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CHRISTOPHER J. FALCON
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FAIRFAX, VA

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JANE DOE,)
)
Petitioner;)
)
 v.)
)
 FAIRFAX COUNTY SCHOOL)
 BOARD,)
 Serve:)
 Karl Frish, Chair of the Board)
 8115 Gatehouse Road)
 Falls Church, VA 22042)
)
Respondent.)
 _____)

2024 03171

Civil Action No. 24-_____

**PETITION FOR DECLARATORY,
INJUNCTIVE, AND ADDITIONAL RELIEF**

INTRODUCTION

1. This is a civil rights action under the Constitution and laws of the Commonwealth of Virginia.

2. This action challenges the actions, policies, and regulations of Respondent Fairfax County School Board (the "School Board" or the "Board") that compel Petitioner Jane Doe ("Petitioner"), a student at Fairfax County Public Schools ("FCPS") to speak in a manner that violates her sincerely held philosophical and religious beliefs, discriminate against her because of those sincerely held philosophical and religious beliefs, and discriminate against her on the basis of sex, all in violation of her rights guaranteed to her by the Constitution of the Commonwealth of Virginia.

3. The School Board violated the Virginia Constitution and laws of the Commonwealth by enacting and applying Regulation 2603.2, which violates the Petitioner's free speech, free exercise, and due process rights.

4. Specifically, FCPS Regulation 2603.2 and its application unconstitutionally violates the Petitioner's sincerely held philosophical and religious beliefs by compelling her to refer to "[s]tudents who identify as gender-expansive or transgender [] by their chosen name and pronoun, regardless of the name and gender recorded in the student's permanent pupil record."

5. Regulation 2603.2 and its application further unconstitutionally violate the Petitioner's philosophical and religious beliefs by compelling her to share a restroom with a biological male.

6. Regulation 2603.2 and its application unconstitutionally discriminate against the Petitioner on the basis of her sex by requiring her to use a private restroom to remain consistent with her beliefs while allowing a biological male to use the female restroom.

7. Finally, Regulation 2603.2 and its application unconstitutionally discriminates against the Petitioner on the basis of sex, as it permits a biological male to feel safe and comfortable by having full access to any restroom of his choice while not allowing the Petitioner to feel safe and comfortable by using the restroom of her biological sex.

8. Regulation 2603.2 and its application serve to compel the Petitioner to speak and act in a certain way on the concept of gender identity, which is among

many controversial topics that are rightly perceived as sensitive political topics and occupy the highest rung on values inherent in inalienable liberty rights and merit special protection. Yet, FCPS has knowingly and blatantly violated the Petitioner’s rights by forcing her to accept the ideological viewpoint of the government and the claimed rights and privileges of other students.

PARTIES

9. The Petitioner is a resident of Fairfax County, Virginia, and a high school student at Fairfax County Public Schools.

10. The Respondent, Fairfax County School Board (the “School Board” or “Board”), is the public body that governs Fairfax County Public Schools (the “School District” or “District”). It is located in Fairfax County, Virginia.

11. The School Board has final policymaking and decision-making authority for rules, regulations, and decisions that govern school division personnel, including the Regulations and actions challenged herein.

12. The School Board exercised its policy-making authority by adopting Regulation 2603.2.

JURISDICTION AND VENUE

13. This Court has personal and subject matter jurisdiction under Va. Code Ann. §§ 8.01-328.1, 17.1-513.

14. This Court has the authority to issue the relief sought under Va. Code Ann. §§ 8.01-184–190 (declaratory judgment, damages, costs, and attorneys’ fees),

§§ 8.01-620–633 (injunctive relief, damages, and costs), and § 57-2.02 (declaratory judgment, injunctive relief, costs, attorneys’ fees).

15. The Respondent is subject to this Court’s jurisdiction under Va. Code Ann. § 22.1-71.

16. Venue is proper in this judicial circuit under Va. Code Ann. § 8.01-261 because the petition is brought in the Circuit Court of the county where the acts giving rise to this Complaint took place, because Defendant has its place of business in this circuit, and because the Petitioner resides in this circuit.

Factual Background

FCPS Regulations and Guidance Documents

17. On October 9, 2020, FCPS adopted the first iteration of Regulation 2603 entitled “Gender-Expansive and Transgender Students.”

18. Today, this regulation has been superseded by Regulation 2603.2, which took effect on April 21, 2022. A true copy is attached as *Exhibit 1*.

19. At some time in 2020, FCPS published a document entitled “Regulation 2603-Gender-Expansive and Transgender Students Guidance Document.” A true copy is attached as *Exhibit 2*.

