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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

GLENDA SCHERER. Plaintiff, v. GLADSTONE SCHOOL DISTRICT, BOB STEWART, in his official capacity as Superintendent of Gladstone School District, TRACY OBERG GRANT, in her official capacity as Board Chair, Defendants.	**Case No. 3:24-cv-00344-YY** Magistrate Judge Youlee Yim You PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT *ORAL ARGUMENT REQUESTED*

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The Parties have conferred but were unable to resolve their disputes.

MOTION

Pursuant to Federal Rule of Civil Procedure 56, Plaintiff moves this Court for an order granting summary judgment in her favor on each of the Amended Complaint's causes of action identified. The ground for this motion is that there is no genuine dispute as to any material fact and that Plaintiff is entitled to judgment as a matter of law. Plaintiff's motion is supported by the argument and authorities below, along with the Declarations of Plaintiff and Dean McGee.

INTRODUCTION

When Glenda Scherer—a mother, teacher, and resident of the Gladstone School District—began expressing concerns about the District's handling of the Covid-19 pandemic, she expected that the people entrusted with educating the community's children would hear her out in good faith. Instead, the District—through its board and its employees—began a yearslong campaign of censorship and shaming, exacerbated by painful interactions with a district employee who doxed private information about her daughter online, physically restrained her special-needs son without the school timely notifying her, and ultimately put her in such fear that she felt compelled to secure a temporary order of protection.

The District's censorship campaign against Glenda has been multifaceted. At varying points she has been blocked or otherwise limited in her online speech, subjected to a system of "prior restraint" in which she was forced to pre-submit her

public comments for approval by a hostile government board, silenced mid-speech, and banned from meetings. The District's censorship regime was premised on its policies governing public comment at meetings of the school board. These policies purport to ban members of the public from speaking disrespectfully to government officials, permit only "objective" criticism of the District, and prohibit any reference to school officials—even board members and the superintendent. These overbroad policies are enforced arbitrarily by a board chair who testified that it should be illegal to disrespect government officials like herself.

Because the First Amendment does not allow public officials to silence criticism, or demand deference from those they serve, this Court should grant summary judgment in Plaintiff's favor on each cause of action in the Amended Complaint.

STANDARD OF REVIEW

Summary judgment is proper if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Munoz v. Mabus*, 630 F.3d 856, 860 (9th Cir. 2010). "The mere existence of some alleged factual dispute between the parties will not defeat a properly supported motion for summary judgment." *Endy v. Cnty of L.A.*, 975 F.3d 757, 763 (9th Cir. 2020). "Likewise, mere allegation and speculation do not create a factual dispute for purposes of summary judgment." *Nelson v. Pima Cmty. Coll.*, 83 F.3d 1075, 1081–82 (9th Cir. 1996). Defeating a motion for summary judgment requires the non-moving party to show that there is a genuine issue of fact, which means that the disputed evidence would be sufficient to support a reasonable jury verdict.

Endy, 975 F.3d at 763; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 245–52 (1986). Here, there are no genuine issues of material fact and Plaintiff is entitled to summary judgment as a matter of law.

STATEMENT OF FACTS

A. The Parties.

Glenda Scherer is a licensed teacher, mother of two and a resident of Gladstone School District (the "District"). Scherer Decl. ¶ 1–3. The District is a public school district operated under the law of the state of Oregon, and a public body as defined in Or. Rev. Stats. §§ 30.260(4) and 174.109. Defendant Bob Stewart served as the Superintendent of the District until June 30, 2024, when he was replaced by Jeremiah Patterson. Defendant Tracey Grant served as the Chair of the District's Board of Education (the "Board") at the filing of this litigation. She has since been replaced by Donna Diggs.[1] The Board, the Board Chair, and the Superintendent are tasked with implementing and enforcing the Board's policies.[2]

B. Glenda develops well-founded concerns about the District and its employees.

In March 2020, as school activities shifted to virtual platforms in response to COVID-19, Glenda became concerned about how the District's policies might negatively impact the learning environment for students, including her daughter

[1] Because Mr. Stewart and Ms. Grant were sued in their official capacities, their successors are deemed "automatically substituted" in their place. Fed. R. Civ. P. 25(d).

