KAREN M. VICKERS, OSB No. 913810
kvickers@vickersplass.com
Telephone: 503-726-5985
BETH F. PLASS, OSB No. 122031
bplass@vickersplass.com
Telephone: 503-726-5975
VICKERS PLASS LLC
5200 SW Meadows Road, Suite 150
Lake Oswego, OR 97035

Of Attorneys for Defendants

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 DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT *Oral Argument Requested*

Defendants Gladstone School District, Bob Stewart, and Tracy Grant respectfully submit the within response in opposition to plaintiff Glenda Scherer's motion for summary judgment.

INTRODUCTION

This case arises out of plaintiff Glenda Scherer's desire to use the public comment period of the District's school board meetings to lodge personnel complaints against District employees.

The parties have filed cross-motions for summary judgment. Defendants incorporate the factual background and authority contained in their separately filed motion for summary

judgment with this opposition. Defendants' motion for summary judgment should be granted and plaintiff Glenda Scherer's motion should be denied.

FACTUAL BACKGROUND

Defendants respectfully offer the following corrections, clarifications, and contradictions to Scherer's submitted factual statements.

- During the COVID-19 pandemic, on December 8, 2020 at 4:16 p.m., Scherer expressed concern to Patterson about comments a staff member made about Scherer's child in response to something Scherer had posted on Facebook. Scherer objected to the staff member stating, "Maybe this isn't the best learning environment for your child and that's ok." Vickers 2nd decl. Ex. 2 (GSD 159-160). The staff member did not mention Scherer's daughter's name. Vickers 2nd decl. Ex. 1 (Scherer Depo 57:1-8). Patterson responded with a voicemail back to Scherer within an hour. Declaration of Glenda Scherer ("Scherer decl."). Ex. 4. Patterson spoke with Scherer and her husband on December 17, 2020. Vickers 2nd decl. Ex. 3 (GSD 329 -330). On February 4, 2021, Patterson advised Scherer that she had handled the situation with the employee and sent a broad communication to District families regarding FERPA rights, as promised. Vickers 2nd decl. Ex. 4 (GSD 108). Over a year later, Scherer submitted a formal complaint to the District about this same situation. Vickers 2nd decl. Ex. 2 (GSD 159). Scherer's formal complaint admits (but Scherer's declaration in this proceeding omits) that Patterson had months earlier dealt with the concern. *Id.* The District processed Scherer's complaint, notwithstanding that the issue had already been dealt with. Scherer decl. Ex. 4.

VICKERS PLASS LLC
5200 SW MEADOWS ROAD, SUITE 150
LAKE OSWEGO, OREGON 97035
(503) 726-5985| (503) 726-5975

- Scherer did not want her son to attend Gladstone Schools for kindergarten. She wanted the District to pay to send him to a private school where his sister attends. Vickers 2nd decl. Ex. 1 (Scherer Depo 47:11-48:8).

- On Friday, September 9, 2022, Scherer's son put his hands around the neck of another child. A staff member, Staff Member 1, an instructional assistant, removed his hands from the other child's neck. Scherer was notified on Tuesday, September 13, 2022. Scherer met with the school principal on Wednesday, September 14, 2022 about the situation. In a follow-up communication, the principal acknowledged that Scherer was correct about the timing of the reporting requirements. Vickers 2nd decl. Ex. 5 (GSD 521-523).

- The District self-reported that it had delayed in reporting to the State of Oregon and conducted training for all administrators. Vickers 2nd decl. Ex. 6 (Stewart Depo 18:24-19:8).

- Staff Member 1 and Scherer had an interaction in a Fred Meyer store which was initiated by Scherer. Vickers decl. Ex 8 (Staff Member 1 Declaration) [Dkt 33-9].

- Scherer was granted an Ex Parte Temporary Stalking Order against Staff Member 1. The order was granted without notice and or hearing to the Respondent, Staff Member 1. *See id.*; *see also* ORS 30.866(2). Staff Member 1 thereafter retained counsel. Her counsel noticed Scherer's deposition. Scherer failed to appear. Rather than face a deposition and allow an actual hearing on the Stalking Order, Scherer dismissed it. Vickers 2nd decl. Ex. 7 (Declaration of Sean Riddell).

