IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

ABBIE PLATT, ANNE MILLER, CARRI MICHON, JESSICA SMITH and SUZANNE SATTERFIELD, *Plaintiffs*, v. LOUDOUN COUNTY SCHOOL BOARD; and MELINDA MANSFIELD, individually and in her official capacity as Chairwoman of the Loudoun County School Board, *Defendant*s.	Case No. 1:24-cv-1873

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

"The First Amendment reflects 'a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.'" *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (quoting *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)). But the Loudoun County School Board—and its Chairwoman, Melinda Mansfield—have weaponized the School Board's public participation policy to silence parents and community members who dared to criticize how the School Board handled a particular school safety issue. This discrimination was accomplished through three vague provisions in the School Board's public participation policy that the School Board deployed to silence these Plaintiffs. Plaintiffs have challenged the School Board's use of these policies, and the policies themselves, and now seek a preliminary injunction that would enjoin the enforcement of those provisions against Plaintiffs for the pendency of this litigation.

Plaintiffs Abbie Platt, Anne Miller, Carri Michon, Jessica Smith, and Suzanne Satterfield are taxpaying residents of Loudoun County and the parents of students who currently attend or formerly attended Loudoun County Public Schools. As concerned parents and community members, Plaintiffs regularly attend the Loudoun County School Board's public meetings to comment on matters of public interest. On October 8, 2024, all Plaintiffs tried to speak to the School Board about a potential school safety issue after news reports suggested that a dangerous student was once again attending Loudoun County public schools.

Rather than listen, the School Board and Mansfield interrupted, admonished, and ultimately silenced Plaintiffs. To do so, Defendants invoked three provisions of its public participation policy: Policy 2520(A)(1), (A)(2), and (A)(3). These three provisions prohibit speech contravening "civility," "decorum," "respect," and comments that "target, criticize, or attack

individual students." But all three provisions fail to precisely inform potential speakers about what speech will be prohibited, while also giving the School Board unfettered discretion to engage in viewpoint discrimination.

Plaintiffs are likely to prevail on the merits of their claims under the First and Fourteenth Amendments and readily meet the remaining preliminary injunction criteria. Deprivation of a core constitutional right, even for a brief period of time, constitutes irreparable injury, and a preliminary injunction would permit Plaintiffs to speak to the School Board about school safety and student safety without the School Board's vague policies chilling or burdening their speech. There is no question, moreover, that the public has a strong interest in protecting the constitutional right to speak to, petition, and even criticize the government without fear of being silenced or suffering arbitrary repercussions. Plaintiffs thus respectfully request that this Court grant a preliminary injunction and enjoin the School Board from enforcing Policy 2520(A)(1), (A)(2), and (A)(3) against Plaintiffs.

BACKGROUND

Loudoun County Public Schools ("LCPS"), Loudoun County's public school district, is administered by an elected School Board. This School Board meets regularly every second and fourth Tuesday of the month during the school year. In each meeting, the School Board holds a public comment period for parents and community members to express concerns directly to the School Board. The official policy of the School Board encourages active community participation: "Community members are invited and encouraged to attend Loudoun County School Board meetings," and that "[t]he School Board welcomes comments from the public and believes strong community engagement is important to a successful school system." Policy 2520, Ex. A, at 1. Parents and community members must register to speak and can do so either electronically or in

person. When registering they may, but need not, list a topic for their remarks. At the general bi-monthly meetings, commentators can speak or petition the School Board about any issue concerning the LCPS system.

Policy 2520 also contains a variety of supposedly neutral procedures that apply to the public comment period of any School Board meeting:

- "Speakers shall maintain the civility, decorum and respect for the functioning and dignity of the School Board at all times." Ex. A, (A)(1).
- "Speakers should be respectful and observe proper decorum in their statements and shall refrain from vulgarity, obscenities, profanity or other like breaches of respect." Ex. A, (A)(2).
- "Speaker comments that target, criticize, or attack individual students are not permitted during public meetings." Ex. A, (A)(3).

