

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

DANIEL P. REGENOLD,
Plaintiff,

v.

OHIO STATE BOARD OF EDUCATION,
and

LAURA KOHLER, *individually and
in her official capacity as President of the
Ohio State Board of Education,*

and

MERLYN JOHNSON, *individually and
in her official capacity as a Member of the
Ohio State Board of Education,*

and

MARTHA MANCHESTER, *individually and
in her official capacity as a Member of the
Ohio State Board of Education,*

and

ANTOINETTE MIRANDA, *individually and
in her official capacity as a Member of the
Ohio State Board of Education,*

and

CHRISTINA COLLINS, *individually and
in her official capacity as a Member of the
Ohio State Board of Education,*

Defendants.

: Case No. 2:21-CV-1916

:

: Judge _____

:

:

:

:

: COMPLAINT FOR INJUNCTIVE
: RELIEF, DECLARATORY
: JUDGMENT, AND DAMAGES

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

:

“[O]ur board president has instituted a policy that prevents people from speaking to our group in reference to any of these issues about critical race theory, etc.... I’m not sure why we have a filter on what we’re allowed to hear here, but we do.”

– John Hagan,
Member, Ohio State Board of Education,

Now comes Plaintiff DANIEL P. REGENOLD and, for his *Complaint* herein, alleges as follows:

1. This is an action for preliminary and permanent injunctive relief, declaratory judgment, and damages arising from the unconstitutional policies, practices, and customs of the OHIO STATE BOARD OF EDUCATION and the unconstitutional actions and decisions of LAURA KOHLER, individually and in her capacity as president of the OHIO STATE BOARD OF EDUCATION, together with the explicit support, encouragement, and ratification by of MERLYN JOHNSON, MARTHA MANCHESTER, ANTOINETTE MIRANDA, and CHRISTINA COLLINS, individually and in their capacity as members of the OHIO STATE BOARD OF EDUCATION, of such unconstitutional policies and actions, all being done under color of law.

2. The policies, practices, and customs of the OHIO STATE BOARD OF EDUCATION, as well as the personal actions and decisions of LAURA KOHLER, MERLYN JOHNSON, MARTHA MANCHESTER, ANTOINETTE MIRANDA, and CHRISTINA COLLINS have restricted and prohibited access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION, all in violation of the First and Fourteenth Amendments to the United States Constitution.

3. DANIEL REGENOLD's rights guaranteed by the First and Fourteenth Amendments to the United States Constitution have been and continue to be violated and threatened to be violated by the policy, practice, and custom of the OHIO STATE BOARD OF EDUCATION and by the direct action of LAURA KOHLER and the explicit support, encouragement, and ratification by MERLYN JOHNSON, MARTHA MANCHESTER, ANTOINETTE MIRANDA, and CHRISTINA COLLINS of such unconstitutional actions.

4. DANIEL REGENOLD has been barred from having access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION based solely upon the content of DANIEL REGENOLD's anticipated statements or testimony, and Defendants have publicly declared that such exclusion from the public forum will continue based solely upon the content or subject matter of the anticipated statement or testimony any person may wish to offered in said public forum.

5. Other citizens of the State of Ohio have also been barred from having access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION based solely upon the content of such citizens' anticipated statements or testimony, and Defendants have publicly declared that such exclusion from the public forum will continue based solely upon the content of the anticipated statement or testimony any person may wish to offered in said public forum..

6. As a result of the Defendants' policies and conduct, DANIEL REGENOLD and other have suffered and will continue to suffer irreparable harm unless the Defendants are immediately enjoined from their unconstitutional prohibition and restriction against the full and robust exercise of core political speech protected by the First and Fourteenth Amendments to the United States Constitution.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, as this action arises under the Fourteenth Amendments to the United States Constitution; under 28 U.S.C. § 1343(a)(3), in that it is brought to redress deprivations, under color of law, of rights,

privileges, and immunities secured by the United States Constitution; under 28 U.S.C. § 1343(a)(4), in that it seeks to recover damages and secure equitable relief under an Act of Congress, specifically, 42 U.S.C. § 1983, which provides a cause of action for the protection of civil and constitutional rights; under 28 U.S.C. § 2201, to secure declaratory relief; under 28 U.S.C. § 2202, to secure other relief, including permanent injunctive and damages; and under 42 U.S.C. § 1988, to award attorneys' fees.

8. Venue is proper within this judicial district and division pursuant to 28 U.S.C. § 1391(b) and Local Rule 82.1, as (i) Defendants are situated within this judicial district; and (ii) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated.

PARTIES

9. Plaintiff DANIEL P. REGENOLD is a citizen of the State of Ohio, residing in Hamilton County, Ohio.

10. Established by Article IV, Section 4 of the Ohio Constitution, Defendant OHIO STATE BOARD OF EDUCATION is a nineteen-member public body which, pursuant to Ohio Rev. Code § 3301.07, is responsible for the general supervision of the system of public education in the State of Ohio.

11. Defendant LAURA KOHLER is the president of the OHIO STATE BOARD OF EDUCATION and is the individual who personally made the decision and took the actions under color of law which caused and continue to threaten the violation of the First Amendment rights of DANIEL REGENOLD (and others) as set forth herein. LAURA KOHLER is sued in both her official capacity and in her individual capacity.