[2] McGee Decl. Ex. 1 ("Patterson Tr.") at 16:23-25; 30:3-9; McGee Decl. Ex. 2 ("Stewart Tr.") at 40:3-22; McGee Decl. Ex. 3 ("Diggs Tr.") at 10:6-14; 14:23-15:1.

and special-needs son. She began expressing these concerns directly to the District and on social media, suggesting (among other things) that the District was failing to utilize state guidance permitting additional in-person learning. Scherer Decl. at ¶¶ 5–9. During this time, an instructional assistant employed by the District harshly responded to one of Glenda's online comments, referencing personal information about her daughter—conduct that was later deemed to violate school policy. Scherer Decl. ¶ 12–13; Patterson Tr. 107:25-109:3.

The same instructional assistant was later placed in a classroom with Glenda's special needs son and wound up physically restraining him, resulting in significant distress to her son. Scherer Decl. ¶ 14. While the parties dispute the severity and necessity of the restraint, it is undisputed that the District failed to notify her for several days in violation of its own policies—violations that resulted in no employee discipline. Scherer Decl. ¶ 15–17; Patterson Tr. 52:20-53:14. When Glenda met with the District to discuss the issue and review her son's educational records she was confronted with documentation of the restraint that appeared fabricated—documentation that the Superintendent later admitted was not contemporaneous, and utilized an out-of-state template with the District's letterhead scotch taped to it. Patterson Tr. 57:8-60:4. When, at Glenda's demand, the District convened an investigation, Glenda learned that the lead investigator was a coworker of the Superintendent's wife. Later, the same instructional assistant aggressively approached Glenda while she was shopping, causing Glenda to obtain a temporary order of protection against her. Scherer Decl. ¶¶ 18–19.

Glenda also began filing public records requests to learn more about the District, one of which appeared to reveal inadequacies in certain administrators' licensing. Scherer Decl. ¶¶ 22–23.

These issues became the impetus for her public comments to the Board—comments that subjected her to the censorship at the heart of this litigation.

C. Defendants begin to suppress Glenda's speech at board meetings and on social media.

Defendants first began to suppress Glenda's speech place at a virtual school board meeting in July of 2020. Scherer Decl at ¶ 7. The District disregarded and excluded from the meeting minutes a written critical comment that Glenda had submitted. *Id.* The School Board never addressed that comment, despite claiming it would do so. *Id.*

The District continued to disregard and suppress Glenda's speech, this time on social media. In September, the District used a "post approval" feature on Facebook to prevent only Glenda from posting her criticism of the District in real time. Scherer Decl at ¶ 9.[3] In November, the District blocked Glenda from interacting with the District's Twitter page, and only unblocked her when she asked to be

[3] *See also* Patterson Tr. 41:19-43:6 ("Q: Does the term post moderation sound familiar? A. Yes. Q. Right. The idea that other posts were either approved or didn't even need to wait for approval, but Glenda's posts were not approved to be entered into that group." A. I believe that is the case. I think there was a brief period of time.")

unblocked. *Id.* at ¶ 11.[4] To this day, Glenda remains unable to freely "tag" the District on social media in real time. Scherer Decl. ¶¶ 38–41.

D. Defendants maintain policies requiring the public to "respect" government officials, permitting only "objective" criticism of the District, and broadly prohibiting any references to any individual staff members.

The Board maintains policies governing the public's conduct during its meetings (the "Policies"), which include the following directives:[5]

- "All members of the public attending School Board meetings must treat each other and the Board with respect." McGee Decl. Ex. 4 p. 1-3. No definition of "respect" is provided.
- "A person speaking during the designated portion of the agenda for public comment may offer *objective* criticism of district operations and programs. The Board will not hear comments regarding any individual district staff member." McGee Decl. Ex. 5.[6] No guidance differentiates "objective" criticism from "subjective" criticism, and no limits are put on the board's ability to suppress speech that references individuals associated with the District.

Defendants' deposition testimony underscored both the arbitrary nature of the Policies and the aggressiveness with which they were interpreted and enforced.

Regarding the "respect" policy, Defendant Grant confirmed that violations are determined solely at the discretion of the Board members. McGee Decl. Ex. 6

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[4] Patterson Tr. 41:15-18 ("Q. . . . . does that refresh your recollection as to whether Glenda was ever blocked from the Twitter account? A. It appears that is the case.").

[5] The Policies are set forth in a February 9, 2022 "Administrative Regulation" titled BDDH-AR (McGee Decl. Ex. 4), and a March 9, 2022 Policy referenced as BDDH (McGee Decl. Ex. 5).

