

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

MOM FOR LIBERTY –
WILSON COUNTY, TN, *et al.*,

Plaintiffs,

v.

WILSON COUNTY BOARD OF
EDUCATION, *et al.*

Defendants.

Case No: 3:23-cv-211

Judge Eli Richardson

Magistrate Judge Luke A. Evans

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

Robin Lemons expected hostility when she appeared at a Wilson County school board meeting to complain that school officials ignored and mishandled a sexual misconduct allegation involving her fourth-grade daughter. And that's exactly what she got. As soon as Lemons aimed her criticism at the Wilson County Director of Schools, the Board cut her off. Board Chairman Jamie Farough offered up an obviously pretextual reason for doing so—at the outset of her remarks, Lemons violated a widely ignored rule that the Board never enforced—and told Lemons to “stop talking.” So Lemons left the podium without finishing her comments about how school administrators failed to protect her daughter.

While the Board invites citizens to speak at its meetings about any topic related to school policy, it has historically made doing so a difficult and intimidating process—one that has prevented the Board's sharpest critics from speaking freely. The Board has warned speakers not to criticize school officials too harshly. And it has demanded that speakers publicly announce their home address no matter how sensitive or controversial their remarks may be.

These policies violate the First Amendment. The Wilson County Board of Education cannot open its meetings for public comment and then censor those who levy the strongest or most controversial disapproval, employing policies that intimidate and discourage individuals from speaking freely. This Court should put an end to it all by declaring these speech restrictions unconstitutional and enjoining the defendants from further enforcement.

FACTUAL BACKGROUND

The public-comment period at Wilson County Board of Education meetings

The Wilson County Board of Education holds regular business meetings twice a month. Exhibit 3, Farough Depo., pp. 12:20–22. These meetings are open to the public, Tenn. Code

Ann. § 8-44-102(a), and each includes a period for public comment, Exhibit 1, Policy 1.404 (Apr. 16, 2023). During this time, the Board invites individuals and groups to speak about issues related to school policy and procedure. *Id.*

The Board has historically relied on a mix of formal and informal rules to police the boundaries of its public-comment period. Officially, Policy 1.404 governs public comments. *Id.* But in practice, the only rules that matter are those the Board chair decides to enforce—regardless of any written or unwritten policy. *See* SUMF 3, 4, 6. When the plaintiffs filed suit, the Board had two rules relevant here that governed public comments. The first rule, previously embodied in Policy 1.404, required individuals to publicly announce their name and address before speaking. Doc. 17-4, PageID#131. The second rule prohibited speakers from making “abusive” comments. Doc. 21-1, PageID#193; Doc. 17-2, PageID#119–20, 123 (¶¶6, 20). This second rule did not appear in Policy 1.404. Doc. 17-4, PageID#131. It instead lived in a “script” that the Board chair read to speakers during each meeting. Doc. 21-1, PageID#193. That script also informed speakers that the chair could terminate anyone’s remarks for failing to abide by the Boards “guidelines.” *Id.*

The Board chills the plaintiffs’ speech and censors Robin Lemons

Plaintiff Amanda Price began worrying about her local school district in early 2021. Doc. 17-2, PageID#118–19 (¶2). This prompted her to start a Wilson County chapter of Moms for Liberty (“M4L”), an advocacy group that seeks to unify, educate, and empower parents to defend their parental rights. *Id.* (¶¶2–3). Price and other M4L members began attending and speaking at Board meetings. *Id.* at PageID#119–20, 123–24 (¶¶4, 6, 21). They advocated for change on a variety of issues affecting Wilson County schools. *See, e.g.*, Exhibit 4, Price Interrog. Resp., pp. 13–14. But Price “never felt comfortable sharing [her] honest, uncensored views.” Doc. 17-2,

PageID#123–24 (¶21). She wanted, for example, to call the Board’s policies “abusive” when she spoke at a meeting on August 2, 2021. Exhibit 4, Price Interrog. Resp., pp. 13. But she decided not to use that language because she “worried that the Board chair would censor [her].” *Id.* The rule against abusive speech caused Price to modify her remarks several other times over the past five years. *Id.* pp. 13–15.

