UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 1:24-cv-03512-CNS-STV

KRISTEN CROOKSHANKS, as parent and next of friend of a minor on behalf of C.C.; MINDY SMITH, as parent and next of friend of a minor on behalf of E.S.; NAACP–COLORADO–MONTANA–WYOMING STATE AREA CONFERENCES; and THE AUTHORS GUILD,

Plaintiffs,

v.

ELIZABETH SCHOOL DISTRICT,

Defendant.

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

Elizabeth School Board members campaigned on a platform of bringing "conservative values" to the District, and as a Board, they have repeatedly cited their political values as the basis for their decisions.[1] In their effort to impose their brand of "conservative" orthodoxy in Elizabeth schools, they looked up "most challenged book lists" to help them create a list of books to remove from Elizabeth's school libraries. 8/12 Bd Mtg at 48:16. After identifying 19 books to remove (the "Removed Books"), the Board drew attention to isolated passages in the books that it found offensive and encouraged parents to vote on whether to permanently banish the books from school libraries, or return them but send parents a notification if their child checked them out.

At every stage in the process, Board members made clear that the Removed Books were targeted because they contained "gender identity ideology," "LGBTQ" content, or "racism/discrimination." Ex. 12, ECF No. 9-12 at 3; Ex. 14, ECF No. 9-14 at 2; Ex. 7, ECF No. 9-7 at 4. It did not matter to the Board that these books might improve students' reading skills, that some were critically acclaimed and read by students across the country, or that they could help Elizabeth students process racism, homophobia, or othering. While Defendant now attempts to distance itself from its own communications and public statements regarding the Removed Books—claiming that its decisions were actually based on inappropriate content, vulgarity, or the District's amorphous educational mission—its

[1] While Defendant complains that Plaintiffs have made "vague" or "undefined" references to the Board members' self-proclaimed "conservative values," Opp. 25, 27, it was the Board members themselves who repeatedly claimed that they were bringing "conservative values" to the District—whatever that means to them.

litigation-inspired pretextual justifications are belied by Board members' own statements. *Id.*

Defendant's legal arguments are similarly unavailing. Defendant wrongly claims its removal of library books constitutes "government speech," a doctrine that the Supreme Court has recognized "is susceptible to dangerous misuse," as it can be weaponized to "silence or muffle the expression of disfavored viewpoints." *Matal v. Tam*, 582 U.S. 218, 235 (2017). And, after using its revisionist version of the facts to argue Plaintiffs' claims fail under the Supreme Court's First Amendment precedents, Defendant also asserts that Plaintiffs are not injured because Defendant recently decided they can access the removed books *if they disclose their constitutionally protected membership in the NAACP or status as a Plaintiff*. Far from resolving Plaintiffs' constitutional injuries, this "decision" only compounds them. Defendant's arguments are dangerous. They would allow any school board to restrict students' access to any books that contravene their own preferred political orthodoxy. That result is not permitted by the First Amendment or by Article II, section 10 of the Colorado Constitution. Preliminary relief is necessary to protect students' right to receive information and authors' freedom from viewpoint-based discrimination.

I. Plaintiffs Have Standing to Seek the Return of All Books Removed from Elizabeth Middle School ("EMS")

Defendant argues Plaintiffs lack standing to challenge the removal of books from EMS. But Defendant does not contest that NAACP has standing to sue on behalf of its members. NAACP's members intend for their children to have access to the books removed from EMS. Thus, NAACP has standing. And, contrary to Defendant's assertion, NAACP members who have removed their children from Elizabeth schools have a stake in this case because "the 'opportunity' to return [a student] to her home district, in addition to

alleviating [ ] ongoing feelings of marginalization, is surely a 'tangible benefit' sufficient to confer standing." *Deal v. Mercer Cty Bd. of Educ.*, 911 F.3d 183, 190 (4th Cir. 2018).

II. Plaintiffs' State Constitutional Claims Are Likely to Succeed

Defendant does not address Plaintiffs' claims under the Colorado Constitution—which "provides broader free speech protections than the Federal Constitution," *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044, 1054 (Colo. 1997)—much less dispute that they are likely to succeed. That alone is reason enough to grant a preliminary injunction.

