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May 19, 2022

VIA EMAIL: james.flaiz@gcpao.com

James R. Flaiz, Esq.
Geauga County Prosecuting Attorney
231 Main Street
Chardon, Ohio 44024

RE: Jim Adams

Dear Mr. Flaiz:

Thank you for the recent opportunity to talk about this matter over the telephone. As we have discussed, McCarthy, Lebit, Crystal & Liffman Co., L.P.A. has been retained by Jim Adams ("Jim") regarding the recent decision by the Geauga County Board of Mental Health and Recovery Services (the "Board") to place Jim on administrative leave and offer him a three-month severance package. To supplement our conversations, I am writing here to clarify my client's stance on this matter, in the hope that the sharing of our perspective will create an environment in which an efficient resolution can be had by all.

The Board Has No Reason to Terminate Jim's Employment

Any understanding of my client's position must begin with the fact that Jim has never been told **any reason** for why he is being put on administrative leave and, as of the writing of this letter, he does not know why the Board has relieved him of his responsibilities. Jim has served as the Board's Executive Director for nearly thirty-five (35) years. At present, he has no immediate plans to exit employment, given that his wife is still three (3) years from attaining Medicare eligibility, and his youngest child is three (3) years from graduating college.

Jim's performance has never given rise to any legitimate reason to terminate his employment, either. Nevertheless, the Board's has, in recent months, developed an obvious, but inexplicable, hostility to Jim continuing in his role. The antagonism began on November 17, 2021, when the Board issued a formal written reprimand to Jim based on his publication of *Preventing, Intervening, and Recovering from School Shootings and Other Traumatic Events* (the "Book"). The reprimand, currently placed in Jim's employment file, criticizes him for being "actively engaged in researching and writing the foregoing publication without notifying the entire Board of your intentions to do so." Of course, a review of the meeting minutes referenced in the reprimand, from August 21, 2019, reflects that no resolution was passed regarding the Book, but instead one Board member (incorrectly) claimed that he "thinks" that "[i]f Jim writes a book…he still needs permission." Thus, even if such an instruction were legal, there actually was no action by the Board to even instruct Jim to refrain from writing the Book. The entire basis for the Board's reprimand was misguided and, frankly, incorrect.

Since this erroneously-issued reprimand, the Board has also made it clear that it believes Jim is too old for his position. More specifically, Board members have repeatedly inquired as to Jim's retirement plans, culminating in a demand for Jim to provide a "succession plan" after a recent Board meeting. Obviously, if Jim were substantially younger, the Board would not be asking about his "retirement" plans. This ongoing pressure has raised understandable suspicion that Jim's age is influencing how he is being perceived – in addition to the Board's hostility to the Book.

Now, Jim has been placed on leave, indefinitely and without any basis. Obviously, this is a familiar order of operations: (a) place a public official on administrative leave, (b) offer a meager severance, (c) threaten the employee that circumstances will get worse if he does not accept, and (d) escalate the situation if he does not capitulate. We are aware that the Board's recent decision to place Jim on leave is simply the initial stage of what will ultimately be an involuntary termination of Jim's employment.

Terminating Jim's Employment Will Result in a Costly, Risky, and Completely-Unnecessary Lawsuit for the County

Terminating Jim's employment will hand him perhaps one of the most straightforward First Amendment retaliation claims that this office has ever seen. As you may know, it is unlawful for a public employer to terminate an employee for that employee's exercise of his constitutionally-protected right to free speech. To establish a prima facie case, Jim must demonstrate that: (1) he was engaged in constitutionally protected speech; (2) he was subjected to an adverse employment action that would deter a person of ordinary firmness from continuing to engage in that speech or conduct; and (3) the protected speech was a substantial or motivating factor for the adverse employment action. Barrow v. City of Hillview, 775 Fed. Appx. 801, 810 (6th Cir. 2019). Given that the Book related to school shootings – a matter of profound social and political importance – there is no question that his "speech" was protected by the First Amendment to the U.S. Constitution. *Stinebaugh v. City of Wapakoneta*, 630 Fed. Appx. 522, 526 (6th Cir. 2015). Here, the Board has already issued a written reprimand to Jim that explicitly criticizes him for the Book. Thus, there is objective, uncontroverted evidence that Jim's protected speech was a motivating factor in the Board's discipline. This reprimand, of course, is the **only written instance of discipline** in the personnel file of a thirty-five (35) year employee. Thus, the Board will not be able to plausibly argue that Jim's exercise of his free-speech rights did not motivate any subsequent termination decision, no matter what after-the-fact pretext it engineers following this letter.

