

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

MAMA BEARS –
FORSYTH COUNTY, GA, et. al,

Plaintiffs,

v.

WESLEY MCCALL, et. al,

Defendants.

Case No. _____

PLAINTIFFS' MEMORANDUM IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

When people addressing the Forsyth County Schools (“FCS”) board read aloud the books that the board provides its students, the board cries foul because children might be in the room. Apparently, the books are too profane to be read out loud at a schoolboard meeting, but not too profane for a school library to lend children.

Plaintiffs want their elected officials to experience the same emotions that struck them when they first read these books: embarrassment and motivation to action. They want to read these books aloud exactly as they are written because they want school officials and fellow citizens to hear the jarring, unsettling, and sexually graphic words that the schools provide their children. But rather than listen, the Board requires speakers to “sanitize” their readings, destroying the power of Plaintiffs’ message. When one mom, Alison Hair, criticized Defendants by reading from a school library book during her public speaking time, Defendants banished her from school board meetings.

The First Amendment guarantees moms the right to criticize school officials’ choice of library books—and it guarantees moms the right to express that criticism by reading the books aloud in public. This Court should grant Plaintiffs’ motion to enjoin Defendants’ unlawful censorship.

FACTUAL BACKGROUND

Mama Bears

Mama Bears of Forsyth County, Georgia is an unincorporated association of individuals committed to protecting the innocence of children. Martin Decl. ¶ 6. Among the Mama Bears are its Chair, Cindy Martin, and Alison Hair, both of whom have school-aged children in Forsyth County. *Id.* ¶ 6; Hair Decl. ¶ 4. The Mama Bears object to the schools’ placement of sexually explicit books in school libraries, and believe that Defendant school officials do not properly address their concerns. Martin Decl. ¶¶ 8, 9.

In April 2022, Georgia enacted O.C.G.A. § 20-2-324.6(b), requiring that each board of education establish a new, streamlined complaint resolution policy for reviewing school material that may be harmful to minors by January 1, 2023, including a right to appeal such a determination to the responsible school board. Plaintiffs intend to provide input about challenged books at school board meetings, as provided by O.C.G.A. § 20-2-324.6(b), by reading aloud from such books. Hair Decl. ¶ 38; Martin Decl. ¶ 20.

The Forsyth County Board of Education’s Public Speech Policy

State law requires the Forsyth County Board of Education to hold regular monthly meetings, which must include a public comment period. O.C.G.A. § 20-2-58 (2020). The Board’s public comment rules “shall include provisions for the

removal of members of the public for actual disruption of [its] public meeting[s].” *Id.* § 20-2-58(c)(3). “A member of the public may be removed from a public meeting of a local board of education for an actual disruption of the proceedings, as determined [by the Board’s rules].” *Id.* § 20-2-58(c)(4).

The Board’s rules provide that it “may limit the time allocated for public participation as well as the length of individual comments at their discretion.” Ex. C. Defendant Board Chair Wesley McCall has declared that individual speakers are limited to three minutes. FORSYTH COUNTY SCHOOLS, *Feb. 15, 2022 Board Meeting Video*, <https://tinyurl.com/5fysrzfp>, at 52:57-53:01 (last visited July 14, 2022) (“FV”); Ex. E; Hair Decl. ¶ 7.

The Board Chair “is responsible for enforcing this policy and speakers who are found in violation will have their allotted speaking time immediately concluded.” Ex. C. The policy requires speakers to “keep their remarks civil,” and prohibits comments that are “profane,” “rude,” “defamatory remarks,” and “personal attacks.” *Id.* “By reading and acknowledging acceptance prior to speaking during public participation, speakers attest that they understand and will abide by this policy.” *Id.*

Defendants’ censorship at the February 15, 2022 school board meeting

Defendant McCall opened the public comment portion of the Board’s February 15, 2022 meeting by purporting to read the policy’s speech content

rules. FV at 52:28-54:27; Ex. E. But to the policy's list of forbidden speech, McCall added a new category: "inappropriate public subjects," which extended to "anything" that might be read. FV at 53:25-53:34. Two armed officers and a security guard flanked the room's entrance, leaving the Hair and Martin, who planned to address the Board, feeling intimidated and anxious. Hair Decl. ¶ 24; Martin Decl. ¶ 15.

Plaintiff Hair spoke that night to criticize the Board for not removing sexually explicit books from school libraries and to ask that they address the situation differently. To make her point, Hair explained that she would read from "Extremely Loud and Incredibly Close," a book that FCS makes available in its libraries. Hair Decl. ¶ 15. As soon as she quoted, "I know that you give someone a blow job by putting your penis," McCall's gavel sounded. *Id.* ¶¶ 15; FV at 59:48-1:00:16; Ex. E. Hair tried to continue speaking but McCall interrupted her stating:

So, you have, we have a couple options. One is you can continue and go back to the rules that we talked about at the beginning....Or two. We can finish now. We have other people that are younger in this and I, we understand your point...But we don't know...We have not had an opportunity to vet this. We...also have a vetting system in place...so the books are not read out loud.

FV at 1:00:18-1:00:48.

Hair tried again to speak but McCall continued to interrupt. Hair agreed not to read anything else to ensure she could finish her public comment. FV at 1:00:48-1:01:17. But McCall continued to speak over her, consuming over 35 seconds of her time providing his own comment. FV at 59:48-1:03:02; Ex. E. Hair's requests to have that time returned went unheeded. *Id.* McCall allowed another Mama Bears member to paraphrase the same book, replacing potentially offensive words with rhymes and acronyms. FV at 1:13:57; Ex. E; Hair Decl. ¶ 20.

Plaintiff Martin also spoke that night. When she described her disappointment with the Superintendent, McCall interrupted her, "Let's be respectful." FV at 1:07:03;1:07:30; Martin Decl. ¶ 16. Martin then read from a sexually explicit school library book, with the intention of criticizing the Board's approach to the controversy. But fearing censorship and expulsion, she substituted acronyms and pauses for any words she guessed might offend McCall. MV at 1:08:04-1:09:13; Martin Decl. ¶ 17.

Defendants' censorship at the March 15, 2022 school board meeting

McCall opened the public comment period portion of the Board's March 15, 2022 meeting by purporting to read the policy, though his version did not align with the actual written policy. FORSYTH COUNTY SCHOOLS, *March 15, 2022 Board Meeting Video*, <https://tinyurl.com/24br38ax>, at 31:11-32:54 (last visited

July 14, 2022) (“MV”); Ex. F. This time, he added a prohibition on “comments which involve inappropriate public subjects” and “read[ings] [which are] inappropriate to being stated in public.” MV at 31:57-32:14.

Hair approached one of the armed law enforcement officers stationed in the room that night to explain her fear that McCall might have her physically escorted from the room or arrested because she planned on reading a book from the FCS library. Hair Decl. ¶ 25. She requested he not take her into custody and allow her to leave peacefully so her child would not be left alone. *Id.*

When it was Hair’s turn to speak, she tried to read aloud from “Georgia Peaches and Other Forbidden Fruit”, a book made available to children in FCS school libraries. *Id.* ¶ 26. Hair read:

We pushed back together feeling the warmth and silk of each other’s skin. Our breaths were coming faster and harder. My mouth circles the soft skin of my breasts and I cried, arching up into her...

MV at 1:20:34-1:20:46; Ex. F.

