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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 OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT *ORAL ARGUMENT REQUESTED*

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Plaintiff Glenda Scherer submits this memorandum of law in opposition to Defendants' Motion for Summary Judgment (ECF No. 29) (the "Motion" or "Mot.").

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 those entrusted with educating the community's children would hear her out in good faith. Instead, the District 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 compelled her to secure a temporary order of protection—with virtually no disciplinary action from the District. The District's censorship was reinforced by policies and practices that, at various times, blocked Glenda's online speech, banned her from meetings, imposed prior restraints, and insulated officials from criticism by requiring comments to be "objective," "respectful," and stripped of references to District officials—even board members and the superintendent.

Defendants' Motion employs an oversimplified and inaccurate account of Glenda's concerns, and it asks this Court to endorse speech codes and censorship that threaten the rights of all Gladstone School District residents. For the reasons set forth below, the Court should reject Defendants' attempt to legitimize these unconstitutional practices.

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). "[T]he mere existence of some alleged factual dispute between the

parties will not defeat an otherwise properly supported motion for summary judgment." *Endy v. Cnty of L.A.*, 975 F.3d 757, 763 (9th Cir. 2020) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). "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* , 477 U.S. at 245–52 .

STATEMENT OF FACTS[1]

I. Glenda's concerns about the District.

Over the last five years, Glenda has publicly expressed concerns about the District on social media and at public board meetings, ranging from its handling of the Covid-19 pandemic (specifically, its failure to utilize available programs to increase in-person learning), to the qualifications of its administrators, to its poor literacy outcomes for students. *See, e.g.*, Scherer MSJ Decl. ¶¶ 4-9. 23, McGee MSJ Decl. Ex. 14. But the District's Motion reduces Glenda's public comments to a desire "to publicly accuse Staff Member 1 . . . of child abuse" and "to make these and other criticisms of named school officials regardless of their truth or falsity." Mot. at 7. In doing so, the District disregards the many issues Glenda has raised and ignores

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Declaration Reference Chart	
"Scherer MSJ Decl."	June 25, 2025 Declaration of Glenda Scherer in Support of Plaintiff's Motion for Summary Judgment (ECF No. 35)
"McGee MSJ Decl."	June 25, 2025 Declaration of Dean McGee in Support of Plaintiff's Motion for Summary Judgment (ECF No. 36)
"Scherer Opp. Decl."	July 23, 2025 Declaration of Glenda Sherer in Opposition to Defendants' Motion for Summary Judgment (filed herewith)
"McGee Opp. Decl."	July 23, 2025 Declaration of Dean McGee in Opposition to Defendants' Motion for Summary Judgment (filed herewith)

deeply disturbing evidence regarding the instructional assistant referred to as "Staff Member 1," her interactions with Glenda, and the District's failure to take meaningful action to redress her concerns.

Staff Member 1 doxed private information about Glenda's daughter online. Around December 8, 2020, Glenda made an online comment about the District's handling of the Covid-19 pandemic. Scherer MSJ Decl. ¶ 12. "Staff Member 1" responded to that comment by doxxing private information about Glenda's daughter using information she only would know as a District employee. Scherer MSJ Decl. ¶ 12 & Ex 3. Glenda filed a complaint, which was not formally processed until October 2022—nearly two years later. Scherer MSJ Decl. ¶ 13. The District ultimately found that the employee's conduct violated school policy, and Staff Member 1 was subjected to unspecified discipline. Scherer MSJ Decl. ¶ 12; McGee Decl., Ex. 1 ("Patterson Tr.") 108:5-109:3.

Staff Member 1 physically restrained Glenda's special-needs son, and the District violated its own policies by failing to notify Glenda. Despite having targeting Glenda and her daughter online, the District later placed Staff Member 1 in a classroom with Glenda's special-needs son. Around September 9, 2022, Glenda noticed that her son was suffering emotionally, but when she asked her son's teacher, she was assured that everything was fine at school and that her son was doing well. Scherer MSJ Decl. ¶¶ 14-15. It was not until days later that she was notified that her son had been physically restrained by Staff Member 1 on that day—a late notification that violated District policy. ¶ 16-17; Patterson Tr. 53:5-24. No District employees were ever disciplined for this failure to notify Glenda. Patterson Tr. 60:1-4.