Robin Lemons is a member of Moms for Liberty who started watching Board meetings in 2022. Doc. 17-1, PageID#110 (¶¶2–3). Eventually, she felt compelled to speak after experiencing the failures of several Wilson County school officials firsthand. *Id.* at PageID#113 (¶13). The problems centered on an incident involving Lemons’s fourth-grade daughter, who informed Lemons that she had been sexually propositioned by another student at school. *Id.* (¶¶13–14). Lemons alerted the school principal but later learned that the principal failed to investigate the incident or report it to the proper state agency. *Id.* (¶14). Lemons also discovered that the Director of Schools lied about whether the incident had been reported when asked about it by a Board member. *Id.* So Lemons decided to speak to the Board directly about these problems. *Id.* (¶13).

Lemons planned to speak at the October 3, 2022, meeting. *Id.* But she worried the Board would censor her for making “abusive” comments if her remarks were “too harsh or critical.” *Id.* at PageID#114 (¶16); Exhibit 5, Lemons Interrog. Resp., p. 13. So she spent “significant time revising . . . [her] planned comments and toning down the criticism [she] wanted to make.” Exhibit 5, Lemons Interrog. Resp., p. 13. Had it not been for the ban on abusive speech, Lemons would have called the Director of Schools “a fucking coward for trying to hide the attempted sexual assault on [her] daughter and for punishing her for it.” *Id.* pp. 13–14. She would have also

called him “a creep” and said he’s “no better than Jeffrey Epstein.” *Id.* p.14. But she refrained from such criticism out of fear that she’d be “censored for making ‘abusive’ remarks.” *Id.*

At the beginning of the public-comment period on October 3, 2022, Defendant Jamie Farough, the then-chair of the Board, read her usual warning informing speakers they must state their address and cannot make abusive comments. Doc. 17-1, PageID#114–15 (¶18). As usual, the warning informed speakers that the Board can “terminate” anyone’s remarks if they do not adhere to the Board’s “guidelines.” *Id.* The individual who spoke before Lemons declined to give her address, and the chair allowed her to speak without interruption. *Id.* at PageID#115 (¶19). When Lemons approached the podium, Farough asked Lemons whether she needed her to repeat the instruction. Doc. 17-13 at 38:34–42 (1:13:52–1:14:00).¹ Lemons answer, “No,” and then explained that “for privacy concerns and my situation, I’m not going to disclose my address.” *Id.* at 38:42–50 (1:14:02–08). Farough allowed Lemons to continue because of “concern for her safety.” Exhibit 3, Farough Depo., pp. 42:13–15, 43:17–19.

Lemons began describing the incident in which her young child was propositioned for sex by another student. She spoke for almost a full minute uninterrupted without using any names or other identifying information—about a third of her allotted time. Doc. 17-13 at 38:52–39:39 (1:14:10–1:14:57). But then Mike Jennings, the county attorney and legal advisor to the Board—interrupted her. He questioned whether the incident had been referred to the appropriate agency

¹ A video of the October 3, 2022, meeting is available at <http://bit.ly/3X1ZPop>. Doc. 17-1, PageID#112 (¶12). Because the Board’s videos do not contain a timestamp, this brief cites to the time marker of the videos (and video excerpts) filed in the record. Video excerpts from 2022 were filed as part of the plaintiffs’ prior motion for a preliminary injunction at Doc. Nos. 17-5 through 17-15. The full videos are available online, *see* Doc. 17-2, PageID#120–23 (¶¶7–18), and citations in the parenthetical refer to the time marker in those full length videos. The plaintiffs have filed additional videos from 2023 with their motion for summary judgment, marked as Exhibits 6, 7, 8, and 11.

and stated his view that Lemons shouldn't talk about it for confidentiality reasons. *Id.* at 39:36–53 (1:14:54–15:11).

Lemons clarified that there would be no privacy or confidentiality issues because she did not intend to disclose any names. *Id.* at 40:02–09 (1:15:20–27). Rather, she wanted to discuss the school officials who failed her daughter. At this point, Farough did not stop Lemons from continuing. Lemons went on to explain that the principal “failed to report [the incident] to [the Department of Children’s Services], failed to investigate it whatsoever.” *Id.* at 40:14–25 (1:15:32–43). Again, Farough did not interrupt. So Lemons continued, turning her criticism to the Director of Schools, Jeff Luttrell, who was sitting next to Farough: “Mr. Luttrell was told about this, lied about it being report—” *Id.* at 40:24–29 (1:15:43–47).

