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results matter

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July 10, 2024

The Hon. David J. Smith, Clerk of Court
United States Court of Appeals, Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303

Re: *Moms for Liberty - Brevard County, Fla. v. Brevard Public Schools*, U.S. Court of Appeals, Eleventh Circuit No. 23-10656

Notice of Supplemental Authority, Fed. R. App. P. 28(j), via ECF

Dear Mr. Smith:

The "personally directed comments" portion of BPS' Policy is viewpoint-neutral and constitutional. (Appellees' Br. 38-39.) In *Vidal v. Elster*, 602 U.S. 286 (2024), the Supreme Court found the "names clause" of the Lanham Act viewpoint-neutral. *Id.* at 293-94, 311 (Kavanaugh, J., concurring in part & Barrett, J. concurring in part), 325 (Sotomayor, J., concurring in part). "No matter the message a registrant wants to convey, the names clause prohibits marks that use another person's name without consent," even "when the trademark's message is neutral or complimentary." *Id.* at 293-94. Thus, the Patent and Trademark Office refused registration of trademarks such as "Welcome, President Biden" and "I Stump for Trump" "because they contained another's name without his consent, not because of the viewpoint conveyed." *Id.* at 294 n.2. Prohibiting the use of another's name without consent "protects the reputation of the individual." *Id.* at 306 (cleaned up).

The names clause is comparable to BPS's Policy precluding "personally directed comments." This guideline "is not based on the speech's content, but because members do not possess the power of the Board." (Doc. 46 at 5.) BPS' Chair interrupted personally directed comments regardless of viewpoint, neutrally applying the Policy to protect persons absent from BPS meetings and to maintain the safety or decorum of meetings. (Doc. 91-1 at 153:11-155:3, 159:17-25, 161:14-24, 167:10-13, 169:5-13, 171:12-20, 185:10-15.) The viewpoint-neutral Policy is constitutional in a limited public forum. *See Barrett v. Walker Cty. Sch. Dist.*, 872 F.3d 1209, 1225 (11th Cir. 2017).

*Vidal* also illustrates the Supreme Court's division regarding the comparison of limited public forum law with the trademark context. Justices Barrett, Kagan, Sotomayor, and Jackson

found limited public forum case law informative to the issues in *Vidal*. Justices Thomas, Alito, and Gorsuch disagreed. *Vidal*, 602 U.S. at 308-309, 317-18. This divergence undermines Appellants' reliance on *Tam* and *Brunetti*. However, if this Court considers *Tam* and *Brunetti* in this case, it should also consider *Vidal* as part of a "trilogy." *See id.* at 326 (Sotomayor, J., concurring in part).

This Court should affirm.

Sincerely,

/s/ Gennifer L. Bridges

Gennifer L. Bridges

cc: All counsel (via ECF)