III. Plaintiffs' Federal Constitutional Claims Are Likely to Succeed

Plaintiffs' First Amendment claims are likely to succeed because (A) a school board's removal of library books is not government speech; (B) Defendant cannot satisfy any level of First Amendment scrutiny; and (C) Defendant's "decision" to provide limited access to the Removed Books fails to redress the ongoing constitutional injuries.

A. The Board's Book Removals Are Not Government Speech

Defendant argues "a school library's curation decisions are government speech immune from First Amendment scrutiny." Opp. 13. No court has agreed. *See GLBT Youth in Iowa Sch. Task Force v. Reynolds*, No. 24-1075, 2024 WL 3736785, at *2–3 (8th Cir. Aug. 9, 2024) ("[T]he placement and removal of books in public school libraries" is not government speech.); *PEN Am. Ctr., Inc. v. Escambia Cnty. Sch. Bd.*, 711 F. Supp. 3d 1325, 1331 (N.D. Fla. 2024) (school library not viewed "as the government's endorsement of the views expressed in the books."); *Virden v. Crawford County*, No. 2:23-CV-2071, 2024 WL 4360495, at *5 (W.D. Ark. Sept. 30, 2024) ("[T]he Supreme Court has not extended [government-speech] doctrine to the placement and removal of books in libraries.").

Defendant relies on *Moody v. NetChoice*, Opp. 13–15, but that case had nothing to do with government speech; it concerned states' power to regulate private social media platforms' editorial choices. 603 U.S. 707 (2024). The Court recognized that "a State may not interfere with private actors' speech to advance its own vision of ideological balance." *Id.* at 741. But school libraries are not *private actors*; they are a "forum for silent speech." *Minarcini v. Strongsville City Sch. Dist*, 541 F.2d 577, 582–83 (6th Cir. 1976). The First Amendment serves to ensure the public "has access to a wide range of views . . . by preventing *the government* from 'tilt[ing] public debate in a preferred direction.'" *Moody*, 603 U.S. at 741 (quoting *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 578–579 (2011)). Here, *the government* has restricted students' access to ideas it disfavors in public school libraries.

Contrary to Defendant's suggestion, *United States v. American Library Association, Inc.* did not treat curation decisions as government speech. Opp. 14. The plurality explained that a library's role is to "decid[e] what private speech to make available to the public." 539 U.S. 194, 204 (2003). While libraries "enjoy broad discretion" in making collection decisions, *id.* at 205, nothing suggests that discretion is boundless. There is simply no authority suggesting the Board's decisions are immune from First Amendment scrutiny.

B. Defendant Cannot Satisfy Any Level of First Amendment Scrutiny

1. Defendant's Book Removals Violate the First Amendment Under *Pico* and Other School Library Precedents

Pico "is the only Supreme Court decision dealing specifically with removal of books from a public school library" and "must be used as a starting point." *Case v. Unified Sch. Dist. No. 233*, 895 F. Supp. 1463, 1469 (D. Kan. 1995). Defendant asserts that Justice

White's concurrence controls and is "agnostic on whether the First Amendment imposes *any* constraints on book-removal decisions made by public-school libraries." Opp. 16. But Justice White did "not reject the plurality's assessment of the constitutional limitations on school officials' discretion to remove books from a school library." *Campbell v. St. Tammany Par. Sch. Bd.*, 64 F.3d 184, 189 (5th Cir. 1995). He agreed the case should be remanded for further fact-finding about the board's reasons for removing library books—an exercise that would be pointless if no facts could establish a First Amendment violation. *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 883–84 (1982).

The *Pico* plurality held that school boards "may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to 'prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion,'" 457 U.S. at 872 (quoting *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)). Plaintiffs will likely succeed in proving Defendant's unconstitutional motives for removing the books. *See* Ex. 12, ECF No. 9-12 at 2 (deciding to remove books because "LGBTQ is only regarding sexual preference which doesn't belong in any school"); Ex. 14, ECF No. 9-14 at 2 (deciding to remove books because they "have gender ideology in them"); Ex. 9, ECF No. 9-9 at 2–3 (advocating for "conservative values" in Elizabeth schools); Ex. 10, ECF No. 9-10 at 2 ("As an elected official committed to conservative values for our children, I feel a strong obligation to honor the promises made during my campaign."). Defendant's argument that its motives were permissible because books were reviewed for "'racism/discrimination, 'religious viewpoints,' 'sexual content,'" and other categories, misses the mark. Opp. 25. Each category contains "ideas to which students

have a right to choose to be exposed." *Counts v. Cedarville School District*, 295 F. Supp. 2d 996, 1004 (W.D. Ark. 2003). If Defendant had truly removed all books containing these topics, few would be left. Instead, under the cover of "sexual content," the Board removed books because they contained LGBTQ+ characters and relationships. And under the cover of "racism," the Board removed books that focus on Black perspectives and experiences.

