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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING**

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HARRY POLLAK,

Plaintiff,

vs.

SUSAN WILSON, in her individual  
capacity, *et al.*,

Defendants.

Case No. 2:22-CV-49-ABJ

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**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO COMPEL**

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This dispute asks whether government officials can use discovery to pry into their political adversaries' internal communications. The First Amendment requires a compelling reason to do so—a showing that the discovery goes to the “heart” of the case. *Silkwood v. Kerr-McGee Corp.*, 563 F.2d 433, 438 (10th Cir. 1977). The Court should deny the defendants' motion to compel because they fail to meet that burden.

NATURE OF THE CASE

1. Plaintiff Harry Pollak signed up to speak during the Sheridan County School District No. 2 (“SCSD2”) board meeting on February 7, 2022. Pollak explained that he intended to address statements the Superintendent made during the board's public meeting one month earlier. But the board chair—defendant Susan Wilson—ordered him to stop speaking. She explained that the board's policies prohibited Pollak from mentioning the Superintendent at all. (ECF No. 43, ¶¶23–39).

Pollak challenges the constitutionality of the board’s rule prohibiting speakers from discussing “personnel matters” when it prohibits mentioning public officials for any reason. (ECF No. 43 at ¶¶ 42–57). Pollak also alleges that Wilson discriminatorily enforced the rule against him. (*Id.* at ¶¶ 52–53, 56–57). And Pollak facially challenges a related rule prohibiting “abusive” comments and similar categories of speech. (*Id.* at ¶¶ 58–73). This case thus boils down to two questions: First, are the board’s policies constitutional? And second, did the board unconstitutionally enforce them against Pollak on February 7, 2022?

2. This dispute arose after the defendants served several discovery requests that implicate the inner workings of Free Our Faces (“FOF”), an association of individuals who began advocating against SCSD2’s policies during the pandemic. Pollak Decl. ¶¶2–3. FOF members largely communicate using a private group on Facebook that prevents the public from knowing who has joined and what they are discussing. *Id.* This confidentiality is critical to the association. *Id.* ¶4. Members of the public, as well as government and law enforcement agencies, have compared FOF and other similar groups to terrorists, leading to criminal investigations into even peaceful speech and protests related to school policies. *Id.* ¶5 & Exh. B at 2. The privacy restrictions governing FOF give Pollak the comfort he needs to speak candidly about important (but sometimes controversial) issues without fear of reprisal or harassment. *Id.* ¶¶4–6. Pollak would not have participated as freely in FOF had he known that his communications with others could be disclosed to the very government officials FOF members often opposed. *Id.* ¶¶4, 6.

3. At issue here are six discovery requests, which fall into three buckets.

**Doc. Requests No. 3, 4, and 5:** These requests ask for all communications between Pollak and others related to events at three school board meetings: November 1, 2021 (Request No. 3); January 10, 2022 (Request No. 4); and February 7, 2022 (Request No. 5). Pollak produced some documents in response to these requests and withheld several more under the First Amendment associational privilege. Pollak’s privilege log identifies documents withheld in response to these requests only.

**Interrogatory No. 4:** This interrogatory asked Pollak to describe his role in FOF “to the extent it pertains to the school district and/or its board meetings during the 2021/2022 school year.”<sup>1</sup> (ECF No. 47-6). Pollak objected to this request as overbroad and seeking privileged and irrelevant information.

**Doc. Requests No. 7 and 8:** These requests asked for every post Pollak has made on Facebook about the school board during the 2021/2022 school year (Request. No. 6), including every post made within the private FOF group (Request No. 7).<sup>2</sup> Pollak objected to these requests as irrelevant, overbroad, not proportional to the case, and likely to implicate privileged materials.

4. Defendants ask the Court to compel responses to all six discovery requests.

But they do not address the overbreadth or relevance objections to Interrogatory No. 4, and they do not address the overbreadth, relevance, and proportionality objections to Document Request Nos. 7 and 8. Rather, the defendants focus only on the associational privilege issue.

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<sup>1</sup> The initial version of this interrogatory was broader, asking Pollak to describe his role within FOF and any other parent or community group that discussed “any [of] the issues and/or subject matter addressed in [the] amended complaint.” (ECF No. 47-3 at 5).

<sup>2</sup> As with Interrogatory No. 4, the defendants first requested much broader discovery. Document Request No. 7 appeared to ask for *every single piece of data* stored on Pollak’s Facebook account since 2021. (ECF No. 47-4 at 7–8). And Document Request No. 8 seemed to ask for every post he made on FOF—regardless of topic. The defendants only narrowed these requests after Pollak objected. (*Id.* at 8).

## ARGUMENT

The Court should deny the motion to compel because the associational privilege protects the documents and information the defendants seek, and the defendants cannot meet their burden to overcome the privilege.

## I. THE ASSOCIATIONAL PRIVILEGE APPLIES.

1. The First Amendment protects the “right to associate for the purpose of engaging in those activities protected by the First Amendment -- speech, assembly, petition for the redress of grievances, and the exercise of religion.” *Schalk v. Gallemore*, 906 F.2d 491, 498 (10th Cir. 1990) (quoting *Roberts v. United States Jaycees*, 468 U.S. 609, 617–18 (1984)). Central to that right is the right to associate privately. See *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2382 (2021) (“*AFPP*”). A “vital relationship [exists] between freedom to associate and privacy in one’s associations.” *Id.* (quoting *NAACP v. Alabama*, 357 U.S. 449, 462 (1958)).

