

1 Michael J. Aguirre, Esq., SBN 060402  
2 Maria C. Severson, Esq., SBN 173967  
3 AGUIRRE & SEVERSON, LLP  
4 501 West Broadway, Suite 1050  
5 San Diego, CA 92101  
6 Telephone: (619) 876-5364  
7 Facsimile: (619) 876-5368

8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 JILANNE D. BARTO, an individual,  
12 Plaintiffs,

13 v.

14 DAVID MIYASHIRO, in his official  
15 capacity as Superintendent Cajon  
16 Valley Union School District; JAMES  
17 MILLER, JO ALEGRIA, TAMARA  
18 OTERO, KAREN CLARK-MEJIA,  
19 each in their official capacity as  
20 Trustee of Cajon Valley Union School  
21 District Board of Trustees; and DOES  
22 1 to 50, inclusive,  
23 Defendants.

Case No. '19CV2261 WQHKSC

**COMPLAINT FOR VIOLATION OF  
UNITED STATES CONSTITUTION,  
FIRST AMENDMENT UNDER  
42 U.S.C. § 1983, AND  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**DEMAND FOR JURY TRIAL**

**INTRODUCTION**

1  
2 1. Plaintiff Jilanne D. Barto has been a member of the Cajon Valley  
3 Union School District Board of Trustees in San Diego County, California for more  
4 than two decades. She was most recently re-elected in November 2018 with sixty-  
5 nine percent of the vote in her district, Trustee Area 2.

6 2. Plaintiff has been outspoken in questioning the Board and the  
7 Superintendent, and his staff and administration, consistent with her fiscally  
8 responsible principles. The School District Board Superintendent and four other  
9 board members have retaliated against Plaintiff and conspired against her in  
10 violation of her First Amendment rights under the United States Constitution.

11 3. Defendants’ retaliatory conduct has repeatedly tried to prevent  
12 Plaintiff from fully representing the constituents that elected her to the Board.

13 **II. PARTIES**

14 **A. Plaintiff**

15 4. Plaintiff Jilanne D. Barto, a current Trustee of Cajon Valley Union  
16 School District Board of Trustees, resides in the County of San Diego.

17 **B. Defendants**

18 5. Defendant David Miyashiro has been the Superintendent of Cajon  
19 Valley Union School District during all relevant times that resulted in deprivation  
20 of Plaintiff’s constitutional rights.

21 6. Defendant David Miyashiro has been the Superintendent of Cajon  
22 Valley Union School District during all relevant times that resulted in deprivation  
23 of Plaintiff’s constitutional rights.

24 7. Defendant James Miller has been a Trustee of Cajon Valley Union  
25 School District Board of Trustees during all relevant times that resulted in  
26 deprivation of Plaintiff’s constitutional rights.  
27  
28

1           8. Defendant Jo Alegria has been a Trustee of Cajon Valley Union  
2 School District Board of Trustees during all relevant times that resulted in  
3 deprivation of Plaintiff's constitutional rights.

4           9. Defendant Tamara Otero has been a Trustee of Cajon Valley Union  
5 School District Board of Trustees during all relevant times that resulted in  
6 deprivation of Plaintiff's constitutional rights.

7           10. Defendant Karen Clark-Mejia has been a Trustee of Cajon Valley  
8 Union School District Board of Trustees during all relevant times that resulted in  
9 deprivation of Plaintiff's constitutional rights.

10           11. Each of the individually named defendants are named in their official  
11 capacity.

12           12. Each of the defendants reside in the County of San Diego.

13           13. The true names and capacities of those Defendants sued herein as  
14 DOES 1 through 50, inclusive, whether individual, governmental, or otherwise, are  
15 unknown to Plaintiff, who sues those Defendants by such fictitious names. When  
16 the DOE parties' true names and capacities and their actual involvement in the  
17 matters alleged herein are ascertained, Plaintiff will amend this complaint to  
18 accurately reflect the same.

19           14. Plaintiff is informed and believes, and thereon alleges, that each of the  
20 fictitiously named defendants designated hereunder as a DOE is responsible in  
21 some manner for the occurrences alleged herein, and that Plaintiff's damages as  
22 herein alleged were proximately caused or contributed to by their conduct.