[6] BDDH-AR similarly states "Speakers may offer objective criticism of school operations and programs but the Board/Committee will not hear complaints concerning specific school personnel or students. Comments of this nature will not be heard. Personal attacks on any District employee, Board member, other testifier, or member of the public will not be allowed." McGee Decl. Ex. 4. No definition of "attacks" is provided.

("Grant Tr.") at 59:8-10. Superintendent Patterson conceded that determining whether a comment is "respectful" was "quite subjective" and that "[s]o many individuals might have different […] interpretations of what respectful means." Patterson Tr. at 29:22-30:1; 31:7-9; *see also id.* at 30:12-13 ("It's difficult for me to say definitively where that line of respect is."). Defendant Stewart acknowledged that enforcement of the policy "would depend on the definition of 'disrespectfully,'" noting that, while his own definition would require conduct rising to the level of physical threats or racial comments, he was "sure the board members have other interpretations." Stewart Tr. at 42:20-43:1-2, 7-9. Current Chair Donna Diggs bluntly stated that it should be illegal to disrespect government officials, and confirmed that Glenda had violated that policy by engaging in disrespect.[7]

Regarding the limitation of criticism to only "objective" criticism, Defendant Grant tacitly conceded that such a determination was a subjective one left in the sole discretion of the Board Chair. *Id.* at 60-61.[8] And Chair Diggs likewise conceded that reasonable people could "probably" disagree as to what would be an objective or subjective criticism. *Id.* at 23:1-4. Defendant Stewart's attempt to define an "objective" criticism was more muddled: "Criticism of operation is, in general, depending on how that's delivered and what the individual that's expressing that—

[7] Diggs Tr. at 22:5-7 ("Q. . . . do you think it should be illegal for members of the public to speak disrespectfully to elected officials? A. Yes, I don't think anybody should speak disrespectfully to anyone."); *id.* at 21:5-7.

[8] For example, Defendant Grant expressed her view that criticisms of mask mandates in school were objectively wrong, while conceding that others in the community would find her perspective to be objectively wrong. Grant Tr. 60:14-61:1.

if they're doing it in a public setting—has chosen to express that, and whether it, in fact, is a criticism of an individual, not of operations." Stewart Tr. at 50:3-9. He added, "there's a blurred line there[.]" *Id.* at 50:10.

Regarding the policy prohibiting references to staff, the Defendants and their successors could not agree as to the scope of the rule. Defendant Grant testified that the policy would prohibit any criticism of the superintendent, even if they were identified only by title. Grant Tr. 67:25-68:17. And current chair Donna Diggs stated that the rule broadly prohibits any comment "identifying a specific person"—even the elected board members themselves. Diggs Tr. 25:2-15. By contrast, Defendant Stewart stated that the Policy prohibits references to teachers and principals, probably prohibits references to the assistant superintendent "in most cases," but would *not* prohibit references to the board members or the superintendent. Stewart Tr. at 46:8-18. Superintendent Patterson was uncertain whether the Board could prohibit a comment as benign as "I don't think the school administrators generally are competent and qualified." Patterson Tr. at 124:14-24.

Notably, the Board enforced the Policies through a system of "prior restraint," requiring individuals wishing to speak to pre-submit their comments for approval and read them verbatim. Scherer Decl. ¶ 13. This pre-speech censorship regime ended on January 21, 2024—only after Glenda's attorneys sent a demand letter requesting as much. McGee Decl. Exs. 6-7.

E. The District aggressively enforced its Policies against Glenda to suppress her speech and ban her from meetings.

The Policies, including the system of prior restraint, have been aggressively enforced against Glenda over the years as demonstrated by the following examples:

January 27, 2021: Then-Chair Greg Lind demanded by email that Glenda stick to her "submitted comments," explaining that "extemporaneous speech" is not permitted and that "if a person goes off-script . . . [he] will have to mute them." Scherer Decl. ¶ 26.

January 12, 2022: Glenda asked to speak at a Board meeting without submitting her comments in advance. By email, then-chair Steve Stewart sent her this reply: "Unfortunately since you do not wish to follow the set procedures and submit your comments ahead of time, I regret to inform you that I cannot allow you to speak." Scherer Decl. ¶ 27.

November 8, 2023:[9] Just before Glenda was ready to speak at a meeting, she stated that she wanted to quote from a public records request that included names of school personnel. The Board Chair told her that she was prohibited from naming names even if they were listed in public records. Glenda self-censored and did not name names during her comment. Scherer Decl. ¶ 28. Her comment concerned hiring and employment practices of the District, licenses and credentials of District administrators, and an executive session of the school Board. The speaker following

[9] The November 8, 2023 meeting can be found here: https://www.youtube.com/watch?v=dfBANkWRZUU&t=1446s. The relevant section begins at timestamp 20:08 and goes until 30:16. It has also been submitted as McGee Decl. Ex. 9.