20. According to Regulation 2603.2, its purpose is “[t]o establish procedures and guidelines for schools to ensure that *all students*, including gender-expansive and transgender students experience a safe, supportive, and inclusive environment.” *Ex. 1* at 1 (emphasis added).

21. Additionally, Regulation 2603.2 states that “[a]ll students have a right

to privacy Fairfax County Public Schools facilities.” *Id.*

22. While the Regulation purports to apply equally to all students, the School Board’s guidance documents reveal that the true purpose of Regulation 2603 was “to provide our gender-expansive and transgender students with a safe, supportive, and inclusive environment.” *Ex 2* at 3.

23. A closer examination of the Regulation confirms that it does not apply to all students equally, nor does it protect all students’ rights equally.

24. Instead, it elevates the interests of “gender-expansive” and “transgender” students at the expense of all others. For example, Regulation 2603.2 states:

A. “Students who identify as gender-expansive or transgender should be called by their chosen name and pronouns, regardless of the name and gender recorded in the student’s permanent pupil record.” *Ex. 1* at 3.

B. “Gender-expansive and transgender students shall be provided with the option of using a locker room or restroom consistent with the student’s gender identity.” *Id.* at 4.

C. “In no case shall a gender-expansive or transgender student be required to use a locker room or restroom that conflicts with the student’s gender identity or be limited to using only a private area, single-occupancy accommodation, or other single-use facility.” *Id.*

25. It is in this way that the Regulation puts the burden of accommodation on biological females who want to use the appropriate restroom or locker room.

26. And for students who object to sharing a restroom with a member of the opposite sex for any reason—including their sincerely held religious beliefs—Regulation 2603.2 states that they, “[S]hall be provided with a reasonable, non-stigmatizing alternative, such as the use of a private area (e.g., a nearby restroom stall with a door, an area separated by curtain, or a nearby health or single-use/unisex bathroom), or with a separate changing schedule (e.g., using the locker room that corresponds to the student’s gender identity before or after other students). *Id.*

27. The Guidance Document defines “[g]ender identity” as, “A person’s sense of their own identity as a boy/man, girl/woman, something in between, or outside the male/female binary. Gender identity is an innate part of a person’s identity and can be the same or different than the sex assigned at birth.” *Ex 2* at 5.

28. The Guidance Document defines “gender-expansive / gender non-conforming / gender-diverse / gender-fluid / gender-non-binary / agender / genderqueer” as, “Terms that convey a wider, more flexible range of gender identity and expression than typically associated with the social construct of a binary (two discreet and opposite categories of ‘male and female’) gender system.” *Id.*

29. The Guidance Document defines “transgender” as “an individual whose gender identity is different from that associated with the individual’s sex assigned at birth. An individual can express or assert a transgender identity in a variety of ways, such as pronoun usage, mannerisms, and clothing. Medical treatments or procedures are not considered a prerequisite for identifying students as transgender.” *Id.* at 6.

30. Regulation 2603.2 cross-references several other policies and regulations, including “Policy 1450.7, Nondiscrimination” and “Regulation 4952.5, Discrimination and Harassment on a Protected Class.” *Ex. 1* at 6. A true copy of Regulation 4952.4 is attached as *Exhibit 3*.

31. Regulation 4952.5, in turn, prohibits “gender-based harassment” and defines this as “acts of verbal, non-verbal, and/or physical aggression, intimidation, or hostility based on a person’s sex, or sex-stereotyping, but which are not necessarily sexual in nature.” *Ex. 3* at 2.

32. Examples include gendered name calling, gendered remarks that are derogatory in nature – intending to demean or humiliate, and harassment based on sexual orientation and gender identity/expression.” *Id.*

33. In August 2022, FCPS sent each student a digital or hard copy of the 2022–23 FCPS “Student Rights & Responsibilities” guide (“SR&R”), which parents were required to acknowledge via signature that they had read, understood, and accepted on behalf of their child the rights and responsibilities articulated in the guide. A true copy is attached as *Exhibit 4*.

34. The 2022–23 SR&R stated that students have “the right to access restroom and locker room facilities and other non-stigmatizing accommodations that are consistent with the student’s gender identity, faith, and for any other reasons as identified in Regulation 2603.” *Id.* at 10.

35. The 2022–23 SR&R also stated that students have “[t]he right to be

called by their chosen names and pronouns.” *Id.*

36. In the Glossary, the 2022–23 SR&R defines “misgendering” as “the act of labeling others with a gender that does not match their gender identity—deliberately or accidentally.” *Id.* at 36.

37. Appendix D of the 2022–23 SR&R is FCPS Regulation 2601.36P, which is entitled “Student Rights and Responsibilities.” *Ex. 4* at 50–122.