But the School Board does not enforce these policies consistently or uniformly. Each of these three speech-restriction provisions suffers from imprecision and overbreadth that renders each one unconstitutionally vague.[1] The School Board has used the leeway provided by these vague terms to weaponize Policy 2520 against Plaintiffs in a way that discriminates on the basis of viewpoint and silences speech critical of how the School Board handled a school safety issue.

I. The School Board Discriminates Against Disfavored Viewpoints and Speech

The Loudoun County School Board has a long history of engaging in targeted suppression of criticism and disfavored viewpoints at School Board meetings. As justification for this suppression—which went so far as threating legal action and closing public meetings to deprive

[1] Plaintiffs argue that 2520(A)(1) and (A)(3) are unconstitutionally vague, and that the language in (A)(2) stating that "Speakers should be respectful and observe proper decorum in their statements and shall refrain from … other like breaches of respect" is unconstitutionally vague. Plaintiffs do not argue that the middle clause of (A)(2)—"shall refrain from vulgarity, obscenities, [and] profanity"—is unconstitutionally vague, and exempt that clause from the target of this preliminary injunction.

parents of the chance to speak—the School Board relies on legally inaccurate definitions of confidential information and overly broad definitions of decorum.

For example, on June 22, 2021, the School Board held its final business meeting before the summer break of that school year. Many parents attended to protest an existing policy enacted by the School Board that allowed students who identify as transgender and "gender-expansive" to use the restrooms and locker rooms that matched their claimed "gender identity," even if different from their biological sex. During the public comment period, one speaker chose to criticize the School Board itself, saying: "You are teaching children to hate others because of their skin color. You are forcing them to lie about other kids' gender. I am disgusted by [the School Board's] bigotry and depravity." *See* Jun. 22, 2021, Meeting, at 1:32:52.[2] Immediately after hearing this criticism, the School Board cut off the speaker's microphone and voted to end the public comment period.

At the end of 2023, the Loudoun County School District elected a new School Board. This current School Board was sworn into office on January 2, 2024, and elected Defendant Mansfield as its Chairwoman. During one of the School Board's very first meetings—on February 27, 2024—many concerned parents urged the School Board to repeal the existing "gender identity" policy that permitted children to use whatever bathroom they chose. *See* Feb. 27, 2024 Meeting. After these critical remarks by concerned parents, the School Board voted to turn off the cameras completely during the public comment periods of all future School Board meetings. Explaining her rationale for the decision, Mansfield said, "I'm not interested in political grandstanding, which has been happening a lot lately." *See* Mar. 12, 2024, Meeting, at 3:44:35.

[2] Recordings of all school board meetings referenced in this Motion for Preliminary Injunction are available at https://go.boarddocs.com/vsba/loudoun/Board.nsf/Public#, or https://perma.cc/26DW-9KYL, and can be accessed by navigating to the video under the "Meetings" tab that corresponds to the specific date referenced.

More warning signs about the School Board's short fuse began to appear. During the public comment period of the March 12, 2024, meeting, many concerned parents and other speakers once again urged the School Board to repeal the existing "gender identity" bathroom policy. Plaintiff Satterfield spoke against the bathroom policy and criticized the School Board. At the end of her remarks, while Satterfield was already walking away from the speaking lectern, Defendant Mansfield took the unprecedented action of raising her voice, addressing Satterfield directly, and telling her to "sit down." *See id.* at 3:14:19. This unprecedented step signaled that, under Mansfield and the new School Board, parents who criticized the School Board's policy decisions were in danger of being targeted and treated differently.

