



December 14, 2023

Via Email and Regular Mail

Michael Penca, Superintendent
Flagstaff Unified School District
3285 East Sparrow Avenue
Flagstaff, AZ 86004
mpenca@fusd1.org

Re: FUSD Media List

Dear Mr. Penca:

We represent Jeff Oravits, a Flagstaff resident and journalist who hosts a daily radio show, the Jeff Oravits Show on 97.1 FM. We understand that FUSD has refused to include Mr. Oravits on its media distribution list or provide him with information on the same terms as other members of the media, apparently because it disapproves of his reporting and his perceived political viewpoints. This is unacceptable, and we are writing to you to ensure this problem is resolved immediately.

From time to time, Mr. Oravits has reported on various issues related to Flagstaff Unified School District (FUSD). Most recently, he has been covering FUSD's reductions in bus service. As part of his research on this topic, Mr. Oravits called FUSD on December 7, 2023, and spoke with FUSD's Director of Communications and Public Relations, Josh Butler. During the conversation, Mr. Butler discussed "getting [Mr. Oravits] on [FUSD's] media list like KAFF" (a competing radio station) so that he could receive press releases and other communications directly from FUSD, as soon as they are issued. But the conversation took on a different tone when Mr. Butler started to inquire about the "format" of the Jeff Oravits Show and repeatedly asked whether it was a "partisan show." Based on Mr. Oravits' answers, Mr. Butler concluded that FUSD could *not* add him to the media list because it only includes "non-partisan media like KAFF and the Arizona Daily Sun."

Mr. Oravits pressed this issue, explaining that his reporting was no more "partisan" than these other outlets, and that in any event, journalists should not be discriminated against for having certain political viewpoints. But Mr. Butler insisted that he would not add Mr. Oravits to FUSD's media list or provide him information on the same terms as other journalists.

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Instead, Mr. Oravits would have to separately email FUSD with any information requests he might have, simply because of how Mr. Butler perceived the content of Mr. Oravits's radio show.

FUSD's refusal to include Mr. Oravits on its media list is highly disturbing public policy and is unconstitutional. Courts have consistently held that "arbitrary or content-based criteria for press pass issuance are prohibited under the First Amendment." *Sherrill v. Knight*, 569 F.2d 124, 129 & n.17 (D.C. Cir. 1977) (collecting cases). Likewise, when the government "voluntarily establish[es] press facilities for correspondents" and makes those resources "publicly available as a source of information for newsmen," the First Amendment "requires that this access not be denied arbitrarily or for less than compelling reasons." *Id.* at 129. This is even clearer under the Arizona Constitution, which goes beyond the federal Constitution in its protections of the right to "freely speak, write, and publish on all subjects" free from government discrimination or retaliation. Ariz. Const. art. II, sec. 6.

By its own admission, FUSD includes a variety of news outlets with varying reporting perspectives on its media list. It cannot exclude Mr. Oravits or restrict his access to information simply because it perceives his speech and viewpoint as unacceptably "partisan." Please immediately confirm in writing that FUSD will add Mr. Oravits to its media list and that it will provide him information to the same extent, and on the same terms, as any other journalist, regardless of his actual or perceived viewpoints.

This is a matter of some urgency: every day Mr. Oravits is excluded based on his perceived political views is another day he is deprived of his constitutional rights. On a practical note, FUSD's discriminatory treatment of Mr. Oravits impairs his ability to report on developing stories and places him at a disadvantage alongside those journalists FUSD has favored with "media list" access. If we do not hear from you by **December 20, 2023**, we will proceed to seek any remedies available under the law, including an injunction to enforce Mr. Oravits' constitutional rights. If we do so, we will also seek costs and attorneys' fees to the full extent authorized under Arizona law.

Please do not hesitate to contact me anytime if you would like to discuss this matter.

Sincerely,

Jonathan Riches, Vice President for Litigation
Adam Shelton, Staff Attorney
John Thorpe, Staff Attorney
Scharf-Norton Center for
Constitutional Litigation at the
Goldwater Institute