38. This Regulation specifies disciplinary consequences for students who violate school policies.

39. Of relevance to this case, however, Regulation 2601.36P Code RB9h provides for discipline for “slurs based upon the actual or perceived gender identity (which includes, but is not limited to, malicious deadnaming or malicious misgendering).” *Id.* at 71.

40. Regulation 2601.36P Code RB9i provides for discipline for students who use “slurs based upon the actual or perceived gender expression.” *Id.*

41. Regulation 2601.36P Code BSC8f provides for discipline for “[d]iscriminatory harassment (includes harassing conduct): Gender identity.” *Id.* at 72.

42. Standard disciplinary measures for violations of Codes RB9h, RB9i, and BSC8f are Level 2 and Level 3, with an option for Level 4 discipline for a violation of BSC8f.

43. Level 2 and Level 3 disciplinary measures include punishments such as weekday detention, Saturday detention, removal from student activities for up to 14 calendar days, out-of-school suspension, and “behavioral instruction.” *Id.* at 77–78.

44. Level 4 disciplinary measures include punishments such as referral to the IEP team, removal from student activities for 21 days, out-of-school suspension, and possible referral to law enforcement.

45. FCPS made changes to the SR&R for the 2023–24 school year, but the definitions, prohibitions, and disciplinary options described above remain the same. See Regulation 2601.37P at 23–24, 29–31. A true copy of the 2023–24 FCPS Students Rights and Responsibilities Guide is attached as *Exhibit 5*.

Petitioner’s Education History and Beliefs

46. The Petitioner is currently a senior at an FCPS high school.

47. The Petitioner has been a student at FCPS since 2014 when she was in third grade.

48. The Petitioner is a practicing Roman Catholic who strives to live in accordance with her faith daily.

49. The Petitioner has completed the Catholic Catechism curriculum and the sacraments of Baptism, Penance, Eucharist, and Confirmation. She regularly attends Catholic Mass and participates in youth groups through the Catholic Church.

50. Because of her beliefs as a practicing Roman Catholic, the Petitioner has sincerely held beliefs that govern her views about human nature, marriage, gender, sexuality, morality, politics, ethics, natural law, and social issues.

51. Through her faith as a practicing Roman Catholic, the Petitioner has learned and sincerely believes that God creates each person as male or female, that the complementary sexes reflect the image of God, that sex cannot be altered, and

that rejection of one's biological sex is a rejection of the image of God within that person.

52. The Petitioner also believes that to acknowledge or endorse that sex can be altered is to speak against God and her sincerely held religious and philosophical beliefs.

53. The Petitioner further believes that referring to another person using pronouns that do not correspond with biological sex is harmful to that person because it is untrue.

54. The Petitioner further believes that referring to another person using pronouns that do not correspond with biological sex is harmful to herself because it forces her to lie.

55. The Petitioner also believes that, based on scientific evidence, there are only two anatomical sex presentations, which are male and female.

56. For students that may not be comfortable using facilities that correspond with their biological sex, the Petitioner supports those students having access to the use of private restrooms.

57. Also, for students that may not be comfortable using pronouns that correspond with their biological sex, the Petitioner supports the choice of that student to use the pronouns with which they are comfortable.

58. Similarly, the Petitioner supports the right of students to choose to refer to other students and teachers by their chosen pronouns, even when they do not correspond to biological sex.

59. The Petitioner does not support, however, any government policy compelling students to refer to other students and teachers by their chosen pronouns when they do not correspond with biological sex.

60. The Petitioner believes that being compelled to share common, female-designated facilities with members of the opposite sex, including restrooms, directly contradicts her faith as a Roman Catholic, compromises her privacy and modesty, and makes her feel unsafe and uncomfortable.

61. The Petitioner further believes that being forced to choose between feeling safe and comfortable in a common female restroom and her sincerely held religious beliefs forces her to choose between her constitutionally protected right to not be subject to sex discrimination and her constitutionally protected rights of free exercise of sincerely held religious beliefs.

The Board's pronoun policies, practices, and procedures violate the Petitioner's free speech and free exercise rights under the Virginia Constitution

62. The Petitioner has received and reviewed the FCPS SR&R Guide as required before each school year. She understands the disciplinary consequences that she could face for “misgendering” another student.

63. The Petitioner also believes that there is a culture of fear that exists at her high school, where students are afraid of getting disciplined or chastised by staff and ostracized by other students and branded as intolerant or unwelcoming if they do not accept or rubber stamp other students claims to be “gender expansive” or “transgender.”

64. The Petitioner has also reviewed Policy 1450.7, Regulation 2603.2, and Regulation 4952.5.

65. The Petitioner sincerely does not understand the meaning of the definitions contained in Regulation 2603.2 related to “gender identity,” “gender expansive,” and “transgender,” and thus does not understand how she can avoid violating Regulation 4952.5 and Policy 1450.7.