Glenda named the Special Education Director by title and criticized him without interruption. Scherer Decl. at ¶ 28.

January 10, 2024:[10] Glenda presubmitted a comment regarding a disturbing incident in which a school employee approached her aggressively while she was shopping, leading her to obtain a temporary order of protection against that employee. Defendant Grant, as the Board Chair, emailed Glenda instructing her to "edit" her comment, claiming she could not reference a school employee by title or discuss events that, in Grant's view, did not "occur during regular business hours" or "have any bearing on school buildings or property." Scherer Decl. ¶ 29.

Before delivering her comment, Glenda asked Defendant Grant what policy authorized these restrictions. Superintendent Stewart interrupted, stating Glenda could not "mention employees" or refer to them "by title." When Glenda again asked for the specific policy, Stewart replied, "We will get you that."

Glenda began her comment, referring only to an unnamed employee "who is investigated for abusing my son." At that point, Stewart signaled to the Chair, who immediately cut Glenda off, ended her speech, and adjourned the meeting. Neither Stewart nor Grant ever provided the policy they referenced. During depositions, Chair Diggs falsely characterized Glenda's conduct as "violent," but withdrew the statement when confronted with video evidence. Diggs Tr. at 62:24-63:1-5; 65:18-24.

[10] The January 10, 2024 meeting can be found here: https://www.youtube.com/watch?v=_7jDYmuVM84&t=3636s. The relevant section begins at timestamp 58:48. It has also been submitted as McGee Decl. Ex 10.

January 23, 2024: Superintendent Stewart sent Glenda a directive banning her from school board meetings unless she received prior approval from the Superintendent. Scherer Decl. at ¶ 30, Ex. 11. The pretext for this directive was an accusation that Glenda had engaged in "unacceptable behavior" during a meeting that had taken place more than one year earlier.[11] The letter also referenced, without explanation, her "unwillingness to behave in a respectful fashion."

The District ultimately rescinded the January 2024 directive on February 12, 2024 after receiving a letter from Glenda's counsel, but the District has threatened to re-implement the ban if Glenda does not treat Board members with "respect." McGee Decl. Ex. 8.

March 13, 2024:[12] Glenda spoke during public comment about the qualifications of Gladstone's administrators, stating "Since we have one of the largest tax rates in Oregon, it would be very helpful to have qualified administrators who are doing their job. Through a public records request at the Teachers and Standards Practices Commission, I learned of four Gladstone administrators who had anomalies regarding their admin licen—." Glenda was sharply cut off by Defendant Grant, citing the Policies and stating that the Board would not allow "complaints concerning specific school personnel." Glenda asserted that the policy violated her

[11] The "unacceptable" behavior was the accidental removal of papers related to her own son, which she returned less than an hour later. Scherer Decl. ¶ 30; Patterson Tr. 85:13-89-12.

[12] The March 13, 2024 meeting can be found here: https://www.youtube.com/watch?v=px8tjdGfLl0&t=3s. The relevant timestamp is 1:01:51. It has also been submitted as McGee Decl. Ex. 11.

free speech rights. Chairwoman Grant insisted she was "protecting [her] employees" and claimed that speaking about "administrators" was "not free speech," accusing Glenda of "libel and slander." Glenda attempted to refer to administrators by number, still not naming names, but the Chairwoman maintained that this was also prohibited. Glenda ultimately moved on to another topic.

At this same meeting, a speaker was allowed to sharply criticize the special education program without interruption.[13]

August 7, 2024:[14] Before allowing Glenda to speak, Chair Diggs read the Policies regarding respect, allowing only objective criticism, no naming names, and no personal attacks. During this meeting, Glenda mentioned one staff member by name. The speaker following Glenda was allowed to mention multiple staff members by name—including the Superintendent—when she was doing so to praise them.

October 9, 2024: Chair Diggs read the Policies before Glenda spoke.[15] Glenda criticized District staff for failing to create a "culture of care" and named one employee, prompting the entire Board to turn toward Chair Diggs, who interrupted by raising her gavel and warned Glenda to follow the no-naming-names guideline.