- Then-Superintendent Bob Stewart first issued a property directive to plaintiff on December 16, 2022. Declaration of Jeremiah Patterson ("Patterson decl.") ¶ 4. This followed an incident where Scherer gathered original District documents to take home with her despite then

VICKERS PLASS LLC
5200 SW MEADOWS ROAD, SUITE 150
LAKE OSWEGO, OREGON 97035
(503) 726-5985| (503) 726-5975

Assistant Superintendent Jeremiah Patterson's direction that she not do so. *Id.* Patterson followed Scherer and stated two or three times in a clear and loud voice that what she was doing was improper and that she needed to return the documents. *Id.*

- The Property Directive was updated on January 23, 2024. Shortly thereafter it was retracted. Patterson decl. ¶ 5. Current Superintendent Jeremiah Patterson has not reimplemented the Property Directive and has no plans to do so. *Id.*

- The District does not require individuals who want to participate in public comment to submit their full comments in advance of meetings. Scherer frequently signs up for meetings with the topic "feedback" and she is permitted to speak. Patterson decl. ¶ 7.

- The District maintains a Facebook page. The District is not restricting Scherer's ability to make posts that "mention" the District. *See generally* Declaration of Raymond Rendleman.

ARGUMENT

I. Defendants Stewart and Grant are entitled to summary judgment on the official capacity claims because the District is also a defendant.

For the reasons given on page 8 of the defendants' motion for summary judgment, defendants Stewart and Grant should be dismissed. Dkt. 29, Defendants' Motion for Summary Judgment ("Defs MSJ") at p. 8.

II. Scherer's policy-based claims fail.

As set forth in Defendants' opening brief at pages 13 to 17, the policy-based claims fail. School board meetings are limited public forums. Defs MSJ at 14. In a limited public forum,

VICKERS PLASS LLC
5200 SW MEADOWS ROAD, SUITE 150
LAKE OSWEGO, OREGON 97035
(503) 726-5985| (503) 726-5975

the government may restrict speech as long as the restrictions are reasonable and not an effort to suppress expression merely because of opposition to the speaker's view. *Id.*

In support of her argument that the District's policies violate her First Amendment rights, Scherer's motion does three things. First, she challenges portions of the District policy that have never been applied to her, and which does she not allege a desire to violate. Plt MSJ at 15. Second, she strips the policy of its context. *Id.* Third, and relatedly, Scherer attempts to analogize the District's policy to policies from other jurisdictions which are materially distinguishable. *Id.* at 16-19.

A. Scherer lacks standing to challenge policies which have not been applied to her.

Scherer challenges an administrative rule which states, "All members of the public attending School Board meetings must treat each other and the Board with respect." *See* Complaint ¶ 24; Plt MSJ at 15. She further seeks to challenge a provision providing that individuals at public comment "may offer objective criticism." Complaint ¶ 23.

Scherer does not allege that she has been stopped from speaking for allegedly violating these provisions, that there is any real danger that she will be stopped from speaking for them, that her speech has been chilled because of these provisions, or that she intends to violate these provisions. She accordingly lacks standing to challenge them.

//

B. The challenged policy, when viewed as a whole, is viewpoint-neutral and withstands First Amendment scrutiny.

The challenged policy, when viewed as a whole, is constitutional. In arguing otherwise, Scherer relies on only portions of the challenged policy. Plt MSJ at 15.

When considering whether a specific phrase in a statute or policy violates the First

VICKERS PLASS LLC
5200 SW MEADOWS ROAD, SUITE 150
LAKE OSWEGO, OREGON 97035
(503) 726-5985| (503) 726-5975

Amendment, courts do not assess the challenged language in isolation. Instead, statutes and policies are interpreted as a whole, considering how other provisions – such as definitions, limiting language, or contextual qualifiers – clarify or narrow the scope of the contested terms. *See U.S. v. Williams,* 553 U.S. 285, 294-95 (2008) (discussing interpretation of a criminal statute).

Here, the entire challenged provision reads:

> 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. The Board chair will direct the visitor to the procedures in Board policy KL- Public Complaints for consideration of a legitimate complaint involving a staff member. A commendation involving a staff member should be sent to the superintendent, who will forward it to the Board.

Dkt. 33-6, Declaration of Dean McGee ("McGee decl.") Ex. 6. As explained in defendants' motion for summary judgment, the challenged policy permits (but does not require) objective criticism and prohibits personnel complaints and commendations. The provision is viewpoint neutral and reasonable in light of the purposes of the forum.

C. The cited cases are not analogous.

In support of her argument that the District's policy violates her rights, Scherer relies on a number of cases which are distinguishable on multiple grounds.