Defendant claims Plaintiffs "concede" that the Board's decisions "were guided by multiple factors." Opp. 26. But Plaintiffs have consistently claimed the Board was "guided" by its desire to impose its preferred political orthodoxy. And it does not help Defendant that others shared its desire to excise the Removed Books. *See* Opp. 26. In *Pico*, too, the removed books were on a politically conservative organization's list of "objectionable" books. 457 U.S. at 856. But regardless of how many people share a board's partisan ideals, "[o]ur constitution does not permit the official suppression of *ideas*." *Id.* at 871.

Plaintiffs have also shown that Defendant's decisions were made to prescribe its preferred orthodoxy. Defendant did not, as its brief claims, remove books because they contain "sexually explicit and vulgar content." Opp. 27. Secretary Powell explained to the rest of the Board that in *You Should See Me in a Crown*, "[t]here isn't anything graphic other than discussing a kiss that I saw." Ex. 12, ECF No. 9-12 at 3. And *#Pride: Championing LGBTQ Rights* "is largely a history of LGBTQ." *Id.* Board members voted to remove these books not to eliminate sexually explicit or vulgar content, but to fulfill their campaign promise of bringing "conservative values" to the District by signaling that "LGBTQ is only regarding sexual preference which doesn't belong in any school," *id.*, and "gender

identity ideology" should not be "out there at all." Ex. 14, ECF No. 9-14 at 2.[2]

Defendant suggests that the Board's removal decisions were constitutional because there are still some books by or about LGBTQ people in Elizabeth's libraries. Opp. 27. But the removal process is ongoing. Ex 15, ECF No. 9-15 at 2. Plaintiffs need not wait for the Board to eradicate every instance of LGBTQ identity in their libraries before filing suit.

While Plaintiffs' claims are likely to succeed under *Pico*, "[e]ven if the [C]ourt concluded that *Pico* is not persuasive precedent, the majority of courts faced with a school book banning case have held that the removal of a book was unconstitutional." *Case*, 895 F. Supp. at 1469; *see also Virden*, 2024 WL 4360495, at *4; *Minarcini*, 541 F.2d at 582; *Sheck v. Baileyville Sch. Comm.*, 530 F. Supp. 679, 693 (D. Me. 1982); *Right To Read Def. Comm. of Chelsea v. Sch. Comm. of City of Chelsea*, 454 F. Supp. 703, 715 (D. Mass. 1978); *Salvail v. Nashua Bd. of Educ.*, 469 F. Supp. 1269, 1272, 1275 (D.N.H. 1979); *Counts*, 295 F. Supp. 2d at 1005; *Roberts v. Madigan*, 702 F. Supp. 1505, 1513 (D. Colo. 1989), *aff'd,* 921 F.2d 1047 (10th Cir. 1990). This Court should do the same.

2.The Books Were Not Removed to Prevent Substantial Disruption

If *Pico* did not apply, then the proper standard would come from *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969). *See Hardwick ex rel. Hardwick v. Heyward*, 711 F.3d 426, 435 n.11 (4th Cir. 2013) ("[W]e must continue to adhere to the *Tinker* test in cases that do not fall within any exceptions that the Supreme Court has created."). Under *Tinker*, students' First Amendment rights cannot be abridged except when

[2] Contrary to Defendant's claims that Booth "did not vote," Opp. 26 n.9, her votes are reflected in email exchanges and spreadsheets. *See* Exhibit 18 – Temporarily

"necessary to avoid material and substantial interference with schoolwork or discipline." *Tinker*, 393 U.S. at 511. "[S]peculative apprehensions of possible disturbance are not sufficient to justify the extreme sanction of restricting the free exercise of First Amendment rights in a public school library." *Counts*, 295 F. Supp. 2d at 1004. Defendant has not—because it cannot—point to any substantial disruption caused by the Removed Books.