At the April 9, 2024, meeting, one speaker strongly criticized the School Board, beginning by accusing the School Board of lying and proceeding to say: "I know you're all women, but I need you to try really hard to think critically…" Defendant Mansfield immediately interrupted the speaker and cut off his microphone. *See* Apr. 9, 2024, Meeting, at 3:22:23. Later in the same meeting, Defendant Mansfield interrupted another speaker and said: "Can we have some decorum and respect for the school board right now?" *See id.* at 3:29:27. She then warned the individuals who were supposedly breaching decorum: "If you cannot contain yourself, I will have to declare trespassing and ask you to leave." *See id.*

II. On October 8, 2024, the School Board Silenced Plaintiffs for their Viewpoints

In the weeks leading up to the School Board's October 8, 2024, public meeting, multiple news sources began reporting about an unidentified LCPS student with ties to the transnational gang MS-13 who previously had been arrested for threatening the life of a fellow student and charged with possession of a stolen firearm. *See* Ex. B, at 1-2; Ex. C., at 1-2. These news stories reported that LCPS had permitted this unidentified student to return to school within the LCPS

system. Plaintiffs were concerned by this report, particularly the idea that the School Board might have allowed this student to return to school or simply reassigned the student to another school within the LCPS system. This concern was far from abstract, as the School Board had reassigned a similarly dangerous student once before—in 2021, after a student sexually assaulted another student at school, the School Board reassigned the attacker to another school within the LCPS system. *See* In re Special Grand Jury Proceedings, No. CL-22-3129, at 1 (Dec. 2, 2022), https://perma.cc/MWU3-V4LF.

On October 8, 2024, many concerned parents—including Plaintiffs Platt, Miller, Michon, Smith, and Satterfield—attended the School Board's public meeting. All Plaintiffs signed up for public comment to express concerns about the safety of their children, and all followed the proper procedure by registering to speak before the public comment period. *See* Platt Decl., ¶¶6-10; Miller Decl. ¶¶6-8; Michon Decl. ¶¶6-8; Smith Decl. ¶¶6-9; Satterfield Decl. ¶¶6-9.

Coincidentally, at this meeting, the School Board discussed a proposal to send firearm safety materials home with every LCPS student. When it came time for public comment, several speakers spoke in favor of the School Board's proposal about firearm safety material. The School Board permitted speakers who supported the proposed policy to speak fully and without interruption. But Mansfield interrupted or cut off every speaker who disagreed with the School Board's proposal or who wanted to criticize the School Board over the way it reportedly handled the student reassignment issue. *See* Oct. 8, 2024, Meeting, at 2:28:42-41:44

First, Miller accused the School Board of continuing to "betray the trust of students and parents" and attempted to talk about "[how] the School Board continues to play Russian roulette daily with our children … like the reassignment of yet another student who poses a significant threat to the safety of students, a student with violent gang affiliation who was arrested…." *See*

Oct. 8, 2024, Meeting, at 2:28:42. But at that point, Mansfield immediately interrupted. Mansfield told Miller that her comments violated the "civility and decorum" of the board and to "refrain from comments on an individual student that could violate applicable confidentiality requirements" or using "personally identifiable information." *See id.* at 2:29:11.

A little later, Michon took the lectern. Michon criticized the School Board for caring more about firearm security outside the school than inside the school, saying: "All of your show perimeter security means nothing if within the walls the children aren't safe. Knowing that recently a student was carrying a concealed weapon walking to school…." *See id.* at 2:37:23. Mansfield immediately interrupted Michon, told her to "refrain from disclosing personal identifiable information about a student," and threatened to end the public comment period. *See id.* at 2:37:44.

Next, Platt spoke. She attempted to both express her concerns and recount how her daughter feels about attending school, saying: "Where's the protection and the safety for our children who are in school with other children who have known threats, who have been arrested, and who are back in the school. And my daughter is terrified to go to school with him…." *See id.* at 2:40:16. Mansfield then interrupted Platt and said: "Just by what you're saying now is personally identifiable information." *See id.* at 2:40:44.

While Miller, Michon, and Platt all resumed their remarks after the interruption by Mansfield, they each felt forced to limit and revise their remarks further in order to avoid having the microphone cut off or face legal repercussions, as Mansfield had threatened before. But after them, another concerned speaker took the lectern and said: "Recently, the local media covered a story where a known gang member with a criminal record…." *See id.* at 2:41:33. Mansfield immediately interrupted this speaker cut off his microphone, and declared that the public comment period was finished and that no more speakers would be allowed to comment. *See id.* at 2:41:44.

