No. 22-10297

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MOMS FOR LIBERTY – BREVARD COUNTY, FL, et al.,

Appellants,

vs.

BREVARD PUBLIC SCHOOLS, et al.,

Appellees.

ON APPEAL FROM
THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
No. 6:21-cv-01849-RBD-GJK

BRIEF OF APPELLEES

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Local Rule 26.1-1, Appellees, BREVARD PUBLIC SCHOOLS, MISTY HAGGARD-BELFORD, MATT SUSIN, CHERYL MCDOUGALL, KATYE CAMPBELL, and JENNIFER JENKINS (collectively, "Appellees"), certify the following list of the trial judge(s), all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this appeal, including subsidiaries, conglomerates, affiliates and parent corporations, including any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party:

Astor, Martha – Counsel for Appellants

Brevard County Public Schools Office of Legal Services – Counsel for Appellees

Brevard Public Schools – Appellee

Bridges, Gennifer L. – Counsel for Appellees

Burr & Forman LLP - Law firm representing Appellees

Campbell, Katye – Appellee

Cholewa, Joseph – Appellant

Dalton, Jr., Hon. Roy B. – United States District Judge, Middle District of Florida

Delaney, Katie – Appellant

Gibbs, Paul – General Counsel for Brevard County School Board

Goldstein Law Partners, LLC – Law firm representing Appellants

Gura, Alan – Counsel for Appellants

Haggard-Belford, Misty – Appellee

Hall, Ashley – Appellant

Institute for Free Speech – Organization representing Appellants

Jenkins, Jennifer – Appellee

Kelly, Hon. Gregory J. – United States Magistrate Judge, Middle District of Florida

Kneessy, Amy – Appellant

Marks, Howard S. - Counsel for Appellee

McDougall, Cheryl – Appellee

Moms for Liberty – Brevard County, FL - Appellant

Morrison, Ryan – Counsel for Appellants

Osborne, David R. – Counsel for Appellants

Susin, Matt – Appellee

Thakrar, Sheena A. - Counsel for Appellees

CORPORATE DISCLOSURE STATEMENT

To Appellees' knowledge, there are no other entities whose publicly-traded stock, equity, or debt may be substantially affected by the outcome of this appeal. Appellee Brevard Public Schools is a local governmental entity with no shareholders, and the remaining Appellees are individual members of its school board. Appellant Moms for Liberty – Brevard County, FL is an unincorporated association with no shareholders, and the remaining Appellants are individual members of that association.

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STATEMENT REGARDING ORAL ARGUMENT

Appellees respectfully request oral argument in this case, as Appellees believe that oral argument will significantly aid the Court in rendering its opinion. *See* Fed. R. App. P. 34(a)(2)(C); 11th Cir. R. 34-3(b)(3). This appeal involves substantial issues of public importance regarding the ability of school boards and other governmental entities to utilize reasonable time, place, and manner restrictions on public comments to ensure decorum in limited public fora. This Court and multiple other circuits have upheld similar policies, but the Sixth Circuit recently misapplied Supreme Court precedent in finding one such policy unconstitutional. Oral argument will assist in assessing the application of correctly decided case law in this matter.

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INTRODUCTION

Appellants' Brief is light on facts because cherry-picked words plucked out of context serve Appellants' purposes much more effectively than actuality. Appellees never interrupted Appellants or asked them to leave because Appellees took offense to their comments. Indeed, the record reflects that speakers at Brevard Public Schools' ("BPS") school board ("Board") meetings—including Appellants—routinely criticize the Board and its policies without any interruption or comment from the Board or its Chair whatsoever.

Conspicuously absent from Appellants' arguments regarding what the First Amendment does and does not allow is any allegation about viewpoints that Appellants were unable to offer at Board meetings. Appellants spoke over one hundred times and finished their comments *every single time*, save one, when the Board Chair asked Appellant Cholewa to leave after his conduct incited disruption in the audience.

On the few occasions at issue, the speakers violated BPS' viewpoint-neutral public comment policy. The Court should decline Appellants' invitation to gut the Board's reasonable ability to ensure decorum at the limited public fora of its meetings.

STATEMENT OF THE ISSUES

1. Did Appellants, who finished their public comments on every occasion except for one when the speaker's conduct incited disruption, fail to demonstrate a substantial likelihood of success on the merits of their constitutional claims?

2. Is the Policy a reasonable time, place, and manner restriction addressing the manner in which speakers deliver comments and not the speakers' viewpoints?

3. Is the Policy a viewpoint-neutral regulation to maintain order and decorum at a limited public forum?

4. Did Appellees apply the Policy evenhandedly?

5. Are the challenged Policy provisions, when read as a whole with the remainder of the Policy, sufficiently tailored and definitive so as not to be unconstitutionally vague or overbroad?

6. Did the District Court plainly err by not conducting an evidentiary hearing?

STATEMENT OF THE CASE

A. Board Meetings and Public Participation Policy

Regular meetings of BPS' Board contain a public comment section at which members of the public may speak. (Supp. App'x Tab 20 at 2-3.)[1] Misty Haggard-Belford, as Chair of the Board, presides over Board meetings. (*Id.* at 3.)

Members of the public may sign up to speak at Board meetings on any topic, regardless of their viewpoints. (*Id.*) The Board does not limit the number of people who sign up to speak at Board meetings. (*Id.*)

If there are more speakers or audience members than space in the Board room allows, those who cannot fit into the room can wait outside, where a loudspeaker broadcasts the meeting. (*Id.* at 4.) Meetings are also live-streamed on YouTube and a local channel. (*Id.*) If a speaker is outside, the speaker can hear his/her name called over the loudspeaker when it is the speaker's turn to address the Board. (*Id.*) People can therefore speak at Board meetings even if they are not sitting in the Board room. (*Id.*)

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[1] Citations to Appellees' Supplemental Appendix appear as "Supp. App'x Tab ___ at ___." Citations to Appellants' Corrected Appendix appear as "Corr. App'x Tab ___ at ___."

School Board Policy 0169.1, entitled "Public Participation at Board Meetings" ("Policy"), governs the manner in which the Chair presides over the public comment section of meetings. (*Id.*; *see also* Corr. App'x Tab 3-1 at 6-7.) The Policy "does not prohibit the Board from maintaining orderly conduct or proper decorum in a public meeting." (Corr. App'x Tab 3-1 at 6.)

The Policy limits public comments to three minutes each. (*Id.*) The Policy also provides that "all statements shall be directed to the presiding officer; no person may address or question Board members individually. Staff members shall not be expected to answer questions from the audience unless called upon by the Board Chairman or the Superintendent." (*Id.* at 7.)

If speakers fail to follow the Policy, the Chair may: (1) interrupt, warn, or terminate a participant's statement when the statement is too lengthy, personally directed, abusive, obscene, or irrelevant; (2) request any individual to leave the meeting when that person does not observe reasonable decorum; (3) request the assistance of law enforcement officers in the removal of a disorderly person when that person's conduct interferes with the orderly progress of the meeting; and (4) call

for a recess or an adjournment to another time when the lack of public decorum so interferes with the orderly conduct of the meeting as to warrant such action. (*Id.*)

The Chair begins each public comment section of the Board's meetings by reviewing the Policy with the audience. This includes reminding the audience that "reasonable decorum is expected at all times, and your statements should be directed toward the Board's chairman." (Supp. App'x Tab 20 at 7.) The Chair also informs the audience that she "may interrupt, warn, or terminate a participant's statement when time is up, it's personally directed, abusive, obscene, or irrelevant," and that she may ask those not observing proper etiquette to leave the meeting. (*Id.*) The Chair concludes the review of the Policy by asking the audience to "encourage an environment appropriate for our children, who may be present or watching from home." (*Id.* at 7-8.)

The Chair is solely responsible for conducting the public comments section of each Board meeting. (*Id.* at 8.) Other Board members usually do not address speakers. (*Id.*)

B. Purposes of the Policy

The Policy aims to ensure that speakers are able to share their

perspectives, regardless of viewpoint, while preventing disruption or interference with the Board's ability to conduct its business. (Supp. App'x Tab. 20 at 8, 9.) The Board has observed that comments directed specifically to individual Board members tend to result in audience members calling out and becoming disruptive, whether in agreement or disagreement with the speaker's comments. (*Id.* at 9.) This precludes the Board from conducting its business and inhibits public speakers from being heard. (*Id.*)

The Policy also seeks to maintain decorum and avoid inciting audience members in a manner that would create an unsafe situation or one that may adversely impact children, who are often physically present at Board meetings or observing via livestream or recorded video. (*Id.* at 8.)

The Policy does not prevent speakers from commenting at Board meetings based on their viewpoints. (*Id.*) The Policy is applied to all speakers, regardless of their position or point-of-view on an issue. (*Id.*)

C. M4L Speakers at Board Meetings

M4L members do not always identify themselves as such when they speak during the Board meetings' public comment sections. (*Id.*) If

they do not verbally identify as M4L members, they may be identified as such from their t-shirts or the Public Comment Forms that speakers fill out before the meetings, which ask speakers to identify what organization they are with, if any. (*Id.*) Cholewa, who never identified himself at Board meetings as an M4L member, is included in the figures below due to his claim that he is a member of M4L. (*Id.* at 9-10.)