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[13] The video of the referenced speaker from the March 13, 2024 meeting can be found here: https://www.youtube.com/watch?v=px8tjdGfLl0&t=3s. The relevant timestamp is 55:09. It has also been submitted as McGee Decl. Ex. 12.
[14] The August 7, 2024 meeting can be found here: https://www.youtube.com/watch?v=l4n7hANsPds. The relevant timestamp is 1:24:14. It has also been submitted as McGee Decl. Ex. 13.
[15] The October 9, 2024 meeting can be found here: https://www.youtube.com/watch?v=W9XO6uS7gvg. The relevant timestamp is 1:19:40. It has also been submitted as McGee Decl. Ex. 14.

December 11, 2024:[16] Glenda named the instructional assistant who had doxed information about her daughter, retrained her son without notification or contemporaneous documentation, and aggressively approached her while shopping. Chairwoman Diggs stopped her, citing the "no naming names" Policy. After a dispute about her remaining speaking time, Glenda resumed and again referenced the same staff member. A Board member stood in protest, and Chair Diggs again interrupted. When Glenda mentioned a different District employee later in her remarks, Diggs again raised her gavel to cut off Glenda, though she ultimately finished her comment.

F. The Board selectively enforces the Policies.

The District selectively enforces the Policies, typically by allowing complimentary comments about employees but prohibiting critical ones. For example, the Board reserves a regular portion of its meetings for "recognition of students, staff and/or public." *See, e.g.,* McGee Decl. Ex. 16. And at the August 7, 2024 meeting,[17] Chair Diggs allowed a parent to name district employee names, including Jeremiah Patterson, when the parent was doing so to praise the Board and District.

The Board also selectively enforces its restrictions on critical comments. At the March 13, 2024 meeting, Glenda's speech was interrupted when she raised general

[16] The December 11, 2024 meeting can be found here: https://www.youtube.com/watch?v=3clhR3VejeQ. The relevant timestamp is 1:25:08. It has also been submitted as McGee Decl. Ex. 15.

[17] *Supra*, n. 14.

concerns about the qualifications of unnamed administrators, even though a commenter before her criticized unnamed employees in the District's special education program without interruption.[18] Scherer Decl. ¶¶ 31–32. The Board has also been inconsistent with Glenda's own comments. For example, at the September 11, 2024 meeting, Glenda first praised Defendant Grant by name, and then repeatedly criticized the head of Gladstone's special education department name, yet Chair Diggs allowed her to do so without interruption.[19]

ARGUMENT

The First Amendment reflects "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) (citations omitted). As set forth below, Defendants have failed to honor that commitment, and summary judgment is appropriate for each of the Amended Complaint's seven causes of action because "there is no genuine dispute as to any material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).[20]

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[18] *Supra* note 13.

[19] The September 11, 2024 meeting referenced can be found here: https://www.youtube.com/watch?v=SzHMPbFvRTo. The relevant timestamp is 2:45:17. It has also been submitted as McGee Decl. Ex. 17.

[20] The seven causes of action are as follows: (1) a facial challenge to the District's policies under the First Amendment right to free speech; (2) an as-applied challenge under the same; (3) a challenge to the policies as an unconstitutional prior restraint; (4) a facial challenge under the First Amendment right to petition; (5) an as-applied challenge under the same; (6) a challenge to Glenda's ban from school property; and (7) a challenge to the restrictions placed on her interactions with the District on social media.

I. The Policies, both facially and as applied to Glenda, violate the Speech Clause of the First Amendment.

The Policies violate the First Amendment's Speech Clause, both on their face and as applied to Glenda. For an as-applied challenge, "Plaintiff must show only that the statute unconstitutionally regulates his own speech. When the challenge is facial, however, Plaintiff must either show that no set of circumstances exists under which the challenged law would be valid, or that it lacks any plainly legitimate sweep." *Järlström v. Aldridge*, 366 F. Supp. 3d 1205, 1212 (D. Or. 2018) (cleaned up); *see also Acosta v. City of Costa Mesa*, 718 F.3d 800, 811 (9th Cir. 2013) ("We will invalidate this section as 'overbroad,' violating the First Amendment, if a substantial amount of its applications are unconstitutional, judged in relation to its plainly legitimate sweep.") (cleaned up). Courts will grant judgment to plaintiffs on both facial and as-applied challenges where there is "a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court." *Id.* at 1213.