Neither Plaintiff Smith nor Plaintiff Satterfield were permitted to express their views after Mansfield prematurely ended the public comment period. Both Smith and Satterfield intended to speak about safety in schools and the news reports of a student being transferred to another school within the School District after threatening to kill another student and being arrested with a firearm.

The day after the School Board's meeting, LCPS Superintendent Aaron Spence and Mansfield issued a joint statement on behalf of LCPS and the School Board. Rather than deny that the School Board had engaged in viewpoint discrimination, Spence and Mansfield attempted to justify their viewpoint discrimination. After incorrectly stating that "federal and state privacy laws" prevented them from allowing any discussion of individual students, Spence and Mansfield said that their silencing of these Plaintiffs was part of an effort to "be vigilant in actively combatting misinformation," and they have characterized these Plaintiffs comments at the meeting as "misinformation" and driven by a "political agenda." Joint Statement, Ex. D, at ¶¶1, 3, 4. A few days after that, at the October 22, 2024, public meeting, Mansfield reminded the attending audience of Plaintiffs' speech "at the last board meeting" and that such speech violated Policy 2520(A)(3), that "speakers may not criticize, target, or attack individual students."[3] *See* Oct. 22, 2024, Meeting, at 2:21:30.

[3] Mansfield added that the prohibition against comments that "criticize, target, or attack individual students" functionally expanded to prohibit comments about "individual students" in a way that "could violate applicable confidentiality requirements." *See* Oct. 22, 2024, Meeting, at 2:21:30-2230. As Plaintiffs outlined in their Complaint, Mansfield used a legally incorrect definition of confidential identifiable information, and Plaintiffs would not be subject to the confidentially laws that bind the School Board. Plaintiffs preserve those arguments, but they do not pertain to the singular vagueness theory presented in this Motion for Preliminary Injunction.

PRELIMINARY INJUNCTION STANDARD

A party seeking a preliminary injunction must establish (1) "that he is likely to succeed on the merits," (2) "that he is likely to suffer irreparable harm in the absence of preliminary relief," (3) "that the balance of equities tips in his favor," and (4) "that an injunction is in the public interest." *Centro Tepeyac v. Montgomery Cnty.*, 722 F.3d 184, 188 (4th Cir. 2013) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).

ARGUMENT

I. Plaintiffs Are Likely to Prevail on the Merits

A. The First Amendment Prohibits Viewpoint Discrimination

"If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea offensive or disagreeable." *Texas v. Johnson*, 491 U.S. 397, 414 (1989). The Supreme Court has held time and again, both within and outside the school context, that the government may not prohibit speech based on the "mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969); *see also Street v. New York*, 394 U.S. 576, 592 (1969) ("[T]he public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers."); *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 414 (1992) ("The mere fact that expressive activity causes hurt feelings, offense, or resentment does not render the expression unprotected."). Indeed, the right to freely criticize the government and its representatives—which will, due to the very nature of criticism, be offensive to the party criticized—lies at the very center of constitutionally protected speech. *Bach v. Sch. Bd. of City of Va. Beach*, 139 F. Supp. 2d 738, 743 (E.D. Va. 2001) ("The Supreme Court has repeatedly explained that 'it is a prized American privilege to speak one's mind,

although not always with perfect good taste, on all public institutions' … includ[ing] the ability to question the fitness of the community leaders, including the administrative leaders in a school system[.]" (quoting *N.Y. Times*, 376 U.S. at 269).

