

2010

# William A. Doyle v. Lehi City, Blythe Bay, Daniel Harrison, Amanda Len Mackintosh : Brief of Appellees

Utah Court of Appeals

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## Recommended Citation

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IN THE UTAH COURT OF APPEALS

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WILLIAM A. DOYLE, an individual,

Plaintiff/Appellant,

vs.

LEHI CITY, a Municipal Corporation,  
BLYTHE BRAY, an individual, DANIEL  
HARRISON, an individual, and AMANDA  
LEN MACKINTOSH, an individual,

Defendants/Appellees.

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Case No. 20100420

APPEAL FROM AN ORDER GRANTING SUMMARY JUDGMENT  
HON. LYNN DAVIS  
FOURTH JUDICIAL DISTRICT COURT IN AND FOR  
UTAH COUNTY, STATE OF UTAH

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**BRIEF OF APPELLEES**  
**LEHI CITY, BLYTHE BRAY, DANIEL HARRISON,**  
**and AMANDA LEN MACKINTOSH**

---

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FILED  
UTAH APPELLATE COURTS  
JAN 19 2011

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## **LIST OF PARTIES TO THE PROCEEDINGS**

All interested parties are identified in the caption on appeal.

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## JURISDICTION

Jurisdiction is proper in this Court pursuant to Utah Code Ann. § 78A-4-103(2)(j).

### ISSUES PRESENTED FOR REVIEW

Issue 1: Did the trial court correctly conclude that Appellees Bray and Harrison are entitled to qualified immunity from Doyle's first amendment claim because it was not clearly established that Appellant William Doyle ("Doyle") enjoyed a constitutionally protected interest in volunteering as a seasonal, unpaid youth baseball coach?

**A. Standard of Review:** This Court reviews grants of summary judgment *de novo* and for correctness. *See, e.g., Pratt v. Pugh*, 2010 UT App 219, ¶ 7, \_\_\_ P.3d \_\_\_ ("...[w]e review the [trial] court's decision to grant summary judgment for correctness, granting no deference to the [trial] court.")(quoting *Eldridge v. Farnsworth*, 2007 UT App 243, ¶ 18, 166 P.3d 639)(alterations in original).

**B. Preservation:** This issue was preserved in Appellees' memorandum in support of their motion for summary judgment. (R. 213-219).

Issue 2: Did the trial court correctly conclude that Bray and Harrison are entitled to qualified immunity from Doyle's equal protection claim because such claim is derivative of his first amendment claim, and because Appellees Bray and Harrison did not violate Doyle's equal protection rights?

**A. Standard of Review:** *See* standard of review for Issue 1.

**B. Preservation:** This issue was preserved in Appellees' memorandum in support of their motion for summary judgment. (R. 212-213).

Issue 3: Did the trial court correctly conclude that Appellee Lehi City is entitled to

summary judgment on Doyle's first amendment, equal protection and procedural due process claims because it is undisputed that the individual Appellees Bray and Harrison did not violate Doyle's constitutional rights?

**A. Standard of Review:** *See standard of review for Issue 1.*

**B. Preservation:** This issue was preserved in Appellees' memorandum in support of their motion for summary judgment. (R. 204-209).

**Issue 4:** Did the trial court correctly conclude that Lehi City is entitled to summary judgment on Doyle's procedural due process claim because there is no fourteenth amendment due process property or liberty interest arising from an unpaid, volunteer youth baseball coach position?

**A. Standard of Review:** *See standard of review for Issue 1.*

**B. Preservation:** This issue was preserved in Appellees' memorandum in support of their motion for summary judgment. (R. 207-208).

**Issue 5:** Did the trial court properly strike portions of the affidavits of Bridget Doyle, James Johnston, Alan Paul, Joyce Olson, Sharon Johnson, Stanley Crump, and Roger Dean, because the statements therein were inadmissible, conclusory, speculative, and not based upon personal knowledge?

**A. Standard of Review:** This Court reviews for correctness a grant of a motion to strike an affidavit submitted in support of a motion for summary judgment. *Brown v. Jorgensen*, 2006 UT App 168, ¶ 19, 136 P. 3d 1252.

**B. Preservation:** This issue was preserved in Appellees' memorandum in support of their motion to strike. (R. 354-361).

Issue 6: Did the trial court correctly conclude that Appellees are entitled to summary judgment on Doyle's defamation and breach of contract causes of action, because his statutory notice of claim did not contain any facts supporting those causes of action?

**A. Standard of Review:** *See* standard of review for Issue 1.

**B. Preservation:** This issue was preserved in Appellees' memorandum in support of their motion for summary judgment. (R. 204).

Issue 7: Should the trial court's ruling on Doyle's equitable estoppel claim be affirmed on the alternate bases that Doyle failed to adduce any evidence of detrimental reliance and because his statutory notice of claim did not contain any facts supporting that cause of action?

**A. Standard of Review:** An appellate court may affirm the judgment appealed from if it is sustainable on any legal ground or theory apparent on the record. *Bailey v. Bayles*, 2002 UT 58, ¶ 13, 52 P.3d 1158.

**B. Preservation:** This issue was preserved in Appellees' memorandum in support of their motion for summary judgment. (R. 204).

Issue 8: Should the trial court's ruling on Doyle's first amendment claim be affirmed on the alternate basis that summary judgment is appropriate because Appellant's speech was not constitutionally protected under the balancing test set forth in *Pickering v. Bd. of Educ.*, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968), and consequently there was no violation of Appellant's constitutional rights?

**A. Standard of Review:** *See* standard of review for Issue 7.

**B. Preservation:** This issue was preserved in Appellees' memorandum in support

of their motion for summary judgment. (R. 213-218).

**Issue 9:** Should the trial court's ruling in favor of Lehi City on Doyle's procedural due process claim be affirmed on the alternate basis that Lehi City afforded Doyle sufficient procedural protections and therefore did not violate Doyle's procedural due process rights?

**A. Standard of Review:** *See* standard of review for Issue 7.

**B. Preservation:** This issue was preserved in Appellees' memorandum in support of their motion for summary judgment. (R. 205).

**Issue 10:** Should the trial court's ruling on Doyle's defamation claim be affirmed on the alternate basis that Appellees are entitled to summary judgment on such claim because the statements alleged are not defamatory as a matter of law?

**A. Standard of Review:** *See* standard of review for Issue 7.

**B. Preservation:** This issue was preserved in Appellees' memorandum in support of their motion for summary judgment. (R. 202-204).

## DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

U.S. CONST. AMEND. I

U.S. CONST. AMEND. IV

Governmental Immunity Act of Utah - U.C.A. § 63G-7-101, *et seq.* (in relevant part)

Utah R. Civ. P. 56

These provisions are set forth in the Addendum.

## STATEMENT OF THE CASE AND STATEMENT OF FACTS

### *Background Regarding Lehi City Legacy Center*

Lehi City is a municipality that offers formalized youth sports programs to its residents at the Lehi "Legacy Center," a gym and sports center located in Lehi City. (R.

198-199). At all relevant times, Appellee Lehi City employed Appellee Dan Harrison as the Director of the Legacy Center and the Director of the Lehi City Recreation Department. (R. 198-199). Lehi City employed Appellee Blythe Bray as the Assistant Director of Recreation and the Legacy Center Program Coordinator, and Appellee Amanda Mackintosh as a youth sports field supervisor. (R. 154; 173-174; 198-199). Harrison supervised Bray, (R. 174; 198), and Bray supervised Mackintosh (R. 151).

Harrison oversaw all recreation services offered by Lehi City at the Legacy Center, and managed approximately 250 employees who work at the Legacy Center and its associated facilities. (R. 198). Bray was responsible for planning and carrying out the operations of all Legacy Center sports leagues, both youth and adult, such as managing player sign-ups, evaluating rules governing sports play, soliciting and reviewing volunteer coach applications, planning and conducting team drafts, scheduling games, and managing and tracking league play during the season. (R. 173; 198). Mackintosh was responsible for supervising league play at the field level, including managing and interacting with scorekeepers, umpires, players, coaches, spectators, and other Lehi City recreation employees. (R. 154).

*Appellees Fairly and Appropriately Implemented Rule Changes for the 2006 Season*

At the beginning of every sport season, the Legacy Center staff, including Bray, Harrison, and Mackintosh, implement changes to the rules governing individual sports. (R. 365-366; 399-400). Bray, Harrison, Mackintosh, and other staff meet to discuss the specific rules that should be modified. (R. 365-366; 400). The Legacy Center staff considers a variety of reasons for changing rules, including program coordinators'

experience in managing team play, player preference, efficient, smooth operation of the programs, scheduling issues, and player or coaching recommendations or requests. (R. 365-366; 400). The determination of which rules will be utilized lies squarely within the discretion of the Lehi City Recreation Department. (R. 365; 399). Lehi City is not required to operate by consensus or majority rule, or to take a vote regarding coaches' or players' preference regarding which rules should govern. (R. 365; 399).

One of the sports offered by the Legacy Center is youth baseball. (R. 198). The youth baseball season runs from approximately May through July. (R. 198). Prior to the commencement of the youth baseball season in 2006, the Legacy Center staff, including Bray, Harrison, and Mackintosh, decided to implement a few changes to the rules governing youth baseball. (R. 170; 365; 368-369; 399). The Utah Boys Baseball Association ("UBBA") rules governed the 2006 season play. (R. 169; 371-395; 401). However, the Legacy Center staff decided to modify the rules governing how to carry out the player draft for the 2006 season, (R. 169; 194), as well as the rule regarding which Lehi City team would attend the state baseball tournament. (R. 169-170; 194; 365-366; 369; 399). The Legacy Center staff implemented these rule changes prior to the start of the 2006 season. (R. 365; 368; 399).

#### *Appellant Doyle Volunteers to Coach*

Appellant William Doyle acted as a volunteer youth baseball coach in the nine and ten year old boys "Pinto League" during the 2006 season. (R. 128; 153; 173; 198). When Doyle applied to coach youth baseball in 2006, he filled out and signed a Volunteer Coach Application and Agreement, which contained a Volunteer Code of Conduct. (R.

125-127; 152-153; 171-173; 185; 196-197). In the Volunteer Code of Conduct, Doyle agreed, among other things:

- a. I agree to follow all policies and procedures established by Lehi City Recreation Department while volunteering;
- b. I will place the importance of sportsmanship, skill development, and physical well-being of assigned players ahead of any personal desire to win. I will adhere strictly to the rules of the game and not attempt to change or manipulate those rules to win or for any personal benefit.
- c. I will do my best to provide safe playing and practicing situations.
- d. I will lead by example, in demonstrating fair play and sportsmanship to all players. I will refrain from yelling, arguing, or showing disrespect of any kind to players, officials, coaches, parents, or spectators.
- e. I will not teach or allow rough or dirty tactics of play.
- f. I will remember that I am a youth sports coach and that the game is for children and not adults. I will remember that all participants deserve a right to fairness and equal playing time.
- g. I will not use profanity of any kind while coaching in games or practices. I will not put down or demoralize any players, coaches, parents, spectators, officials or Parks and Recreation Department staff.
- h. I understand that failure to abide by this "Code of Conduct" may result in disciplinary action up to and including termination of being a volunteer.

(R. 127; 152-153; 171-173; 185; 196-197).

By signing the Volunteer Agreement, Doyle further acquiesced as follows: "I understand that if I do not abide by the Volunteer 'Code of Conduct,' I may be removed as a volunteer, and may be prohibited from volunteering in the future." (R. 185). Doyle agrees that Lehi City can properly dismiss a coach for swearing, using foul language, arguing with others, and yelling in the presence of children. (R. 122; 125).

Lehi City did not monetarily compensate Doyle for volunteering as a youth baseball coach. (R. 128; 173; 197). Doyle did not receive any other tangible benefits

from Lehi City in exchange for volunteering as a youth baseball coach. (R. 128; 173; 197).

*Kimberly Martinez's Observations of Doyle's Conduct*

The SAGE Program is an educational program for parents of children enrolled in Legacy Center youth sports. (R. 151-152; 171; 195-196). SAGE stands for "Set a Good Example." (R. 151-152; 171; 195-196). The program encourages positive attitudes, fosters healthy goals for sports play, and teaches parents to keep the focus on the children having fun instead of winning. Parents must take the SAGE program as a prerequisite for their child enrolling in the league. (R. 151-152; 171; 195-196). SAGE is only required for parents of players; enrollment and completion of the SAGE program has no bearing on whether a person is entitled to coach a youth sports team. (R. 151-152).

Near the beginning of the 2006 youth baseball season, Doyle came to the Legacy Center registration desk to dispute the requirement that all parents of children enrolled in youth sports take the SAGE program. (R. 171; 196). Kimberly Martinez was working as the registration desk attendant. (R. 173; 198). Doyle approached Martinez and demanded that he be excepted from the requirement of attending the SAGE program. Doyle yelled and raised his voice at Martinez, and was visibly upset about the SAGE program requirement. (R. 173; 195).

Martinez reported her negative interaction with Doyle to Harrison and Bray immediately after it occurred. (R. 170; 195). Bray and Harrison observed that Martinez was noticeably shaken up by the way Doyle communicated with her. (R. 170; 195). Martinez filled out an incident report regarding her interaction with Doyle. (R. 181).

*Appellee Blythe Bray's Observations of Doyle's Conduct*

During the 2006 season, Bray attended about half of the boys youth baseball games held on a weekly basis. (R. 170; 195). Bray observed Doyle engage in several instances of conduct during the 2006 season that she personally believed violated the Volunteer Code of Conduct. (R. 170; 195). On May 25, 2006, Doyle yelled and raised his voice at Bray regarding the rule changes that the Legacy Center had implemented for the 2006 youth baseball season. (R. 168-170; 194-195). Bray felt threatened and intimidated by Doyle's behavior. (R. 168; 194). Doyle admits that he was "upset" with Bray that day, and that he raised his voice at Bray when talking to her about the tournament automatic bid issue. (R. 107). Doyle admits that he said "bull" to Bray when talking to her about the issue of automatic bids to the state tournament. (R. 119). Bray filled out an incident report after this incident occurred. (R. 160).