As Hair tried to read the last few words of this sentence McCall gaveled her. She tried to continue but McCall interrupted her multiple times and argued with audience members who had reacted to his interruption. MV at 1:20:48-22:19; Hair Decl. ¶ 27. Hair asked for her public comment time to be returned. MV at 1:21:35-1:21:39 Hair Decl ¶ 29. McCall instead demanded that she “follow [the] rules.” MV at 1:22:00-1:22:05. Hair Decl. ¶ 27. He accused her of

using profanity. MV at 1:22:17-1:22:20. Hair Decl. ¶ 27. She then asked if he tried to silence her because he did not “like the filth [he] let in our libraries.” MV at 1:22:20-1:22:23; Ex. F; Hair Decl. ¶ 27. McCall argued that he was enforcing the guidelines, devolved into arguing with the audience, and then called for a recess which terminated Hair’s comment. MV at 1:22:23-1:22:32. Hair Decl. ¶ 27. McCall did not return Hair’s public comment time though he spoke for more than one minute and forty seconds of her allotted three minutes. MV at 1:19:13-1:22:32; Hair Decl. ¶ 29.

Other speakers, however, were granted extra time to express sympathy for the board members, considering their jobs’ alleged difficulties and low salaries. MV at 1:25:12-1:29:36; 1:45:48-1:49:13; Hair Decl. ¶ 32. Hair left when the recess was called, in part due to fears she might be arrested. *Id.* ¶ 28.

McCall interrupted another Mama Bears member during this meeting and accused her of defamation because she referred to him and Defendant Morrissey by name. MV at 1:05:22-1:06:05; Ex. F. Later in the same meeting, McCall declared that the Board’s speech policy, requires “that you don’t call out any board member by name and that you don’t make any direct comment to them so that we all feel respectful.” MV at 1:09:28-1:09:36; Ex. F.

Defendants banish Alison Hair from school board meetings

On March 17, 2022, McCall wrote Hair a letter excluding her from future Board of Education meetings until she “states in writing, to me, that [she will] follow the rules of the Board [and] follow my directives.” Ex. A. Although Hair did not attend any board meetings after receiving this letter, Hair Decl. ¶ 37, the full FCS Board sent her another letter on May 11, 2022, signed by each individual defendant board member, reaffirming Hair’s banishment from its meetings because her “remarks were not civil.” Ex. B.

Ongoing impact of Defendants’ censorship

Having been formally banished from attending her local school board’s meetings, Alison Hair refrains from doing so. She cannot participate in these official government meetings and interact with her fellow citizens and elected officials, and cannot speak publicly before the school board or petition the school board to redress her grievances, unless she agrees in writing to follow McCall’s directives and the Policy restraining her speech. *Id.* But Hair does not want to alter her messages to suit the Board’s preferences, and she cannot reliably predict what words McCall would deem “profane,” “rude,” “defamatory,” “personal attacks,” or “[un]civil.” Hair Decl. ¶ 31. Hair fears arrest and prosecution should she disregard the board’s order banning her

from its meetings. Hair Decl. ¶ 36. Hair intends to speak on various topics if the banishment is lifted. *Id.* ¶ 39.

Martin refrains from speaking before the Board, because she fears that Defendants would banish her as they did Hair if she expresses herself as she intends. Martin Decl. ¶ 20. Like Hair, Martin cannot predict which of her words or statements might be considered “profane,” “rude,” “defamatory,” “personal attacks,” or “[un]civil.” *Id.* ¶19. Other Mama Bears members, and the general public are modifying their speech before the FCS Board or foregoing speaking altogether because they reasonably fear that they would be censored, ejected from meetings, or banished from future meetings if they read aloud from challenged books or otherwise engage in any political speech that runs afoul of the policy or otherwise offends Defendants. *Id.* ¶21.

SUMMARY OF ARGUMENT

Defendants engage in blatant viewpoint discrimination at their school board meetings, censoring readers who use terms and language—and thus, convey messages—that they dislike. Viewpoint discrimination is always unconstitutional in a limited public forum such as a school board meeting.

Moreover, key terms of Defendants’ policies are so subjective and incapable of reasoned application as to invite discriminatory enforcement in the future.

They are unconstitutionally vague and overbroad, and the policy’s prerequisite that speakers accept them imposes an unlawful prior restraint.

First Amendment plaintiffs are entitled to preliminary injunctive relief where their claims are likely to succeed on the merits, as violations of First Amendment rights inflict irreparable harm, and the equities and public interest favor the protection of fundamental rights.

ARGUMENT

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008). “The third and fourth factors merge when, as here, the [g]overnment is the opposing party.” *Gonzalez v. Governor of Georgia*, 978 F.3d 1266, 1271 (11th Cir. 2020) (internal quotation marks omitted).

Because direct penalization of protected speech inflicts irreparable harm, and because the government has no interest enforcing an unconstitutional law, plaintiffs who establish a likelihood of success on such claims “also meet the remaining [preliminary injunction] requirements as a necessary legal consequence of [the] holding on the merits.” *Otto v. City of Boca Raton*, 981 F.3d 854, 870 (11th Cir. 2020); *Scott v. Roberts*, 612 F.3d 1279, 1297 (11th Cir.

2010). Moreover, as following constitutional requirements cannot injure Defendants, the Court should not require a bond to secure the injunction.

I. PLAINTIFFS WILL SUCCEED ON THE MERITS

A. The First Amendment forbids Defendants from discriminating against speech at school board meetings on the basis of viewpoint.

“The government’s power to restrict First Amendment activities depends on ‘the nature of the relevant forum.’” *Gay Lesbian Bisexual Alliance v. Pryor*, 110 F.3d 1543, 1548 (11th Cir. 1997) (quoting *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 800 (1985)). “A limited public forum . . . exists where a government has reserv[ed a forum] for certain groups or for the discussion of certain topics.” *Barrett v. Walker Cty. Sch. Dist.*, 872 F.3d 1209, 1224 (11th Cir. 2017) (internal quotation marks omitted). Public comment periods of school board meetings are limited public fora. *Id.* at 1225; *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 & n.7 (1983).

Speech restrictions in a limited public forum “must be reasonable and viewpoint neutral.” *Bloedorn v. Grube*, 631 F.3d 1218, 1231 (11th Cir. 2011). While “a limited public forum may rightly limit speech at the forum to only certain content, the First Amendment does not tolerate viewpoint-based discrimination against speech within the scope of the forum’s subject matter.” *Barrett*, 872 F.3d at 1225 n.10. Government officials “cannot engage in bias,

censorship or preference regarding [another] speaker’s point of view.” *Otto*, 981 F.3d at 864 (internal quotation marks omitted).

Viewpoint discrimination, “an egregious form of content discrimination,” *Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1126 (11th Cir. 2022) (quoting *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995)), “goes beyond mere content-based discrimination and regulates speech based upon agreement or disagreement with the particular position the speaker wishes to express.” *Cambridge Christian Sch., Inc. v. Fla. High Sch. Ath. Ass’n*, 942 F.3d 1215, 1241 (11th Cir. 2019) (internal quotation marks and citation omitted).

“[G]overnment must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.” *Otto*, 981 F.3d at 864 (quoting *Rosenberger*, 515 U.S. at 829). This Court “[has] not shied away from the same point: ‘The prohibition against viewpoint discrimination is firmly embedded in first amendment analysis.’” *Id.* (quoting *Searcey v. Harris*, 888 F.2d 1314, 1325 (11th Cir. 1989)). Precedents such as *Rosenberger* and *Searcey* “do not leave a lot of breathing room for viewpoint-based speech restrictions.” *Id.* “[R]estrictions based on content must satisfy strict scrutiny, and those based on viewpoint are

prohibited,’ seemingly as a *per se* matter.” *Speech First*, 32 F.4th at 1126 (quoting *Minn. Voters All. v. Mansky*, 138 S. Ct. 1876, 1885 (2018)).