Viewpoint discrimination can be proved through "disparate treatment towards people or things sharing the characteristic that was the nominal justification for the action," "departures from normal procedures," and "post hoc rationalization" for the discrimination. *St. Michael's Media, Inc. v. Mayor & City Council of Baltimore*, 566 F. Supp. 3d 327, 367 (D. Md. 2021). Here, the School Board unquestionably engaged in viewpoint discrimination. It engaged in disparate treatment and departure from the normal procedures. Every policy concerning "decorum," "respect," or speaking about "individual students" that the School Board enforced against Plaintiffs has been inconsistently enforced such that other speakers who spoke in the same manner or on substantively similar topics were not silenced. And perhaps most damning, the School Board published post hoc rationalizations for silencing Plaintiffs in which it *admitted* that it chose to engage in content discrimination and viewpoint discrimination. The October 9, 2024, statement by Defendant Mansfield disclosed that the School Board silenced Plaintiffs due to concerns about a "political agenda" and "misinformation"—which constitutes open content discrimination and viewpoint discrimination. This discrimination against Plaintiffs' First Amendment rights occurred, in no small part, because the vagaries of Policy 2520 permit arbitrary and discriminatory application.

B. The First Amendment Prohibits Vague Speech Regulations

Not only is the government forbidden from prohibiting disfavored speech, but the government also can't enact speech policies so vague that they can be enforced arbitrarily or discriminatively against disfavored speech. Since a vague law is "no law at all," *United States v.*

Davis, 588 U.S. 445, 447 (2019), "[i]t is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined," *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). "The degree of vagueness that the Constitution tolerates—as well as the relative importance of fair notice and fair enforcement—depends in part on the nature of the enactment." *Vill. of Hoffman Estates. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 498 (1982). In particular, the "standards of permissible statutory vagueness are strict in the area of free expression." *NAACP v. Button*, 371 U.S. 415, 432 (1963).

In this First Amendment context, the vagueness doctrine serves two primary goals: (1) to ensure fair notice and prevent laws so vague that "ordinary people cannot understand what conduct is prohibited," and (2) to "protec[t] against arbitrary and discriminatory enforcement of the law." *Hardwick ex rel. Hardwick v. Heyward*, 711 F.3d 426, 442 (4th Cir. 2013) (cleaned up); *see id.* ("A law is unconstitutionally vague if it fails to establish standards for the government and public that are sufficient to guard against the arbitrary deprivation of liberty interests."). When a speech regulation runs against these two interests, "[t]he vagueness of such a regulation raises special First Amendment concerns because of its obvious chilling effect on free speech." *Reno v. ACLU*, 521 U.S. 844, 871-71 (1997).

The test for unconstitutional vagueness, then, is whether the regulation "chills" a "substantial amount of protected speech." *United States v. Williams*, 553 U.S. 285, 304 (2008). Courts must consider whether the challenged provision: (1) gives "the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly," and (2) prevents "arbitrary and discriminatory enforcement" by "provid[ing] explicit standards for those who apply them." *Grayned*, 408 U.S. at 108. These two tests operate disjunctively; failing either inquiry demonstrates that a regulation is unconstitutional.

C. The School Board's "Decorum," "Respect," and "Individual Student" Policies Are Unconstitutionally Vague and Affect Protected Speech

The School Board's speech restrictions at Policy 2520(A)(1) and (A)(2) prohibit any speech that disrupts "civility," "decorum," or "respect." And the speech restriction at Policy 2520(A)(3) prohibits comments that "target, criticize, or attack individual students"—or, as the expansive definition adopted by the School Board shows, any comments that *mention* an "individual student." *Compare* Oct. 8, 2024, Meeting, at 2:28:42-41:44 (comments that vaguely mention a specific incident involving. student), *with* Oct. 22, 2024, Meeting, at 2:21:30 (treating the previous meeting's comments as having targeted, criticized, or attacked individual students).

On their face, there is no question these prohibitions sweep in enormous amounts of protected speech and expression. Speakers who raise their voices to a yell when discussing a matter of sports funding may simply be zealously advocating for their children—or may be perceived as uncivil. A parent who asks the School Board to investigate a teacher who is not properly grading homework may simply be asking the Board to look into a legitimate problem—or may be perceived as disrespectful to the LCPS staff. Commenters who speak on for a few seconds after their time concludes or turn to briefly address someone in the crowd who disagrees with them may simply be engaging in the normal behavior of concerned parents—or may be perceived as violating decorum. And a parent who stands up to talk about reports of a bully on the school bus may simply be looking out for all students' safety—or may be perceived as "target[ing]" or "attack[ing]" a given student.