3. Defendant's Removal Decisions Were Not Curricular Speech, and Were Not Reasonably Related to Legitimate Pedagogical Purposes

Defendant argues *Hazelwood* bars Plaintiffs' claims. Opp. 21. But *Hazelwood* applies only to restrictions on *curricular* speech—not to the removal of books from school libraries—and Defendant could not satisfy *Hazelwood*'s test even if it did apply.

In *Hazelwood*, a principal directed that two "inappropriate" articles be withheld from a school newspaper produced as part of a journalism class. 484 U.S. 260, 262–64 (1988). Considering the constitutionality of that decision, the Court distinguished between speech that a school "tolerate[s]" and "speech that may fairly be characterized as part of the school curriculum," which "the public might reasonably perceive to bear the imprimatur of the school." *Id.* at 271. The Court held that restrictions on curricular speech—like the newspaper—must be "reasonably related to legitimate pedagogical concerns." *Id.* at 273.

Unlike the *Hazelwood* newspaper, school libraries are places to "discover areas of interest and thought not covered by the prescribed curriculum." *Right To Read Def. Comm. of Chelsea*, 454 F. Supp. at 715. Students "are not required to read the books contained in the libraries; neither are the students' selections of library materials supervised by faculty

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Suspended Book List.

members." *Campbell*, 64 F.3d at 189; *see also* Answer, ECF No. 26 ¶ 119 (admitting "none of the 18 titles that the School Board voted to permanently remove . . . were required reading for any classroom or student" this year). And the District's own definition of "curriculum" would exclude libraries, as they are not "an organized plan of instruction comprised of a sequence of instructional units that engages students in mastering the standards." *See* Co. Dep't of Education Curriculum. The Board's decision to remove books from school libraries thus "concerns a non-curricular matter" and "must withstand greater scrutiny within the context of the First Amendment than would a decision involving a curricular matter." *Id.*; *see also Case*, 895 F. Supp. at 1469 (declining to apply *Hazelwood* where book was removed from school library because *Hazelwood* "was a curriculum case").[3]

Fleming v. Jefferson County School Dist. R-1, 298 F.3d 918 (10th Cir. 2002), does not require a different result. There, following a school shooting, the school invited students to paint tiles to install on the school's walls. *Id.* at 920. Plaintiffs sued when their tiles with religious messages were not added to the walls. *Id.* at 921. Because the school had organized the painting sessions, held them at the school, provided faculty supervision, content guidelines, and instructions about subject matter, removed inappropriate tiles, and organized volunteers to affix the tiles, the tiles bore the school's imprimatur. *Id.* at 930. A school library is an entirely different matter. Far from promoting a school board's own

[3] Defendant attempts to use *Bd. of Educ. of Westside Cmty. Sch. v. Mergens ex rel. Mergens*, 496 U.S. 226, 246 (1990), to argue that school libraries are "curricular." Opp. 21. But *Mergens* says nothing about school libraries; the Court merely referenced a particular

messages, a school library is intended to provide students with access to "a range of knowledge, from the world's great novels and plays to books on hobbies and how-to-do-it projects." *Roberts*, 702 F. Supp. at 1512. This "range" must include books on "diverse topics"—including those their school board dislikes. *Campbell*, 64 F.3d at 190.

Finally, even if the *Hazelwood* standard applied here, Defendant would not meet it, because its restrictions on Plaintiffs' access to information are not "reasonably related to legitimate pedagogical concerns." *Hazelwood*, 484 U.S. at 273. Defendant gestures to its "broad effort to standardize the District's curriculum to enhance educational value," and its directive "to reevaluate the books in the District's school libraries to align them with the District's curricular and educational goals." Opp. 23. But Defendant fails to explain what its curricular goals *are* and how the Removed Books—which Board members had not read, Answer, ECF No. 26 ¶ 70—interfered with them. Defendant summarily states that its goals "meant removing select books with sexually explicit content, including base vulgarity, that were not age appropriate for the respective school library, or that promoted discourse or indoctrination on sensitive and controversial topics best left to parents as the primary educators of their children." Opp. 23. But none of Defendant's citations indicate that books were removed for these reasons or specify any curricular goals served by removing library books. Snowberger Decl. ECF No 25-1 ¶¶ 7, 20, 43 (not mentioning library books); *id.* ¶ 13 (expressing intent to align library collection with curriculum but mentioning no curricular goals served by removing library books). The District's "decision" to allow Plaintiffs and

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school's statements about band, drama, and choir in its curriculum in determining whether the school's obligations under the Equal Access Act were triggered. *Id.* at 246.

