Luke D. Miller
Miller Bradley Law, LLC.
1567 Edgewater St. NW
PMB 43
Salem, OR 97304
luke@millerbradleylaw.com

Dean McGee
dmcgee@libertyjusticecenter.org
Noelle Daniel
ndaniel@libertyjusticecenter.org
Liberty Justice Center
7500 Rialto Blvd. Suite 1-250
Austin, TX 78735
Phone: 312-637-2280

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 GRANT, in her official capacity as Board Chair, Defendants.	**Case No. 3:24-cv-00344-YY** Magistrate Judge Youlee Yim You ORAL ARGUMENT REQUESTED

PLAINTIFF'S REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF HER MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Defendants' opposition is remarkable for how much it concedes. They do not dispute that the government cannot demand "respect" from its critics, or limit criticism to only "objective" comments. They do not defend the constitutionality of indefinitely banning Glenda from attending school board meetings in person as punishment for her speech. And they do not defend their prior restraint regime that forced Glenda to pre-submit remarks for review and edits by the elected officials she was critical of. They also tacitly concede that their Policies have been enforced in an arbitrary, one-sided way.

Their defenses largely rest predominantly on two arguments, and both fail. First, they insist that their ban on referencing officials—even by title—is viewpoint neutral and reasonable. It is neither. By expressly forbidding "personal attacks" and layering that prohibition with their "respect" and "objective criticism" requirements, the policy targets critical viewpoints only and, at minimum, is unreasonable given the purpose of public comment at school board meetings. Second, they ask the Court to trust that their worst practices will not return by declaring them moot, or insisting that Glenda was never actually censored under some of those policies. But the record makes clear that these policies have been used against her, and their mootness arguments are textbook examples of issues capable of repetition yet evading review.

Finally, while a few of Glenda's Facebook posts in which she tags the District appear on the District's "Mentions" tab, many other posts are still hidden from

view. The District claims that it does not have a post-approval feature in place, but the evidence submitted by Glenda would indicate otherwise.

STATEMENT OF FACTS[1]

There are no genuine disputes of fact material to Glenda's First Amendment claims. What Defendants offer instead is a continued effort to control the narrative and divert attention from their actions. Glenda submits a reply declaration only to give context to some of Defendants' assertions. But what is most telling is what Defendants do not contest:

- They do not contest that a District employee violated school policy by posting about Glenda online and referencing her daughter.
- They do not contest that this same employee was later placed in a classroom with Glenda's special-needs son, and that after physically restraining him, the District failed to notify Glenda or properly document the incident as required by its own policies.
- They do not contest that when Glenda later met with the District to discuss the incident, she was presented with scotch-taped, seemingly fabricated documents—and that when she accidentally left with those papers and returned them an hour later, the District responded by attempting to ban her from school grounds through a "property directive."
- They do not contest that Glenda obtained a temporary stalking protective order after a disturbing encounter with the same employee off campus, and that when she attempted to bring this concern to the Board, the District extended the "property directive" to prevent her from attending school board meetings altogether.

[1] "McGee MSJ Decl." refers to the June 25, 2025 Declaration of Dean McGee in support of Plaintiff's Motion for Summary Judgment (ECF No. 36). "McGee Reply Decl." refers to the August 18, 2025 reply declaration of Dean McGee in further support of Plaintiff's Motion for Summary Judgment, which is submitted to supplement some of the deposition transcripts submitted with the opening brief.

- They do not contest that, when Glenda requested an independent investigation into these matters, the person assigned to lead it was the Superintendent's coworker.

- They also do not contest that Glenda received records from the Teachers and Standards Practices Commission suggesting multiple administrators lacked proper licenses, and that when she raised those concerns before the Board—even without using names—she was cut off and informed that such speech was "not free speech."

These uncontested facts illuminate the backdrop against which Glenda's speech was suppressed. Defendants' efforts to reframe the narrative only reinforce the need for summary judgment in her favor to vindicate her right to publicly address these concerns.