The First Amendment’s protection of the right to express one’s views guarantees more than a right to support a particular side of a debate. *Matal v. Tam*, 137 S. Ct. 1744, 1764-65 (2017) (Kennedy J., concurring in part). “It protects the right to create and present arguments for particular positions in particular ways, as the speaker chooses.” *Id.*; see *Iancu v. Brunetti*, 139 S. Ct. 2294, 2299, 2301 (2019). It is axiomatic that “the government may not censor speech merely because it is ‘offensive to some.’” *Matal*, 137 S. Ct. at 1763. “[W]e cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process.” *Cohen v. California*, 403 U.S. 15, 26 (1971). Neither FCS nor any of its board members may control the terms of the debate as to which books should be placed on school library shelves.

B. Defendants’ speech policies, on their face and as applied against the Mama Bears, violate the First Amendment’s prohibition of viewpoint discrimination.

The Defendants may not silence, interrupt, or ban members of the community for simply reading from the pages found in their children’s school libraries. Directly on point stands *Ison v. Madison Local Sch. Dist. Bd. of*

Educ., 3 F.4th 887 (6th Cir, 2021), in which the Sixth Circuit held that a school board president who stopped a speaker “when he started offending people” engaged in impermissible viewpoint discrimination. *Id.* at 895. The speech policy struck down in *Ison*, facially and as-applied, forbade “antagonistic,” abusive,” and “personally directed” speech. *Id.* These terms are not meaningfully different from Defendants’ prohibitions of “[un]civil” and “rude” speech, and speech that Defendants believe constitutes “personal attacks” and “defamatory remarks.” Ex. C. Likewise, the Eastern District of Pennsylvania struck down a similar policy which forbade, among other speech categories, speech deemed “personally directed,” “abusive,” and “irrelevant.” *Marshall v. Amuso*, No. 21-4336, 2021 U.S. Dist. LEXIS 222210 (E.D. Pa. Nov. 17, 2021).

Although Plaintiffs do not argue that the First Amendment protects obscenity, Defendants’ prohibition against “profane” speech is unconstitutional. The First Amendment protects profanity, and none of the books Plaintiffs would read, however objectionable in a school setting, are books “which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value.” *Miller v. California*, 413 U.S. 15, 24 (1973); *Marshall*, 2021 U.S. Dist. LEXIS 222210 at *29 n.9 (reminding school solicitor that plaintiffs’ speech is not obscene).

Surely Defendants would not suggest that they could be prosecuted for distributing these books. “[C]omments to [a] School Board, though they reference sexual conduct,” are not obscene when they “are not appealing to any prurient interest and are offered to make a political or philosophical point.” *McBreairty v. Sch. Bd. of RSU22*, No. 1:22-cv-00206-NT, 2022 U.S. Dist. LEXIS 128353, at *15 (D. Me. July 20, 2022).

And to the extent Defendants treat people differently based on their views, providing extra time to those who express sympathy for the Board, they engage in constitutionally forbidden viewpoint discrimination. *Brooks v. Francis Howell School District*, 4:22-cv-00169-SRC, 2022 U.S. Dist. LEXIS 73113, at *21-*22 (E.D. Mo. April 21, 2022).

- C. Barring speakers from mentioning the names of school board members at school board meetings is an unreasonable content-based restriction of political speech.

Barring speakers from so much as mentioning school board members is fundamentally incompatible with the purpose of school board meetings: the discussion and debate of school administration. It is difficult, if not often impossible, to express opinions about how FCS should run its schools without uttering the names of the officials responsible for formulating and executing district policies. And to simply mention Defendants Wesley McCall or Kristin

Morrissey by name, coupled with a statement of pure opinion or a true statement of fact about these officials, *e.g.* Hair Decl. ¶ 33; MV at 1:05:22-1:05:54; Ex. F, does not rise to the level of “defamation.” *Echols v. Lawton*, 913 F.3d 1313, 1321 (11th Cir. 2019). Moreover, McCall is not equipped to adjudicate, on the fly, whether a speaker’s statement is truly defamatory. Defamation claims belong in court.

The First Amendment secures “the ability to question the fitness of the community leaders, including the administrative leaders in a school system, especially in a forum created specifically to foster discussion about a community’s school system.” *Bach v. Sch. Bd. of Va. Beach*, 139 F. Supp. 2d 738, 743 (E.D. Va. 2001) (internal quotation marks omitted). The Board practices a “classic form of viewpoint discrimination [allowing] laudatory and neutral [views of District employees] while prohibiting...negatively critical [views of] District employees.” *Leventhal v. Vista Unified Sch. Dist.* 973 F. Supp. 951, 960 (S.D. Cal. 1997). Speakers may express sympathy for a Board member’s having a supposedly difficult, low-paying job, but when Martin notes her disappointment with the Superintendent’s performance she is told to “be respectful,” Martin Decl. ¶ 16; *see also Mnyofu v. Bd. of Educ. of Rich. Twp. High Sch. Dist.* 227, No. 15 C 8884, 2016 U.S. Dist. LEXIS 45773, at *6 (N.D.

Ill. Apr. 5, 2016) (citation omitted) (the “right to criticize public officials” at a school board meeting “is clearly established”).

D. Defendants’ policies and practices that violate Plaintiffs’ free speech rights also violate Plaintiffs’ petition right.

“The right to petition the government for a redress of grievances is one of the most precious of the liberties safeguarded by the Bill of Rights and is high in the hierarchy of First Amendment values.” *DeMartini v. Town of Gulf Stream*, 942 F.3d 1277, 1288 (11th Cir. 2019) (internal punctuation marks and citations omitted). The right “is such a fundamental right as to be implied by the very idea of a government, republican in form,” *Id.* at 1288-89 (internal punctuation and citations omitted), as it “allows citizens to express their ideas, hopes, and concerns to their government and their elected representatives.” *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 388 (2011).

“A petition may consist of a ‘personal grievance addressed to the government’ and may be an oral grievance.” *Floyd v. Cty. of Miami-Dade*, No. 17-cv-21709, 2017 U.S. Dist. LEXIS 76631 at *9 (S.D. Fla. May 18, 2017) (quoting *Guarnieri*, 564 U.S. at 394). And although “[c]ourts should not presume there is always an essential equivalence in the [Speech and Petition] Clauses or that Speech Clause precedents necessarily and in every case resolve Petition Clause claims,” *Guarnieri*, 564 U.S. at 388 (citation omitted), Petition

Clause claims may be decided using Speech Clause analysis. *Id.* at 389; *Grigley v. City of Atlanta*, 136 F.3d 752, 754-55 (11th Cir. 1998).

Much if not most public comment at school board meetings qualifies as petitioning for redress of grievances. Under the present circumstances, the viewpoint and content discrimination analyses of Plaintiffs’ speech claims also govern—and prove—their petition claims.

E. Defendants’ speech policy is unduly vague

“It 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). A regulation can be “impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement.” *Hill v. Colorado*, 530 U.S. 703, 732 (2000) (citing *Chicago v. Morales*, 527 U.S. 41, 56-57 (1999)); *Marshall*, 2021 U.S. Dist. LEXIS 222210 at *12. And “where a vague statute abuts upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly

marked.” *Grayned*, 408 U.S. at 109 (internal punctuation marks and citations omitted).