NAACP members access to the Removed Books also undermines any notion that there was a legitimate reason to remove them. What kind of "pedagogical concern" applies only to students who are not NAACP members? There is simply no reason to believe that the books were removed because of vulgarity or age-inappropriateness, and every reason to believe they were removed to impose the Board's political orthodoxy.

In applying *Hazelwood*'s standard, the Court "would be abdicating [its] judicial duty if [it] failed to investigate whether the educational goal or pedagogical concern was *pretextual*." *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1292–93 (10th Cir. 2004). Where a defendant articulates a pedagogical concern that is "a sham pretext for an impermissible ulterior motive," *Hazelwood* does not save them. *Id.* at 1293. In *Axson-Flynn*, where a Mormon student refused to utter "fuck" or "God" in an acting class, the Court concluded that "the program's insistence that Axson-Flynn speak with other 'good Mormon girls' and that she could 'still be a good Mormon' and say these words certainly raises concern that hostility to her faith rather than a pedagogical interest in her growth as an actress was at stake in Defendants' behavior in this case." *Id.* Here, the Board has expressed that certain ideas don't belong in schools, and the Board's President admitted that she would not care if one of the Removed Books—a critically acclaimed Toni Morrison novel—would improve students' reading abilities. Any attempt at *post hoc* justifications is plainly pretextual.

4. Defendant's Removal of Books Was Neither Reasonable Nor Viewpoint-Neutral

Defendant asserts its removal of books "is garden-variety regulation of access to a non-public forum," Opp. 27, but fails to recognize that libraries' "status as a nonpublic forum" would not give the Board "unfettered power to exclude any [speech] it wished." *Ark.*

Educ. Television Comm'n v. Forbes, 523 U.S. 666, 682 (1998). "[T]he exclusion of a speaker from a nonpublic forum" cannot be viewpoint-based and must be "reasonable in light of the purpose of the property." *Id.* The Board's exclusions were viewpoint-based. *Supra* Section III.B.1. And removing disfavored books is unreasonable given that "[t]he school library is a mirror of the human race, a repository of the works of scientists, leaders, and philosophers." *Roberts*, 702 F. Supp. at 1512.

Defendant cites *Ginsberg v. New York*, 390 U.S. 629 (1968), and *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978), suggesting its removals "protect minors." Opp. 28. But neither case involved forum analysis. And while the "state may regulate children's access to materials not deemed obscene for adults . . . such regulation is permissible only where the restricted materials meet the stringent test for obscenity as to children, or 'harmful to minors.'" *Sund v. City of Wichita Falls*, 121 F. Supp. 2d 530, 552 (N.D. Tex. 2000). Defendant has not tried to meet this test.

Defendant further argues the Guild's claim fails because the authors' books remain available to Plaintiffs. Opp. 18. But access to their books is restricted and stigmatized. *Infra* Section C. Moreover, the Guild's claim does not turn on Plaintiffs' access, but on the right to share their books free from viewpoint-based discrimination. Mot., ECF No. 9 at 21–25. The Guild has shown a likelihood of success on the merits of its First Amendment claim.

C. Defendant's Unenforceable "Decision" to Permit Limited Access to the Removed Books Fails to Remedy Constitutional Harms

Defendant apparently decided on the day its Opposition was due to put the removed books back in the libraries and make them available only to Plaintiffs, NAACP members, and NAACP members' children. Opp. 10. This "decision" does not, as Defendant contends,

provide Plaintiffs with the same access that they had before the books were removed, Opp. 17, because it requires anyone who intends to access the Removed Books to first disclose that they are a plaintiff in this litigation or that they (or their parent) are a member of the NAACP. Snowberger Decl. ECF No. 25-1 at 20. Courts have long recognized that "compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association" as other restrictions on expression. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958); *Tattered Cover*, 44 P.3d at 1054.

"To overcome the deterrent effect on associational rights resulting from compelled disclosure of membership lists, the government must demonstrate a *compelling* interest . . . and a substantial relationship between the material sought and legitimate governmental goals." *In re First Nat. Bank, Englewood, Colo.*, 701 F.2d 115, 117 (10th Cir. 1983) (quoting *NAACP*, 357 U.S. at 463–64). Any interest the Board has in requiring that students give up their privacy in association to receive books, far from "compelling," is unconstitutional.