ARGUMENT

I. Summary judgment should be granted against the Individual Defendants.

The Individual Defendants argue that they are entitled to summary judgment (and, by extension, summary judgment should be denied against them) because they are sued in their official capacity along with the District itself. But courts, including the Ninth Circuit, regularly uphold claims against both government agencies and employees sued in their official capacity. *See, e.g.*, *Larez v. City of L.A.*, 946 F.2d 630, 647-48 (9th Cir. 1991) (upholding jury verdicts against both the Chief of the LAPD in his official capacity and the City itself even though "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"); *California v. Trump*, 963 F.3d 926 (9th Cir. 2020) (upholding grant of summary judgment against federal officials sued in their official capacities and the departments they led).

II. Glenda Scherer is entitled to Summary Judgment on her claims concerning the Policies.

A. Glenda has standing to challenge the "respectful" and "objective" requirements.

Defendants tacitly concede that requiring criticism to be "respectful" and "objective" would be unconstitutional. Instead, they argue that Glenda lacks standing to challenge those requirements. But there is an abundance of evidence demonstrating that Glenda has been censored for violating those policies—most notably the testimony from Donna Diggs, the current Chair of the Board, who identified three such instances during her testimony.[2] 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 MSJ Decl. Ex. 11)[3]—also "believe[d]" Glenda had violated that rule. McGee MSJ Decl. Ex. 2 ("Stewart Tr.") 41:21-42:16. Regarding the "objective"

---

[2] McGee Reply MSJ Ex. 1 at 36:6-12 ("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. Q. Okay. So in your opinion, this interaction was also a violation of that policy? A. Yes.").

McGee MSJ Decl. Ex. 3 ("Diggs Tr.") at 21:5-10 ("Q. Has Glenda's speech during public meetings ever been disrespectful? A. Yes. Q. Okay. Can you think of examples when Glenda from your perspective violated [the "respect" policy]? A. Yelling at a meeting.").

McGee Reply MSJ Ex. 1 at 38:14-20 ("Q. . . . did Glenda violate any other policies in that interaction? A. She raised her voice again, so yes. Q. And which policy is that? A. Being respectful.").

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

requirement for criticism, Defendant Patterson testified that Glenda had been censored pursuant to "Paragraph 10"—a reference encompassing both the "objective" criticism policy, the prohibition on "personal attacks," and references to "specific school personnel." McGee MSJ Decl. Ex. 4; McGee MSJ Decl. Ex. 1 ("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, in First Amendment cases, "the inquiry tilts dramatically toward a finding of standing"—requiring only a showing that plaintiffs 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) (cleaned up). 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 Rest. 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 objectively false, and therefore in violation of the Policies. There is simply no reasonable question that she has standing to challenge these Policies.

B. Reading the Policies "as a whole" does not salvage them.

Tacitly recognizing that a requirement of "objective" criticism would be unconstitutional, Defendants argue that the phrase "***may*** offer objective criticism" is superfluous and not meant to limit the type of criticism allowed. But this interpretation does not make sense: including the word "objective" in this context could only be read as limiting the type of criticism permitted; if "subjective" criticism were permitted, then there would be no need to include the modifying word "objective"—*expressio unius est exclusio alterius*.[4] And this interpretation is offered only by Defendants' attorneys, not the Defendants themselves. Tracy Grant, for example, testified that the Board Chair would be charged with drawing the line between objective and subjective criticism when enforcing the policies.[5] Defendant Bob Stewart testified that a board chair must draw the line between "fact" and "opinion"—implying that criticism based on the opinion of a speaker rather than facts (in the eyes of the board chair) would be prohibited. Stewart Tr. 44:2-16.

Defendants also fail to acknowledge all of the Policies when suggesting that the Policies must be "interpreted as a whole." Specifically, Defendants omit the

[4] "A core canon of statutory construction is the rule against surplusage: courts must construe a statute so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Saldana v. Bronitsky*, 122 F.4th 333, 342 (9th Cir. 2024) (internal quotation marks omitted).

