

**IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
CIVIL DIVISION**

ARKANSAS JUSTICE REFORM COALITION; SARAH MOORE PLAINTIFFS

v. Case No: 72 CV 20-1749-2

CITY OF FAYETTEVILLE, ARKANSAS

DEFENDANT

**AMENDED COMPLAINT FOR EMERGENCY INJUNCTIVE RELIEF AND
DECLARATORY JUDGEMENT**

The Arkansas Justice Reform Coalition and Sarah Moore, on behalf of all similarly situated Fayetteville, Arkansas, residents, by and through their attorneys Matthew Bender and Stephen Coger, state for their Complaint:

INTRODUCTION

1. On August 4, 2020, the Fayetteville City Council held a “robust debate” on the decision to accept a federal grant of \$250,000 to partially fund two School Resource Officers (SROs) for a four-year period. *See* Stacy Raburn, *Two School Resource Officers Positions Rejected in Fayetteville*, ARK. DEM. GAZETTE (August 5, 2020).¹ The total cost of creating the two SRO officers positions will be \$567,710 over four years. The City of Fayetteville and Fayetteville Public School District would be responsible for \$317,710 in financial obligations if the grant was accepted and the positions funded. *Id.*
2. Councilmember Matthew Petty “proposed a change to require the officers hired to also be licensed in social work, therapy or similar field. He added the condition as long as the requirement is allowed under state law and a good faith effort is made to

¹ Available at <https://perma.cc/RAG7-H4G6>.

find such candidates.” *Id.* “Deputy Police Chief Jamie Fields said, ‘finding a qualified applicant would be extremely difficult.’” *Id.* After the discussion, the motion to accept the grant failed 5-3, and the deadline to accept the grant expired on August 8, 2020. *Id.*

3. Although the motion to accept the grant failed, and the deadline for accepting the grant passed, the Fayetteville City Council a new motion to debate the measure again on Tuesday, August 18, 2020, on the City Council Agenda Meeting.² The addition of the measure to the agenda after it failed on August 4, 2020, violates the procedural rules of the Fayetteville City Council and is *ultra vires*—meaning an act done beyond a person or group’s legal power of authority.
4. Beyond the unlawful procedure to reconsider the motion to accept the grant to partially fund two SROs, the addition of SROs creates and immediate harm to the residents of the Fayetteville Community and children in the Fayetteville Public School System.

1. NATIONAL RESEARCH: THE AFFECTS OF SROs AND LEARNING IN LOCKDOWN

5. While there is a perception that SROs provide essential safety, and we should be mindful of tragedies that have repeatedly harmed our public schools, SROs are a poor fix for school safety. Instead SROs create a situation that can become **learning in lockdown** and perpetuate the school-to-prison pipeline. *See generally*, Aaron Sussman, *Learning in Lockdown: School Police, Race, and the Limits of Law*, 59 UCLA L. REV. 788 (2012) (discussing the overall affects and challenges from law enforcement in schools, **the lawsuits that have challenged systemic biases by the**

² Fayetteville City Council Agenda Meeting for August 18, 2020, at 5:30 p.m., available at <https://t.ly/Yfer>.

ACLU that result from SROs harming students in schools, and the alternatives that can foster positive school-police partnerships); *see also* Luis Mirón et. al., *The Roots & Presence of "Sharecropper Education" in the Nation: Educational Apartheid in the Sister Cities of New Orleans and Miami*, 5 Stan. J. CIV. RTS. & CIV. LIBERTIES 133 (2009) (discussing the long history of a two-track educational system going back to Jeffersonian ideals); Ellen Marrus, *Education in Black America: Is It the New Jim Crow?*, 68 ARK. L. REV. 27, (2015) (discussing the effect of law enforcement in schools, especially on students in the foster care system).