Scherer first cites *Acosta v. City of Costa Mesa,* 718 F.3d 800 (9th Cir. 2013). In *Acosta,* the City of Costa Mesa prohibited public speakers from making personal, impertinent, profane, and insolent comments. *Id.* at 806. The code further provided that violations could be prosecuted as misdemeanor crimes. *Id.* at 807. The Ninth Circuit found that the restriction was

VICKERS PLASS LLC
5200 SW MEADOWS ROAD, SUITE 150
LAKE OSWEGO, OREGON 97035
(503) 726-5985| (503) 726-5975

facially unconstitutional.

The District's policy is distinguishable from *Acosta* in several ways. First, the District's policy prohibiting comments about individual staff members is modified by language providing that it applies to complaints and commendations. As *Acosta* and *Williams* teach, the challenged provision must be read as a whole. Moreover, the Code in *Acosta* threatened criminal arrest for violations at a City meetings. The District's policies, which apply only to school district board meetings, do not contemplate arrest or penalty.

Next, Scherer points to *Moms for Liberty v. Brevard Pub. Sch.,* 118 F.4th 1324 (11th Cir. 2024). In that case, the Court invalidated a school district's policy that provided, "no person may address or question Board members individually" and further barred "abusive, obscene, or irrelevant" comments. Those restrictions bear no resemblance to the challenged District policy.

Finally, Scherer relies on two district court cases from California, *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). In both cases, the challenged school district policies contained viewpoint restrictions.

In *Baca,* the policy prohibited "charges or complaints against any employee of the District, regardless of whether or not the employee is identified by name or by any reference which tends to identify the employee." *Baca,* 936 F. Supp. at 730. The Court rejected the restriction, noting "It is difficult to imagine a more content-based prohibition on speech than this policy, which allows expression of two points of view (laudatory and neutral) while prohibiting a different point of view (negatively critical) on a particular subject matter (District employees' conduct or performance)." *Id.*

VICKERS PLASS LLC
5200 SW MEADOWS ROAD, SUITE 150
LAKE OSWEGO, OREGON 97035
(503) 726-5985| (503) 726-5975

Likewise in *Leventhal,* the school district had a bylaw prohibiting complaints or charges against school district employees in public session. *Leventhal,* 973 F. Supp. at 954. There, as in *Baca,* the Court found that the restriction was viewpoint-based and invalidated it as to speech regarding concerns about the Superintendent's qualifications. *Id.* at 960. In so holding, the Court clarified that its ruling did not necessarily apply to complaints about non-policymaking employees such as teachers, custodians, and cafeteria workers. *Id.* at 961.

Here, and in contrast to the cases relied on by Scherer, the District's policy is neutral. Both personnel complaints and commendations are both prohibited. The restrictions are reasonable in light of the forum, which is created by Oregon's Public Meetings Law which itself requires personnel complaints be handled in executive session unless an employee requests otherwise. This protects an employee's right to privacy. The restrictions are further reasonable in light of the role of school boards in Oregon, which are tasked with setting high level policy, not handling day-to-day personnel matters. *See* ORS 332.075.

The District's policy is facially constitutional.

D. Scherer's limited as-applied challenge fails.

In her motion, Scherer limits her as-applied challenge to instances in which she claims she has been prohibited from "raising concerns about the qualifications of administrators without even referencing their names or specific titles." Plt MSJ at 19 citing Scherer decl. ¶¶ 28-34.

As a factual matter, Scherer has not been prohibited from discussing raising concerns generally about the qualifications of administrators without referencing their names or titles. Her citations do not support her assertions:

VICKERS PLASS LLC
5200 SW MEADOWS ROAD, SUITE 150
LAKE OSWEGO, OREGON 97035
(503) 726-5985| (503) 726-5975

- During the November 2023 meeting, referenced in paragraph 28 of Scherer's declaration, she spoke for three minutes without interruption about the licensing issues.
- During the January 2024 meeting, referenced in paragraph 29 of Scherer's declaration, Scherer wanted to discuss discipline of Staff Member 1. Staff Member 1 is an instructional assistant, not an administrator.
- The Property Directive letter, referenced in paragraph 30 of Scherer's complaint, does not address concerns about administrator credentials. And it is unclear how Scherer, who was told repeatedly not to remove documents from the District, "accidentally" left the building with the documents.
- During the March 2024 meeting, referenced in paragraphs 31 and 32 of Scherer's declaration, she avers that she wanted to specifically discuss alleged abnormalities in TSPC records of four administrators.

