

STATE OF MICHIGAN JUDICIAL DISTRICT 22ND JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO. 18-516AW
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Court address 101 E. Huron St
Ann Arbor, Minnesota 48104

David S. Swartz

Court telephone no.
(734) 222-3001

Plaintiff's name(s), address(es), and telephone no(s). Douglas Willer and Mary F. Willer Michigan
Plaintiff's attorney, bar no., address, and telephone no. Tracy E. Van den Bergh, P70066 125 N. Huron Street Ypsilanti, Michigan 48197 (734) 483-4166

v

Defendant's name(s), address(es), and telephone no(s). James Webb, Mary Treder Lang, Michelle Crum, Dennis Beagan, Michael Hawks, Eunice Jefferies, Michael Morris, and Alexander Simpson, individually and as members of the Eastern See Attachment 1
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CLERK OF COURT
 JUDICIAL DISTRICT
 22ND JUDICIAL CIRCUIT
 COUNTY PROBATE
 MAY 10 2018
 CERTIFIED BY
 [Signature]

SUMMONS NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued	This summons expires AUG 09 2018	Court clerk
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Family Division Cases (The following is information required in the caption of every complaint and is to be completed by the plaintiff.)

- This case involves a minor who is under the continuing jurisdiction of another Michigan court. The name of the court, file number, and details are on page ____ of the attached complaint.
 - There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
 - An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.
- The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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Civil Cases (The following is information required in the caption of every complaint and is to be completed by the plaintiff.)

- This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
 - There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
 - A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.
- The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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VENUE

Plaintiff(s) residence (include city, township, or village) Michigan	Defendant(s) residence (include city, township, or village) Michigan
Place where action arose or business conducted	

May 10, 2018
Date

[Signature]
Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Note to Plaintiff: The summons is invalid unless served on or before its expiration date.

SUMMONS AND COMPLAINT
Case No. _____

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

<input type="checkbox"/> OFFICER CERTIFICATE I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)	OR	<input type="checkbox"/> AFFIDAVIT OF PROCESS SERVER Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)
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- I served personally a copy of the summons and complaint.
- I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint, together with _____
List all documents served with the Summons and Complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee		Signature
\$		\$		_____
Incorrect address fee	Miles traveled	Fee	TOTAL FEE	Name (type or print)
\$		\$	\$	_____
				Title

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Signature: _____
Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____ Attachments
 _____ on _____
Day, date, time
 _____ on behalf of _____
 Signature

Attachment

Attachment 1

Michigan University Board of Regents, James Smith, individually and as President of Eastern Michigan University, and Scott Weatherbee, individually and as Vice President and Director of Intercollegiate Sports of Eastern Michigan University
Michigan

STATE OF MICHIGAN
IN THE 22nd CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

DOUGLAS WILLER and MARY F. WILLER,

Plaintiffs,

v.

JAMES WEBB, MARY TREDER LANG, MICHELLE CRUM,
DENNIS BEAGAN, MICHAEL HAWKS, EUNICE JEFFRIES,
MICHAEL MORRIS, and ALEXANDER SIMPSON,
Individually and as members of the Eastern Michigan University
Board of Regents;

JAMES SMITH,
Individually and as President of Eastern Michigan University;

and SCOTT WEATHERBEE,
Individually and as Vice President and Director of
Intercollegiate Sports of Eastern Michigan University,

Defendants.

ROBERTS & FREATMAN
Ellis B. Freatman, III (P34278)
Tracy E. Van den Bergh (P70066)
Attorneys for Plaintiffs
125 N. Huron Street
Ypsilanti, MI 48197
(734) 483-4166

RECEIVED
MAY 10 2010
Washtenaw County
Clerk Register

COMPLAINT FOR MANDAMUS AND DAMAGES

*There is no civil action filed, pending, or resolved
between the Plaintiffs and Defendants arising out of the same
transactions or occurrences alleged in this complaint.*

Plaintiffs Douglas and Mary F. Willer, by and through their attorneys, Roberts &
Freatman, state the following in support of their Complaint for Mandamus and damages:

ROBERTS AND FREATMAN
ATTORNEYS AND COUNSELORS
125 NORTH HURON ST.
YPSILANTI, MICH. 48197

(734) 483-4166

The Parties

1. Plaintiffs Douglas Willer and Mary F. Willer are residents of Hillsdale County, Michigan and both graduates of Eastern Michigan University (“EMU”).
2. Ms. Willer received her undergraduate and master’s degrees in elementary education from EMU. In addition, she has been a long-time booster of EMU sports, especially wrestling.
3. Ms. Willer’s husband, Mr. Douglas Willer, received his undergraduate and master’s degrees from EMU, is a member of the EMU Athletic Hall of Fame, a two-time All-American wrestler, EMU’s first MAC Champion, and was honored as both EMU Athlete and Scholar of the Year.
4. In addition, along with his EMU teammate, Mark Davids, Mr. Willer represented EMU and the United States at the World University Games in Moscow.
5. Defendants James Webb, Mary Treder Lang, Michelle Crum, Dennis Beagan, Michael Hawks, Eunice Jeffries, Michael Morris, and Alexander Simpson are Michigan citizens and the appointed members of the governing Board of Regents at Eastern Michigan University, located in Washtenaw County Michigan.
6. Defendant James Smith is a resident of Washtenaw County and the President of Eastern Michigan University, having been appointed by the EMU Board of Regents
7. Defendant Scott Weatherbee is the Vice President and Director of Intercollegiate Sports at Eastern Michigan University, having been appointed by the EMU Board of Regents.

Common Allegations

8. On March 20, 2018, Defendant Weatherbee informed EMU coaches and student athletes that EMU was eliminating and would no longer sponsor the sports of women's softball, women's tennis, men's swimming and diving, and men's wrestling.
9. That same day, a press conference was held where Defendant Weatherbee described the process allegedly used by EMU to make its decision.
10. Defendant Weatherbee made three claims, including that he "went to the *Board* and the President and this is the option we landed on;" that he "notified the *Board* and talked to them last week;" and that "the *Board* and the President wanted to hold off (the announcement) until graduation..."
11. In a press release issued by EMU that same day, Defendant Webb, the President of the Board of Regents, claimed that "this move is part of a broad, University effort to properly adjust our budget for the years to come, and Athletics is actively participating in this process. The *Board of Regents* fully supports President James Smith and Vice President/Director of Athletics Scott Wetherbee."
12. In addition, although Defendant Weatherbee alleged that the consideration to cut sports began in "late February or early March" when he was told that the Athletics budget needed to be cut by approximately \$2.4 million, the modification of his own employment contract belies this assertion.
13. Not coincidentally, in December 2017, Defendant Weatherbee was released by the Board of Regents from the liquidated damages clause in his employment contract that would have required him to pay up to \$135,000 if any EMU varsity sports were eliminated.

14. The Board of Regents never gave any notice of, nor conducted, any public meeting at which their decision to eliminate the four sports was discussed and made.
15. In fact, on information and belief, Defendants conspired to make their decision to eliminate the four sports in secret and without public comment.
16. In addition, in November of 2017, Defendants Smith and Weatherbee submitted a false report to the National Collegiate Athletic Association (NCAA), claiming that an assistant Athletic Director was the “University CFO” and grossly exaggerating the alleged expenses of the wrestling program they intended to eliminate, and thereby exaggerating all of the alleged expenses which included those figures.
17. Defendants Smith and Weatherbee also submitted a false Equity in Athletics Data form to the United States Department of Education grossly exaggerating the alleged expenses of the wrestling program they intended to eliminate, and thereby exaggerating all of the alleged expenses which included those figures.
18. Despite repeated requests from 100s of students, alumni, parents, faculty, and concerned citizens, the Defendants have refused to reconsider their decision to eliminate the four sports and have prevented any public comment by these interested parties at the regular Board of Regents meetings.

Count 1 – Violation of the Open Meetings Act

19. Plaintiffs incorporate paragraphs 1-18 as if fully stated herein.
20. The Michigan Open Meetings Act provides that “all meetings of a public body shall be open to the public and shall be held in a place available to the general public;” that “all decisions of a public body shall be made at a meeting open to the public;” and that “all

deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public.” MCL 15.263.

21. According to the public statements of Defendants Webb and Weatherbee, Defendants Webb, Lang, Crum, Beagan, Hawks, Jeffries, Morris, and Simpson, or at least a quorum of them, met in secret and discussed dropping various athletics programs at EMU; reducing the Athletic Department budget; and eliminating men’s wrestling, women’s tennis, men’s swimming and diving, and women’s softball, which was ultimately approved.
22. This meeting was conducted in secret without any notice or public opportunity to attend or be heard and constitutes a deliberate violation of the Open Meetings Act, entitling Plaintiffs to relief.
23. Wherefore, pursuant to MCL 15.270 and MCL 15.273, Plaintiffs respectfully request that the Court:
 - a. invalidate the action of the Defendants eliminating the varsity sports of women’s softball, women’s tennis, men’s swimming and diving, and men’s wrestling; and
 - b. order each of the Defendants to pay to the Plaintiffs actual and exemplary damages of \$500.00, plus court costs and attorney fees.