Between January 19, 2021 and October 26, 2021, at least 34 individuals who identified themselves as members of M4L spoke at Board meetings. (*Id.* at 10.) More members may be identifiable. (*Id.*) These 34 individuals spoke at least 109 times. (*Id.*)

Of the 109 times (at the least) that M4L members spoke at Board meetings during this timeframe, Appellants identify only four occasions when M4L members were interrupted by the Board's Chair and only a single occasion when the Chair asked an alleged M4L member (Cholewa) to leave the meeting. (*Id.*)

M4L members often criticize Board decisions and can be confrontational in tone. (*Id.*) However, unless an M4L member—or any public commenter—violates the Board's viewpoint-neutral Policy, the Chair does not interrupt or otherwise intervene during their

statements. (*Id.*) Each such occasion alleged by Appellants were for violations of the Policy, and the Chair treated commenters who differed with Appellants' viewpoints the same way. (*Id.*)

D. Appellant Ashley Hall

Between January 19, 2021 and October 26, 2021, Appellant Hall spoke 13 times at Board meetings, and the Chair interrupted her once. (Supp. App'x Tab 20 at 11.) That interruption occurred on February 23, 2021, when Hall began to thank Appellee Susin regarding a topic, and the Chair asked her "not to focus on individual board members, and keep it focused on the chair of the board as a whole." (*Id.*) Although Hall started to express a positive statement toward Susin, the Chair interrupted Hall under the Policy's requirement that speakers direct their comments to the Chair. (*Id.*)

Specifically, Hall began her comments by informing the Board that a child was disappointed that he could not enter the Board room "due to your 'all of a sudden' mask mandate policy coming in here." (*Id.* at 16.) She acknowledged that the boy read a letter "to Mr. Mullins and Ms. Belford outside, but he could not come in today and is deeply

disappointed." (*Id.* at 16-17.)[2]

Hall continued, "Mr. Susin, I'm going to thank you personally for—," at which point the Chair interrupted Hall as discussed above. (*Id.*) The Chair did not interrupt Hall for the viewpoint that she was expressing. (*Id.*) After this brief interruption, during which the Chair stopped the 3-minute timer for Hall's comment period, Hall completed her statement. (*Id.*) At least three other M4L members also spoke at the February 23, 2021 meeting without interruption. (*Id.*)

On the 12 other occasions during which Hall spoke at Board meetings, she delivered her comments without interruption, including statements expressing her "concern[] about the overreach in power and overstep these [sic] rights that the Board has taken in recent months"; her belief that the Board was "falling short of that oath [to uphold our Constitution]"; accusations that the Board had "betrayed" students and was guilty of "hypocrisies"; and a characterization of the Board's mask mandate policy in schools as a "ridiculous roller coaster." (*Id.* at 13, 15, 32, 48, 71, 82.) On one occasion, during the October 26, 2021 meeting,

[2] The Chair did not interrupt Hall for mentioning the Chair or Superintendent Mullins. (*Id.* at 17.) Speakers are free to refer to the Chair, and Superintendent Mullins is not a member of the Board. (*Id.*)

Hall claimed that "one particular Board member" made "dangerous and slanderous accusations . . . against hardworking, concerned parents in our organization." (*Id.* at 107.) Because Hall did not direct her comments to the "particular Board member" in question and kept her comments directed to the Board's Chair in compliance with the Policy, the Chair did not interrupt Hall. (*See id.*)

E. Appellant Katie Delaney

Appellant Delaney spoke 13 times at Board meetings. (Supp. App'x Tab 20 at 11.) The Chair never interrupted Delaney's speaking time (*id.* at 12), including when Delaney likened BPS' school mask mandate to forcing people to wear a "yellow star on our chests"; spoke against critical race theory in schools; accused the Board of "fear-mongering" and of "quarantining our healthy kids . . . illegal[ly]"; told the Board that they should be "ashamed" of their policies; and characterized the Board's mask policy as "illegal." (*Id.* at 54, 56-58, 68, 79, 84, 98.)

F. Appellant Amy Kneessy

Appellant Kneessy is a former member of the Board. (Supp. App'x Tab 20 at 12.) Kneessy did not speak at any of the meetings that

occurred between January 19, 2021 and October 26, 2021. (*Id.* at 13.) Belford-Haggard, the Board's Chair, who served with Kneessy while Kneessy was on the Board, does not recall seeing Kneessy at any Board meetings that occurred during the 2021 calendar year. (*Id.* at 12-13.)

G. Appellant Joseph Cholewa

Appellant Joseph Cholewa spoke 5 times at Board meetings. (Supp. App'x Tab 20 at 12.) Of these occasions, the Chair interrupted him twice and asked him to leave once for Policy violations. (*Id.* at 12.)

Cholewa first spoke at the May 21, 2021 meeting, addressing the Board's COVID-19 mask policy in schools and observing in part, "I don't see you serving anybody, because the data says the masks affect children negatively, from a social, emotional, intellectual, physical, all these things that impact them negatively, but nobody listened." (*Id.* at 50-51.) Cholewa then gestured at Appellee McDougall, stating, "I mean, how am I supposed to stand up here for District 2 while I watched you [gesturing at McDougall] behind a plastic prison—" (*Id.*)

At this point, Appellee Susin addressed the Chair, stating, "You've gotta cut him off. Don't call out one of our Board members," and the Chair responded, "Yeah." (*Id.* at 51.) The Chair's resulting exchange

with Cholewa was as follows:

> Cholewa: I didn't call out anybody.
>
> Haggard-Belford: Keep it directed to me, please.
>
> Susin: We've got a motion on the floor and there's majority support for exactly what you're saying, so I understand—
>
> Cholewa: I can't point out how she sat behind a piece of plastic?
>
> Susin: I'm just saying that the enthusiasm is well-respected, but at the same time, pointing out a member—
>
> Cholewa: This is my—this is my representative.
>
> Haggard-Belford: Sir, the rules are—
>
> Cholewa: Stop the clock if you're going to interrupt me.
>
> Haggard-Belford: The rules that I read in the beginning indicate that comments should be directed to me and about the issue and not directed to individual school board members. So, that is very clear in the beginning.
>
> Cholewa: So I can't talk about my representative from my district?
>
> Haggard-Belford: No, you cannot.
>
> Cholewa: Okay.
>
> Haggard-Belford: Would you like me to resume the clock?
>
> Cholewa: Yeah, and give me more time. You just wasted ten seconds.
>
> Haggard-Belford: That's because you opted not to follow the rules.
>
> Cholewa: I can't hear you because I'm talking and you have

masks on your face.

Haggard-Belford: Your clock's started.

Cholewa: And you took time away from me?

Haggard-Belford: We took time because you didn't respond to the directions that were provided and the directions Mr. Susin provided. I will gladly allow you to finish your three minutes, if you are ready.

(*Id.* at 51-52.)

Cholewa concluded his statement with the following:

Okay, all right. So I'm just going to cut to it. The dat—like I said, the kids are the most important thing, and we have a sign behind you that says 'students with excellence,' you know, treat every student with excellence, but the problem is, I keep hearing, everything I hear you say has nothing to really do with the students. It has to do with the teachers, and my problem with that, is that, you know, kids don't vote. The teachers vote. So it's easier to go out there and put on your videos with your masks on your faces and virtue signal with your rainbow masks or whatever woke points you think you're trying to get, 'cause that's clearly the most important thing, is politics, virtue signaling, woke points, let's let everyone know that 'I'm there, I'm hip, and I'm with whatever,' even though the science says that you're destroying our kids, probably providing them with some kind of minor PTSD after this entire thing. But nobody cares because, like I said, I can't even trust that our elected – that you guys, as our elected, are even making the right decisions. 'Cause it's not about the teachers, it's not about the – it's about the kids, it's only one thing that's important in this world, and that's our kids. They're innocent. You turned them into victims. I cannot believe that I have to be up here. I mean, at the rate we're going, you're introducing this LGBTQ crap like, and then, the next thing you know

> we're going to be dealing with this critical race theory and you're going to be forcing vaccinations on them to go back to school.

(*Id.* at 52-53.) Cholewa's time then expired, but as he was leaving the microphone, he stated, "You should all be recalled." (*Id.* at 53.) Cholewa spoke for a total of 2 minutes and 37 seconds. (*Id.*) His timer was paused for most of the interruption. (*Id.*)

The Chair did not interrupt Cholewa for his viewpoint. (*Id.*) Instead, the Chair interrupted Cholewa for directing his statements to McDougall rather than to the Chair and the Board as a whole, which violated the Policy. (*Id.*) Multiple other speakers (both M4L members and non-members) shared Cholewa's viewpoints, but they did not violate the Policy, and the Chair did not interrupt them. (*Id.* at 53-54.)

Cholewa next spoke at the September 9, 2021 meeting. (*Id.* at 83.) His comments included references to "two Board members who had the courage to vote no on the mask mandate," and to "one of the Board members [who] volunteered her political party affiliation as a Democrat." (*Id.* at 84.) Cholewa's overall message was against the Board's COVID-19 mask policy. (*See id.*) Cholewa also stated:

> To the one Board member who is so worried about racial equity and inclusion as I stare up at a Board with zero racial

> diversity, I think it's time for her to lead by example, acknowledge her white privilege, put her money where her mouth is, and step down as a Board member to allow her position to be filled by a person of color.

(*Id.* at 84-85.) Cholewa did not direct his comments specifically to those Board members whom he referenced, so the Chair did not interrupt his comments. (*Id.* at 85.)