Additionally, Defendant argues—without support—that no First Amendment violation can occur when the targeted books "remain available to [patrons] in a library but are not placed on library shelves." Opp. 17. Courts disagree. *Virden*, 2024 WL 4360495, at *4 (relocating library books infringed upon First Amendment rights); *Sund*, 121 F. Supp. 2d at 549 (same); *Fayetteville Pub. Libr. v. Crawford Cnty., Arkansas*, No. 5:23-CV-5086, 2024 WL 5202774, at *9 (W.D. Ark. Dec. 23, 2024) ("Creating segregated '18 or older' spaces in libraries and bookstores will powerfully stigmatize the materials placed therein" and chill access to those materials); *Counts*, 295 F. Supp. 2d at 1002.

In *Counts*, all *Harry Potter* books were moved to an area of the school library that

was inaccessible unless students were checking them out—and they needed parental permission to do so. 295 F. Supp. 2d at 1001. The court held that the restrictions infringed upon students' First Amendment rights because "the stigmatizing effect of having to have parental permission to check out a book constitutes a restriction on access." *Id.* at 1002. Additionally, to access the book, the student "must locate the librarian, perhaps waiting her turn . . . then ask to check the book out and wait while the librarian verifies that she has parental permission to do so, before she can even open the covers of the book." *Id.* at 999. "[T]he fact that [plaintiff] cannot simply go in the library, take the books off the shelf and thumb through them . . . without going through the permission and check-out process is a restriction on her access." *Id.* at 1002. Likewise, here, students must consult with a librarian (in addition to disclosing sensitive information) to access the Removed Books.

This burden is not, as Defendant suggests, analogous to that in *American Library Association*. Opp. 18. There, while content-blocking software limited access to online materials, patrons could ask a librarian to unblock specific websites or wholly disable the filter. 539 U.S. at 209. Any constitutional concerns with over-blocking were "dispelled by the ease with which patrons may have the filtering software disabled." *Id.* But an adult patron asking a public librarian to disable an overbroad filter is not burdened in the same way as a child asking a school librarian to provide access to a stigmatized book—especially when the child must reveal their participation in this litigation or the NAACP. *See* Ex. 3390; EX 3394; Ex 3393.

Even if Defendant implemented its decision—which is in no way guaranteed or enforceable—it does not diminish Plaintiffs' need for preliminary injunctive relief.

D. The Remaining Equitable Factors Favor a Preliminary Injunction

The District admits it plans to continue removing books from school libraries. Answer, ECF No. 26 ¶ 149; Ex. 15, ECF No. 9-15 at 2. Without preliminary relief, Plaintiffs' injuries will worsen. Defendant faults Plaintiffs for its "delay" in seeking an injunction. Opp. 29. But parents and students had to weigh their constitutional rights against the consequences of disagreeing with the Board, which include public shaming and humiliation. Compl. ECF No. 1 ¶¶ 48–50; Crookshanks Decl, ECF No. 9-2 ¶ 22; Smith Decl, ECF No. 9-3 ¶ 23; 10/28 Bd Mtg at 7:30. Any delay is due to the risks of retaliation—not lack of injury.

Defendant now claims that, if Plaintiffs' request for preliminary injunction is granted, "[t]he District would be forced to purchase, catalog, and re-shelve the removed titles." Opp. 30. But Defendant's "decision" to provide limited access to the Removed Books indicates that no hardship will result from returning them. And contrary to Defendant's contention, preliminary relief would prevent the District only from making *unconstitutional* decisions.

Defendant threatens that, if the Court grants a preliminary injunction, school boards will make their decisions "out of the public eye and suppress community debate on the purpose of a school district's library collection." Opp. 30. Defendant forgets that school boards are government entities subject to the Colorado Open Records Act, which exists, in part, to ensure that government entities are held accountable when they abuse their power. Enjoining Defendant from unconstitutional conduct should not reduce transparency.

CONCLUSION

Plaintiffs' request for a preliminary injunction should be granted.

Dated: February 10, 2024.

Respectfully submitted,

s/ Celyn D. Whitt

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CERTIFICATE OF SERVICE (CM/ECF)

I HEREBY CERTIFY that on February 10, 2025, I electronically filed the foregoing **PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses:

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