6. Instead of protecting students, SROs change a school from a social and educational environment into a surveillance zone. This change is a root cause of the school-to-prison-pipeline. When schools introduce SROs, students are more likely to be arrested, suspended, or expelled. This system perpetuates poverty, low-education rates, and often affects students and families in our poorest and most marginalized communities.
7. The history of police in schools is troubling. “The use of police in schools originated during the 1950s when white communities feared that Black children would disrupt newly-integrated schools.” Patrick Cremin, *School Policing was Designed to Criminalize Black Students. We Must Follow Black Voices Calling for its Abolition*. HARV. CIVIL RIGHTS. & CIVIL LIBERTIES L. REV. AMICUS (July 8, 2020).³ “School resource officers were placed in schools during the development of zero tolerance policies. Zero tolerance policies in schools require punishment, including suspension and expulsion, irrespective of the severity of a student's

³ Available at, <https://harvardcrcl.org/school-policing-was-designed-to-criminalize-black-students-we-must-follow-black-voices-calling-for-its-abolition/>.

offense.” Lauren A. Maddox, *"His Wrists Were Too Small": School Resource Officers and the over-Criminalization of America's Students*, 6 U. MIAMI RACE & SOC. JUST. L. REV. 193, 194 (2016).

8. Against this backdrop of the historical reason for law enforcement in schools, SROs have created a lobby and successfully spread their presence in public schools. “The lobbying wing of the The National Association of School Resource Officers (NASRO) believes that ‘schoolbased policing is the fastest-growing area of law enforcement.’” Michael Heise and Jason Nance, *Defund the (School) Police?: Bringing Data to Key School-to-Prison Pipeline Claims*, Cornell Legal Studies Research Paper 20-23 at *14 (July 27, 2020).⁴
9. Nationwide, studies show that students with disabilities and non-white students are more likely to enter the juvenile justice system. *See* Amanda Merkwae, *Schooling the Police: Race, Disability and the Conduct of School Resource Officers*, 21 MICH. J. RACE & L. 147, 151-157 (2015) (discussing the impact of race and disability on the school-to-prison pipeline).
10. SROs are not community police officers. “They typically spend about 50% of their time performing the law enforcement role, 25% counseling or mentoring, 13% teaching, and 12% on other activities [such as they] give law-related presentations pertaining to alcohol and drug prevention, gang awareness, and conflict resolution.” *Id.* at 161. “There is overwhelming evidence suggesting that students of color and students with disabilities are funneled into the justice system due to the disparate

⁴ Available at, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3589300.

impact of exclusionary discipline policies and discretionary arrests in schools.” *Id.* at 180.

11. The rights of students investigated by SROs are limited because they are not considered law enforcement, but school officials. *Id.* at 167 (discussing many places do not require SROs to even mirandize students under investigation because of their special status); *see also* Heise and Nance, *supra*, at *15 (“Courts also consistently hold that school officials do not need to provide Miranda warnings before interrogating a student about potential wrongdoing, even when they subsequently provide the evidence they obtain to law enforcement”). In Arkansas, a typical investigation of a juvenile requires both the child’s and a parent’s consent before a child can be questioned.
12. Research shows students who are referred to law enforcement or arrested are more likely to be held back a grade or drop out, even at the elementary school levels, and non-white students are more likely to be disciplined for subjective reasons (like talking back or being belligerent). *See generally* Libby Nelson and Dara Lind, *The School-to-Prison Pipeline Explained*, VOX (October 27, 2015)⁵; *see also* Heather Cobb, *Separate and Unequal: The Disparate Impact of School-Based Referrals to Juvenile Court*, 44 HARV. C.R. - C.L. L. REV. 581 (2009) (discussing the zero tolerance policies schools initiated in *the early 1990s* to solve gaps in school discipline and because of cultural and other understanding gaps leads already disadvantaged students being referred to juvenile justice systems);⁶ Judith Scully,

⁵ Available at <https://t.ly/ZJU1>.