12. Defendant MERLYN JOHNSON is a member of the OHIO STATE BOARD OF EDUCATION and, in acting under color of law, is the individual who, individually and in her capacity as a member of the OHIO STATE BOARD OF EDUCATION, provided explicit support, encouragement, and ratification of the unconstitutional policy of the OHIO STATE BOARD OF EDUCATION, as well as the unconstitutional actions of LAURA KOHLER as set forth herein. MERLYN JOHNSON is sued in both her official capacity and in her individual capacity.

13. Defendant MARTHA MANCHESTER is a member of the OHIO STATE BOARD OF EDUCATION and, in acting under color of law, is the individual who, individually and in her capacity as a member of the OHIO STATE BOARD OF EDUCATION, provided explicit support, encouragement, and ratification of the unconstitutional policy of the OHIO STATE BOARD OF EDUCATION, as well as the unconstitutional actions of LAURA KOHLER as set forth herein. MARTHA MANCHESTER is sued in both her official capacity and in her individual capacity.

14. Defendant ANTOINETTE MIRANDA is a member of the OHIO STATE BOARD OF EDUCATION and, in acting under color of law, is the individual who, individually and in her capacity as a member of the OHIO STATE BOARD OF EDUCATION, provided explicit support, encouragement, and ratification of the unconstitutional policy of the OHIO STATE BOARD OF EDUCATION, as well as the unconstitutional actions of LAURA KOHLER as set forth herein. ANTOINETTE MIRANDA is sued in both her official capacity and in her individual capacity.

15. Defendant CHRISTINA COLLINS is a member of the OHIO STATE BOARD OF EDUCATION and, in acting under color of law, is the individual who, individually and in her capacity as a member of the OHIO STATE BOARD OF EDUCATION, provided explicit support, encouragement, and ratification of the unconstitutional policy of the OHIO STATE BOARD OF

EDUCATION, as well as the unconstitutional actions of LAURA KOHLER as set forth herein. CHRISTINA COLLINS is sued in both her official capacity and in her individual capacity.

FACTUAL ALLEGATIONS

16. On July 14, 2020, the OHIO STATE BOARD OF EDUCATION embraced and adopted policies advancing Marxist ideologies of critical race theory and the false proposition of systemic racism.

17. Specifically, on July 14, 2020, the OHIO STATE BOARD OF EDUCATION adopted a resolution given the title of *Resolution to Condemn Racism and to Advance Equity and Opportunity for Black Students, Indigenous Students and Students of Color*.

18. A copy of the *Resolution to Condemn Racism and to Advance Equity and Opportunity for Black Students, Indigenous Students and Students of Color* is attached hereto as *Exhibit A*.

19. Even though the *Resolution* was beyond the scope of authority of the OHIO STATE BOARD OF EDUCATION as set forth in Ohio Rev. Code § 3301.07, the OHIO STATE BOARD OF EDUCATION adopted the *Resolution* on a vote of 12-to-5.

20. Within the *Resolution*, the OHIO STATE BOARD OF EDUCATION declared that it “shall require training for all state employees and contractors working with the Department of Education to identify their own implicit biases so that they can perform their duties to the citizens of Ohio without unconscious racial bias.”

21. Within the *Resolution*, the OHIO STATE BOARD OF EDUCATION explicitly directed “the Ohio Department of Education to reexamine the Academic Content Standards and Model Curriculums to make recommendations to the State Board of Education as necessary to eliminate bias and ensure that racism and the struggle for equality are accurately addressed.”

22. In further support of advancing the Marxist ideologies of critical race theory and the false proposition of systemic racism, the Ohio Department of Education has posted on its website support for the 1619 Project, a Marxist-inspired effort at revisionist history that falsely seeks to redefine and vilify the United States and its founding principles.

23. As a result of the OHIO STATE BOARD OF EDUCATION embracing and adopting Marxist ideologies that undermine the freedom-loving aspects of American society, a significant outcry and shock arose from freedom-loving individuals throughout the State of Ohio that such Marxist ideologies would even find solace and support in their public officials and, in particular, with the OHIO STATE BOARD OF EDUCATION and a majority of its members.

24. Pursuant to Section VII(I) of the Policies and Procedures of the OHIO STATE BOARD OF EDUCATION (<http://education.ohio.gov/getattachment/State-Board/State-Board-Reports-and-Policies/Policies-Procedures-Manual.pdf.aspx?lang=en-US>):

Members of the public have opportunities to address the State Board ... during the business meeting. Members of the public who wish to address the State Board on agenda items scheduled for a vote at the current meeting will be permitted to address the State Board before the casting of any vote. Individuals who wish to address the State Board on issues of general interest or items not scheduled for a vote at the current meeting will be permitted to address the State Board following the voting on items of business at that meeting. In either instance, the individual may speak for a period not to exceed five minutes. The president may impose further limitations on public participation as deemed appropriate or necessary.

25. Thus, the OHIO STATE BOARD OF EDUCATION has designated a portion of its public meetings as a public forum for members of the public to provide public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION.