To this end, “[t]he Supreme Court has recognized that the First Amendment creates a qualified associational privilege from disclosure of certain information in discovery.” *Wyoming v. U.S.D.A.*, 239 F. Supp. 2d 1219, 1236 (D. Wyo.) (citing *NAACP*, 357 U.S. at 462), *vacated on other grounds*, 414 F.3d 1207 (10th Cir. 2005). The privilege “attaches if a discovery order adversely affects the ability of an organization and its members to collectively advocate for the organization’s beliefs.” *Id.* (citing *NAACP*, 357 U.S. at 462). “Federal courts have consistently held that disclosure of internal associational activities (i.e., membership lists, volunteer lists, . . . and past political activities of members) satisfy this *prima facie* showing because disclosure of these associational activities chills freedom of association.” *Id.*

(citing *NAACP*, 357 U.S. at 462). When that *prima facie* showing is made, the burden “shift[s] to the party seeking disclosure to demonstrate a compelling need for the requested information.” *Id.*

2. Pollak has made the *prima facie* showing that the privilege applies because the defendants have asked for documents and information that would reveal the identity of FOF members, as well as their internal communications about past political activities. *See id.* at 1236. This alone creates an “inevitable” chill on the right to associate—triggering the privilege. *See AFPP*, 141 S. Ct. at 2383; *Wyoming* 239 F. Supp. 2d at 1236. And Pollak would be less likely to associate with FOF if communications about his past political activities and the identities of other FOF members were disclosed to the school board. *See Pollak Decl.* ¶¶ 4, 6.

The defendants argue that the privilege does not apply because they are not seeking the kind of information it protects (membership lists and communications about past political activities). (ECF No. 47 at 7–8). That’s wrong. The defendants have asked for communications about a political protest (Request No. 3) and the plaintiff’s political speech at public meetings (Request Nos. 4 & 5). Those communications would reveal the names of individuals who are members of FOF *and* their discussions about past political activities. That information lies at the core of the associational privilege. *See Wyoming*, 239 F. Supp. 2d at 1236.

The defendants’ second argument is that the privilege only applies to “recognized organization[s]” that are “legitimately attempting to protect” their information. (ECF No. 47 at 7). The defendants do not explain what a “recognized organization”

is under the First Amendment. Nor do they explain what a “legitimate[] attempt[] to protect” one’s associations is. Instead, they simply assert *ipse dixit* that associating on social media or by email surely does not count. Three responses:

*First*, courts cannot “draw, and then redraw, constitutional lines based on the particular media or technology used to disseminate political speech from a particular speaker.” *Citizens United v. FEC*, 558 U.S. 310, 326 (2010). That Pollak associates online or using Facebook has no bearing on the First Amendment.

*Second*, the defendants appear confused about the scope of associational freedom. “[T]he First Amendment protects an individual’s right to *join groups* and *associate with others* holding similar beliefs.” *Dawson v. Delaware*, 503 U.S. 159, 163 (1992) (emphasis added). It is not the right to incorporate, or the right to enter into formal partnership agreements. It applies “[r]egardless of the type of association” at issue. *AFPF*, 141 S. Ct. at 2383. That is why courts have applied the privilege in diverse circumstances. *See, e.g., Beinin v. Ctr. for the Study of Popular Culture*, No. 06-2298, 2007 U.S. Dist. LEXIS 47546, at \*8–11, & n.4 (N.D. Cal. 2007) (associational privilege applies to emails to plaintiff supporting litigation despite lacking a “formal organization” because individuals “share a common stance”); *Demuth v. Fletcher*, No. 08-5093, 2010 U.S. Dist. LEXIS 162962, at \*21–24 (D. Minn. Mar. 18, 2010). (associational privilege extends to all individuals gathered for a political protest).

*Third*, any feared slippery slope from protecting these communications lacks merit. “[I]t is crucial to remember that we are considering the essence of First

Amendment freedoms--the freedom to protest policies and programs to which one is opposed, and the freedom to organize, raise money, and associate with other like-minded persons so as to effectively convey the message of the protest.” *Int’l Action Ctr. v. United States*, 207 F.R.D. 1, 3 (D.D.C. 2002). The defendants concede that FOF consists of individuals who organized a private group on Facebook “to protest mask requirements.” (ECF No. 47 at 7). That kind of political association lies at the First Amendment’s core. *Int’l Action Ctr.*, 207 F.R.D. at 3. Whether the privilege also protects other kinds of non-political associations on social media is simply not a question this Court needs to answer.

## II. THE DEFENDANTS HAVE FAILED TO OVERCOME THE ASSOCIATIONAL PRIVILEGE.

Because the privilege applies, the defendants must show a compelling reason for obtaining their discovery. That requires the Court to consider several factors: (1) relevance; (2) how necessary the information is; (3) whether the party can obtain it from other sources; (4) the nature of the information; and (5) whether the party asserting the privilege put the information at issue. *Grandbouche v. Clancy*, 825 F.2d 1463, 1466–67 (10th Cir. 1987).