The District presented Glenda with fabricated and improper documentation of Staff Member 1's physical restraint of Glenda's son, then conducted an internal investigation led by

a coworker of the Superintendent's wife. 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 admitted during depositions 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 "independent" investigation, Glenda learned that the lead investigator was a coworker of the Superintendent's wife. Scherer MSJ Decl. ¶¶20-21. Glenda raised this concern with the Board, but it was never addressed. McGee Decl. Ex. 1 (Grant Tr.) 38:12-40:24.

"Staff Member 1" aggressively approached Glenda while shopping, putting her in fear and causing her to obtain a temporary order of protection. Around December 13, 2023, while Glenda was shopping for groceries, Staff Member 1 approached Glenda and yelled at her. Scherer MSJ Decl. ¶ 18. The incident put her in such fear that she secured a Temporary Order of Protection. Scherer MSJ Decl. ¶ 19. Glenda raised this concern with the Board, but it was never addressed. McGee Opp. Decl. Ex. 1 (Grant Tr.) 79:21-80:6.

II. 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 district officials.

The Board maintains policies governing the public's conduct during its meetings (the "Policies"), which include the following directives:[2]

- "All members of the public attending School Board meetings must treat each other and the Board with respect." McGee MSJ 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

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

> comments regarding any individual district staff member." McGee MSJ Decl. Ex. 5.[3] 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 are interpreted and enforced.

Regarding the "respect" policy, former Board Chair Tracy Grant confirmed that violations are determined solely at the discretion of the Board members. McGee MSJ Decl. Ex. 6 ("Grant Tr.") at 59:8-10. Superintendent Patterson conceded that determining whether a comment is "respectful" was "quite subjective" because "[s]o many individuals might have different […] interpretations of what respectful means." Patterson Tr. at 29:22-30:1; 31:7-9. Defendant Stewart, the former Superintendent 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, in her view, Glenda had violated that policy on multiple occasions.[4]

Regarding the limitation of speech to only "objective" criticism, Defendant Grant tacitly conceded that such a determination was a subjective one left in the sole discretion of the Board

[3] 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 MSJ Decl. Ex. 4. No definition of "attacks" is provided.

[4] 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; 36:4-9; 38:14-20.

Chair. Grant Tr. at 60-61.[5] 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—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, might prohibit 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 its policies through a system of prior restraint, requiring individuals who wished to speak to pre-submit their comments for approval and then read them verbatim. Scherer Decl. ¶ 13. This ended only on January 21, 2024—after Glenda's attorneys sent a demand letter demanding its termination. McGee MSJ Decl. Exs. 6–7.

[5] 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.

III. 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, all of which take place within the statute of limitations period.

November 8, 2023:[6] 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 MSJ 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 Glenda named the Special Education Director by title and criticized him without interruption. Scherer MSJ Decl. at ¶ 28.

January 10, 2024:[7] Glenda pre-submitted a comment regarding the disturbing incident in which Staff Member 1 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 MSJ Decl. ¶ 29.

Before delivering her comment, Glenda asked Defendant Grant what policy authorized these

[6] 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 MSJ Decl. Ex. 9.
[7] 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 MSJ Decl. Ex 10.

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.

January 23, 2024: Superintendent Stewart sent Glenda a directive banning her from school board meetings unless she received prior approval from the Superintendent. Scherer MSJ 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.[8] The letter also referenced, without explanation, her "unwillingness to behave in a respectful fashion."

The District ultimately rescinded the 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 MSJ Decl. Ex. 8.

March 13, 2024:[9] 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

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

[9] 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 MSJ Decl. Ex. 11.

