

STATE OF MICHIGAN
IN THE SUPREME COURT

(ON APPEAL FROM THE COURT OF APPEALS)

KENNETH J. SPEICHER, an Individual

Supreme Court No. 148617

Plaintiff-Appellee,

Court of Appeals No. 306684

V

Lower Court No. 11-600857-CZ

COLUMBIA TOWNSHIP BOARD OF
TRUSTEES and COLUMBIA TOWNSHIP
PLANNING COMMISSION,

Defendants-Appellants. _____ /

**DEFENDANTS-APPELLANTS' RESPONSE BRIEF IN OPPOSITION TO AMICUS
CURIAE BRIEF OF OUTSIDE LEGAL COUNSEL PLC AND ATTORNEY PHILIP L.
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ARGUMENT¹

A. **Public policy considerations do not weigh in favor of allowing for recovery of attorney fees absent an award of injunctive relief under MCL 15.271(4).**

1. *The availability of attorney fees will not deter claims under the Open Meetings Act, which are often brought by media and resolved without costly litigation.*

Contrary to Amicus Curiae's position, the Act's purpose of providing the public with full disclosure of the acts of government officials will not be thwarted if attorney fee awards are limited to situations in which injunctive relief is sought and obtained. (See Amicus Curiae Brief, pp 5-6). *Rochester Community Schools Bd of Ed v State Bd of Ed*, 104 Mich App 569, 582; 305 NW2d 541 (1981). Stated another way, the availability of attorney fees will not deter litigants from bringing claims to enforce the Open Meetings Act. Claims for violations of the Open Meetings Act are not extraordinarily expensive to litigate. These cases are typically resolved by the court on summary disposition, without undergoing lengthy litigation or costly trials. See, e.g, *Davis v City of Detroit Financial Review Team*, 296 Mich App 568; 821 NW2d 896 (2012); *Herald Co, Inc v Tax Tribunal*, 258 Mich App 78; 669 NW2d 862 (2003); *Herald Co v City of Bay City*, 463 Mich

¹ Amicus Curiae argues in Subsection I of its Argument that "[t]he plain language of MCL 15.271(4) does not require the issuance of an injunction as a condition to being entitled to attorney fees." (Amicus Brief, pp 3-4). Because Defendants-Appellants briefed this issue extensively in their Supplemental Brief, they will not repeat those arguments in this Response. Instead, Defendants-Appellants direct this Court to pages 16 - 26 of their Supplemental Brief in Support of Application for Leave to Appeal.

111; 614 NW2d 873 (2000); *Crowley v Governor of Michigan*, 167 Mich App 539; 423 NW2d 258 (1988); *VR Entertainment v City of Ann Arbor*, 2013 WL 6692743 (Mich App 12/19/03) (Exhibit A); *Detroit News, Inc v City of Detroit*, 2006 WL 1628463 (Mich App 6/13/06) (Exhibit B). Accordingly, Amicus Curiae's assertion that enforcement of the Open Meetings Act will be largely "out of legal reach" absent attendant attorney fee awards is without merit. (Amicus Curiae Brief, p 6).

Further, Amicus Curiae overlooks that the media is a frequent litigator of claims brought pursuant to MCL 15.271. "In major cases enforcing state open-meeting and open-records laws, it has regularly been a newspaper or press association that is the named party, with other newspapers and media groups routinely signing on as amici. Ron Nell Anderson Jones, *Litigation, Legislation, and Democracy in a Post-Newspaper America*, 68 WLLR 557, 592 (Spring 2011). This is certainly true in Michigan, where many of the leading Open Meetings Act cases have been brought by newspapers. See, e.g., *Booth Newspapers, Inc v University of Michigan Bd of Regents*, 444 Mich 211; 507 NW2d 422 (1993); *Booth Newspapers, Inc v Wyoming City Council*, 168 Mich App 459; 425 NW2d 695 (1988); *Federated Publications, Inc v Board of Trustees of Michigan State University*, 460 Mich 75; 594 NW2d 491 (1999); *Herald Co., Inc v Tax Tribunal*, 258 Mich App 78; 669 NW2d 862 (2003); *Herald Co v City of Bay City*, 463 Mich 111; 614 NW2d 873 (2000); *Detroit News, Inc v City of Detroit*, 2006 WL 1628463 (Mich App 6/13/06) (Exhibit B). Public officials and corporations also account for a percentage of plaintiffs in Open

Meetings Act cases. *Crowley v Governor of Michigan*, 167 Mich App 539; 423 NW2d 258 (1988). In addition, MCL 15.271(1) authorizes the attorney general and prosecuting attorney of the county in which the public body serves to bring an action for noncompliance with the Act. Accordingly, the availability of attorney fees will not deter civil actions to compel compliance or enjoin further noncompliance with the Open Meetings Act.

2. ***Interpreting the attorney fee provision as Amicus Curiae suggests will lead to over-enforcement of the Open Meetings Act.***

Amicus Curiae suggests that attorney fee awards are essential to continued enforcement of the Open Meetings Act. (Amicus Brief, p 6). But Amicus Curiae does not speak to the fact that permitting recovery of attorney fees when declaratory or other, non-injunctive relief is obtained will cause more than the optimal level of enforcement.² Attorneys looking to make a living off of attorney fee awards will bring hyper-technical claims against governmental bodies doing their best to provide the public with full disclosure.³ Several legal scholars have recognized this phenomenon,

² An economically rational regulatory system deters only to the point at which the cost of preventing additional violations equals the cost of the violations. See generally, W.M. Landes and R.A. Posner, *The Private Enforcement of Law*, 4 J Leg Studies 1 (1975). Typically "private plaintiffs engage in litigation to further their own economic interests; they rarely concern themselves with the social costs and causal benefits of their lawsuits." Tamar Frankel, *Implied Rights of Action*, 67 Va L Rev 553, 571 (1981).

³ The fact that an amicus brief has been filed by a private law firm which admittedly dedicates a "substantial portion of its practice...to private prosecutions of violations of the Open Meetings Act" underscores this potential problem. (Amicus Brief, p vi).

including in the attorney fee context. Carl Cheng, *Important Rights and the Private Attorney General Doctrine*, 73 Cal L Rev 1929, 1939 (1985) (noting that “[t]he effect of awarding attorneys’ fees for the enforcement of all statutes, then, would be to encourage the overenforcement of statutes.”); Richard A. Bierschbach, *Overenforcement*, 93 Gio L J 1743 (August 2005) (discussing overenforcement of the law); David Rosenberg, *The Causal Connection in Mass Exposure Cases: A “Public Law” Vision of the Tort System*, 97 Harv L Rev 849, n 251 (1984) (noting that “[w]hen attorneys’ fees are awarded over and above recovery, there is a danger of inefficient overenforcement.”).