*Relevance & necessity.* “When a claim of Associational Privilege is asserted, the relevance standard is more exacting than the minimal showing of relevance under Rule 26(b)(1).” *Wyoming*, 239 F. Supp. 2d at 1242. “The Tenth Circuit has described this as ‘certain relevance,’ which means that the information must go to the ‘heart of the matter.’” *Id.* (citing *Grandbouche*, 825 F.2d at 1467; *Silkwood*, 563 F.2d at 438). The defendants must show that the discovery is crucial to their case. *Id.*

Despite that high burden, the defendants make only a cursory argument for relevance. (ECF No. 47 at 8–9). They claim that Pollak’s communications about the board during the 2021/2022 school year matter because they could show “his intent and purpose in coming to speak at the board meetings.” (*Id.* at 8). The defendants cite three paragraphs in the amended complaint in which Pollak alleges that he spoke at the board’s meetings to advocate against policies he disagreed with (ECF No. 43, ¶¶ 23, 25) and has refrained from speaking again since February 7, 2022, because of the board’s policies (*id.* ¶ 40). Based on those three paragraphs alone, the defendants claim that everything Pollak might have said about the school board during the 2021/2022 school year “is directly relevant to the allegations being made by Pollak.” (ECF No. 47 at 8–9). But the defendants never claim they dispute that Pollak’s reason for speaking is to oppose board policies. Still, even if Pollak’s private communications are relevant, the defendants must show the discovery is *crucial* to the case—and they do not even try. This “scant showing of relevancy” should “end[] the analysis quite quickly.” *Anderson v. Hale*, 2001 U.S. Dist. LEXIS 6127, at \*24 (N.D. Ill. May 10, 2001).<sup>3</sup>

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<sup>3</sup> The defendants’ lukewarm defense of their discovery highlights a troubling part of this dispute. The defendants seem intent on using this litigation to launch a collateral investigation into a protest that disrupted a school board meeting on November 1, 2021. (See ECF 13 at 7 & n.1). What reason justifies seeking communications about that protest (Doc. Request No. 3, ECF No. 47-4 at 5), which occurred more than three months before the events giving rise to this suit? So far, the defendants have yet to offer one. But they insist on using discovery to probe things like Pollak’s “role” with FOF and what he may have said about the protest or the school board around that time.



*Other factors.* The other factors weigh against the defendants as well. Start first with the defendants' claim that they cannot obtain this information elsewhere because serving a subpoena on the FOF administrators would lead to the same privilege problem. True, Pollak would oppose such a subpoena. But it's not clear how the defendants can represent that they have no other option. One of the defendants is Shelta Rambur, *who is an administrator of FOF*. (ECF No. 43 ¶ 14; ECF No. 47-5 at 3). Rambur could provide the Facebook information to her co-defendants (but appears to have chosen not to). And if all the defendants want is discovery into Pollak's "purpose and intent" for speaking at board meetings, they can probe that issue at his deposition. Pollak does not allege that discovery into his intent is off limits. But given the marginal relevance, discovery into the non-privileged evidence of his intent should be enough. And as for whether this is the kind of information the privilege protects—it plainly is. The associational privilege protects communications about political activities and the identity of political associates, which is what the defendants are after. *See supra* at 4–7.

Finally, Pollak has not placed his communications or activities within FOF at issue. He has not alleged that SCSD2 is preventing FOF members from communicating with each other or interfering with their associational interests. *See, e.g., Grandbouche*, 825 F.2d at 1467 (analyzing a claim that the plaintiff "placed certain information into issue" by claiming injuries to his associational interests). Rather, this information is at issue only because the defendants believe it *might* prove something about Pollak's intent.

III. THE COURT SHOULD ALSO DENY THE MOTION AS TO INTERROGATORY NO. 4 AND REQUEST NOS. 7 AND 8 FOR NON-PRIVILEGE REASONS.

The defendants do not address Pollak's non-privilege objections to Interrogatory No. 4 or Doc. Requests No. 7 and 8. The defendants do not explain how Pollak's role in FOF (Interrog. No. 4) is relevant. And they do not argue that requiring Pollak to search through years of posts to identify everything that might relate to SCSD2 or its meetings (Doc. Request Nos. 7 and 8) is proportional to the needs of this case. By defendants' own account, Pollak's "intent and purpose" is a marginal issue. (ECF No. 47 at 9). Although the privilege applies to much of the discovery in these requests, Pollak's non-privilege objections are enough to deny the motion as well.

#### CONCLUSION

The Court should deny the motion or, alternatively, review the documents *in camera* to assess their relevance. If the Court grants the motion, it should deny the request for fees because the defendants made no argument that Pollak's objections are not "substantially justified." Fed. R. Civ. P. 37(a)(5)(A).

Dated: June 1, 2023.

Respectfully submitted by,

/s/ Brett R. Nolan

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<sup>4</sup> Admitted in Kentucky. Not admitted to practice in the District of Columbia. Supervised by D.C. bar attorneys under D.C. App. R. 49(c)(8).

**CERTIFICATE OF SERVICE**

I certify that the foregoing was served on all counsel of record on June 1, 2023, using the Court's CM/ECF system.

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HARRY POLLAK,

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Case No. 2:22-CV-49-ABJ

SUSAN WILSON, in her individual  
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Defendants.

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DECLARATION OF HARRY POLLAK

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I, Harry Pollak, declare the following is based on my personal knowledge:

1. I reside within Sheridan County, Wyoming, where I have lived since September 2021.
2. I am a member of a private political group known as Free Our Faces, or FOF. FOF is an association of parents and other like-minded individuals concerned about education policy and other civic issues in the Sheridan County area. We engage in civic and political advocacy, and we rely primarily on a private Facebook

group to communicate about political issues and strategy. Members sometimes communicate with each other by other means.