Because school board meetings are considered "limited public fora" under First Amendment law, any restrictions on speech must be "reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45–46 (1983). Here, the challenged Policies require speakers to treat board members "with respect," limit criticism of district operations to only "objective" criticisms, and prohibit not only "attacks" but "comments regarding any individual district staff member"—a policy that his been interpreted so broadly as to prohibit even references by title to

board members and the superintendent. These Policies impose impermissible viewpoint regulations and, regardless, are unreasonable considering the purpose of school board meetings.

A. The Policies are facially unconstitutional.

In *Acosta*, the Ninth Circuit held that an ordinance prohibiting "personal, impertinent, profane, [and] insolent" comments at city council meetings was facially unconstitutional. 718 F.3d 800, 806, 811 (9th Cir. 2013) (reversing the district court's grant of summary judgment in favor of defendants). In concluding "that no reasonable construction can eliminate its overbreadth," the court recognized that critical protected speech was proscribed by the plain language of the ordinance:

> A comment amounting to nothing more than bold criticism of City Council members would [be prohibited], whereas complimentary comments would be allowed. Nothing guarantees that such a comment would rise to the level of actual disruption. Thus, the ordinance allows the City to prohibit non-disruptive speech that is subjectively impertinent, insolent, or essentially offensive.

Id. at 811–15. The District's Policies suffer from the same constitutional deficiencies as those in *Acosta*—there is no meaningful distinction between the statute banning "impertinent" and "insolent" speech; between requiring "respect" and limiting speakers to "objective" criticisms; and between a prohibition on "personal" speech and the Policies' declaration that the Board "will not hear comments" or "attacks" about "individual district staff members."

Recently, and consistent with *Acosta*, the Eleventh Circuit found that school board policies prohibiting "abusive," "obscene," and "personally directed" speech were facially invalid under the First Amendment. *Moms for Liberty v. Brevard Pub.*

Sch.,118 F.4th 1324 (11th Cir. 2024). The ban on "abusive" speech was "constitutionally problematic because it enabled [the Board] to shut down speakers whenever [it] saw their message as offensive." *Id.* at 1334. In other words, because "giving offense is a viewpoint, . . . a restriction barring that viewpoint effectively requires 'happy talk,' permitting a speaker to give positive or benign comments, but not negative or even challenging ones." *Id.* (cleaned up). The same is true here, as "[t]he government is ill-equipped . . . to decide what is or is not" respectful or objective under the Policies. *Id.* at 1335.

The *Brevard* schools also barred "personally directed" speech, and prohibited speakers from addressing individual board members. While the court found that neither policy necessarily reflected viewpoint discrimination, both policies were nevertheless unreasonable in light of the purpose of public comment at school board meetings:

> If a parent has a grievance about, say, a math teacher's teaching style, it would be challenging to adequately explain the problem without referring to that math teacher. Or principal. Or coach. And so on. Likewise when a parent wishes to praise a teacher or administrator. Such communications are the heart of a school board's business, and the ill-defined and inconsistently enforced policy barring personally directed speech fundamentally impedes it without any coherent justification.
>
> To be sure, sometimes meetings can get tense—no one enjoys being called out negatively, and some may even dislike public praise. But that is the price of admission under the First Amendment. Rather than curtail speech, as a Nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate.

Id. at 1337 (quotation marks omitted). This is, of course, exactly the type of criticism that Glenda has been prohibited from raising before the Board.

The Eleventh Circuit concluded that such restrictions were "unreasonable" in part because they were "enforced in an arbitrary or haphazard way" that "reflect[] no boundaries beyond the presiding officer's real-time judgment about who to silence:"

> Sometimes just mentioning someone's name was enough to provoke interruption, but other times using a name was met with no resistance. . .
>
> Even though [the board chair's] definition seemed to require, at least as a baseline, that a speaker use someone's name to violate this policy, the record reflects several times when speakers were interrupted for personally directed speech even though they did not name anyone—at all.

Id. at 1335–37. This description could be lifted straight from the Eleventh Circuit and applied to the Defendants here, who have likewise enforced the Policies in an arbitrary and haphazard way.[21]

Courts within the Ninth Circuit have struck down similar restrictions, including *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719 (C.D. Cal. 1996) and *Leventhal v. Vista Unified Sch. Dist.*, 973 F. Supp. 951 (S.D. Cal. 1997)—cases that are cited as "legal references" in the Policies themselves.[22] In *Baca*, for example, the Court enjoined a school district from enforcing a policy prohibiting speakers from criticizing the school's employees by name and position, observing that "[i]t is difficult to imagine a more content-based prohibition on speech than this policy." 936 F. Supp. at 730. In *Leventhal*, the court struck down similar restrictions, finding that "[d]ebate over public issues, including the qualifications and