26. In meetings following adoption of the *Resolution*, members of the general public were afforded access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION and those members of the public made statements concerning the *Resolution*,

including those supportive of the Marxist agenda inherent in the *Resolution*, critical race theory and/or the 1619 Project.

27. According to the official minutes of the meeting of the OHIO STATE BOARD OF EDUCATION held on September 22, 2020, nine individuals spoke at the meeting on topics concerning the *Resolution*, critical race theory, the 1619 Project, *etc.*

28. The official minutes of the OHIO STATE BOARD OF EDUCATION held on September 21-22, 2020, are available on-line at <http://education.ohio.gov/getattachment/State-Board/State-Board-Meetings/State-Board-Meetings-for-2020/Sept-21-22-2020-Meeting-Minutes-Final.pdf.aspx?lang=en-US>.

29. According to the official minutes of the meeting of the OHIO STATE BOARD OF EDUCATION held on October 13, 2020, ten individuals spoke at the meeting on topics concerning the *Resolution*, critical race theory, the 1619 Project, *etc.*

30. The official minutes of the OHIO STATE BOARD OF EDUCATION held on October 12-13, 2020, are available on-line at <http://education.ohio.gov/getattachment/State-Board/State-Board-Meetings/State-Board-Meetings-for-2020/Oct-2020-Meeting-Minutes-Final.pdf.aspx?lang=en-US>.

31. According to the official minutes of the meeting of the OHIO STATE BOARD OF EDUCATION held on November 10, 2020, ten individuals spoke at the meeting on topics concerning the *Resolution*, critical race theory, the 1619 Project, *etc.*

32. The official minutes of the OHIO STATE BOARD OF EDUCATION held on November 9-10, 2020, are available on-line at [http://education.ohio.gov/getattachment/State-Board/State-Board-Meetings/State-Board-Meetings-for-2020/Nov-2020-Meeting-Minutes-Final.pdf.aspx? lang=en-US](http://education.ohio.gov/getattachment/State-Board/State-Board-Meetings/State-Board-Meetings-for-2020/Nov-2020-Meeting-Minutes-Final.pdf.aspx?lang=en-US).

33. At some time following the meeting of the OHIO STATE BOARD OF EDUCATION of November 10, 2020, LAURA KOHLER made the determination that she would preclude any member of the general public from making comments or providing testimony during the public participation portion of meetings of the OHIO STATE BOARD OF EDUCATION that relate or concern the action of the OHIO STATE BOARD OF EDUCATION in adopting the *Resolution to Condemn Racism and to Advance Equity and Opportunity for Black Students, Indigenous Students and Students of Color*, and other related topics, including, without limitation, critical race theory or the 1619 Project.

34. Though not formally voting on it, the OHIO STATE BOARD OF EDUCATION has implicitly accepted and adopted the policy of precluding members of the general public from making comments during the public participation portion of meetings of the OHIO STATE BOARD OF EDUCATION that relate or concern the action of the OHIO STATE BOARD OF EDUCATION in adopting the *Resolution to Condemn Racism and to Advance Equity and Opportunity for Black Students, Indigenous Students and Students of Color*, and other related topics, including, without limitation, critical race theory or the 1619 Project.

35. During the course of the meeting of the OHIO STATE BOARD OF EDUCATION held on April 14, 2021, LAURA KOHLER raised the subject of her decision to preclude members of the general public from making comments during the public participation portion of meetings of the OHIO STATE BOARD OF EDUCATION that relate or concern the action of the OHIO STATE BOARD OF EDUCATION in adopting the *Resolution to Condemn Racism and to Advance Equity and Opportunity for Black Students, Indigenous Students and Students of Color*, and other related topics, including, without limitation, critical race theory or the 1619 Project.

36. During the course of the meeting of the OHIO STATE BOARD OF EDUCATION held on April 14, 2021, LAURA KOHLER acknowledged that, in advance of that meeting, she “had a couple of speakers who wanted to address the Board on critical race theory”, but that she denied those individuals access to or the opportunity to participate in the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION and she did so because the subject matter of their anticipated comments of these individuals were on a subject which she had decreed to be verboten.

37. During the course of the meeting of the OHIO STATE BOARD OF EDUCATION held on April 14, 2021, LAURA KOHLER specifically admitted that she personally made the decision to prohibit individuals access to or from participating in the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION, whenever such comments concerned two specific subject matters, *viz.*, the 1619 Project and the *Resolution to Condemn Racism and to Advance Equity and Opportunity for Black Students, Indigenous Students and Students of Color*.

38. During the course of the meeting of the OHIO STATE BOARD OF EDUCATION held on April 14, 2021, LAURA KOHLER specifically acknowledged that she had received three requests to access or participate in the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION but denied the three requests to access the public forum because of the subject matter of the anticipated comments, citing “the policy we have been using for the past 6 months”.

39. During the course of the meeting of the OHIO STATE BOARD OF EDUCATION held on April 14, 2021, LAURA KOHLER raised the prospect of potentially re-opening the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION on the subject matters of the *Resolution*, critical race theory, the 1619 Project, *etc.*

40. However, LAURA KOHLER ultimately characterized the prospect or idea of allowing full public comment and testimony on the subject matters of the *Resolution*, critical race theory, the 1619 Project, *etc.*, in the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION (which would be consistent with the First Amendment and the United States Constitution) to be a “misstep of proposing an idea that was half-baked, quarter-baked, not-baked-at all”.