Hyper-technical claims brought largely by gadflies should not be permitted to burden local governments in this way. Yet, Amicus Curiae advocates for an approach that would do just that. Even in situations where injunctive relief is inappropriate, the potential for fees would force local governments to bear the costs of defending litigation that might not otherwise be pursued. For example, in this case Speicher was denied injunctive relief (and properly so) because although a technical violation of the notice provision might have occurred, there was no history of violations or evidence that the violation was willful or deliberate. In addition and equally important, both this Court and the trial court agreed that Speicher failed to show that he was injured by the claimed violation because “it is undisputed that plaintiff had the same opportunity as every other citizen to address the Commission at the meetings it did hold, and plaintiff presented the issues he was concerned about to the Commission at the December 2010,

January 2011, and the April 2011 meetings.” (*Speicher v Columbia Twp Bd of Trustees*, Docket No. 306684, slip op, January 22, 2013, p 2). Nonetheless, Speicher has continued to pursue a hyper-technical violation of the Open Meetings Act and contemporaneous attorney fees. Should this Court sanction Speicher’s methodology and permit litigants to recover attorney fees absent an award of injunctive relief, financially-strapped local governments would be forced to expend scarce resources on hyper-technical claims brought by disgruntled employees, political opponents, and others looking to embarrass and create problems for local governments rather than to promote openness in government affairs. The legislative purpose of discouraging governmental officials from acting in secret is not furthered in such circumstances. *Rochester Community Schools Bd of Ed v State Bd of Ed*, 104 Mich App 569, 582; 305 NW2d 541 (1981). Defendants-Appellants therefore urge this Court to squarely hold that no costs or attorney fees are to be awarded absent injunctive relief.

B. This Court’s ruling should be given retroactive effect and applied to all pending and future cases.

Amicus Curiae further argues that any decision by this Court must be given prospective application, only. (Amicus Curiae Brief, pp 7-8). Even though Amicus Curiae concedes that the decision could legally be given full retroactive effect, it urges not to do so here because the body of law in this area has been “established for more than thirty years.” (*Id.*, p 7). Not only does this argument overlook the several intermediate appellate decisions that have limited attorney fee awards to cases

involving an award of injunctive relief, *Leemreis v Sherman Twp*, 273 Mich App 691; 731 NW2d 787 (2007); *Felice v Cheboygan County Zoning Commission*, 103 Mich App 742; 304 NW2d 1 (1981); *Saline Area Schools v Mullins*, 2007 WL 1263974, (No 272558, Mich Ct App May 1, 2007) (Exhibit C) , it also disregards that both the general rule of retroactivity and its underlying principles compel retroactive application of this Court's ruling.

At the outset, it is important to reiterate the general rule. Statutory decisions apply retroactively; that is, a judicial decision explaining the meaning of a statute applies from the effective date of the statute. That notion finds its roots in Blackstone who explains that the duty of the court is not to "pronounce new law, but to maintain and expound the old one," *Harper v Virginia Dept of Taxation*, 509 US 86, 107; 113 S Ct 2510; 125 L Ed2d 74 (1993) (Scalia, J., concurring) (quoting 1 W Blackstone, Commentaries 69 (1765)). This is consistent with the principle that a judge's function is not to legislate but to explain the meaning of legislation enacted by a legislative body. Even when overruling prior precedent, the new decision is "an application of what is, and therefore had been, the true law." Shulman, *Retroactive Legislation*, 13 *Encyclopedia of the Social Sciences* 355, 356 (1934). One state court justice explained the thinking behind the rule:

I understand the doctrine to be in such cases, not that the law is changed, but that it was always the same as expounded by the legal decision, and that the former decision was not, and never had been the law, and is overruled for that very reason.

Gelpcke v City of Dubuque, 68 US (1 Wall) 175, 211 (1863) (Miller, J., dissenting).

In more recent times, Justice Scalia and others have lambasted the judiciary for usurping legislative powers by toying with retroactivity. By way of example, Justice Scalia took the position that “prospective decisionmaking is incompatible with the judicial role, which is to say what the law is, not to prescribe what it shall be,” *American Trucking Ass’n v Smith*, 496 US 167, 200; 110 S Ct 2323; 110 L Ed 2d 145 (1990) (Scalia, J., concurring). According to Scalia, applying decisions prospectively “is contrary to that understanding of ‘the judicial power’ which is not only the common and traditional one, but which is the only one that can justify courts in denying force and effect to the unconstitutional enactments of duly elected legislatures, the very exercise of power asserted in [this case].” (*Id.*, p 201). See also Bradley Scott Shannon, *The retroactive and prospective application of judicial decisions*, 26 Harv J of Law & Public Policy 811 (2003).

These principles apply with equal strength under Michigan law. Each time the Court arrogates to itself the power to legislate, it harms the administration of justice. Decisions that tinker with full retroactivity of a statute, in essence, amount to the judicial rewriting of the statute’s effective date. By establishing a new effective date, the Court encroaches upon the legislature’s sphere of authority. Indeed, such a ruling may be seen as a violation of the Separation of Powers clause of the Michigan Constitution, which divides the powers of government into three branches and which bars one branch from exercising powers properly belonging to the other. Const 1963, art 3, § 2.

If prospective application of the law might conceivably be justified when addressing a change in the common law (an area within the judiciary's unique purview) or when dealing with vested property rights or when imposing a new duty or obligation, no such rationale applies here. Any decision limiting the retroactive effect of this decision amounts to a usurpation of legislative prerogative to establish the limitation date for bringing claims. Instead, full retroactivity should apply.

