in the Legislature works the same harm.

91. Barring Rep. Libby from speaking or voting on the House floor excludes her from the office to which she was duly elected by the people of Maine's House District 90, even though she

satisfies the standing requirements for a person to serve as a member of the Maine House set forth in the Maine Constitution. *See* Me. Const. Art. IV, Pt. 1, §4; *cf. Powell v. McCormack*, 395 U.S. 486, 550 (1969).

92. Barring Rep. Libby from speaking or voting on the House floor constitutes a de facto expulsion from the office to which she was duly elected by the people of Maine’s House District 90 without “the concurrence of 2/3” members, as required by the Maine Constitution. Me. Const. Art. IV, Pt. 3, §4.

93. Barring Rep. Libby from voting on the House floor deprives Plaintiffs and voters in House District 90 of their right to vote for a state representative.

94. Canceling Rep. Libby’s representative votes on the House floor in violation of the Maine Constitution’s provisions for House membership violates due process.

95. Plaintiffs have suffered and will suffer irreparable harm absent injunctive and declaratory relief against Defendants.

COUNT IV
Republican Guarantee
42 U.S.C. §1983; U.S. Const. Art. IV, §4
All Plaintiffs against Defendants

96. Plaintiffs repeat and reallege each of their prior allegations.

97. The U.S. Constitution “guarantee[s] to every State in this Union a Republican Form of Government.” U.S. Const. art. IV, § 4.

98. “[T]he distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves.” *Duncan v. McCall*, 139 U.S. 449, 461 (1891). “[W]hile the people are thus the source of political power, their governments, national and state, have been limited by written constitutions, and

they have themselves thereby set bounds to their own power, as against the sudden impulses of mere majorities.” *Id.*

99. “The Guarantee Clause is best understood as protecting basic rights of political participation within state governments.” Erwin Chemerinsky, *Cases Under the Guarantee Clause Should Be Justiciable*, 65 U. Colo. L. Rev. 849, 867 (1994). “[T]he key features of a republican form of government are a right to vote and a right to political participation.” *Id.* at 868.

100. The Guarantee Clause “presupposes the continued existence of the states and ... those means and instrumentalities which are the creation of their sovereign and reserved rights.” *Printz v. United States*, 521 U.S. 898, 919 (1997).

101. Barring Rep. Libby from speaking or voting on the House floor—stripping her of her most important responsibilities as an elected representative and denying her privileges of the office to which she was duly elected—deprives Plaintiffs of representation in the House and thus presents a real threat to the constitutionally guaranteed republican form of government.

102. “A republican form of government can only be preserved by securing to its electors the right to select their [representatives] by ballot, for terms fixed in advance by the Legislature of the state.” *Bd. of Elections for Franklin Cnty. v. State ex rel. Schneider*, 191 N.E. 115, 120 (Ohio 1934).

103. Plaintiffs and the 9,000 Mainers of House District 90 elected Rep. Libby to a two-year term through 2026.

104. Barring Rep. Libby from speaking or voting on the House floor deprives Plaintiffs of representation in the House, disenfranchises 9,000 Mainers in House District 90, and deprives them of their ability to elect their own representatives to exercise legislative power and pass laws.

105. Barring Rep. Libby from speaking or voting on the House floor constitutes a de facto expulsion from the office to which she was duly elected by the people of Maine’s House District 90

without “the concurrence of 2/3” members, as required by the Maine Constitution. Me. Const. Art. IV, Pt. 3, §4.

106. Barring Rep. Libby from speaking or voting on the House floor excludes her from the office to which she was duly elected by the people of Maine’s House District 90, even though she satisfies the standing requirements for a person to serve as a member of the Maine House set forth in the Maine Constitution. *See* Me. Const. Art. IV, Pt. 1, §4; *cf. Powell*, 395 U.S. at 550.

107. While some Guarantee Clause claims have been held to be nonjusticiable, the Supreme Court has been clear that the Guarantee Clause is a critical protection of the people in our Constitution and that there remain claims that could be justiciable. *See New York v. United States*, 505 U.S. 144, 184-85 (1992); *see also Largess v. Supreme Jud. Ct. for the State of Mass.*, 373 F.3d 219, 229 (1st Cir. 2004) (*per curiam*) (observing “several members of the Supreme Court have suggested that federal courts can indeed review the internal allocations of power in a state government under the text of this clause” (citing *Bush*, 531 U.S. at 112 (Rehnquist, C.J., concurring, joined by Scalia and Thomas, JJ.))). The “unusual and extreme” circumstances here present such a justiciable claim for “the federal courts to enforce the Guarantee Clause.” *Largess*, 373 F.3d at 229. A State has no republican form of government when it has stripped an elected legislator—the main ingredient of any republican form of government—of her right to speak and vote on behalf of her constituents contrary to the state’s constitutionally prescribed rules for what makes a qualified legislator and requirement of two-thirds vote for expulsion.