Cholewa spoke again at the September 21, 2021 meeting. (*Id.*) He began his comments with the following:

> "It's not about freedom." That's a direct quote from the current president of the United States of America, who's a Democrat and a bully. It's definitely about politics, but it's not about science or freedom. I wonder what it was about for any of those who fought against slavery or discrimination, or anyone who has ever fought and died serving our military. It's always been about freedom. Freedom is the bedrock of our country. But according to our current President, it's not about freedom. That's the current mindset of the administration and the White House. Their shameful ideologies seemed to have trickled down into our school boards. Remember when classic liberalism used to advocate for the protection of civil liberties, unlimited government? Now it's mutated into a toxic woke progressivism that's affecting our country like a plague. But they made a very big mistake when they decided they're going to come after our children. It crossed a serious line. Now I'm pissed. I'm not having it. You know Democrats don't care about freedom when it comes to raising and caring for children. Let's look at some of the other disgusting leftist ideologies we're fighting. We're talking about the party that accepts the murder of full-term babies with abortion. The party that says babies, white babies are born racist and oppressive . . .

(*Id.* at 89.)

The Chair then interrupted, saying, "Joey, you, you're pushing the limit. Please be respectful. Okay?" (*Id.*) Cholewa replied, "Well, it's not about freedom of speech in front of you." (*Id.*) The Chair interrupted Cholewa due to the Policy's limit on statements that are personally directed, abusive, and irrelevant, and the Chair was concerned that Cholewa's statements would adversely affect the decorum of audience members and disrupt the Board's ability to conduct its business. (*Id.* at 89-90.) The Chair did not interrupt Cholewa due to his viewpoint. (*Id.* at 90.)

Cholewa continued his statement, which the Chair ultimately interrupted after he spoke for another 28 seconds:

> Cholewa: The party that believes in masking children, I'm sorry. It's the party that believes that political activism and indoctrination by teachers is acceptable in schools. A party that believes in masking children to silence them and turn them into faceless and emotionless drones. A party that thinks that if a child plays with toys or dresses in clothes for the opposite sex, they should immediately be confirmed a transgender and put on hormone blocking drugs so that their parents can show them off like a fashion accessory, because really, all that matters to them is that . . .
>
> Haggard-Belford: Joey.
>
> Cholewa: The praise and acceptance of their other . . .

Haggard-Belford: Enough.

Cholewa: . . . woke friends.

Haggard-Belford: Enough.

Cholewa: Of what?

Haggard-Belford: Enough.

Cholewa: Grow up. Okay?

Haggard-Belford: Please stop. You are insulting . . .

Cholewa: Grow up.

Haggard-Belford: . . . half of our . . .

Cholewa: I don't care what you think, I'm . . .

Haggard-Belford: . . . audience.

Cholewa: . . . not saying anything inappropriate.

[Audience shouting comments]

Haggard-Belford: And you guys need to stop or I'm going to clear the Board room.

Choluwa: . . . [inaudible] rules in our schools . . .

Haggard-Belford: I'm not referring to . . . sir, I'm asking you to be respectful of people who . . .

Cholewa: I am respectful.

Haggard-Belford: I'm asking you to be respectful of people

> who view things differently.
>
> Choluwa: So I can't talk about their views? I literally just want to [inaudible]. You did it to me the time before [inaudible] acknowledge what my district person did for an entire year, because you go on and silence people, you don't want to hear the truth, and it's going to come out. And I will fight you. I'll be here every weekend, and I will be yelling at you and screaming at you and telling you things that you don't want to hear, and that's right, because this is America. I know you don't like freedom, I know you don't like liberty, you don't like the Constitution . . .
>
> Haggard-Belford: All right.
>
> Cholewa: Guess what. I'm going to keep talking.
>
> Haggard-Belford: Leave please. Have a good night.

(*Id.* at 90-91.)

The Chair interrupted Cholewa because he continued with personally directed, abusive, and irrelevant comments and was not exhibiting the decorum required for the Board to continue with its business without impediment. (*Id.* at 92.) Cholewa's comments resulted in disruption in the audience, as demonstrated by the shouts that the audience interjected while the Chair engaged with Cholewa. (*Id.*) These were violations of the Policy. (*Id.*) The Chair did not interrupt Cholewa or ask him to leave based on his viewpoints, which were shared by many others who spoke at the meeting without interruption. (*Id.*)

On October 5, 2021, Cholewa addressed the Board again. (*Id.* at 92-93.) At that meeting, Cholewa delivered his comments without interruption, including implying that the Board members are narcissists, disregard the rule of law, believe that "parental rights are beneath them," are "out of touch" and have harmed children by damaging their education, are authoritarians and arrogant, and should "cover [their] face[s] in shame." (*Id.* at 93-94.)

Cholewa also spoke at the October 12, 2021 meeting. (*Id.* at 94.) At that time, he spoke on a resolution on the Board's agenda. His statements included, "School boards have become infected with ideologies that have deviated from educational norms and forced our children to become subjected to social activism in schools. That promotes racism, segregation, oppression, victimhood, sexually explicit materials, and unjustified hatred toward our country." Cholewa also stated that COVID-19 masking policies are "against everything that's natural, against law, against the science, in violation of parental rights." Additionally, Cholewa claimed, "The parents who come to these meetings are the frontline fighters against the real evil that is contaminating our schools," and compared mask policies to "child

abuse." (*Id.* at 95-96.) The Chair did not interrupt Cholewa's comments. (*Id.* at 96.)

H. March 9, 2021 Meeting

Most speakers at the March 9, 2021 meeting sought to address a non-discrimination policy adopted by the Board in 2016. (*Id.* at 18.) Shortly before the meeting, BPS' guidelines for implementing the policy, including accommodations for transgender children, circulated on social media. (*Id.*) Passionate advocates on both sides of the issue sought to address the Board on the policy and guidelines. (*Id.*)

Protestors gathered outside the Board's building, utilizing bullhorns to voice epithets and physically bumping into those entering for the meeting. (*Id.*) One speaker at the meeting, who identified herself as the former president of the Trump Club, described being "verbally attacked" and screamed at by her "own party" on her way into the meeting. (*Id.*)

The Board Chair learned there were students in the parking lot outside the Board building who came to speak. (*Id.*) Given the hostile and potentially dangerous environment outside, the Chair asked Board staff and law enforcement officers to escort the students and any

parents or guardians accompanying them into the building for their safety. (*Id.* at 18-19.) The Chair did not do this to favor these speakers based on their viewpoint. (*Id.* at 19.)

Escorting the students into the building did not prevent anyone from speaking. (*Id.*) The Board does not limit the number of speakers at meetings, and people signed up to speak who could not sit in the Board room due to space constraints waited outside and listened to the meeting over the loudspeaker, then entered the Board room to speak when their name was called. (*Id.*) Cholewa was not among the 49 people who signed up to speak. (*Id.*; Supp. App'x Tab 22 at 14-64.)

I. Interruption Regarding a Book at October 26, 2021 Meeting

At the October 26, 2021 meeting, M4L member Michelle Beavers criticized proposed changes to the Policy and the Board's COVID-19 mask policy, and the Chair did not interrupt these comments. (Supp. App'x Tab 20 at 104.) Beavers then turned to the topic of books in school, but she did not preface this topic change and did not inform the Board that she was reading from a book available in a school library:

> Beavers: "I tiptoed toward the door peering through the window at the boy's pants around his ankles squeezed between April's straddled legs as she lay on the teacher's desk. I swung the door open letting the soft light from the

> hallway shine a spotlight on them. 'Shit,' he muttered, pulling up his pants."
>
> Haggard-Belford: Ma'am, I need for you to keep your language clean, okay?
>
> Beavers: Oh, this was our schoolbooks.
>
> Haggard-Belford: Yeah, I understand, but at this meeting I need for you to not . . .
>
> Beavers: Well, then, you get my point. You get my point right? You get my point? These books are in our school. Are you doing to keep me muted? Because I would like my time back that you muted me for then.

(*Id.*) The Chair, who did not mute Beavers, interrupted her based on the Policy's limits on comments that are obscene, abusive, or irrelevant, not for her viewpoint. (*Id.*)

Beavers completed her comments without further interruption:

> These books are in our school. That is my point. That is just one of them. I have another one here, it says, "See Dick. See Jane. Hear baby Sally cry. See Jane put the knife in baby Sally's neck. Baby Sally is quiet now." That's just part of it. It also talks about going to other people's houses where your parents aren't going to know what you're doing, encourage people to play games calling strangers that says, "can you come to my party? Mommy and Daddy left me alone and forgot it was my birthday. Will you come and play at my party?" This is what, this was for a second grade child. A second grader. Can you imagine someone's second grader coming home with a book that says to kill a baby? And it also talks about taking a fake baby and drowning it.

(*Id.* at 104-105.)

J. Interruptions of Speakers With Different Viewpoints than M4L.

The Board Chair regularly interrupts speakers with viewpoints different from those typically voiced by M4L members if they violate the Policy. Examples include:

- March 9, 2021: interruption of a speaker in favor of BPS' antidiscrimination policy and guidelines who began by stating that the protestors outside the meeting "screamed at [her], called [her] a bitch, a whore, a prostitute." (*Id.* at 26.) The Chair interrupted, stating, "Whoa, whoa, whoa, whoa, whoa. I can't allow you to say those words in here, okay? . . . I need you to make sure you keep it clean." (*Id.*) This was due to the Policy preventing language that is abusive, obscene, or irrelevant. (*Id.*)

- March 23, 2021: interruption of a representative of Space Coast Pride, who stated, "The sad fact is that all children do not live with accepting and affirming families. Can you imagine the LGBTQ student who may live with families such as those who were here at the last meeting?" (*Id.* at 27.) The Chair asked the speaker to "keep comments directed to us and not personally directed to others." (*Id.* at 27-28.)