At that point Farough cut her off.

When Lemons mentioned Luttrell, Farough invoked Lemons’s earlier refusal to disclose her address as an excuse for terminating her speaking time: “Ms. Lemons, you also refused to adhere to the guidelines for giving your address, so we’ve asked you to stop talking today, because there’s, from my understanding there’s more than one involved. And so we’ve asked that you stop, for now, and let the process continue.” *Id.* at 40:28–45 (1:15:46–16:03); Doc. 17-1, PageID#116 (¶25). Farough identified no other rule or guideline that Lemons “refused to adhere to” other than failing to announce her address. Doc. 17-13 at 40:28–45 (1:15:46–16:03); Doc. 17-1, PageID#116 (¶26).

After the October 3 meeting, the chilling effect created by the Board’s speaking policies amplified. Farough continued enforcing both rules, even after learning that the abusive-speech rule was unlawful (and sharing that information with other board members). SUMF 16; SUMF 17. And in January of the next year, Farough started interrupting more speakers to demand that

they state their address after another board member complained about the rules being inconsistently enforced. SUMF 17.

Price and Lemons had previously self-censored to avoid violating the rule against abusive speech. SUMF 12; SUMF 14. But after October 3, both plaintiffs worried that the Board would start invoking the address requirement to cut off speakers when criticism goes too far or targets the wrong person. SUMF 13; SUMF 15. Price spoke one more time before deciding that she'd rather stop speaking altogether than continue to "censor[] [her] own views." Exhibit 4, Price Interrog. Resp. pp.14–15. Lemons has not spoken since she was censored. Exhibit 5, Lemons Interrog. Resp., pp.14–15. This caused both women to miss the opportunity to speak at several meetings, including several meetings in 2023 and 2024 when the Board considered matters such as whether to sanction one of its members and whether to remove inappropriate library books from the school system. Exhibit 4, Price Interrog. Resp., pp.14–15; Exhibit 5, Lemons Interrog. Resp., pp.14–15. Both plaintiffs continue to worry that the wrong comment or the wrong criticism will end the same way it did for Lemons on October 3, 2022. SUMF 20.

The Board re-writes its rules in response to this lawsuit

The plaintiffs sued the Board in March 2023 and moved for a preliminary injunction. The Board responded to the suit by denying that any of its policies violate the First Amendment, Doc. No. 20, PageID#173–74 (¶¶11–18), a position it continues to maintain today, Doc. No. 43, PageID#312. Within weeks, however, the Board sought to head off the litigation by rescinding the challenged policies. First, Farough adopted a new script to read at each meeting that no longer ordered parties to state their address or refrain from making "abusive" remarks. SUMF 18. Farough made this change unilaterally, without a vote, because the Board's written policies did not require her to read the old script. Exhibit 3, Farough Depo., pp. 105:8–106:08. Second,

the Board revised Policy 1.404 to remove the address rule. SUMF 19. At the time, no board member discussed the policy revision or explained his or her reasons for voting for the change. Farough later acknowledged that she could have stopped enforcing the abusive-speech ban on her own, without a vote, but that she only stopped doing so because this lawsuit was filed. Exhibit 3, Farough Depo., pp. 88:8–17; 105:8–106:08.

ARGUMENT

I. THE PLAINTIFFS’ CLAIMS ARE NOT MOOT.

A. Voluntary cessation does not apply.

Although the Board rescinded the two challenged policies after the plaintiffs filed suit, the claims are not moot. That’s because a defendant’s “voluntary cessation does not moot a case unless it is absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” *West Virginia v. EPA*, 597 U.S. 697, 720 (2022) (internal quotation omitted). The Board bears a “heavy” burden to prove that a “once-live case has become moot.” *Id.* at 719. The Board cannot meet that burden here for three reasons.