Scherer's as-applied challenge fails because the challenge she makes, that she was prohibited from discussing administrator qualifications without evening referencing them by name or title, is not supported by the factual record herein. She provides no other basis for her as applied challenge.

E. The petition claims are co-extensive with the free speech claims.

The petition claims and the speech claims are analyzed the same way. Defs MSJ at 17. In Scherer's motion she seems to agree but invites the Court to give "careful consideration" of the petition claims in the event her speech claims are not meritorious. Plt MSJ at 21. No framework for analysis, however, is provided. The claims should be analyzed the same way.

VICKERS PLASS LLC
5200 SW MEADOWS ROAD, SUITE 150
LAKE OSWEGO, OREGON 97035
(503) 726-5985| (503) 726-5975

III. Scherer's challenge to the withdrawn January 2024 Property Directive is moot, and in any event, the Property Directive did not violate the First Amendment.

Scherer alleges that Superintendent Stewart's January 23, 2024 Property Directive violated her First Amendment rights. The claim is moot because the Property Directive was withdrawn before this litigation was filed. Regardless, Scherer was not "banned" as she alleges.

A. The Property Directive claim is moot.

A plaintiff's claim becomes moot, and therefore no longer presents a justiciable case or controversy, where "the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Rosebrock v. Mathis,* 745 F.3d 963, 971 (9th Cir. 2014) (citation omitted). "If an event occurs that prevents the court from granting effective relief, the claim is moot and must be dismissed." *Am. Rivers v. Nat'l Marine Fisheries Serv.,* 126 F3.d 1118, 1123 (9th Cir. 1997).

On January 23, 2024, Stewart updated his prior property directive to include District board meetings. On February 12, 2024, before this lawsuit was filed, the Property Directive was withdrawn. In the intervening 17 months, the District has not reimplemented the Property Directive and current Superintendent Jeremiah Patterson has no plans to do so. The Property Directive claim is moot.

B. The Property Directive did not violate Scherer's First Amendment rights.

Scherer's Property Directive argument is based on a false factual premise. She was not "banned" from Board meetings as claimed. Plt MSJ at 22. Rather, following a series of incidents wherein Scherer swore at staff and failed to heed directions of the Assistant Superintendent, Superintendent, and Board Chair, then-Superintendent Stewart updated the Property Directive. The new Property Directive permitted Scherer to participate in Board

VICKERS PLASS LLC
5200 SW MEADOWS ROAD, SUITE 150
LAKE OSWEGO, OREGON 97035
(503) 726-5985| (503) 726-5975

meetings remotely and attend in person with permission of the Superintendent:

> The directive is updated to include school board meetings and workshops on school district property which you cannot attend without approval from the Superintendent's Office. School Board meetings and workshops are streamed online.

Patterson decl Ex. 2 (January 23, 2024 Property Directive).

Scherer argues that the ban is unconstitutional, relying on Judge Simon's opinion in *Walsh v. Eng,* 154 F. Supp. 3d 1113 (2015). But the facts here are more like *Mead v. Gordon,* 583 F. Supp 2d. 1231 (D. Or. 2008) than *Walsh.*

In *Mead,* Judge Papack had "no difficulty concluding" that a restriction on a patron's presence in the Washington County Courthouse was "reasonable." *Mead,* 583 F. Supp. 2d. at 1243. There, the County issued the patron a one-year exclusion from the county courthouse for, among other things, yelling at then-Circuit Court Judge Hernandez from the gallery during a hearing. The exclusion allowed the patron to enter the building for her own court hearings and otherwise with an escort. In upholding the restriction, Judge Papak noted that although "one might question the necessity of a year-long exclusion when [the plaintiff's] actions were not violent," the plaintiff's ability to visit the courthouse with an escort "was a reasonable means to accommodate both parties' [plaintiff and the government's] interest." *Id.* at 1239-40.

By contrast, in *Walsh,* a patron was excluded from City Hall for 60 days following his disruptive conduct at a Portland City Council meeting. *Walsh,* 154 F. Supp. 3d at 1122. Following receipt of the exclusion notice, the patron entered City Hall. City employees called the police, who told the patron that he would be arrested for trespassing if he did not leave. *Id.* Noting that the restriction at issue prevented the patron from (a) physically using any of the facilities in City Hall; (b) making comments during City Council meetings; and (c) meeting with

VICKERS PLASS LLC
5200 SW MEADOWS ROAD, SUITE 150
LAKE OSWEGO, OREGON 97035
(503) 726-5985| (503) 726-5975

City Council members on premises, Judge Simon invalidated the patron's complete ban.