[5] McGee Decl. Ex. 6 ("Grant Tr.") 59:19-25 ("Q. Who draws the line between objective and subjective criticism of school operations and programs? A. The board chair, since they're kind of conductor of the meeting, based on the wording in number 10, would be the ones who kind of delegate where that is going.").

prohibition on "personal attacks" found in the Policies' "Administrative Regulations," which read as follows:

> 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. Defendants' argument that the Policies are "viewpoint neutral" and "prohibit[] personnel complaints and commendations" (Opp'n Br. at 6) is simply irreconcilable with the Policies' specific prohibition on "attacks" (i.e. on criticism of government officials).

C. Defendants are unable to meaningfully distinguish precedent cited in Plaintiff's Motion for Summary Judgment.

Defendants are unable to meaningfully distinguish the precedent cited in the opening brief in which similar policies were struck down as unconstitutional. For example, Defendants do not dispute that the Ninth Circuit has already ruled that speech codes at municipal meetings prohibiting "personal, impertinent, profane, [and] insolent" comments are facially unconstitutional. *Acosta v. City of Costa Mesa*, 718 F.3d 800, 806-07, 811 (9th Cir. 2013). Defendants instead argue that these Policies are distinguishable from *Acosta* because they are neutral and "appl[y] to complaints and commendations." Opp'n Br. at 7. But this is wrong: as mentioned above, the District's Policies specifically prohibit "attacks" (an inclusion that would be superfluous if the Policies were actually viewpoint neutral); whereas the *Acosta* policies included a genuinely facially neutral ban on any "personal" comments that was still struck down. Defendants also note that the *Acosta* speech codes include the

explicit threat of arrests, but do not explain why that difference is relevant to the First Amendment analysis at issue here. *Id.*

Defendants do not argue that *Moms for Liberty v. Brevard Pub. Schs.*, 118 F.4th 1324 (11th Cir. 2024) was decided incorrectly, but instead argue that the policies there "bear no resemblance to the challenged District policy." Opp'n Br. at 7. But Defendants' discussion of those Policies omits the most analogous policy struck down by the Eleventh Circuit, which prohibited "personally directed" speech—a prohibition that the Eleventh Circuit found unreasonable in light of the purpose of public comment at school board meetings. *Id.* at 1337. And Defendants' only response to *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 referenced in the Policies themselves as relevant legal precedent—is to say that those policies were not viewpoint neutral because they exclusively prohibited "complaints." Opp'n Br. 7-8. But the Policies here are also not viewpoint neutral: they prohibit "personal attacks" and further limit any criticism to "objective" criticism delivered in a manner that they find "respectful."

D. Glenda's as-applied challenges are not "limited" and the Court should find summary judgment in her favor for each of them.

Defendants incorrectly state that Glenda's only as-applied challenge concerns her speech regarding the qualifications of administrators. Opp'n Br. 8. But the Motion simply highlights that as one example of Defendants' censorship, as paragraphs 28-34 of Glenda's declaration and pages 9-11 of the Motion detail many others. Defendants also state that Glenda was not censored for referencing concerns

about the qualifications of administrators, but that is exactly what happened at the March 2024 meeting, when Tracy Grant invoked the Policies to silence Glenda after stating that she "learned of four Gladstone administrators who had anomalies regarding their admin licenses"—later clarifying in the exchange that "if you're going to talk about administrators, that is not allowed" and declaring that criticism of administrators is "not free speech." McGee Decl. Ex. 11.

III. Glenda is entitled to summary judgment on her Petition Clause claims.

Defendants concede that if this Court grants Glenda summary judgment on her claims under the Speech Clause of the First Amendment, it should also grant summary judgment under the Petition Clause. Opp'n Br. 9. Defendants also do not dispute that the Supreme Court has held that that "Courts should not presume . . . that Speech Clause precedents necessarily and in every case resolve Petition Clause claims." *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 388 (2011). Accordingly, even if this Court denies summary judgment on Glenda's Speech Clause claims, it should nevertheless grant summary judgment on the Petition Clause claims in light of the fact that Glenda was, in fact, petitioning her elected officials for a redress of grievances and was thwarted from effectively doing so. *Id.* at 388–89.