41. Free and robust speech under the First Amendment is not an idea that is “half-baked, quarter-baked, [or] not-baked-at all”.

42. During the course of the meeting of the OHIO STATE BOARD OF EDUCATION held on April 14, 2021, MERLYN JOHNSON described allowing the re-opening of the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION on the subject matters of the *Resolution*, critical race theory, the 1619 Project, *etc.*, would be opening “a can of worms”, and, in so doing, she publicly supported and advocated, under color of law, the continued prohibition against members of the general public having access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION to provide public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF

EDUCATION when such comments or testimony concerned the *Resolution*, as well as critical race theory and the 1619 Project.

43. During the course of the meeting of the OHIO STATE BOARD OF EDUCATION held on April 14, 2021, in addressing the potential of re-opening the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION on the subject matters of the *Resolution*, critical race theory, the 1619 Project, *etc.*, MERLYN JOHNSON decried having “to sit here and listen to the kinds of speeches that we heard after that Resolution [] passed” and, in so doing, she publicly supported and advocated, under color of law, the continued prohibition against members of the general public having access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION to provide public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION when such comments or testimony concerned the *Resolution*, as well as critical race theory and the 1619 Project.

44. During the course of the meeting of the OHIO STATE BOARD OF EDUCATION held on April 14, 2021, in addressing the potential of re-opening the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION on the subject matters of the *Resolution*, critical race theory, the 1619 Project, *etc.*, MERLYN JOHNSON declared “I was really glad when [LAURA KOHLER] said we weren’t going to have those speeches anymore” and, in so doing, she publicly supported and advocated, under color of law, the continued prohibition against members of the general public having access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION to provide public

comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION when such comments or testimony concerned the *Resolution*, as well as critical race theory and the 1619 Project.

45. During the course of the meeting of the OHIO STATE BOARD OF EDUCATION held on April 14, 2021, in addressing the potential of re-opening the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION on the subject matters of the *Resolution*, critical race theory, the 1619 Project, *etc.*, MERLYN JOHNSON declared that “I would just prefer that we not have a conversation about critical race theory, or 1619....” and, in so doing, she publicly supported and advocated, under color of law, the continued prohibition against members of the general public having access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION to provide public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION when such comments or testimony concerned the *Resolution*, as well as critical race theory and the 1619 Project.

46. During the course of the meeting of the OHIO STATE BOARD OF EDUCATION held on April 14, 2021, in addressing the potential of re-opening the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION on the subject matters of the *Resolution*, critical race theory, the 1619 Project, *etc.*, MERLYN JOHNSON declared that “I don’t want to sit here again and listen to two months of people – they have their opinions.... This is not what I’m here for” and, in so doing, she publicly supported and advocated, under color of law, the continued prohibition against members of the general public having access

to the public forum created and established by the OHIO STATE BOARD OF EDUCATION to provide public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION when such comments or testimony concerned the *Resolution*, as well as critical race theory and the 1619 Project.

47. During the course of the meeting of the OHIO STATE BOARD OF EDUCATION held on April 14, 2021, in addressing the potential of re-opening the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION on the subject matters of the *Resolution*, critical race theory, the 1619 Project, *etc.*, MERLYN JOHNSON declared that “I’m using race and I don’t feel ashamed about that” and, in so doing, she publicly supported and advocated, under color of law, the continued prohibition against members of the general public having access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION to provide public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION when such comments or testimony concerned the *Resolution*, as well as critical race theory and the 1619 Project.

48. During the course of the meeting of the OHIO STATE BOARD OF EDUCATION held on April 14, 2021, in addressing the potential of re-opening the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION on the subject matters of the *Resolution*, critical race theory, the 1619 Project, *etc.*, MERLYN JOHNSON declared that if such public comments or testimony were allowed on such subjects then the meeting of the OHIO STATE BOARD OF EDUCATION “would no longer be a safe space for me” and, in so doing, she publicly supported and advocated, under color of law, the continued prohibition

against members of the general public having access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION to provide public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION when such comments or testimony concerned the *Resolution*, as well as critical race theory and the 1619 Project.

49. During the course of the meeting of the OHIO STATE BOARD OF EDUCATION held on April 14, 2021, in addressing the potential of re-opening the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION on the subject matters of the *Resolution*, critical race theory, the 1619 Project, *etc.*, MARTHA MANCHESTER explicitly spoke “in support of the action [LAURA KOHLER] took” in closing off access to the general public of the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION on the subject matters of the *Resolution*, critical race theory, and the 1619 Project, and, then, MARTHA MANCHESTER proceeded to characterize LAURA KOHLER as being “wise to do that”, and, in so doing, she publicly supported and advocated, under color of law, the continued prohibition against members of the general public having access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION to provide public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION when such comments or testimony concerned the *Resolution*, as well as critical race theory and the 1619 Project.