108. Plaintiffs have suffered and will suffer irreparable harm absent injunctive and declaratory relief against Defendants.

PRAYER FOR RELIEF

Plaintiffs respectfully request the following relief:

A. A declaratory judgment that the censure of Rep. Libby and application of House rules prohibiting her from speaking on the House floor and voting on behalf of her constituents is unlawful retaliation, in violation of the First and Fourteenth Amendments of the U.S. Constitution;

B. A declaratory judgment that the censure of Rep. Libby and application of House rules prohibiting her from voting on behalf of her constituents of the House District 90 violates the Equal Protection, Due Process, and Guarantee Clauses of the U.S. Constitution;

C. Injunctive relief prohibiting Rep. Libby from being barred from speaking on the House floor;

D. Injunctive relief prohibiting the disregard and non-counting of Rep. Libby's votes cast on behalf of House District 90 constituents;

E. An award of attorney's fees, costs, and expenses under 42 U.S.C. §1988; and

F. Any other legal or equitable relief the Court may deem just and proper.

Dated: March 11, 2025

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Respectfully submitted,

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Counsel for Plaintiffs

VERIFICATION

I am over the age of 18 and am a Plaintiff in this action. I declare under penalty of perjury, pursuant to 28 U.S.C. §1746, that I have read the foregoing VERIFIED COMPLAINT, and the factual allegations thereof, and that to the best of my knowledge the facts alleged therein are true and correct.

Dated: March 11, 2025

/s/ Laurel D. Libby

Per Local Civil Rule 10, Plaintiffs' counsel retains a paper copy of this verification bearing an original signature, available for future production.

/s/ Patrick Strawbridge

**U.S. District Court
District of Maine (Bangor)
CIVIL DOCKET FOR CASE #: 1:25-cv-00083-MRD**

LIBBY et al v. FECTEAU et al
Assigned to: JUDGE MELISSA R. DUBOSE
Referred to: US MAGISTRATE JUDGE PATRICIA A.
SULLIVAN
Case in other court: First Circuit Court of Appeals, 25-01385
Cause: 42:1983 Civil Rights Act

Date Filed: 03/11/2025
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

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V.

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Movant

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Date Filed	#	Docket Text
03/11/2025	<u>1</u>	COMPLAINT against RYAN M FECTION, ROBERT B HUNT PAYMENT OF FILING FEE DUE WITHIN 48 HOURS. IF FILING FEE IS BEING PAID WITH A CREDIT CARD COUNSEL ARE INSTRUCTED TO LOGIN TO CMECF AND DOCKET Case Opening Filing Fee Paid FOUND IN THE Complaints and Other Initiating Documents CATEGORY. CHECK PAYMENTS DUE WITHIN 48 HOURS. , filed by RONALD P LEBEL, JASON LEVESQUE, DONALD DUBUC, BERNICE FRASER, RENE FRASER, LAUREL D LIBBY, WENDY MUNSELL. (Service of Process Deadline 6/9/2025) Fee due by 3/13/2025.(mjlt) (Entered: 03/11/2025)
03/11/2025	<u>2</u>	CIVIL COVER SHEET. (mjlt) (Entered: 03/11/2025)
03/11/2025	<u>3</u>	Summons Issued as to ROBERT B HUNT. Counsel shall print the embossed summons and effect service in the manner in accordance with Fed.R.Civ.P.4. Note-If you are using Version 6 of Adobe Acrobat, be sure the PRINT WHAT field is set to DOCUMENTS AND COMMENTS (Click File, then Print to check this setting). (mjlt) (Entered: 03/11/2025)
03/11/2025	<u>4</u>	Summons Issued as to RYAN M FECTION. Counsel shall print the embossed summons and effect service in the manner in accordance with Fed.R.Civ.P.4. Note-If you are using Version 6 of Adobe Acrobat, be sure the PRINT WHAT field is set to DOCUMENTS AND COMMENTS (Click File, then Print to check this setting). (mjlt) (Entered: 03/11/2025)

