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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

HARRY POLLAK,

Plaintiff,

vs.

SUSAN WILSON, in her individual capacity, *et al.*,

Defendants.

Case No. 2:22-CV-49-ABJ

PLAINTIFF'S NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff Harry Pollak submits the following supplemental authority from the Eleventh Circuit and D.C. Circuit in support of his motion for summary judgment (ECF No. 65) and response to SCSD2's motion for summary judgment (ECF No. 67):

In response to Pollak's motion for summary judgment, SCSD2 cited a decision from the Middle District of Florida, *Moms for Liberty – Brevard County, FL v. Brevard Public Schools*, 656 F. Supp. 3d 1296 (M.D. Fla. 2023). (*See* ECF No. 68 at 18). Just last week, the Eleventh Circuit reversed that decision in an opinion addressing many of the same issues raised here—two of which merit a brief discussion. *See generally Moms for Liberty v. Brevard Pub. Sch.*, No. 23-10656, -- F.4th --, 2024 U.S. App. LEXIS 25394 (11th Cir. Oct. 8, 2024).

First, the Eleventh Circuit held that a policy purporting to prohibit speakers at a school board meeting from talking about specific individuals was unconstitutionally

unreasonable because the board could not "define the policy." *Id.* at *23. This indeterminacy led to "unpredictable and haphazard enforcement." *Id.* at *25. For example, "[s]ometimes just mentioning someone's name was enough to provoke interruption, but other times using a name was met with no resistance." *Id.* at *23. As explained in Plaintiff's summary-judgment motion, that same problem exists here. (*See* ECF No. 66 at 14–15).

Second, the Eleventh Circuit also held that the school board's rule was unconstitutionally unreasonable because it undermined the purpose of a public-comment period—"educating the Board and the community about community members' concerns." *Moms for Liberty*, 2024 U.S. App. LEXIS 25394, at *26. That resembles the purpose of SCSD2's public-comment period, which is to "hear the viewpoints of citizens throughout the district" about "school operations and programs." (ECF No. 66-1 at 1). Prohibiting individuals from discussing specific people for any reason, especially people who work for the school system, "actively obstructs" this purpose. *Moms for Liberty*, 2024 U.S. App. LEXIS 25394, at *26. So too does SCSD2's Personnel Rule. (*See* ECF No. 66 at 10–14).

The D.C. Circuit also recently held that a speech regulation in a limited public forum violated the First Amendment because the government could not define the relevant terms, which led to inconsistent enforcement. *See People for the Ethical Treatment of Animals v. Tabak*, 109 F.4th 627, 637–38 (D.C. Cir. 2024) ("*PETA*"). There the term was "off-topic," but "the government fail[ed] to provide any definition of 'off-topic' in its Comment Guidelines, to its social media moderators, or

even in this litigation." *Id.* at 637. The lack of "objective, workable standards" rendered the rule unconstitutional. *See PETA*, 109 F.4th at 637 (quoting *Minn. Voters All. v. Mansky*, 585 U.S. 1, 21 (2018)). Likewise, SCSD2's policy does not define "personnel matters," and the Board's representative testified that SCSD2 leaves it up to the presiding chair to decide what the policy means. (*See* ECF No. 66 at 14–15). Without objective, workable standards, the rule is unconstitutional. (*Id.* at 16).

Dated: October 15, 2024.

Respectfully submitted by,

/s/ Brett R. Nolan
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CERTIFICATE OF SERVICE

I certify that the foregoing was served on all counsel of record on October 15, 2024, using the Court's CM/ECF system.

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