The School Board's prohibitions based on "civility," "decorum," "respect," and "individual students" thus hit the unconstitutional trifecta of being highly expansive, highly subjective, and hopelessly vague. Any time a parent disagrees with the decision the School Board has made and attempts to express that disagreement, this criticism—no matter how carefully

worded—is capable of offending someone who made that decision, and therefore being labeled uncivil, disrespectful, or a breach of decorum. And any time a commentor speaks about a school-related incident *some* reference to individual students will necessarily occur—thus triggering a wholly subjective analysis on when mentioning "a student who…" becomes too specific to be permitted.[4] Thus, whoever wields the gavel at the School Board meeting can weaponize Policy(A)(1), (A)(2), and (A)(3) to arbitrarily silence one speaker and permit the next to speak, simply because the chair dislikes what the first speaker has to say.

Given the amorphous way in which these speech restrictions can be applied, "people of common intelligence must necessarily guess at [Policy 2520]'s meaning and differ as to its application." *Citizens United v. FEC*, 558 U.S. 310, 324 (2010). Consider, for example, how the School Board applied these provisions on October 8, 2024. Plaintiff Miller did not use "vulgarity, obscenities, or profanity." *See* Policy 2520(A)(2). She spoke only about her concerns for the safety of students, and about how "the School Board continues to play Russian roulette daily with our children … like the reassignment of yet another student who poses a significant threat to the safety of students, a student with violent gang affiliation who was arrested[.]" *See* Oct. 8, 2024, Meeting, at 2:28:42. The School Board silenced her on the grounds that this speech violated "civility and decorum." *See id.* at 2:29:11. Plaintiff Miller never targeted, criticized, or attacked an individual student. *See* Policy 2520(A)(3). She asked only "[w]here's the protection and the safety for our children who are in school with other children who have known threats, who have been arrested,

[4] In the October 22, 2024, meeting Mansfield suggested that if speakers "generalize" or pluralized their speech—such as, "some students" instead of "a student"—their comments would not violate Policy 2520(A)(3). *See* Oct. 22, 2024, Meeting, at 2:23:05. Yet on October 8, 2024, Mansfield interrupted and admonished Platt even though Platt had preemptively pluralized her comments to avoid singling out an individual student, saying: "Where's the protection and the safety for our children who are in school with *other children* who have known threats, who have been arrested, and who are back in the school…." *See* Oct. 8, 2024, Meeting, at 2:40:16.

and who are back in the school" and noted that "my daughter is terrified to go to school with him." *See id.* at 240:16. But the School Board ignored her plea to address the legitimate safety concern and accused her of targeting, criticizing, or attacking an individual student. *See id.* at 2:40:44.

What will trigger the next silencing of speakers, closing public debate, and threatening legal repercussions? Another stray remark that the School Board views as "political grandstanding"? *See* Joint Statement (Oct. 9, 2024), https://perma.cc/7YN9-95R3. A remark that the School Board thought was insulting? *See* Apr. 9, 2024, Meeting, at 3:22:23. Some quiet chatter among the audience? *See id.* at 3:29:27. Or simply a good-faith criticism of how the School Board handles the safety of students? *See* Oct. 8, 2024, Meeting, at 2:28:42-41:44. Plaintiffs—and the rest of Loudoun County's residents—are left guessing, because Policy 2520 does not tell them.

Policy 2520(A)(1), (A)(2), and (A)(3) give neither fair notice on what speech is prohibited nor explicit standards on how the policies will be enforced in a neutral and unbiased way. The inherently subjective terms "civility," "decorum," and "respect" are not "readily susceptible to a narrowing construction." *Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 397 (1988). Because the speech silenced in the case bears on undeniably protected expression—the rights of parents to speak about the safety and well-being of their children and rights of citizens to criticize their government—the First and Fourteenth Amendments to the U.S. Constitution demand far greater clarity and precision than these speech restrictions provide. Plaintiffs are therefore likely to succeed on the merits of their First Amendment vagueness claim.