Although prior erroneous decisions have allowed recovery of attorney fees and court costs where *any* relief is granted, *Craig v Detroit Pub Schs Chief Executive Officer*, 265 Mich App 572; 697 NW2d 529 (2005); *Herald Co, Inc v Tax Tribunal*, 258 Mich App 78; 669 NW2d 862 (2003); *Morrison v City of East Lansing*, 255 Mich App 505; 660 NW2d 395 (2003); *Nicholas v Meridian Charter Twp Bd*, 239 Mich App 525; 609 NW2d 574 (2000); *Manning v East Tawas*, 234 Mich App 244; 609 NW2d 574 (2000); and *Schmiedicke v Clare Sch Bd*, 228 Mich App 259; 577 NW2d 706 (1998), overruling them does not constitute "clearly establishing a new rule of law." In a similar vein, and contrary to Amicus Curiae's assertion (see Amicus Brief, p 8), there can be no reliance on these erroneous decisions where the case law on this issue squarely conflicts. Several published decisions have deviated from the *Schmiedicke/Nicholas* line of reasoning and have interpreted MCL 15.271(4) as requiring an award of injunctive relief. See *Leemreis v Sherman Twp*, 273 Mich App 691; 731 NW2d 787 (2007); *Felice v Cheboygan County Zoning Commission*, 103 Mich App 742; 304 NW2d 1 (1981); *Saline Area Schools v Mullins*, 2007

WL 1263974, (No 272558, Mich Ct App May 1, 2007). Indeed, one of these cases was decided several decades ago. *Felice, supra* at 746. Accordingly, plaintiffs cannot assert any legitimate reliance interests which would favor prospective application only. *Jahner v Department of Corrections*, 197 Mich App 111, 115; 495 NW2d 168 (1992) (holding that “although there was reliance by respondent on its directive, there was no justifiable reliance on court precedent because the decisions were in conflict.”).

Schmiedicke and its progeny represent usurpation of legislative action. This Court itself has flatly asserted that it has an obligation to correct such past abuses, an act which “restores legitimacy” to the system. And the Court has done so without limiting the effect of its decision in the past. See, e.g., *Robinson v Detroit*, 462 Mich 439, 472-473; 613 NW2d 307 (2000). This central factor controls all other aspects of the three-factor retroactivity test embraced by this Court in *Pohutski v City of Allen Park*, 465 Mich 675; 641 NW2d 219 (2002). The test: (1) the purpose of the “new” rule is to conform Michigan jurisprudence to the mandates of the Michigan Legislature; (2) there can have been no proper or legitimate reliance on a judicially-created rule of law adopted in contravention of the clear and unambiguous statutory text; and (3) the effect of full retroactivity on the administration of justice will be to honor the commands and prohibitions of the Michigan legislation.

In *Pohutski*, this Court quoted *Robinson’s* teaching about retroactivity in the context of the prior misreading of a statute and explained:

In considering the reliance interest, we consider “whether the previous decision has become so embedded, so accepted, so fundamental, to everyone’s expectations that to change it would produce not just readjustments, but practical real-world dislocations.” *Id.* at 466, 613 N.W.2d 307. Further, we must consider reliance in the context of erroneous statutory interpretation:

[I]t is well to recall in discussing reliance, when dealing with an area of the law that is statutory, ... that it is to the words of the statute itself that a citizen first looks for guidance in directing his actions. This is the essence of the rule of law: to know in advance what the rules of society are. Thus, if the words of the statute are clear, the actor should be able to expect, that is, rely, that they will be carried out by all in society, including the courts. In fact, should a court confound those legitimate citizen expectations by misreading or misconstruing a statute, it is that court itself that has disrupted the reliance interest. When that happens, a subsequent court, rather than holding to the distorted reading because of the doctrine of stare decisis, should overrule the earlier court’s misconstruction. The reason for this is that the court in distorting the statute was engaged in a form of judicial usurpation that runs counter to the bedrock principle of American constitutionalism, i.e., that the lawmaking power is reposed in the people as reflected in the work of the Legislature, and, absent a constitutional violation, the courts have no legitimacy in overruling or nullifying the people’s representatives. Moreover, not only does such a compromising by a court of the citizen’s ability to rely on a statute have no constitutional warrant, it can gain no higher pedigree as later courts repeat the error. [*Id.* at 467-468; 613 NW2d 307.]

Thus, while too rapid a change in the law threatens judicial legitimacy, correcting past rulings that usurp legislative power restores legitimacy.

(*Id.*, p 472-473) (CORRIGAN, J., concurring).

More recently, this Court characterized the retroactivity aspect of *Pohutski* as an extreme measure warranted only because of exigent circumstances. *County of Wayne v Hathcock*, 471 Mich 445, 484 n 98; 684 NW2d 765 (2004). The *Hathcock* court cautioned that there “is a serious question as to whether it is constitutionally legitimate for this Court to render purely prospective opinions, as such rulings are, in essence, advisory opinions.” (*Id.*, p 484, n 98). *Pohutski* was sui generis since it involved a history in which the Court had allowed recovery for trespass-nuisance claims against local governments that extended back to the 1800s. At the same time, after the *Pohutski* litigation began but before the Court issued its opinion, the Michigan Legislature created a new statutory cause of action. Thus, giving its decision retroactive effect would have, in the Court’s view, carved out a tiny group of litigants who alone could not recover, when everyone before and after had the right to bring their claim. Critical to the Court’s analysis was its effort to be faithful to what it undoubtedly perceived as a legislative signal when a new statute creating a cause of action was given immediate effect while *Pohutski* was pending before the Court.

Whatever the merits of *Pohutski*’s decision to limit its effectiveness to prospective-only, those considerations do not apply here. Contrary to Amicus Curiae’s assertion, MCL 15.271(4) - which was intended to allow recovery of actual attorney fees and costs only when the litigant succeeds in obtaining injunctive relief under the Open

Meetings Act - should be given full retroactive effect. Doing so will be consistent with this Court's philosophy of effectuating legislative pronouncements and enactments.

Finally, public policy considerations weigh in favor of retroactive application. When the Court judicially decides whether to apply a principle that must be seen as a correct statement of the law to only some cases rather than to all cases, it harms the administration of justice. It results in an uneven application of law violating the basic norm of appellate law that like cases be treated alike. A directive that the holding is to have prospective application fosters the error arising from earlier courts' mishandling of MCL 15.271(4), a mishandling that severely undercut the Michigan Legislature's intent to limit attorney fee awards to situations in which injunctive relief is sought and obtained. Limiting the effect of its holding would lend judicial endorsement to the Courts' mistaken interpretation of MCL 15.271(4). Sound jurisprudential principles demand adherence to the general rule of full retroactivity. Only under such an approach will the Court be vindicating the statutory provision intended to limit recovery of actual attorney fees and costs to specific situations in which violations of the Open Meetings Act are accompanied by an award of injunctive relief.

RELIEF

WHEREFORE, Defendants-Appellants Columbia Township Board of Trustees and Columbia Township Planning Commission respectfully request this Court peremptorily reverse the Court of Appeals for the reasons articulated by the Court in its call for a special panel, or failing that, grant this application for leave to appeal and rule that costs and attorney fees are not statutorily authorized here, and enter any and all other relief this Court deems proper in law and equity.