On approximately June 17, 2006, Bray learned that Doyle's assistant coach was involved in a verbal altercation with the coach of another team. (R. 168). A few days later, on June 19, 2006, Doyle barged into Bray's office after regular business hours and without an appointment with the intent to discuss what happened during the verbal altercation. (R. 167-168; 193). Despite not having an appointment and not being invited in, Doyle, Doyle's wife Bridget, Doyle's assistant coach, and Doyle's father, all forced themselves into Bray's office. (R. 168; 193). During the meeting, Doyle raised his voice at Bray and was angry about Bray's assessment of the situation involving the assistant coaches. (R. 168; 193). Bray felt ambushed and threatened by Doyle on June 19, 2006. (R. 167-168; 193). Bray filled out an incident report regarding this incident. (R. 157).

During a later incident in June of 2006, Doyle yelled at Bray about his frustration with the manner in which the youth baseball draft was conducted and the way the teams were selected for state tournaments. (R. 167; 193). On that occasion, Bray heard Doyle use inappropriate language in the presence and within earshot of youth baseball players, including the terms “bullshit” and “dammit.” (R. 167; 193).

*Appellee Amanda Mackintosh's Observations of Doyle's Conduct*

As a field supervisor during the 2006 season, (R. 154; 173; 198), Mackintosh observed instances of Doyle's conduct that she personally believed violated the Volunteer Code of Conduct. (R. 151). Mackintosh was familiar with the Volunteer Code of Conduct at all relevant times during the 2006 season. (R. 152). Mackintosh observed Doyle yelling and screaming in front of players approximately 10-15 times during the 2006 season. (R. 151). On multiple occasions, Mackintosh observed Doyle swear and use foul language in front of players, including the statement, “that's a bullshit call.” (R. 151).

Mackintosh saw Doyle become furious over the Legacy Center's decision to allow girls' teams to use the boys' playing fields, and she heard Doyle state that he would “report it to the media” if girls used the boys' field. (R. 151). Mackintosh observed Doyle engage in a verbal yelling altercation with another coach over an umpire's decision. (R. 151). An uncomfortable spectator told Mackintosh that Doyle was instructing rough tactics of play by telling his players to knock over the other team's players if they did not get out of the way. (R. 150-151).

Mackintosh observed Doyle screaming at scorekeepers and threatening the

scorekeeper to “pay attention” and to add a point for his team. (R. 150). Mackintosh overheard Doyle cursing about the scorekeeper’s decision while descending the stairs from the scorekeeper’s tower, including using the term “bullshit.” (R. 150). One scorekeeper was so upset by Doyle’s actions that the scorekeeper told Mackintosh that she was going to quit, but Mackintosh convinced her to stay by promising that she would not have to score any of Doyle’s games. (R. 150). Doyle’s temper was so bad that Mackintosh was scared every time he approached her. (R. 143-146; 149).

In June of 2006, Doyle told Mackintosh that he was going to circulate a petition to get Appellee Bray fired. (R. 150). When Mackintosh asked Doyle why he would circulate a petition to try to get Blythe fired, Doyle told her that Blythe was “dumb” and “doesn’t know anything.” (R. 150).

*Doyle Attempts to Override Bray’s Interpretation of 2006 City Tournament Rules*

At the end of regular season play in 2006, the Legacy Center held the Lehi City youth baseball tournament. (R. 401). During the tournament, Doyle tried to assert an unfair advantage for his team, which was playing in the tournament, by incorrectly claiming that an opposing team’s pitcher had exceeded the number of allowed pitched “outs,” thus requiring the game to be forfeited. (R. 401). The rule at issue is contained in the Utah Boys Baseball Association (“UBBA”) rulebook and provides for a limitation on the number of “outs” a youth player can pitch. (R. 381-382). As applied to Pinto league, the league in which Doyle’s team played, the rule provided for a weekly maximum of 18 outs for regular league play and 24 outs for tournament play. (R. 381-382; 401).

During the tournament, Doyle claimed that the other team’s pitcher had exceeded the

number of 24 allowed outs by pitching more than that amount in a week, and thus that the other team had forfeited the game. (R. 400-401). Doyle's position was that the player's pitches in another league's game counted toward the number of outs the player could pitch in a week in Lehi City games. (R. 400). The other league was a non-Lehi City, non-UBBA league. (R. 400). Bray disagreed with Doyle's interpretation of the rule because the rule as written was not clear regarding whether pitches made in another league would count toward the number of pitched outs allowed in Lehi City league play. (R. 400). Bray took the position that, because Lehi City has no means of accurately tracking and recording a player's pitches made in non-Lehi City games, such pitched "outs" should not count toward the number of outs a pitcher could pitch in Lehi City league play, and as such, there was no basis for Doyle's claim that game at issue should be forfeited. (R. 400). Ultimately, Bray decided not to force the issue further, despite her official position on the matter. (R. 400).

#### *Bray Expresses Concerns to Harrison Regarding Doyle's Conduct*

In July of 2006, at the conclusion of the season, Bray went to her supervisor, Dan Harrison, to discuss her concerns regarding Doyle's violations of the Volunteer Code of Conduct. (R. 166; 192). Bray discussed with Harrison each incident regarding Doyle's improper conduct and her concerns regarding the bad example Doyle was giving to youth sports participants. (R. 166; 192). Bray and Harrison decided to wait until the following season to see if Doyle would apply for a volunteer coaching position before deciding on the appropriate course of action. (R. 166; 192).

#### *Doyle Applies to Coach in 2007 Season*

In late March of 2007, Doyle submitted a Volunteer Coach Application. (R. 166;

192). Bray and Harrison met to discuss their response to the application. (R. 166; 191-192). Per Harrison's request, Bray prepared a list of each incident of Doyle's conduct during the 2006 season that she believed violated the Volunteer Code of Conduct or which she believed was disruptive to the program, its employees, and other volunteers. (R. 166; 183; 191). Harrison also asked Bray to determine whether there were enough other coaches to cover all of the available coaching spots. Bray reviewed the coaching applications and told Harrison there were enough other volunteers to fill the available spots for the 2007 season. (R. 165; 191). Bray and Harrison jointly decided that other volunteers should be given the opportunity to participate with priority over Doyle, and decided not to select him for a coaching position in 2007. This decision was based upon the numerous observations of Doyle's improper conduct by Bray, Martinez, and Mackintosh. (R. 165-166; 191).

On or about March 26, 2007, Harrison called Doyle and asked him to come to Harrison's office to discuss the upcoming season. (R. 164; 190). On March 27, 2007, Doyle came to Harrison's office at the Legacy Center. (R. 164; 190). Harrison informed Doyle of the decision not to select him as a coach for the 2007 season due to the numerous reports of him acting in an inappropriate manner in the presence of players. (R. 164; 190). Harrison told Doyle that they would consider his application as a youth baseball coach for the 2008 season. (R. 190). Harrison discussed with Doyle the list of various incidents that Bray prepared. (R. 183; 190).

After the meeting with Doyle, Harrison asked registration attendant Kimberly Martinez to prepare an incident report regarding her interaction with Doyle when he

yelled at her about the SAGE program at the beginning of the 2006 season. (R. 181; 190). Additionally, Harrison asked Amanda Mackintosh to make a written record of her interactions with Doyle in which she believed he acted inappropriately. (R. 179; 189). The purpose of Harrison's requests of Martinez and Mackintosh was to make a written record of the facts. (R. 189). Harrison clearly instructed both Martinez and Mackintosh to indicate in their statements both the date on which the statement was prepared and the dates on which the incidents occurred. (R. 189).

After the March 27, 2007 meeting, Harrison talked to another Lehi City employee, Legacy Center site supervisor Roy Pearson. (R. 189). Mr. Pearson told Harrison that he had also observed Doyle yelling at coaches and umpires, cursing, and repeatedly arguing with scorekeepers. (R. 189).

Doyle was displeased with the decision not to select him as a volunteer coach for the 2007 season, so he requested a meeting with Lehi City Assistant City Administrator Ron Foggin and City Administrator Jamie Davidson. (R. 164; 189). Lehi City Risk Manager Scott Sampson called Doyle to inform him that Lehi was standing by its decision not to select Doyle as a coach for the 2007 season due to Doyle's observed improper conduct reported by numerous individuals and because there were enough other volunteers to fill all available spots. (R. 164; 189). Sometime after Sampson's call, Doyle purchased, for \$3,500, billboard space along southbound I-15 near Lehi City, with a picture of two skunks and the phrase "Something stinks in Lehi City Recreation." (R. 140-141; 149; 164; 189). The billboard referred viewers to Doyle's website, [www.citystinkers.com](http://www.citystinkers.com). (R. 104; 140-141; 149; 164; 189).

Doyle persisted in his request for a meeting with Lehi City representatives. (R. 188-189). In response, Lehi City representatives scheduled a meeting for May 3, 2007. (R. 164; 188-189). Present at the meeting were Doyle, Doyle's attorney, Doyle's father-in-law, Lehi City Mayor Howard Johnson, Assistant City Administrator Ron Foggin, and Risk Manager Scott Sampson. (R. 163-164; 188-189). Lehi representatives told Doyle during the meeting that if he would agree to take down the billboard and the website, they would agree to allow him to serve as a coach in the 2007 season, conditioned upon his good behavior. (R. 163; 188). Doyle would not agree to take down his billboard and his website at the conclusion of the meeting. (R. 163; 188)

Following the May 3, 2007 meeting with Lehi City representatives, Doyle sent several baked and iced cakes to various Lehi City departments emblazoned with the skunks and statement "Something Stinks in Lehi City Recreation." (R. 136-138; 163; 188).

Per Doyle's request, Lehi City arranged for another meeting between Doyle and Lehi City representatives on May 16, 2007, where the Lehi City Mayor and the City Attorney were present. (R. 102; 188). At the conclusion of the May 16, 2007 meeting, Lehi representatives told Doyle they were standing by their decision regarding the 2007 season, but that Doyle could apply to coach in 2008. (R. 188).

Doyle admits he had the opportunity to be heard by City representatives. (R. 101-102).

#### *Doyle's Alleged First Amendment "Protected Speech"*

In his deposition during the proceedings before the trial court, Doyle identified

five topic areas that he spoke about during the 2006 season that he claims form the basis of his first amendment claims:

- a. Talking to Bray about the manner in which the Pinto league player draft was conducted (R. 120A);
- b. Talking to Bray about the manner in which the Pinto league teams would be selected for the state tournament and whether the winning team from seasonal play would have an “automatic bid” to the state tournament; (R. 120);
- c. Complaining about players not complying with the “over-pitching” rule (R. 120);
- d. Discussing a possible petition to change the rules in youth sports with other coaches, which petition Doyle admits he never circulated in a written form (R. 112-113); and,
- e. Going to Blythe’s office with assistant coach Troy, wife Bridget, and father without an appointment (R. 114; 116-117).

Doyle admits that all of the subject matters of his alleged speech relate to his activities as a volunteer baseball coach. (R. 115). Doyle admits that his speech was made while he was engaged in and in furtherance of his volunteer coaching responsibilities. (R. 115). Doyle admits that whether a particular rule is used in youth baseball only has an impact on those individuals who have a relationship to the league, such as players, coaches, and Lehi recreation employees, and that community members who do not have any interest in youth sports, are not affected by which rules are used. (R. 109-111).

During the 2006 season, Bray was open to discussing with Doyle the issues regarding the draft, the automatic bid, and the over pitching rule, but she felt threatened and uncomfortable when Doyle yelled, screamed and used foul language when talking to her. (R. 167; 193). The subject of Doyle’s speech in each of the five specified areas was not a basis for the decision not to select Doyle as a coach for 2007. (R. 165; 190-192).

*Harrison Unaware of Any Other Coaches like Doyle*

In Harrison's tenure with Lehi City, he is not aware of any other youth sports coach who has ever been reported to have engaged in repeated unsportsmanlike conduct in violation of the Volunteer Coach Code of Conduct, such as verbally abusing Lehi employees, swearing in front of children, arguing with officials, and threatening and intimidating players, spectators, and other volunteers. (R. 187). If Harrison had ever learned of any other individuals conducting themselves in the same or similar manner as Doyle conducted himself in the 2006 season, Harrison would have directed his staff to take the same action against those individuals as was taken against Doyle. (R. 187).

*Doyle's Admits He Had No Contract for Volunteer Coaching  
and Suffered No Financial Harm*

Doyle admits that he did not have a contract with Lehi guaranteeing him a volunteer coach position in the 2007 season. (R. 108). Although Doyle claims that Bray told him at the end of the 2006 season that Lehi "needed more coaches" like Doyle, (R. 108), Bray denies that she ever made this statement or represented to Doyle or his wife that Doyle would be selected as a coach for the 2007 youth baseball season. (R. 363; 397). Doyle admits that he has not suffered any financial harm as a result of Lehi's decision not to select him as a coach for the 2007 season. (R. 101).

*Doyle's Notice of Claim*

On November 28, 2007, Doyle served Lehi City and the individual Appellees with an Amended Notice of Claim. (R. 131-134). Doyle's Amended Notice of Claim makes no mention of facts supporting causes of action for defamation, breach of contract, or

equitable estoppel. (R. 131-134).

### *Procedural History*

Doyle filed his Complaint on September 6, 2007 and his Amended Complaint on August 29, 2008. (R. 1-20; 38-61). Doyle did not conduct any depositions during the fact discovery time period. (*See generally*, record). On August 7, 2009, the deadline for dispositive motions, Appellees filed their motion for summary judgment. (R. 97-100; 101-245). Doyle filed his memorandum in opposition to Appellees' motion for summary judgment on August 31, 2009, along with various affidavits. (R. 353-361). Appellees filed their reply memorandum in support of their motion for summary judgment on September 21, 2009 (R. 362-422), along with a motion to strike Doyle's affidavits. (R. 353-361).

Doyle filed his memorandum in opposition to the motion to strike on October 5, 2009 (R. 423-428), and Appellees filed their reply on October 19, 2009 (R. 429-435). The district court held two hearings on Appellees' motions, on December 14, 2009 (R. 475, p. 1-45) and January 11, 2010 (R. 476, p. 1-47). The district court issued its memorandum decision granting summary judgment in favor of Appellees on March 23, 2010. (R. 443-464). The district court further granted Appellees' motion to strike in part, excluding certain paragraphs of Doyle's supporting affidavits. (R. 452-454). On May 3, 2010, the trial court signed its order granting Appellees' motion for summary judgment and motion to strike. (R. 465-467). On May 10, 2010, Doyle filed his Notice of Appeal. (R. 468-470).