II. THE REMAINING PRELIMINARY INJUNCTION FACTORS OVERWHELMINGLY FAVOR GRANTING PRELIMINARY RELIEF

The School Board's Policy 2520(A)(1), (A)(2), and (A)(3) not only infringe Plaintiffs' constitutional rights, but they will also cause Plaintiffs irreparable harm and tip the balance of equities and public interest decisively in favor of granting preliminary relief.

A. Plaintiffs Will Suffer Irreparable Harm At All Future School Board Meetings if the Board's Policies & Practices Are Not Enjoined

The School Board's policies and the unconstitutional way it chooses to apply them will cause Plaintiffs to suffer irreparable injury absent a preliminary injunction. The Supreme Court has repeatedly instructed that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *accord W.V. Ass'n of Club Owners & Fraternal Servs., Inc. v. Musgrave*, 553 F.3d 292, 298 (4th Cir. 2009).

As described in the discussion of the October 8, 2024, meeting, the School Board weaponized its vague policies to target Plaintiffs' disfavor speech and to interrupt, admonish, and silence speakers. And the School Board ultimately closed public comment early and deprived two Plaintiffs of any chance to speak at all. But because Plaintiffs now seek a preliminary injunction, "they may not rest on the [School Board's] past conduct, but must instead 'establish an ongoing or future injury in fact.'" *Abbott v. Pastides*, 900 F.3d 160, 175 (4th Cir. 2018); *see also Kenny v. Wilson*, 885 F.3d 280, 287-88 (4th Cir. 2017).

When ordering preliminary injunctions, courts recognize two different paths by which to "establish the requisite ongoing injury" caused by "government policies alleged to violate the First Amendment. *Abbott*, 900 F.3d at 175. First, Plaintiffs may show "that they intend to engage in conduct at least arguably protected by the First Amendment but also proscribed by the policy they wish to challenge," and that "there is a "credible threat" that the policy will be enforced against them when they do so." *Id.* Or second, Plaintiffs may make a showing of voluntary "self-censorship," or an "objectively reasonable" belief of a credible threat such that they "refrain from exposing themselves to sanctions under the policy[.]" *Id.* Both these paths involve some analysis of a credible threat of enforcement. And the most obvious way to demonstrate a credible threat of

enforcement in the future is, of course, an enforcement action in the past. *See, e.g.*, *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 164 (2014) ("history of past enforcement" is "good evidence" of a genuine threat of enforcement).

Here, Plaintiffs can demonstrate the requisite ongoing injury under either standard. For the first path, all Plaintiffs have affirmed that they all wish and "intend to continue to attend Loudoun County School Board meetings and speak during public comment," including on the specific ongoing safety concern that motivated their October 8, 2024, comments. *See* Platt Decl. ¶4; *see also* Miller Decl. ¶4, Michon Decl. ¶4, Smith Decl. ¶4, Satterfield Decl. ¶4. Yet there is a credible threat that if they try to speak on such matters, the School Board will once again use the vague provisions of Policy 2520 to intimidate, silence, and perhaps even bring legal charges against Plaintiffs. After all, the School Board has shut down meetings and threatened legal charges before. *See* Apr. 9, 2024, Meeting, at 3:29:27.

And with regard to the second path, Plaintiffs are already engaged in self-censorship. Plaintiffs Platt, Miller, and Michon were all forced to self-censor the latter portions of their October 8, 2024, remarks in order to not run further afoul of Mansfield's arbitrary application of Policy 2520(A)(1), (A)(2), and (A)(3). *See* Platt Decl. ¶15; Miller Decl. ¶11; Michon Decl. ¶10. And given the same history of past enforcement and therefore, the threat of future enforcement, all Plaintiffs are now choosing to self-censor rather than return to public comment periods and speak about the safety issue facing LCPS and their children. *See* Platt Decl. ¶19; Miller Decl. ¶16; Michon Decl. ¶13; Smith Decl. ¶17; Satterfield Decl. ¶18.