3. The FOF Facebook group is not open to the public. The membership of FOF is private, except for the three individuals who act as the group's administrators. Those three individuals are Tiffany Leimback, Shelta Rambur, and Sarah Smothers. The public cannot access the membership list of FOF or otherwise discover the identity of its regular members, and only members of FOF can view the group's internal communications.

4. Confidentiality is an important factor affecting how I participate in the group. We often discuss and advocate about issues that are controversial, which could subject members to public scorn. I can engage more freely in discussions about political issues and strategy because those internal discussions are not publicly available. I would be much less willing to freely share and discuss my ideas with members of FOF if I knew that those conversations were subject to discovery—particularly if those conversations and communications were discoverable by the very individuals and government agencies that I have advocated against. I would also be less likely to engage with the anonymous members of FOF if I knew that doing so would lead to disclosing their identities and communications about controversial political issues to people outside of FOF.

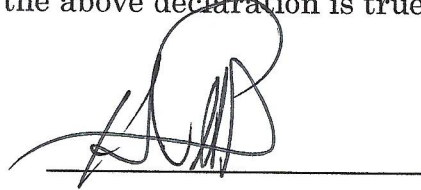
5. I fear threats, harassment, and reprisal from both the government and private parties if my internal communications with FOF members, including those who remain anonymous, are disclosed to outsiders. I am aware, for example, that

the National School Boards Association (“NSBA”) sent a letter to the federal government comparing many parents who protested and advocated against school policies to “domestic terrorism.” *See* Exhibit A at 2 (NSBA Letter). That letter specifically cited a protest in Wyoming that disrupted a school board meeting. *Id.* at 4 & n.17. I am worried about reports that, after the NSBA letter comparing the free speech of parents to domestic terrorism, the federal government began using counterterrorism resources to investigate even parents who peacefully opposed school board policies around the country. *See* Exhibit B (Letter J. Jordan & M. Johnson). And I am also aware that when the local media reported on a group of FOF members suing the school district over its mask mandate, it prompted another comparison to “terrorist[s]” in the public comments. *See Free Our Faces brings Federal Lawsuit Against SCSD#2*, Sheridan Media (Nov. 8, 2021), available at <https://perma.cc/753C-SKDB>.

6. This kind of backlash directed at parents (like myself and the anonymous members of FOF) who want to peacefully advocate for political change makes it less likely that I would have candid discussions with members of FOF if those communications were disclosed to the public or in this litigation. One of the defendants in this case, Susan Wilson, recently made public comments at a school board meeting criticizing those who post comments online critical of the school board and its members. If my communications with other members of FOF were disclosed to Wilson, I would be much less likely to participate in FOF in the future.

I declare under penalty of perjury that the above declaration is true and correct.

Executed on June 1, 2023.

A handwritten signature in black ink, appearing to read 'HARRY POLLAK', is written over a solid horizontal line. The signature is stylized and somewhat cursive.

HARRY POLLAK

# **EXHIBIT A**





National School Boards Association  
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[www.nsba.org](http://www.nsba.org)

September 29, 2021

The Honorable Joseph R. Biden  
President of the United States  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

*Re: Federal Assistance to Stop Threats and Acts of Violence Against Public Schoolchildren, Public School Board Members, and Other Public School District Officials and Educators*

Dear Mr. President:

America's public schools and its education leaders are under an immediate threat. The National School Boards Association (NSBA) respectfully asks for federal law enforcement and other assistance to deal with the growing number of threats of violence and acts of intimidation occurring across the nation. Local school board members want to hear from their communities on important issues and that must be at the forefront of good school board governance and promotion of free speech. However, there also must be safeguards in place to protect public schools and dedicated education leaders as they do their jobs.

NSBA believes immediate assistance is required to protect our students, school board members, and educators who are susceptible to acts of violence affecting interstate commerce because of threats to their districts, families, and personal safety. As our school boards continue coronavirus recovery operations within their respective districts, they are also persevering against other challenges that could impede this progress in a number of communities. Coupled with attacks against school board members and educators for approving policies for masks to protect the health and safety of students and school employees, many public school officials are also facing physical threats because of propaganda purporting the false inclusion of critical race theory within classroom instruction and curricula.<sup>1</sup> This propaganda continues despite the fact that critical race theory is not taught in public schools and remains a complex law school and graduate school subject well beyond the scope of a K-12 class.

On behalf of our state associations and the more than 90,000 school board members who govern our country's 14,000 local public school districts educating more than 50 million schoolchildren, NSBA appreciates your leadership to end the proliferation of COVID-19 in our communities and our school districts. We also appreciate recent discussions with White House and U.S. Department of Education staff on many critical issues facing public schools, including threats school officials are receiving.

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<sup>1</sup> The Armed Conflict Location & Event Data Project (ACLED), "Fact Sheet: Demonstrations over Critical Race Theory in the United States," July 14, 2021, [https://acleddata.com/acleddatanew/wp-content/uploads/2021/07/ACLED\\_Fact-Sheet\\_CRT-Demos\\_2021.pdf](https://acleddata.com/acleddatanew/wp-content/uploads/2021/07/ACLED_Fact-Sheet_CRT-Demos_2021.pdf).

*The leading advocate for public education*

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In addition, we applaud your actions to restore resources to school districts that have not yet received their education stabilization funding through the Project SAFE (Supporting America's Families and Educators) grant program for coronavirus recovery efforts, including the use of face masks and other precautions to help prevent COVID-19 infections among students and educators. Now, we ask that the federal government investigate, intercept, and prevent the current threats and acts of violence against our public school officials through existing statutes, executive authority, interagency and intergovernmental task forces, and other extraordinary measures to ensure the safety of our children and educators, to protect interstate commerce, and to preserve public school infrastructure and campuses.