03/11/2025	5	ORDER OF RECUSAL. By MAGISTRATE JUDGE JOHN C. NIVISON. (mjlt) (Entered: 03/11/2025)
03/11/2025	6	ORDER OF RECUSAL.. By JUDGE JOHN A. WOODCOCK, JR. (mjlt) (Entered: 03/11/2025)
03/11/2025	7	ORDER OF RECUSAL.. By JUDGE LANCE E. WALKER. (mjlt) (Entered: 03/11/2025)
03/11/2025	8	MOTION for Preliminary Injunction by RENE FRASER, DONALD DUBUC, LAUREL D LIBBY, RONALD P LABEL, WENDY MUNSELL, JASON LEVESQUE, BERNICE FRASER Responses due by 4/1/2025. (Attachments: # 1 Affidavit Declaration of Bernice Fraser, # 2 Affidavit Declaration of Donald Dubuc, # 3 Affidavit Declaration of Ronald Label, # 4 Affidavit Declaration of Jason Levesque, # 5 Affidavit Declaration of Wendy Munsell, # 6 Affidavit Declaration of Rene Fraser)(STRAWBRIDGE, PATRICK) (Entered: 03/11/2025)
03/11/2025	9	CERTIFICATION for Admission Pro Hac Vice of Taylor A.R. Meehan filed by PATRICK N. STRAWBRIDGE on behalf of All Plaintiffs (Total admission fee \$ 200 receipt number AMEDC-3080383.) The District of Maine is a CM/ECF NextGen Court. If PHV counsel has not previously been granted electronic filing rights with the District of Maine, PHV counsel will now need to submit a PRO HAC VICE request in this District via PACER at www.pacer.uscourts.gov (STRAWBRIDGE, PATRICK) (Entered: 03/11/2025)
03/11/2025	10	CERTIFICATION for Admission Pro Hac Vice of Daniel M. Vitagliano filed by PATRICK N. STRAWBRIDGE on behalf of All Plaintiffs (Total admission fee \$ 200 receipt number AMEDC-3080384.) The District of Maine is a CM/ECF NextGen Court. If PHV counsel has not previously been granted electronic filing rights with the District of Maine, PHV counsel will now need to submit a PRO HAC VICE request in this District via PACER at www.pacer.uscourts.gov (STRAWBRIDGE, PATRICK) (Entered: 03/11/2025)
03/11/2025	11	NOTICE of APPROVAL by Clerk's Office re 9 Certification for Admission Pro Hac Vice,, 10 Certification for Admission Pro Hac Vice, Attorney TAYLOR A.R. MEEHAN and DANIEL M. VITAGLIANO for all plaintiffs added to this specific case only. Maine has transitioned to the NextGen ECF filing system; therefore, to complete the admissions process, Attorney Vitagliano and Meehan must register for a PACER account and/or request the appropriate e-filing rights in the District of Maine via PACER at www.pacer.uscourts.gov by 3/18/2025. NOTE: Counsel appearing Pro Hac Vice MUST click on the PRO HAC VICE link when requesting e-filing rights via PACER. For more details on NextGen/PACER go to our website at www.med.uscourts.gov . (lrt) (Entered: 03/11/2025)
03/11/2025	12	ORDER OF RECUSAL. By MAGISTRATE JUDGE KAREN FRINK WOLF. (mjlt) (Entered: 03/11/2025)
03/11/2025	13	ORDER OF RECUSAL. By JUDGE STACEY D. NEUMANN. (mjlt) (Entered: 03/11/2025)
03/11/2025	14	ORDER OF RECUSAL.. By JUDGE NANCY TORRESEN. (mjlt) (Entered: 03/11/2025)
03/12/2025	15	ORDER By JUDGE LANCE E. WALKER. (mjlt) (Entered: 03/12/2025)
03/12/2025	16	SERVICE Returned EXECUTED filed by RONALD P LABEL, JASON LEVESQUE, DONALD DUBUC, BERNICE FRASER, RENE FRASER, LAUREL D LIBBY, WENDY MUNSELL as to ROBERT B HUNT. (STRAWBRIDGE, PATRICK) (Entered: 03/12/2025)