### **SUMMARY OF ARGUMENT**

This Court should affirm the trial court's summary judgment in favor of Appellees Lehi City, Blythe Bray, Daniel Harrison, and Amanda Mackintosh on all of Doyle's causes

of action against them. The trial court correctly found that Bray and Harrison are entitled to qualified immunity from Doyle's first amendment and equal protection claims. It was not clearly established at the time of the conduct at issue that a volunteer enjoys such constitutional protections. Moreover, even if it was clearly established, the trial court's decision should be affirmed on the alternate basis that Bray and Harrison did not violate any of Doyle's first amendment or equal protection rights.

The trial court's summary judgment in favor of Lehi City on Doyle's first amendment and equal protection claims should also be affirmed, because the individual Appellees did not violate Doyle's constitutional rights, and even if they did, Doyle failed to show any evidence that Lehi City had a municipal policy or custom that was the moving force behind the individual Appellees' alleged constitutional violations. Lehi is also entitled to summary judgment on Doyle's procedural due process claim because volunteers do not enjoy procedural due process protections, and, even if they do, Doyle had no specific liberty or property interest in this case arising out of his volunteer coach position.

This Court should also affirm the trial court's summary judgment on Doyle's defamation, breach of contract, and equitable estoppel claims. Summary judgment was warranted on Doyle's defamation, equitable estoppel and breach of contract claims because no facts supporting those claims were set forth in Doyle's notice of claim. Lastly, the Court should affirm the trial court's summary judgment in favor of Appellees on Doyle's equitable estoppel claim, because Doyle did not show evidence of any detrimental reliance, and his defamation claim, because the statements alleged are not defamatory as a matter of law.

## ARGUMENT

### **I. THIS COURT SHOULD AFFIRM SUMMARY JUDGMENT IN FAVOR OF APPELLEES BRAY AND HARRISON BECAUSE THEY POSSESS QUALIFIED IMMUNITY FROM DOYLE'S CONSTITUTIONAL CLAIMS.**

Government officials performing discretionary functions are protected by qualified immunity from lawsuits under 42 U.S.C. § 1983 alleging constitutional violations, so long as the official's "conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Gomes v. Wood*, 451 F.3d 1122, 1134 (10th Cir. 2006) (internal quotations omitted). Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 334, 341, 106 S.Ct. 1092, 89 L.E.2d 271 (1986). When a state official asserts qualified immunity, he raises a rebuttable presumption that he is immune from the plaintiff's 42 U.S.C. § 1983 claims. *See Medina v. Cram*, 252 F.3d 1124, 1129 (10th Cir. 2001).

In order to overcome the presumption of qualified immunity, the plaintiff bears the initial "heavy burden" of showing that the defendant's conduct violated one of the plaintiff's constitutional rights. *Reynolds v. Powell*, 370 F.3d 1028, 1090 (10th Cir. 2004); *Brosseau v. Haugen*, 543 U.S. 194, 198, 125 S.Ct. 596, 160 L.E.2d 583 (2004). The determinative question is: "Taken in the light most favorable to the party asserting the injury, do the facts alleged show the [government official]'s conduct violated a constitutional right?" *Kirkland v. St. Vrain Valley Sch. Dist.*, 464 F.3d 1182, 1188 (10th Cir. 2006). If the government actor's conduct did not violate one of the plaintiff's

constitutional rights, qualified immunity is appropriate as a matter of law. *See Saucier v. Katz*, 533 U.S. 194, 201-02 (2001).

However, if the plaintiff satisfies his initial burden of showing evidence of a constitutional violation, the plaintiff must still proceed to meet the second burden of demonstrating that the constitutional right allegedly violated was clearly established, on a specific level, at the time of the conduct at issue. *Brosseau*, 543 U.S. at 199. The plaintiff must show that “[t]he contours of the right [were] sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Brosseau*, 543 U.S. at 201. This involves setting forth prior case law that specifically addresses and “squarely governs” the factual situation the defendant confronted to demonstrate a right is clearly established. *Brosseau*, *supra* at 200-201. “For the law to be clearly established, there must be a Supreme Court or Tenth Circuit decision on point, or the clearly established weight of authority from other courts must be as plaintiff maintains.” *Foote v. Spiegel*, 118 F.3d 1416, 1424 (10th Cir.1997). Qualified immunity may be denied only if it is “obvious” under prior case law that a reasonably competent officer would have realized that his actions were unconstitutional. *Gomes*, *supra*, at 1134.

Courts have discretion as to the order in which to apply the qualified immunity test. *Pearson v. Callahan*, 555 U.S. 223, 129 S.Ct. 808, 818, 172 L.Ed.2d 565 (2009). In cases where the constitutional issues are complex, it is permissible to evaluate whether a right is clearly established prior to analyzing whether the facts show a violation of a constitutional right. *Id.*

**a. First Amendment**

Doyle claims that Bray and Harrison decided not to select him as a coach for the 2007 season because he: 1) spoke regarding “matters of fairness and safety” (Aplt. Brief at p. 8); 2) spoke regarding “improper operation of recreational programs in Lehi City” (Aplt. Brief at 31); and 3) “raised concerns about changes in the recreational program” (Aplt. Brief at p. 29). Beyond these vague and conclusory descriptions of his alleged speech, Doyle never specifically identifies for this Court the exact comments he claims to have made regarding fairness, safety, improper operation, or concerns about changes.

As explained below, however, Bray and Harrison are entitled to qualified immunity from Doyle’s first amendment claim because it was not clearly established in 2007 that volunteers enjoyed first amendment protections, and because Doyle’s speech was not constitutionally protected, such that Bray and Harrison did not violate his first amendment rights even if their decision not to select him as a coach was premised upon his speech.

*i. It was not clearly established in 2007 that a volunteer is entitled to first amendment protection.*

At the time of Bray and Harrison’s decision not to select Doyle as a coach, it was not clearly established that a volunteer who engaged in allegedly protected speech regarding his volunteer position possessed a protected interest under the First Amendment to the United States Constitution. Generally speaking, “[t]he First Amendment prohibits government officials from subjecting an individual to retaliatory actions ... for speaking out.” *Hartman v. Moore*, 547 U.S. 250, 256, 126 S.Ct. 1695, 164 L.Ed.2d 441 (2006). However, neither the United States Supreme Court nor the Tenth Circuit has ever

extended such protections to volunteers.

In order to overcome the rebuttable presumption that Bray and Harrison are entitled to qualified immunity from this claim, Doyle must point to a prior case from the Supreme Court or Tenth Circuit extending First Amendment protections to a volunteer. Doyle has not satisfied this burden, because no such prior law exists. There is no prior case law from the Tenth Circuit or the Supreme Court that specifically addresses and “squarely governs” the factual situation presented here, *Brosseau*, 543 U.S. at 200-201, holding that an unpaid volunteer who receives no monetary compensation or attendant tangible benefits is entitled to first amendment protection in his volunteer position.

To argue the volunteer’s right was clearly established, Doyle relies on a sole Tenth Circuit case, *Anderson v. McCotter*, 100 F.3d 723 (10th Cir. 1996). However, the trial court correctly concluded that *Anderson* does not clearly establish a volunteer’s first amendment right for qualified immunity purposes, because the *Anderson* court expressly concluded that the plaintiff there was not a volunteer, and instead was a public employee, because she received monetary compensation and college credit in exchange for her service. *Id.* at 726. (“The uncontroverted facts indicate that Ms. Anderson was, for all relevant purposes, a public employee...” ) Indeed, the Tenth Circuit went so far as to make clear that it was not deciding the issue of whether a volunteers’ right was clearly established. *Id.* at 729 (“We need not decide whether it was clearly established before this case that volunteers had *Pickering* protection, because Ms. Anderson was not a volunteer.”)

Because the Tenth Circuit found Ms. Anderson to be a public employee and not a

volunteer, the *Anderson* Court's comment regarding the constitutional protections a volunteer might enjoy was unnecessary to the court's ultimate decision in the case and therefore was *dicta*. The Utah Supreme Court has repeatedly observed that dicta "never carries the force of law." *Bingham v. Roosevelt City Corporation*, 2010 UT 37, ¶ 23. It has long been recognized that "the avoidance of constitutional dicta is itself desirable[.]" *Ehrlich v. Town of Glastonbury*, 348 F.3d 48, 56 (2d Cir. 2003).

In *Hope v. Pelzer*, a qualified immunity case, the United States Supreme Court expressly concluded that dicta statements of another court "d[id] not come close to clearly establishing the unconstitutionality" of the conduct at issue in that case. 536 U.S. 730, 762, 122 S. Ct. 2508, 2527, 153 L. Ed. 2d 666 (2002). Indeed, numerous other courts have so held. *See, e.g., Hamilton v. Cannon*, 80 F.3d 1525, 1530 (11th Cir.1996)("The law cannot be established by dicta. Dicta is particularly unhelpful in qualified immunity cases where we seek to identify clearly established law."); *Jones v. White*, 992 F.2d 1548, 1566 (11th Cir. 1993)("[F]or law-of-the-circuit purposes ... [the review of any precedent] ought to focus far more on the judicial decision than on the judicial opinion." (citation and quotation marks omitted) (alterations in original)); *Atiyeh v. Hairston*, 1993 WL 532976 (E.D. Pa. Dec. 22, 1993)("The dicta ... was insufficient to create a clearly established right to be free from malicious use of process. No case law has recognized dicta as the declaration of a clearly established right. Further, qualified immunity is intended to allow officials reasonably to anticipate when their conduct may give rise to liability for damages. A statement in dicta does not put defendants on notice that their actions may violate the constitution.")(internal citations omitted). Consequently, any

suggestion by the *Anderson* Court in dicta that a volunteer might be entitled to first amendment protections do not serve to clearly establish this right in the Tenth Circuit.<sup>1</sup> Accordingly, Bray and Harrison are entitled to qualified immunity.

ii. *Under the balancing test set forth in Pickering v. Board of Education, Bray and Harrison did not violate Doyle's first amendment rights.*

Even assuming *arguendo* that a volunteer enjoys a similar first amendment protection as that of an employee, Bray and Harrison are nonetheless entitled to qualified immunity because Doyle's speech does not meet the standard set forth in *Pickering v. Bd. of Educ.*, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968). Under that case, a four-step analysis is used to resolve an employee's first amendment retaliation claim and the question of whether his or her speech is protected by the first amendment. *Id.*; *see also*, *Connick v. Myers*, 461 U.S. 138, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983).

First, a court must determine whether the employee's speech can be "fairly characterized as constituting speech on a matter of public concern." *Id.* at 146, 103 S.Ct. 1684. If the speech does not touch upon a matter of public concern, there is no first amendment interest. Second, if the speech is regarding a matter of public concern, the court must then balance the employee's interest as a citizen, in commenting upon matters

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<sup>1</sup> While there is some authority from other circuits for the notion that "lucid and unambiguous dicta concerning the existence of a constitutional right can without more make that right 'clearly established' for purposes of a qualified immunity analysis," *Wilkinson v. Russell*, 182 F.3d 89, 112 (2d Cir.1999) (Calabresi, J., concurring); *see also Hanes v. Zurick*, 578 F.3d 491, 496 (7th Cir.2009) ("[E]ven dicta may clearly establish a right."), the Tenth Circuit has never adopted such a standard. Moreover, even if it had, the brief statement in *Anderson* upon which Doyle relies falls entirely short of meeting the standard of "lucid and unambiguous."

of public concern, against “the interest of the State, as an employer, in promoting the efficiency of the public service it performs through its employees.” *Pickering*, 391 U.S. at 568, 88 S.Ct. 1731.

Only if the balance tips in favor of the employee does the analysis reach the third step, which requires the plaintiff to “prove that the protected speech was a ‘motivating factor’ in the detrimental employment decision.” *Id.* (internal quotation marks and citation omitted). If the plaintiff makes this showing, the burden shifts “to the employer to show by a preponderance of evidence that it would have reached the same decision in the absence of the protected activity.” *Id.*; *see also Dill v. City of Edmond*, 155 F.3d 1193, 1201 (10th Cir. 1998). “[A]pplication of the *Pickering* balancing test is a question of law[.]” *Gardetto v. Mason*, 100 F.3d 803, 812 (10th Cir. 1996).

### **1. *Pickering* First Element – Matter of Public Concern**

Doyle never specifies in his brief on appeal the exact speech that he claims is constitutionally protected, beyond vague claims that he spoke out regarding “matters of fairness and safety” (Aplt. Brief at p. 8), “improper operation of recreational programs in Lehi City” (Aplt. Brief at 31), and “raised concerns about changes in the recreational program” (Aplt. Brief at p. 29). In his deposition in the proceedings below, however, Doyle identified five topic areas which he claims are protected speech under the first amendment, including: 1) talking to Bray about the Pinto league player draft; 2) talking to Bray about how the state tournament and whether the winning team from seasonal play would have an “automatic bid;” 3) talking to Bray about the “over-pitching” rule; 4) talking about a possible petition to change the rules in youth sports; and 5) talking with Bray at her

office about an incident involving Doyle's assistant coach and a coach from another team. However, as explained below, none of these subject areas is entitled to first amendment protection because they do not implicate matters of public concern.

Speech may involve public concern if it can "be fairly considered as relating to any matter of political, social, or other concern to the community." *Connick v. Myers*, 461 U.S. 138, 146, 103 S.Ct. 1684, 1689, 75 L.Ed.2d 708 (1983). In determining whether speech is on a matter of public concern, the Court must consider "the content, form, and context of a given statement, as revealed by the whole record." *Id.* at 147-48, 103 S.Ct. at 1689-90; *O'Donnell v. Yanchulis*, 875 F.2d 1059, 1061 (3d Cir.1989) (quoting *Connick*).

