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results matter

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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

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

Dear Mr. Smith:

In *McDonough v. Garcia*, 90 F.4th 1080 (11th Cir. 2024), the Court was bound by prior precedent to apply a traditional public forum standard to a city council meeting.

Prior precedent requires this Court to apply the limited public forum standard to school board meetings. *See, e.g.*, *Barrett v. Walker Cnty. Sch. Dist.*, 872 F.3d 1209, 1225 (11th Cir. 2017); *Dyer v. Atlanta Ind. Sch. Sys.*, 852 F. App'x 397, 401 (11th Cir. 2021). These determinations are binding unless overruled by this Court en banc or by the Supreme Court. *See U.S. v. Vega-Castillo*, 540 F.3d 1235, 1236 (11th Cir. 2008).

Appellee's policy was drafted to comply with the limited public forum standard and with FCC regulations as required by state law, as the meetings are broadcasted on public television. § 350.81(3)(a), Fla. Stat. (2022).

The Policy complies with the limited public forum analysis because it is "reasonable and viewpoint-neutral"—it does not restrict any particular viewpoint, and BPS' Chair applied the Policy "evenhandedly." *See Cleveland v. City of Cocoa Beach, Fla.*, 221 F. App'x 875 (11th Cir. 2007). Viewpoint discrimination "targets not subject matter, but *particular views* taken by speakers on a subject." *Rosenberger v. Rector & Visitors of Univ. of Vir.*, 515 U.S. 819, 829 (1995). (emphasis added). Speakers at BPS meetings may deliver any opinion in a *manner* that is not abusive, obscene, or personally-directed.[1]

[1] M4L's own policy prohibits abusive, offensive, or harassing behavior.

The lenient and infrequent application of the Policy to Appellants—only four out of 109 occurrences—did not objectively chill Appellants' speech. No person was trespassed, and the only time an Appellant was asked to leave a meeting, Cholewa caused disruption and threatened the Chair, "I will fight you." (Doc. 90-4 at 29:4-15; Doc. 91-1 at 27:12-20.) Applying the Policy to ensure safety and order in a limited public forum does not give a "heckler's veto" absent evidence that the Policy is a pretext for viewpoint discrimination. *See Seattle Mideast Awareness Campaign v. King Cnty.*, 781 F.3d 489, 502-503 (9th Cir. 2015). No such evidence exists.

This Court should affirm.

Sincerely,

/s/ Gennifer L. Bridges

Gennifer L. Bridges

cc: All counsel (via ECF)