⁶ Available at <https://perma.cc/TMH9-YC4W>. The author also notes “because **school-based referrals** to the **juvenile court** system represent such an important entry point to the prison system, the methods through which students are **referred** are incredibly important. In this context, an explicit focus on reducing

Examining and Dismantling the School-to-Prison Pipeline: Strategies for A Better Future, 68 ARK. L. REV. 959, 971 (2016) (discussing on of law enforcement in schools on elementary and middle school children and their family);

13. “Suspensions and expulsions are two of the ways schools push students from the education system to the justice system. Schools increasingly suspend and expel students for infractions that might once have merited detention, such as speaking disrespectfully to a teacher or failing to comply with the school uniform.” Meredith Simons, *Giving Vulnerable Students Their Due: Implementing Due Process Protections for Students Referred from Schools to the Justice System*, 66 DUKE L.J. 943, 945 (2017).
14. The increase in law enforcement in school has has been considered by some to be deliberate re-segregation and targeting as “disproportionately, children from historically marginalized communities are provided uncritical curriculum, funneled into the school-to-prison pipeline, and disproportionately lose all American citizenry privileges.” Darrell Jackson, *Teaching Tomorrow's Citizens: The Law's Role in Educational Disproportionality*, 5 ALA. C.R. & C.L.L. REV. 215, 226 (discussing the role of law enforcement in schools as a systemic effort to disenfranchise diverse and marginal communities from the mainstream American culture, including voting).
15. This phenomenon is not limited to non-white students, but all vulnerable students. “Students of low socioeconomic status, students of color, students with disabilities, and male students are disproportionately subjected to discipline and, thus, more likely to be placed on the pipeline track. Once singled out, these students tend to experience

racial disparities is essential. (citing Adira Siman, *Challenging Zero Tolerance: Federal and State Legal Remedies for Students of Color*, 14 Cornell J.L. & Pub. Pol'y 327, 329 (2005).

harsh disciplinary practices, such as suspension, expulsion, and even arrest. These students are then more likely to fall behind in their classes or to completely disengage from school.” See Leah Aileen Hill, *Disrupting the Trajectory: Representing Disabled African American Boys in A System Designed to Send Them to Prison*, 45 *FORDHAM URB. L.J.* 201, 203 (2017); see also Traci. Porter, *The School-to-Prison Pipeline: The Business Side of Incarcerating, Not Educating, Students in Public Schools*, 68 *ARK. L. REV.* 55, 56 (2015) (noting the profit interests in the school to prison pipeline).

16. The introduction of law enforcement in school is often done for well intentioned reasons. “Some school officials may feel compelled to create an intense surveillance environment because they lack the resources and training to properly educate and manage high numbers of students with acute need.” Jason P. Nance, *Student Surveillance, Racial Inequalities, and Implicit Racial Bias*, 66 *EMORY L.J.* 765, 783 (2017) (“In the wake of high-profile incidents of school violence, school officials have increased their reliance on a host of surveillance measures to maintain order and control in their schools. Paradoxically, such practices can foster hostile environments that may lead to even more disorder and dysfunction.”).

17. Schools such as Fayetteville may be among the ideal places to halt the spread of law enforcement in public school systems. “Any attempts by school districts and state legislatures to reallocate funds into initiatives that maintain the current school policing apparatus, such as youth-informed training for school police officers, will--at best--provide a temporary solution for a deeply rooted manifestation of structural racism. As rural school districts reduce their reliance on traditional memoranda of

understanding with local law enforcement agencies, advocates should capitalize on calls for true investments in resources that will make schools welcoming and nurturing environments--more academic resources, mental health personnel, and restorative justice implementation.” Andrew Hairston, *Toward the End of School Policing in Texas and Arkansas*, 42 U. ARK. LITTLE ROCK L. REV. 753, 762 (2020) (discussing how schools in the South, specifically in Arkansas, are places that should focus on creating law enforcement free learning zones).

18. **The presence of SROs in public schools have even been identified as a reason for expanding school choice and promoting charter schools, which extract money from the public school system.** See Daniel E. Rauch, *School Choice Architecture*, 34 YALE L. & POL'Y REV. 187, 195 (2015) (discussing that parents should be given access to stats from school arrests and suspensions when choosing between schools).