Count 2 – Violation of the Open Meetings Act

24. Plaintiffs incorporate paragraphs 1-23 as if fully stated herein.
25. MCL 15.263(5) guarantees that “a person shall be permitted to address a meeting of a public body under rules established and recorded by the public body.”

26. Despite this statutory guarantee, Defendant Board of Regents designed and applied its rules to effectively prevent any public discussion on EMU's decision to eliminate four varsity sports and/or to reduce the Athletic Department budget.
27. Specifically, total time allotted for public comment during meetings is limited to thirty (30) minutes, regardless of the complexity, seriousness, or level of public interest in the matters facing the University. In addition, each speaker is restricted to three minutes and the number of persons desiring to speak is limited to the first ten individuals that sign up.
28. After learning of the decision to eliminate women's softball, women's tennis, men's swimming and diving, and men's wrestling, Plaintiffs requested to speak at the April 20 meeting in writing by filling out and submitting the "Request to Address the Board of Regents" form on April 18, 2018.
29. However, the Board denied Plaintiffs' request, stating that all 10 public speaking opportunities had already been filled. Significantly, none of the 10 public speaking opportunities were filled by anyone who wished to address the issue of eliminating sports, which effectively denied all public comment on this issue.
30. Over 200 people attended the April 20 meeting wanting to comment and to express their opinions about the elimination of sports; Defendants refused to allow any of them to speak.
31. Despite being told by the Board that there were no public speaking slots available, Plaintiffs attended the meeting and again requested an opportunity to speak.

32. Once again, the Board denied their request, claiming there were no spots available and this time also adding that Plaintiffs were ineligible to speak because the issue of eliminating athletics was not on the agenda.
33. On information and belief, in order to curtail public discourse regarding eliminating sports at EMU, Defendants or their agents arranged to fill the spots with 10 speakers who they knew would not address the Board and its decision to eliminate sports at EMU over the estimated 200 other people who came out in opposition.
34. After Defendant Webb, the Board president, prohibited the Plaintiffs and others from speaking at the meeting, he then spoke publicly about the issue, but abruptly closed the meeting when the Plaintiffs and others sought to respond.
35. EMU's rules limiting public participation to thirty minutes, as written, and as applied at the meeting on April 20, 2018 violate the Open Meetings Act.
36. As explained by our Attorney General in published opinion AGO 5332, "Since a provision which limits the period of time at a public meeting during which citizens may address the public body to 1/2 hour may result in certain members of the public being denied the opportunity to address the body, it is my opinion that, if the rule limiting the period of citizen participation to 1/2 hour is applied in a manner which completely denies a person the right to address the public body, it will constitute a violation of the act."
37. The current Attorney General has also stated in his "Open Meetings Handbook":
- "In order to carry out its responsibilities, the board can also consider establishing rules allowing the chairperson to encourage groups to designate one or more individuals to speak on their behalf to avoid cumulative comments. But a rule limiting the period of

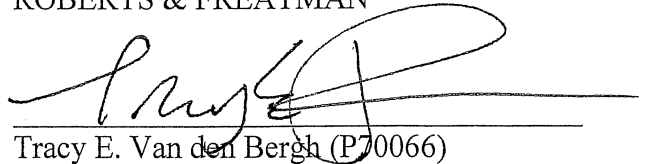
public comment may not be applied in a manner that denies a person the right to address the public body, such as by limiting all public comment to a half-hour period.”

38. Wherefore, pursuant to MCL 15.270, MCL 15.273, and MCL 15.271, Plaintiffs respectfully request that the Court:

- a. invalidate the action of the Defendants eliminating the varsity sports of women’s softball, women’s tennis, men’s swimming and diving, and men’s wrestling;
- b. order each of the Defendants to pay to the plaintiffs actual and exemplary damages of \$500.00, plus court costs and attorney fees; and
- c. permanently enjoin the Defendants from further promulgating or enforcing a rule limiting public comment to ½ hour at meetings of the Board of Regents of the University, and award plaintiffs their costs and attorney fees.

RESPECTFULLY SUBMITTED:

ROBERTS & FREATMAN



Tracy E. Van den Bergh (P70066)
Attorney for Plaintiffs
125 N. Huron Street
Ypsilanti, MI 48197
(734) 483-4166

Dated: 5/10/18