Further, should the Board proceed further and officially terminate Jim's employment, he will have exceedingly strong claims under 29 U.S.C. § 623(a) and Ohio Revised Code § 4112.02, both of which prohibit discrimination on the basis of age. To establish a *prima facie* case of discrimination, a plaintiff must generally show that he was: (1) a member of a protected class; (2) discharged; (3) qualified for the position; and (4) that he was replaced by a younger person. *Moffat v. Wal-Mart Stores, Inc.*, 620 Fed. Appx. 453, 457 (6th Cir. 2015); *Blair v. Henry Filters, Inc.*, 505 F.3d 517, 529 (6th Cir. 2007). If terminated, Jim will have suffered an adverse employment action and be well within the class of employees protected by the ADEA. As for his qualifications, the

focus is on "a plaintiff's **objective** qualifications to determine whether he or she was qualified for the relevant job." *Twa v. Mercy Health Partners*, W.D. Mich. No. 19-cv-1049, 2021 U.S. Dist. LEXIS 157590, *11-12 (Aug. 20, 2021) (emphasis in original). In addition to his three-and-a-half decades of service to the County, Jim has a Master's Degree, is nationally recognized for his research, and has served as Ohio's statewide Association President twice during his tenure at the Board. Finally, the Board has already placed an employee nearly thirty years younger than Jim in his role and given his responsibilities to her, meaning that he has been replaced by someone substantially younger than him. *Tuttle v. Metro. Gov't*, 474 F.3d 307, 318 (6th Cir. 2007) (even a "temporary" replacement can satisfy the plaintiff's prima facie burden).

Upon Jim establishing his prima facie cases, the Board will be required, as a matter of law, to provide a legitimate, nondiscriminatory, and nonretaliatory reason for terminating Jim's 35-year employment. Of course, the Board already has an "uphill battle" on that front, because it does not have a legitimate, nonretaliatory reason: it already committed to writing, less than a year ago, that Jim's employment was in jeopardy specifically because he exercised his First Amendment rights. Thus, Jim will have powerful evidence that any reason the Board now offers as justification for his termination is pretextual as it did not "actually motivate" the termination. *Chattman v. Toho Tenax Am., Inc.*, 686 F.3d 339, 349 (6th Cir. 2012) (listing methods of showing pretext). While we suspect that some members of the Board believe that they can simply hire an investigator to engineer an after-the-fact rationalization for Jim's removal, the law is clear that such "post hoc creation[s]" as mere "litigation strategy" that a jury can reject. *Gaglioti v. Levin Group, Inc.*, 508 Fed. Appx. 476, 483 (6th Cir. 2012).

Perhaps the most glaring evidence of pretext, however, are the procedural irregularities and deviation from policy in which the Board is currently engaged. "Fishy" decision-making processes – including those that deviate from statutory requirements and/or circumvent Ohio's Open Meetings Act – are indicative of pretext in discrimination and retaliation cases. *Goodsite v. Bd. of Educ. of the Norwalk City Sch. Dist.*, N.D. Ohio No. 16-cv-2486, 2020 U.S. Dist. LEXIS 35379 (Mar. 2, 2020). Putting aside the convoluted history regarding Jim's employment contract, Ohio Revised Code § 340.04 states that the Board is not permitted to terminate Jim's employment for just any reason. Instead, the Board must have "good cause." Of course, the best of evidence of the Board's definition of "good cause" can be found in the last employment contract that officially applied, which enumerated the following causes: (1) mutual agreement, (2) retirement, (3) permanent disability, (4) death, (5) conviction of a felony, or (6) insufficient funding. None of those factors apply here. Under the law, Jim's removal cannot be "arbitrary or capricious" but must instead be "sufficient warrant for removal" as recognized by the law and public policy. For example, in *Hale v. Bd. of Educ.*, 13 Ohio St.2d 92, 234 N.E.2d 583 (1968), the public employee was terminated after he crashed his vehicle while intoxicated and left the scene of the accident. The Ohio Supreme Court held that, while the employee's conduct "may adversely reflect upon his character and integrity," the "single isolated incident…would not represent…'good and just cause' for termination." We simply do not see, under the applicable legal standard, how the Board could plausibly argue that it has cause to terminate Jim's employment. Thus, not only will Jim's termination provide ample pretext evidence in support of his federal civil rights claims, but Jim will also prevail in an administrative appeal over the decision itself.

Jim's Damages

Jim's claims would allow him to recover back pay, front pay, noneconomic compensatory damages, punitive damages, liquidated damages (doubling Jim's back pay award), and attorneys' fees. Thus, proceeding on its current path creates steep risk for the Board. Given that a 35-year public servant is now being discussed in the press on administrative leave for "undisclosed" reasons (when, in reality, those reasons are actually "nonexistent"), we cannot countenance the current status quo for long.

As I mentioned during our call, I think that an early, private mediation in the next thirty (30) days represents the best opportunity for the parties to this case to avoid the steep risk associated with escalating this matter further. Please share this letter with appropriate representatives, including (a) necessary Board members, (b) county officials who are involved in approving any resolution of this matter, and (c) the insurance carrier for the Board, whose participation in any mediation would be of paramount importance in light of the substantial damages arising from Jim's claims. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Jack Moran

cc: Ann-Marie Ahern, Esq.
Frank T. George, Esq.
Mr. James Adams