First, timing. A defendant changing its behavior in response to litigation “raises suspicions that its cessation is not genuine.” *Speech First, Inc. v. Schlissel*, 939 F.3d 756, 769 (6th Cir. 2019). Here, the Board altered its unlawful policies only after the plaintiffs sued. SUMF 18; SUMF 19. The Board continues to defend the legality of its former policies, Doc. No. 43, PageID#312, and the Board’s representative explained that it rescinded its rules only because of this litigation. Exhibit 2, WCS Depo., pp. 66:21–25.² That fact “increases” the Board’s already heavy burden “to prove that its change is genuine.” *Speech First*, 939 F.3d at 769.

² Derrick Green testified on behalf of the Board under Fed. R. Civ. P. 30(b)(6), and so his testimony about the purpose of the address rule is binding on the Board. *See* Exhibit 14, Notice of 30(b)(6) Deposition for Wilson County board of Education; Exhibit 2, WCS Depo., pp. 6:9–15.

Yet the timing issue gets even worse. Months before this lawsuit, Farough personally notified the other board members about case law from the Sixth Circuit that cast doubt on the legality of the ban on abusive speech. *See* Exhibit 9, Farough Board Emails. Removing that rule did not require a vote. SUMF 6. All that it took was for Farough to decide not to read the script banning abusive comments at future meetings. Exhibit 3, Farough Depo., pp. 88:8–17; 105:8–106:08. Yet she continued to do so for months—stopping only after the plaintiffs sued. SUMF 17; SUMF 18; SUMF 19; Exhibit 3, Farough Depo., pp. 106:4–25.

Second, the Board continues defending the constitutionality of both rules. After responding to the plaintiffs’ preliminary injunction, the Board stated that it “maintain[s] that [its] policies and practices have at all times existed within the proper bounds of the First Amendment both facially and as applied to the Plaintiffs.” Doc. No. 43, PageID#312. It does not concede that its policies were unconstitutional, and it does not concede that invoking the address rule to silence Lemons violated the First Amendment. Exhibit 2, WCS Depo., pp. 45:8–46:19. The Board’s failure to concede that its policies “encroach[ed] on” the plaintiffs’ First Amendment rights weighs against mootness. *Speech First*, 939 F.3d at 770.

Third, the ease with which the Board can (and does) alter its policies and practices is problematic. When a change in policy arises from “ad hoc, discretionary, and easily reversible actions,” courts give it little weight. *Id.* at 768. The changes to the address rule and abusive-speech rule fit the bill, and the problems are exacerbated by the history of the chair inconsistently exercising her unilateral authority.

Formally changing the address rule required a simple vote. There was no “lengthy internal process,” *id.* at 768–69, and no one on the Board even had to explain what it was doing or why it

did so,³ and a majority of the Board today were not even on the Board that voted for the change in 2023. Exhibit 3, Farough Depo., pp. 118:17–24. That process is so easy the Board has revised the same policy four more times just since the lawsuit was filed. *See* Exhibit 1, Policy 1.404 (Apr. 16, 2026).

Rescinding the abusive-speech rule was even easier. The rule never appeared in a formal policy, and so the Board’s voluntary cessation was nothing more than Farough deciding to change the script she read out loud. SUMF 6; SUMF 18. No one voted on the change. Exhibit 3, Farough Depo., pp. 105:8–106:8. Farough could have stopped announcing the rule whenever she wanted, but despite learning that the rule was unconstitutional, she kept enforcing it. *Id.* at 88:8–17; 105:8–106:08. And because of that discretionary authority, nothing stops the current chair or a future chair from deciding on a whim to resurrect it. SUMF 6. The rescission of the abusive-speech ban could not have been more “ad hoc, discretionary, and easily reversible”—exactly the kind of change that deserves no weight under the voluntary cessation doctrine. *Speech First*, 939 F.3d at 768.