- July 29, 2021: interruption of three speakers expressing support for BPS' mask policy and one speaker expressing "concern[] about these moms" after speakers began directing comments to audience members. (*Id.* at 69-72.)

- October 26, 2021: interruption of a speaker in favor of masks and vaccines when he directly addressed two Board members. (*Id.* at 105-106.)

K. Devolution of Decorum in Meetings and Adoption of Language Referencing § 877.13, Florida Statutes

Over the time at issue, audience conduct grew increasingly out of control, with audience members frequently shouting at speakers or Board members. (*See* Supp. App'x Tab 20 at 42, 44-48, 65-66, 72-73.) After disruptions at the July 29, 2021 meeting, and at the suggestion of the Brevard County Sheriff's Office, the Chair and BPS staff added language to the Chair's opening remarks citing to § 877.13, Florida Statutes. (*Id.* at 74.) That statute provides that it is unlawful to disrupt or interfere with the lawful administration or functions of a school board. (*See id.* at 74-75.) Appellants have not challenged the constitutionality of the statute in this case.

STANDARD OF REVIEW

This Court generally reviews the denial of a preliminary injunction for abuse of discretion, but reviews *de novo* the district court's underlying legal conclusions. *Keister v. Bell*, 879 F.3d 1282, 1287 (11th Cir. 2018). In free speech cases, the Court reviews "constitutional facts" *de novo* and "ordinary historical facts" for clear error. *See id.* (quoting *Booth v. Pasco Cty.*, 757 F.3d 1198, 1210 (11th Cir. 2014)). "Historical facts 'are facts about the who, what, where, when, and how of the controversy.'" *Id.* By contrast, "the 'why' facts . . . are the core constitutional facts that involve the reasons the [defendant] took the challenged action." *Flanigan's Enters. Inc. of Ga. v. Fulton Cty.*, 596 F.3d 1265, 1276 (11th Cir. 2010).

When an appellant cannot clearly demonstrate a substantial likelihood of success on the merits, the Court need not address the other preliminary injunction requirements. *Keister*, 879 F.3d at 1288.

Finally, when a party argues, for the first time on appeal, that the district court erred by not conducting an evidentiary hearing, this Court reviews the issue only for plain error. *United States v. Montes*, 151 F. App'x 846, 855 (11th Cir. 2005).

SUMMARY OF THE ARGUMENT

This case is not *Tam* or *Brunetti*. It is not a case involving the unconscionable muzzling of citizens. And, above all, it is not a case in which Appellees discriminated against Appellants based on their viewpoints.

Members of Moms For Liberty – Brevard County, FL ("M4L"), including Appellants Hall, Delaney, and Cholewa, spoke over a hundred times at BPS Board meetings. Out of their triple-digit appearances, Appellants alleged only four occasions when they were interrupted but nonetheless concluded their remarks, and one occasion when Cholewa was asked to leave a meeting, to support their claims that Appellees violated their First Amendment rights.

Appellants cannot point to any viewpoint that they were not actually able to express. Appellants repeatedly challenged the Board's authority to implement policies and the policies themselves, criticized Board members, and addressed issues ranging from schoolbooks to critical race theory. Appellants even spoke on topics as irrelevant to school board business as the federal administration and their views on "liberal" beliefs. It was only when Appellants violated the Policy by

delivering their viewpoints in a personally directed, abusive, obscene, and/or irrelevant manner that the Chair interrupted Appellants' comments. After each interruption, Appellants completed their comments with the sole exception of when the Chair asked Cholewa to leave. On that occasion, Cholewa's conduct actually incited disruption in the audience.

The Policy is a narrowly-tailored reasonable time, place, and manner restriction that serves the Board's significant interest in conducting orderly business. It is viewpoint-neutral on its face, applying to all speakers at the limited public forum of a school board meeting, regardless of their stated opinions. Appellees apply the Policy evenhandedly, and it is therefore viewpoint-neutral as applied. Furthermore, the context of the challenged provisions demonstrates that they are designed to maintain decorum in school board meetings and are not vague or overbroad. The district court correctly found that Appellants are not entitled to a preliminary injunction because they lack a substantial likelihood of success on the merits.

ARGUMENT AND CITATIONS TO AUTHORITY

I. The District Court Correctly Determined that Appellants Are Not Likely to Succeed on the Merits.

A. In a Limited Public Forum Such as a School Board Meeting, the Government May Implement Policies to Ensure its Ability to Conduct Business.

The parties agree that the public comment portions of the Board's meetings are limited public fora. *See Cambridge Christian Sch. Inc. v. Fla. High Sch. Athletic Ass'n*, 942 F.3d 1215, 1237 (11th Cir. 2019). "[C]ontent-based discrimination . . . is permitted in a limited public forum if it is viewpoint neutral and reasonable in light of the forum's purpose." *Barrett v. Walker Cty. Sch. Dist.*, 872 F.3d 1209, 1225 (11th Cir. 2017); *see also Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106, 121 S.Ct. 2093, 150 L.Ed.2d 151 (2001) ("The State is not required to . . . allow persons to engage in every type of speech" in a limited public forum).

The Board has a significant governmental interest in maintaining decorum, preventing disruptions, and conducting efficient meetings. *See Jones v. Heyman*, 888 F.2d 1328, 1332 (11th Cir. 1989); *see also Rowe v. City of Cocoa, Fla.*, 358 F.3d 800, 803 (11th Cir. 2004).

B. The Policy is Viewpoint-Neutral and Reasonable on its Face.

1. The Policy is a Constitutionally-Permissible Time, Place, and Manner Restriction.

The Policy is a reasonable time, place, and manner restriction designed to prevent disruption to Board meetings. Affording the Chair discretion to interrupt, warn, and terminate personally directed, abusive, or obscene comments is critical to preventing disruption. *See Steinburg v. Chesterfield Cty. Planning Comm'n*, 527 F.3d 377, 386-87 (4th Cir. 2008) (noting that personal attacks inevitably lead to "argumentation" which "has the real potential to disrupt the orderly conduct of the meeting").

Appellants first take issue with the Policy's guideline that "[a]ll statements shall be directed to the presiding officer; no person may address or question Board members individually." (Corr. App'x Tab 3-1 at 7.) Requiring speakers to direct their comments, whatever they may be, to the Board Chair does not prohibit any speech, including offensive speech. It merely addresses the manner in which speakers should present their comments. *See Charnley v. Town of S. Palm Beach*, No. 13-81203-Civ-Rosenberg/Hopkins, 2015 WL 12999749, at *8 (S.D. Fla.

Mar. 23, 2015), *report and recommendation adopted*, 2015 WL 12999750 (S.D. Fla. Apr. 9, 2015) ("*Charnley I*"), *aff'd*, *Charnley v. Town of S. Palm Beach Fla.*, 649 F. App'x 874 (11th Cir. 2016) ("*Charnley II*") (town council's policy requiring speakers to address the presiding officer was an appropriate time, place, and manner restriction). For instance, speakers were interrupted by the Chair after attempting to convey positive statements toward a particular Board member (including one such statement by Appellant Hall), as well as in instances of negative personally directed comments.

Similarly, the terms "abusive" and "obscene" refer not to a viewpoint that a speaker espouses, but to the manner in which it is conveyed. In *Milestone v. City of Monroe, Wisconsin*, 665 F.3d 774 (7th Cir. 2011), the court found that a code of conduct prohibiting "abusive, vulgar, or demeaning language" and requiring patrons to treat personnel "with respect" was "aimed at *conduct* not *speech*" and constituted a constitutionally-acceptable time, place, and manner restriction. *Id.* at 783-84. As a hypothetical example, the statements, "My district's representative is doing a bad job and should resign," and "My district's representative is doing a sh*tty job and we should put her

head on a pike if she doesn't resign," both convey the same viewpoint. However, the first is conveyed in a manner that does not violate the Policy; the second is subject to interruption or termination by the Chair as abusive and obscene.

In a limited public forum, time, place, and manner restrictions "must only be reasonable and viewpoint neutral." *Keister*, 29 F.4th at 1252. "The reasonableness standard is not demanding; a restriction on expression is reasonable even if it is not the most reasonable or the only reasonable limitation on expression." *Id.* at 1257 (internal quotations omitted).

As the District Court observed, the Policy's guideline regarding "personally directed" comments "is not based on the speech's content, but because members do not possess the power of the Board." (Corr. App'x Tab 46 at 5.) This provision of the Policy applies to all speakers regardless of viewpoint, and it is reasonable given that individual Board members do not have the power to speak for the Board.

The Policy's guideline allowing the Chair to interrupt or terminate "abusive" or "obscene" speech is also reasonable and narrowly tailored.

In *Milestone*, the Seventh Circuit explained the meaning of "narrowly tailored" in a time, place, or manner context:

> In "time, place, or manner" cases, "narrow tailoring" does not mean that the government must use "the least restrictive or least intrusive means" to achieve its end; rather, in this context "the requirement of narrow tailoring is satisfied 'so long as the . . . regulation promotes a substantial government interest that would be achieved less effectively absent the regulation.'"

