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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

GLEND A 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

**PLAINTIFF’S OBJECTIONS TO
MAGISTRATE’S FINDINGS &
RECOMMENDATION**

Introduction

Pursuant to Federal Rule of Civil Procedure 72(b), 28 U.S.C. § 636(b)(1)(C), and LR 72-2, Plaintiff Glenda Scherer respectfully objects to the Findings and Recommendation entered July 21, 2026 (ECF 70; hereinafter the “F&R”) which recommends granting Defendants’ Motion for Summary Judgment (ECF 29),

denying Plaintiff's Motion for Summary Judgment (ECF 32), and denying Plaintiff's Motion for Leave to File a Supplemental Declaration (ECF 65).

Plaintiff objects to each portion of the F&R identified below and requests de novo review. See 28 U.S.C. § 636(b)(1)(C); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

Objections

1. The F&R erred in finding the 2024 Property Directive “reasonable under the circumstances.”

Plaintiff objects to the F&R finding that the 2024 Property Directive was a permissible, viewpoint-neutral exclusion. (F&R at 35.) Plaintiff maintains that she never actually “disrupted” a meeting and yet was banned from meetings indefinitely. Plaintiff was entitled to summary judgment on this claim, but, at a minimum, the record reflects a genuine dispute of material fact that precludes summary judgment for Defendants. Further, in consideration of this Court's decision in *Walsh v. Enge*, 154 F. Supp. 3d 1113, 1119 (D. Or. 2015) it is clear that this type of prospective exclusion based on prior incidents of perceived disruption jeopardizes First Amendment rights. (“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.”)

2. The F&R erred in concluding that Plaintiff lacks standing to challenge the “respect” provision.

Plaintiff objects to the F&R finding that there is no evidence in the record showing that the Board ever invoked the “respect” provision to restrict Plaintiff’s speech at a Board meeting. (F&R at 20–21.) This finding ignores the sworn testimony of Donna Diggs and Bob Stewart, both of whom testified that Plaintiff violated this specific provision and that her exclusion from school board meetings was predicated in part on her perceived failure to behave “respectfully.” 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.”); Stewart Tr. at 41:21–42:16.

Even if the “respect” provision had not been formally invoked against her, there remains a credible threat that the challenged provision could be invoked against her sufficient to chill her protected speech. *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1155 (9th Cir. 2000). Plaintiff remains committed to criticizing the Board in a manner that the District has subjectively deemed “disrespectful” and, therefore, she faces a concrete and ongoing threat of enforcement.

3. The F&R erred in finding the District’s “no-naming” and “objective criticism” restrictions viewpoint neutral.

Plaintiff objects to the F&R’s finding that the “no-naming” and “objective criticism” restrictions are viewpoint neutral. (F&R at 23, 28.) Permitting speakers to praise named staff while barring another speaker from naming staff in a critical manner is viewpoint-based discrimination. *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 730 (C.D. Cal. 1993) (“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).")

Furthermore, the F&R's attempt to distinguish *Acosta v. City of Costa Mesa*, which holds that both "complimentary comments" and "bold criticism" must be permitted to coexist in a limited public forum, is untenable. 718 F.3d 800, 811-815 (9th Cir. 2013). (F&R at 25.) In *Acosta*, the Ninth Circuit held that "[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. Plaintiff maintains that the reasoning of *Acosta* is directly relevant to the analysis in this case and should be applied accordingly. By requiring criticism to be "objective"—a subjective standard controlled by the Board—the District has created a mechanism to suppress dissent while welcoming accolades.

The F&R acknowledges that the "Board's public comment policies could be written in a more precise way," noting that the BDDH-AR restriction only references "complaints" and that "there are times when perhaps the explanation of the reasons why plaintiff's testimony was not allowed at that particular time at a meeting could have tracked more perfectly" with binding First Amendment precedent. (F&R at 28–29.) Yet, the F&R maintains that they satisfy the

requirements for viewpoint neutrality. However, the Board reserves a regular portion of its meetings for “recognition of students, staff and/or public” (Pl.’s Mot. Summ. J. Decl. McGee Ex. 16) and the evidence establishes that the Board has allowed complimentary comments about employees while prohibiting critical ones in violation of Plaintiff’s First Amendment rights.

4. The F&R erred in denying Plaintiff’s Motion for Leave to File a Supplemental Declaration.

Plaintiff objects to the F&R’s denial of Plaintiff’s request to supplement the record with evidence regarding the District’s February 19, 2026 community forum. (F&R at 40.) This evidence—showing that Superintendent Patterson restricted Plaintiff to a single question while allowing other attendees multiple, and then characterized her inquiry as an “attack”—proves that the censorship is an ongoing issue. (Pl.’s Supp. Decl. at 3.)

The F&R’s alternative “merits” analysis of this evidence is even more troubling; it concludes that “the alleged limitation that plaintiff be allowed to ask only one question appears to be reasonable based on plaintiff’s history of disrupting district meetings and preventing the opportunity for other members of the public to have their voices heard.” (F&R at 40.) This amounts to not only another conclusive factual determination of Plaintiff’s “disruption,” but also a blessing to justify future constitutional deprivation based on past “disruption”—the very type of prospective restriction *Walsh* forbids. *Walsh*, 154 F. Supp. 3d at 1133. (“[P]rolonged and prospective exclusions defeat the very purpose of the forum: to provide the opportunity for discourse on public matters.”)

Conclusion

For the reasons stated above, Plaintiff respectfully requests that this Court conduct a de novo review of the record, decline to adopt the magistrate's Findings and Recommendation, grant Plaintiff's Motion for Summary Judgment, and grant Plaintiff's Motion for Leave to File a Supplemental Declaration.

Respectfully Submitted,

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