50. During the course of the meeting of the OHIO STATE BOARD OF EDUCATION held on April 14, 2021, in addressing the potential of re-opening the public forum created and

established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION on the subject matters of the *Resolution*, critical race theory, the 1619 Project, *etc.*, MARTHA MANCHESTER explicitly declared that “the position [LAURA KOHLER] [has] taken is the right one for the Board” and, in so doing, she publicly supported and advocated, under color of law, the continued prohibition against members of the general public having access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION to provide public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION when such comments or testimony concerned the *Resolution*, as well as critical race theory and the 1619 Project.

51. During the course of the meeting of the OHIO STATE BOARD OF EDUCATION held on April 14, 2021, in addressing the potential of re-opening the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION on the subject matters of the *Resolution*, critical race theory, the 1619 Project, *etc.*, ANTOINETTE MIRANDA declared that she did not think that “it will not serve any purpose to have a talk about critical race theory” and that “people don’t really understand it”, and, in so doing, she publicly supported and advocated, under color of law, the continued prohibition against members of the general public having access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION to provide public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION when such comments or testimony concerned the *Resolution*, as well as critical race theory and the 1619 Project.

52. During the course of the meeting of the OHIO STATE BOARD OF EDUCATION held on April 14, 2021, in addressing the potential of re-opening the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION on the subject matters of the *Resolution*, critical race theory, the 1619 Project, *etc.*, ANTOINETTE MIRANDA explicitly “applaud[ed] [LAURA KOHLER] for not having any more people come forward” and, in so doing, she publicly supported and advocated, under color of law, the continued prohibition against members of the general public having access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION to provide public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION when such comments or testimony concerned the *Resolution*, as well as critical race theory and the 1619 Project.

53. During the course of the meeting of the OHIO STATE BOARD OF EDUCATION held on April 14, 2021, in addressing the potential of re-opening the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION on the subject matters of the *Resolution*, critical race theory, the 1619 Project, *etc.*, CHRISTINA COLLINS declared that she was not supportive of “bringing in theories or words that are being misconstrued or supporting misconceptions” implicitly meaning public comments on such subject matters, and, in so doing, she publicly supported and advocated, under color of law, the continued prohibition against members of the general public having access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION to provide public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION

when such comments or testimony concerned the *Resolution*, as well as critical race theory and the 1619 Project.

54. During the course of the meeting of the OHIO STATE BOARD OF EDUCATION held on April 14, 2021, LAURA KOHLER ultimately announced that she personally would continue in place the policy, practice, or custom of the OHIO STATE BOARD OF EDUCATION and would continue to personally enforce and implement her prior decision and action to preclude access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION on the subject of the *Resolution*, critical race theory, the 1619 Project, *etc.*

**First Cause of Action
(42 U.S.C. 1983 – First Amendment)**

55. Plaintiff incorporates by reference the foregoing as if fully restate herein.

56. In advance of the meeting of the OHIO STATE BOARD OF EDUCATION scheduled for April 14, 2021, DANIEL REGENOLD requested and sought to be allowed access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION on the subject of critical race theory in the educational context.

57. Initially, DANIEL REGENOLD communicated his request to be allowed access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comments or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION on the subject of critical race theory in the educational context by oral communication with Alex Goodman, a staff member of the Ohio Department of Education and of the OHIO STATE BOARD OF EDUCATION.

58. During the course of his conversation with Alex Goodman, DANIEL REGENOLD was informed by Alex Goodman that LAURA KOHLER had personally made the decision to not accept any public comment or testimony during the course of public meetings of the OHIO STATE BOARD OF EDUCATION on the subject of “race”.

59. Additionally, on March 5, 2021, DANIEL REGENOLD transmitted a letter to Ohio Governor DeWine (with copies to members of the OHIO STATE BOARD OF EDUCATION) criticizing the OHIO STATE BOARD OF EDUCATION and its radicalization and preoccupation with identity politics, as evidence by, *inter alia*, the *Resolution to Condemn Racism and to Advance Equity and Opportunity for Black Students, Indigenous Students and Students of Color*, its advancement of the Marxist ideology of critical race theory and its propagation of the 1619 Project.

60. A true and accurate copy of the letter sent by DANIEL REGENOLD is attached hereto as *Exhibit B*.

61. Following his conversation of Alex Goodman wherein he was informed of the policy, practice, and custom of the OHIO STATE BOARD OF EDUCATION and the specific actions of LAURA KOHLER to prohibits members of the general public access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION when such statement or testimony would concern the *Resolution*, critical race theory, or the 1619 Project, DANIEL REGENHOLD sent an e-mail to LAURA KOHLER reiterating his desire and intent to provide a public statement or testimony at the forthcoming meeting of the OHIO STATE BOARD OF EDUCATION:

When I used the word “Radical” State Board of Education in my letter to Governor DeWine the word seems to be portrayed accurately by your decision to limit speech. Such a decision is hard to justify – hard to believe. When you take your action to limit speech, with many of the other actions taken by the board in the last 9 months, it starts to present a clear view to Ohioans of the Board’s intent.

I intend to testify in person on Tuesday, April 13, 2021 regarding Critical Race Theory an important topic in Ohio Education. Please send me a link and a time to prepare to testify.

