

IN THE CLARK CIRCUIT COURT NO. _____
STATE OF INDIANA

A.J. FELKER,
PETITIONER

VS.

CASE:

NEW WASHINGTON HIGH SCHOOL,
JOSH EMILY, ATHLETIC DIRECTOR, IN
HIS OFFICIAL CAPACITY AND THE GREATER CLARK
COUNTY SCHOOLS,
RESPONDENTS

**VERIFIED PETITION FOR TEMPORARY INJUNCTION
AND DECLARATORY JUDGMENT**

Comes now A.J. Felker, after first being duly sworn upon his oath, and with his attorney, Larry O. Wilder, and set forth the following Petition for Temporary Injunction and for Declaratory Judgment:

STATEMENT OF FACTS

1. The Petitioner, A.J. Felker (hereinafter "Felker") is a resident of Clark County, Indiana. He is the father of Drake Anthony Felker (hereinafter "Drake").
2. Drake is a sophomore at New Washington High School (hereinafter "School"). The School is a public school located in New Washington, Indiana and receives funding from the Greater Clark County School Corporation (hereinafter "GCCS").
3. The GCCS is funded by property taxes and money received from the State of Indiana and the United States Federal Government. The GCCS is a "state agency" as defined by the United States Constitution and the Indiana State Constitution.

4. Drake plays basketball. He participates on both the Varsity and Junior Varsity basketball teams.
5. Josh Emily (hereinafter "Emily") is the School's Athletic Director and the Assistant Principal.
6. Johnathan May (hereinafter "May") is the Varsity Basketball Coach at the School.
7. On January 19, 2018 Felker was at Austin High School in Scott County, Indiana attending his Son's basketball game.
8. With 3:33 remaining the the Third Quarter the referee stopped play and turned to the stands and ejected Felker from the Austin High School gymnasium.
9. Felker left the gymnasium accompanied by several law enforcement officers. The events are memorialized on ScottCounty.tv on FaceBook.
10. Emily was not present at the game.
11. At the conclusion of the game Felker was allowed to return to the gymnasium.
12. Sometime after this incident the official that ejected Felker, Paul Neidig, contacted the Indiana High School Athletic Association (hereinafter "IHSAA") and filed a "Unsporting Behavior Report." **Exhibit "A"**
13. On January 26, 2018 Felker was contacted by Emily and informed that he (Felker) was being "suspended" from attending the next three (3) New Washington High School basketball games.
14. The New Washington High School basketball team had a game on January 27th at West Washington.
15. Felker took his Son to the School on January 27, 2018 so his son could ride with the team to West Washington. West Washington is located in Washington County, Indiana and it is NOT a school overseen by the GCCS.
16. Felker dropped his Son off and was confronted by the Coach May regarding Felker's intentions to attend the game. Felker informed that his attorney advised that he (attorney) did not believe that Emily had the authority to ban him from attending the game.
17. Coach May, upon learning of Felker's intention to attend the game in Washington County, informed Felker that he DID NOT think it was a good idea and questioned whether it was a good idea for Felker's son to attend the game as well.

18. Felker's son did not travel with the team nor did Felker attend the game at West Washington High School.
19. New Washington's next two (2) games are "away" games. Their final three (3) games are at New Washington High School. **Exhibit "B"**
20. The regular season ends on February 23, 2018.

**LEGAL CLAIMS FOR DECLARATORY JUDGMENT
AND TEMPORARY INJUNCTION ENJOINING ENFORCEMENT
OF THE RESPONDENTS' PROHIBITION OF FELKER FROM ATTENDING
HIS SON'S EXTRACURRICULAR SPORTS EVENTS**

1. Article 8, Section 1 of the Indiana Constitution provides in relevant part that "it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all."
2. The Indiana Supreme Court, in *Indiana High School Athletic Association, Inc., v. Carlberg, et. al.*, 694 N.E.2d 222 (In. 1998) in pertinent part that, "... the integral role that athletics play in our state's constitutionally mandated system of education and the history of judicial scrutiny... dictate that the common law provide for judicial oversight..."
3. Felker is a citizen of the United States more particularly Clark County, Indiana.
4. Felker has a Constitutionally protected right to enter the public property of the GCCS and banning him from entering the property of GCCS without first being afforded due process is a violation of his fundamental rights.
5. Emily's act of banning Felker was arbitrary and capricious inasmuch as Emily lacked authority to ban Felker from the government's property without due process of law.
6. Emily's act of banning Felker from the property of West Washington High School as well as his purported ban of Felker from the property of Medora High School and Trinity Lutheran High School is arbitrary and capricious and is undertaken without lawful authority and violates due process of law.
7. Emily's actions are arbitrary and capricious inasmuch as Emily was not present at the incident that allegedly forms the basis for Felker's ban from his Son's basketball games.