“The void-for-vagueness doctrine addresses ‘at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way.’” *Burns v. Town of Palm Beach*, 999 F.3d 1317, 1349 (11th Cir. 2021) (quoting *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012)). Indeterminate prohibitions create opportunities for abuse through open-ended interpretation. *Minn. Voters All.*, 138 S. Ct. at 1891. The discretion of a board meeting’s presiding officer “must be guided by objective, workable standards. Without them [the official’s] own politics may shape his views on what counts as [prohibited speech].” *Id.*

“In First Amendment free speech cases . . . ‘rigorous adherence to th[e]se requirements is necessary to ensure that ambiguity does not chill protected speech.’” *Burns*, 999 F.3d at 1349 (quoting *Fox Television Stations*, 567 U.S. at 253-54). “Content-based regulations thus require a more stringent vagueness test.” *Wollschlaeger v. Governor*, 848 F.3d 1293, 1320 (11th Cir. 2017) (en banc) (internal quotation marks omitted). The “government may regulate in the

area’ of First Amendment freedoms ‘only with narrow specificity.’” *Id.* (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963)).

The *Marshall* court struck down a school board’s prohibition of “abusive” and “personally directed” comments not only for sanctioning viewpoint discrimination, but also on vagueness grounds. 2021 U.S. Dist. LEXIS 222210 at *20, *23. It correctly held that these terms, as here, were unconstitutionally vague because that policy lacked “objective, workable standards’ to guide” enforcement. *Id.* at *20 (quoting *Minn. Voters All.*, 138 S. Ct. at 1891). The lack of defined terms allowed “little more than the presiding officer’s own views” to determine what violated the public speaking policy, which “openly invite[d] viewpoint discrimination.” *Id.*

This Court should follow this approach in dealing with Defendants’ policy prohibiting “profane,” “rude,” “defamatory,” “[un]civil” speech and “personal attacks.” As Defendants themselves argue over how these rules apply, Hair Decl. ¶¶ 31,33; MV at 1:05:22-1:05:54; Ex. F, the public cannot be on notice as to what may come in and what must stay out. McCall wants things sanitized, but “it is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual.” *Cohen*, 403 U.S. at 25.

F. Defendants’ speech policy is overbroad

The overbreadth doctrine is similar, but not identical, to the vagueness doctrine. *See Kolender v. Lawson*, 461 U.S. 352, 358 n.8 (1983) (explaining that “traditionally viewed vagueness and overbreadth as logically related and similar doctrines”). A speech regulation “may be overbroad and have an unconstitutional chilling effect on speech even if it is not vague.” *Henderson v. McMurray*, 987 F.3d 997, 1005 (11th Cir. 2021). “For the First Amendment, a law is facially invalid if it ‘punishes a ‘substantial’ amount of protected free speech, ‘judged in relation to the statute’s plainly legitimate sweep.’” *Fla. Ass’n of Prof’l Lobbyists Inc. v. Div. of Legislative Info. Servs.*, 525 F.3d 1073, 1079 (11th Cir. 2008).

More specifically, a regulation is overbroad when the government allows the “scope” of the rule “to reach both unprotected expression as well as, at least potentially, protected speech.” *Wacko’s Too, Inc. v. City of Jacksonville*, 522 F. Supp. 3d 1132, 1159 (M.D. Fla. 2021) (quoting *American Booksellers v. Webb*, 919 F.2d 1493, 1502 (11th Cir. 1990)). Speech regulations “may not ‘sweep unnecessarily broadly and thereby invade the area of protected freedoms.’” *Id.* (quoting *NAACP v. Alabama*, 377 U.S. 288, 307 (1964)). “In First Amendment cases, there exists a serious concern that overbroad laws may lead to chilling protected expression.” *Id.* (internal citations omitted.) Prohibiting “words

offensive to some who hear them [] sweeps too broadly.” *Gooding v. Wilson*, 405 U.S. 518, 527 (1972).

Defendants’ speech policy is unconstitutionally overbroad. It sets no boundaries for its prohibitions on speech that is “rude,” “profane,” “defamatory,” “[un]civil” or a “personal attack[.]” It is incapable of reasoned application and, consequently, allows viewpoint discrimination. It provides no “objective, workable standards,” but, instead, allows Defendants’ “own politics” to shape their views on what is prohibited. *Minn. Voters All.*, 138 S. Ct. at 1891. The scope of the rule allows Defendants to prohibit “both unprotected expression as well as, at least potentially, protected speech.” *Wacko’s Too*, 522 F. Supp. 3d at 1159 (internal citations omitted). These terms have “[u]ncertain meanings” at Board meetings that cause individuals to steer further from the unlawful speech zone than necessary, which, consequently, consumes lawful speech at Board meetings. *Grayned*, 408 U.S. at 109. Indeed, the overbreadth of the Policy raises “serious” First Amendment concerns that its application “may lead to a chilling effect on protected expression.” *Wacko’s Too*, 522 F. Supp. 3d at 1159.

As noted *supra*, the language Defendants censor does not fit the legal understanding of obscenity. Nor does it amount to “personally abusive epithets . . . likely to provoke violent reaction,” a.k.a., “fighting words,” which can be

regulated. *Cohen*, 403 U.S. at 20. Instead, Defendants are using overbroad terms to silence parents discussing books found in their school’s library. *see e.g.*, Hair Decl. ¶¶ 26-27. Accordingly, the Policy is unconstitutionally overbroad.

G. Defendants’ speech policy imposes an unconstitutional prior restraint

“A prior restraint on expression exists when the government can deny access to a forum for expression before the expression occurs.” *Barrett*, 872 F.3d at 1223. A board policy, is a prior restraint if it “*prevents* members of the public from speaking at a Board meeting unless they comply with the Policy’s requirements.” *Id.* By requiring Plaintiffs to “read[] and acknowledge[e] acceptance” of the limitations to the First Amendment rights as a condition of speaking, Ex. C, the Board imposes a prior restraint on speech. The Policy’s attestation clause “allows it to silence speech before it happens.” *Austin v. Univ. of Fla. Bd. of Trs.*, Case No. 1:21cv184-MW/GRJ *43, 2022 U.S. Dist. LEXIS 11733 (N.D. Fla. Jan. 21, 2022). It “*prevents* members of the public from speaking at a Board meeting unless they comply with the Policy’s [unconstitutional] requirements.” *Barrett*, 872 F.3d at 1223.

Some prior restraints are valid where they contain “narrowly drawn, reasonable, and definite standards to guide [an] official’s decisions.” *Bloedorn*,

631 F.3d at 1236 (citation omitted). But “[g]enerally, subjecting protected expression to an official’s ‘unbridled discretion’ presents ‘too great’ a ‘danger of censorship and of abridgment of our precious First Amendment freedoms.’” *Ft. Lauderdale Food Not Bombs v. City of Ft. Lauderdale*, 11 F.4th 1266, 1295 (11th Cir. 2021) (quoting *Se. Promotions v. Conrad*, 420 U.S. 546, 553 (1975)).

The Policy grants McCall “unbridled discretion,” providing him no narrowly drawn, reasonable, or definite standards to apply. He has only the unconstitutional language of a policy that is so indefinite the Board itself cannot always decide when and how it should be applied.

II. DEFENDANTS IRREPARABLY HARM PLAINTIFFS BY SILENCING THEIR SPEECH

“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Roman Catholic Diocese v. Cuomo*, 141 S. Ct. 63, 67 (2020) (per curiam) (internal quotations omitted). “Because the [Policy inflicts] an unconstitutional direct penalization of protected speech, continued enforcement, for even minimal periods of time, constitutes a *per se* irreparable injury.” *Otto*, 981 F.3d at 870 (internal quotation marks, citations and footnote omitted).