Doyle admits that whether a particular rule is used in a youth baseball league only has a potential impact on individuals who have a relationship to the league, such as players, coaches, and recreation employees. Doyle admits that community members who do not have any interest in youth sports would not be affected by which rules are used. (R. 109-110). As such, Doyle's speech regarding internal rules governing nine and ten year old children's sports cannot "be fairly considered as relating to any matter of political, social, or other concern to the community." *Connick, supra*.

Additionally, the content, form, and context of Doyle's comments show that they do not implicate matters of public concern. The content involves matters internal to a city youth sports league, including how to do a player draft, how to select a team for a tournament, and how many pitches a youth player can pitch. The form of Doyle's comments was verbally abusive, aggressive, expletive-ridden, and hostile, as reported by Bray, Mackintosh, and Martinez. By Doyle's own admission, he was upset, raised his

voice, and used the term “bull” when communicating with Bray. The context of Doyle’s speech was during Doyle’s performance of his volunteer coaching responsibilities, as the speech was made to others who were also attempting to perform either their employment or volunteer responsibilities with Lehi City. Doyle admitted in his deposition that members of the general public in Lehi who have no relationship to youth sports will not have any concern in the specific rules applicable to nine and ten year old boys little league play. (R. 109-110). Doyle’s statements do not address matters of public concern.

Moreover, numerous cases establish that “speech relating to tasks within an employee’s uncontested employment responsibilities is not protected from regulation” and generally does not implicate matters of public concern. *Brammer-Hoelter v. Twin Peaks Charter Academy*, 492 F.3d 1192, 1203 (10th Cir. 2007). “This may be true even though the speech concerns an unusual aspect of an employee’s job that is not part of his everyday functions.” *Id.*; see also, *Battle v. Bd. of Regents*, 468 F.3d 755, 761 n. 6 (11th Cir. 2006) (per curiam). An issue “internal to the workplace” is typically not a matter of public concern. *Anderson, supra*, 100 F. 3d at 728.

The topics of Doyle’s speech are all “internal to the workplace” and therefore do not implicate matters of public concern. All of his speech pertains directly to his responsibilities as a volunteer baseball coach and matters “internal to” the volunteer workplace, including the player draft, the state tournament, the over pitching rule, and one coach’s altercation with another coach. Therefore, the statements do not implicate matters of public concern and do not constitute protected speech. *Brammer-Hoelter, supra*, at 1203.

Moreover, because Doyle's speech does not implicate matters of public concern, Bray and Harrison did not violate his first amendment rights *even if* their decision not to hire Doyle was based upon him engaging in such speech. This is a vital distinction, because Doyle primarily argues on appeal that summary judgment in favor of Appellees should be reversed because Bray and Harrison's "motives" for not selecting Doyle as a coach for the 2007 season involve genuine disputes of material fact that preclude judgment as a matter of law. (Aplt. Brief at p. 29). However, because Doyle's speech is not regarding a matter of public concern, it does not matter why Bray and Harrison decided not to select him as a volunteer, and they were entitled to not select Doyle as a volunteer, *even if* their decision was based squarely upon Doyle's speech. Therefore, even if Bray and Harrison decided not to re-select Doyle as a coach due to the content of his speech, such decision did not violate Doyle's first amendment rights. Bray and Harrison are entitled to qualified immunity on this basis alone.

## **2. *Pickering* Second Element – Balancing of Interests**

If the Court concludes that Doyle's speech does relate to matters of public concern, the second prong of the *Pickering* balancing test requires the Court to balance Doyle's and Lehi City's competing interests in the speech at issue. Even then, Doyle's speech is still not protected under the first amendment because Lehi City's interest in regulating Doyle's speech outweighs Doyle's interest in commenting about such matters.

On Doyle's side of the balance, the Court should consider the interests of the public in receiving his speech. On Appellees' side of the balance, the Court must weigh Lehi City's interests in ensuring that youth players receive the highest quality instruction

from calm, even tempered coaches who set positive examples and conduct themselves in accordance with the Volunteer Code of Conduct. Additionally, under well recognized law, Lehi has a legitimate interest the efficient administration of and avoiding disruption to its youth sports programs.

The Tenth Circuit has long recognized that speech is not protected where restriction of the speech is necessary to prevent the disruption of official functions or to insure effective performance by the speaker. *Dixon v. Kirkpatrick*, 553 F.3d 1294, 1034 (10th Cir. 2009)(citing *Gardetto v. Mason*, 100 F.3d 803, 815 (10th Cir.1996)). Lehi's legitimate interest in avoiding disruption requires the Court to assess whether Doyle's speech: (1) impaired discipline by superiors; (2) impaired harmony among co-workers; (3) had a detrimental impact on close working relationships for which personal loyalty and confidence are necessary; (4) impeded the performance of the speaker's duties; or (5) interfered with the regular operation of the enterprise. See *Rankin v. McPherson*, 483 U.S. 378, 388, 107 S.Ct. 2891, 2899, 97 L.Ed.2d 315 (1987). These interests are referred to collectively as "disruption" factors. *Id.*

Doyle admits that his speech was made while he was engaged in coaching activities. (R. 115). Doyle's comments caused significant "interfere[ence] with the regular operation of the" league, impaired harmony between Doyle and Bray, Mackintosh, and Martinez, had a detrimental impact on close working relationships between those individuals, posed a detrimental impact on Bray, Mackintosh, and Martinez's abilities to do their own jobs, and generally contravened Lehi's interest in ensuring that its coaches set a good example for youth participants. When Doyle

communicated with Bray regarding each area of concern, he yelled, used foul language, and Bray felt intimidated. Doyle communicated in such a fashion in the presence of youth sports players, parents, spectators, other coaches, and Lehi City employees. Bray had concerns that Doyle's mannerisms and means of communication were setting an extremely bad example for the players. Doyle's conduct impaired harmony in the league, impeded employees from performing their duties, and generally "interfere[d] with the regular operation of the enterprise." *Rankin, supra*, at 388.

Lehi, Bray and Harrison's interests in ensuring that all volunteers set good behavior examples for children and that Lehi employees be allowed to perform their job responsibilities at the ball field without harassment and intimidation by volunteers outweigh Doyle's interest in his speech, even if they implicate matters of public concern. As such, Bray and Harrison are entitled to qualified immunity.

### **3. *Pickering* Third Element – Motivating Factor**

Appellees presented undisputed evidence to the lower court that their decision not to select Doyle as a coach for the 2007 season was not based upon the content of his speech, but rather was based upon his violations of the Volunteer Code of Conduct, which included, by Doyle's own admission, becoming upset and raising his voice with Lehi City employees. Doyle did not adduce any admissible evidence in the Court below to dispute Appellees' evidence that the decision not to select Doyle as a coach for the 2007 season was premised on the content or topic of his allegedly protected speech, as opposed to his disruption to and interference with the youth sports league.

Although he admitted in his deposition to becoming upset with Bray, raising his

voice, and using the term “bull” repeatedly, in his post-deposition affidavit Doyle contradicted his deposition testimony and denied engaging in any conduct that violated the Volunteer Code of Conduct. Doyle’s post-deposition Affidavit was prepared by his counsel in opposition to Appellees’ motion for summary judgment. The Utah Supreme Court has observed as follows regarding such conflicts:

As a matter of general evidence law, a deposition is generally a more reliable means of ascertaining the truth than an affidavit, since a deponent is subject to cross-examination and an affiant is not. 6 J. Moore, W. Taggart & J. Wicker, *Moore's Federal Practice* § 56.11[4] at 56-277 (1983). That does not mean, however, that in summary judgment proceedings, a deposition should be accorded greater weight than an affidavit. The purpose of summary judgment is not to weigh the evidence. But when a party takes a clear position in a deposition, that is not modified on cross-examination, he may not thereafter raise an issue of fact by his own affidavit which contradicts his deposition, unless he can provide an explanation of the discrepancy.

*Webster v. Sill*, 675 P.2d 1170, 1172-73 (Utah 1983); *see also*, *Traco Steel Erectors, Inc. v. Control, Inc.*, 2007 UT App 407, 175 P.3d 572, 580 *aff'd*, 2009 UT 81, 222 P.3d 1164 (“We conclude that because Bronson's affidavit contradicts his deposition testimony, Traco cannot use Bronson's affidavit to assert that an issue of material fact exists...”)

Based upon his own admissions during his deposition (R. 107, 119, 122), Doyle violated the Volunteer Code of Conduct during the 2006 season. All parties agree that Lehi City had the authority to remove coaches who violate the Volunteer Code of Conduct. Doyle failed to show any evidence in the court below that the reason Bray and Harrison decided not to select him as a coach for the 2007 season was due to the subject of his speech, rather than because of his violations of the Code of Conduct and the

disruption he caused and the manner in which he communicated. As such, Bray and Harrison did not violate Doyle's first amendment rights, and they are therefore entitled to qualified immunity.

**b. Equal Protection/Fourteenth Amendment**

The trial court correctly ruled that Bray and Harrison are entitled to qualified immunity from Doyle's fourteenth amendment equal protection claim. Bray and Harrison are entitled to qualified immunity because this claim is derivative of his first amendment claim, the right at issue was not clearly established, and because even if volunteers enjoy equal protection rights, there was no violation those rights in this case.

*i. Doyle's equal protection claim is derivative.*

Doyle's equal protection claim is derivative of his First Amendment claim, from which Bray and Harrison are entitled to qualified immunity, as established above. Where a government actor is entitled to qualified immunity from a first amendment claim, and a plaintiff alleges a violation of equal protection that is derivative of such claim in that the equal protection claim is "premised on the allegation that Plaintiff was engaged in protected speech," the individual defendants are also entitled to qualified immunity on the derivative equal protection claim as well. *See Christensen v. Park City Municipal Corporation*, 554 F.3d 1271, 1280 (10th Cir. 2009). Here, Doyle alleges that Bray and Harrison violated his equal protection rights "in order to inhibit and punish the exercise of his constitutional rights under the First Amendment[.]" (R. 43). Because Bray and Harrison are entitled to qualified immunity from Doyle's first amendment claim, they are similarly entitled to qualified immunity from Doyle's derivative equal protection claim.

- ii. *It was not clearly established in 2006 and 2007 that a volunteer was entitled to equal protection.*

The trial court correctly concluded that Doyle failed to “show[] by admissible evidence that he was treated substantially differently from other similar situated coaches,” or that “there was no rational basis for the difference in treatment.” (R. 449-450, Mem. Dec. at 15). Doyle cannot overcome Bray and Harrison’s presumption of entitlement to qualified immunity on his equal protection claim because it was not clearly established in 2006 and 2007 that a volunteer little league coach possessed fourteenth amendment equal protection rights in regards to his volunteer position. There is no prior case from the Tenth Circuit or United States Supreme Court clearly holding that a volunteer is entitled to equal protection with respect to his volunteer position, and most importantly, Doyle has not cited any such case law to this Court. *See* Aplt. Brief at p. 31-33. Thus, Doyle has failed to establish that “the contours of the [claimed equal protection right for volunteers] [were] sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Gann v. Cline*, 519 F.3d 1090, 1092 (10th Cir. 2008). Bray and Harrison are consequently entitled to qualified immunity from Doyle’s equal protection claim.

- iii. *Bray and Harrison did not violate Doyle’s assumed equal protection rights.*

Even if it was clearly established that a volunteer possesses an equal protection right, the trial court properly concluded that Doyle failed to prove that such a right was violated. In order to show a violation of equal protection, Doyle must “come forward with evidence to establish a genuine issue as to whether he ‘has been intentionally treated

differently from others similarly situated and that there is no rational basis for the difference in treatment.”” *Travis v. Park City Mun. Corp.*, 565 F.3d 1252, 1257 (10th Cir. 2009)(quoting *Village of Willowbrook v. Olech*, 528 U.S. 562, 564, 120 S.Ct. 1073, 145 L.Ed.2d 1060 (2000)). Here, there is no admissible evidence in the record to suggest that Lehi, Bray, or Harrison intentionally treated Doyle differently than other volunteer coaches similarly situated, or that there was no rational basis for their treatment.

According to Harrison, in the history of his direction of the Lehi City Legacy Center, no other coach has ever conducted himself in the same improper manner as Doyle did in the 2006 season, as no other coach has ever been reported by so many observers to have acted inappropriately in the presence of children. According to Harrison, if any other coach had been reported to have conducted himself in the same manner as Doyle, that person would have received the same treatment as Doyle, and would not have been selected for a coaching position the following year. Bray, Harrison and Lehi did not treat Doyle differently, because no other coach has ever acted in the same manner as Doyle.

Doyle asserts that the affidavits he submitted in opposition to Appellees’ motion for summary judgment provide evidence to raise a dispute of fact regarding whether Doyle did in fact conduct himself in a manner similar to other coaches. (R. 304-309). However, as explained below in Section III, the trial court properly struck the paragraphs from those affidavits upon which Doyle relies because they are inadmissible. As such, Doyle failed to adduce any evidence that he was treated differently than other coaches.

Finally, even if Doyle had adduced admissible evidence to raise a dispute of fact on whether he was treated differently from other volunteer coaches, Bray and Harrison

nonetheless had a rational basis for their differing treatment of Doyle. Doyle engaged in behavior that violated the Volunteer Code of Conduct, which authorized Bray and Harrison to cease Lehi City's volunteer relationship with Doyle. Lehi has legitimate interests in ensuring the efficient operation of the league, and that children and players were not exposed to bad examples of unsportsmanlike conduct. There was no equal protection violation because Bray and Harrison's conduct was at all times rational and reasonable. The trial court's summary judgment in favor of Bray and Harrison on this claim should be affirmed.