Here, the withdrawn January 23 Property Directive aligns more closely with *Mead* than *Walsh.* In contrast to *Walsh,* Scherer was never "banned" from Board meetings as she claims. Rather, similarly to *Mead,* she was permitted to attend to business on District property so long as she made an appointment and she was permitted to attend Board meetings with prior approval from the Superintendent's office. There is no evidence that she was ever denied an appointment or a request to attend a Board meeting (or that she ever made such a request). Further, unlike the patron in *Walsh*, whose total ban lasted 60 days, Scherer was only required to seek permission to attend Board meetings for a 20-day period before the Property Directive was withdrawn. And in further contrast to the patron in *Walsh,* who was not permitted to make comments during City Council meetings, Scherer was permitted to *fully* participate in Board meetings either with permission or remotely. *See* McGee decl. Ex. 5 n. 1 (Policy BDDH) ("When in-person attendees are allowed to provide oral comment, virtual attendees will be afforded the same opportunity.").

The withdrawn Property Directive did not violate Scherer's First Amendment rights.

IV. The social media claims are time-barred. Regardless, the District's social media settings do not violate Scherer's rights.

Scherer argues that the District violated her rights by blocking her from a Twitter account in 2020, applying a Facebook post-moderation feature in 2020, and limiting her ability to "tag" the District on social media. Plt MSJ at 24.

A. The Twitter blocking and Facebook post-moderation claims are time-barred.

42 U.S.C. 1983 does not have its own statute of limitations. The applicable limitations period is determined by the statute of limitations for personal-injury claims in the state where the

VICKERS PLASS LLC
5200 SW MEADOWS ROAD, SUITE 150
LAKE OSWEGO, OREGON 97035
(503) 726-5985| (503) 726-5975

alleged injury occurred. *Wallace v. Kato,* 549 U.S. 384, 387 (2007). Oregon's statute of limitations for personal injury is two years. ORS 12.110(1). Thus, the statute of limitations for a section 1983 claim alleging an injury in Oregon is subject to a two-year statute of limitations. *Sain v. City of Bend,* 309 F.3d 1134, 1139 (2002).

Here, Scherer alleges that the District violated her First Amendment rights by blocking her from Twitter in 2020 and applying a post-moderation feature in 2020. Scherer did not file suit until February 24, 2024, four years after the alleged social media incidents. Scherer's claims are therefore time-barred by the two-year statute of limitations that applies to her claims.

B. Scherer fails to establish that the social media-based claims were caused by District policy.

The only defendant in this matter is the Gladstone School District. There is no vicarious liability under section 1983. *Monell v. Dep't of Social Svs. of City of New York,* 436 U.S. 658, 691-94 (1978). To hold a municipal entity liable a plaintiff must show that the entity itself caused the deprivation. *Id.* at 693. Therefore, a plaintiff must identify a policy or custom of the municipal entity that caused the constitutional violation, and a link between the policy and custom and the deprivation. *Id.*

There are three ways a plaintiff making a section 1983 claim can establish that a municipal entity caused an alleged constitutional violation. First, a plaintiff can show that the employee who deprived him of a right did so because he was acting pursuant to a formal municipal policy or custom of the municipal entity so entrenched that it amounts to a formal policy. Second, the plaintiff can prove that the person who deprived him of a right was an official with "final policymaking" authority such that the official's acts necessarily amount to a formal entity policy. Third, a plaintiff can prove that an official with final policymaking

VICKERS PLASS LLC
5200 SW MEADOWS ROAD, SUITE 150
LAKE OSWEGO, OREGON 97035
(503) 726-5985| (503) 726-5975

authority "ratified" a municipal employee's alleged unconstitutional act. *See Gillette v. Delmore,* 979 F.2d 1342, 1346-47 (9th Cir. 1992).

Scherer neither alleged nor submitted admissible evidence showing that the Twitter or Facebook restrictions that she complains of are attributable to any District policy. When Stewart and Patterson learned of the Twitter and Facebook issues, they were promptly remedied. Vickers 2nd decl, Ex. 6 (Stewart Depo 13:12-16:13 & Depo Ex. 1); Ex. 8 (Patterson Depo 40:19-46:20).