Milestone, 665 F.3d at 784 (quoting *Ward v. Rock Against Racism,* 491 U.S. 781, 798–99, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989)). Here, the Policy supports the Board's substantial interest in conducting orderly meetings where the Board can address its business and hear all speakers who wish to comment by allowing the Chair to limit comments that may cause disruption. The limitation on "abusive" or "obscene" speech does not prevent speakers from expressing their views—merely from expressing their views in an abusive or obscene manner.

Because the Policy is an appropriate, narrowly tailored time, place, and manner restriction governing the manner in which a speaker may deliver any viewpoint to the Board, it is facially constitutional.

2. Eleventh Circuit Law Supports the District Court's Finding that the Policy is Viewpoint-Neutral and Reasonably Serves a Substantial Governmental Interest.

This Court previously upheld actions taken to maintain order in limited public fora that are similar to the Policy's guidelines at issue. In *Jones v. Heyman*, 888 F.2d 1328 (11th Cir. 1989), this Court reversed a ruling that a mayor deprived a public speaker of his freedom of speech. *See id.* at 1330. There, the speaker commented on an off-topic subject during a city commission meeting, and when asked by the mayor to confine his comments to the topic at hand, the speaker "retorted in a raised voice: 'Let me tell you something, Mister, I am on the subject. If you can't stay germane in your mind, that's your problem, not mine.'" *Id.* at 1329. This Court, having reviewed the video of the exchange,[3] characterized the speaker's attitude as "decidedly antagonistic." *Id.* After the mayor warned that further outbursts would result in removal, the speaker replied, "I don't think you're big enough," and the mayor ordered his expulsion. *Id.*

[3] "This entire incident was recorded on video tape; this tape forms part of the record on review." *Id.* at 1329 n.2. Likewise, the meetings and exchanges in this case were video recorded, cited by the parties below, and form part of the record on appeal before this Court.

This Court recognized, "[t]he freedom of expression protected by the First Amendment is not inviolate; the Supreme Court has established that the First Amendment does not guarantee persons the right to communicate their views 'at all times or in any manner that may be desired.'" *Id.* at 1331 (quoting *Heffron v. Int'l Soc'y for Krishna Consciousness*, 452 U.S. 640, 647, 101 S.Ct. 2559, 2564, 69 L.Ed.2d 298 (1981) and *Adderley v. Florida*, 385 U.S. 39, 48, 87 S.Ct. 242, 246, 17 L.Ed.2d 149 (1966)). This Court found that the mayor's actions resulted not from disapproval of the speaker's message but from "the need to continue the orderly progression of an already lengthy commission meeting."[4] *Id.* at 1332. "[T]he mayor's interest in controlling the agenda and preventing the disruption of the commission meeting" was "sufficiently significant" to satisfy the governmental interest prong of its analysis. *Id.* at 1333. "To hold otherwise—to deny the presiding

[4] In *Jones*, this Court analyzed the mayor's actions under the traditional public forum framework, which is more restrictive than that applied to a limited public forum. *See id.* at 1331. Even under that framework, which prohibits not only viewpoint discrimination, but also content discrimination, this Court found that the mayor's actions were constitutional. Since the publication of *Jones*, this Court recognized school board meetings as limited public fora instead of traditional public fora. *See Cambridge Christian Sch.*, 942 F.3d at 1237.

officer the authority to regulate irrelevant debate and disruptive behavior at a public meeting—would cause such meetings to drag on interminably, and deny others the opportunity to voice their opinions." *Id.* Any incidental effect of the mayor's actions on certain speakers, including the speaker at issue, was irrelevant. *See id.* at 1332.

As *Jones* demonstrates, the presiding officer in a limited public forum does not stray from the Constitution when limiting disruptive speech to ensure the orderly conduct of business. This, too, is the Policy's aim and how the Policy was employed in this case.

This Court addressed a similar issue in *Rowe v. City of Cocoa, Florida*, 358 F.3d 800 (11th Cir. 2004), in which it analyzed a city council policy that: (1) allowed residents to be heard during meetings, (2) described the public comment sections of meetings as "not for the purpose of advancing arguments or repetitious questions concerning matters which the council believes to be closed or not of general public concern," and (3) allowed the council to decline to hear comments from non-residents, subject to certain exceptions. *Id.* at 801-802. A non-resident claimed that the policy was facially unconstitutional after the

mayor twice "invoked and applied the residency rule" to limit the speaker's comments. *Id.* at 802.

This Court held that the council's rules "do not, on their face, violate the First Amendment." *Id.* Given that "[t]here is a significant governmental interest in conducting orderly, efficient meetings of public bodies," the council could "confine their meetings to a specified subject matter." *Id.* at 803. "As a limited public forum, a city council meeting is not open for endless public commentary speech but instead is simply a limited platform to discuss the topic at hand." *Id.* Thus, "[t]he restrictions in the challenged regulations are reasonable and viewpoint neutral." *Id.* at 804. *Rowe* underscores the significance of the Board's interest in maintaining decorum at meetings to ensure the ability to conduct orderly business.

In *Charnley II*, this Court found that the district court properly dismissed a speaker's claims that her First Amendment rights were violated when her comments at a town hall meeting were interrupted and she was threatened with arrest. 649 F. App'x at 875. This Court affirmed "[f]or substantially the same reasons given by the thorough opinion of the district court." *Id.*

The district court's opinion described the policy at issue as precluding speakers from addressing specific members of the council, the town attorney, or the town manager, and requiring comments to "address the Council as a whole through the Mayor." *Charnley I*, 2015 WL 12999749, at *1. The policy also provided that "any person who becomes boisterous and interferes with the continuation of the meeting shall be requested by the Mayor to cease such behavior" and would be escorted from the room if "the behavior continue[d]." *Charnley I*, 2015 WL 12999749 at *2.

The speaker in *Charnley* claimed that over the course of five meetings, the mayor interrupted her when she attempted to question the town manager or council members directly; "immediately gaveled" her after she stated that she was "appalled and disgusted" with the new vice-mayor and demanded to know why a council member "had not been 'run out of town'"; and threatened her with removal when she tried to speak beyond her allotted time. *Id.* at *2-*3. The speaker claimed that the council engaged in "selective enforcement" of the public comment policy, "in that they only used it to curtail her speech." *Id.* at *3.

The district court observed, "Plaintiff did not have an absolute right to free speech at the Town Council meetings," which are limited public fora. *Id.* at *7. "[C]ourts routinely uphold public meeting policies, which purport to restrict comments at township meetings to matters that are germane to current issues of local governance, impose decorum requirements on participants, and impose time, place and manner expression rules upon speakers." *Id.* (internal quotations omitted). Within this framework, the court held that "any restrictions imposed on [the speaker's] speech at the Town Council meetings were appropriate, content-neutral, time, place and manner regulations." *Id.* at *8. The court further determined that "to the extent Plaintiff attempted to question individual members of the council, remain at the podium and speak beyond her allotted time, and make disparaging personal remarks, her speech was not protected and thus, her First Amendment rights were not violated." *Id.*

Furthermore, "[e]ven if Plaintiff's speech could be construed as protected, she fails to demonstrate that she suffered such adverse actions that would deter a person of ordinary firmness from continuing to assert her First Amendment rights." *Id.* Indeed, "Plaintiff continued

to return to the meetings to voice her criticisms, thus, she was evidently undeterred by the purported infringement on her speech." *Id.*

The policy at issue in *Charnley I* and *Charnley II* is similar to the Policy in that it prevented speakers from directly addressing council members. Like the *Charnley* policy, the Policy in this case is also a time, place, and manner restriction that reasonably serves a substantial governmental interest. Notably, too, Appellants repeatedly returned to Board meetings to make comments after the instances forming the basis of their claims, much like Charnley.

Most recently, this Court decided *Dyer v. Atlanta Independent School System*, 852 F. App'x 397 (11th Cir. 2021), *cert. denied*, 142 S.Ct. 484 (2021). In *Dyer*, the school system established policies "[t]o maintain proper decorum and avoid disruptive meetings." *Id.* at 398. Those policies prohibited audience members from "applauding, cheering, jeering, or engaging in speech that 'defames individuals or stymies or blocks meeting progress.'" *Id.* Audience members could be removed for violating the policies. *See id.*

The speaker in *Dyer* "directed racially-charged, derogatory epithets like the 'N-word,' 'coons,' and 'buffoons'" toward the school

board, marking the first of several suspensions from speaking at, and later attending, board meetings. *Id.* The board suspended the speaker a second time for "inappropriate and disruptive behavior" at a subsequent board meeting, and a third suspension came after the speaker "again used racial slurs." *Id.* at 398-99.

While the board conceded that the speaker's "offensive speech was 'protected' under the First Amendment," the board argued that the "offensive speech was disruptive and violated its policies on proper decorum." *Id.* at 399. "In other words, AISS insisted that it removed Dyer from its community meetings 'not because it disagreed with Dyer's message, but because it regarded his use of racially-insensitive language to be . . . *disruptive* to the meeting.'" *Id.*

This Court agreed, finding the "policies outlining how someone may speak at a community meeting, prohibiting disruption, and requiring decorum" to be "content-neutral" and concluding that the board "did not regulate Dyer's speech based on its content." *Id.* at 402. Instead, the board "regulated Dyer's offensive speech because it was disruptive." *Id.* Thus, neither the board's policies nor its application of the policies in its treatment of the speaker was unconstitutional. *See id.*

Dyer demonstrates this Court's recognition of the distinction between regulating speech simply because it is offensive, and regulating the disruption that offensive speech causes to an otherwise-orderly meeting. The First Amendment does not offer a blanket protection for offensive speech when it disrupts the ability to carry on orderly business in a limited public forum.