66. Because of the Petitioner’s sincerely held philosophical and religious beliefs, she does not believe in the concepts and definitions contained in Regulation 2603.2 and to acknowledge the truth of those concepts and definitions would be to falsely act in contradiction of those rights.

67. The Petitioner also sincerely believes that, even if those concepts and definitions did not violate her sincerely held philosophical beliefs, it is objectively and subjectively unclear what conduct or speech would constitute “misgendering” under Regulation 2603.2, Regulation 4952.5, and the FCPS SR&R Guide.

68. As a result, the Petitioner reasonably fears being subject to discipline for acting and speaking in a way consistent with her sincerely held philosophical and religious beliefs but would be in violation of Policy 1450.7, as applied by Regulations 4952.5 and 2603.2.

69. At the beginning of the 2023–24 school year, the Petitioner received the 2023–24 SR&R. Unlike in past years where parents would merely need to sign and acknowledge receipt and understanding of the rights and responsibilities articulated in the SR&R, FCPS stopped providing parents with hard copies to sign, but instead

required students (including the Petitioner) to watch a video and take a test on the SR&R. Signature and acceptance of the SR&R, a requirement of each student, was predicated on a student answering 70 percent of the questions “correctly.” FCPS staff did not clearly explain to students that passing the test would result in the signature and acceptance of the SR&R.

70. The video that the Petitioner was compelled to watch, and did watch, contained a slide stating: “The right to access restroom and locker room facilities and other non-stigmatizing accommodations that are consistent with your gender identity, faith, and for any other reason.” A true and accurate depiction of that slide is attached as *Exhibit 6*. A true and accurate copy of the test is attached as *Exhibit 7*.

71. The test that the Petitioner was required to take included the following question: “A student has the right to be called by their chosen name and pronoun.” *Ex. 7* at 3. Test takers were required to answer the question “true” or “false.” *Id.*

72. Aware that the SR&R test posed that question, Petitioner refused to take the test, as doing so would require her to either speak against her sincerely held philosophical and religious beliefs or speak in confirmation of those sincerely held philosophical beliefs and face potential discipline, chastisement, and/or social ostracization.

73. The Petitioner was told in person by her teacher that she needed to take the SR&R test and the teacher also gave her a written note that instructed the Petitioner to take the SR&R test.

74. The teacher followed up his in-person and written requests to the Petitioner with two emails informing her that she needed to take the SR&R test.

75. On September 26, 2023, other students who refused to take the SR&R test were required to go to the cafeteria and take the test under supervision. The Petitioner was informed that she must go to the cafeteria to take the SR&R test, but she again refused.

76. In early October 2023, the Petitioner's mother emailed the school principal to inform him that the Petitioner would not be taking the SR&R test as it constituted "compelled speech" on "gender identity," among other topics, which were contrary to their religious beliefs and family values.

77. A second FCPS employee then sent an email to the Petitioner's mother, instructing her that there was no opt-out for the SR&R and requiring her to sign, which she did not.

78. Also, during the first week of the 2023–24 school year, one of the Petitioner's teachers discussed the preferred pronouns policy in class at the beginning of the year by reading from a welcome packet which some teachers indicated had been provided by the school principal. The Petitioner's teacher asked her and her classmates to discuss their preferred pronouns with each other.

79. Most of the Petitioner's teachers also required students fill out a "Getting to Know You" form. The form was sent to the Petitioner through Schoology, which is an internal online platform that allows teachers to communicate with students. The Petitioner's teachers told her that the school's principal had requested this

form be filled out by students.

80. In that form, students were asked to provide their name and, in the line immediately after their name, their “Preferred Name and pronouns.” A true and accurate depiction of a portion of this survey is attached as *Exhibit 8*.

81. The question asking for “Preferred Name and pronouns” included an asterisk next to it, indicating that it was required to answer the question in order to submit the form. *Id.*

82. The previous school year, the Petitioner’s history teacher had also required students to fill out a similar form requesting that they provide her pronouns.

83. The Petitioner sincerely felt that answering questions asking her to state her pronouns violated her sincerely held philosophical and religious beliefs, but answered the questions out of fears of discipline, chastisement, and/or social ostracization.

84. The Petitioner has also been made aware of a similar “Getting to Know You” form required by teachers at a different FCPS high school where students were compelled to answer whether they used “she/her,” “he/him,” “they/them,” or “other” pronouns, with a space to enter the pronouns next to other. A true and accurate copy of this survey is attached as *Exhibit 9*.