2. FAYETTEVILLE: LOCAL SRO FACTS & PROBLEMS

19. Fayetteville Public Schools are not the exception, and data from our school system shows systemic bias and criminalization of the Fayetteville Public School System’s learning environment.
20. The SRO arrests of students in Fayetteville Public Schools demonstrate a dramatic racial bias and increasing number of arrests. In the 2016-2017 school year, 37 students were arrests by SROs and 60 percent were non-white students. In 2017-2018, 35 students were arrested by SROs and 68 percent were non-white. In 2018-2019, 65 students were arrested by SROs and 63 percent were non-white. In 2019-2020’s restricted school year, 42 students were arrested by SROs and 57 percent were non-

white. See Fayetteville Police Chief Mike Reynolds, *School Resource Officer Arrests for the 2016-2020 School Years* (August 13, 2020)⁷ (Exhibit 1).

21. Male students were more likely to be arrested than female students, and black male students were more likely to be re-arrested. *Id.* Overall, 62 percent of students arrested were non-white students and 71 percent were male. *Id.*
22. During the report's period, 152 of the arrests were school initiated (defined as by school staff), 30 were self-initiated (defined as by the SRO) and only 17 were the result of a complaint (defined as made by a student, parent, or victim). Overall, only 9 percent of SRO arrests were the result of a student, victim, or parent complaint. *Id.*
23. During the report's period, 57 percent of arrests were for non-violent actions, although the definition of violent is broad and is not broken down by type of offense. 88 percent of students arrested were cited and returned to their parent. The report does not include what school discipline resulted from the arrest.

PARTIES

24. **The Arkansas Justice Reform Coalition** is a statewide association dedicated to criminal justice reform, including equal justice, reducing mass incarceration and unnecessary criminalization of juvenile school students, founded in 2018 and based in Fayetteville, Arkansas. Prompted by concerns of its members and residents of Fayetteville, Arkansas, it brings this action to oppose the expansion of School Resource Officers in Fayetteville Public Schools. The existence of SROs nationwide, and locally, leads to an increased referral of students, as young as elementary school

⁷ Chief Reynolds report is available at <https://perma.cc/5T3T-NAFL>. The report only includes Black, Hispanic, and White, and Other as categories, and does not include any data for elementary schools. I quoted the number of students arrested. The number of arrests is higher because of re-arrests. The report only captures arrests by SROs, not referrals to law enforcement.

students, to law enforcement in a manner that shows systemic racial bias and disadvantages marginalized and low-income students while not making public school students safer.

25. **Sarah Moore** is a resident of Fayetteville, Arkansas, residing at 400 W. Patricia Lane, with children enrolled in the Fayetteville Public School System. Her school age children have experienced problems due, in part, to the absence of behavioral intervention specialists in Fayetteville Public Schools, and she and her family have been denied relief through the administrative channels of Fayetteville Public Schools or the presence of Fayetteville School Resource Officers.

JURISDICTION AND VENUE

26. This is an action for an emergency injunction pursuant to Arkansas Rule of Civil Procedure 65, and declaratory judgment under Arkansas Rule of Civil Procedure Rule 57. Jurisdiction is appropriate because the Arkansas Justice Reform Coalition is located in Fayetteville, and Sarah Moore (Plaintiffs) is a Fayetteville, Arkansas, resident and public school student parent. This case arises from the violation of the Fayetteville City Council of its *Rules of Order and Procedure of the Fayetteville City Council (City Council Rules)*. Jurisdiction is appropriate under Arkansas Code Annotated Section 16-13-201(a), which provides “circuit courts shall have original jurisdiction of all justiciable matters not otherwise assigned pursuant to the Arkansas Constitution.”

27. Venue is appropriate in Washington County, under Arkansas Code Annotated Section 16-60-101 because it is the county in which a substantial part of the event giving rise

to the cause of action occurred, and the county in which an individual defendant, Sarah Moore, resided at the time of the event giving rise to the cause of action.