23           15. Plaintiff is informed and believes, and thereon alleges, that at all  
24 relevant times herein, each of the defendants was the agent, employee, alter ego,  
25 and/or co-conspirator of one or more of the remaining defendants and in doing the  
26 acts alleged herein, was acting within the purpose, course and scope of such  
27 agency, employment joint venture or conspiracy, and with the consent, permission  
28 or ratification of one or more remaining defendants.

1 **III. JURISDICTION AND VENUE**

2 16. This Court has jurisdiction under 28 U.S.C. § 1331 because the action  
3 arises from alleged violations of the U.S. Constitution and thereby depends on  
4 resolution of substantial questions of federal law. This Court also has jurisdiction  
5 under 28 U.S.C. § 1343(3) and (4) because this action seeks to redress a  
6 deprivation, under color of law, of a right, privilege or immunity secured by the  
7 United States Constitution, and seeks to recover equitable and other relief under 42  
8 U.S.C. § 1983, an Act of Congress providing for the protection of civil rights.

9 17. Defendants are not barred from liability for damages under qualified  
10 immunity because their conduct violates “clearly established statutory or  
11 constitutional rights of which a reasonable person would have known.” *Harlow v.*  
12 *Fitzgerald*, 457 U.S. 800, 817, 102 S. Ct. 2727, 2738 (1982).

13 18. Venue is proper in the Southern District of California under 28 U.S.C.  
14 § 1391(b)(1) because the defendants are located in and do business in this District,  
15 including business related to the claims in this Complaint. Venue is also proper  
16 under 28 U.S.C. § 1391(b)(2) because the events giving rise to Plaintiff’s claims  
17 occurred in this District.

18 **IV. BACKGROUND**

19 19. Plaintiff is a Trustee on the Cajon Valley Union School District Board  
20 of Trustees. She was first elected in 1994 and has served twenty-five years on the  
21 Board. She was most recently re-elected in November 2018 with sixty-nine percent  
22 of the vote from her district, Trustee Area 2.

23 20. As required by state law and Cajon Valley Union School District  
24 Board By Laws 9224 BB (2017), “prior to entering upon the duties of their office,  
25 all Governing Board members shall take the oath.”

26 21. Plaintiff has taken that oath and, therefore, has committed herself to  
27 the successful representation of her constituents.  
28

1           22.    The Cajon Valley Union School District Board of Trustees (“Board”)  
2           “has been elected by the community to provide leadership and citizen oversight of  
3           the district.” Cajon Valley Union School District Board By Laws 9000 BB (2017).  
4           The Board is charged with “[s]etting the direction for the district through a process  
5           that involves the community, parents/guardians, students, and staff . . . .” *Id.* The  
6           Board also has the responsibility of “[p]roviding community leadership and  
7           advocacy on behalf of the students, the district’s educational program, and public  
8           education in order to build support within the local community and at state and  
9           national levels.” *Id.*

10           23.    As Trustee of the Board, “the member’s first commitment is to the  
11           well-being of [the] youth.” Cajon Valley Union School District Board By Laws  
12           9271 BB (2017). [Her] primary responsibility is to every student in the district.” *Id.*  
13           She also has commitments to “[t]he community,” and she is “obliged by law to  
14           participate in decisions pertaining to education in the district.” Trustees of the  
15           Board are “not to use [their positions] for private advantage or personal gain.” *Id.*  
16           Trustees are to “[m]ake use of opportunities to enlarge [their] potential as a Board  
17           member through participation in educational conferences, workshops, and training  
18           sessions . . . .” *Id.*

19           24.    Plaintiff values her position as a Trustee of the Board and adheres to  
20           the bylaws established by the District. Throughout her time on the Board, Plaintiff  
21           has regularly met with her constituents, made site visits to schools within the  
22           District, attended school related conferences, participated vocally at Board  
23           meetings, and set the agenda in order to expand her reach and effectively represent  
24           her constituents.

25           25.    Plaintiff is fiscally minded and has spoken on behalf of her  
26           constituents, even when it meant disagreeing with other Trustees/Defendants.

27           26.    Plaintiff has always spoken and continues to speak on behalf of the  
28           best interests of her constituents.

1 27. After her re-election in November 2018, Plaintiff spoke unfavorably  
2 about Defendants' actions.

3 28. Defendants disagree with Plaintiff on policy issues and are depriving  
4 her of her right to hold office and the right to exercise the authority of her duly  
5 elected position.