85. The students at a separate FCPS high school were also required to answer whether the teachers could “use this pronoun when I contact caregivers?” *Id.*

86. On August 22, 2023, the Petitioner’s mother emailed the principal about

the Petitioner being required to fill out the “Getting to Know You Form,” the Petitioner being required to discuss pronoun usage with other students, and all of her teachers discussing pronouns during the first week of school. The Petitioner’s mother also asked about the SR&R test, and was told by the principal that it was required for acknowledgment and signature of the SR&R.

87. Since the enactment of Regulation 2603.2, the Petitioner’s teachers refer to students by their preferred pronouns, even when they do not match their biological sex, and expect students to do the same.

88. As a result of FCPS’s policies, regulations, practices, and procedures related to pronoun usage, the Petitioner and other students feel extreme social pressure to suppress their sincerely held philosophical and religious beliefs and affirm a concept that is anathema to those beliefs—that sex and gender is not an immutable characteristic given by God in his image, but instead fluid, changeable, and properly defined by Regulation 2603.2.

89. Consequently, the Petitioner lives in daily fear that if she speaks in a manner that is consistent with her sincerely held philosophical and religious beliefs, she will be subject to discipline, chastisement, and/or social ostracization.

90. Petitioner thus engages in a practice of self-censoring, in which she attempts, to the best of her ability, to avoid using pronouns altogether when addressing or discussing individuals whose “gender identity,” as defined by Regulation 2603.2, could change by the month, week, day, or even minute.

The Board's restroom policies, practices, and procedures violate the Petitioner's free exercise rights under the Virginia Constitution and discriminate against her on the basis of her religious and sex-based rights

91. On May 17, 2023, the Petitioner was entering a female bathroom with her friend. Knowing that someone was behind her, but not knowing who, she held the door open for that person.

92. When she realized that she was holding the door open for Richard Roe ("Roe"), a male student, significantly larger than the Petitioner, who was a freshman at the time.

93. Upon information and belief, Roe does not identify as a female nor does he identify as transgender.

94. Sharing a restroom with a man would be contrary to the Petitioner's sincerely held philosophical and religious beliefs and her desire for modesty and privacy as a woman, so the Petitioner chose not to enter the restroom and went to a different bathroom.

95. Upon information and belief, Roe considers himself "gender expansive," as defined by Regulation 2603.2. He consistently uses the male and female restroom interchangeably and has done so since at least May of 2023.

96. On May 18, 2023, the Petitioner told her mother that there was a male using the female restroom at her school and that this had been a regular occurrence.

97. The same day after receiving this information from the Petitioner, her mother called the school principal. She informed him that her daughter told her that a male student was regularly using the female restrooms at FCPS, that her daughter

witnessed this the day before when attempting to use the restroom, and that her daughter was so uncomfortable with this that she immediately went to find a different bathroom. The Petitioner's mother told the principal Roe's name and her told her that he would investigate the matter using "video and other methods."

98. The Petitioner's mother asked the principal if anything could be done to prevent Roe from using the female restroom in the future, and he responded by referencing the SR&R and stating that school policy allows students to use the restroom that aligns with their declared gender identity.

99. Following the call, the Petitioner's mother sent an email to the principal reiterating her concerns and including screenshots from Roe's Instagram page, which indicated that he attended the same school as the Petitioner and went by the pronouns "he/they."

100. On May 19, 2023, the principal replied and asked for a time to discuss the matter with the Petitioner's mother.

101. The Petitioner's mother was traveling during the time when the principal sent his response email and did not see it, so on May 23, 2023, he again replied to the original email from the Petitioner's mother, thanking her for contacting him and providing a map of individual bathrooms for the Petitioner to use.

102. According to the map provided to the Petitioner's mother by the principal, there are nine sex-segregated, shared bathrooms spread among three floors at the high school. The principal pointed to four facilities that the Petitioner could use: two single use bathrooms on the first floor, one single use bathroom on the second

floor, and the health clinic on the second floor.

103. After exchanging emails with the principal, the Petitioner's mother emailed an FCPS Assistant Superintendent ("Asst. Super."), asking for a phone call "to discuss an incident that keeps happening in my daughter's school keeping her and other girls from feeling safe in their bathrooms."

104. The Petitioner's mother spoke to Asst. Super. on May 30, 2023. The Asst. Super. indicated that she was made aware of the details through the principal, and she confirmed that the SR&R and Regulation 2603.2 allows students to use bathrooms that correspond to their gender identity.

105. The Petitioner's mother asked the Asst. Super. what FCPS would do to protect the safety and privacy of her daughter and other girls, and she responded that it was not her job to set policy, but rather to enforce it.

106. The Asst. Super suggested that the Petitioner reach out to the school board and vote during the next elections. Finally, the Asst. Super. indicated that the positive that came from the report was that FCPS was now aware of the situation concerning Roe and could form a response team to assist him.