III. THE BALANCE OF EQUITIES, AND PUBLIC INTEREST, FAVOR PLAINTIFFS

“It is clear that neither the government nor the public has any legitimate interest in enforcing an unconstitutional ordinance.” *Otto*, 981 F.3d at 870.

Indeed, “the public interest is served when constitutional rights are protected.” *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1327 (11th Cir. 2019).

IV. THE COURT SHOULD WAIVE RULE 65(C)’S SECURITY REQUIREMENT

The Court should not require Plaintiffs to post a bond because they have a high probability of success on their claims, Defendants will not suffer monetary damages from the injunction, the government is the defendant, and First Amendment rights are at issue. *See Univ. Books & Videos, Inc. v. Metro. Dade Cnty.*, 33 F. Supp. 2d 1364, 1374 (S.D. Fla. 1999); *Maxwell v. Sch. Dist. of Volusia Cty.*, No. 20-cv-1954, 2020 U.S. Dist. LEXIS 206581, at *12 (M.D. Fla. Oct. 23, 2020).

CONCLUSION

Plaintiffs’ motion for preliminary injunction should be granted.

Dated: July 25, 2022

Respectfully submitted,

/s/ Erika C. Birg
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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and spacing requirements of LR 5.1(C) because this brief has been prepared in double spaced typeface using Microsoft Word in 13-point in Century School Book.

/s/ Erika C. Birg

Erika C. Birg
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 25th day of July, 2022, I electronically filed the foregoing Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction with the Clerk of Court using the CM/ECF system, and served this document by hand delivery with personal service of the complaint upon the following:

Forsyth County Schools
c/o Dr. Jeff Bearden, Superintendent
1120 Dahlonega Highway
Cumming, GA 30040

Forsyth County Schools
c/o Sandi Abbott, Clerk of the Board
1120 Dahlonega Highway
Cumming, GA 30040

Wesley McCall
4210 Woodwind Drive
Cumming, GA 30028

Kristin Morrissey
3310 Caney Creek Lane
Cumming, GA 30041

Tom Cleveland
5225 Millsford Court
Cumming, GA 30040

Darla Light
5080 Hopewell Road
Cumming, GA 30028

Lindsay Adams
7715 Majors Road, Ste. 100
Cumming, GA 30040

/s/ Erika C. Birg
Erika C. Birg
Georgia Bar No. 058140

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

MAMA BEARS OF FORSYTH
COUNTY, ALISON HAIR, and
CINDY MARTIN

Plaintiffs,

v.

WESLEY MCCALL, Chair, Forsyth
County Board of Education, in his
official and individual capacities;
FORSYTH COUNTY SCHOOLS;
KRISTIN MORRISSEY, Vice Chair,
Forsyth County Board of Education,
in her official and individual
capacities; TOM CLEVELAND,
Member, Forsyth County Board of
Education, in his official and
individual capacities; LINDSEY
ADAMS, Member, Forsyth County
Board of Education, in her official
and individual capacities; and
DARLA LIGHT, Member, Forsyth
County Board of Education, in her
official and individual capacities,

Defendants.

Case No. 22-cv-_____

DECLARATION OF
ALISON HAIR

I, Alison Hair, hereby declare that:

1. I am adult and am competent to make this declaration.

2. I reside in Forsyth County, Georgia.

3. I have one child who at one time attended a Forsyth County School District.

4. I am a member of Mama Bears.

5. The letter identified as Exhibit A is a true and accurate copy of the letter I received from Wesley McCall on March 17, 2022.

6. The letter identified as Exhibit B is a true and accurate copy of the letter I received from the full Board on May 11, 2022.

7. The video stored at <https://tinyurl.com/5fysrzfp> is a true and accurate depiction of what I spoke, heard, and observed at the Forsyth County School Board meeting held on February 15, 2022.

8. Exhibit E is a true and accurate excerpt of portions of the video from the February 15 school board meeting, taken from the video stored online by the school district. It accurately shows some of the public comments at issue in this case.

9. The video stored at <https://tinyurl.com/24br38ax> is a true and accurate depiction of what I spoke, heard, and observed at the Forsyth County School Board meeting held on March 15, 2022 up until the time the room was cleared. After the room was cleared the Board would only allow one speaker

in the room at a time. My knowledge of what happened after the Board cleared the room is based on reviewing the video the Board posted.

10. Exhibit F is a true and accurate excerpt of portions of the video from the March 15 school board meeting, taken from the video stored online by the school district. It accurately shows some of the public comments at issue in this case.

11. Though it is not stated in the Public Participation Policy, I have heard Wesley McCall, Chairman of the Board, announce at the beginning of public comment periods that each speaker has only three minutes to make a comment. Forsyth County Schools, Feb. 15, 2022 Board Meeting video, <https://tinyurl.com/5fysrzfp>, at 52:57-53:01 (last visited July 12, 2022).

12. I attended the February 15, 2022 school board meeting and was stunned and intimidated when I saw two armed officers and a security guard stationed at the entrance of the meeting. I don't recall seeing police officers at prior school board meetings.

13. During this meeting McCall adopted a new practice in which he read from the Public Participation Policy. I do not remember him doing this in prior meetings. Feb. Board Meeting Video at 53:28-54:27.

14. At the beginning of the public comment period at the February 15, 2022 meeting of the Forsyth County School Board Wes McCall purported to

read a variation of Board Policy BCBI but which does not actually align with that policy. The following is a complete and accurate transcript of the exchange:

If your comments include anything that you might read tonight is ennpropriate[sic] inappropriate to being stated in public you will be instructed to stop.

Feb. Board Meeting Video at 53:30-53:34.

15. When it was my turn to provide public comment I attempted to read a passage from a book called “Extremely Loud and Incredibly Close” to alert the Board and members of the public to what was in these books. As soon as I read “I know that you give someone a blow job by putting your penis...” I was interrupted by McCall. Feb. Board Meeting Video at 59:48-1:00:16.

16. I tried to keep speaking but McCall interrupted me again. He said:

So, you have, we have a couple options. One is you can continue and go back to the rules that we talked about at the beginning....Or two. We can finish now. We have other people that are younger in this and I, we understand your point...But we don’t know...We have not had an opportunity to vet this. We...also have a vetting system in place...so the books are not read out loud.

Feb. Board Meeting Video at 1:00:18-1:00:46.

17. I requested my time be returned and then I tried to return to making my public comment but McCall kept interrupting me. I said:

Hair:	I will move on to the rest of my comments and I would like my time...To please be returned.... And
-------	--

how, how dare you say ‘Oh well there’s minors in here, wait, what is it? My son’s a minor and this book that you all have copies of is in my son’s middle school. So, here’s what I’m here to tell you. I am here to confront evil...

McCall: Your time is up.

Feb. Board Meeting Video at 1:00:55-1:03:02.

18. Wes McCall spoke over me for more than 35 seconds of my three minutes of speaking time. I asked for my time back but he did not give it to me.

19. Wes McCall thanked me for being respectful to the rules as I left the podium, even though he spoke over me and did not give me my time back after doing it. Feb. Board Meeting Video at 1:03:16-1:03:21.

20. I listened as another Mama Bear member to paraphrase an excerpt from the same book I did, “Extremely Loud and Incredibly Close” but replaced potentially offensive words like penis, ass, cock, cunt, sex, and dick with other acronyms and rhymes she was allowed to continue with only one interruption. McCall just asked her to look at him. When this speaker told the board she was not sure if she was allowed to read what she was paraphrasing she was told she was not. Feb. Board Meeting Video at 1:13:57-1:15:36.