03/12/2025	17	NOTICE of Appearance by KIMBERLY L. PATWARDHAN on behalf of RYAN M FECTEAU, ROBERT B HUNT (PATWARDHAN, KIMBERLY) (Entered: 03/12/2025)
03/12/2025	18	SERVICE Returned EXECUTED filed by RONALD P LEBEL, JASON LEVESQUE, DONALD DUBUC, BERNICE FRASER, RENE FRASER, LAUREL D LIBBY, WENDY MUNSELL as to RYAN M FECTEAU. (STRAWBRIDGE, PATRICK) (Entered: 03/12/2025)
03/12/2025	19	NOTICE of Appearance by JONATHAN R. BOLTON on behalf of RYAN M FECTEAU, ROBERT B HUNT (BOLTON, JONATHAN) (Entered: 03/12/2025)
03/12/2025	20	CONCURRING ORDER By CHIEF U.S. DISTRICT JUDGE JOHN J. MCCONNELL(mjlt) (Entered: 03/12/2025)
03/12/2025		Case Assigned to JUDGE MELISSA R. DUBOSE and US MAGISTRATE JUDGE PATRICIA A. SULLIVAN. (mjlt) (Entered: 03/12/2025)
03/12/2025		Set Answer Deadline for RYAN M FECTEAU and ROBERT B HUNT; Defendants having been served on March 11, 2025: Answer due by 4/1/2025. (mjlt) (Entered: 03/12/2025)
03/13/2025	21	Consent MOTION for Order <i>setting briefing schedule</i> , Consent MOTION for Oral Argument/Hearing re 8 MOTION for Preliminary Injunction by RENE FRASER, DONALD DUBUC, LAUREL D LIBBY, RONALD P LEBEL, WENDY MUNSELL, JASON LEVESQUE, BERNICE FRASER Responses due by 4/3/2025. (STRAWBRIDGE, PATRICK) (Entered: 03/13/2025)
03/13/2025	22	CERTIFICATION for Admission Pro Hac Vice of Marie E. Sayer filed by PATRICK N. STRAWBRIDGE on behalf of All Plaintiffs (Total admission fee \$ 200 receipt number AMEDC-3081618.) The District of Maine is a CM/ECF NextGen Court. If PHV counsel has not previously been granted electronic filing rights with the District of Maine, PHV counsel will now need to submit a PRO HAC VICE request in this District via PACER at www.pacer.uscourts.gov (STRAWBRIDGE, PATRICK) (Entered: 03/13/2025)
03/13/2025	23	NOTICE of APPROVAL by Clerk's Office re 22 Certification for Admission Pro Hac Vice. Attorney MARIE E. SAYER added for DONALD DUBUC, BERNICE FRASER, RENE FRASER, RONALD P LEBEL, JASON LEVESQUE, LAUREL D LIBBY, and WENDY MUNSELL to this specific case only. (jgd) (Entered: 03/13/2025)
03/17/2025	24	NOTICE of Hearing: Telephone Conference set for 3/18/2025 02:30 PM before JUDGE MELISSA R. DUBOSE. The parties have been provided the Court's call-in information. (mjlt) (Entered: 03/17/2025)
03/17/2025		Filing Fee Paid via Credit Card (Filing fee \$ 405 receipt number AMEDC-3082728.), filed by RONALD P LEBEL, JASON LEVESQUE, DONALD DUBUC, BERNICE FRASER, RENE FRASER, LAUREL D LIBBY, WENDY MUNSELL.(STRAWBRIDGE, PATRICK) (Entered: 03/17/2025)
03/18/2025	25	Minute Entry for proceedings held before JUDGE MELISSA R. DUBOSE: Video Conference of Counsel held. (Court Reporter: Michelle Feliccitti) (mjlt) (Entered: 03/18/2025)
03/18/2025	26	Order re: Consent Motion for Setting Briefing Schedule. Defendant to file a response by April 1, 2025; Plaintiff to file a Reply by April 3, 2025. Matter set for oral argument via Zoom on April 4, 2025 at 12:00 p.m. By JUDGE MELISSA R. DUBOSE. (mjlt) (Entered: 03/18/2025)
03/18/2025		Set Deadlines as to 8 MOTION for Preliminary Injunction Pursuant to the Court's Order entered on March 18, 2025: Responses due by 4/1/2025. Reply due by 4/3/2025. (mjlt) (Entered: 03/18/2025)