While local and state law enforcement agencies are working with public school officials in several communities to prevent further disruptions to educational services and school district operations, law enforcement officials in some jurisdictions need assistance – including help with monitoring the threat levels. As these threats and acts of violence have become more prevalent – during public school board meetings, via documented threats transmitted through the U.S. Postal Service, through social media and other online platforms, and around personal properties – NSBA respectfully asks that a joint collaboration among federal law enforcement agencies, state and local law enforcement, and with public school officials be undertaken to focus on these threats.<sup>2</sup> NSBA specifically solicits the expertise and resources of the U.S. Department of Justice, Federal Bureau of Investigation (FBI), U.S. Department of Homeland Security, U.S. Secret Service, and its National Threat Assessment Center<sup>3</sup> regarding the level of risk to public schoolchildren, educators, board members, and facilities/campuses. We also request the assistance of the U.S. Postal Inspection Service to intervene against threatening letters and cyberbullying attacks that have been transmitted to students, school board members, district administrators, and other educators.

As these acts of malice, violence, and threats against public school officials have increased, the classification of these heinous actions could be the equivalent to a form of domestic terrorism and hate crimes. As such, NSBA requests a joint expedited review by the U.S. Departments of Justice, Education, and Homeland Security, along with the appropriate training, coordination, investigations, and enforcement mechanisms from the FBI, including any technical assistance necessary from, and state and local coordination with, its National Security Branch and Counterterrorism Division, as well as any other federal agency with relevant jurisdictional authority and oversight. Additionally, NSBA requests that such review examine appropriate enforceable actions against these crimes and acts of violence under the Gun-Free School Zones Act, the PATRIOT Act in regards to domestic terrorism, the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, the Violent Interference with Federally Protected Rights statute, the Conspiracy Against Rights statute, an Executive Order to enforce all applicable federal laws for the

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<sup>2</sup> The Herald Editorial Board, *HeraldNet*, “Editorial: Mob’s actions at school board meeting unacceptable,” September 1, 2021, <https://www.heraldnet.com/opinion/editorial-mobs-actions-at-school-board-meeting-unacceptable/>.

<sup>3</sup> U.S. Secret Service, National Threat Assessment Center, “Averting Targeted School Violence,” March 2021, <https://www.secretservice.gov/sites/default/files/reports/2021-03/USSS%20Averting%20Targeted%20School%20Violence.2021.03.pdf>.

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protection of students and public school district personnel, and any related measure. As the threats grow and news of extremist hate organizations showing up at school board meetings is being reported, this is a critical time for a proactive approach to deal with this difficult issue.

These threats or actual acts of violence against our school districts are impacting the delivery of educational services to students and families, as many districts receive federal funds and subsidies for services to millions of students with disabilities, health screenings and supplemental supports for disadvantaged students, child nutrition, broadband connectivity, educator development, school safety activities, career and technical education, and more. School board meetings have been disrupted in California<sup>4</sup>, Florida<sup>5</sup>, Georgia<sup>6</sup>, and other states<sup>7</sup> because of local directives for mask coverings to protect students and educators from COVID-19.

An individual was arrested in Illinois for aggravated battery and disorderly conduct during a school board meeting.<sup>8</sup> During two separate school board meetings in Michigan<sup>9</sup>, an individual yelled a Nazi salute in protest to masking requirements, and another individual prompted the board to call a recess because of opposition to critical race theory.

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<sup>4</sup> Elizabeth Marie Himchak, *Poway News Chieftain/ Rancho Bernardo News Journal*, "Protesters disrupt Poway Unified board meeting, cause its adjournment," September 9, 2021, <https://www.sandiegouniontribune.com/pomerado-news/news/schools/story/2021-09-09/protesters-disrupt-poway-unified-board-meeting-force-its-ag>.

<sup>5</sup> Ryan McKinnon, *Sarasota Herald-Tribune*, "Sarasota school board may limit public input after some meetings get disorderly," September 20, 2021, <https://www.heraldtribune.com/story/news/education/2021/09/20/sarasota-school-board-may-limit-public-input-after-meetings-gone-wild/8417784002/>.

<sup>6</sup> Alia Malik, *The Atlanta Journal-Constitution*, "Anti-mask crowd disrupts Gwinnett school board meeting," May 21, 2021, <https://www.ajc.com/news/anti-mask-crowd-disrupts-gwinnett-school-board-meeting/IYO7R6GHJ5DTLEFCQHER7V3GBA/>

<sup>7</sup> Julie Wootton-Greener, *Las Vegas Review-Journal*, "School board meeting turns contentious over COVID-19 policies," August 12, 2021, <https://www.reviewjournal.com/local/education/school-board-meeting-turns-contentious-over-covid-19-policies-2418652/>.

WAVY.com, "Norfolk school officials, police monitoring threats made toward Norview schools," September 21, 2021, <https://www.wavy.com/news/local-news/norfolk/norfolk-school-officials-police-monitoring-threats-made-toward-norview-schools/>.

WBTV-Charlotte, "Gov. Roy Cooper addresses 'threats, bullying, intimidation' at school board meetings over mask requirements," September 21, 2021, <https://www.wbvtv.com/2021/09/21/gov-roy-cooper-address-fight-against-covid-19-north-carolina/>.