62. In response to the e-mail from DANIEL REGENOLD, LAURA KOHLER acknowledged the policy, practice, and custom of the OHIO STATE BOARD OF EDUCATION, as well as her specific role in personally making the decision on such policy, to prohibit access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION when any member of the general public indicates that he or she will make a statement or testimony would concerning certain specific subjects, *viz.*, the *Resolution*, critical race theory, or the 1619 Project:

As president, I made the decision in the late fall of 2020 to limit public comment on two issues, the Board's Resolution to Condemn Racism and to Advance Equity and Opportunity for Black Students, Indigenous Students and Students of Color (which was adopted in July, 2020) and the 1619 Project to written testimony only.

63. Thus, as a result of the policy, practice, and custom of the OHIO STATE BOARD OF EDUCATION, as well as the unconstitutional actions of LAURA KOHLER, individually and in her capacity as president of the OHIO STATE BOARD OF EDUCATION, and the other Defendants named herein in supporting and ratifying, under color of law, the prohibition against public statements or testimony at meetings concerning the subject matters of the *Resolution*, critical race theory, or the 1619 Project, DANIEL REGENOLD was denied access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION at its meeting on April 14, 2020.

64. As a result of the policy, practice, and custom of the OHIO STATE BOARD OF EDUCATION, as well as the unconstitutional actions of LAURA KOHLER, individually and in her capacity as president of the OHIO STATE BOARD OF EDUCATION, and the other Defendants named herein in supporting and ratifying, under color of law, the prohibition against

public statements or testimony at meetings concerning the subject matters of the *Resolution*, critical race theory, or the 1619 Project, other individuals were denied access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION at its meeting on April 14, 2020, and DANIEL REGENOLD (and other members of the general public) were denied the right to receive information and ideas from the public forum created and designated by the OHIO STATE BOARD OF EDUCATION.

65. In light of the actions and pronouncements by LAURA KOHLER at the meeting of OHIO STATE BOARD OF EDUCATION on April 14, 2021, together with the actions of MERLYN JOHNSON, MARTHA MANCHESTER, ANTOINETTE MIRANDA, and CHRISTINA COLLINS in providing explicit support, encouragement, and ratification of such actions and pronouncements by LAURA KOHLER at that same meeting, DANIEL REGENOLD and other members of the general public will continue to be denied access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION because they desire to make public comment and testimony in that forum upon one of the verboten subject matters concerning the *Resolution*, critical race theory, and/or the 1619 Project.

66. The actions and policies of the Defendants in denying DANIEL REGENOLD and others access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comment and testimony during the course of meetings of the OHIO STATE BOARD OF EDUCATION fails to comply with the standards and requirements for the regulation of activities protected by the First Amendment.

67. The actions and policies of the Defendants in denying DANIEL REGENOLD and others access to the public forum created and established by the OHIO STATE BOARD OF EDUCATION for public comment and testimony during the course of meetings of the OHIO

STATE BOARD OF EDUCATION has been undertaken in violation of the First and Fourteenth Amendments to the United States Constitution.

68. In order to prevent further violation of Plaintiff's constitutional rights by Defendants, as well as other who might wish to freely exercise their First Amendment rights in the same or similar manner during the designated portion of future meetings of the OHIO STATE BOARD OF EDUCATION, it is appropriate and proper that a declaratory judgment be issued, pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, declaring unconstitutional the actions of Defendants in their individual capacity and the policy and practice of the OHIO STATE BOARD OF EDUCATION to prohibit or restrict public comments or testimony during meetings of the OHIO STATE BOARD OF EDUCATION based upon the content or subject matter, or the anticipated content or subject matter, of such comment or testimony.

69. Furthermore, pursuant to 28 U.S.C. § 2202 and Fed. R. Civ. P. 65, it is appropriate, and hereby requested, that this Court issue a preliminary and permanent injunction enjoining the Defendants from enforcing the prohibition on the advocacy by DANIEL REGENOLD (as well as others) as part of the public forum created or established by the OHIO STATE BOARD OF EDUCATION as part of its meetings.

70. As a direct and proximate result of the actions of the policy, practice, and customs of the OHIO STATE BOARD OF EDUCATION and the actions of the individual Defendants in their individual capacity, DANIEL REGENOLD has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law.

71. As a direct and proximate result of the individual Defendants' actions and conduct in their individual capacity, including their restriction and prohibition, under color of law, against DANIEL REGENOLD and others of having access to the public forum created and established by

the OHIO STATE BOARD OF EDUCATION, DANIEL REGENOLD has had his political speech directed to the public squelched, which has deprived him of his constitutional rights to freedom of speech as protected by the First Amendment, the right to petition the government for redress of grievances pursuant to the First Amendment, and the denial of equal protection of the law in violation of the rights afforded by the Fourteenth Amendment.

72. As a direct and proximate result of the individual Defendants' actions and conduct in their individual capacity, including their restriction and prohibition, under color of law, against the right to freedom of speech and to petition the government redress of grievances in the public forum at issue herein, DANIEL REGENOLD has suffered damage as a result thereof.

73. As a direct and proximate result of the individual Defendants' actions and conduct in their individual capacity, including their restriction and prohibition, under color of law, against the right to freedom of speech and to petition the government redress of grievances in the public forum at issue herein, DANIEL REGENOLD is entitled to recover damages for the violation of his constitutional rights.