03/18/2025	27	NOTICE of Hearing on Motion <u>8</u> MOTION for Preliminary Injunction : Oral Argument set for 4/4/2025 12:00 PM via Zoom Hearing before JUDGE MELISSA R. DUBOSE. The parties have been provided the Court's call-in information.(mjlt) (Entered: 03/18/2025)
04/01/2025	<u>28</u>	RESPONSE in Opposition re <u>8</u> MOTION for Preliminary Injunction filed by RYAN M FECTEAU, ROBERT B HUNT. Reply due by 4/15/2025. (Attachments: # <u>1</u> Exhibit 1) (PATWARDHAN, KIMBERLY) (Entered: 04/01/2025)
04/01/2025	<u>29</u>	AFFIDAVIT of Ryan Fecteau re <u>28</u> Response in Opposition to Motion filed by RYAN M FECTEAU, ROBERT B HUNT. (Attachments: # <u>1</u> Exhibit A - House Rules, # <u>2</u> Exhibit B - Legislative Code of Ethics, # <u>3</u> Exhibit C - Letter from Speaker to Libby, # <u>4</u> Exhibit D - HR 1)(PATWARDHAN, KIMBERLY) (Entered: 04/01/2025)
04/01/2025	<u>30</u>	AFFIDAVIT of Suzanne Gresser filed by RYAN M FECTEAU, ROBERT B HUNT. (Attachments: # <u>1</u> Exhibit 1)(PATWARDHAN, KIMBERLY) (Entered: 04/01/2025)
04/01/2025	<u>31</u>	MOTION to Dismiss for Failure to State a Claim , MOTION to Dismiss for Lack of Jurisdiction by RYAN M FECTEAU, ROBERT B HUNT Responses due by 4/22/2025. (PATWARDHAN, KIMBERLY) (Entered: 04/01/2025)
04/02/2025		Reset Deadlines as to <u>8</u> MOTION for Preliminary Injunction In accordance with the Conference of Counsel held on March 18, 2025: Plaintiffs' Reply due by 4/3/2025. (mjlt) (Entered: 04/02/2025)
04/03/2025	32	NOTICE of Hearing: Conference of Counsel set for 4/4/2025 11:30 AM in VIDEO HEARING before JUDGE MELISSA R. DUBOSE. The parties have been provided the Court's call-in information.(mjlt) (Entered: 04/03/2025)
04/03/2025	<u>33</u>	MOTION for Leave to File <i>Amicus Curiae Brief</i> by Foundation for Individual Rights and Expression Responses due by 4/24/2025. (Attachments: # <u>1</u> Supplement Proposed Amicus Curiae Brief)(MORRIS, ROBERT) (Entered: 04/03/2025)
04/03/2025	<u>34</u>	REPLY to Response to Motion re <u>8</u> MOTION for Preliminary Injunction filed by RENE FRASER, DONALD DUBUC, LAUREL D LIBBY, RONALD P LABEL, WENDY MUNSELL, JASON LEVESQUE, BERNICE FRASER. (Attachments: # <u>1</u> Affidavit Declaration of Laurel Libby)(STRAWBRIDGE, PATRICK) (Entered: 04/03/2025)
04/04/2025	35	Minute Entry for proceedings held before JUDGE MELISSA R. DUBOSE: Video Conference of Counsel held. (Court Reporter: Michelle Felicitti) (mtm) (Entered: 04/04/2025)
04/04/2025	36	Minute Entry for proceedings held before JUDGE MELISSA R. DUBOSE: Video Oral Argument held re <u>8</u> MOTION for Preliminary Injunction filed by DONALD DUBUC, BERNICE FRASER, RENE FRASER, LAUREL D LIBBY, RONALD P LABEL, JASON LEVESQUE, WENDY MUNSELL. Order to issue. (Court Reporter: Michelle Felicitti) (mtm) (Entered: 04/04/2025)
04/08/2025	<u>37</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings Video Oral Argument held on April 4, 2025 before Judge Melissa R. Dubose. Court Reporter/Transcriber: Michelle Felicitti, Telephone Number: 2074323114. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.med.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Release of Transcript Restriction set for 7/7/2025. (FELICCITTI, MICHELLE) (Entered: 04/08/2025)