<sup>8</sup> WGEM, "Mendon man arrested following disruption at Unity School board meeting," September 2, 2021, <https://wgem.com/2021/09/02/mendon-man-arrested-following-disruption-at-unity-school-board-meeting/>.

<sup>9</sup> Steve Neavling, *Detroit Metro Times*, "Nazi salute, insults hurled at chaotic Birmingham schools meeting over mask mandate," August 19, 2021, <https://www.metrotimes.com/news-hits/archives/2021/08/19/nazi-salute-insults-hurled-at-ruckus-birmingham-schools-meeting-over-mask-mandate>.

Kalie Marantette, *WLNS.com*, "Grand Ledge school board goes into recess due to public 'disruption,'" June 16, 2021, <https://www.wlns.com/news/grand-ledge-school-board-goes-into-recess-due-to-public-disruption/>.

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In New Jersey<sup>10</sup>, Ohio<sup>11</sup>, and other states<sup>12</sup>, anti-mask proponents are inciting chaos during board meetings. In Virginia<sup>13</sup>, an individual was arrested, another man was ticketed for trespassing, and a third person was hurt during a school board meeting discussion distinguishing current curricula from critical race theory and regarding equity issues. In other states including Washington<sup>14</sup>, Texas<sup>15</sup>, Wisconsin<sup>16</sup>, Wyoming<sup>17</sup>, and Tennessee<sup>18</sup>, school boards have been confronted by angry mobs and forced to end meetings abruptly. A resident in Alabama, who proclaimed himself as “vaccine police,” has called school administrators while filming himself on Facebook Live.<sup>19</sup>

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<sup>10</sup> Joe Strupp, *Asbury Park Press*, “NJ mask mandate for students sparks school board disruption, suspends meeting,” August 26, 2021, <https://www.app.com/story/news/education/in-our-schools/2021/08/26/nj-school-mask-mandate-sparks-disruption-boe/5585283001/>.

<sup>11</sup> Maia Belay, *Fox8*, “Sheriff deputies called to tense Nordonia Hills school board meeting due to mask policy,” August 31, 2021, <https://fox8.com/news/sheriff-deputies-called-to-tense-nordonia-hills-school-board-meeting-due-to-mask-policy/>.

<sup>12</sup> Pete Bannon, *The Delaware County Daily Times*, “Mask protest brings police to Garnet Valley School Board meeting,” August 25, 2021, Updated August 26, 2021, <https://www.delcotimes.com/2021/08/25/mask-protest-brings-cops-to-garnet-valley-school-board-meeting/>.

Brenley Goertzen, *Salon.com*, “Anti-mask mob swarms school board meeting,” August 12, 2021, <https://www.salon.com/2021/08/12/anti-mask-mob-swarm-school-board-meeting/>.

<sup>13</sup> Drew Wilder, Jackie Bensen, Andrea Swalec and NBC4 Washington Staff, *NBCWashington.com*, “‘The Meeting Has Degenerated’: 1 Arrest, 1 Injury at Loudoun Schools Meeting on Equity,” June 22, 2021, Updated June 23, 2021, <https://www.nbcwashington.com/news/local/northern-virginia/loudoun-school-board-transgender-student-policy-race-equity/2708185/>.

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<sup>14</sup> Emily Gilbert, *Whidbey News Times*, “Oak Harbor school board clears the room after audience shouts disrupt meeting,” August 13, 2021, <https://www.whidbeynewstimes.com/news/oak-harbor-school-board-clears-the-room-after-audience-shouts-disrupt-meeting/>.

<sup>15</sup> Talia Richman and Brayden Garcia, *The Dallas Morning News*, “‘Critical race theory’ roils Fort Worth school board meeting as Texas braces for continued fight,” June 22, 2021, <https://www.dallasnews.com/news/education/2021/06/22/critical-race-theory-roils-fort-worth-school-board-meeting-as-texas-braces-for-continued-fight/>.

<sup>16</sup> WBAY news staff and Jason Zimmerman, *WBAY.com*, “Oshkosh School Board meeting postponed after protesters disrupt it, argument breaks out,” August 25, 2021, Updated August 26, 2021, <https://www.wbay.com/2021/08/25/oshkosh-school-board-meeting-called-off-after-protesters-enter-board-members-walk-out/>.

<sup>17</sup> Margaret Austin, *Wyoming Tribune Eagle* via Wyoming News Exchange, *Pinedale Roundup*, “School board meeting over COVID stopped after disruption,” August 4, 2021, <https://pinedaleroundup.com/article/school-board-meeting-over-covid-stopped-after-disruption>.

<sup>18</sup> Jackie Delpilar, *WZTV Nashville*, “Anti-mask protesters show lack of empathy at recent Middle Tennessee school meetings,” September 12, 2021, <https://fox17.com/news/local/anti-mask-protesters-show-lack-of-empathy-at-recent-middle-tennessee-school-meetings>.

<sup>19</sup> Aubrey Bailey, *WHNT.com*, “‘If you give one more shot, you yourself will be executed’ Alabama man tells Missouri pharmacists,” August 24, 2021, <https://whnt.com/news/alabama-news/if-you-give-one-more-shot-you-yourself-will-be-executed-alabama-man-tells-missouri-pharmacists/>.