**II. THIS COURT SHOULD AFFIRM SUMMARY JUDGMENT IN FAVOR OF LEHI CITY ON DOYLE'S CONSTITUTIONAL CLAIMS BECAUSE THERE IS NO EVIDENCE OF AN UNCONSTITUTIONAL POLICY OR CUSTOM AND BECAUSE LEHI DID NOT VIOLATE DOYLE'S ALLEGED CONSTITUTIONAL RIGHTS.**

**a. Lehi City has no unconstitutional policy or custom.**

Under § 1983, a local government can only be subject to suit for its employees' alleged constitutional violations if the plaintiff shows that the employees acted pursuant to an unlawful official municipal policy or custom. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); *Hollingsworth v. Hill*, 110 F.3d 733, 742 (10th Cir.1997). "A municipality is not liable for the constitutional violations of its employees simply because such a violation has occurred; a policy or custom must have actually caused that violation." *Cordova v. Aragon*, 569 F.3d 1183, 1194 (10th Cir. 2009). It is not enough for a plaintiff merely to identify conduct attributable to the municipality. The plaintiff must also demonstrate that, through its deliberate conduct, the municipality was the "moving force" behind the injury alleged. *Monell* at 694. That is, a

plaintiff must show that the municipality acted with the requisite degree of culpability, and must demonstrate a direct causal link between the municipal action and the deprivation of federal constitutional rights. *Board of County Com'rs of Bryan County, Okl. v. Brown*, 520 U.S. 397, 404, 117 S.Ct. 1382 U.S. (1997).

Doyle's Amended Complaint does not allege an unconstitutional policy or custom against Lehi, (R. 38-61), and in his brief on appeal, Doyle similarly does not make any claim of an unconstitutional policy or custom. Doyle's failure to allege and demonstrate the existence of an unconstitutional policy or custom, and that such a policy or custom caused the violations of his rights, is fatal to his claims against Lehi City.

**b. Lehi City did not violate Doyle's constitutional rights.**

As explained below, even if Doyle did show evidence of an unlawful policy or custom, which he failed to do in the proceedings below, there is no evidence that any of Doyle's rights were actually violated in this case by Bray and Harrison, which is a prerequisite to a finding of municipal liability against Lehi City. *See Camuglia v. The City of Albuquerque*, 448 F.3d 1214, 1223 (10th Cir. 2006)(quoting *Watson v. City of Kansas City, Kan.*, 857 F.2d 690, 697 (10th Cir.1988) (internal citation omitted)(“... it would be improper to allow a suit to proceed against the city if it was determined that the officers' action did not amount to a constitutional violation[.]”) Because Doyle failed to show any evidence that Bray or Harrison actually violated Doyle's constitutional rights, the trial court properly granted summary judgment in Lehi's favor on all of Doyle's constitutional claims against it.

*i. First amendment and equal protection*

As discussed above, Bray and Harrison did not violate Doyle's first amendment rights because Doyle's speech does not satisfy the *Pickering* balancing test. Therefore, Lehi City similarly cannot be found to have violated Doyle's first amendment rights. Regarding Doyle's equal protection claim, as set forth above, there is no law holding that a volunteer such as Doyle is entitled to equal protection of the laws, and even if there were, Doyle has not adduced evidence that Bray or Harrison did in fact treat him differently or that there was not a rational basis for its treatment of him. As such, because Bray and Harrison did not violate Doyle's first amendment or equal protection rights, Doyle cannot show that Lehi City violated his rights, either.

*ii. Fourteenth Amendment – Procedural Due Process<sup>2</sup>*

Lehi City did not violate Doyle's due process rights, because unpaid seasonal volunteers do not possess a liberty or property due process interest in their volunteer status. No Supreme Court or Tenth Circuit case has ever recognized such an interest. Furthermore, all of the cases on point from outside the Tenth Circuit conclude that an unpaid volunteer does not possess any liberty or property interest in his continued volunteer status. *See, e.g., Hyland v. Wonder*, 972 F.2d 1129, 1140-1143 (9th Cir. 1992) ("Hyland has no constitutionally cognizable property interest in the perpetuation of his volunteer status."); *Versarge v. Township of Clinton*, 984 F.2d 1359, 1370 (3d Cir.1993) (concluding volunteer firefighter did not have due process right to hearing on

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<sup>2</sup> Doyle's Amended Complaint asserts procedural due process claims against the City only. *See* R. 38-61.

termination); *Griffith v. Lanier*, Not Reported in F.Supp.2d, 2007 WL 950087(D.D.C. 2007)(“...because the Volunteers do not have either a property or liberty interest in retaining their positions as members of the Reserve Corps, they are unable to state a Fifth Amendment due process claim.”); *Shands v. City of Kennett*, 789 F.Supp. 989, 995 (E.D.Mo.1992) (finding that no liberty interest is implicated in context of volunteer fire department where plaintiffs failed to establish that their terminations caused them “economic damage or lost ... opportunity for employment”); *see also Kennedy v. McCarty*, 778 F.Supp. 1465, 1477-78 (S.D.Ind.1991) (finding that reserve police officer failed to establish deprivation of a liberty interest by termination where he did not show that the termination affected his primary means of employment). Because there is no legal support for the conclusion that a volunteer enjoys a due process right in his or her volunteer position, the trial court’s summary judgment in favor of Lehi should be affirmed.

But even if due process protections extended to volunteers, Doyle still did not possess a protected property or liberty interest relating to his volunteer position with Lehi City. “The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property.” *Bd. of Regents v. Roth*, 408 U.S. 564, 569, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). “The Supreme Court has stated that property interests are not created by the Constitution, but by existing rules or understandings that stem from independent sources, ‘such as state law-rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.’” *Darr v. Town of Telluride*, Colo., 495 F.3d

1243, 1251 (10th Cir. 2007)(quoting *Roth* at 577).

Doyle does not allege that his property interest is rooted in a statute, local ordinance, or rule, but rather, Doyle hinges his property interest claim on the assertion that he was *promised* a coaching position in 2007. (R. 44-45). In his deposition, however, Doyle admitted that he was never a party to a contract with Lehi regarding continued volunteer work, that he was not paid for volunteering as a baseball coach, and that Bray never promised him a volunteer coaching position in 2007 -- rather, Doyle's testimony was that Bray merely said to him at the conclusion of the 2006 season, "we need more coaches like you." (R. 108).

The statement "Lehi needs more coaches like you," or words to that effect, is *per se* insufficient to create a legitimate claim of entitlement to a continued volunteer position. "To create a property interest, the state-law rule or understanding must give the recipient a 'legitimate claim of entitlement to [the benefit].' For example, an employee may possess a property interest in public employment if she has tenure, a contract for a fixed term, an implied promise of continued employment, or if state law allows dismissal only for cause or its equivalent." *Darr, supra*, at 1251 (alterations in original)(internal quotations omitted); *see also, Hyland, supra*, at 1140-1143 (volunteer did not possess a property interest without contract or mutually explicit understanding). The language used must be "mutually explicit" in order to create a legitimate claim of entitlement. *Farthing v. City of Shawnee, Kan.*, 39 F.3d 1131, 1135 (10th Cir. 1994). Bray's statement that Lehi "needs more coaches" like Doyle is not a mutually explicit statement that Doyle would be guaranteed a coaching position in 2007, but rather, at best, it is a statement of

conciliation.

Furthermore, the Volunteer Code of Conduct authorized Lehi to remove any coach who violated its provisions, and hence, Doyle was on notice that his volunteer position was essentially terminable at will, and as such, a mere statement that the City needed more coaches like him could not explicitly create an understanding that Doyle would be guaranteed a coaching spot in 2007. Accordingly, Doyle was not entitled to procedural due process protections in regards to his volunteer position.

Doyle also does not possess a constitutionally protected liberty interest in his volunteer coaching status. He claims that he derived various “tangible benefits” from the volunteer position but in his brief on appeal he does not identify what those benefits were. (Aplt. Brief at pp. 33-35). However, in his deposition, Doyle admitted that he was not paid for his volunteer position, and could not identify any other tangible benefits he claimed to have received for his coaching work. Neither the Supreme Court nor the Tenth Circuit has ever recognized a liberty interest in voluntary, unpaid public service. Moreover, Doyle does not allege that the claimed deprivation of this alleged liberty interest caused him any harm, including any economic loss. (R. 101).

Reputation alone, apart from some tangible interest such as monetary compensation, constitutes neither a liberty nor property interest sufficient to invoke procedural due process protections. *See Paul v. Davis*, 424 U.S. 693, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976). Doyle has not identified any tangible interest he received from Lehi for his volunteering as a youth baseball coach. As such, he did not possess any liberty

interest in his volunteer position and was not entitled to procedural due process protections prior to not being selected as a coach for the 2007 season.

Finally, as set forth above, even if the Court believes that Doyle was entitled to due process protections prior to deprivation of a right to volunteer work, Doyle still cannot make out a constitutional violation because he was afforded all of the process he was due. He was given the opportunity to meet with Lehi representatives on two occasions to discuss the basis of his complaints. Doyle admits that he had the opportunity to be heard by Lehi City representatives. (R. 101-102). To the extent Doyle was entitled to procedural due process to begin with, he received all he was due. This is sufficient to satisfy due process.

**III. THE TRIAL COURT PROPERLY STRUCK THE AFFIDAVITS OF APPELLANT, BRIDGET DOYLE, JAMES JOHNSTON, ALAN PAUL, JOYCE OLSON, SHARON JOHNSON, STANLEY CRUMP, AND ROGER DEAN.**

The trial court properly struck certain paragraphs of the affidavits submitted in opposition to Appellees' motion for summary judgment. R. 277-310. The affidavits are based upon inadmissible hearsay, are not based upon personal knowledge, are speculative, contain conclusory statements, lack evidentiary foundation, contain immaterial and irrelevant statements, contain immaterial and inadmissible character evidence, and do not meet the substantive requirements of Rule 56(e) of the Utah Rules of Civil Procedure governing affidavits submitted in support of motions for summary judgment. That Rule sets out the substantive requirements for affidavits and states that "[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as

would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.” UTAH R. CIV. P. 56(e).

The requirements of Rule 56(e) are mandatory, and prior case law confirms that it is well within a trial court’s discretion to strike from the record and accord no weight to noncompliant affidavits. *See, e.g., GNS Partnership v. Fullmer*, 873 P.2d 1157, 1164-65 (Utah Ct.App.1994) (affidavits not based on personal knowledge were properly stricken); *Treloggan v. Treloggan*, 699 P.2d 747, 748 (Utah 1985) (affidavit based on unsubstantiated belief insufficient); *Norton v. Blackham*, 669 P.2d 857, 859 (Utah 1983) (conclusory affidavits failing to state factual basis for conclusion stated are invalid).

The affiants’ personal beliefs regarding Doyle’s demeanor are irrelevant and constitute inadmissible character evidence under U.R.E. 608 and 609. (R. 209-302, ¶¶ 4-7; R.. 294-297, ¶¶ 4-7; R. 290-292, at ¶¶ 4-7; R. 286-288, ¶¶ 4-7; R. 280-284, at ¶¶ 4-7; R. 280-281, at ¶¶ 4-7; R. 277-278 at ¶¶ 4-7). Furthermore, the affiants have no personal knowledge of whether Lehi City was aware of any other acting in hostile, aggressive, or unsportsmanlike manner. (R. 209-302, ¶ 8; R. 294-297, at ¶ 8; R. 290-292, at ¶ 8; R. 286-288, at ¶ 8; R. 280-284, at ¶ 8). Whether Lehi City employees cheered for one team or another is irrelevant to the causes of action herein. (R. 209-302, at ¶ 10; R. 294-297, at ¶ 10; R. 290-292, at ¶ 9).

The affiants’ opinions that Bray and Harrison are “untrustworthy” and “unprofessional” are inadmissible character evidence under U.R.E. 608 and 609, and are conclusory statements not supported by any evidentiary foundation. (R. 209-302, at ¶ 11; R. 294-297, at ¶ 11; R. 290-292, at ¶ 10; R. 286-288, at ¶ 10). The affiants’ statements

regarding Bray's "experience" and that rules were changed "mid-season" lacks evidentiary foundation, is conclusory, and is speculative. (R. 209-302, at ¶ 11; R. 294-297, at ¶ 11; R. 290-292, at ¶ 11). The affiants' assertion that Bray violated a rule is hearsay, lacks personal knowledge, and is conclusory, because the affiants do not state the basis for their asserted knowledge of the rule at issue, do not explain why there was an "infraction," do not state the basis for their conclusion that Bray's decision would have "harmed" Doyle's team, and do not state how Bray allegedly "circumvented" the rule. (R. 209-302, at ¶ 12; R. 294-297, at ¶ 12; R. 290-292, at ¶ 12; R. 286-288, at ¶ 12).

Anything the affiants "heard" about the need for volunteers in the 2007 season is inadmissible hearsay. (R. 209-302, at ¶ 13; R. 294-297, at ¶ 13). The affiants' assertions that Lehi City employees represented that Doyle could coach is conclusory, and lacks foundation, in that the affiants do not explain who purportedly made such a representation, when it was made, or what its substance purportedly was, and the affiants were not present during any of the alleged conversations during which Doyle claims Bray promised he could coach in 2007. (R. 209-302, at ¶ 14; R. 294-297, at ¶ 14). Finally, whether or not it was affiant Johnston's decision to purchase billboards or Doyle's decision, and who paid for them, are irrelevant and immaterial to any issue in this case. (R. 294-297, at ¶¶ 16 & 17).

The noted paragraphs are inadmissible, and therefore should not be considered in conjunction with this appeal. *See* U.R.C.P. 56. The trial court's ruling striking the noted paragraphs was correct and should be affirmed.

**IV. THIS COURT SHOULD AFFIRM SUMMARY JUDGMENT IN FAVOR OF APPELLEES ON DOYLE'S DEFAMATION, BREACH OF CONTRACT, AND EQUITABLE ESTOPPEL CLAIMS, BECAUSE HIS NOTICE OF CLAIM FAILED TO MENTION ANY FACTS SUPPORTING THOSE CAUSES OF ACTION.**

Under the Governmental Immunity Act of Utah, a plaintiff must provide notice of a claim against a governmental entity and its employees prior to filing a lawsuit. U.C.A. § 63G-7-401, *et seq.* A plaintiff's failure to comply with the mandatory notice of claim requirements precludes the district court from exercising jurisdiction. *See Heideman v. Washington City*, 155 P.3d 900, 2007 UT App 11, ¶ 12 (Utah App. 2007). "[T]here is no ambiguity in the nature of claim requirement: 'There must be enough specificity in the notice to inform as to the nature of the claim so that the defendant can appraise its potential liability.'" *Id.* at ¶ 14 (*quoting Yearsley v. Jensen*, 798 P.2d 1127, 1129 (Utah 1990)).