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 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.[10]

August 7, 2024:[11] 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.[12] Glenda discussed the District's literacy scores. Glenda then 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

[10] 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 MSJ Decl. Ex. 12.
[11] 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 MSJ Decl. Ex. 13.
[12] 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 MSJ Decl. Ex. 14.

interrupted by raising her gavel and warned Glenda to follow the no-naming-names guideline.

December 11, 2024:[13] Glenda named the instructional assistant who had doxed information about her daughter, restrained 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.

IV. The Board selectively enforces the Policies.

The District selectively enforces the Policies. For example, the Motion asserts that "[t]he challenged provision restricts comment on a subject matter – individual staff – regardless of the speaker's opinion or perspective." Mot. at 16. As a threshold matter, this is not true on the face of the Policies, which specifically prohibit "personal attacks." McGee MSJ Decl. Ex. 4. But it is also not true in practice, as the Board permits complimentary comments about employees but prohibits 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 MSJ Decl. Ex. 16. And, as an example, at the August 7, 2024 meeting,[14] 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.

[13] 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 MSJ Decl. Ex. 15.

[14] *Supra* n. 11.

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 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.[15] Scherer MSJ 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.[16]

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). With that background, Defendants have failed to establish their entitlement to judgment as a matter of law on each of the arguments raised in the Motion.

I. Defendants Stewart and Grant are not entitled to summary judgment.

Defendants concede that, if found unconstitutional, the District itself is liable for the conduct set forth in the Amended Complaint, but argues that the individual Defendants should be dismissed. (Mot. at 8). Plaintiff does not dispute Defendants' assertion that "an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." *Kentucky v.*

[15] *Supra* n. 10.
[16] 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 MSJ Decl. Ex. 17.

Graham, 473 U.S. 159, 166 (1985). But, despite Defendants' reference to an out-of-district decision holding otherwise, courts need not dismiss individual defendants named in their official capacity just because the municipal entity itself is also named. Just as one example, in *Larez v. Lopez*, the Ninth Circuit conducted a thorough review of a jury verdict rendered against, among others, the Chief of the LAPD in his official capacity, and the City of Los Angelas itself. 946 F.2d 630 (9th Cir. 1991). While recognizing that "the fate of the City hinges on Chief Gates's official capacity liability" because the Chief "may be fairly said to represent official City policy on police matters," the Ninth Circuit nevertheless upheld the jury verdict against both the Chief and the City. *Id.* at 647-48. There is no reason to deviate from that approach here.[17]

II. Glenda does not assert any time-barred claims.

Defendants are correct that the statute of limitations would bar any claims concerning conduct predating February 26, 2022 (Mot. p. 9). But the Amended Complaint's references to conduct before that date is included only as necessary context for Glenda's causes of action, all of which are premised on conduct after that date. Accordingly, there is no argument for summary judgment based on the statute of limitations.

III. Glenda has standing to challenge the policies limiting her speech to "respectful" comments and "objective" criticism.

Defendants argue that Glenda lacks standing to challenge the policies that limit her public comment to "respectful" and "objective" criticism because "there is no evidence that the District has ever enforced the 'respect' or 'objective criticism' provisions to prevent her from speaking at a Board meeting." (Mot. at 10). This is both factually and legally untrue.

[17] At minimum, Defendant Tracy Grant should not be dismissed because she served as Board chair and Oregon law recognizes that the Board itself may "sue and be sued." Or. Rev. Stat. § 332.072, Because Donna Diggs is now the Board Chair, the Court may substitute her as the named defendant representing the Board. *See* Fed. R. Civ. Pro. 25(d).