Appellants attempt to distinguish *Jones* and *Dyer* by arguing that in those cases, this Court limited disruptive *behavior* rather than disruptive *language*. This Court's opinions in those cases, which describe a speaker's "conduct" by reference to the speaker's verbal expressions, do not support the distinction that Appellants seek to draw. *See Jones*, 888 F.2d at 1332 (describing Jones' "disruptive conduct" as his "admonishing the commission," his "retort," and his final comment to the mayor); *see also Dyer*, 852 F. App'x at 402 (describing the speaker's speech as "disruptive" and that the school board's description of his comments as "abusive, abhorrent, [and] hate-filled" supported the speaker's suspension for "disruptive and unruly behavior"). Neither *Jones* nor *Dyer* described any actions or behavior by the speakers other than their speech itself.

BPS, like the government entities in *Jones*, *Rowe*, *Charnley II*, and *Dyer*, implemented a Policy designed to maintain order and decorum at its meetings. It matters not what viewpoint a speaker espouses—if a comment is personally directed, overly lengthy, obscene, abusive, or irrelevant, it threatens the Board's ability to complete its business.

While Appellants would have the Court read the terms "personally directed," "obscene," and "abusive" as viewpoint-related, they simply are not; they are unrelated to the ideas expressed by a speaker. "A restriction on speech constitutes viewpoint discrimination when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Rosenberger v. Rector & Visitors of Univ. of Vir.*, 515 U.S. 819, 829, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995). In other words, viewpoint discrimination "targets not subject matter, but *particular views* taken by speakers on a subject." *Id.* (emphasis added). If the Policy prohibited "personally directed comments that criticize Board members," or "abusive comments that target liberals," the Policy would be facially unconstitutional for viewpoint discrimination. That is, of course, not what the Policy says. Instead, the

Policy is neutral and designed to serve the Board's significant interest in carrying out its business in an orderly fashion without disruption.

The District Court found that the Policy is not only viewpoint-neutral, but also content-neutral—a level of neutrality that is unnecessary in a limited public forum, but nevertheless demonstrates how far the Policy falls from being facially unconstitutional. (Corr. App'x Tab 46 at 5.) As the Supreme Court recently recognized, when a regulation "do[es] not single out any topic or subject matter for differential treatment," and a "substantive message itself is irrelevant to the application of the provisions" of the regulation, it is content-neutral. *City of Austin, Tex. v. Reagan Nat'l Adver. of Austin, LLC*, --- S.Ct. ---, No. 20-1029, 2022 WL 1177494, at *5 (Apr. 21, 2022). Even where a restriction "may require some evaluation of the speech," it may "nonetheless remain content neutral." *Id.* at *6. While some evaluation may be necessary to determine if a statement is "personally directed," "abusive," or "obscene," the Policy does not "discriminate based on the topic discussed or the idea or message expressed." *Id.* at *7.

It cannot fairly be argued that allowing speakers to directly address and question Board members, and affording the Chair no

discretion to limit abusive, obscene, and personally directed remarks, would lead to a more efficient and orderly meeting. Because the contested Policy provisions allow the Board to further its interest of efficient and orderly public school board meetings and does not discriminate based on viewpoint, they are facially constitutional. The District Court correctly determined that Appellants do not have a substantial likelihood of success on the merits and denied their motion for preliminary injunction. This Court should affirm.

C. The Policy is Viewpoint-Neutral and Reasonable As Applied.

The record overwhelmingly demonstrates the Board's evenhandedness in applying the Policy. The District Court recognized that the four instances in which the Chair interrupted M4L members and the one occasion on which the Chair asked Cholewa to leave "were out of more than a hundred times in which M4L members spoke unimpeded." (Corr. App'x Tab 46 at 7.) The videos of these instances show that "these few interruptions were regularly brief and respectful, and [Appellants] freely finished speaking." (*Id.*) Furthermore, the Chair interrupted non-M4L members when they violated the Policy, and M4L and non-M4L members alike spoke uninterrupted many times when

they did not violate the Policy. (*See id.*) On the single occasion on which the Chair asked Cholewa to leave a meeting, his comments violated the Policy as irrelevant, abusive, and disruptive. (*See id.* at 8.) The Board meeting videos speak for themselves and demonstrate that "the Policy was evenhandedly applied as a whole." (*Id.*)

Where a facially viewpoint-neutral policy is applied evenhandedly, without regard to the particular message that the speaker seeks to convey, the policy is not unconstitutional as applied. *See Cleveland v. City of Cocoa Beach, Fla.*, 221 F. App'x 875, 879 (11th Cir. 2007).

In an attempt to force the conclusion that the Policy is unconstitutional as applied, Appellants repeatedly point to a momentary disruption of one M4L member who, at the October 26, 2021 Board meeting, began reading from a book she purportedly checked out of a BPS library. The record reveals that this occurrence was not, as Appellants claim, in response to "inconvenient or uncomfortable criticism." (Appellants' Br. 28.) Instead, after the M4L member delivered comments criticizing proposed changes to the Policy and the Board's COVID-19 mask policy, which the Chair did not interrupt, she suddenly began reading an excerpt from a book, but did not signal that

she was changing topics. (Supp. App'x Tab 20 at 104.) The M4L member quoted the following excerpt—for which she provided no context:

> I tiptoed toward the door peering through the window at the boy's pants around his ankles squeezed between April's straddled legs as she lay on the teacher's desk. I swung the door open letting the soft light from the hallway shine a spotlight on them. 'Shit,' he muttered, pulling up his pants.

(*Id.*) After the Chair asked the M4L member to "keep [her] language clean," and the member explained that she was reading from a schoolbook, she completed her comments. (*Id.* at 104-105.)

Appellants' argument, that this was an unconstitutional application of the otherwise-constitutional prohibition on obscene speech, distorts the record. The Chair did not respond to "inconvenient or uncomfortable criticism" in asking the M4L member to keep her language clean, but rather to sexually charged language and a word that most people view as profanity. On other occasions, when non-M4L speakers used such words, the Chair interrupted them and asked them to keep their language "clean." (*See id.* at 26, 48, 49.) Appellants applied the Policy evenhandedly and without regard to viewpoint.

The District Court, which considered the incontrovertible content of the Board meeting videos and fully assessed the Board's application

of the Policy, correctly determined that the Policy is constitutional as applied. This Court should affirm.

D. This Case is Not *Tam* or *Brunetti*.

Appellants attempt to shoehorn this case into the framework offered by *Matal v. Tam*, 137 S.Ct. 1744, 198 L.Ed.2d 366 (2017), and *Iancu v. Brunetti*, 139 S.Ct. 2294, 204 L.Ed.2d 714 (2019). They liken the Policy's guidelines allowing the Chair to interrupt or terminate "personally directed," "abusive," or "obscene" statements to the Lanham Act's disparagement and immorality clauses. Appellants' comparison is misguided.

First, the Court should reject Appellants' conflation of regulations against "offensive" speech with the Policy's guideline allowing the Chair to interrupt or terminate "abusive" speech. The two are not synonymous, as the Supreme Court recognized in *Cantwell v. State of Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940). There, it distinguished speech that "highly offended" listeners from "epithets and personal abuse." *Id.* at 309-10. *"Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution." Id.* (emphasis added). Thus, as

acknowledged in *Cantwell*, there is a distinction between speech that "gives offense" and that which is "abusive." The Policy does not address "offensive" speech, but rather "abusive" statements. Under *Cantwell*'s analysis, Appellants' attempt to apply the broad statement in *Tam* and *Brunetti* that "giving offense is a viewpoint" is misplaced. Because the Policy does not restrict "offensive" speech, *Tam* and *Brunetti* are not instructive for this reason alone.

Tam and *Brunetti* are also factually distinguishable from the instant case. In those cases, trademarks formed the messages—and, thus, the viewpoints—at issue. *See Tam*, 137 S.Ct. at 1760 (referring to the "viewpoint expressed by a mark"). The trademark bars under the Lanham Act required an assessment of a trademark (*i.e.*, the viewpoint) to place the mark in one of two categories. In *Tam*, those categories were "disparaging" versus "benign." *Id.* at 1750. In *Brunetti*, the categories were "immoral" or "scandalous" versus those that "accord with . . . society's sense of decency or propriety." *Brunetti*, 139 S.Ct. at 2299. For example, in *Tam*, "the disparagement bar allowed a trademark owner to register a mark if it was 'positive' about a person, but not if it was 'derogatory.'" *Id.* (quoting *Tam*, 137 S.Ct. at 1750). In

Brunetti, marks reading, "Love rules" and "Always be good" would receive registration, while "Hate rules" or "Always be cruel" would be denied registration under the Lanham Act's "immoral or scandalous" bar. *Id.* at 2300. In this way, the registration bars in both *Tam* and *Brunetti* prevent registration of marks conveying disfavored ideas.

Tam does indeed state that "[g]iving offense is a viewpoint." *Tam*, 137 S.Ct. at 1763. But the offense is on account of the viewpoint expressed. *Id.* ("The 'public expression of ideas may not be prohibited merely because the *ideas themselves* are offensive to some of their hearers.'") (quoting *Street v. New York*, 394 U.S. 576, 592, 89 S.Ct. 1354, 22 L.Ed.2d 572 (1969)) (emphasis added); *see also Brunetti*, 139 S.Ct. at 2300 ("[T]he statute, on its face, distinguishes between two opposed sets of *ideas*: . . . those inducing societal nods of approval and those provoking offense and condemnation.") (emphasis added).