107. Receiving no substantive assistance from FCPS, the Petitioner was thus confronted with another choice. On one hand, she could continue to use the common use restrooms, even though it would require her to act in contradiction of her sincerely held philosophical and religious beliefs and compromise her right to privacy and offend her sense of modesty as a female. On the other hand, she could stay true to her beliefs, protect her privacy, and maintain her modesty as a female by only using one

of the four out of thirteen restrooms at the high school.

108. Given the inconvenience and unequal access to bathrooms where she could feel safe and comfortable, vis-à-vis Roe, the Petitioner chose to limit as much as possible her use of restrooms while at school. Most days the Petitioner completely avoids using restrooms at school and will only do so when absolutely necessary.

109. Roe, now a sophomore, continues to be a student at the high school in the 2023-24 school year and he still consistently uses the male and female restroom interchangeably.

110. The Petitioner continues to limit as much as possible her use of restrooms while at school, only using them when absolutely necessary

111. The Petitioner is not the only student at the high school who objects to Roe using a female restroom. In February of 2024, a student-run Instagram page posted several anonymous statements by students objecting to Roe's use of female restrooms.

112. In response to these concerns, an individual believed to be Roe, wrote: "I go in the girls bathroom for safety reason[sic], in the boys bathroom I've been threatened to be jumped multiple times, raped, and screamed at every time. In the girls bathroom no one has ever said anything to me about how they are so uncomfortable, stop being a little bitch behind ur spam account is[sic] embarrassing. My counselor and principal all said I'm allowed to go in there, I don't even look at any of you I go in a stall. You go to a public school not everything is catered to you."

Statements of Law

113. At all times relevant, each and all the acts and policies alleged in this Complaint were attributed to the Defendant who acted under color of a statute, regulation, or custom of the Commonwealth of Virginia.

114. Defendant knew or should have known that they were violating Petitioner's statutory and constitutional rights and did violate Petitioner's constitutional rights by enacting Regulation 2603.2 and applying it to the Petitioner in violation of her constitutional rights to free exercise, free speech, and equal protection of the laws.

115. Regulation 2603.2 and its application are so vague that ordinary citizens must guess its meaning and will differ as to the rule's application, such that it unconstitutionally deprives citizens of liberty without due process of law.

116. The policies and practices that led to the violation of the Petitioner's statutory and constitutional rights remain in effect.

117. Petitioner is suffering irreparable harm from the Defendant's actions.

118. Petitioner has no adequate or speedy remedy at law to correct the deprivation of her rights by the Defendant.

119. The unconstitutional policies and practices that led to the violation of the Petitioner's constitutional rights raise an issue of great public interest, impact every student at FCPS, and are capable of evading review based on the fleeting nature of the violation of individual students' statutory and constitutional rights.

120. Compelling the Petitioner to act and speak in a way that is contrary to

her sincerely held philosophical and religious beliefs in order to conform to a highly sensitive government-sponsored ideology on sex and gender, does not serve any legitimate or compelling state interest and is not narrowly tailored to serve any such interests.

121. Purposely discriminating against the Petitioner for acting and speaking in manner consistent with her sincerely held philosophical and religious, does not serve any legitimate or compelling state interest and is not narrowly tailored to serve any such interests.

122. Purposely discriminating against the Petitioner on the basis of sex, does not serve any significant state interest and is not narrowly tailored to serve any such interests.

123. Defendant's actions have caused injury and continue to cause injury to the Petitioner including depriving her of her statutory and constitutional rights.

Count I
Violation of Virginia Constitution art. I, § 16 and Code of Virginia § 57-1
Free Exercise of Religion

124. The Petitioner incorporates paragraphs 1–123 of the Petition.

125. By threatening to punish the Petitioner for expressing her sincerely held philosophical and religious beliefs in the way that she discusses issues related to gender identity, including the use of pronouns consistent with a person's biological sex, the Respondent has violated and continues to violate the Petitioner's right to the free exercise of religion under the Virginia Constitution and the Act for Religious Freedom.

126. The Petitioner’s view and expression related to gender identity, including the use of pronouns, are motivated by her sincerely held religious beliefs and are avenues through which she exercises her religious faith.

127. Expressing the Respondent’s mandated message on gender identity would require the Petitioner to violate her sincerely held religious beliefs.

128. Threatening to punish the Petitioner for not using pronouns that violate their conscience caused her to suffer on account of her religious belief or opinion.

129. Threatening to punish the Petitioner for not using pronouns that violate her conscience restricted her “freedom to profess, and by argument, to maintain, her opinions in matters of religion and diminished her civil capacities.”

130. Respondent’s regulations and their interpretation and enforcement of their regulations creates a religious test for students.