[21] *See supra* Statement of Facts § F.
[22] McGee Decl. Ex. 5.

performance of public officials (such as a school superintendent), lies at the heart of the First Amendment." 973 F. Supp.at 958 (finding that board's purported interest in protecting "the privacy and property rights" of school employees could not justify the Board's restrictions on discussion of "personnel matters"). These decisions are consistent with almost every other court that has addressed similar restrictions at school board meetings; there is no meaningful distinction between the Policies at issue here and the policies regularly struck down by courts as facially unconstitutional.[23]

B. At minimum, the Policies are unconstitutional as applied to Glenda.

While the Policies should be struck down as facially violative of the Speech Clause, there is no doubt that, at minimum, they have been unconstitutionally applied to Glenda, as she has been censored simply for raising concerns about the qualifications of administrators without even referencing their names or specific titles. Scherer Decl. ¶¶ 28– 34. This is, of course, exactly the type of speech that school board public comment periods are intended to foster and protect. *See, e.g.*, *Leventhal*, 973 F. Supp.at 958.

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[23] *See Ison v. Madison Local School District Board of Education* 3 F.4th 887, 892 (6th Cir. 2021) (restrictions on "abusive," "personally directed" and "antagonistic" comments were unconstitutional); *Pollak v. Wilson*, No. 22-CV-49-ABJ, 2024 U.S. Dist. LEXIS 229713, at *31 (D. Wyo. Oct. 25, 2024) (a restriction on discussing "'personnel matters' . . . goes far beyond the government interest of upholding decorum and efficiency; it interferes with the public's ability to communicate with their government."); *Bach v. Sch. Bd. of City of Virginia Beach*, 139 F.Supp.2d 738, 743 (E.D. Va. 2001); *Moore v. Asbury Park Bd. Of Educ.*, 2005 WL 2033687 at *11–12 (D.N.J. Aug. 23, 2005); *Mama Bears of Forsyth County v. McCall*, 642 F.Supp.3d 1338, 1351–52 (N.D. Ga. 2022).

II. The District engaged in impermissible "prior restraint" when it required Glenda to pre-submit comments for approval.

Prior restraint is a "regulation of expression aimed at suppressing speech before it is uttered, as opposed to punishment of individuals after the expression has occurred." *Burch v. Barker*, 861 F.2d 1149, 1154 (9th Cir. 1988). Such restraints "bear[] a heavy presumption of unconstitutionality" because they "bring under government scrutiny a far wider range of expression" by "shut[ting] off communication before it takes place." *Id.* at 1154–55. Even students—who are afforded somewhat narrower First Amendment rights in school than participants in public meetings—"cannot be subjected to regulation on the basis of undifferentiated fears of possible … embarrassment to school officials." *Id.* at 1159.[24]

With this backdrop, "prior restraint" is the only way to describe Defendants' now-defunct policy of prohibiting "extemporaneous speech" and requiring Glenda to pre-submit her comments for approval, complete with "suggested" edits and threats of censorship if she dared to go off script. Scherer Decl. ¶¶ 26–27, 29. And given that "prior restraints are permissible in only the rarest of circumstances, such as imminent threat to national security," *Burch*, 861 F.2d at 1155, there is no dispute that this practice toward Glenda was unconstitutional.

[24] *See also Eagle Point Educ. Ass'n/SOBC/OEA v. Jackson Cty. Sch. Dist. No. 9*, No. 1:12-cv-00846-CL, 2015 U.S. Dist. LEXIS 89744, at *15 (D. Or. Apr. 6, 2015) (striking down a pre-approval requirement for signs and banners worn by students and school employees).

III. The Policies violate the First Amendment's right to petition government for a redress of grievances.

The right to petition "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). While "the rights of speech and petition share substantial common ground . . . Courts should not presume there is always an essential equivalence in the two Clauses or that Speech Clause precedents necessarily and in every case resolve Petition Clause claims." *Id.* A key distinction is that the guaranty of free speech "fosters the public exchange of ideas," whereas the right to petition "conveys the special concerns of its author to the government and, in its usual form, requests action by the government to address those concerns." *Id.* at 388–89.