Appellees do not take issue with Doyle's summary of the law governing interpretations of notices of claim, Aplt. Brief at 42, and concur with the principles that Doyle was not required to list his causes of action by name or to meet the standard of pleading set forth in U.R.C.P. 12. However, he was required to include enough facts pertaining to his defamation, breach of contract, and equitable estoppel claims in order to make Appellees aware that he would be pursuing such claims. Doyle's Amended Notice of Claim (R. 131-134) does not mention any factual basis for Doyle's defamation, breach of contract, or equitable estoppel claims.

Simply put, there was not "enough specificity" in Doyle's Amended Notice of Claim to give Defendants notice of his defamation, breach of contract, or equitable estoppel

claims. The words “contract,” “agreement,” “arrangement,” “promise,” “understanding” or any other words that could reasonably interpreted to mean “contract” are not stated anywhere in Doyle’s Amended Notice of Claim. Thus, Appellees did not have notice of his breach of contract or equitable estoppel claims. Moreover, the word “reputation,” “status,” “character,” “integrity,” “honesty,” “credibility,” “truthfulness,” or “standing,” are not stated anywhere in Doyle’s Amended Notice of Claim. Similarly, there is no allegation that Doyle suffered a loss of standing, a diminished reputation, or impugned credibility in the community as a result of Appellees’ conduct. As such, Appellees similarly were not on notice of Doyle’s defamation claim. The Amended Notice of Claim simply did not provide sufficient detail to provide notice to Lehi City and its employees of Doyle’s common law claims of breach of contract, equitable estoppel, or defamation. Accordingly, the trial court properly concluded that Appellees are entitled to summary judgment on those claims.

**V. THIS COURT SHOULD AFFIRM SUMMARY JUDGMENT ON DOYLE’S EQUITABLE ESTOPPEL CLAIM BECAUSE THE TRIAL COURT CORRECTLY FOUND THAT DOYLE SHOWED NO EVIDENCE OF DETRIMENTAL RELIANCE.**

The trial court construed Doyle’s equitable estoppel claim as one for promissory estoppel, because equitable estoppel is not a cause of action; rather, it is a defense. (Mem. Dec. at p. 19). The trial court granted summary judgment because Doyle showed no evidence of detrimental reliance, a required element of an estoppel claim. *See J.R. Simplot Co. v. Sales King Int’l*, 2000 UT 92, ¶ 29, 17 P. 3d. 1100. The trial court correctly found that there is no evidence in the record that Doyle relied to his detriment on Bray’s alleged statement that Lehi needed more coaches like him. Indeed, Doyle

admitted he suffered no financial harm as a result of the alleged promise of Bray. (R. 101). As such, the trial court's summary judgment on Doyle's estoppel claim should be affirmed.

**VI. THIS COURT SHOULD AFFIRM SUMMARY JUDGMENT ON DOYLE'S DEFAMATION CLAIM ON THE ALTERNATE BASIS THAT THE STATEMENTS ALLEGED ARE NOT DEFAMATORY AS A MATTER OF LAW.**

Because the trial court concluded that Appellees are entitled to summary judgment on Doyle's defamation claim due to Doyle's deficient notice of claim, the trial court did not reach Appellees' argument that summary judgment was appropriate on his defamation claim because the statements are not defamatory as a matter of law. However, Appellees are entitled to judgment as a matter of law on Doyle's defamation claim, because no reasonable juror could conclude that the statements alleged are actually defamatory.

A *prima facie* case for defamation must demonstrate that “(1) the defendant published the statements [in print or orally]; (2) the statements were false; (3) the statements were not subject to privilege; (4) the statements were published with the requisite degree of fault; and (5) the statements resulted in damages.” *Jacob v. Bezzant*, 212 P.3d 535, 2009 UT 37, ¶ 21 (quoting *Oman v. Davis Sch. Dist.*, 2008 UT 70, ¶ 68, 194 P.3d 956 (alteration in original) (internal quotation marks omitted)).

Doyle alleges that Mackintosh made defamatory statements (R. 49) and that Bray and Harrison published those statements, (R. 48). The statements Doyle alleges to be defamatory include:

- a. “On several different occasions I had to ask Bill Doyle to stop cussing. He would say things like ‘that is a Bull S\*\*\* call.’ There

- would be kids sitting on the bench when he would say them.”
- b. “Then someone mentioned that he [Mr. Doyle] was telling the kids on his team to just knock the other kids over if they did not get out of the way.”
  - c. “Him and his assistant had tempers that were so bad that I was scared every time he would confront me.”
  - d. “It was always a struggle to get an umpire to want to ump his games or a score keeper to score it.”

(R. 49).

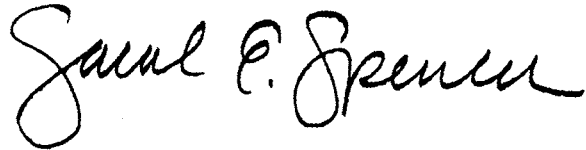
“[A] statement is defamatory if it impeaches an individual's honesty, integrity, virtue, or reputation and thereby exposes the individual to public hatred, contempt, or ridicule.” *Jacob, supra*, at ¶ 26 (quoting *West v. Thomson Newspapers*, 872 P.2d 999, 1008 (Utah 1994)). None of the alleged statements meet this high standard. No reasonable juror could conclude that it is defamatory to state that a sports coach used the word “bullshit,” told players to knock other players over, has a temper, or that it is difficult to find a scorekeeper for a coach’s games. Although bullshit is an expletive that most would agree should not be used around children, it is nonetheless a common term used by many individuals. This Court should affirm as a matter of law that these statements do not rise to the level of defamation as a matter of law.

### CONCLUSION

For the reasons set forth above, Appellees Lehi City, Daniel Harrison, Blythe Bray, and Amanda Mackintosh respectfully request the Court affirm the trial court’s grant of summary judgment in their favor.

RESPECTFULLY SUBMITTED this 19th day of January, 2011.

CHRISTENSEN & JENSEN, P.C.



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David C. Richards  
Sarah E. Spencer  
*Attorneys for Appellees*

**CERTIFICATE OF SERVICE**

This is to certify that on the 19th day of January, 2011, two true and correct copies  
of the foregoing **BRIEF OF APPELLEES** was mailed, first-class postage prepaid, to:

Justin D. Heideman  
HEIDEMAN, McKAY, HEUGLY & OLSEN, LLC  
2696 N. University Ave., Suite 180  
Provo, UT 84604  
*Attorney for Appellant Doyle*

CHRISTENSEN & JENSEN, P.C.



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David C. Richards  
Sarah E. Spencer  
*Attorneys for Appellees*

Memorandum Decision  
/ Ruling

March 23, 2010

MAR 25 2010

**FILED**

MAR 23 2010

4TH DISTRICT  
STATE OF UTAH  
UTAH COUNTY

IN THE FOURTH JUDICIAL DISTRICT COURT,  
UTAH COUNTY, STATE OF UTAH

WILLIAM A. DOYLE,

Plaintiff,

vs.

LEHI CITY, BLYTHE BRAY, DANIEL  
HARRISON, AMANDA LEN  
MACKINTOSH,

Defendants.

**RULING**

Date: March 23, 2010

Case No.: 070402671

Judge: Lynn W. Davis

The parties came before the court for oral argument on December 14, 2009, and January 11, 2010. Justin D. Heideman represented William A. Doyle ("Plaintiff") and Sarah E. Spencer represented Lehi City, Blythe Bray, Daniel Harrison, and Amanda Len Mackintosh ("Defendants."). The court, having carefully reviewed the parties' memoranda and heard argument in the matter, hereby rules as follows:

**I.**

**Procedural History**

1. On August 7, 2009, Defendants filed their Motion for Summary Judgment and supporting memorandum.
2. On August 31, 2009, Plaintiff filed his opposition memorandum.

3. On September 21, 2009, Defendants filed their reply memorandum, their Motion to Strike Affidavits and supporting memorandum.
4. On October 5, 2009, Plaintiff filed his opposition to the Motion to Strike Affidavits.
5. Defendants replied on October 19, 2009.
6. The court held oral arguments on December 14, 2009, then continued the remainder of the argument to January 11, 2010.
7. On January 11, both parties concluded their arguments, and the court stated that it would announce its ruling in writing.

## II.

### Factual Background

Plaintiff William A. Doyle was a volunteer coach in Lehi City's youth baseball program, having been involved with Lehi youth baseball for more than 20 years. In 2006, he allegedly engaged in numerous instances of inappropriate and unsportsmanlike conduct in the presence of players, coaches, spectators, and others. This behavior included yelling, swearing, and fighting. The preceding information is alleged in several affidavits provided by Defendants.

According to Plaintiff, he occasionally became upset and might have raised his voice, but for good reason. Plaintiff voiced concerns about the fairness of the Pinto league draft, and the state tournament automatic bid. Plaintiff also commented about enforcing the "over-pitching" rule and discussed a possible petition to change some rules. Finally, Plaintiff and some of his family members went to the office of Blythe Bray, Lehi youth sports Program Coordinator, to

discuss an incident that happened with the coach of another team.

At the close of the 2006 season, Blythe and Lehi City Recreation Director Dan Harrison reviewed reports of Plaintiff's conduct and determined that Plaintiff had violated the Volunteer Code of Conduct. They decided that if Plaintiff applied to volunteer in 2007, he would not be selected, according to Defendants. In March of 2007, after Plaintiff applied to coach again, Harrison asked him to come to his office. Harrison told him that he was not selected to coach in 2007 because of his improper behavior, but that he might be allowed to coach in 2008. Plaintiff was told that he could coach football or basketball in 2007, but not baseball.

Later, billboards were put up on I-15, with pictures of two skunks and the phrase, "Something Stinks in Lehi's Recreation Department!" Several cakes with the same image and phrase were sent to Lehi City departments, including the Recreation Department. At his deposition, Plaintiff admitted that his father-in-law James Johnston put up the billboards, and Plaintiff paid for them. Plaintiff admitted that the cakes were his idea. In Mr. Johnston's affidavit, he admits that he and his wife, Catherine, created and promoted the billboards and the web site [www.citystinkers.com](http://www.citystinkers.com).

On May 3, 2007, Plaintiff met with Lehi City representatives. Defendants claim they offered to accept him as a volunteer coach in 2007 if he would correct his behavior and take down the billboards. According to Defendants, he denied the offer. Plaintiff claims that there was no such offer.

Plaintiff then filed an Amended Notice of Claim, as well as this lawsuit.

### III.

#### Standard of Review for Summary Judgment

Pursuant to Utah Rule of Procedure 56, “summary judgment is appropriate only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Oman v. Davis School Dist.*, 2008 UT 70, ¶ 14. This Court must view “all facts and inferences in the light most favorable to the nonmoving party.” *Robinson v. Mount Logan Clinic, LLC*, 2008 UT 21, ¶ 2.

In this case, Defendants bear the burden of showing that no genuine issue of material fact exists and that Defendants are entitled to judgment as a matter of law.

### IV.

#### The Parties’ Arguments

##### a. Defendants’ Arguments Supporting Summary Judgment

Defendants maintain that they are entitled to summary judgment on all nine causes of action in Plaintiff’s Amended Verified Complaint.

As to the alleged violations of the First and Fourteenth Amendment, Bray and Harrison are entitled to qualified immunity because Plaintiff cannot show that the Lehi officials violated a constitutional right. Nor can Plaintiff show that the constitutional right allegedly violated was clearly established at the time of the conduct. Under the First Amendment, Plaintiff alleges five topics that constitute protected speech. However, Defendants argue that it was not clearly established in 2007 that Plaintiff, a volunteer, was entitled to First Amendment protection for any

of the speech which preceded Defendants' decision not to re-select Plaintiff as a volunteer coach. A volunteer does not have the First Amendment protection that shields paid workers from retaliatory termination. Further, under the *Pickering v. Board of Education* balancing test, Plaintiff does not prevail. 391 U.S. 563 (1968). First, the five areas do not implicate matters of public concern. See *Connick v. Myers*, 461 U.S. 138 (1983). Second, Lehi City's interest in promoting efficiency in administering its youth sports programs outweighs any interest of Plaintiff in commenting on rules and regulations regarding the Pinto baseball league. Finally, Plaintiff cannot show that his comments were a motivating factor in Defendants' decision not to re-select him as a volunteer.

Defendants argue that because the Equal Protection claim is derivative of the First Amendment Claim, the qualified immunity defense still applies. Further, there was no clearly established right to equal protection regarding volunteer positions in 2007. The rights were not sufficiently clear that a reasonable official would have understood that he or she was violating those rights. See *Gann v. Cline*, 519 F.3d 1090, 1092 (10th Cir. 2008). Even if the court were to accept the entitlement to equal protection, Plaintiff has not shown evidence of disparate treatment of others similarly situated or no rational basis for any difference in treatment. See *Travis v. Park City Mun. Corp.*, 565 F.3d 1252, 1257 (10th Cir. 2009). The evidence shows that no other volunteer coach has conducted himself or herself in such an outrageous manner as Plaintiff. Moreover, Defendants had a rational basis in choosing not to re-instate Plaintiff based on his many acts of misconduct.

As to the constitutional claims against the City, Defendants contend that Plaintiff has not and cannot establish that an unconstitutional policy or custom of Lehi City caused the alleged constitutional violations. Assuming *arguendo* that Lehi City had an unconstitutional policy or custom, Plaintiff cannot show that any of his constitutional rights were violated.

Defendants argue that Plaintiff has not produced any caselaw showing that Plaintiff has a liberty or property interest in volunteer work. There is no such interest. Plaintiff's interest was not rooted in a statute, local ordinance, or a rule. Plaintiff claims that he was promised a coaching position. However, Plaintiff's deposition shows that he never signed a contract for continued volunteer work, he was never paid as a volunteer, and he was never promised any kind of position in 2007. Moreover, even if Plaintiff had some type of property interest in volunteer work, he was afforded due process by being given the opportunity to coach if he would take down the anti-Lehi City billboards and website. He declined to do so.

Defendants argue that Plaintiff has no protected liberty interest in volunteer coaching. He could not identify any tangible benefits, and he admitted that he did not lose any job prospects out of conduct at issue in this case. Reputation alone is not a property or liberty interest protected by the Constitution. *See Paul v. Davis*, 424 U.S. 693 (1976).