Tam and *Brunetti* took issue with statutes prohibiting offensive *ideas*. By its very nature, a policy or statute that distinguishes between favored versus disfavored ideas cannot be viewpoint-neutral. Here, unlike in *Tam* and *Brunetti*, BPS' Policy does not favor certain ideas and disfavor others. Instead, the Policy leaves the ideas expressed by

speakers intact and only ensures decorum in school board meetings by placing reasonable time, place, and manner restrictions on the *way* in which speakers communicate their opinions. The Policy does not empower the Chair to employ value judgments of what may be, for example, disparaging or scandalous, and then silence—based on that judgment—certain viewpoints, as in *Tam* and *Brunetti*.[5] To be sure, Appellants' many uninterrupted statements in the record show that they fully expressed their opinions and ideas. Enabling the Chair to determine whether a speaker is using obscenity or abuse to deliver their viewpoint does not touch the viewpoint itself.

It must also be noted that in *Tam* and *Brunetti*, the Court did not engage in any type of forum analysis or balancing of interests because no such analysis was needed in considering the application of the

[5] In this way, this case is also distinguishable from *Speech First, Inc. v. Cartwright*, --- F.4th ---, No. 21-12583, 2022 WL 1301853 (11th Cir. May 2, 2022). The policies there were blatantly overbroad, clearly designed to target content and viewpoints that one could find "discriminatory," and required "value" judgments. The content-based nature of the policies mandated the application of strict scrutiny, and it was apparent on the face of the policies that they were aimed at "offensive" speech. *Id.* at *10-*11. A forum analysis was unnecessary. *Speech First* is therefore distinguishable from the instant case, which involves a viewpoint-neutral time, place, and manner restriction designed to prevent disruption in a limited public forum.

Lanham Act to proposed trademarks. The D.C. Circuit acknowledged this limitation of *Tam* as follows:

> [*Matal* contained the] anodyne statement that speech may not be banned on the ground that it expresses ideas that offend . . . . The relevance of a case in which the Supreme Court did not engage in a forum analysis at all escapes us. *Matal* did not discuss forum doctrine in any depth because *Matal* dealt not with the Government permitting speech on government property but with government protection of speech from commercial infringement.

Am. Freedom Def. Initiative v. Wash. Metro. Area Transit Auth., 901 F.3d 356, 364 (D.C. Cir. 2018). The same holds true for *Brunetti*.

While the plurality in *Tam* briefly analogized the trademark application process to limited public fora, the Supreme Court has cautioned against relying on such analogies in reaching a determination in another context. *See Denver Area Educ. Telecomms. Consortium, Inc. v. F.C.C.,* 518 U.S. 727, 749, 116 S.Ct. 2374, 135 L.Ed.2d 888 (1996) ("[W]e are wary of the notion that a partial analogy in one context, for which we have developed doctrines, can compel a full range of decisions in such a new and changing area."). The Court should decline to read the *Tam* plurality's partial analogy to limited public fora in a trademark case as persuasive in the context of this school board case.

Appellants rely heavily on the Sixth Circuit's application of *Tam* in *Ison v. Madison Local School District Board of Education*, 3 F.4th 887, 895 (6th Cir. 2021) and the Eastern District of Pennsylvania's subsequent decision in *Marshall v. Amuso*, --- F. Supp. 3d ---, No. 21-4336, 2021 WL 5359020 (E.D. Pa. Nov. 17, 2021). For the reasons discussed above, *Ison* and *Marshall* were incorrect in finding *Tam* applicable to the constitutionality of school board policies against "personally directed" and "abusive" speech.

They are also hardly dispositive of the issue. In addition to the Eleventh Circuit precedent discussed above, the Fourth, Fifth, Seventh, and Ninth Circuits have upheld policies similar to BPS' Policy as viewpoint-neutral and constitutional. *See, e.g.*, *Davison v. Rose*, 19 F.4th 626, 635-36 (4th Cir. 2021) (school board's policy disallowing comments "that are harassing or amount to a personal attack against any identifiable individual" was "viewpoint neutral" and "reasonable" to avoid "unnecessary delay or disruption to a meeting"); *Fairchild v. Liberty Indep. Sch. Dist.*, 597 F.3d 747, 754-55 (5th Cir. 2010) (school board policy "forbidding the disclosure of information about specific teachers during open Board meetings" was constitutional); *Steinburg v.*

Chesterfield County Planning Comm'n, 527 F.3d 377, 385-87 (4th Cir. 2008), *cert. denied*, 555 U.S. 1046, 129 S.Ct. 632 (Mem.), 172 L.Ed.2d 611 (2008) (policy against "personal attacks" was content-neutral and not facially unconstitutional); *Milestone*, 665 F.3d at 783-84 (a "prohibition against abusive, vulgar, or demeaning language" was unrelated to content and focused on the manner of the speech); *Ballard v. Patrick*, 163 F. App'x 584, 584-85 (9th Cir. 2006) (orders prohibiting "profane, abusive, or slanderous speech" were viewpoint-neutral).

There is a distinction between "abusive" speech and speech that "gives offense," and *Tam* and *Brunetti* do not address reasonable time, place, and manner restrictions in a limited public forum. Furthermore, multiple circuit courts—including this one—have upheld policies similar to the one at issue as viewpoint neutral and reasonable for maintaining order and decorum. The District Court correctly rejected *Ison* and *Marshall* and their applications of *Tam* and *Brunetti*.

E. The Policy Does Not Violate Appellants' Petition Right.

As Appellants recognize, "Petition Clause claims may be decided using Speech Clause analysis." (Appellants' Br. 36.) For the same reasons set forth above describing the Policy's constitutionality insofar

as Appellants' free speech claims are concerned, the Policy likewise does not violate Appellants' right to petition the government.

F. The Policy is Neither Unconstitutionally Overbroad Nor Vague.

The Court should reject Appellants' argument that the Policy is unconstitutionally vague and overbroad.

"The void-for-vagueness doctrine serves two central purposes: (1) to provide fair notice of prohibitions, so that individuals may steer clear of unlawful conduct; and (2) to prevent arbitrary and discriminatory enforcement of laws." *Tracy v. Fla. Atl. Univ. Bd. of Trs.*, 980 F.3d 799, 807 (11th Cir. 2020), *cert. denied*, 142 S.Ct. 584 (2021) (internal quotations omitted). "[V]agueness arises when a statute is so unclear as to what conduct is applicable that persons of common intelligence must necessarily guess at its meaning and differ as to its application. *Id.* (cleaned up). "[P]erfect clarity and precise guidance have never been required even of regulations that restrict expressive activity." *Ward*, 491 U.S. at 794.

The Policy does not define the terms "personally directed," "abusive," or "obscene," but this "is not dispositive" of whether it is unconstitutionally vague. *Tracy*, 980 F.3d at 807. "When a term is left

undefined, 'we normally construe it in accord with its ordinary or natural meaning.'" *Id.* (quoting *Smith v. United States*, 508 U.S. 223, 228, 113 S.Ct. 2050, 124 L.Ed.2d 308 (1994)). These terms are part of the mainstream vernacular and are not legal terms of art. A person of common intelligence can readily discern what "personally directed," "abusive," and "obscene" mean so that they may avoid making comments at Board meetings that the Chair may interrupt or terminate.[6]

Additionally, the Policy has dual purposes: ensuring (1) that members of the public have the right to participate in Board meetings, and (2) the orderly and efficient conduct of meetings. These purposes guide the Chair in exercising her authority to interrupt, warn, or terminate abusive, personally directed, obscene, irrelevant, and lengthy speech. Accordingly, the Policy, while flexible and allowing for discretion, is limited by its focus on disruptive conduct regardless of viewpoint. It therefore is not employed in an arbitrary and

[6] For example, the term "abusive" appears repeatedly in the Florida Statutes to prohibit conduct in certain situations, without need for a definition of the term. Presumably, the Florida Legislature believes the term to be commonly understood. *See, e.g.*, §§ 559.72, 1002.20, 1003.04, Fla. Stat. (2021).

discriminatory manner and withstands Appellants' facial challenge. *Ward*, 491 U.S. at 794-96 ("In evaluating a facial challenge to a state law, a federal court must . . . consider any limiting construction that a state court or enforcement agency has proffered.").

Furthermore, overbreadth "is 'strong medicine' that courts should employ 'sparingly and only as a last resort.'" *Cheshire Bridge Holdings, LLC v. City of Atlanta, Ga.*, 15 F.4th 1362, 1371 (11th Cir. 2021) (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 613, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973)). "A facial-overbreadth challenge requires a showing that 'the statute punishes a substantial amount of protected free speech.'" *Tracy*, 980 F.3d at 808 (quoting *Doe v. Valencia Coll.*, 903 F.3d 1220, 1232 (11th Cir. 2018)). Appellants "bear the burden of 'demonstrat[ing] from the text of the [challenged provisions] and from actual fact that a substantial number of instances exist in which [the provisions] cannot be applied constitutionally." *Cheshire Bridge*, 15 F.4th at 1370-71 (quoting *N.Y. State Club Ass'n v. City of New York*, 487 U.S. 1, 14, 108 S.Ct. 2225, 101 L.Ed.2d 1 (1988)). If a regulation does not reach a "substantial amount" of constitutionally protected conduct, "then the overbreadth challenge must fail." *Id.* at 1371 (quoting *Vill. of*

Hoffman Ests. v. Flipside, Hoffman Ests., Inc., 455 U.S. 489, 494, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982)). "Perfection is not required to survive an overbreadth challenge—a law that shields most protected activity is permissible." *Id.* at 1378 (cleaned up).