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Other groups are posting watchlists against school boards and spreading misinformation that boards are adopting critical race theory curriculum and working to maintain online learning by haphazardly attributing it to COVID-19.<sup>20</sup>

In Ohio, an individual mailed a letter to a school board member labeling the return address on the envelope from a local neighborhood association and then enclosing threatening hate mail from another entity.<sup>21</sup> This correspondence states that, “We are coming after you and all the members on the ... BoE [Board of Education].” This hate mail continues by stating, “You are forcing them to wear mask—for no reason in this world other than control. And for that you will pay dearly.” Among other incendiaries, this same threat also calls the school board member a “filthy traitor,” implies loss of pension funds, and labels the school board as Marxist. Earlier this month, a student in Tennessee was mocked during a board meeting for advocating masks in schools after testifying that his grandmother, who was an educator, died because of COVID-19.<sup>22</sup> These threats and acts of violence are affecting our nation’s democracy at the very foundational levels, causing school board members – many who are not paid – to resign immediately and/or discontinue their service after their respective terms.<sup>23</sup> Further, this increasing violence is a clear and present danger to civic participation, in which other citizens who have been contemplating service as either an elected or appointed school board member have reconsidered their decision.

NSBA believes public discussions and transparency by local school board members are important for the safe and effective operations of schools.<sup>24</sup> It is vital that public discourses be encouraged in a safe and open environment, in which varying viewpoints can be offered in a peaceful manner. Our children are watching the examples of the current debates and we must encourage a positive dialogue even with different opinions. However, with such acute threats and actions that are disruptive to our students’ well-being, to the safety of public school officials and personnel, and to interstate commerce, we urge the federal government’s intervention against individuals or hate groups who are targeting our schools and educators.

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<sup>20</sup> Nick Surgery, *Documented*, “TPUSA launches project targeting school board members,” August 20, 2021, <https://substack.documented.net/p/tpusa-school-board-watchlist>

<sup>21</sup> Lindsey Mills, WBNS, “‘Disturbing’: Worthington school board member receives threats for masks in schools,” September 21, 2021, <https://www.10tv.com/article/news/local/worthington-school-board-member-receives-threats-for-masks-in-schools/530-f3c04240-76b4-456b-aad9-8555397b5427>.

<sup>22</sup> Kim Bellware, *The Washington Post*, “Student mocked at school board meeting after sharing that his grandmother died of covid-19,” September 10, 2021, [https://www.washingtonpost.com/nation/2021/09/10/grady-knox-tennessee/?utm\\_campaign=wp\\_main&utm\\_medium=social&utm\\_source=facebook&fbclid=IwAR29rIKzLY0tz4p0yB5VJDk\\_n\\_oIj5AJp6oiEvzJC1oRAYsMMMOPb8EvjY](https://www.washingtonpost.com/nation/2021/09/10/grady-knox-tennessee/?utm_campaign=wp_main&utm_medium=social&utm_source=facebook&fbclid=IwAR29rIKzLY0tz4p0yB5VJDk_n_oIj5AJp6oiEvzJC1oRAYsMMMOPb8EvjY).

<sup>23</sup> Andy Humbles, *The Nashville Tennessean*, “Jon White resigns as Wilson County School Board member,” September 8, 2021, <https://www.tennessean.com/story/news/local/wilson/2021/09/08/jon-white-resigns-wilson-county-school-board-member/5750949001/>.

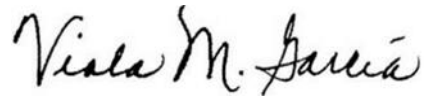
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<sup>24</sup> National School Boards Association and AASA, The School Superintendents Association, “NSBA, AASA Issue Joint Statement Calling for End to Threats and Violence Around Safe School Opening Decisions,” September 22, 2021, <https://www.nsba.org/News/2021/end-threats-violence-joint-statement>.

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NSBA is committed to working with you and your Administration as a partner to address this crisis affecting America's public schools, and greatly appreciates your prompt attention to our requests. We stand ready to work with you.

Respectfully,



Viola M. Garcia, EdD  
President



Chip Slaven, Esq.  
Interim Executive Director & CEO

# **EXHIBIT B**

ONE HUNDRED SEVENTEENTH CONGRESS

**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON THE JUDICIARY  
2138 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6216

(202) 225-3951  
judiciary.house.gov

May 11, 2022

The Honorable Merrick B. Garland  
Attorney General  
Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20535

Dear Attorney General Garland:

In sworn testimony before this Committee, you denied that the Department of Justice or its components were using counterterrorism statutes and resources to target parents at school board meetings.<sup>1</sup> We now have evidence that contrary to your testimony, the Federal Bureau of Investigation has labeled at least dozens of investigations into parents with a threat tag created by the FBI's Counterterrorism Division to assess and track investigations related to school boards. These cases include investigations into parents upset about mask mandates and state elected officials who publicly voiced opposition to vaccine mandates. These investigations into concerned parents are the direct result of, and would not have occurred but for, your directive to federal law enforcement to target these categories of people.

On October 4, 2021, in response to a request from the National School Boards Association that the federal government use counterterrorism tools, including the Patriot Act, to target parents at school board meetings, you issued a memorandum directing the FBI to address these threats.<sup>2</sup> The press release accompanying your memorandum highlighted the FBI's National Threat Operations Center to serve as a snitch-line for tips about parents at school board meetings.<sup>3</sup> By October 20, the FBI had operationalized your directive. In an FBI-wide email, the FBI's Counterterrorism Division and Criminal Division announced the creation of a new threat tag—EDUOFFICIALS—and directed all FBI personnel to apply it to school board-related threats.<sup>4</sup>

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<sup>1</sup> *Oversight of the United States Department of Justice: Hearing Before the H. comm. on the Judiciary*, 117th Cong. (2021) (testimony from Hon. Merrick Garland, Atty Gen., U.S. Dep't of Justice).