Defendants contend that Plaintiff may not allege an independent claim for attorney fees under 42 U.S.C. Sec. 1988 because such recovery is not a separate action.

Finally, Defendants argue entitlement to summary judgment on Plaintiff's defamation, breach of contract, and equitable estoppel claims because of Plaintiff's failure to file a proper

notice of claim pursuant to the Governmental Immunity Act of Utah. The Notice of Claim does not mention these three causes of action and does not provide a sufficient factual basis to put Defendants on notice of these claims. Therefore, the court does not have jurisdiction with regard to those claims. *See Heideman v. Washington City*, 2007 UT App 11, ¶ 12, 155 P.3d 900. Alternatively, the defamation claim fails as a matter of law because the statements spoken were true, an absolute defense to defamation. Further, no reasonable juror could possibly conclude that the alleged statements were in fact defamatory.

Based on the foregoing, Defendants request summary judgment on all of Plaintiff's claims.

**b. Plaintiff's Opposition Arguments in his Memorandum**

Plaintiff counters the motion by averring that he never raised his voice in anger or swore. He states he never engaged in verbally abusive or offensive conduct with anyone. As for the Lehi City Volunteer Code of Conduct, Plaintiff argues that he never once violated it.

Plaintiff contends that Defendants are not entitled to qualified immunity. Citing *Anderson v. McCotter*, Plaintiff claims that government employees and government volunteers have the same First Amendment rights. 100 F.3d 723 (10th Cir. 1996). Applying the *Pickering* balancing test, the matters on which Plaintiff spoke concern the public, such as the efficiency of a publicly run little league program. These topics of speech were about fairness and safety, both public interests. Further, Plaintiff argues that his speech did not have a disruptive effect on the recreation department. If his speech had disrupted the department, then Bray would not have

represented to Plaintiff that he would retain a coaching position in 2007. Plaintiff also contends that his comments such as those regarding the automatic bid were motivating factors in his firing. Finally, most of Defendants' evidence of Plaintiff's alleged misconduct came after the decision to terminate Plaintiff.

Arguing that he was treated differently than other similarly situated persons, Plaintiff alleges an Equal Protection violation. Plaintiff is a "class of one." *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). There is no rational explanation for why Plaintiff was not re-selected when it is clear that he acted no differently than any other youth baseball coach in Lehi. Again, it is suspect that the reports that form the basis for Lehi's decision were created after the fact.

Although Plaintiff did not bring claims against Lehi under 42 U.S.C. § 1983, the court should treat these claims as having a cause of action under that statute. Plaintiff cites to *Stanko v. Maher*, wherein the Tenth Circuit court treated the constitutional action as it if been filed under 42 U.S.C. § 1983 although it was not. 419 F.3d 1107, 1110 n.2 (10th Cir. 2005). Moreover, an official policy or custom of a governmental entity can arise from a single decision. *See Owen v. City of Independence*, 445 U.S. 622 (1980). Plaintiff argues that Assistant City Administrator Ron Foggin's decision to give approval to Harrison's request to ban Plaintiff from coaching in 2007 was an unconstitutional policy or custom in violation of § 1983.

Further, Plaintiff argues that his First Amendment rights were violated when he engaged in protected speech and was fired as a result. His Fourteenth Amendment Due Process rights

were violated because he had a property interest that was taken away without due process of law. The United States Supreme Court stated that constitutionally protected entitlements or understandings can arise from implied contracts. *See Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972). Plaintiff contends that Bray had affirmatively represented to him on two occasions that Plaintiff would definitely coach a youth baseball team for Lehi in 2007. Thus, Plaintiff argues, he was not afforded the process he was due when Defendants reneged on Bray's promise. Further, Plaintiff claims that he had a liberty interest in coaching because he was deprived of the opportunity to coach his own son in Lehi baseball, where his family has had roots for decades.

As for Defendants' argument that the Amended Notice of Claim was inadequate, Plaintiff argues that the notice has sufficient specificity because each specific cause of action is not required to be pled. *See Cedar Profl Plaza, L.C. v. Cedar City Corp.*, 2006 UT App 36, ¶ 9, 131 P.3d 275. The purpose of the notice requirements is merely to apprise defendants of potential liability. *Id.* Also, "a plaintiff asserting an equitable claim is not bound by the notice requirements of the Immunity Act." *Houghton v. Dep't of Health*, 2005 UT 63, ¶ 20, 125 P.3d 860. Plaintiff contends that the Amended Notice of Claim contained a factual basis which clearly put Defendants on notice of all possible causes of action.

c. Defendants' Reply Arguments

Defendants argue that none of the disputed facts by either side in this case is material; therefore, summary judgment is appropriate.

As to the legal arguments, Defendants' claim that the individual Defendants are entitled to qualified immunity was not genuinely controverted by Plaintiff. Further, it was not ever clearly established that a volunteer youth coach possessed First or Fourteenth Amendment rights in that coaching position.

Although Plaintiff argues that his speech may have been the deciding factor in his termination, he denies ever once violating the Volunteer Code of Conduct. However, in his own deposition, Plaintiff admits to raising his voice with the some of the individual defendants, using the phrase "a bunch of bull" repeatedly, and becoming upset when discussing the youth baseball draft in front of the children. Further, any affidavits Plaintiff relies on to alleged Equal Protection violations should be stricken, according to Defendants.

Regarding Plaintiff's constitutional claim against Lehi City, Plaintiff incorrectly equates a single decision to a policy or custom of the city. Defendants argue that Plaintiff must show that it was a policy or custom that was the motivating factor behind the adverse decision, and Plaintiff cannot do this. As to the common law claims, Plaintiff's Notice of Claim was clearly insufficient. It does not contain the terms, which Plaintiff now argues in detail, "contract," "promise," "understanding," "agreement," "reputation," "character," "integrity," or "standing." Lehi City could not have been on notice of Plaintiff's equitable claims based on the Notice's lack of detail or helpful information.

Defendants maintain their summary judgment motion should be granted in full.

d. Arguments For and Against Striking Plaintiff's Affidavits

Defendants seek to strike seven of Plaintiff's affidavits for the following reasons: They are based on inadmissible hearsay, are speculative, lack evidentiary foundation, are not based on personal knowledge as required by Rule 56(e), and they contain conclusions, immaterial statements, and inadmissible character evidence. Defendants sift through each affidavit one by one and identify the paragraphs that should be stricken for one or more of the reasons stated.

Plaintiff essentially denies every contention in Defendants' memorandum, and argues that the affidavits should remain and be considered as admissible evidence against Defendants. Plaintiff claims that all affidavits are based on firsthand knowledge of the affiant.

Defendants reply that Plaintiff's arguments do not address the specifics of the reasons for excluding the affidavits. For example, although several affiants claim that Plaintiff was treated differently than other similarly situated coaches, the affiants have no personal knowledge of what actions Lehi City may have taken against other coaches who acted in allegedly hostile or aggressive ways.

## **V.**

### **Case Analysis**

#### **a. Defendant's Motion to Strike Affidavits is Granted.**

The court grants the motion to strike the portions of the affidavits requested by Defendants. The court strikes the following paragraphs from the Affidavit of Bridgit Doyle: 8, 11, 12, 13, 14, 15, 16 and 17. Many of those statements are conclusory, irrelevant and lacking in foundation. The others, in addition to their lack of foundation, contain some inadmissible

hearsay information. Such speculative conclusions, not based upon personal knowledge, are not to be admitted as evidence in this case.

The court also strikes the following paragraphs from the Affidavit of James Johnston: 8, 10, 11, 12, 13, 14 and 15. The reasons for exclusion are the same as those given for excluding portions of the Affidavit of Bridgit Doyle.

In the Affidavit of Alan Paul, Paragraphs 7, 8, 10, 11, 12 and 13 are stricken. Again, there is a lack of foundation and the statements contain irrelevant information and hearsay. Specifically, Paragraph 10 is conclusory, irrelevant, and contains inadmissible opinion testimony.

In the Affidavit of Joyce Olson, Paragraphs 8, 9, and 10 are stricken for the reasons cited.

In the Affidavit of Sharon Johnston, Paragraph 8 is stricken.

In the Affidavit of Wayne Stanley Crump, Paragraph 7 is stricken.

In the Affidavit of Roger Dean, Paragraph 6 is stricken.

**b. Defendants' Motion for Summary Judgment is Granted.**

The court now considers the Affidavit of William A. Doyle, in the context of Defendants' Motion for Summary Judgment. Much of the affidavit is directly contradictory to the many affidavits provided by Defendants. For example, Plaintiff states that he never once used inappropriate language in front of youth players, and that he never once yelled or cursed at umpires, scorekeepers, field supervisors, other coaches, Blythe Bray, Amanda Mackintosh, or Ron Pearson. *See* Aff. of William A. Doyle, ¶¶ 12 - 15. However, the Affidavit of Blythe Bray states that Plaintiff screamed at her and used the term "bullshit" within earshot of children. *See*

Aff. of Blythe Bray, ¶ 30. Ms. Bray provides details of many other incidents with Plaintiff that are inconsistent with the testimony of Plaintiff. As cited by Plaintiff, it only takes one sworn statement to create an issue of fact sufficient to defeat summary judgment. *See Webster v. Sill*, 675 P.2d 1170, 1172 (Utah 1983).

However, as cited by Defendants, “the mere existence of genuine issues of fact . . . does not preclude the entry of summary judgment if those issues are immaterial to the resolution of the case.” *Burns v. Cannondale Bicycle Co.*, 876 P.2d 415, 419 (Utah Ct. App. 1994). Thus, dozens of genuine factual disputes, such as those in the case before the court, would not preclude summary judgment if those disputes are irrelevant. This court finds that the fact issues raised in Plaintiff’s affidavit are not material to the analysis and determination of this case, and that Defendants are entitled to summary judgment as a matter of law.

Plaintiff cites language from *Andersen v. McCotter*, in which the court stated that “the exercise of free speech rights is not dependent upon the receipt of a full-time salary.” 100 F.3d at 727. This statement was not essential to the holding of the case, as Mrs. Andersen was not deemed to be a non-paid volunteer. *Id.* at 726. The Tenth Circuit Court stated that the plaintiff, Mrs. Andersen, “was, for all relevant purposes, a public employee . . . [who] was paid for twenty hours of work per week.” *Id.* Also, Mrs. Andersen was held to have received legally protectible benefits (besides monetary compensation) for her work, such as college credit. *Id.* Finally, the court unequivocally stated that: “We need not decide whether it was clearly established before this case that volunteers had *Pickering* protection, because Ms. Anderson was not a volunteer.”

*Id.* at 729.

In the instant situation, Plaintiff was clearly a volunteer with no legally protectible interests in youth coaching. In his deposition, Plaintiff stated that he had never been paid in all his years of voluntary service with Lehi youth baseball. See Doyle Dep., 25:11-24, Feb. 17, 2009. Plaintiff's argument that he was deprived of the opportunity to coach his son and carry on his family tradition of coaching Lehi youth baseball may be true, but that does not mean that he lost a constitutionally protected benefit. Not only was Plaintiff a volunteer in every sense of the word, he did not have any of the benefits that Mrs. Andersen in *McCotter* was found to have had, such as financial compensation and college credit.

This is relevant because the individual Defendants are qualifiedly immune from a § 1983 suit if "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Gomes v. Wood*, 451 F.3d 1122, 1134 (10th Cir. 2006). Indeed, "the affirmative defense of qualified immunity . . . protects all but the plainly incompetent or those who knowingly violate the law." *Camuglia v. City of Albuquerque*, 448 F.3d 1214, 1218 (10th Cir. 2006). Certainly, a statement of dicta from *McCotter* does not create a "clearly established" constitutional right for the purpose of Plaintiff's § 1983 claims. There was no knowing violation of law by the individual Defendants. Further, the clear distinction between Plaintiff's volunteer position and Mrs. Andersen's de facto public employee status make the two cases dissimilar in this key aspect. Thus, the individual Defendants in this case are entitled to qualified immunity.

Plaintiff was a seasonal, unpaid volunteer. He was not even technically terminated or demoted. He was simply not accepted as a volunteer for the 2007 season. No reasonable governmental official would have recognized that not selecting Plaintiff to serve as a volunteer baseball coach would have violated Plaintiff's constitutional rights.

Cases from outside the Tenth Circuit holding that volunteers' First Amendment rights are the same as those of employees are simply not relevant to this decision. "For the law to be clearly established, there must be a Supreme Court or Tenth Circuit decision on point, or the clearly established weight of authority from other courts must be as plaintiff maintains." *Foote v. Spiegel*, 118 F.3d 1416, 1424 (10th Cir. 1997). The *Anderson v. McCotter* decision is not directly on point, and Plaintiff has not shown that the clear weight of extra-jurisdictional authority supports his interpretation.

Because Plaintiff's Equal Protection claim is derivative of his First Amendment claim, the individual Defendants have qualified immunity for that claim as well. This is because, in essence, the Equal Protection claim is "premised on the allegation that Plaintiff was engaged in protected speech." *Christensen v. Park City Mun. Co.*, 554 F.3d 1271, 1280 (10th Cir. 2009). Further, Plaintiff has not shown by admissible evidence that he was treated substantially differently from other similarly situated coaches. See *Travis v. Park City Mun. Corp.*, 565 F.3d 1252, 1257 (10th Cir. 2009). Further, Plaintiff did not show that there was "no rational basis for the difference in treatment." *Id.* Statements from Plaintiff's supporting affidavits, most of which have been stricken, do not contain particularized, specific instances based on personal knowledge

that other coaches engaged in the same behavior as Plaintiff but were treated differently.

The decision not to re-select Plaintiff as a volunteer in 2007 may have constituted a policy or custom of Lehi City, although it was merely a single act. A single decision by an authorized government official or body may be reflective of a policy or custom. *See Owen v. City of Independence*, 445 U.S. 622, 633 (1980). There is no argument from Defendants that Assistant City Administrator Ron Foggin did not have official authorization to give approval to Harrison's decision to remove Plaintiff from consideration as a volunteer coach. However, because this court has determined that any rights Plaintiff may have had were not violated by the individual Defendants, such rights would also not be violated by Lehi City. "A municipality may not be held liable where there was no underlying constitutional violation by any of its officers." *Camuglia*, 448 F.3d at 1223. Therefore, Plaintiff's claims against the city fail as a matter of law.