The First Amendment does not protect Appellants' violations of the viewpoint-neutral guidelines of the Policy. *See Charnley I*, 2015 WL 12999749, at *8. The Policy only implicates disruptive conduct outside of the First Amendment's protection and therefore does not reach a substantial amount of constitutionally protected conduct. *See Jones v. City of Key West, Fla.*, 679 F. Supp. 1547, 1559 (S.D. Fla. 1988), *rev. on other grounds*, 888 F.2d at 1332 (public meeting policy prohibiting "obscene or profane speech" and "loud or boisterous behavior" was not unconstitutionally overbroad or vague); *see also Milestone*, 665 F.3d at 784-85; *Fairchild*, 597 F.3d at 760; *White v. City of Norfolk*, 900 F.2d 1421, 1425 (9th Cir. 1990) (policy prohibiting "loud, threatening, personal or abusive language" and disorderly conduct was not unconstitutionally overbroad).

Appellants rely entirely on *Marshall* to support their argument that the Policy is unconstitutionally vague and overbroad. As discussed

above, the court in *Marshall*—following *Ison*—began its analysis with the incorrect premise that *Tam* required a determination that the application of policies similar to the one at issue in this case constitutes viewpoint discrimination. *Marshall*, 2021 WL 5359020, at *5-*6.

From there, the court found the policies unconstitutionally vague because they were "irreparably clothed in subjectivity." *Id.* at *6. However, the court also noted that "some degree of discretion in how to apply a given policy is necessary," so long as "'that discretion [is] guided by objective, workable standards' to avoid the moderator's own beliefs shaping his or her 'views on what counts' as a policy violation." *Id.* (quoting *Minn. Voters Alliance v. Mansky*, --- U.S. ---, 138 S.Ct. 1876, 1891, 201 L.Ed.2d 201 (2018)). There, the school board "presented no examples of guidance or other interpretive tools to assist in properly applying" the policies. *Id.* at *7. Conversely, the Policy itself provides that it "does not prohibit the Board from maintaining orderly conduct or proper decorum." (Corr. App'x Tab 3-1 at 6.) Furthermore, the Policy's guideline allowing the Chair to interrupt or terminate statements is one of four subsections to Section G of the Policy. Together, the subsections read as follows:

> G. The presiding officer may:
>
> 1. interrupt, warn, or terminate a participant's statement when the statement is too lengthy, personally directed, abusive, obscene, or irrelevant;
>
> 2. request any individual to leave the meeting when that person does not observe reasonable decorum;
>
> 3. request the assistance of law enforcement officers in the removal of a disorderly person when that person's conduct interferes with the orderly progress of the meeting;
>
> 4. call for a recess or an adjournment to another time when the lack of public decorum so interferes with the orderly conduct of the meeting as to warrant such action.

(*Id.* at 7.)

This context demonstrates that the guideline allowing the Chair to interrupt or terminate public comments that are personally directed, abusive, or obscene is part of a framework designed to enable to Chair to maintain order and decorum at Board meetings. In analyzing whether this provision of the Policy is unconstitutionally vague, this Court should consider the Policy as a whole. *See Keister*, 29 F.4th at 1259 (in analyzing claim that phrase in a policy was unconstitutionally vague, "we do not read the phase . . . in isolation. Rather, we consider it within the context of the Policy as a whole.").

Unlike *Marshall*, in which the government offered no guidance or interpretive tools for application of the policies at issue, the context in which the terms "personally directed," "abusive," and "obscene" are found in the Policy inform their meaning. That context demonstrates that this guideline serves the animating purpose of ensuring decorum at Board meetings. The Policy is not unconstitutionally vague.

The *Marshall* court also found that the policies in question there were overbroad, once again relying on the proposition in *Tam* and *Brunetti* that "giving offense is a viewpoint" and the statement in *Street v. New York* that an "expression of ideas may not be prohibited *merely* because the ideas are themselves offensive to some of their hearers." *Marshall*, 2021 WL 5359020, at *7 (quoting *Street v. New York*, 394 U.S. 576, 592 89 S.Ct. 1354, 22 L.Ed.2d 572 (1969)) (emphasis added).

It is incorrect to characterize the Policy as preventing "offensive" speech. The *Marshall* court relied on *Gooding v. Wilson*, 405 U.S. 518, 92 S.Ct. 1103, 31 L.Ed.3d 408 (1972) for the proposition that the Supreme Court found the term "abusive" to be overbroad in—as *Marshall* puts it—"other contexts." *Id.* (citing *Gooding*, 405 U.S. at 525). *Gooding* involved a Georgia criminal statute that made the use of

"opprobrious words or abusive language, tending to cause a breach of the peace" a misdemeanor. *Gooding*, 405 U.S. at 519. This context, like that in *Tam* and *Brunetti*, does not require a forum analysis—unlike the instant case, which does. *See Fairchild*, 597 F.3d at 760 (analyzing overbreadth challenge in context of limited forum). The court also failed to acknowledge *Cantwell*'s distinction between offensive speech and abusive speech, the latter of which is "not in any proper sense communication of information or opinion safeguarded by the Constitution." *Cantwell*, 310 U.S. at 310. Where a policy against "abusive" and "vulgar" (or "obscene") language is narrowly tailored to serve a substantial government interest (as it is here), it is not unconstitutionally overbroad. *See Milestone*, 665 F.3d at 784-85 (code of conduct against "abusive" and "vulgar" language was not overbroad).

For these reasons, the Court should find that the District Court correctly determined that the Policy is neither vague nor overbroad and affirm the order denying Appellants' motion for preliminary injunction.

II. The District Court Did Not Plainly Err in Not Conducting an Evidentiary Hearing.

For the first time on appeal, Appellants argue that the District Court should have conducted an evidentiary hearing on their Motion for

Preliminary Injunction—in particular, on their preferential access claim involving the March 9, 2021 meeting.

Where a party raises, for the first time on appeal, the argument that the district court reversibly erred by not conducting an evidentiary hearing, this Court reviews the issue only for plain error. *United States v. Montes*, 151 F. App'x 846, 855 (11th Cir. 2005) (citing *United States v. Gay*, 251 F.3d 950, 951 (11th Cir. 2001) (*abrogated on other grounds*, *McCarthan v. Dir. of Goodwill Indus.-Suncoast, Inc.*, 851 F.3d 1076 (11th Cir. 2017)) and *United States v. Peters*, 403 F.3d 1263, 1270 (11th Cir. 2005)).

Under plain error review, this Court:

> may not correct an error the defendant failed to raise in the district court unless there is: (1) error, (2) that is plain, and (3) that affects substantial rights. . . . Even then, [this Court] will exercise [its] discretion to rectify the error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings.

Id. at 856 (quoting *Peters*, 403 F.3d at 1271).

Plain error is not present here. Appellants had ample opportunity to seek an evidentiary hearing below. They could have requested one in the Motion for Preliminary Injunction. They could have filed a motion for clarification or reconsideration when the District Court issued the

briefing order on the Motion. They could have sought leave to file supplemental affidavits after Appellees responded to their Motion for Preliminary Injunction (rather than filing a reply exceeding the specified page length allowed by the Court and affidavits without leave). They could have moved to change the non-evidentiary hearing on their Motion to an evidentiary one after seeing Appellees' Response and affidavits. They could have objected to the non-evidentiary nature of the hearing at the hearing itself.

They did none of these things. Now, for the first time, Appellants argue that the District Court should have conducted an evidentiary hearing on a factual issue that they conceded below was not dispositive. (Supp. App'x Tab 54 at 8:22-24 ("[T]his particular factual dispute does not have to be resolved for Your Honor to grant our motion.").)

The Court should find that the District Court did not violate Appellants' substantial rights. Justice and fairness do not require reversal for an evidentiary hearing when Appellants did not bother to exercise any number of permissible options to seek one below. The District Court did not plainly err, and this Court should affirm.

CONCLUSION

Appellants cannot clearly show a substantial likelihood of success on the merits of their claims. With the exception of a single time when Cholewa's conduct incited disruption at a Board meeting and the Chair asked him to leave (after he had already spoken at length), Appellants were never prevented from expressing their viewpoints at Board meetings. The brief interruptions of which Appellants complain were due to violations of the Policy's reasonable time, place, and manner guidelines on public comments, which are viewpoint-neutral on their face and as applied. The Policy, which does not prohibit "offensive" speech, is also sufficiently tailored to serve the Board's significant interest in maintaining order at Board meetings and is not overbroad or vague. Finally, the District Court did not plainly err in not ordering an evidentiary hearing—an issue that Appellants raise for the first time on appeal.

For all of these reasons, this Court should affirm the order denying Appellants' Motion for Preliminary Injunction.

Respectfully submitted this 16th day of May, 2022.

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CERTIFICATE OF COMPLIANCE WITH RULE 32

This brief complies with the type-face requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6). This brief has been prepared in 14-point Century Schoolbook, which is a proportionally spaced font that includes serifs.

This brief complies with the type-volume limitations in Federal Rule of Appellate Procedure 32(a)(7) because it contains 12,843 words, excluding the items enumerated in Rule 32(f).

/s/ Gennifer L. Bridges
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CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2022, I electronically filed the

foregoing with the Clerk of the Court by using the CM/ECF System, which will send a notice of electronic filing to the following:

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