Respectfully submitted,

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Dated: September 22, 2014

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Not Reported in N.W.2d, 2013 WL 6692743 (Mich.App.)
 (Cite as: 2013 WL 6692743 (Mich.App.))

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT
 RULES BEFORE CITING.

UNPUBLISHED

Court of Appeals of Michigan.
 V.R. ENTERTAINMENT, Dream Nite Club, Vick-
 ash Mangray, Jeff Mangray, and Reese Mangray,
 Plaintiffs-Appellants,
 v.
 CITY OF ANN ARBOR, City Council of Ann Ar-
 bor, City of Ann Arbor Police Department, and
 Michigan Liquor Control Commission, Defend-
 ants-Appellees.

Docket No. 311155.
 Dec. 19, 2013.

Washtenaw Circuit Court; LC No. 12-000357-NZ.

Before: MURPHY, C.J., and FITZGERALD and
 BORRELLO, JJ.

PER CURIAM.

*1 In this dispute over the nonrenewal of a li-
 quor license, plaintiffs appeal as of right the order
 granting summary disposition in favor of defend-
 ants on claims that defendants violated the Open
 Meetings Act (OMA), MCL 15.261 *et seq.*, violated
 procedural due process protections, and failed to
 proffer evidence sufficient to support the allega-
 tions leading to a liquor license renewal objection.
 On appeal, plaintiffs are only challenging the sum-
 mary dismissal of the OMA and due process
 claims. We affirm.

The record reflects that fights, acts of violence,
 the carrying of weapons, and liquor law violations
 often occurred on the premises of Dream Nite Club,
 which is located in the City of Ann Arbor (city).
 Plaintiff V.R. Entertainment (VRE), doing business

as Dream Nite Club, was owned and operated by
 plaintiffs Vickash, Jeff, and Reese Mangray, and it
 held a Class C liquor license. On February 23,
 2012, Ann Arbor's Liquor License Review Commit-
 tee (review committee) met and voted in favor of
 recommending nonrenewal of VRE's liquor license.
 On March 5, 2012, defendant Ann Arbor City
 Council (city council) resolved to accept the recom-
 mendation of the review committee. However, pur-
 suant to city ordinance, it was necessary to conduct
 an administrative hearing before communicating
 any nonrenewal recommendation or renewal objec-
 tion to defendant Michigan Liquor Control Com-
 mission (MLCC). To that end, a hearing was sched-
 uled for March 19, 2012. On March 7, 2012, the
 city council provided VRE with notice of the re-
 newal objection and the March 19th hearing date.
 In accordance with that notice, the administrative
 hearing was held on March 19, 2012.

The city presented substantial evidence at the
 four-hour hearing in support of the nonrenewal re-
 commendation, introducing numerous witnesses
 and exhibits that established the history of the many
 disturbances and illegalities that had transpired at
 Dream Nite Club. Plaintiffs, represented by two at-
 torneys, were given the full opportunity to cross-
 examine the city's witnesses, to challenge the ex-
 hibits, to make arguments, and to present witnesses.
 After completion of the hearing, the administrative
 hearing officer, who was also a member of the city
 council and review committee, found that there had
 been more than 162 calls for police assistance at
 Dream Nite Club in a three-year period. The hear-
 ing officer further found that the police reports con-
 cerning the Dream Nite Club included complaints
 of assaults, underage drinking, and large fights,
 some of which resulted in various injuries. The ad-
 ministrative hearing officer issued a recommenda-
 tion that the city council adopt a resolution, to be
 forwarded to the MLCC, objecting to renewal of
 VRE's liquor license. On the evening of March 19,
 2012, the same day as the hearing, the city council,

Not Reported in N.W.2d, 2013 WL 6692743 (Mich.App.)
(Cite as: 2013 WL 6692743 (Mich.App.))

by resolution, accepted and adopted the hearing officer's findings and recommendation. The city council then sent notification to the MLCC that it was formally objecting to the renewal of VRE's liquor license.

*2 Plaintiffs initiated the present lawsuit on April 2, 2012, seeking only injunctive relief in an effort to protect VRE's liquor license. On April 17, 2012, plaintiffs amended their complaint, adding the OMA, due process, and evidentiary claims. On April 30, 2012, the MLCC held a hearing on the city's renewal objection. In a letter to VRE dated May 7, 2012, the MLCC first noted that the city had not withdrawn its renewal objection. The MLCC further indicated, "Since MCL 436.1501 requires approval by the local legislative body, and such approval is not currently on file with the [MLCC], your license was placed in escrow as of May 1, 2012, and will remain in escrow subject to the provisions in administrative rule R 436.1107." The trial court granted summary disposition in favor of defendants on June 6, 2012, finding that any claim for injunctive relief was moot given the MLCC's decision, that the city council's decision was not arbitrary and capricious, that plaintiffs received the required rudimentary due process, and that the OMA claim was not supported by the evidence. A separate federal action, alleging civil rights violations and asking for injunctive relief, had been filed by plaintiffs against defendants, which action regarded a prior city nuisance suit concerning the Dream Nite Club and touched on liquor license issues comparable to those here. The federal action was summarily dismissed on June 22, 2012. According to defendants, in January 2013, the escrowed liquor license was transferred to another establishment. In a reply brief, plaintiffs argue that an actual transfer had not occurred and that they were contesting any transfer of the liquor license.

On appeal, plaintiffs argue that they were not provided notice of the February 23, 2012, meeting conducted by the review committee that resulted in the nonrenewal recommendation, were not provided

notice of the March 5, 2012, meeting conducted by the city council that resulted in a renewal objection resolution, were provided inadequate notice, just a couple of hours, with respect to the meeting on March 19, 2012, in which the city council adopted the hearing officer's recommendation, and were not given a reasonable opportunity to be heard at these meetings. Plaintiffs contend that these failures deprived them of their right to procedural due process and that the same failures also violated the OMA. Additionally, plaintiffs maintain that they were denied procedural due process because they were not provided an unbiased and impartial hearing officer and because the city had failed to promulgate evidentiary standards, procedural guidelines, or operating procedures.

