



FIRE

Foundation for Individual
Rights and Expression

May 15, 2023

Sent Via FedEx Overnight Shipping and Email

Board of Trustees

Uvalde Consolidated Independent School District

c/o Luis Fernandez, President

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Re: Uvalde Parent Banned from School Property for Criticizing UCISD

Dear Trustees:

The Foundation for Individual Rights and Expression¹ is deeply concerned about the decision by Uvalde Consolidated Independent School District (UCISD) to ban our client, Adam Martinez—a parent of two UCISD students—from school district property for criticizing the district’s hiring of an officer the Uvalde County Sheriff’s Office deemed ineligible for rehire. Mr. Martinez’s criticism is fully protected by the First Amendment and the school district’s unlawful retaliation violates his right to freedom of speech. UCISD must immediately rescind the ban.

On May 24, 2022, Mr. Martinez’s youngest child was present at Robb Elementary during the mass shooting that killed 21 people and injured 17 more. Thankfully, Mr. Martinez’s son was not physically harmed. After the shooting, Mr. Martinez, like many others, became a vocal critic of UCISD’s efforts to secure its schools.

On February 13, 2023, Mr. Martinez learned the school district had recently hired an officer whom the Uvalde County Sheriff’s Office had deemed ineligible for rehire. That evening, Mr. Martinez attended a UCISD School Board meeting and approached UCISD Police Chief Joshua Gutierrez to peacefully discuss his

¹ FIRE is a nonpartisan, nonprofit organization dedicated to defending the individual rights of all Americans to free speech and free thought—the most essential qualities of liberty.

concerns about the new hire. As multiple recordings of the meeting demonstrate, their conversation remained quiet and did not disrupt the meeting. Nevertheless, in response to Mr. Martinez's calm but impassioned criticism, Chief Gutierrez told Mr. Martinez to sit down. Mr. Martinez, who wished to continue speaking with Gutierrez, refused. Chief Gutierrez then lashed out by banning Mr. Martinez from all school district property and escorting Mr. Martinez and his family from the building. The following day, UCISD Interim Superintendent Gary Patterson sent Mr. Martinez a formal criminal trespass warning banning him from all school district property, including School Board meetings, for two years.

After Mr. Martinez filed a grievance with the school district, UCISD has allowed him to pick up his daughter from Morales Junior High School and attend events in which she is involved. Upon Mr. Martinez's further request, UCISD allowed him to attend his son's baseball practices. But Mr. Martinez is still banned from all other school property. And he is still banned from attending School Board meetings and other functions providing opportunities for parents to voice their concerns.

The district is even refusing to allow Mr. Martinez to attend his nephew's upcoming graduation. On April 27, Mr. Martinez emailed Interim Superintendent Patterson to ask whether he could attend the ceremony. Interim Superintendent Patterson refused to answer, instead retorting: **"It seems like you are very fond of posting about us."** Patterson's statement demonstrates that the UCISD is aware of Mr. Martinez's past criticism of the school district on Facebook and is considering that criticism as it enforces the ban. To date, Interim Superintendent Patterson has not given Mr. Martinez an answer. And on Friday May 12, after a security concern in the district caused many parents to pick up their kids from school, the ban prevented Mr. Martinez from picking up his nephew.

UCISD banned Mr. Martinez simply for raising concerns about whom the school district was hiring to protect the district's children, an issue of understandable importance for Uvalde parents, like Mr. Martinez. In doing so, UCISD has violated and is continuing to violate the First Amendment. The Supreme Court long ago established that criticism of public officials is squarely protected by the First Amendment. *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) ("[D]ebate on public issues should be uninhibited, robust, and wide-open, and . . . it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."). And it is well settled that "the First Amendment prohibits government officials from subjecting an individual to retaliatory actions" for engaging in protected speech. *Hartman v. Moore*, 547 U.S. 250, 256 (2006).

The First Amendment also prohibits the government from censoring speech based on viewpoint. *Matal v. Tam*, 582 U.S. 218, 243 (2017) (holding “viewpoint discrimination is forbidden” regardless of location). There can be little doubt that if Mr. Martinez had approached Chief Gutierrez at the February 13th School Board meeting and praised his performance, Mr. Martinez would not be subject to a criminal trespass warning. The First Amendment prohibits singling out critics for unfavorable treatment.

Lastly, a school district imposes an unconstitutional prior restraint when, as here, it completely forecloses an individual’s ability to speak at public school board meetings. *Monroe v. Hous. Indep. Sch. Dist.*, 794 F. App’x 381, 385 (5th Cir. 2019) (explaining that if the plaintiff’s remarks during a school board meeting did not “reach[] the level of a true threat,” the school district would be impermissibly “restraining [plaintiff] from speaking at a public meeting based on the content of his speech or his viewpoint” if it banned him based on those comments); *see also Wilson v. N.E. Indep. Sch. Dist.*, No. 5:14-CV-140-RP, 2015 WL 13716013, at *4, *6 (W.D. Tex. Sept. 30, 2015) (holding a criminal trespass warning allowing school officials to grant or deny plaintiff permission to participate in school board meetings was a prior restraint on her First Amendment rights). UCISD banned Mr. Martinez from school property, including School Board meetings, for two years specifically because he dared to criticize the school district, and is now subjecting him to an unlawful prior restraint in violation of the First Amendment.

In addition to violating the First Amendment, UCISD’s ban also contravenes both Texas state law and the school district’s policy. Texas statute and UCISD policy provide that “[a] parent is entitled to complete access to any meeting of the board, other than a closed meeting[.]” *Education Code 26.007(a)*; Uvalde CISD BE(LEGAL)-P. As long as Mr. Martinez remains banned from School Board meetings, the district deprives Mr. Martinez of not only his First Amendment right to free speech, but his rights as a parent to participate in critical aspects of his children’s education.

UCISD’s ban in retaliation for Mr. Martinez’s protected speech is an ongoing violation of our client’s clearly established First Amendment rights. Mr. Martinez wishes to attend his nephew’s graduation on May 26, 2023. He also wants to attend future School Board meetings and events, like any other parent. Unless and until the school district lifts its unconstitutional ban, he cannot.

Please provide written confirmation no later than the close of business on Monday, May 22, 2023, that UCISD has lifted its ban of Adam Martinez from UCISD property and its School Board meetings. Otherwise, FIRE will file

a lawsuit and seek the full array of remedies including punitive damages and attorney's fees.

Thank you for your prompt attention to this matter. Please do not hesitate to contact me with any questions.

Sincerely,



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*** *Member of the Pennsylvania
Bar*

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cc: Gary Patterson, Interim Superintendent, Uvalde Consolidated Independent School District, *via* FedEx Overnight and email to gpatterson@uvaldecisd.net

Joshua Gutierrez, Chief of Police, Uvalde Consolidated Independent School District, *via* FedEx Overnight and email to jgutierrez8288@uvaldecisd.net

Encl.