6 29. The primary policy disagreement is over fiscal expenditure issues.  
7 Plaintiff asked probing questions about the way in which Defendants spend District  
8 funds, and in response, has been excluded from typical Board-related functions.

9 30. For example, Plaintiff raised issues about how much money District  
10 Superintendent Miyashiro has spent on his travel and conference costs, and raised  
11 questions about the size and nature of expenditures from his discretionary funds.

12 31. In December 2018, Plaintiff questioned Defendant Trustee Jo  
13 Alegria's request for payment for a missed Cajon Valley Board meeting since she  
14 was being paid for business other than the District's business. Defendant Miyashiro  
15 responded in a hostile manner.

16 32. In May 2019, Plaintiff raised questions about contracts with the  
17 District, particularly in connection with a \$600,000 contract that Defendant  
18 Miyashiro proposed be and in fact was awarded to Dryw Otero, son of Board  
19 President Defendant Tamara Otero.

20 33. Defendants have unlawfully retaliated against Plaintiff for her efforts  
21 to bring to the public's attention the financial irregularities of the Defendants.

22 **Defendants' Denial of Plaintiff's Right to Hold and Serve Office**

23 34. In August 2018, Defendant Miyashiro prohibited Plaintiff from  
24 contacting District employees directly, including the Assistant Superintendent and  
25 Board Secretary, both of whom are necessary for Plaintiff to effectively serve her  
26 constituents.

27 ///

28 ///

1           35. In August 2018, after being unable to attend a closed-session Board  
2 meeting, Defendants refused to share with Plaintiff information that was exchanged  
3 during the meeting.

4           36. It is custom for the Board to give all Trustees the opportunity to set the  
5 agenda through rotation, in order to represent their constituents' interests. In  
6 December 2018, Defendants took Plaintiff off the agenda-setting rotation and  
7 replaced her with another Trustee. Plaintiff has not been on the rotation since she  
8 was removed.

9           37. In March 2019, Defendants refused to allow Plaintiff to use her Cal  
10 Card (issued to each Board member to make purchases when conducting District  
11 business) to pay for her ticket to the Mayor's lunch. The other Trustees' tickets  
12 were paid with Superintendent pay.

13           38. In March 2019, Plaintiff requested the District website be updated with  
14 her current phone number and a new photograph -- a request she had made several  
15 times prior to no avail.

16           39. In April 2019, Defendants denied Plaintiff a position on a Board  
17 committee, and if not, a request for an alternate position on the committee. These  
18 requests were denied.

19           40. In June 2019 and on several other occasions, Defendants denied  
20 Plaintiff access to video of recorded Board meetings and public comment cards.  
21 Defendants then deleted the recordings before Plaintiff could review them.

22           41. In September 2019, Plaintiff tried to collect some coins (given to staff  
23 and students as rewards) which she had earned, but Defendants refused Plaintiff the  
24 coins, even though the other Defendant Trustees received theirs.

25           42. In October 2019, Defendants cancelled Plaintiff's Cal Card credit card.

26           43. In October 2019, Plaintiff emailed Defendant Miyashiro on behalf of  
27 several concerned constituents about a Twitter post. In response, Defendant  
28 Miyashiro copied the Trustees and other District employees, telling Plaintiff to refer

1 the constituents to him “if there [*sic*] real.” Instead of discussing the concerning  
2 Twitter post, the response was meant to disrespect Plaintiff and belittle the  
3 constituent’s concern.

4 44. Plaintiff’s fellow trustees took an arbitrary and capricious attitude  
5 towards Plaintiff’s request to attend education related conferences. For example, on  
6 12 November 2019, Plaintiff wrote the Superintendent, “I would like to respectfully  
7 request to attend this year’s CSBA conference.” In response, Plaintiff received from  
8 the President of the Board an email responding, “if you need to be reminded of the  
9 decisions made by the Board to self govern in closed session, please call me.” In  
10 other words, the answer was “no.”

11 45. Defendants have restricted Plaintiff from visiting schools under her  
12 jurisdiction and have prohibited her from participating in official functions of the  
13 Board.

14 46. Defendants have prohibited Plaintiff from attending Board meetings  
15 and restricted her from being on District property.