A trial court's decision to grant a motion for summary disposition is reviewed de novo. *Elba Twp. v. Gratiot Co. Drain Comm'r*, 493 Mich. 265, 277, 831 N.W.2d 204 (2013). Whether due process has been afforded is a constitutional question that is also reviewed de novo. *Id.* at 277-278, 831 N.W.2d 204. Likewise, legal issues concerning the OMA are reviewed de novo on appeal. *In re Jude*, 228 Mich.App. 667, 670, 578 N.W.2d 704 (1998). In general, MCR 2.116(C)(10) provides for summary disposition when there is no genuine issue regarding any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. A summary disposition motion brought pursuant to MCR 2.116(C)(10) tests the factual support for a party's claim. *Skinner v. Square D Co.*, 445 Mich. 153, 161, 516 N.W.2d 475 (1994). A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact. *Quinto v. Cross & Peters Co.*, 451 Mich. 358, 362, 547 N.W.2d 314 (1996). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v. Gen. Mo-*

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tors Corp., 469 Mich. 177, 183, 665 N.W.2d 468 (2003).

*3 Initially, we note that an issue is presented with respect to whether plaintiffs' claims were rendered moot by the MLCC's actions. Given that we conclude, for the reasons set forth below, that the trial court did not err in granting summary disposition as to the merits of plaintiffs' due process and OMA claims, we find it unnecessary to engage in any analysis or to issue a ruling regarding the mootness argument.

Our Supreme Court has recognized that individuals or entities seeking to renew a liquor license possess a property interest entitled to "rudimentary due process" protection. *Bundo v. Walled Lake*, 395 Mich. 679, 695-696, 238 N.W.2d 154 (1976). The *Bundo* Court articulated the requirements of rudimentary due process and added its own caveat:

"(i) timely written notice detailing the reasons for proposed administrative action; (ii) an effective opportunity to defend by confronting any adverse witnesses and by being allowed to present in person witnesses, evidence, and arguments; (iii) a hearing examiner other than the individual who made the decision or determination under review; and (iv) a written, although relatively informal, statement of findings."

We find it necessary to impose one modification upon this general requirement in order to better fit the needs and interests involved in this case. There should be no requirement that the hearing examiner be someone other than the members of the local legislative body. To require an independent examiner would deprive the local body of discretion to rule on the matter. The local body itself may conduct the hearing. [*Id.* at 696-697, 238 N.W.2d 154 (citations omitted). ^{FN1}]

FN1. The Court also held "that courts may review arbitrary and capricious actions

taken by local legislative bodies in recommending to the MLCC that liquor licenses not be renewed[.]" *Bundo*, 395 Mich. at 704, 238 N.W.2d 154.

In this case, it is undisputed that on March 7, 2012, the city sent plaintiffs a letter informing them that the review committee had received objections to renewal of VRE's liquor license. The letter detailed: (1) the substance of those objections with specific reference to the applicable provisions of the city code; (2) the date, time, and location of a hearing on the matter; (3) the city's intention to present evidence in support of the objections; and (4) plaintiffs' right to be present for the hearing, present evidence and witnesses, confront the city's witnesses, present arguments, and to be represented by an attorney. The letter also specified that the hearing officer's decision would be forwarded to the city council for final approval and thereafter forwarded to the MLCC. Based on this undisputed notice, there is no question of fact that plaintiffs received timely written notice detailing the reasons for the city's proposed administrative action, satisfying the first requirement of rudimentary due process. *Bundo*, 395 Mich. at 696, 238 N.W.2d 154.

In regard to the second requirement, i.e., an effective opportunity to defend, plaintiffs, through counsel, were allowed to confront adverse witnesses and present witnesses, evidence, and arguments at the March 19, 2012 hearing, so this requirement was satisfied. *Id.* With respect to the standard third requirement of an independent hearing officer, plaintiffs complain that the hearing officer here was on the review committee and on the city council and that he effectively adopted his own findings and recommendation. However, as noted above, *Bundo* modified the requirement and specifically approved of the use of a hearing officer to conduct a hearing despite the fact that the officer sits on the local legislative body; this is exactly what occurred in the case at bar. *Id.* at 697. *Bundo*, which plaintiffs remarkably fail to even acknowledge on appeal, is the controlling precedent.

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Plaintiffs instead cite old United States Supreme Court precedent that was referred to and acknowledged in *Bundo*. Assuming an implicit argument by plaintiffs that our Supreme Court in *Bundo* exceeded its bounds, it is for that Court to address and resolve the matter, not us. Plaintiffs do not contend that the hearing officer was biased and prejudiced against them for reasons other than the fact that the hearing officer sat on the review committee and city council. Finally, plaintiffs were provided a written statement of findings prepared by the hearing officer, thereby satisfying the fourth requirement of rudimentary due process. *Id.* at 696, 238 N.W.2d 154.

*4 In sum, plaintiffs were afforded rudimentary due process consistent with the Michigan Supreme Court's ruling in *Bundo* relative to liquor license renewal objections. Plaintiffs essentially ignore the March 7, 2012, notice of the renewal objection and hearing date, as well as the evidentiary hearing conducted on March 19, 2012, in accordance with the notice. They instead mistakenly assert that due process entitled them to personal notice and an opportunity to be heard specifically at the February 23, March 5, and March 19, 2012, meetings conducted by the review committee and city council. As explained, rudimentary due process required notice and an opportunity to be heard before the deprivation of plaintiffs' property interest in the liquor license, and plaintiffs were afforded those due process protections via the timely March 7th notice and the March 19th hearing. No more was required.

Lastly, plaintiffs maintain that the city violated due process by failing to promulgate evidentiary standards, procedural guidelines, or operating procedures to govern the meetings and hearing. We have acknowledged that "due process requires a local legislative body to establish some standards or guidelines which provide liquor licensees with notice of what criteria will result in the initiation of license non-renewal or revocation proceedings." *Roseland Inn, Inc. v. McClain*, 118 Mich.App. 724, 731, 325 N.W.2d 551 (1982). To this end, and over-

looking the fact that plaintiffs failed to properly preserve this argument for appeal, the city enacted Ann Arbor Ordinance, § 9:79 (Annual renewal; license revocation, appeal and fees). This ordinance details the myriad reasons, including those invoked here, for which the city council may object to the renewal of a liquor license, plainly explaining the criteria on which the licensees and licenses will be evaluated. Section 9:79 also provides procedural details regarding notice and the administrative hearing, and it was cited and its provisions referenced in the March 7, 2012, notice to plaintiffs. The city had also adopted the "City Liquor Administrative Hearing Rules," which were referenced by the hearing officer at the commencement of the hearing. Overall, on the undisputed facts presented, plaintiffs were afforded due process and the trial court properly granted defendants' motion for summary disposition on the due process claim.