Finally, this court now determines whether Plaintiff had constitutionally protected liberty or property interests. The short answer is no. Property interests "stem from independent sources such as state law-rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." *Darr v. Town of Telluride*, 495 F.3d 1243, 1251 (10th Cir. 2007) (internal quotations omitted). It has already been established that Plaintiff received no monetary or other tangible benefits from coaching. Further, his claim that a comment by Bray created an enforceable contract with Plaintiff is unavailing. The comment, as stated in Plaintiff's deposition, is that Lehi "needs more coaches like [Plaintiff]." Doyle Dep., 224: 9, Feb. 17, 2009. Plaintiff's affidavit interprets this phrase as an affirmative representation that Plaintiff would

“definitely be coaching a team for the following youth baseball season.” Aff. of William A. Doyle, ¶ 31, Aug. 31, 2009. Viewing this statement and its interpretation in the light most favorable to Plaintiff, this court cannot find that there was any legal entitlement to a volunteer coaching position in 2007 for due process reasons. As to Plaintiff’s liberty interest, being deprived of the chance to coach his son in a setting where his family had deep roots is not constitutionally recognized. Plaintiff argues that he lost the opportunity to give meaningful public service, and that his reputation was harmed. However, Plaintiff provided no law holding that serving the public is a protected liberty interest. Further, reputation alone, without an accompanying tangible interest, is not a property or a liberty interest protected by the Due Process Clause of the Fourteenth Amendment. *Paul v. Davis*, 424 U.S. 693, 712 (1976).

Having concluded that Plaintiff had no liberty or property interests in volunteer coaching youth baseball teams, the court does not need to analyze the question of procedural due process. Thus, the court makes no determination whether, for example, the May 3, 2007, meeting at the city offices, where Plaintiff was allegedly given the opportunity to coach again upon the fulfillment of certain conditions, constituted notice and an opportunity to be heard.

The court notes that Plaintiff did not respond to Defendant’s argument that the U.S.C. § 1988(b) claim is not a separate cause of action. Moreover, the court has discretion to award reasonable attorney fees only to the prevailing party. 42 U.S.C. § 1988(b). Thus, the cause of action for attorney fees is dismissed as a matter of law.

Further, it is clear that, even accepting Plaintiff’s affidavit as true, he engaged in conduct

that could be construed as violating the Volunteer Code of Conduct. He admitted to becoming upset when discussing the bid and draft in front of children. He used the term “a bunch of bull,” which could be considered inappropriate language, in front of children. Plaintiff admitted that he may have raised his voice while becoming upset, which demonstrates “yelling, arguing, or showing disrespect,” three activities that are specifically prohibited by volunteers as listed on the Volunteer Application that Plaintiff signed. *See* Volunteer Code of Conduct, ¶ 5, Apr. 20, 2006. Therefore, Defendants had the right to choose not to accept Plaintiff as a volunteer based on his violations of the Volunteer Code of Conduct.

Finally, the court rules that the Amended Notice of Claim is inadequate to put the City on notice of the defamation and breach of contract causes of action. The Governmental Immunity Act of Utah states “[t]he notice of claim shall set forth . . . the nature of the claim asserted.” U.C.A. § 63G-7-401(3)(a)(ii). Under the section entitled “NATURE OF THE CLAIM ASSERTED BY PLAINTIFFS” in the Notice, there is no reference to defamation or breach of contract. Two of the non-specific theories listed are “42 U.S.C. §1983 & §1988 claims in tort against Blythe Bray and Dan Harrison” and “Other unknown causes of action.” *See* Notice, P.3, Nov. 28, 2007. True, the Immunity Act does not require a listing of “each specific cause of action that might be pleaded.” *Cedar Profl Plaza L.C. v. Cedar City Corp.*, 2006 UT App 36, ¶ 9, 131 P.3d 275. But no information in the Amended Notice of Claim apprises Lehi City of its potential liability for out-of-the blue claims such as defamation or breach of contract. The Notice simply is not sufficiently specific to comply with the statute. “Utah law mandates strict

compliance with the Immunity Act.” *Greene v. Utah Transit Auth.*, 2001 UT 109, ¶ 12, 37 P.3d 1156. It is up to the Legislature, not the courts, to disturb or change the requirements. “Failure to strictly comply with these requirements results in a lack of jurisdiction.” *Heideman v. Washington City*, 2007 UT App 11, ¶ 12, 155 P.3d 900. Therefore, this court has no jurisdiction to entertain the claims of defamation and breach of contract.

As an equitable theory, equitable estoppel is probably not subject to the notice requirements of the Immunity Act. *See Houghton v. Dep’t of Health*, 2005 UT 63, ¶ 19 n.3, 125 P.3d 860. However, the claim is still dismissed for the following additional reasons: Equitable estoppel is a defense, not a cause of action (such as promissory estoppel). *Youngblood v. Auto-Owners Ins. Co.*, 2007 UT 28, ¶ 12, 158 P.3d 1088. Here, Plaintiff asserted equitable estoppel as his Ninth Cause of Action in his Amended Verified Complaint of August 29, 2008. Viewing Plaintiff’s claim and allegations in the light most favorable to Plaintiff, this court construes his claim to be one for promissory estoppel instead. *See Youngblood* at ¶ 22. His claim deals with a promise about the future rather than the representation of an existing fact (the statement that Plaintiff would coach in the 2007 season was made in 2006). Generally, this is the real distinction between promissory and equitable estoppel. *See Youngblood* at ¶ 17.

At any rate, the court notes that Plaintiff alleges no detrimental reliance as a result of the “promise.” Because Plaintiff had no property or liberty interests, or any other kind of tangible benefits, in volunteer youth baseball coaching, Plaintiff suffered no injuries or damages when he was not selected to coach in 2007. There is simply no admissible evidence to support the claim

for damages resulting from any kind of reasonable reliance on Bray's or Harrison's comments. Reasonable reliance and resulting injury or loss to the plaintiff are two of the necessary elements of promissory estoppel. *See J.R. Simplot Co. v. Sales King Int'l*, 2000 UT 92, ¶ 29, 17 P.3d 1100. Therefore, Plaintiff's estoppel claim is dismissed.

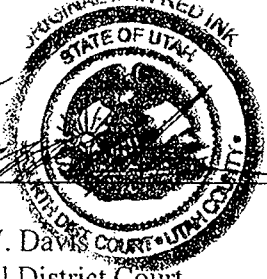
In conclusion, the court observes that youth sports programs are designed for the benefit of children. Parents and coaches should support and encourage the children, and most importantly, set a good example. Children learn virtues such as togetherness, teamwork, and sportsmanship. Moreover, youth participants advance their skills through practice and competition. To sum up, community youth sports exist for children to learn and have fun. Somewhere along the line, it appears that Plaintiff may have lost sight of these simple truths. The court invites Plaintiff to internalize the following sentence from the Volunteer Code of Conduct, Paragraph 7: "I will remember that I am a youth sports coach, and that the game is for children and not adults."

## **VI.**

### **Ruling**

Based on the foregoing, Defendants' Motion to Strike Affidavits is granted in full. Defendants' Motion for Summary Judgment is also granted in full. All parties are ordered to pay for their own attorney fees and costs. Counsel for Defendants shall prepare an Order consistent with this court's Ruling.

Dated this 23<sup>rd</sup> day of March, 2010.

  
Judge Lynn W. Davis  
Fourth Judicial District Court

A certificate of mailing is on the following page.

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 070402671 by the method and on the date specified.

MAIL: JUSTIN D HEIDEMAN 2696 N UNIVERSITY AVE STE 180 PROVO, UT 84604

MAIL: SARAH E SPENCER 15 W SOUTH TEMPLE STE 800 SALT LAKE CITY UT 84144

Date: 3/24/10

Deputy Clerk



Order Granting Defendants'  
Motion for Summary Judgment  
and Motion to Strike

May 3, 2010

**FILED**

MAY 3 2010

4TH DISTRICT  
STATE OF UTAH  
UTAH COUNTY

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**COPY**

IN THE FOURTH JUDICIAL DISTRICT COURT

UTAH COUNTY, PROVO DEPARTMENT, STATE OF UTAH

WILLIAM A. DOYLE, an individual,

Plaintiff,

vs.

LEHI CITY a Municipal Corporation,  
BLYTHE BRAY, an individual, DANIEL  
HARRISON, an individual, and AMANDA  
LEN MACKINTOSH, an individual,

Defendants.

**ORDER GRANTING DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT  
AND MOTION TO STRIKE**

Civil No. 070402671

Judge Lynn W. Davis

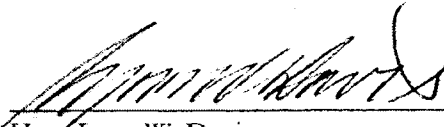
THIS MATTER is before the Court on Defendants' Motion for Summary Judgment and Motion to Strike. The Court, having considered the Memoranda filed by the parties regarding Defendants' Motions, the arguments by counsel presented at the hearings held on said Motions, and the Court's file, hereby ORDERS, ADJUDGES and DECREES Defendants' Motions are GRANTED.

Judgment as a matter of law is hereby entered in favor of Defendants. Plaintiff's claims

against Defendants are dismissed, with prejudice and on the merits. The Court issues this order based on the reasons set forth in the Court's Memorandum Decision of March 23, 2010.

DATED this 3 day of <sup>May</sup>~~April~~, 2010.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Lynn W. Davies", is written over a horizontal line.

Hon. Lynn W. Davies  
District Court Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of April, 2010, I caused a copy of the foregoing  
**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND  
MOTION TO STRIKE** to be mailed, U.S. first class, postage prepaid, upon the following:

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# Addendum

## DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

### U.S. Const. Amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### U.S. Const. Amend IV, § 1

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### Utah R. Civ. P. 56.

(a) For claimant. A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move for summary judgment upon all or any part thereof.

(b) For defending party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought, may, at any time, move for summary judgment as to all or any part thereof.

(c) Motion and proceedings thereon. The motion, memoranda and affidavits shall be in accordance with Rule 7. The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

### Governmental Immunity Act of Utah, U.C.A. § 63G-7-101 (2010), in relevant part:

#### **63G-7-101. Title, scope, and intent.**

(1) This chapter is known as the "Governmental Immunity Act of Utah."

(2) (a) The waivers and retentions of immunity found in this chapter apply to all functions of government, no matter how labeled.

(b) This single, comprehensive chapter governs all claims against governmental entities or against their employees or agents arising out of the performance of the employee's duties, within the scope of employment, or under color of authority.

**63G-7-401. Claim for injury -- Notice -- Contents -- Service -- Legal disability -- Appointment of guardian ad litem.**

(1) (a) Except as provided in Subsection (1)(b), a claim arises when the statute of limitations that would apply if the claim were against a private person begins to run.

(b) The statute of limitations does not begin to run until a claimant knew, or with the exercise of reasonable diligence should have known:

(i) that the claimant had a claim against the governmental entity or its employee; and

(ii) the identity of the governmental entity or the name of the employee.

(c) The burden to prove the exercise of reasonable diligence is upon the claimant.

(2) Any person having a claim against a governmental entity, or against its employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority shall file a written notice of claim with the entity before maintaining an action, regardless of whether or not the function giving rise to the claim is characterized as governmental.

(3) (a) The notice of claim shall set forth:

(i) a brief statement of the facts;

(ii) the nature of the claim asserted;

(iii) the damages incurred by the claimant so far as they are known; and

(iv) if the claim is being pursued against a governmental employee individually as provided in Subsection **63G-7-202(3)(c)**, the name of the employee.

(b) The notice of claim shall be:

(i) signed by the person making the claim or that person's agent, attorney, parent, or legal guardian; and

(ii) directed and delivered by hand or by mail according to the requirements of Section **68-3-8.5** to the office of:

(A) the city or town clerk, when the claim is against an incorporated city or town;

(B) the county clerk, when the claim is against a county;

(C) the superintendent or business administrator of the board, when the claim is against a school district or board of education;

(D) the presiding officer or secretary/clerk of the board, when the claim is against a local district or special service district;

(E) the attorney general, when the claim is against the state;

(F) a member of the governing board, the executive director, or executive secretary, when the claim is against any other public board, commission, or body; or

(G) the agent authorized by a governmental entity to receive the notice of claim by the governmental entity under Subsection (5)(e).

(4) (a) If an injury that may reasonably be expected to result in a claim against a governmental entity is sustained by a claimant who is under the age of majority or mentally incompetent, that governmental entity may file a request with the court for the appointment of a guardian ad litem for the potential claimant.

(b) If a guardian ad litem is appointed, the time for filing a claim under Section **63G-7-402** begins when the order appointing the guardian is issued.

(5) (a) Each governmental entity subject to suit under this chapter shall file a statement with the Division of Corporations and Commercial Code within the Department of Commerce containing:

- (i) the name and address of the governmental entity;
- (ii) the office or agent designated to receive a notice of claim; and
- (iii) the address at which it is to be directed and delivered.

(b) Each governmental entity shall update its statement as necessary to ensure that the information is accurate.

(c) The Division of Corporations and Commercial Code shall develop a form for governmental entities to complete that provides the information required by Subsection (5)(a).

(d) (i) A newly incorporated municipality shall file the statement required by Subsection (5)(a) promptly after the lieutenant governor issues a certificate of incorporation under Section **67-1a-6.5**.

(ii) A newly incorporated local district shall file the statement required by Subsection (5)(a) at the time that the written notice is filed with the lieutenant governor under Section **17B-1-215**.

(e) A governmental entity may, in its statement, identify an agent authorized by the entity to accept notices of claim on its behalf.

(6) The Division of Corporations and Commercial Code shall:

(a) maintain an index of the statements required by this section arranged both alphabetically by entity and by county of operation; and

(b) make the indices available to the public both electronically and via hard copy.

(7) A governmental entity may not challenge the validity of a notice of claim on the grounds that it was not directed and delivered to the proper office or agent if the error is caused by the governmental entity's failure to file or update the statement required by Subsection (5).