04/11/2025	38	NOTICE/CORRESPONDENCE Re: recent and upcoming House floor votes by RENE FRASER, DONALD DUBUC, LAUREL D LIBBY, RONALD P LABEL, WENDY MUNSELL, JASON LEVESQUE, BERNICE FRASER (STRAWBRIDGE, PATRICK) (Entered: 04/11/2025)
04/18/2025	39	MEMORANDUM AND ORDER denying 8 Motion for Preliminary Injunction By JUDGE MELISSA R. DUBOSE. (mtm) (Entered: 04/18/2025)
04/18/2025	40	Emergency INTERLOCUTORY APPEAL as to 39 Order on Motion for Preliminary Injunction by RENE FRASER, DONALD DUBUC, LAUREL D LIBBY, RONALD P LABEL, WENDY MUNSELL, JASON LEVESQUE, BERNICE FRASER .(Filing fee \$ 605 receipt number AMEDC-3098999.) NOTICE TO FILER: A transcript Report/Order form <u>MUST</u> be completed and submitted to the First Circuit Court of Appeals. The form can be found under the Forms & Fees section on their website at https://www.ca1.uscourts.gov . NOTICE TO COUNSEL: Counsel should register for a First Circuit CM/ECF Appellate Filer Account at https://pacer.psc.uscourts.gov . Counsel should also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at https://www.ca1.uscourts.gov/cmecf (STRAWBRIDGE, PATRICK) (Entered: 04/18/2025)
04/18/2025		COPIES of Notice of Appeal Sent to Counsel Re: 40 Interlocutory Appeal filed by DONALD DUBUC, BERNICE FRASER, RENE FRASER, LAUREL D LIBBY, RONALD P LABEL, JASON LEVESQUE, WENDY MUNSELL. (mtm) (Entered: 04/18/2025)
04/18/2025	41	APPEAL COVER SHEET Re: 40 Interlocutory Appeal (mtm) (Entered: 04/18/2025)
04/18/2025	42	CLERK'S CERTIFICATE Re: 40 Interlocutory Appeal, Documents sent to the U.S. Court of Appeals. (mtm) (Entered: 04/18/2025)
04/18/2025		Abbreviated Appeal Record Transmitted Electronically to U.S. Court of Appeals re 40 Interlocutory Appeal. (mtm) (Entered: 04/18/2025)
04/18/2025	43	USCA Case Number 25-1385 for 40 Interlocutory Appeal, filed by DONALD DUBUC, BERNICE FRASER, RENE FRASER, LAUREL D LIBBY, RONALD P LABEL, JASON LEVESQUE, WENDY MUNSELL. (jlm) (Entered: 04/18/2025)
04/18/2025	44	Emergency MOTION for Injunction Pending Appeal or, Alternatively, Request for Clarification by RENE FRASER, DONALD DUBUC, LAUREL D LIBBY, RONALD P LABEL, WENDY MUNSELL, JASON LEVESQUE, BERNICE FRASER Responses due by 5/9/2025. (STRAWBRIDGE, PATRICK) (Entered: 04/18/2025)
04/18/2025	45	AMENDED MEMORANDUM AND ORDER re 8 MOTION for Preliminary Injunction filed by DONALD DUBUC, BERNICE FRASER, RENE FRASER, LAUREL D LIBBY, RONALD P LABEL, JASON LEVESQUE, WENDY MUNSELL By JUDGE MELISSA R. DUBOSE. (mtm) (Entered: 04/18/2025)
04/18/2025	46	CLERK'S FIRST SUPPLEMENTAL CERTIFICATE Re: 40 Interlocutory Appeal, Documents Sent to U.S. Court of Appeals (mtm) (Entered: 04/18/2025)
04/18/2025		Supplemental Record on Appeal transmitted to US Court of Appeals re 40 Interlocutory Appeal. (mtm) (Entered: 04/18/2025)
04/21/2025	47	ORDER denying 44 Emergency Motion for Injunction Pending Appeal or, Alternatively, Request for Clarification. The Plaintiffs "Emergency Motion for an Injunction Pending Appeal" is denied for the reasons the court stated in its Memorandum and Order (ECF No.

		45) denying Plaintiffs Motion for Preliminary Injunction. By JUDGE MELISSA R. DUBOSE. (mtm) (Entered: 04/21/2025)
04/21/2025	48	CLERK'S SECOND SUPPLEMENTAL CERTIFICATE Re: 40 Interlocutory Appeal, Documents Sent to U.S. Court of Appeals (mtm) (Entered: 04/21/2025)

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