We also conclude that the trial court properly granted summary disposition as to plaintiffs' claim that, relative to the February 23, March 5, and March 19, 2012, meetings, defendants violated OMA by failing to provide notice and an opportunity to address a public body. Under OMA, when a public body meets, it must provide notice to the public. MCL 15.265(1). By statute, the notice must include "the public body's name, address, and telephone number, and it must be posted at its principal office and other appropriate locations." *Lysogorski v. Bridgeport Charter Twp.*, 256 Mich.App. 297, 299, 662 N.W.2d 108 (2003), citing MCL 15.264. "A court has discretion to invalidate a decision made in violation of the OMA if it finds that violation impaired the rights of the public under the OMA." *Morrison v. East Lansing*, 255 Mich.App. 505, 520, 660 N.W.2d 395 (2003), citing MCL 15.270(2). In *Knauff v. Oscoda Co. Drain Comm'r*, 240 Mich.App. 485, 495, 618 N.W.2d 1 (2000), this Court observed:

*5 A party seeking to invalidate a decision by a public body under the OMA must allege both a precise violation of the act and that the violation

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impaired the rights of the public. The mere recital in a complaint of language that the rights of the public were impaired, without specific references to facts supporting the alleged violation and public impairment, is insufficient. [Citations omitted.]

We initially conclude that plaintiffs failed to establish any documentary facts showing that the alleged violations impaired the rights of the public. Even plaintiffs' own rights were not impaired, given the administrative hearing that comported with due process protections.

Moreover, in compliance with OMA, on December 8, 2011, the city clerk posted notice of all the city council meetings scheduled for 2012, including the meetings held on March 5 and March 19, 2012.^{FN2} Plaintiffs do not contend that the information was not posted as shown by defendants. Instead, they claim that something more was required, that they were personally entitled to notice and that the notice needed to include information regarding the specific contents of the meetings. Plaintiffs' claims are clearly without merit because OMA does not require personal notice; it requires "public notice." MCL 15.265(1). In arguing that defendants' notice of the meetings needed to include particular agenda details, plaintiffs mistakenly rely on *Haven v. City of Troy*, 39 Mich.App. 219, 224, 197 N.W.2d 496 (1972), a case wherein this Court described the more detailed notice that is required if a hearing is actually conducted at a meeting. However, *Haven* did not concern the provisions in OMA. Moreover, *Haven* applied only in situations in which a hearing was being conducted at a meeting and, consequently, it has no applicability to the present facts. Instead, under OMA, defendants were not required to provide any particular degree of detail as to the meeting's contents and there was no specific agenda format required. *Lysogorski*, 256 Mich.App. at 299, 662 N.W.2d 108 ("An agenda format is not required" under OMA). On the undisputed facts, the notice complied with OMA.

FN2. Plaintiffs failed to plead in their com-

plaint an OMA claim below based on the February 23 meeting of the review committee. Accordingly, plaintiffs' appellate claims regarding that meeting is not preserved for review. *Booth Newspapers, Inc. v. Univ. of Mich. Bd. of Regents*, 444 Mich. 211, 234, 507 N.W.2d 422 (1993). We note that defendants assert that notice of the meeting on February 23 was also properly posted to the public, which plaintiffs do not deny in their appellate reply brief. Moreover, with respect to plaintiffs' claim of entitlement to personal notice under OMA, it is rejected for the same reasons set forth below relative to the March meetings.

Claiming violations of OMA and the First Amendment, plaintiffs also contend that they were not provided an opportunity to address the city council. MCL 15.263(5) provides, "A person shall be permitted to address a meeting of a public body under rules established and recorded by the public body." However, consistent with the plain statutory language, this Court has explained that a public body may impose rules limiting public comment without violating OMA. See, e.g., *Lysogorski*, 256 Mich.App. at 302, 662 N.W.2d 108. In Ann Arbor, the city council's rules provide two means of addressing the council during a meeting: a reserved public comment period at the beginning and a general public comment period at the end of the meeting. The minutes for the meetings on March 5th and March 19th confirm that these public comment periods were held and that, in fact, there were additional available time slots for speakers from the public. That plaintiffs chose not to avail themselves of these public comment periods does not establish either an OMA or First Amendment violation, especially as to the March 19th meeting, in which, as plaintiffs were fully aware, the city council would address the hearing officer's findings and recommendation regarding the liquor license renewal.

*6 Lastly, in a very cursory argument,

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plaintiffs contend that the trial court prematurely granted summary disposition because further discovery would have benefited their position. We disagree. "Although incomplete discovery generally precludes summary disposition, summary disposition may nevertheless be appropriate if there is no disputed issue before the court or if further discovery does not stand a fair chance of finding factual support for the nonmoving party." *VanVorous v. Burmeister*, 262 Mich.App. 467, 476-477, 687 N.W.2d 132 (2004). We fail to see how any further discovery could save plaintiffs' due process and OMA claims; the documentary evidence actually submitted conclusively established that plaintiffs received the required rudimentary due process and that there were no OMA violations that would support invalidation of the city's renewal objection. Plaintiffs contend that the depositions of city officials are needed to show irregularities in notices, which could establish that the Dream Nite Club "was being unfairly singled out for selective enforcement." Plaintiffs did present an argument below sounding in equal protection in the form of selective enforcement, but no such claim was ever pled in the complaint. And the trial court rejected the argument as finding no evidentiary support, yet plaintiffs do not even contend on appeal that the trial court erred in rejecting an equal protection, selective enforcement claim, let alone set forth an equal protection analysis. There is simply no merit to plaintiffs' argument that summary disposition was premature.

Affirmed. Having fully prevailed on appeal, defendants are awarded taxable costs pursuant to MCR 7.219.

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UNPUBLISHED OPINION. CHECK COURT
 RULES BEFORE CITING.

Court of Appeals of Michigan.
 DETROIT NEWS, INC., Plaintiff-Appellant,
 v.

CITY OF DETROIT, Detroit City Council, Mary-
 ann Mahaffey, Kenneth V. Cockrel, Sharon
 McPhail, Barbara-Rose Collins, Joann Watson, and
 Detroit City Council Personnel Committee, Defend-
 ants-Appellees,

and
 Sheila M. Cockrel, Alberta Tinsley-Talabi, Kay
 Everett, and Alonzo W. Bates, Defendants.

Docket No. 259323.
 June 13, 2006.