28. It is the county where the Arkansas Justice Reform Coalition has its principal office in this state at the time of the event that created the cause of action.
29. Venue is also proper because the Plaintiffs assert their right to relief against the defendant jointly, severally, and arising out of the same occurrence; the existence of a the questions of law and material fact is common to all the plaintiffs; the common questions of law and material fact will predominate over Plaintiff's individual questions of law or material fact; and the interest of justice supports the joinder of the parties as plaintiffs in one civil action.

FACTS

30. This case centers on the Fayetteville City Council's improper attempt to reconsider for the second time a motion before the Council, *without* the unanimous consent of the Council.
31. On August 4, 2020, the Fayetteville City Council passed the initial resolution accepting a \$250,000 grant for the purpose of hiring new SROs to be stationed in Fayetteville public schools. The question presented in this initial resolution was whether to accept the proposed grant. *See Fayetteville City Council Resolution (August 4, 2020) (Exhibit 2).*
32. Following the initial vote, a motion to reconsider was properly made by a prevailing party member, Councilperson Sarah Marsh. A motion to reconsider is used when a Council member realizes that they might have made a decision without proper debate, or if information is received later in the meeting that impacts an earlier decision.

33. According to *Roberts Rules of Order (Roberts's Rules)*, and *City Council Rules*, a motion to reconsider is proper if made by a prevailing party member who voted with the prevailing side (whether for or against), unless the vote was by ballot, in which case votes are secret. *Roberts Rules* at 133; *City Council Rules*, Sec. 4; Reconsideration. (Exhibit 3).
34. This **first** motion to reconsider (made on August 4) was brought by a prevailing party member who wanted to require stronger credentials for the SRO hires. This is a sentiment echoed by many educational institutions and local community members whose interests the prevailing member was likely attempting to advance and protect.
35. The Fayetteville City Council then amended the initial resolution to include stronger credential requirements for any SRO hired through the proposed \$250,000 grant. After considering the amendment to the original issue presented, the prevailing party member was not satisfied with the more stringent credentials proposed in the amendment by the Council. The amended resolution was then voted down as the prevailing member changed her previous yes vote to a no vote.
36. Now Councilperson Teresa Turk has filed a motion dated August 7, 2020,—a nominally new motion, but really a **second motion to reconsider**—because it is a substantive motion to rehear the same issue. **The motion, and any grant approval arising from the motion, violates of the Fayetteville City Council's own rules.** See Council Member Turk's Motion. (Exhibit 4).

DISCUSSION

37. Another motion to reconsider the amended resolution cannot be made, at this point, without unanimous consent, pursuant to the *City Council Rules*. See *City Council Rules*, Sec. 4, Reconsideration. (Exhibit 3, relevant portion of the *City Council Rules*).
38. Despite this rule governing reconsideration, because unanimous consent is absent, some Fayetteville City Council members are attempting to circumvent the Fayetteville *City Council Rules* by purporting to reintroduce the resolution as a novel issue before the Council.
39. The City attorney's position is that, although the proposed resolution contains precisely the same issue, it is actually presenting a different question.
40. In an attempt to justify this violation of the Fayetteville City Council's own rules, the City states that "because the new resolution does not contain a section attempting to impose minimum employment standards for police officer applicants, there was never a vote to approve or deny only the acceptance of the \$250,000 grant by itself. Therefore, this is not the identical question and a proper Resolution for the City Council to consider." See City Attorney's Memo, (August 11 2020). (Exhibit 5).
41. The City of Fayetteville memo purports that they are removing the amendment in an attempt to persuade a member of the prevailing party to approve the \$250,000 grant. This is a misrepresentation of the circumstances that led to the vote. The initial resolution was the proposed \$250,000 for additional SRO officers in Fayetteville schools. The prevailing member in question voted that resolution down because the amendment did not require strong enough credentials for the SRO officers.