The plaintiffs expect the Board to argue that it matters that this lawsuit has been pending for three years and the Board has not gone back to its old ways. Exhibit 2, WCS Depo., pp. 73:17–25. But the fact that “a defendant suspends its challenged conduct and then carries on litigating for some specified period” does not render a case moot. *FBI v. Fikre*, 601 U.S. 234, 243 (2024). In *Fikre*, the government had stopped acting unlawfully eight years earlier—but the Supreme Court still held that it was not enough for the government to meet its “formidable burden” to establish the case was moot. *Id.* at 241–43. That was in part because the government offered no

³ *See* 05/01/23 Board Meeting at 2:20:39–2:21:20, available at <https://bit.ly/43Y84FI>; 06/05/23 Board Meeting at 2:55:10–2:55:59, available at <https://bit.ly/3oXUYtx>.

evidence that it would not do “the same or similar things in the future.” *Id.* at 242. And here the problem is even worse: the Board concedes it has no power to even make such a commitment to bind future boards. SUMF 5. The bare fact that the Board rescinded its rules in response to this litigation and has not reimposed them while the litigation has remained ongoing does not offer any support for their mootness claim.

B. Mootness does not affect the plaintiffs’ claim for nominal damages.

Even if the plaintiffs’ request for injunctive relief is moot, mootness does not affect their claims for retrospective relief, including nominal damages. *Uzuegbunam v. Preczewski*, 592 U.S. 279, 282–83, 284 (2021). All three plaintiffs request nominal damages for past harm. Doc. 1, PageID#29. For Lemons, that past harm includes not just the censorship on October 3, but also the chilled speech she experienced before and after that meeting from the Board’s unlawful policies. SUMF 14; SUMF 15; *see Chelsey Nelson Photography, LLC v. Louisville/Jefferson Cnty. Metro Gov’t*, No. 3:19-cv-851, 2025 US. Dist. LEXIS 193655, at *15–22 (W.D. Ky. Sept. 30, 2025) (citing *Kareem v. Cuyahoga Cnty. Bd. of Elections*, 95 F.4th 1019, 1027 (6th Cir. 2024)). Price and M4L likewise can seek nominal damages to “redress[]” their “retrospective harm” caused by the chilling effect from the Board enforcing its rules. SUMF 12, 13; *Kareem*, 95 F.4th 1027. So even if the Court were to conclude that the requests for injunctive relief are moot, that would not affect the live controversy over the plaintiffs’ past harm for which they seek nominal damages.

II. THE ABUSIVE-SPEECH RULE AND ADDRESS-RULE ARE FACIALLY UNCONSTITUTIONAL.

“The Free Speech Clause limits the government’s power to regulate speech on public property.” *Am. Freedom Def. Initiative v. Suburban Mobility Auth.*, 978 F.3d 481, 485 (6th Cir. 2020). Those limits “var[y] depending on the forum where the speech occurs.” *Ison v. Madison*

Loc. Sch. Dist. Bd. of Educ., 3 F.4th 887, 893 (6th Cir. 2021). A limited public forum exists where the government opens its property “for certain groups or for the discussion of certain topics.” *Id.* (quoting *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995)). The public-comment period of a school board meeting is a limited public forum. *See Lowery v. Jefferson Cnty. Bd. of Educ.*, 586 F.3d 427, 432 (6th Cir. 2009).

While the government can restrict the topics discussed at a limited public forum (*i.e.*, “school policies and procedures”), any speech restrictions must be “reasonable in light of the purpose served by the forum” and viewpoint neutral. *Ison*, 3 F.4th at 893 (internal quotations omitted). That means the government “must be able to articulate some sensible basis” for its rule. *Minn. Voters All. v. Mansky*, 585 U.S. 1, 16 (2018). And regardless of its rationale, the government cannot “disfavor[] certain points of view.” *Ison*, 3 F.4th at 893 (internal quotation omitted).

A. The abusive-speech rule discriminates based on viewpoint.⁴

The abusive-speech rule discriminates based on viewpoint—and the question is not close. The Sixth Circuit considered a virtually identical rule just five years ago in *Ison*. There, the Court held that a rule barring “abusive” speech amounts to “impermissible viewpoint discrimination because . . . [it] prohibit[s] speech purely because it disparages or offends.” *Ison*, 3 F.4th at 894 (quoting *Matal v. Tam*, 582 U.S. 218, 243 (2017)). So too here. The Board’s ban on abusive comments violates the First Amendment.