Every moment that Plaintiffs are forced to self-censor and limit their speech based on the unconstitutional weaponization of vague speech restrictions "unquestionably constitutes irreparable injury." *Elrod*, 427 U.S. at 373. Every moment of silenced speech is an injury. And

none of these injuries, once suffered, can be later undone. That is the essence of irreparable First Amendment harm. Plaintiffs have therefore shown they will be irreparably harmed during the pendency of litigation if they do not receive preliminary relief.

B. The Balance of Equities and the Public Interest Both Favor Relief

Both the balance of equities and public interest tip overwhelmingly in favor of granting Plaintiffs' requested preliminary relief. Because the University is a state actor, these third and fourth requirements for a preliminary injunction—"are established when there is a likely First Amendment violation." *Centro Tepeyac*, 722 F.3d at 191.

For balance of the equities—Plaintiffs have a powerful interest in ensuring the protection of their First Amendment rights to openly and vigorously discuss on all matters of public concern relating to the operation of LCPS and the safety of the students within that system. By contrast, the School Board "is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found unconstitutional." *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002) (cleaned up); *accord Centro Tepeyac*, 722 F.3d at 191 (a state actor "is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found unconstitutional"). So the School Board has no legitimate interest in banning or chilling speech protected by the First Amendment, even if such speech were thought to be "particularly hurtful to many." *Snyder*, 562 U.S. at 456. Besides, if the Court enjoins Policy 2520(A)(1), (A)(2), and (A)(3), the School Board would remain free to enact new regulations appropriately tailored to the First Amendment such that they are not susceptibly to arbitrary and discriminatory enforcement against disfavored speakers. So the harm suffered by Plaintiffs if a preliminary injunction is denied far outweighs the harm, if any, suffered by the School Board if the preliminary injunction is granted.

In addition, upholding the Constitution always promotes the public interest. *See Giovani Carandola*, 303 F.3d at 521 ("[U]pholding constitutional rights surely serves the public interest."); *Centro Tepeyac*, 722 F.3d at 191 (same). When courts "protect the constitutional rights of the few, it inures to the benefit of all." *Int'l Refugee Assistance Proj. v. Trump*, 857 F.3d 554, 604 (4th Cir. 2017), *vacated as moot*, 183 S.Ct. 353 (2017).

III. The Court Should Waive the Rule 65(c) Security Bond

Rule 65(c) permits a court discretionary authority to levy a security bond upon the granting of a preliminary injunction. But this Court should not require Plaintiffs to post a bond, since Plaintiffs have a high likelihood of success on the merits of their claim, Defendants will not suffer monetary injury from a preliminary injunction, the government is the Defendant here, and First Amendment rights are at issue. *See Norris v. City of Asheville*, 2024 WL 1261206, at *10 (W.D.N.C. Mar. 25, 2024) ("[T]he Defendants risk effectively nothing in complying with the preliminary injunction requested by the Plaintiffs, and certainly do not risk significant financial expense. Therefore, any costs suffered by the Defendants during the period of the preliminary injunction will be minimal or nonexistent.").

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' motion for a preliminary injunction and:

(1) enjoin Defendants from enforcing Policy 2520(A)(1) and (A)(2) against Plaintiffs at future School Board public comment periods, or otherwise limiting Plaintiffs' speech based on "civility," "decorum," or "respect," except to the extent that (A)(2) covers vulgarity, obscenities, and profanity; and

(2) enjoin Defendants from enforcing Policy 2520(A)(3) against Plaintiffs at future School Board public comment periods, or otherwise limiting Plaintiffs' speech based on whether it references "individual students."

DATED: October 28, 2024

Respectfully submitted,

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** Pro hac vice motions forthcoming*
***Application for admission forthcoming*

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2024, I served the foregoing document with the Clerk of Court using the Court's ECF system, thereby serving all counsel who have appeared in this case. Because Defendants have not yet entered an appearance, I am also serving the foregoing by email and by certified mail, return receipt requested, at the address below:

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