<sup>2</sup> Memorandum from Atty Gen. Merrick Garland, U.S. Dep't of Justice, Partnership Among Federal, State, Local, Tribal, And Territorial Law Enforcement to Address Threats Against School Administrators, Board Members, Teachers, and Staff (Oct. 4, 2021).

<sup>3</sup> Press Release, U.S. Dep't of Justice, Justice Department Addresses Violent Threats Against School Officials and Teachers (Oct. 4, 2021).

<sup>4</sup> Email from Carlton Peebles, Deputy Assistant Director, Criminal Investigative Div., Fed. Bureau of Investigation, to FBI\_SACS (Oct. 20, 2021).



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We have learned from brave whistleblowers that the FBI has opened investigations with the EDUOFFICIALS threat tag in almost every region of the country and relating to all types of educational settings. The information we have received shows how, as a direct result of your directive, federal law enforcement is using counterterrorism resources to investigate protected First Amendment activity. For example:

- In one investigation begun following your directive, the FBI's ██████ Field Office interviewed a mom for allegedly telling a local school board “we are coming for you.” The complaint, which came into the FBI through the National Threat Operations Center snitch-line, alleged that the mom was a threat because she belonged to a “right wing mom’s group” known as “Moms for Liberty” and because she “is a gun owner.” When an FBI agent interviewed the mom, she told the agent that she was upset about the school board’s mask mandates and that her statement was a warning that her organization would seek to replace the school board with new members through the electoral process.
- The FBI's ██████ Field Office opened an investigation, subsequent to your directive, into a dad opposed to mask mandates. The complaint came in through the National Threat Operations Center snitch-line and alleged that the dad “fit the profile of an insurrectionist” because he “rails against the government,” “believes all conspiracy theories,” and “has a lot of guns and threatens to use them.” When an FBI agent interviewed the complainant, the complainant admitted they had “no specific information or observations of . . . any crimes or threats,” but they contacted the FBI after learning the Justice Department had a website “to submit tips to the FBI in regards to any concerning behavior directed toward school boards.”
- In another case initiated after your directive, the FBI's ██████ Field Office opened an investigation into Republican state elected officials over allegations from a state Democratic party official that the Republicans “incited violence” by expressing public displeasure with school districts’ vaccine mandates. This complaint also came into the FBI through the National Threat Operations Center snitch-line.

This whistleblower information is startling. You have subjected these moms and dads to the opening of an FBI investigation about them, the establishment of an FBI case file that includes their political views, and the application of a “threat tag” to their names as a direct result of their exercise of their fundamental constitutional right to speak and advocate for their children. This information is evidence of how the Biden Administration is using federal law enforcement, including counterterrorism resources, to investigate concerned parents for protected First Amendment activity. Although FBI agents ultimately—and rightly—determined that these cases did not implicate federal criminal statutes, the agents still exerted their limited time and resources investigating these complaints. This valuable law-enforcement time and resources could have been expended on real and pressing threats.

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These investigations into concerned parents were the direct result of your October 4 directive to the FBI. Each of the cases was initiated following your directive. Each of the complaints came into the FBI through the same snitch-line—the National Threat Operations Center—highlighted in the press release accompanying your October 4 memorandum. One complainant even told an FBI agent that they reported the tip to the FBI because of the snitch-line, despite having “no specific information” about any actual threat. These facts lead us to conclude that these investigations into concerned parents, and likely many more like them, would not have occurred but for your directive.

Parents have an undisputed right to direct the upbringing and education of their children,<sup>5</sup> which includes voicing their strong opposition to controversial curricula at local schools. This whistleblower information raises serious concerns that your October 4 memorandum will chill protected First Amendment activity as parents will rightfully fear that their passionate advocacy for their children could result in a visit from federal law enforcement. You have refused to rescind your October 4 memorandum and its anti-parent directives. In light of this new whistleblower information, we again call on you to rescind your October 4 memorandum.

Committee Republicans have been investigating the Biden Administration’s misuse of law-enforcement resources to target concerned parents since last fall.<sup>6</sup> You have failed to substantively respond to our requests for documents and your sworn testimony to the Committee is now contradicted by whistleblower information. Please be assured that Committee Republicans will not let this matter drop. Accordingly, we request the following information:


1. Produce all documents and materials identified in our letters to Departmental components dated November 1, 2021, November 2, 2021, November 3, 2021, and November 18, 2021, immediately; and
2. Take all reasonable steps immediately to preserve all records responsive to our letters to Department components.

In addition, we remind you that whistleblower disclosures to Congress are protected by law and that we will not tolerate any effort to retaliate against whistleblowers for their disclosures.



Jim Jordan  
Ranking Member

Sincerely,



Mike Johnson  
Ranking Member  
Subcommittee on the Constitution,  
Civil Rights and Civil Liberties

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<sup>5</sup> *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (citing *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)).

<sup>6</sup> Letter from House Judiciary Committee Republicans to Hon. Christopher A. Wray, Dir., Fed. Bureau of Investigation (Nov. 3, 2021).

The Honorable Merrick B. Garland

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cc: The Honorable Jerrold L. Nadler  
Chairman