B. The abusive-speech rule is vague and overbroad.

1. *The abusive-speech rule is unconstitutionally vague.*⁵

The Fourteenth Amendment prohibits enforcing vague laws. *See Miller v. City of Cincinnati*, 622 F.3d 525, 539 (6th Cir. 2010). The First Amendment likewise forbids enforcing restrictions

⁴ Doc. No. 1 (Counts Five and Six).

⁵ Doc. No. 1 (Count Eight).

that are so vague they chill protected speech. *Id.* The question is whether “a person of ordinary intelligence can readily identify” how it applies. *Id.* (internal quotations omitted). This ensures that people receive “fair warning of proscribed conduct,” and it “protects citizens against the impermissible delegation of basic policy matters for resolution on an ad hoc and subjective basis,” which risks “arbitrary and discriminatory application.” *Id.* (internal quotations omitted).

The abusive-speech rule is unconstitutionally vague because no “person of ordinary intelligence can readily identify the applicable standard for inclusion” within the prohibition. *Id.* The Board does not define “abusive.” SUMF 4. Nor could the Board give a clear definition during its deposition. Exhibit 2, WCS Depo., pp. 55:18–56:14; 61:8–62:2; 63:6–64:10. The Board’s representative first testified that he believed “abusive” was a “synonym” referring to “the criminal statute on disruptive behavior,” even though the word “abusive” is not in that statute. *Id.* at 55:18–55:25. But when pressed further, the Board’s representative stated that he was only making a “personal inference” about what the term meant based on a “feeling” he got after talking to the Director of Schools about it. *Id.* at 56:1–24. He eventually acknowledged that the meaning of the rule would change based on who was the chair because it was “very subjective.” *Id.* at 63:16–64:10; SUMF 4.

That’s a problem because not everyone shares the Board representative’s “feeling” about what words are “abusive.” In 2022, a concerned citizen emailed Farough over remarks that Price’s husband made at a recent meeting. Exhibit 10, March 2022 Emails to Farough. She believed that his remarks were “abusive” and was “disappointed that [it] wasn’t addressed at the time.” *Id.* Farough could not say whether she agreed because it depended too much on “context.” Exhibit 3, Farough Depo., pp. 97:1–99:13. Yet she acknowledged that the Board chair “obviously” disagreed with the citizen because he or she did not stop the speaker. *Id.* at 100:12–

21. And the Board’s representative, as discussed above, testified that he cannot say who was right under the rule because it depends on “what the chair at the time would *perceive* as abuse.” Exhibit 2, WCS Depo., pp. 61:8–62:2 (emphasis added). So whether an individual’s comments are “abusive” will turn entirely on the view of whoever happens to hold the gavel at that time. SUMF 4; Exhibit 2, WCS Depo., pp. 63:16–64:10; Exhibit 10, March 2022 Emails to Farough.

Reasonable minds may differ about what constitutes abusive speech—but the First Amendment does not tolerate that kind of vague restriction.

2. *The abusive-speech rule is unconstitutionally overbroad.*⁶

The First and Fourteenth Amendment also prohibit enforcing substantially overbroad laws that punish protected speech. *See Speet v. Schuette*, 726 F.3d 867, 872–73 (6th Cir. 2013). Speech regulations may not “sweep unnecessarily broadly and thereby invade the area of protected freedoms.” *NAACP v. Alabama*, 377 U.S. 288, 307 (1964). “The showing that a law punishes a substantial amount of protected free speech, judged in relation to the statute’s plainly legitimate sweep, suffices to invalidate *all* enforcement of that law, until and unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression.” *Virginia v. Hicks*, 539 U.S. 113, 118–19 (2003) (citation modified). Prohibiting “words offensive to some who hear them . . . sweeps too broadly” to be constitutional and “is easily susceptible to improper application.” *Gooding v. Wilson*, 405 U.S. 518, 527–28 (1972) (citation modified).

The abusive-speech rule bans whatever speech the chair decides is too offensive or harsh or insulting. Exhibit 2, WCS Depo., pp. 63:16–64:10. While it might prohibit unprotected speech, such as true threats or defamation, the prohibition sweeps up protected political speech, pure

⁶ Doc. No. 1 (Count Nine).

opinions, or true statements of fact that the Board chair might otherwise decide crosses the line. By sweeping up vast amounts of protected speech, the rule is overbroad and thus facially unconstitutional.