21. I heard another Mama Bear member reading a portion of a book, self-censoring in the same way I had and was not stopped. After stating she knew she had to “elaborate since we have to monitor ourselves” she read, “I have given a few HJ’s, a few, three or four, successful BJ’s...” and she was not interrupted like I was. Feb. Board Meeting Video at 1:17:43-1:17:59.

22. At the beginning of the public comment period at the March 15, 2022 meeting of the Forsyth County School Board Wes McCall again purported to read a variation of Board Policy BCBI, but which does not actually align with that policy. The following is a complete and accurate transcript of McCall’s statement:

We want to remind our citizens that public participation is to present issues or concerns to the Board but in doing so we do not allow profane comments or comments which involve inappropriate public subjects. If your comments, included anything you might read tonight, is inappropriate to being stated in public you will be stopped from saying it or reading it.

Forsyth County Schools, March 15, 2022 Board Meeting video,

<https://tinyurl.com/24br38ax>, at 31:11-32:54 (last visited July 12, 2022).

23. During public comment at the same March 15 meeting McCall stated that the Public Participation Policy requires “that you don’t call out any board member by name and that you don’t make any direct comment to them

so that we all feel respectful.” March Board Meeting Video. at 1:09:25-1:09:36.

24. There were two, armed law enforcement officials standing by the doors at the March 15, 2022 meeting. I felt intimidated and concerned they were targeting me. One of the armed law enforcement officials was standing toward the front of the room and he slowly walked toward me as I spoke at the March 15, 2022 meeting, which is depicted on the meeting video. March Board Meeting Video at 1:19:13-1:22:44.

25. When I attended the March 15, 2022 board meeting I approached one of the armed law enforcement officers before I went in to the meeting. I told him I thought that McCall might try to have me arrested or physically removed from the room because I was going to read a book. I asked him to please allow me to leave peacefully so that my child would not be left alone.

26. When it was my turn to speak at the March 15 meeting, I tried to read an excerpt from a portion of a book found in the library at the school my child was attending. I thought that if I self-censored words which I guessed the Board would think were offensive then maybe I’d be allowed to speak without getting cut-off or interrupted. I prefaced my comment by explaining how important it was that they listen to me. I said:

You've got a different person here tonight. You've got a mother begging, begging you all to do something....And my First Amendment rights, I am invoking right now...and by the way I don't have the BJ word. Don't worry. But I'm telling you, you're going to hear me out. I'm done. I am having to make a different school choice for my child, based on the unethical behavior of this board.

I then tried to read an excerpt of "Georgia Peaches and Other Forbidden Fruit," which is available to children in Forsyth County Schools:

We pushed back together feeling the warmth and silk of each other's skin. Our breaths were coming faster and harder. My mouth circles the soft skin of my breasts and I cried, arching up into her....I flip over again straddling her. I kiss my way down her breastbone. I'm taking each nipple right in between my teeth...

March Board Meeting Video at 1:19:18-1:20:47.

27. But McCall still did not let me finish my comment. Instead, he interrupted and asked if I had submitted the book to the school for review. I kept trying to read, but McCall was arguing with audience members. He then demanded I obey and "follow our rules." I thought that I was following them and tried to explain that I was. Instead, McCall accused me of using profanity. I tried to return to the subject of the books and asked him if the reason he was trying to keep me from speaking was because he did not "like the filth [he] let in our libraries." He argued that he was just following guidelines and then went back to arguing with the audience and me. He then

called a recess which terminated my comment. March Board Meeting Video at 1:20:48-1:22:19.

28. As I tried to speak that night, I noticed the armed law enforcement officer was slowly approaching me on my right. I left just after the recess was called in part because I was afraid the officer might arrest me.

29. At the March 15 meeting, Wes McCall spoke over me for more than one minute and forty seconds of what was supposed to be my three minutes of speaking time. He also failed to provide a full three minutes. I asked for my time back, but he refused.

30. Wes McCall used over half of what was supposed to be my public comment opportunity to argue with audience members and to silence me.

31. I cannot predict which of my words or statements will be considered “profane,” “rude,” “defamatory,” “personal attacks,” or “[un]civil.”

32. I saw in the March video posted by FCS that McCall gave extra time to some speakers who expressed sympathy for the board members considering their jobs’ alleged difficulties and low salaries. March Board Meeting Video at 1:25:12-1:29:36; 1:45:48-1:49:13.

33. Members of the board also used another Mama Bear member’s time that night to argue about how to apply Board Policy regarding “personal attacks,” “defamatory,” and personally directed comments should be applied.

They gave conflicting accounts on how time keeping worked. The following is a complete and accurate transcription of the exchange:

Speaker:	Ms. Morrissey again chimed in stating that the attention being given to these books is quote benefitting because they can't find them anywhere to purchase....Another intriguing tidbit was when Wes McCall learned that there are quite literally no guidelines...
Board Member:	No, no, she can't call out the board
McCall:	She is stating the facts, she is stating facts. She did not...
Speaker:	I am not, I am not defaming. I'm simply stating that was actually something that happened in the video. [McCall and the unidentified board member continue to argue off mic about how to apply the policy]...

March Board Meeting Video at 1:05:22-1:06:05.

34. I heard McCall change the rules for public comment again after a recess to a "require[ment] that you don't call out any board members by name and that you don't make any direct comment to them so that we all feel respectful." March Board Meeting Video at 1:09:28-1:09:36.

35. On March 17, 2022 I received a letter, (Ex. A) from Wes McCall stating that I was prohibited from attending public meetings until I sent a written letter promising to "follow the rules of the Board" and "follow my directives."

36. I can no longer attend board meetings because I refuse to waive my First Amendment right to read aloud from the books that are found in FCS libraries. If I waive my rights, then my voice and beliefs cannot be shared with the public without Wes McCall's approval of my message. I fear arrest and prosecution if I do attend.

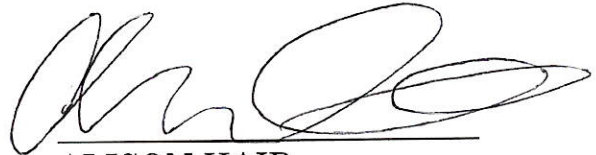
37. I received a second letter (Ex. B) from the full board on May 11, 2022, stating that I was prohibited from attending public meetings until I sent a written letter promising to "follow the rules of the Board" and "follow [McCall's] directives." This letter was signed by all of the board members. I have not attended a meeting since I received the first letter prohibiting my attendance.

38. I am currently unable to give any public comment at an FCS school board meeting, including about the pornographic books available to children in FCS libraries. I will also not be able to give input about book challenges at school board meetings, once the new Georgia state law on book challenges takes effect. That is because I'm banned from even attending those meetings.

39. If my banishment is lifted I intend to speak again and in particular about pornographic books that I don't think should be in our school libraries.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 19, 2022.


ALISON HAIR

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

MAMA BEARS OF FORSYTH
COUNTY, ALISON HAIR, and
CINDY MARTIN

Plaintiffs,

v.

WESLEY MCCALL, Chair, Forsyth
County Board of Education, in his
official and individual capacities;
FORSYTH COUNTY SCHOOLS;
KRISTIN MORRISSEY, Vice Chair,
Forsyth County Board of Education,
in her official and individual
capacities; TOM CLEVELAND,
Member, Forsyth County Board of
Education, in his official and
individual capacities; LINDSEY
ADAMS, Member, Forsyth County
Board of Education, in her official
and individual capacities; and
DARLA LIGHT, Member, Forsyth
County Board of Education, in her
official and individual capacities,

Defendants.