131. Respondent’s regulation and their threatened enforcement of the regulations to punish the Petitioner violated and continue to violate the Petitioner’s free exercise of religion as guaranteed by the Virginia Constitution and the Act for Religious Freedom.

132. Respondent’s actions have cause and continue to cause injury to the Petitioner, including depriving her of her constitutional and statutory rights.

Count II
Violation of the Code of Virginia § 57-2.02
Petitioner’s Right to Exercise Religious Freedom

133. The Petitioner incorporates paragraphs 1–132 of the Petition.

134. The Petitioner’s sincerely held religious beliefs prohibit her from using

female pronouns to refer to a male and vice-versa.

135. By compelling the Petitioner to use male pronouns to refer to a female, and vice versa, or be disciplined, Respondent has imposed and continues to impose a substantial burden on the Petitioner's religious exercise.

136. The Respondent's policies are an attempt to coerce her into changing or violating her sincerely held religious beliefs on the pain of punishment and scholastic discipline.

137. Compelling the Petitioner to use female pronouns to refer to a male student, and vice further, does not further a compelling government interest and is not narrowly tailored to further any compelling government interest.

138. Threatening to discipline the Petitioner or compelling her to speak specific words is not the least restrictive means of furthering the Respondent's stated interests.

139. Threatening to punish the Petitioner if she does not comply with the regulations violated and will continue to violate the Petitioner's civil rights under Va. Code Ann. § 57-2.02.

140. The Respondent's regulation and threatened enforcement of the regulation cause injury and will continue to cause injury to the Petitioner, including depriving her of her constitutional and statutory rights.

Count III
Violation of the Constitution of Virginia art. I, § 12
Free Speech: Viewpoint and Content Discrimination

141. The Petitioner incorporates paragraphs 1–140 of the Petition.

142. By threatening to punish the Petitioner for expressing her views regarding gender identity and for not expressing the Respondent's views regarding gender identity, the Respondent has engaged in content and/or viewpoint discrimination in violation of the Virginia Constitution.

143. The Respondent's regulations required the Board or its designees to evaluate the content and viewpoint of student expression to determine whether it is consistent with the mandates of their regulations and practices.

144. The discussion of how to respond to individuals claiming to be gender expansive and discuss issues like gender identity and whether to alter the use of pronouns, or not use pronouns, is a matter of public concern and debate.

145. Compelling an individual to express an objective biological falsehood is not a lawful message.

146. The discussion or how to respond to individuals claiming to be gender expansive and discuss issues like gender identity is not curricular speech.

147. Using, or not using, pronouns to refer to other students is not curricular speech.

148. The Petitioner's expression, or lack thereof, regarding gender identity is protected by the Virginia Constitution.

149. By threatening to discipline the Petitioner for violating their regulations, the Respondent has threatened to punish the Petitioner for exercising her right to engage in expression, or lack of expression, that the Virginia Constitution protects.

150. The Respondent's regulations and their threatened enforcement of those policies to discipline the Petitioner have violated and continue to violate her right to freedom of expression as guaranteed by the Virginia Constitution.

151. The Respondent's actions have caused and continue to cause injury to the Petitioner by depriving her of her constitutional and statutory rights.

Count IV
Violation of the Constitution of Virginia art. I, § 11
Deprivation of Due Process of Law

152. The Petitioner incorporates paragraphs 1–151 of the Petition.

153. The Virginia Constitution prohibits the deprivation of liberty without due process of law.

154. Rules which use terms that are so vague that ordinary citizens must guess at their meaning and will differ as to the rule's application unconstitutionally deprive citizens of liberty without due process of law.

155. A rule must afford citizens a reasonable opportunity to know what is prohibited in order to comply with constitutional due process requirements.

156. Rules which restrict or compel speech or action must meet a higher standard of specificity to satisfy constitutional due process requirements.

157. The Respondent's regulations and their enforcement of those regulations are unconstitutionally vague, ambiguous, and contradictory.

158. The Respondent's policies, regulations, and related practices are unconstitutionally vague because they prohibit discrimination on the basis of "sex" and "gender identity," which are inherently in conflict.

159. The Respondent’s policies, regulations, and related practices are unconstitutionally vague because its definition of “gender-expansive” is vague and overbroad, such that ordinary citizens must guess at their meaning and will differ as to the definitions and the circumstances under which their use of pronouns is under restriction or compulsion and subject to sanction.

Count V
Violation of the Constitution of Virginia art. I, § 11
Petitioner’s Right to be Free from Religious Discrimination

160. The Petitioner incorporates paragraphs 1–159 of the Petition.

161. By requiring the Petitioner to use a single-use restroom in order to be able to exercise her sincerely held religious beliefs, the Respondent has violated and is continuing to violate the Petitioner’s right to be free from governmental discrimination under the Virginia Constitution.