WHEREFORE, Plaintiff prays for judgment against Defendants and that the Court:

- A. Adjudge, decree and declare the rights and other legal relations of the parties to the subject matter in controversy in order that such declarations shall have the force and effect of final judgment and that the Court retain jurisdiction of this matter for the purpose of enforcing the Court's orders;
- B. Pursuant to 28 U.S.C. §2201, declare that Defendants' policy, practice, and custom, as alleged above, as well as the actions of the individual Defendants herein as set forth above, violate and violated the First and Fourteenth Amendments to the United States Constitution;

C. Pursuant to 28 U.S.C. §2202, 42 U.S.C. §1983, and Fed. R. Civ. P. 65 preliminarily and permanently enjoin Defendants from enforcing their unconstitutional policy, practice, and custom against Plaintiff and others similarly situated now or in the future, order Defendants to provide equal access to the public forum, and award damages to Plaintiff for the actions and conduct of the individual Defendants herein;

D. Pursuant to 42 U.S.C. §1988 and other applicable law, award Plaintiff his costs and expenses incurred in bringing this action, including reasonable attorneys' fees; and

E. Grant such other and further relief as the Court deems equitable, just and proper.

Respectfully submitted,

/s/ Curt C. Hartman

Curt C. Hartman

THE LAW FIRM OF CURT C. HARTMAN

7394 Ridgepoint Drive, Suite 8

Cincinnati, Ohio 45230

(513) 379-2923

hartmanlawfirm@fuse.net

Christopher P. Finney

FINNEY LAW FIRM, LLC

4270 Ivy Pointe Blvd., Suite 225

Cincinnati, Ohio 45245

(513) 943-6656

chris@finneylawfirm.com

Attorneys for Plaintiff



Resolution

20. RESOLUTION TO CONDEMN RACISM AND TO ADVANCE EQUITY AND OPPORTUNITY FOR BLACK STUDENTS, INDIGENOUS STUDENTS AND STUDENTS OF COLOR

The State Board of Education (the "Board") hereby **ADOPTS** the following Preambles and Resolution:

As our nation grapples with the hard truths of racism and inequality, we are listening with broken hearts and engaging with determined spirits. We acknowledge that Ohio's education system has not been immune to these problems, and while we earnestly strive to correct them, we have a great deal of work left to do.

Whereas the Ohio Strategic Plan for Education: 2019-2024 Each Child, Our Future, adopted by a resolution of the State Board of Education in June, 2018 begins with the vision that in Ohio each child is challenged to discover and learn, prepared to pursue a fulfilling post-high school path and empowered to become a resilient, lifelong learner who contributes to society; and

Whereas, Equity is our plan's greatest imperative and number one principle; and

Whereas profound disparities between Black, Indigenous and People of Color (BIPOC) students and their white peers exist in all parts of the Ohio education system; and

Whereas gaps between test performance of Black, Indigenous and People of Color (BIPOC) students and their white peers have been observed since Ohio began disaggregating the data; and

Whereas progress to close these gaps has been uneven and unsatisfactory; and

Whereas a culturally responsive curriculum reflects the history and background of all students, and empowers students to value all cultures, not just their own; and

Whereas research has shown that a culturally responsive curriculum can motivate students of color to a higher level of academic achievement and in many cases increase the graduation rate of previously disengaged students; and

Whereas, black male students lag far behind their white counterparts in several measures of educational attainment, including graduation rates, which keeps gainful employment out of reach, and

Whereas starting as early as preschool, black male students are affected disproportionately by suspensions, expulsions and zero-tolerance discipline policies in schools; and

Whereas "separate but equal" is no longer the law of the land, but systemic inequity in education has relegated millions of children of color to under-resourced, struggling schools; and

Whereas significant gaps between the performance of Black students compared to their white peers exist even in generously resourced schools; and



Resolution

Item 20 continued

Whereas the State Board of Education believes that public schools are fundamental to our democratic society and we must be dedicated to equity and thoughtful teaching of future citizens that racism, bigotry and hatred have no place; and

Whereas, the path to equity begins with a deep understanding of the history of inequalities and inhumanity and how they have come to impact current society; therefore be it

Resolved, that the State Board of Education condemns, in the strongest possible terms, white supremacy culture, hate speech, hate crimes and violence in the service of hatred. These immoral ideologies and actions deserve no place in our country, state and school system. And be it

Further resolved, that the starting point of our work in racial equity must be reflection and internal examination, whereby the board will look for ways to engage our members in open and courageous conversations on racism and inequity; and be it

Further resolved that the State Board of Education shall offer training to Board members to identify our own implicit biases so that we can perform our duties to the citizens of Ohio without racial bias; and be it

Further resolved that the State Board of Education shall require training for all state employees and contractors working with the Department of Education to identify their own implicit biases so that they can perform their duties to the citizens of Ohio without unconscious racial bias; and be it

Further resolved that the State Board of Education directs the Ohio Department of Education to reexamine the Academic Content Standards and Model Curriculums to make recommendations to the State Board of Education as necessary to eliminate bias and ensure that racism and the struggle for equality are accurately addressed; and be it

Further resolved that the State Board of Education directs the Ohio Department of Education to continue the practice of ensuring all state administered tests are free of racial bias; and be it