Defendants cite former Board Chair Tracy Grant's testimony that she did not know of any instances of Glenda being punished under the "respect" requirement as evidence that it has not been enforced against Glenda. But current Board Chair Donna Diggs testified that Glenda *had* violated the respect requirement on multiple occasions.[18] And Defendant Bob Stewart—who sent a letter purporting to ban Glenda from attending school board meetings, in part because she "had demonstrated an unwillingness to behave in a respectful fashion" (Scherer Decl. Ex. 11)[19]—also testified that he "believe[d]" Glenda had been punished for violating that rule. Stewart Tr. 41:21-42:16. Regarding the "objective" criticism policy, Defendant Patterson testified that Glenda had been censored pursuant to "Paragraph 10"—a reference to the portion of the Policies that encompass both the "objective" criticism policy and the prohibition on "personal attacks" and references to "specific school personnel." McGee MSJ Decl. Ex. 4; Patterson Tr. 31:1-3.

However, even if the "respect" and "objective criticism" provisions of the Policies had not yet been invoked against her, the Ninth Circuit has clarified that "when the threatened enforcement effort implicates First Amendment rights, the inquiry tilts dramatically toward a finding of standing"—requiring Plaintiff only to show that they intend "to engage in a course of conduct arguably affected with a constitutional interest and that there is a credible threat that the challenged provision will be invoked against the plaintiff." *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1155 (9th Cir. 2000) (internal quotation marks omitted).[20]

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[18] Diggs Tr. at 36:6-9 ("Q At one point earlier today you said that Glenda had violated the policy on respectfulness. A. Oh, you're right. She did, she did violate that policy, yes."); 21:5-7; 38:14-20.

[19] That letter was revoked only on the condition that Glenda "treat . . . board members[] with respect." McGee MSJ Decl. Ex. 8.

[20] Defendants acknowledge that, due to the "unique" nature of a First Amendment challenge, "plaintiffs may establish an injury in fact without first suffering a direct injury from the challenged restriction" so long as there is "a realistic danger of sustaining a direct injury as a result of the policy's operation or enforcement." Mot. at 10.

To determine whether a plaintiff faces a credible threat, courts consider three factors: "(1) the likelihood that the law will be enforced against the plaintiff; (2) whether the plaintiff has shown, 'with some degree of concrete detail,' that she intends to violate the challenged law; and (3) whether the law even applies to the plaintiff." *Italian Colors Restaurant v. Becerra*, 878 F.3d 1165, 1172 (9th Cir. 2018) (quoting *Lopez v. Candaele*, 630 F.3d 775, 786 (9th Cir. 2010)). The evidence here reflects Glenda's commitment to continue speaking in a manner that the current Chair has already (wrongly) branded as both disrespectful and false, and therefore in violation of their policies. There is simply no reasonable question that she has standing to challenge these Policies.

IV. Defendants are not entitled to summary judgment regarding Glenda's ban from school board meetings.

Defendants tacitly concede that banning Glenda from school board meetings for her speech would be unconstitutional, but argue that they cannot be held liable because (1) Glenda was still permitted to view meetings remotely and was given the option of asking permission to attend (from the person who banned her); and (2) the ban was withdrawn a month later (though only in response to a demand letter from counsel). Nearly identical arguments have been previously rejected by this Court.

In *Walsh v. Enge*, a citizen was banned for 60 days from attending City Council meetings after disrupting a meeting, having previously been subjected to 30-day bans for disruptions and other behavior that had put another attendee in fear for her safety. 154 F. Supp. 3d 1113, 1121-23 (D. Or. 2015). In finding the City's conduct unconstitutional, Judge Simon explained the broad protections that citizens are afforded against bans from municipal meetings, holding that "the government may not . . . prospectively exclude individuals from future public meetings merely because they have been disruptive in the past." *Id.* at 1118-19.

There, the Court rejected the city's mootness argument, recognizing that such bans were "capable of repetition yet evading review." *Id.* at 1125. The same is true here, as Defendants have explicitly threatened to reinstate the ban on Glenda if they feel disrespected by her.[21] And it is notable that the ban enforced on Glenda by Defendants was harsher than the *Walsh* ban, purporting to indefinitely lock her out even though she has never engaged in actually disruptive behavior (like shouting down a speaker, speaking out of turn, or putting other attendees in fear). The *Walsh* court also found it irrelevant that the excluded individual could watch meetings online, submit written comments, and schedule appointments with city officials, explaining that forcing citizens to accept those alternatives would "defeat the very purpose of the forum: to provide the opportunity for discourse on public matters." *Id.* at 1133. Defendants' arguments here fail for the same reason.