IV. Defendants cannot evade liability for banning Glenda from school board meetings.

Defendants tacitly concede that banning Glenda from school board meetings for protected speech would be unconstitutional, but argue that they cannot be held liable because the issue is moot, and because Glenda was still permitted to view

meetings remotely and was given the option of asking permission to attend. Opp'n Brief 10-11. Judge Simon's decision in *Walsh v. Enge* refutes both arguments. 154 F. Supp. 3d 1113 (D. Or. 2015). In *Walsh*, 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. 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. The Court rejected the city's mootness argument, recognizing that such bans were "capable of repetition yet evading review." *Id.* at 1125-26. The same is true here, as Defendants have explicitly threatened to reinstate the ban on Glenda if they feel she disrespects them.[6] 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.

The lead case Defendants rely on, *Mead v. Gordon*, 583 F. Supp. 2d 1231 (D. Or. 2008), is inapposite. Despite trying to frame Glenda as "disruptive," Defendants

[6] *See* McGee MSJ Decl. Ex. 8 ("[W]hile 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).

have not identified a single instance of Glenda shouting down the board while it is conducting its business—much less a situation analogous to a repeat offender yelling at a judge several times during a hearing and further disrupting courthouse business with obscenities hurled toward a deputy. *Id.* at 1235-36. Defendants also conflate the grounds for the original property directive issued to Glenda more than a year earlier, while ignoring the fact that the sole reason they updated it to prohibit her attendance at board meetings was in response to her constitutionally protected speech. McGee Reply MSJ Ex. 2 (Stewart Tr.) 31:14-32-17; McGee Reply MSJ Ex. 3 (Patterson Tr.) 109:25-110:5.

V. Glenda's social media claim is still ripe.

Glenda does not bring any time-barred claims. Any facts in Glenda's Motion for Summary Judgment regarding time-barred claims are included solely to provide context, demonstrating the systematic censorship that the District has engaged in, including on social media.

The only issue that Glenda contests concerns "mentions" on the District's Facebook page. While Defendants maintain that the District does not have an approval feature in place, this has not been Glenda's experience. Although some of her posts will occasionally appear in the District's mentions, there are many more posts that will not appear on the Mentions page, as detailed in the Scherer Opp.

Decl. and accompanying exhibits, filed with Plaintiff's Opposition to Defendants' Motion for Summary Judgment (ECF No. 46).[7]

VI. Defendants cannot evade liability for their regime of prior restraint.

Defendants do not, and cannot, defend the constitutionality 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 dares to go off script. Scherer MSJ Decl. ¶¶ 26–27, 29. They further admit that this regime existed within the statute of limitations, and that Glenda was forced to pre-submit her speech and encouraged to alter it before she could even express herself. Opp'n Br. at 16. 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. *Walsh* 154 F. Supp. 3d at 1125-26.

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.

[7] At a minimum, this remains a disputed issue of fact, and Defendants are not entitled to summary judgment on this issue.

Dated: August 18, 2025

Respectfully submitted,
/s/ Luke D. Miller

Luke D. Miller
Miller Bradley Law, LLC.
1567 Edgewater St. NW
PMB 43
Salem, OR 97304
luke@millerbradleylaw.com

/s/ Dean McGee

Dean McGee (*Pro Hac Vice*)
dmcgee@libertyjusticecenter.org
Noelle Daniel (*Pro Hac Vice*)
ndaniel@libertyjusticecenter.org
Liberty Justice Center
7500 Rialto Blvd.
Suite 1-250
Austin, Texas 78735
Ph.: 512.481.4400

Attorneys for Plaintiff