42. Simply because the resolution does not contain heightened credential requirements for SROs does not mean the resolution has been substantially altered to presents a new question. The question is precisely the same: should the City accept the money for this grant or not? *See* Council Person Teresa Turk’s Motion (Exhibit 4).
43. A resolution that has been altered immaterially cannot masquerade as a novel resolution to avoid the unanimous vote requirement. The substantive issue remains the same—whether or not to receive grants funds already applied for, for the funding of SROs.
44. Although the second resolution does not contain the amendments and specificity of the first resolution, asserting that is a novel resolution is false. It is only done so in an attempt to circumvent *City Council Rules* and avoid the unanimous approval that is necessary for the City Council reconsider the initial resolution a second time.
45. Claiming that the City is attempting to placate the concerns of City Council members by removing the amendment and voting again on the \$250,000 grant as a novel issue is an evasion of the City’s own rules.
46. The *City Council Rules* contains a Code of Ethics that states the following; “As the governing authority of the City of Fayetteville, Arkansas we, the Mayor and Council Members, adhere to the following ethics principles and pledge to conduct our affairs accordingly: Serve others, not ourselves; Use resources with efficiency and economy; Treat all people fairly; Use the power of our position for the well-being of our constituents; Create an environment of honesty, openness and integrity.”
47. In Fayetteville’s *City Council Rules*, at Section 2, it is written that for anything not articulated in these rules or the rules governing Arkansas municipal officials, “the

most recent edition of *Robert's Rules of Order* shall apply.” See *City Council Rules*, Sect. 2, Precedence of Motions.

48. In *Roberts's Rules*, in regards to reconsideration, the author warns of the potential for the evasion of valid reconsideration by forces claiming that a proposal is novel. Such a case is presented here and a declaratory judgment is sought to enforce the Rules as written and the spirit of the same.

49. Council Member Sarah Marsh originally intended to approve the receipt of the funds, and voted to do so. Then, as a member of the prevailing party, she moved to reconsider. Then she indicated her final intent to reject. Now the City is claiming Council Member Turk's new motion is a novel question. It is not because the Council voted on this precise issue previously, and cannot do so again without unanimous consent.

50. If the Council holds another vote on the question of whether to accept a \$250,000 grant for new SRO officers in Fayetteville Schools, it will be a violation of the Rules of Order and Procedure of the Fayetteville City Council and such a vote will not align with ethical requirements that the Council “Use the power of [their] position for the well-being of our constituents” and does not serve to “create an environment of honesty, openness and integrity.”

CONCLUSION & PRAYER FOR RELIEF

WHEREFORE, after a full hearing on this matter, Plaintiff respectfully requests that the court enter judgment according to the emergency injunction and declaratory relief sought, and any other appropriate relief. Specifically, Plaintiff asks the Court to order and declare the following:

(1) Enter an Declaratory Judgment that the Fayetteville City Council cannot reconsider consider the same issue without unanimous consent as required by the City's own rules; and,

(2) Enter an Emergency Injunction and Declaratory Judgment that the Fayetteville City Council is enjoined from accepting the grant proposed by Councilwoman Turk's unlawful motion unless unanimous consent is obtained by all Council members, as per the City's Own Rules; or

(3) Enter an Emergency Injunction that precludes the City of Fayetteville from accepting funds through an unlawful vote.

Respectfully submitted,

Arkansas Justice Reform Coalition;
Sarah Moore

By:



Matthew Bender, AR No. 2014105
PO Box 742
Tontitown, AR 72770
(479) 200-3497
matt@mattbenderlawyer.com

S/ Stephen Coger

Stephen Coger No. 2015197
Arkansas Justice Collective
director@arkansaslaw.org

CERTIFICATE OF SERVICE

I, Matthew Bender, do hereby certify that I have this 15th day of August, 2020, served a copy of the above and foregoing Complaint to City Attorney Kit Williams through the e-filing system, personal email, personal service, or certified mail.



Matthew Bender