C. The District's current Facebook settings do not violate Scherer's First Amendment rights.

The District maintains a Facebook page called Gladstone Schools. Since July 2023, the page has been managed by Raymond Rendleman, Communications Coordinator. Mr. Rendleman has not changed the District's settings.

The District maintains a post-approval feature for Posts that would otherwise appear on its main Posts page. The District's Facebook account is set to require Post approval for "tagged" posts. The District has not approved anyone's Post to appear on its main Post page. The District's Posts page, of course, is the District's own speech. Accordingly, its decision not to allow any outside tagged posts on that page does not violate the First Amendment. *See Sutliffe v. Epping Sch. Dist.*, 584 F.3d 314, 329 (1st Cir. 2009).

What Scherer actually complains about is her ability to "Mention" or hyperlink the District on in posts she creates on her own page. Scherer cites no cases for the proposition that the District is required to host a Facebook mention and *Sutliffe* suggests such claims are not available. Regardless, any user can "mention" the District in a post on Facebook. This means that a user can type "@ Gladstone Schools" in the Facebook post, and the Gladstone School's Facebook account will be hyperlinked to the post. *See generally* Rendleman decl. ¶ 5.

VICKERS PLASS LLC
5200 SW MEADOWS ROAD, SUITE 150
LAKE OSWEGO, OREGON 97035
(503) 726-5985| (503) 726-5975

The District's Facebook account has a tab called Mentions. This page shows posts by users who have mentioned the District. The District does not review posts before they appear on the District's Mentions page. Posts created by accounts controlled by Glenda Scherer mentioning the District routinely show up in the District's Mentions tab. *Id.*

The District is not violating Scherer's rights because it is not applying an approval feature to her "Mentions." Indeed, as shown in the District's opening motion, she repeatedly mentions the District in her posts which appear on the District's Mentions page. Summary judgment should be granted to defendants accordingly.

V. The District no longer requires pre-submission of comments.

Scherer's claim alleging that the District's requires pre-submission of comments claim is time-barred and moot.

Scherer alleges that the District's former practice of asking commenters to submit their public comments in advance violates the First Amendment as a prior restraint. Plt MSJ at 20. By way of background, during the COVID-19 pandemic, as the District was transitioning to remote board meetings, individuals who wished to participate in public comment submitted their comments in advance and the comments were read by the Board chair. This applied to all commenters, not just Scherer's. Defs MSJ at 3. This practice is no longer in effect.

A. The pre-submission claim is time-barred.

As described above, the statute of limitations on Scherer's claims is two years. In arguing that the pre-submission claims violated her rights, she identifies January 27, 2021 and January 12, 2022 as two of the three dates on which her rights were violated. Plt MSJ at citing

VICKERS PLASS LLC
5200 SW MEADOWS ROAD, SUITE 150
LAKE OSWEGO, OREGON 97035
(503) 726-5985| (503) 726-5975

Sherer decl. ¶¶ 26-27, and Ex. 4. Both instances occurred more than two years prior to the filing of the first complaint in this matter. Dkt. 1. These claims are accordingly time-barred.

B. The pre-submission claim is moot.

The standard for mootness is described above. The pre-submission claim is moot because the District is no longer requiring pre-submission of comments.

C. Scherer mischaracterizes the only timely pre-submission incident.

The only timely instance Scherer identifies is contained in paragraph 29 of Scherer's declaration, citing Exhibit 10. In that instance, Scherer was not forced to edit her pre-submitted comment. She was advised that if she chose to move forward with it during the public comment period of the meeting, the timer would be stopped and she would be encouraged to move on. *Id.* That is exactly what happened. The District did not silence Scherer's speech in advance of her making it.

CONCLUSION

For the reasons given above, defendants request that the Court deny plaintiff Glenda Scherer's motion for summary judgment and grant their motion.

/ / / /

VICKERS PLASS LLC
5200 SW MEADOWS ROAD, SUITE 150
LAKE OSWEGO, OREGON 97035
(503) 726-5985| (503) 726-5975

DATED: July 23, 2025.

VICKERS PLASS LLC

s/ Karen M. Vickers

KAREN M. VICKERS, OSB No. 913810
kvickers@vickersplass.com
503-726-5985
BETH F. PLASS, OSB No. 122031
bplass@vickersplass.com
503-726-5975
Of Attorneys for Defendants