UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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DEBORAH ALEXANDER, MAUD MARON, and NOAH HARLAN,

Plaintiffs,

-against-

TAJH SUTTON, President, Community Education Council 14, in her official and individual capacities; MARISSA MANZANARES, First Vice President, Community Education Council 14, in her official and individual capacities; DAVID C. BANKS, Chancellor, New York City Public Schools, in his official and individual capacities; NINA S. MICKENS, Equity Compliance Officer, in her official and individual capacities; COMMUNITY EDUCATION COUNCIL 14; NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendants.
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Case Number 1:24-cv-2224

DEFENDANT SUTTON'S MEMORANDUM OF LAW IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

Defendant Tajh Sutton, President of Community Education Council 14 (CEC 14"), by her attorney Jonathan Wallace, offers this Memorandum of Law in opposition to Plaintiffs' Motion for a Preliminary Injunction.

PRELIMINARY STATEMENT

Plaintiffs seek a preliminary injunction protecting their "right" to bully and harass individual defendants and the schoolchildren in their district, to exercise a "heckler's veto" over all proceedings at CEC 14, and to disrupt their public meetings, all under the purported cover of the First Amendment. But the First Amendment, allowing Defendants to impose reasonable time, place and manner restrictions on speech in their meetings,

does not go into the dark places that Plaintiffs wish it did.

The Plaintiffs by their own admission delight in bullying school board members and attendees, and even schoolchildren, who do not share their own right wing views, which include the viewpoints that any criticism of Israel is antisemitism, and that there is no such thing as a "transgender" child. Highly confident of the correctness of their views, Plaintiffs demand, not that CEC 14's proceedings become "content neutral" as they claim, but that their own speech be allowed to drown out all others. In fact, inveighing hypocritically against "viewpoint discrimination", they seek to impose viewpoint discrimination-- in favor of their own views. They are entitled in our society and by the First Amendment to hold these views and to express them. They are not entitled, under cover of the First Amendment and this Court's intervention, to scream them out in CEC 14 meetings, to interrupt speakers, and to threaten them[1] (and even schoolchildren in the district[2]) in person and online.

THE FIRST AMENDMENT PERMITS IMPOSITION OF REASONABLE TIME, PLACE AND MANNER RESTRICTIONS ON PLAINTIFFS' SPEECH IN CEC'S LIMITED PUBLIC FORUM AND SOCIAL MEDIA

"As a threshold matter, prohibiting someone from testifying at a public meeting because they have disrupted or otherwise interrupted the meeting is a reasonable time, place and manner restriction on speech in limited public fora.... Such prohibitions pass

1 Plaintiffs, completely ignoring the fact that CEC 14, as a limited public forum, may enforce reasonable time place and manner restrictions to ensure it gets its business done without disruption, ask this Court to enjoin the enforcement of rules against "name calling" and "discord", Complaint, Prayers for Relief, 1(d) and (e).

2 One Plaintiff acknowledges telling the *New York Post* about a pro-Palestinian student editorialist at Stuyvesant: "The byline should read coward instead of anonymous. If you are going to repeat revolting Hamas propaganda and transcribe your ignorance and Jew hatred, put your name to it".

constitutional muster so long as they are content-neutral, serve a significant government interest, and leave open alternative channels for expression." *Komatsu v City of NY,* 2021 US Dist LEXIS 14522, at *6 (SDNY Jan. 26, 2021, No. 20-CV-7046 (ER)); *Devine v Vil. of Port Jefferson,* 849 F Supp 185, 190 (EDNY 1994) ("It was only after Devine began to shout, drown out other members of the community, and interrupt members of the Board as they attempted to proceed with the business at hand did the Mayor request that Devine stand down"); *Perez v Hoblock,* 248 F Supp 2d 189, 197 (SDNY 2003) affirmed, 368 F.3d 166 (Second Circuit 2004) (Plaintiff's "'harsh and vulgar' speech and behavior interfered with and disrupted the meeting -- precluding the airing of his alleged grievance"); *LeDerman v Individual,* 2018 US Dist LEXIS 251383, at *7-8 (SDNY Mar. 23, 2018) ("About a minute later, Lederman again interrupted the panelists").

CEC 14 is a limited public forum, *Santorelli v Town of Islip,* 2019 US Dist LEXIS 252365, at *5-6 (EDNY June 21, 2019, No. 18-CV-1078 (AMD) (RLM)) ("It is well-established that a public meeting of an elected municipal board . . . is considered to be a limited public forum"); *Roth v Levittown Union Free Sch. Dist.,* 2023 US Dist LEXIS 171865, at *5 (EDNY Sep. 26, 2023, No. 23-CV-0361 (RPK) (ARL)) (school board may "limit[] the expressive activity to certain kinds of speakers or to the discussion of certain subjects").[3]

Rules of conduct regulating screaming, threats, and disruption of meetings are content neutral and permissible (and are in fact essential to permit CEC 14 to do business without continual disruption), *Cipolla-Dennis v County of Tompkins*, 2019 US Dist LEXIS 84291, at *19 (NDNY May 20, 2019, No. 3:18-CV-1241) *affirmed* 2022 U.S. App. LEXIS 11372 (2nd Cir. 2022).

3 *Levittown* holds that a school board could consistently with the First Amendment limit participation to individuals living in the district. Each of the plaintifs in their affidavits in support of the preliminary injunction motion admit that they live in other districts, not CEC 14.

("Thus, the County can exclude this genre of speech at the public comment portions of its legislative meetings as long as the exclusion is viewpoint neutral and reasonable. A rule is viewpoint neutral if it is based on the manner in which speakers transmit their message to viewers and not upon the message they carry").

Reasonable viewpoint neutral restrictions on postings by followers of CEC 14's social media also survive First Amendment review, *Squicciarini v Vil. of Amityville,* 2019 US Dist LEXIS 42776, at *26-27 (EDNY Mar. 15, 2019, No. 17-CV-6768 (DRH)).

CONCLUSION

The Motion for Preliminary Injunction must be denied because Plaintiffs have not shown a likelihood of success on the merits.

Dated: Amagansett, NY
May 6, 2024

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