Wayne Circuit Court; LC No. 04-420270-CZ.

Before: SMOLENSKI, P.J., and HOEKSTRA and
 MURRAY, JJ.

[UNPUBLISHED]

PER CURIAM.

*1 Plaintiff appeals as of right, challenging the circuit court's order granting summary disposition in favor of defendants ^{FN1} and dismissing this action alleging violation of the Open Meetings Act (OMA), MCL 15.261 *et seq.* We affirm.

^{FN1}. In the lower court, the parties stipulated to the dismissal of defendants Sheila M. Cockrel, Alberta Tinsley-Talabi, Kay Everett, and Alonzo W. Bates. Therefore, these defendants are not parties to this appeal.

The individual defendants are all elected members of defendant Detroit City Council (Council). In

addition, defendants Maryann Mahaffey, Kenneth V. Cockrel, Jr., and Sharon McPhail were, at all relevant times, members of defendant Detroit City Council Personnel Committee (Committee). This action arises out of the Committee's selection of five candidates to interview for the position of Research and Analysis Division Director (RAD). The members of the Committee individually reviewed the application materials of the 18 applicants and selected five candidates to interview. Plaintiff filed suit, alleging that this "round robin" meeting of the Committee violated the OMA, which required that the narrowing of the pool of applicants be conducted at a meeting open to the public.

After plaintiff filed its complaint, the Council abandoned its search for a RAD and disbanded the Committee. Consequently, rather than seeking injunctive relief in the lower court, plaintiff sought only a declaratory judgment that the "round robin" process of narrowing the 18 applicants to five candidates violated the OMA. Plaintiff appeals the trial court's ruling that no case or controversy exists because of the Council's abandonment of its search for a RAD.

This Court reviews *de novo* a trial court's decision on a motion for summary disposition. *Spiek v. Dep't of Transportation*, 456 Mich. 331, 337; 572 NW2d 201 (1998). It appears that the trial court granted summary disposition for defendants under MCR 2.116(C)(4), which applies in cases in which "[t]he court lacks jurisdiction of the subject matter." MCR 2.116(C)(4). "Where no case of actual controversy exists, the circuit court lacks subject matter jurisdiction to enter a declaratory judgment." *Fieger v. Comm'r of Ins.*, 174 Mich.App 467, 470; 437 NW2d 271 (1988); see also *Associated Builders & Contractors v Dep't of Consumer & Industry Services Director*, 472 Mich. 117, 124-125; 693 NW2d 374 (2005). Whether the trial court has subject-matter jurisdiction is a question of law that this Court reviews *de novo*. *Citizens for Common Sense in Gov't v Attorney General*, 243 Mich.App 43,

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49-50: 620 NW2d 546 (2000).

Pursuant to MCR 2.605(A)(1), a circuit court may issue a declaratory judgment in "a case of actual controversy within its jurisdiction." The existence of an actual controversy is a condition precedent to the exercise of declaratory relief. *CCSG, supra* at 54-55. "[A]n 'actual controversy' exists where a declaratory judgment or decree is necessary to guide a plaintiff's future conduct in order to preserve his legal rights." *Kircher v. City of Ypsilanti*, 269 Mich.App 224, 227; 712 NW2d 738 (2005), citing *Shavers v. Attorney Gen*, 402 Mich. 554, 588; 267 NW2d 72 (1978). Actual injuries or losses are not necessary, *id.*, rather, an actual controversy requires that plaintiffs " 'plead and prove facts which indicate an adverse interest necessitating the sharpening of the issues raised.' " *Associated Builders, supra* at 126, quoting *Shavers, supra* at 589.

*2 Once the Council decided to abandon the search for a RAD, plaintiff's case was rendered moot. The actual controversy requirement of MCR 2.605, "requires that the Court not decide moot questions in the guise of giving declaratory relief." *Dept of Social Services v. Emanuel Baptist Preschool*, 434 Mich. 380, 470; 455 NW2d 1 (1990) (opinion by Boyle, J.). Further, because plaintiff may commence a new suit should the challenged procedure be used in the future, we cannot conclude that this issue is "one of public significance that is likely to recur, yet evade judicial review." *Federated Publications, Inc v. Lansing*, 467 Mich. 98, 112; 649 NW2d 383 (2002). The trial court correctly determined that it lacked jurisdiction under MCR 2.605(A)(1) to grant the requested declaratory relief and, therefore, properly granted summary disposition in favor of defendants.

Because of our holding, we need not address plaintiff's remaining issue.

Affirmed.

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(Cite as: 2007 WL 1263974 (Mich.App.))

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UNPUBLISHED OPINION. CHECK COURT
RULES BEFORE CITING.

Court of Appeals of Michigan.
SALINE AREA SCHOOLS and Samuel A. Sini-
cropi, Plaintiffs/Counter-Defendants-Appellees,
v.

John MULLINS and Tanny Mullins, Defendants/
Counter-Plaintiffs-Appellants.

Docket No. 272558.
May 1, 2007.

Washtenaw Circuit Court; LC No. 04-000060-CC.

Before: SMOLENSKI, P.J., and SAAD and
WILDER, JJ.

PER CURIAM.

*1 Defendants appeal the trial court's order that granted plaintiffs' motion for summary disposition on defendants' counterclaims. We affirm.

This case arises out of a number of incidents involving defendants' allegedly inappropriate behavior during their sons' high school wrestling meets. Plaintiffs filed this action against defendants in January 2004, and alleged that defendants' conduct toward the team, its coaches, and the families of the coaches was so disruptive that it warranted judicial intervention. Defendants filed a counterclaim and contended that they merely spoke out against certain policies of the school and the athletic program, and that plaintiffs retaliated against them for doing so.

I. Attorney Fees Under the Open Meetings Act

Defendants argue that the trial court erred when it failed to award them attorney fees under MCL 15.271(4) of the Open Meetings Act (OMA). MCL 15.271(1) provides that "a person may com-

mence a civil action to compel compliance or to enjoin further noncompliance with this act." Further, under MCL 15.271(4), "[i]f a public body is not complying with this act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act and succeeds in obtaining relief in the action, the person shall recover court costs and actual attorney fees for the action." MCL 15.271(4).

The record reflects that, though plaintiffs admit that a board member asked Mrs. Mullins not to videotape a school board meeting on August 24, 2004, at the next board meeting on September 14, 2004, the school board explicitly acknowledged that the OMA requires that it permit the public to record the meetings. Yet, more than three months after the board stated that the public is permitted to record meetings under OMA, defendants filed a counterclaim under OMA, MCL 15.271(1), and sought a temporary and permanent injunction to prevent further noncompliance with the act. Rather than issue an injunction, the trial court awarded defendant \$250 in damages.^{FNI}

FNI. Plaintiffs do not appeal the trial court's \$250 award.