8. Emily has failed to provide any rules, regulations or documents that support his ability to unilaterally ban Felker from public property owned by either GCCS and/or any other property not owned by GCCS. Therefore, Emily's threat prohibiting Felker from attending games conducted on property NOT under GCCS's control is arbitrary, capricious and violates Felker's Constitutional Right to be free to gather at a public place of his choice.
9. Emily's actions of banning Felker from public property absent due process, absent Indiana Code and any other statute, ordinance or articulated rule or regulation is a denial of Felker's right to enjoy his Constitutionally protected right to Free Speech inasmuch it is alleged that he is being punished for statements made in a public forum (a sporting event). There is no evidence that Felker's statements of criticism at the sporting event constituted speech that is NOT protected by the Indiana or United States' Constitution.
10. Felker would ask the court to enter a declaratory judgment determining whether the GCCS, Emily, New Washington High School and/or any other governmental entity has the right to ban a parent from attending extracurricular events involving their children absent due process of law.
11. Felker would ask that the court enter a judgment declaring the rights of a parent to attend extracurricular activities of their children on property of other than that maintained by the GCCS absent due process of law.
12. Felker would ask that the court enter a judgment declaring his rights to a hearing or other due process prior to the government punishing him by prohibiting him from attending extracurricular activities of his child either on the GCCS property or the property of any other government or non-government property.

IRREPARABLE HARM

1. If the Court does not enjoin the Emily and the GCCS's enforcement of the ban upon Felker he will suffer irreparable harm.
2. Felker lacks an adequate legal remedy to compensate Felker for the damage he will suffer if he is prohibited from watching his Son's high school basketball games.
3. There are a limited number of moments in a lifetime when a Father has the opportunity to attend their children's athletic, scholastic or artistic endeavors.
4. If the government wrongfully prohibits Felker from enjoying these moments the government has no ability to compensate Felker for this loss. The loss of a memory has no monetary value. The loss of a moment in your children's lives is

forever gone and there is nothing that can be done by the court to recreate those missed moments.

5. There is a likelihood that Felker will prevail as a matter of law. GCCS and New Washington High School do not have the authority to unilaterally ban parents from the government's property without due process and/or absent well articulated rules and regulations.
6. There is a likelihood that Felker will prevail as a matter of law. GCCS and New Washington High School do not have the authority to unilaterally ban parents from the the property of other schools without due process and/or absent well articulated rules and regulations.
7. There is a likelihood that Felker will prevail as a matter of law. The IHSAA does not have the authority to unilaterally ban parents from the government's property without due process and/or absent well articulated rules and regulations. Moreover, in the particular matter the IHSAA has NOT banned Felker from the property of the GCCS or any other government property. Moreover, the IHSAA has not banned Felker from attending interscholastic athletic events over which the IHSAA has venue.
8. It is in the best interest of the public at large to enjoin the GCCS from enforcing it's order prohibiting Felker from attending his Son's games without first conducting a full evidentiary hearing and trial inasmuch as the issue of power of the government over parents of athletes is of great public interest and concern.

WHEREFORE, the Petitioner, A.J. Felker, request the court enter an order as follows:

- A. An immediate temporary order enjoining the Respondents' from prohibiting him from attending his Son's athletic events on property other than that owned by the Respondents'
- B. An immediate temporary order enjoining the Respondents' from prohibiting him from attending his Son's athletic events on property owned and operated by the Respondents' pending the final disposition of this case.
- C. A trial by jury on all matters triable to a jury in this case.
- D. A trial on the merits of the case to declare the rights of the Petitioner and Respondent in consideration of the facts set forth herein.

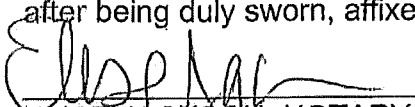
- E. An order declaring the Petitioner's rights as requested in the verified petition for relief.
- F. Any and all other relief that he may be entitled to in the premises.

I, A.J. Felker, affirm under the penalties of perjury that the above statements are true and accurate to the best of my knowledge and belief.



A.J. Felker, Petitioner

I, Elise Jackson, affirm that A.J. Felker appeared before me on this date and, after being duly sworn, affixed his signature hereto.



ELISE JACKSON, NOTARY
CLARK COUNTY, INDIANA

MY COMMISSION EXP: 3/29/23

PREPARED BY:


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CERTIFICATE OF SERVICE

I, Larry O. Wilder, affirm that a true and accurate copy of the above pleadings have been served on the individuals set forth below on the 3/29/18.



LARRY O. WILDER #11443-10