It is also well settled that "a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *City of Mesquite v. Aladdin's Castle*, 455 U.S. 283, 289 (1982). The "heavy" burden of demonstrating mootness rests with the Defendants, who have not "made it absolutely clear" that they will not continue with their pattern of censorship, allowing them free reign to "return to [their] old ways." *Norman-Bloodsaw v. Lawrence Berkeley Lab*, 135 F.3d 1260, 1274 (9th Cir. 1998) (internal citations omitted).

V. Defendants are not entitled to summary judgment on the issue of social media tagging.

Defendants do not dispute that viewpoint discrimination is impermissible on government social media accounts, but argue that they are entitled to summary judgment regarding Glenda's

[21] *See* McGee MSJ Decl. Ex. 8 ("while the District is willing to rescind the January 23 directive *at this time*, it expects Ms. Scherer . . . to treat . . . Board members[] with respect.") (emphasis added).

social media claim, pointing to posts by Glenda that appear on the "Mentions" page of the District's Gladstone Schools page. However, there are over a dozen posts by Glenda which do not appear on the District's Gladstone Schools—apparently because the District is still picking and choosing which posts appear in its mentions. Four examples of such posts that do not appear in the District's Gladstone Schools page are attached to Glenda's Declaration submitted in opposition to this motion. Scherer. Opp. Decl., Exs. 1-4. At the very least, this factual issue is still in dispute, and summary judgment cannot be equitably applied against Glenda at this stage of the pleadings.

VI. Defendants are not entitled to a ruling that their censorship policies are constitutional.

Defendants correctly set forth the general legal principles concerning the constitutionality of speech policies at school board meetings: school board meetings are construed as limited public forums, and therefore Defendants' Policies must be reasonable and viewpoint neutral, and an as-applied challenge requires plaintiffs to show that a substantial number of the policy's applications are unconstitutional. Mot. at 13-14. The challenged Policies—i.e. the prohibition on referencing school personnel, the requirement that public comment is respectful, and the limitation of public comment to "objective" criticism—are not reasonable or neutral, and result in a substantial number of unconstitutional applications.

A. The Policies are facially unconstitutional.

In arguing for summary judgment, Defendants do not cite any precedent from within the Ninth Circuit. This is because the Ninth Circuit has liberally protected public speech in limited public forums. In *Acosta v. City of Costa Mesa*, 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 and the District's Policies requiring "respect" and limiting speakers to "objective" criticisms; and there is no meaningful difference 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 court also found that the *Brevard* schools' bans on "personally directed" speech and speech directed at individual board members were unreasonable in light of the purpose of public comment at school board meetings, recognizing that grievances about school personnel,

including teachers, principals, coaches, and administrators "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." *Id.* at 1337. The fact that such meetings "can get tense" and include individuals "being called out negatively . . . is the price of admission under the First Amendment." *Id.* This is, of course, exactly the type of speech that residents of the Gladstone School District have 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." *Id.* at 1335–37 ("Sometimes just mentioning someone's name was enough to provoke interruption, but other times using a name was met with no resistance. [And] the record reflects several times when speakers were interrupted for personally directed speech even though they did not name anyone—at all.") 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.[22]

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.[23] 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—rejecting virtually every argument made by Defendants here—by finding that the

[22] *See supra* Statement of Facts § IV.
[23] McGee MSJ Decl. Ex. 5.