Case No. 22-cv-_____

DECLARATION OF
CINDY MARTIN

I, Cindy Martin, hereby declare that:

1. I am adult and am competent to make this declaration.
2. I reside in Forsyth County, Georgia.

3. I have one child who attends a Forsyth County School, which falls within the Forsyth County School District (FCS).

4. Attached as Exhibit C is a true and accurate copy of the Forsyth County School's Board Policy BCBI: Public Participation in Board Meetings, which I downloaded from the FCS website and is available at <https://tinyurl.com/yc4zfmht>.

5. The book excerpt identified as Exhibit D is a true and accurate copy of a book excerpt from a book titled "Extremely Loud and Incredibly Close." This book is available to students at least one FCS school.

6. I am the Chair of Mama Bears of Forsyth County, Georgia is an unincorporated association of parents and Forsyth County residents whose mission is to organize, educate, and empower parents to defend their parental rights. We are committed to the protection of the innocence of the children in Forsyth County in Georgia.

7. Mama Bears members are concerned with the availability of books with pornographic content in Forsyth County School libraries. I found the contents of these books to be shocking. This motivated me and some other members to spend many hours every week researching and recording the contents of these books.

8. The Mama Bears and I have challenged the presence of books in FCS schools through a process called a “book challenge.” These start when a person files a Media Center Materials Appeal Form with a school. The school passes the appeal form to a committee which then has 45 days per book to complete a review. Only one book may be reviewed at a time in any individual school. The Mama Bears have identified over one-hundreds books we believe are inappropriate.

9. To have all of these books reviewed through a challenge under this procedure would require between seventeen to twenty-five years, assuming no new books were added. These pornographic books are still available to children during the challenge process. The Mama Bears and I believe that this is an unacceptable system, which should be replaced with a more efficient system of review that would protect their children from pornographic materials. We are advocating for a more expedient review process to get these books out of the hands of children and for the Forsyth County School Board to create guidelines to follow when acquiring new books so this type or pornographic material no longer enters our libraries and endangers our children.

10. I am not a lawyer, but my understanding is that there was recently a Georgia state law passed that is supposed to speed up the book review

process and I fully support this. It requires a 10-day review period and allows parents to provide input on books during regularly scheduled board meetings. I intend to make use of the state law by reading aloud from challenged books at school board meetings, as do other Mama Bears members.

11. The Mama Bears are united to change our educational system, because we feel it has not been responsive to our requests as individuals. We believe that the best way to drive change is to act as a group and provide factual information to members of the public and the Forsyth County Board of Education.

12. We believe that if the Board and other members of the public actually hear the contents of these pornographic books, school officials may act more quickly to remove them from schools. To do so, we must expose these readings in a way that cannot be ignored; reading them out loud to key decision makers and those who attend the board meetings or watch the livestreams or video archives of those meetings. We also show enlarged copies of notable pages and post excerpts of them on social media so all are on notice of what is in FCS libraries. We want to give input into the books just as Georgia statute allows.

13. The video stored at <https://tinyurl.com/5fysrzfp> is a true and accurate depiction of what I spoke, heard, and observed at the Forsyth County School Board meeting on February 15, 2022.

14. Exhibit E is a true and accurate excerpt of portions of the video from the February 15 school board meeting, taken from the video stored online by the school district. It accurately shows some of the public comments at issue in this case.

15. When I entered the February 15, 2022 Forsyth County School Board meeting I discovered two officers and a security guard at the entrance of the meeting room. I felt stunned and intimidated by their presence. I was not used to seeing police at school board meetings.

16. I attempted to speak at the meeting, but was interrupted and told to be respectful when I complained that the district's Superintendent was not responding to parental concerns about books because he took the position that it was "up to parents" to get offensive materials out of schools. I explained to the Board that "nothing disappoints me more than a person who's been placed in a position of power and does not use that power to promote good," but Wes McCall interrupted me and told me to be respectful. *Forsyth County Schools*, Feb. 15, 2022 Board Meeting video, <https://tinyurl.com/5fysrzfp>, at 1:06:51-1:07:30 (last visited July 12, 2022).

17. I also read from a sexually explicit school library book titled “Call Me By Your Name,” with the intention of criticizing the Board’s approach to the controversy. I feared censorship so I substituted acronyms and pauses for any words I thought would be considered “rude” or “profane” I guessed and tried to replace words I thought might be offensive to him because they offended me. I did tell the Board I was afraid they were not going to let me read the book, but I did it anyway, replacing words I guessed would be censored with pregnant pauses and initials. I knew that meant they would not get the full power of my meaning but I did not want them to end my public comment. I read:

Martin:	<p>I’m going to try and you stop me. Okay? Just, just let me know, let me know if I’m off , if I’m off base.</p> <p>“When we reached our balcony he hesitated at the door and then stepped into my room. It took me by surprise. ‘Take your trunks off’ he said. That was strange but I didn’t have it in me to disobey. I lowered them and got out of them. ‘Sit down’ he said. I had barely done as I was told when he brought his mouth to my C and took it all in. I was H in no time. I let my left hand rub his____ and then began to stick my____. I told him to do me a favor and lean forward a little bit.’ (verbal filler omitted) Do you see? Do you understand? Why is this in our schools? “The peach was soft and firm when I finally succeeded in tearing it apart with my C. I saw that its red color reminded me not just of an anus but a V. Hold each, I hold each half in either hand firmly against my c and I began to rub myself until I thought I heard it say F me Elio. F</p>
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me harder.” Enough is enough. Please, please work with parents here on this...

McCall: Ms. Martin that’s enough, Ms. Martin that’s enough. Your time is up. Thank You.

Feb. Board Meeting Video at 1:07:32-1:10:02.

18. During my public comment time Wes McCall interrupted me twice and also thanked me for being respectful. I could not tell which things were respectful according to him and which were not. Feb. Board Meeting Video at 1:06:51-1:10:04.

19. I cannot predict which of my words or statements will be considered “profane,” rude,” “defamatory,” “personal attacks,” or “[un]civil.”

20. As a result of Defendants’ actions of interrupting me and staffing the school board meetings with police, as well as their actions to ban, interrupt, cut-off, and exclude Mama Bears member Alison Hair, I have started self-censoring, even though I would like to comment further about pornographic books and should be allowed under the new Georgia law. Because of Defendants’ actions, I refrained from speaking at the April school board meeting.

21. Other members of Mama Bears and members of the public are modifying their speech or not making public comment at all because they are afraid they will be censored, ejected from meetings, or banished from future

meetings. They fear that all of these things are potential outcomes if they read from challenged books or say things that is political in nature. That fear includes the loss of the right to give input about book challenges under the new Georgia state law.

22. I continue to be concerned about speaking freely during the public comment period and will not speak again until I am able to speak freely without fear of interruption or being forced to write assurances that I will "follow [McCall's] directives."

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 17, 2022.

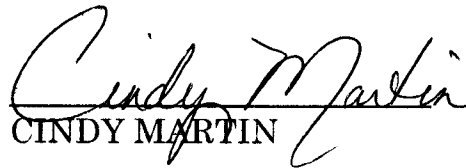

CINDY MARTIN

Exhibit A

March 17, 2022 Letter from Wesley McCall



Dr. Jeffrey Bearden, Superintendent • 1120 Dahlonega Highway • Cumming, Georgia 30040 •
Telephone 770.887.2461 • Fax 770.781.6632

March 17, 2022

Dear Ms. Hair:

On March 15, 2022 during the public participation section of the Forsyth County Board of Education meeting you violated the Board's rules regarding public participation and refused to follow my instructions or risk being removed. Just prior to your presentation, I reminded the entire audience, including you, of the rules and indicated that if there was a violation of the rules that resulted in a disruption of the meeting, the room would be cleared and the speaker would not be allowed to continue. Despite those warnings, you violated the rules, encouraged the audience to participate with you in the disruption and refused to honor my directives as Board Chair. It was clear that your intent was not to comment to the Board in this public forum but was to disrupt the meeting of the Board of Education to draw attention to yourself and your beliefs.