The record compels the conclusion that defendants did not commence an "action to compel compliance or to enjoin further noncompliance with" the OMA and defendants did not sustain their burden to show that they were entitled to a temporary or permanent injunction. A past violation of the OMA, by itself, is not sufficient "to constitute a real and imminent danger of irreparable injury" to support an injunction. *Wilkins v. Gagliardi*, 219 Mich.App 260, 275-276; 556 NW2d 171 (1996). Again, because the board acknowledged that the public is permitted to videotape meetings and because no evidence suggests that defendants or other members of the public were prevented from recording future meetings, defendants did not establish a

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“real or imminent danger of irreparable injury,” *id.* at 276. and were not entitled to the relief sought, a preliminary or permanent injunction. *Nicholas v. Meridian Charter Twp Bd.* 239 Mich.App 525, 536 n 3; 609 NW2d 574 (2000). In other words, defendants did not seek relief under the OMA to compel compliance because plaintiff complied well before defendants commenced the action. See *Ridenour v. Bd of Ed of the City of Dearborn School Dist.* 111 Mich.App 798; 314 NW2d 760 (1982). Further, defendants did not request declaratory relief, see *Nicholas, supra* at 536 n 3, and defendants did not show an impairment of public rights. Further, the trial court did not enter an order or judgment that compelled compliance with the OMA, nor did the court enjoin plaintiffs' noncompliance, or invalidate any decision by plaintiffs, see *Felice v. Cheboygan Cty Zoning Comm.* 103 Mich.App 742; 304 NW2d 1 (1981). Accordingly, we reject defendants' assertion that they are entitled to costs and attorney fees.

II. Breach of Contract

*2 Defendants claim that the trial court erred when it dismissed their breach of contract claim. Specifically, defendants contend that because the parties' February 2004 consent order constitutes a contract, any violation of its terms amounts to a breach of that contract. Defendants cite *In re Lobaina*, 267 Mich.App 415, 418; 705 NW2d 34 (2005) to support their assertion that “[j]udgments entered pursuant to the agreement of parties are of the nature of a contract.” *Id.* at 418, quoting *Gramer v. Gramer*, 207 Mich.App 123, 125; 523 NW2d 861 (1994). However, *Lobaina* also states that judgments entered into “upon the settlement of the parties ... represents a contract, which ... is to be interpreted as a question of law.” *Id.* A “settlement” is “[a]n agreement ending a dispute or lawsuit.” Black's Law Dictionary (7th ed). Because the February 2004 consent order did not settle the case or end the lawsuit, the trial court correctly dismissed defendants' breach of contract claim.

III. 42 USC 1983

Defendants further assert that the trial court er-

roneously dismissed their 42 USC 1983 claim. 42 USC 1983 governs civil actions for deprivation of civil rights under the federal Constitution. The statute states, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

“A cause of action under § 1983 is stated where a plaintiff shows (1) that the plaintiff was deprived of a federal right, and (2) that the defendant deprived the plaintiff of that right while acting under color of state law.” *Davis v. Wayne Co Sheriff*, 202 Mich.App 572, 576-577; 507 NW2d 751 (1993).

In *Good News Club v. Milford Central School*, 533 U.S. 98, 106-107; 121 S Ct 2093; 150 L.Ed.2d 151 (2001), the United States Supreme Court explained:

When the State establishes a limited public forum, the State is not required to and does not allow persons to engage in every type of speech. The State may be justified “in reserving [its forum] for certain groups or for the discussion of certain topics.” The State's power to restrict speech, however, is not without limits. The restriction must not discriminate against speech on the basis of viewpoint, and the restriction must be “reasonable in light of the purpose served by the forum....” [Modification in original; citations omitted.]

Defendants assert that plaintiffs employed tactics that limited their speech and actions at the wrestling matches in order to stop their lawful criticism of school athletic policies and behavior by athletic department personnel. Defendants assert that the school fabricated charges of disorderly be-

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havior on defendants' part at the wrestling matches. However, in the February 2004 consent order, defendants agreed to abide by a list of restrictions on their activities at wrestling matches and their contacts with listed members of the school's athletic department, and they agreed to not attend certain functions. The consent order both legitimizes plaintiffs' actions and defendants' speculation about underlying motives for the actions taken (as set forth in the consent order) cannot form the basis of a § 1983 claim. Furthermore, the February 2004 consent order called for the appointment of a neutral party to investigate defendants' allegations concerning the athletic department. That investigator was appointed and issued a report. Indeed, in a second consent order, the school district agreed to implement certain changes identified in the report. Thus, defendants' concerns were presented and addressed.^{FN2}

FN2. The court also correctly rejected defendants' claim in part because, though they claimed that their children were victims of plaintiffs' retaliatory actions, the children were not parties to the action.

*3 Affirmed.

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STATE OF MICHIGAN
IN THE SUPREME COURT
(ON APPEAL FROM THE COURT OF APPEALS)

KENNETH J. SPEICHER, an Individual

Supreme Court No. 148617

Plaintiff-Appellee,

Court of Appeals No. 306684

V

Lower Court No. 11-600857-CZ

COLUMBIA TOWNSHIP BOARD OF
TRUSTEES and COLUMBIA TOWNSHIP
PLANNING COMMISSION,

Defendants-Appellants.

PROOF OF SERVICE

MARJORIE E. RENAUD, being first duly sworn deposes and says that she is an employee with the firm of Plunkett Cooney, and that on the 22nd day of September, 2014, she caused to be served a copy of Defendants-Appellants' Response Brief to Amicus Curiae Brief of Outside Legal Counsel PLC and Attorney Philip L. Ellison and Proof of Service, upon the following:

Robert W. Smith, Esq. 707 Comerica Building 151 S. Rose Street Kalamazoo, MI 49007-4792	Robert E. Thall, Esq. Bauckham Sparks Lohrstorfer Thall & Seeber, PC 458 West South Street Kalamazoo, MI 49007-4621
Philip L. Ellison, Esq. Outside Legal Counsel, PLC P.O. Box 107 Hemlock, MI 48626	

by enclosing same in a pre-addressed, pre-stamped envelope and depositing same in the United States mail.


MARJORIE E. RENAUD

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