"District's interest in making sure that members of the public cannot complain about school district employees . . . does not outweigh the public's interest in being able freely to express themselves to their elected officials on all issues related to the operation of public schools." 936 F. Supp. at 730-31.[24] In *Leventhal*, the court struck down similar restrictions, finding that "[d]ebate over public issues, including the qualifications and performance of public officials (such as a school superintendent), lies at the heart of the First Amendment." 973 F. Supp.at 958. The Court further held 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 numerous other courts that have addressed similar restrictions at school board meetings.[25] And while Defendants cite some cases which arguably held to the contrary (Mot. at 15), none of those cases are within the Ninth Circuit, and many of them are plainly distinguishable. For example, Plaintiffs cite *Monroe v. Hous. Indep. Sch. Dist.*, but that case concerned objectively threatening and disruptive behavior. No. H-19-1991, 2019 U.S. Dist. LEXIS 248091, at *17 (S.D. Tex. July 19, 2019) (noting that the policies did permit "criticism . . . of the school board or certain administrators."). And even still, the decision was

[24] In rejecting the defendants' concerns about protecting employees from false allegations, the *Baca* court held that "neither the United States nor California constitution allows government to censor statements merely because they are false and/or defamatory." *Baca*, 936 F. Supp. at 727.
[25] *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).

vacated on appeal, ultimately resulting in a preliminary injunction in the plaintiff's favor. *See Monroe v. Hous. Indep. Sch. Dist.*, No. H-19-1991, 2021 U.S. Dist. LEXIS 263460, at *1 (S.D. Tex. Aug. 4, 2021). Each of the other upheld policies were at least somewhat narrower or better defined than the Policies here, and none included the "respect" or "objective criticism" policies.[26]

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 MSJ 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.

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

Defendants correctly assert (Mot. at 17) that Plaintiff's claims under the Petition clause can be resolved in the same manner as her speech claims because "the considerations that shape the

[26] *Slinkard v. Indep. Sch. Dist. No. 1 of Tulsa Cnty.*, No. 23-cv-354-JDR-JFJ, 2025 U.S. Dist. LEXIS 59769, at *21 (N.D. Okla. Mar. 31, 2025) (policy was narrower, focusing its proscription on pending grievances, complaints and disciplinary actions."). *McBreairty v. Miller* No. 1:23-cv-00143-NT, 2024 U.S. Dist. LEXIS 87231, at *4 (D. Me. May 15, 2024) (policy at least attempted to define what its proscription of "discussion of a personnel matter" meant, limiting it to "job performance and conduct" of an employee.). *Cipolla-Dennis v. Cnty of Tompkins*, No. 21-712, 2022 U.S. App. LEXIS 11372, at *4 (2d Cir. Apr. 27, 2022) (policy in the Second Circuit's unpublished decision specifically excluded "elected officials" and concerned only "the job performance of named County employees."); *Davison v. Rose*, 19 F.4th 626, 635 (4th Cir. 2021) (limited to comments "that are harassing or amount to a personal attack against any identifiable individual"); *Fairchild v. Liberty Indep. Sch. Dist.*, 597 F.3d 747, 756 n.24 (5th Cir. 2010) (policy implicitly allowed the board to publicly hear personnel complaints, though only ones "that remain unresolved after they have been addressed through proper administrative channels and when they have been placed on the agenda.").

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*, 154 F. Supp. 3d at 1118, 1126-27 (addressing both Speech Clause and Petition Clause claims).

However, 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." *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 388 (2011). Thus, if the Court finds that the District is entitled to summary judgment under the Speech clause, it should deny summary judgment on her claims under the Petition Clause given that 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, verbal harassment by an employee that ultimately caused her to obtain a temporary order of protection, and its failure to properly redress these issues. Scherer MSJ Decl. ¶¶ 7, 10-11, 13, 18-19, 28-29.

VIII. Defendants engaged in impermissible "prior restraint" when they 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.[27]

With this backdrop, it is understandable that Defendants barely offer a defense (Mot. at 17) of their 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 MSJ Decl. ¶¶ 26–27, 29. Contrary to Defendants' argument, that claim is not moot because—like the threat to ban Glenda from school board meetings—such a policy would be capable of repetition, yet evading review if declared moot. *Walsh* 154 F. Supp. 3d at 1155.

CONCLUSION

Defendants' motion for summary judgment should be denied.

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Respectfully submitted,
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[27] *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).

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