C. The address rule is unreasonable.⁷

Speech restrictions in a limited public forum must be “reasonable in light of the purpose served by the forum.” *Ison*, 3 F.4th at 893 (quotation omitted). But there is “no conceivable governmental interest” that justifies requiring individuals to publicly announce their address before speaking. *See Bd. of Airport Comm’rs v. Jews for Jesus*, 482 U.S. 569, 575 (1987). And so the address rule violates the First Amendment.

The Board conceded that it lacked any reason for this requirement. SUMF 21. No law or policy requires, for example, that speakers reside in Wilson County. Exhibit 2, WCS Depo., pp. 24:8–12. Nor is the Board aware of any time it denied a speaker the opportunity to speak based on where he or she lived. *Id.* at 24:13–17. Yet even if that were not true, the Board has ways to verify residential status privately, before a speaker takes the podium. *Id.* at 21:10–22:13. And when asked why the Board would require speakers to publicly announce their address, the Board’s representative put it bluntly: “I do not know.” *Id.* at 22:14–17, 27:1–4.

The First Amendment requires the Board “to articulate some sensible basis” for any speech regulation at a limited public forum. *See Mansky*, 585 U.S. at 16. The Board’s concession that it cannot explain any purpose at all is fatal.

That conclusion follows before even considering the chilling effect this rule imposes. “Forcing commenters to disclose their home address before speaking on controversial or hot-button issues seems particularly likely to silence a would-be speaker.” *Moms for Liberty* –

⁷ Doc. No. 1 (Counts One & Three).

Wilson Cnty. v. Wilson Cnty. Bd. of Education, 155 F.4th 499, 517 (6th Cir. 2025) (Thapar, J., joined by Murphy, J., concurring). That’s true here. Lemons refrained from speaking after Farough ordered her to stop talking because she refused to disclose her address, and Price has engaged in similar self-censorship to avoid the same fate. SUMF 12; SUMF 13; SUMF 14; SUMF 15. The rule thus undermines “the purpose served by the forum,” *Ison*, 3 F.4th at 893, because it needlessly prevents some citizens from doing the very thing that the public-comment period exists for—speaking on matters of public concern. And it imposes those costs despite “bear[ing] little relationship” to the forum’s purpose. *Miller*, 622 F.3d at 536.

D. The plaintiffs are entitled to nominal damages and a permanent injunction.

1. *The plaintiffs are entitled to nominal damages for past harm from the Board enforcing its rules and chilling their speech.*

Because the ban on abusive speech and the address rule facially violate the First Amendment, the plaintiffs are entitled to nominal damages for the harm caused by the Board’s past enforcement and threats of enforcement.

Price and Lemons both self-censored in response to the Board’s repeated threats to enforce the abusive-speech rule. SUMF 12; SUMF 13; SUMF 14; SUMF 15. Price, for example, worried that calling the school’s Covid mask mandate “abusive” might lead to her being censored, so she refrained from doing so—even though she wanted to. Exhibit 4, Price Interrog. Resp., p. 13. She also refrained from accusing board members and staff of abusing children (and referring to them as “groomers”) for fear of being censored. *Id.* Lemons likewise modified her speech on October 3, because she worried that the Board would cut her off for violating the abusive-speech rule. Exhibit 5, Lemons Interrog. Resp., pp. 13–14.

“Self-censorship” is “a harm that can be realized even without an actual prosecution.”

Chelsey Nelson Photography, LLC v. Louisville/Jefferson Cnty. Metro Gov’t, 624 F. Supp. 3d

761, 781 (W.D. Ky. 2022) (quoting *Virginia v. Am. Booksellers Ass’n*, 484 U.S. 383, 393 (1988)). And nominal damages are a proper remedy to “redress[]” the “retrospective harm” a plaintiff experiences when she has already self-censored in response to a credible threat of enforcement. *Kareem*, 95 F.4th 1027. In fact, nominal damages are mandatory when the plaintiff establishes a constitutional injury that does not result in actual money damages. *Sutton v. Cleveland Bd. of Educ.*, 958 F.2d 1339, 1352 (6th Cir. 1992). The fact that Price and Lemons modified their speech by refraining from using the harsh language they would have preferred to avoid having their remarks terminated for being “abusive” entitles them to nominal damages.