Further resolved that the State Board of Education strongly recommends that all Ohio school districts begin a reflection and internal examination of their own involving all members of their school community to examine all facets of the school's operations ; with a special emphasis on curriculum, hiring practices, staff development practices, and student discipline e.g. suspension/expulsion; and be it

Further resolved that the State Board of Education directs the Ohio Department of Education to provide support for school districts' reflection and internal examination, including identifying and sharing curricular models and resources; promoting sessions to allow districts to share and collaborate on their actions; and to share progress in implementing these changes; and be it



Resolution

Item 20 continued

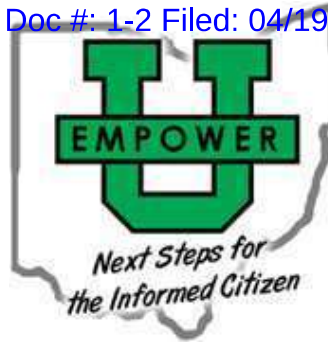
Further resolved, that the State Board of Education will be led by our guiding document Each Child, Our Future and advocate for it as a framework for developing policy and action.

I certify that the above is a true and correct copy of the action taken by the State Board of Education at its meeting on July 14, 2020.

Columbus, Ohio
July 14, 2020

A handwritten signature in black ink that reads "Paolo A. DeMaria". The signature is written in a cursive style and is positioned above a horizontal line.

Paolo DeMaria
Superintendent of Public Instruction



March 5, 2021

Governor Mike DeWine
Governor's Office
Riffe Center, 30th Floor, 77th South High Street
Columbus, OH 43215-6117

Dear Governor DeWine,

You may remember me-- I run EmpowerUOhio.org a FREE university in Cincinnati that you spoke to in June of 2017. We are now in our 21st Semester of over 400 FREE classes offered to the public in the last 10 years--many of these classes were about Education in Ohio. Recently, while travelling, someone from Northern Ohio called me to share information about the State School Board of Ohio. Quite frankly, after a pretty good review of their work it concerns me.

This Ohioan who called me, warned about something called the Resolution to Condemn Racism and to Advance Equity. Specifically geared to Black and Indigenous Students this Resolution is a cut-and-paste job of Identity Politics that is circulating around Governments across Ohio—like Hamilton County. It has all the negatives that you hear about—indoctrination training for employees, a reflection and internal examination, an assumption that we all have implicit bias regardless of our *Heart*. This resolution clearly has the appearance of the start of Critical Race Theory.

After further review of the Ohio website I spoke with the State School Board President Laura Kohler and Superintendent Paolo Demaria about the fact that the disgraced 1619 Project has a link on their web site as a State of Ohio Resource. This link, offers teachers resources and lesson plans by Nikole Hannah-Jones and informs our Ohio students that “The truth is that democracy...has been born on the backs of black resistance. Black people have seen the worst of America.” I asked President Kohler to take this link down because it's racist. President Kohler informed me that she is not opposed to having 1619 project information shared with students by a skilled teacher (even if factually incorrect).

I am writing you this note because I think the State of Ohio School Board is consumed by Identity Politics and is promoting Equity and Discrimination at the expense of Equality*. I believe the School Board has become a “Radicalized” and is outside the norm of Ohioans. When Ohioans find out this propaganda has made it into their kids schools they will not be happy. At EmpowerUOhio.org we will do everything we can to let Ohioans know the direction their State School Board is headed. I urge you to mix up the School Board to include more diversity of thought that truly represents Ohioans in a “color blind” manner, and not divide people with a clear division along racial lines.

Sincerely,

Daniel P. Regenold, Managing Board Member
EmpowerUOhio.org

Exhibit B

*Please review Woodson 1776 curriculum. This is a history program that won't divide based on race.

Page Two
Governor Mike DeWine Letter

Cc:

- Ms. Laura Kohler, President
 - Superintendent Paolo DeMaria
 - Ms. Charlotte McGuire, VP, District 3
 - Ms. Diana Fessler, District #1
 - Ms. Kirsten Hill, District #2
 - Ms. Jenny Kilgore
 - Ms. Christina Collins, District 5
 - Ms. Antoinette Miranda, District 6
 - Mr. Tim Miller, District 7
 - Mr. John Hagan, District 8
 - Ms. Michelle Newman, District 9
 - Mr. Brendan Shea, District 10
 - Ms. Meryl Johnson, District 11
 - Mr. Eric Poklar, Member at Large
 - Mr. Mark Lamoncha, Member at Large
 - Ms. Martha Manchester, Member at Large
 - Mr. Mike Toal, Member at Large
 - Mr. Steve Dackin, Member at Large
 - Mr. Paul LaRue, Member At Large
-
- Representative Gayle Manning
 - Representative Robert R. Cupp
 - Representative Bill Seitz
 - Senator George F. Lang
 - Senatory Andrew O. Brenner
 - Senator Louis W. Blessing, III
 - Senator Matt Huffman
 - Senator Nathan H. Manning
-
- The Cincinnati Enquirer
 - The Columbus Dispatch
 - The Cleveland Plain Dealer
-
- Email to 4,104 Statewide EmpowerU Attendees
 - BCC—To several interested people.