16 47. Defendants have attempted to keep Plaintiff from serving in her  
17 position as a duly elected Trustee, and have even tried to coerce her to sign a  
18 resignation letter when she complained of their retaliation.

19 **FIRST CLAIM FOR RELIEF**

20 **Violation of First Amendment under 42 U.S.C. §1983**

21 **(Against All Defendants)**

22 48. Plaintiff re-alleges and incorporates the allegations of all prior  
23 paragraphs of the complaint, as though fully set forth herein.

24 49. “Every person who, under the color of any statute, ordinance, [or]  
25 regulation . . . of any State . . . subjects or causes to be subjected, any citizen of the  
26 United States . . . to the deprivation of any rights, privileges or immunities secured  
27  
28



1 by the Constitution and laws, shall be liable to the party injured in an action at law.”  
2 42 U.S.C. § 1983.

3 50. Plaintiff, a citizen of the United States, is endowed with a First  
4 Amendment right to speak critically of her government. As an elected Trustee of a  
5 board charged with governing the school district, Plaintiff has an obligation to take  
6 positions on controversial political questions so that her constituents can be fully  
7 informed by them. *Bond v. Floyd*, 385 U.S. 116, 136 (1966).

8 51. Defendants, acting under the color of law within their official positions  
9 in the District as set forth herein, have sought to stop Plaintiff from taking policy  
10 positions that differ from theirs, and in so doing, have violated Plaintiff’s right of  
11 free expression under the First Amendment of the United States Constitution.

12 52. Defendants have demonstrated a pattern of conduct aimed at silencing  
13 Plaintiff’s attempts to look into their questionable behavior.

14 53. By preventing Plaintiff from attending community events, denying her  
15 proper and customary Board-related expenditures, and by doing the other acts  
16 complained of herein, Defendants have violated Plaintiff’s First Amendment right  
17 to speak on behalf of and represent her constituents’ interests.

18 **SECOND CLAIM FOR RELIEF**

19 **Retaliation under 42 U.S.C. § 1983**

20 **(Against all Defendants)**

21 54. Plaintiff re-alleges and incorporates the allegations of all prior  
22 paragraphs of the complaint, as though fully set forth herein.

23 55. Plaintiff questioned some financial decisions made by Defendants. In  
24 an effort to stop Plaintiff’s further probing, Defendants retaliated and prevented her  
25 from serving her constituents.

26 56. Defendants took action to chill or silence Plaintiff from exercising  
27 her constitutional rights under the First Amendment. Defendants took away  
28 Plaintiff’s ability to speak to District employees, to be present at Board meetings, to

1 participate in conferences and events other Trustees participate in. They cancelled  
2 her Cal Card, and have prevented her from providing meaningful input to the Board  
3 on behalf of her constituents.

4 57. If Plaintiff had not taken policy positions contrary to Defendants,  
5 Defendants would not have so acted against Plaintiff. Defendants' actions are  
6 intended to chill, and in fact have effectively silenced, Plaintiff's speech.

7 58. Plaintiff's right to hold office includes her First Amendment right to  
8 speak on behalf of her constituents and exercise the rights bestowed upon her as an  
9 elected official of the District, whether or not favorable to the Defendants.

10 59. Defendants have taken steps to silence Plaintiff from doing her job and  
11 representing her constituents. Defendants required Plaintiff to obtain approval from  
12 the Board before she makes site visits or speaks with the public. Defendants banned  
13 Plaintiff from being on District property and only allowed her to participate in  
14 Board meetings via conference calls. Defendants removed Plaintiff from the  
15 agenda-setting rotation – a rotation in which every Trustee is to be included.

16 60. Defendants have a desire to chill Plaintiff from using her First  
17 Amendment rights because Plaintiff takes different policy positions and questions  
18 Defendants decisions. But-for Plaintiff speaking out against Defendants, they  
19 would not have taken action against her.

20 61. The adverse action against Plaintiff is a direct result of her speech. As  
21 a 25-year member of the Board, she had not previously experienced retaliation until  
22 her speech was contrary to Defendants' liking.

23 **THIRD CLAIM FOR RELIEF**

24 **Injunctive Relief for Violation of the United States Constitution**  
25 **(Against all Defendants)**

26 62. Plaintiff re-alleges and incorporates the allegations of all prior  
27 paragraphs of the complaint as though fully set forth herein.  
28