The Forsyth County Board of Education welcomes comments from the public and has demonstrated that throughout the last few months but cannot allow its meetings to be disrupted. Therefore, you are prohibited from attending meetings of the Board of Education until such time as you are willing to state in writing, to me, that you will follow the rules of the Board regarding public participation and that you will follow my directives as Board Chair during public participation.

Sincerely,

Wes McCall
Chairperson, Forsyth County Board of Education

Exhibit B

May 11, 2022 Letter from Full Board



Dr. Jeffrey Bearden, Superintendent • 1120 Dahlonega Highway • Cumming, Georgia 30040 •
Telephone 770.887.2461 • Fax 770.781.6632

May 11, 2022

Dear Ms. Hair:

It is the opinion of each of the individual members of the Forsyth County Schools Board of Education signing below that on March 15, 2022 you violated Board Policy BCBI: Public Participation in Board Meetings Rule # 9 – “Speakers are asked to keep their remarks civil. Profane, rude, defamatory remarks and personal attacks will not be allowed.”

We feel that your remarks were not civil. As Mr. McCall stated to you in his March 17, 2022 letter, “It was clear that your intent was not to comment to the Board in the public forum but was to disrupt the meeting of the Board of Education to draw attention to yourself and your beliefs.”

As stated in the March 17, 2022 letter, you are prohibited from attending meetings of the Board of Education until such time you are willing to state in writing to the Board that you will follow the rules of the Board regarding public participation and will follow Mr. McCall’s directives as Board Chair during public participation.

Sincerely,

Forsyth County Board of Education

Wes McCall, Board Chair

Kristin Morrissey, Vice Chair

Lindsey Adams, Board Member

Tom Cleveland, Board Member

Darla Light, Board Member

Forsyth County Schools does not discriminate on the basis of race, color, religion, national origin, age, disability, or gender in employment decisions or educational programs and activities.

Exhibit C

Board Policy BCBI

Board Policy BCBI: Public Participation in Board Meetings
Status: ADOPTED

Original Adopted Date: 07/19/2007 | **Last Revised Date:** 04/20/2021 | **Last Reviewed Date:** 04/20/2021

Public Participation in Board Meetings

Meetings of the Board of Education are held to conduct the affairs and business of the school system. Although these meetings are not meetings of the public, the public is invited to attend all meetings and citizens are invited to address the Board at all regular meetings at the time shown on the agenda and in accordance with procedures below.

For scheduling purposes, prospective speakers with non-agenda related items must sign up at least 24 hours in advance of the meeting with the Clerk of the Board. Prospective speakers with agenda related items may sign up with the Clerk of the Board up until 15 minutes prior to the start time of the regular Board meeting. The Board may also call special meetings solely for the purpose of public participation and comment.

1. The Board may limit the time allocated for public participation as well as the length of individual comments at their discretion.
2. Where appropriate, the public is urged to follow the School System's Issues Resolution Process before presenting issues or concerns to the Board through public participation.
3. Only Forsyth County residents, representatives of businesses or organizations, or school system employees may address the Board during public participation. No individual or group will be retaliated against, in any manner whatsoever, for speaking during public participation.
4. The Board requests that multiple speakers from a group or organization appoint a single representative to address the Board.
5. All speakers shall address the Board by first stating their names. All remarks shall be made to the Board as a body and addressed through the Chair. Remarks shall not be addressed to individual Board members.
6. Speakers may bring printed material and other supporting materials. These materials should be given to the Clerk of the Board.
7. Personnel issues involving individual employees, issues involving individual students and pending litigation are not subjects for public participation.
8. Speakers are asked to keep their remarks civil. Profane, rude, defamatory remarks and personal attacks will not be allowed.
9. The Board will not respond to comments made by the speaker during public participation unless they chose to ask questions. Speakers should remain at the microphone while answering questions.

The Chairman of the Board is responsible for enforcing this policy and speakers who are found in violation will have their allotted speaking time immediately concluded.

By reading and acknowledging acceptance prior to speaking during public participation, speakers attest that they understand and will abide by this policy. Failure to abide by this policy may result in forfeiture of the right to participate in future Board meetings.

Policy Reference Disclaimer: These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

Note: To access the policy references, click here <https://simbli.eboardsolutions.com/SU/amlgTZiB9plushNjl6WXhfiOQ==> and close the LexisNexis tab, which will return you to the policy. Click on the links below to be taken to each specific code. **You should only have to do this one time per session.**

State References

O.C.G.A. 16-11-0034

Description

Preventing or disrupting a meeting of General Assembly or other meetings of members -
<https://simbli.eboardsolutions.com/SU/GSF7XQ6badFI7gBsnplusyslshslshA==>

O.C.G.A. 16-11-0035

Removal from campus or facility of unit of university system or school; failure to leave -
<https://simbli.eboardsolutions.com/SU/DfZe02yfl6LGxn4DqWB7Kw==>

O.C.G.A. 20-02-0058

Regular monthly meeting of local boards; adjournment; temporary presiding officer; notice of date; template for financial review; public comment period -
<https://simbli.eboardsolutions.com/SU/n9bD5hLSFT3eAplusOYC1ITGw==>

O.C.G.A. 50-14-0001

Open Meetings Act; notice; minutes; telecommunication conferences -
<https://simbli.eboardsolutions.com/SU/vKJceZslshrsGjVB4PNkJmh3g==>

Federal References

USC 1st Amendment

Description

First Amendment, U.S. Constitution -
<https://simbli.eboardsolutions.com/SU/GfxGQ5ZMD65t7uT1xdjA2Q==>

Exhibit D

**Excerpts from the book
“Extremely Loud and Incredibly Close.”**

blowjob?" I said, "I've never even met her."

I know a lot about birds and bees, but I don't know very much about the birds and the bees. Everything I do know I had to teach myself on the Internet, because I don't have anyone to ask. For example, **I know that you give someone a blowjob by putting your penis in their mouth. I also know that dick is penis, and that cock is penis, too. And monster cock, obviously. I know that VJs get wet when a woman is having sex, although I don't know what they get wet with. I know that VJ is cunt, and also ass. I know what dildos are, I think, but I don't know what cum is, exactly. I know that anal sex is humping in the anus, but I wish I didn't.**"

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"I'm going to say a word and I want you to tell me the first thing that comes to mind. You can say a word, a person's name, or even a sound. Whatever. There are no right or wrong answers here. No rules. Should we give it a try?" I said, "Shoot." ... He said, "But let's try not to use the same word. Ok?" "OK. I mean, yeah." "Family." **"Heavy petting." "Heavy petting?" "It's when a man rubs a woman's VJ with his fingers. Right?"**

Page ?

..."Oskar, Ron is my friend." **I was going to ask her if she was humping her friend, and if she had said yes, I would have run away, and if she had said no, I would have asked if they heavy-petted each other, which I know about.**

Page ?

...we lowered ourselves to the ground, our backs against the shelves, we could hear them talking inside and smell the pipe smoke that seeped between the books, Anna started kissing me, "But what if they come out?" I whispered,

Exhibit E

See Video Submitted by USB

**Forsyth County School Board Meeting
February 15, 2022**

Exhibit F

See Video Submitted by USB

**Forsyth County School Board Meeting
March 15, 2022**