162. The Petitioner is similarly situated to other students at West Springfield High School, including Roe.

163. Roe has stated that he needs to use a restroom where his safety and comfort are not compromised. The Respondent did not direct or require Roe to use one of the four single-use restrooms at West Springfield High School. Rather the Respondent, applying its regulations, gave Roe the right to use the female restroom.

164. The Petitioner desires to use a restroom where she will not be compromised in the free exercise of her religion. Pursuant to its regulations, the Respondent required the Petitioner to use one of the four single-use restrooms at West Springfield High School as the means to permit her to use the bathroom in a manner that would

not compromise her free exercise of religion.

165. The Respondent's regulations and related practices have been applied to discriminate intentionally against the Petitioner's rights of free expression, free exercise of religion, and due process of law. Therefore, discriminatory intent is presumed.

166. The Respondent applied their regulations and related practices to the Petitioner in a discriminatory and unequal manner, giving other students the right to use restrooms in a manner that conforms to their views on gender identity, while denying the Petitioner that same right in violation of her right to be free from government discrimination under the Virginia Constitution.

167. The Respondent's actions have caused and continue to cause injury to the Petitioner including depriving her of her constitutional and statutory rights.

Count VI
Violation of the Constitution of Virginia, art. I, § 11
Discrimination on the Basis of Sex

168. The Petitioner incorporates paragraphs 1–167 of the Petition.

169. By requiring the Petitioner to use a single use restroom in order to be able to maintain her modesty, privacy, safety and comfort, the Respondent has violated and is continuing to violate the Petitioner's right to be free from governmental discrimination on the basis of sex under the Virginia Constitution.

170. Pursuant to its regulation and related practices, the Respondent has granted an accommodation to Roe to feel safe and comfortable in the use of a common restroom by providing him the right to use the female restroom.

171. Pursuant to that same regulation and related practices, the Respondent has required the Petitioner to make a choice between maintaining her modesty, privacy, safety and comfort by using one of the four single-use bathrooms in West Springfield High School, or compromising her modesty, privacy, safety and comfort by sharing the female restrooms with a biological male.

172. The Respondent's regulations and related practices have been applied to discriminate intentionally against the Petitioner's rights of free expression, free exercise of religion, and due process of law. Therefore, discriminatory intent is presumed.

173. The Respondent applied its regulations and related practices to the Petitioner in a discriminatory and unequal manner, giving Roe the right to use restrooms in a manner that allows him to feel safe and comfortable in the use of a common, female restroom, while denying the Petitioner that same right in violation of her right to be free from government discrimination under the Virginia Constitution.

174. The Respondent's actions have caused and continue to cause injury to the Petitioner including depriving her of her constitutional and statutory rights.

Prayer for Relief

WHEREFORE, the Petitioner respectfully requests that this Court enter judgment against the Defendant and provide the Petitioner with the following relief:

A. A declaratory judgment that the Respondent's regulations and related practices violated, and continue to violate:

1. The Petitioner's right to free expression under the Virginia Constitution, Article I, § 12;
2. The Petitioner's right to free exercise under the Virginia Constitution, Article I, § 16;
3. The Petitioner's right to free exercise under Va. Code Ann. § 57-2.02;
4. The Petitioner's right to due process under the Virginia Bill of Rights, Article I, § 11;
5. The Petitioner's right to be free from government discrimination on the basis of religion under the Virginia Constitution, Article I, § 11;
6. The Petitioner's right to be free from government discrimination on the basis of sex under the Virginia Constitution, Article I, § 11.

B. A declaratory judgment that the Respondent's policy 2603.2 is incompatible with the guarantees of freedom provided by the Constitution and Code of Virginia.

C. A permanent injunction prohibiting the Respondent, its agents, officials, servants, employees, and any other person acting on its behalf from enforcing the Regulations 2603.2 and 4952.5 to: (i) compel individuals to express ideas regarding identity that violate their conscience, including referring to or addressing students using pronouns different than their biological sex, or (ii) prohibit individuals from expressing views regarding gender identity or to punish them for expressing those views, including addressing and referring to students based on their biological sex.

D. A permanent injunction prohibiting the Respondent, its agents, officials,

servants, employees, and any other person acting on its behalf from enforcing the Regulations 2603.2 and 4952.5 to allow students to use restrooms of the opposite sex.

E. Nominal damages for the violation of the Petitioner’s constitutional rights;

F. Petitioner’s reasonable attorneys’ fees, costs, and other costs and disbursements in this action; and

G. All other further relief to which the Court may deem proper and to which the Petitioner may be entitled.

Dated: March 4, 2024

Petitioner
BY COUNSEL

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