Here, the Court may "analyze the Petition claim under the same standards as the Speech claim" because "the considerations that shape the applications of the Speech Clause to Plaintiff apply with equal force to claims under the Petition Clause. *Järlström v. Aldridge*, 366 F. Supp. 3d 1205, 1212 n.2 (D. Or. 2018) (cleaned up); *see also Walsh v. Enge*, 154 F. Supp. 3d 1113 (D. Or. 2015) (addressing Speech Clause and Petition Clause claims together). However, if the Court finds that Glenda has not satisfied her burden under the Speech Clause, it should give careful consideration to her claims under the Petition Clause given the unique role of school board meetings, "the very purpose of [which] is the creation of a forum for public discourse and decisionmaking." *Walsh*, 154 F. Supp. 3d at 1131 (internal quotation marks and citation omitted) (referring to public comment at city council meetings).

Glenda's censored speech was consistently aimed at petitioning the Board to address specific concerns, including improving education during the pandemic, the District's failure to respond to the doxing of her daughter's private information, its failure to notify her about the physical restraint of her son, and verbal harassment by an employee that ultimately caused her to obtain a temporary order of protection. Scherer Decl. ¶¶ 7, 10-11, 13, 18-19, 28-29. In each instance, Defendants chose to censor her grievances, rather than consider and redress them.

IV. The District violated Glenda's rights when it banned Glenda from attending Board meetings.

This Court's decision in *Walsh v. Enge* highlights the egregiously unconstitutional nature of Defendants' January 2024 "property directive" banning Glenda from school board meetings. 154 F. Supp. 3d 1113 (D. Or. 2015). In that case, a city banned a citizen from council meetings for 60 days after he had interrupted proceedings and raised his voice, causing disruption. *Id.* at 1118. In finding that the city had violated the First Amendment's Speech and Petition Clauses, Judge Simon explained the broad protections that citizens are afforded against such bans:

> What the government may not do is prospectively exclude individuals from future public meetings merely because they have been disruptive in the past. A contrary holding might lead to officials shutting the government's doors to those whose viewpoints the government finds annoying, distasteful, or unpopular. Permanent or even lengthy exclusions for past disruptive conduct could become a convenient guise for censoring criticisms directed toward the powerful. The First Amendment's guarantees, although not absolute, are not so flimsy.

Id. at 1119.[25]

Defendants' conduct toward Glenda was notably worse than the unconstitutional conduct in *Walsh*, as she was banned from meetings indefinitely without ever having actually disrupted a meeting. And even after withdrawing the ban following the threat of legal action, Defendants have maintained the right to re-ban Glenda if she dares to make them feel disrespected again. McGee Decl. Ex. 8. Thus, applying *Walsh*, it is inarguable that the District's decision to ban Glenda violated her First Amendment rights.

V. The District violated Glenda's rights when it blocked Glenda on social media and otherwise limited her interactions with District accounts.

It is well understood that government entities, such as school districts, are not permitted to block or otherwise interfere with a constituent's comments on social media because of the viewpoints of the constituent. *See Garnier v. O'Connor-Ratcliff*, 41 F.4th 1158, 1185 (9th Cir. 2022) (holding that First Amendment protections "apply no less to the vast 'democratic forums of the Internet' than they do to the bulletin boards or town halls of the corporeal world.") (vacated on other grounds). Even government officials operating *individual* pages are potentially subject to First Amendment liability for acts of viewpoint discrimination on those pages. *See generally Garnier v. O'Connor-Ratcliff*, 136 F.4th 1181 (9th Cir. 2025) (applying *Lindke v. Freed*, 601 U.S. 187 (2024)).

[25] *See also Johnson v. Perry*, 859 F.3d 156, 176 (2d Cir. 2017) (holding that for school "events to which the public was invited," parents have a First Amendment "right not to be excluded based on viewpoint differences or because of possible annoyance.").

There is no dispute that the District blocked Glenda on Twitter in 2020. Patterson Depo. Tr. 40:21-41:18. There is also no dispute that the District subjected Glenda to "post moderation"—essentially a form of prior restraint—in 2020. Scherer Decl. ¶¶ 8-11.[26] And the District has continued to maintain a limitation on Glenda's ability to "tag" it on social media that apparently is not applied to others. Scherer Dec. ¶¶ 38-41. This is continued viewpoint discrimination online based solely on the District's continued attempts to avoid criticisms that they disagree with from Glenda.[27]

CONCLUSION

Summary judgment should be granted for Plaintiff on each of her causes of action, nominal damages and attorneys' fees should be awarded to Plaintiff, and Defendants should be permanently enjoined from enforcement of the Policies.

[26] *See also* Patterson Depo. Tr. 41:19-43:6.

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Respectfully submitted,
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