Price and Lemons also both self-censored in response to Farough enforcing the address rule on October 3. SUMF 13; SUMF 15. Since Farough forced Lemons to stop speaking because she “refused” to state her address, Lemons has refrained from speaking again. Exhibit 5, Lemons Interrog. Resp., pp. 14–15; Exhibit 12, Lemons Depo., pp. 79:22–80:13. And after speaking one more time, in which she toned down her remarks to avoid a similar fate as Lemons, Price decided to stop speaking rather than to speak inauthentically. Exhibit 4, Price Interrog. Resp., pp. 14–15. That self-censorship is an additional reason that plaintiffs are entitled to nominal damages.

The Board will likely respond that Farough never enforced the address rule against Lemons because it wasn’t her true motivation, even though she explicitly invoked the rule when ordering Lemons to sit down. *See* Exhibit 3, Farough Depo. 67:10–15. But even if Farough’s denial is credible, it is irrelevant to the chilled-speech claims. Farough never “publicly disavowed” her statement that Lemons had to sit down because she refused to state her address. *See Kareem*, 95 F.4th at 1027. She didn’t disavow it privately to Lemons, either. Exhibit 3, Farough Depo., pp. 82:6–9. In fact, Farough actually started interrupting more and more speakers if they did not state

their address after another Board member commented on the prior inconsistency just two months later. *See* Exhibit 4, Price Interrog. Resp., pp. 16–17; Exhibit 5, Lemons Interrog. Resp., pp. 15–16; Exhibit 6, January 18, 2023 Board Meeting Video at 2:14–44, 8:20–8:44, 14:08–14:32; 30:27–31:00; Exhibit 7, February 6, 2023 Board Meeting Video at 43:08–43; 1:04:46–50; 108:49–1:09:08; Exhibit 8, March 13, 2023 Board Meeting Video at 19:00–35; 24:50–55; 30:18–24.⁸

The only question here is whether the plaintiffs’ self-censorship was objectively reasonable. *See Kareem*, v. 95 F.4th at 1027. No one disputes that Farough identified Lemons’s refusal to state her address as at least one reason she stopped Lemons from speaking. Lemons and Price thus reasonably believed it could happen again and thus refrained from speaking. That credible threat of enforcement chilled their speech, which entitles them to nominal damages. *Id.*

Separately, Lemons is also entitled to nominal damages for the actual enforcement on October 3. Farough’s claim that she did not enforce the address rule against Lemons is exactly the kind of “internally contradictory deposition testimony” that “cannot, by itself, create a genuine dispute of material fact.” *Bush v. Compass Grp. USA, Inc.*, 683 F. App’x 440, 449 (6th Cir. 2017) (collecting cases). Farough first claimed that the reason she did not initially stop Lemons for failing to state her address was because of “concern for her safety.” Exhibit 3, Farough Depo., pp. 43:9–19; *see also id.* 64:22–24 (“[S]he had said that she was concerned out of her personal situation. I didn’t stop her because she said that.”). She emphasized that again by explaining that she “did not enforce [the address rule] against [Lemons] because she said she was afraid for her safety” and “there needs to be some grace in that position.” *Id.* at 44:12–15. But

⁸ The videos filed as Exhibits 6, 7, 8, and 11 are also accessible online: <https://bit.ly/4bWgNPh> (Exhibit 6); <https://bit.ly/4hHazX7> (Exhibit 7); <https://bit.ly/45w1KIt> (Exhibit 8); and <https://bit.ly/4wwj9wD> (Exhibit 11).

then Farough said that she did not believe the chair even had the authority to stop someone from speaking for failing to state her address because it's "more of a guideline." *Id.* at 71:4–9; 93:1–8. That testimony contradicted her earlier claim that the rule was not "optional." *Id.* at 42:6–9. And then she later claimed that even though she doesn't believe the chair can enforce the address rule because it is a guideline, *id.* at 71:4–9, 93:1–8, some guidelines can be enforced, *id.* 91:21–92:2. When asked how someone might learn which guidelines are enforceable and which aren't, Farough said she did not know. *Id.* at 94:11–20; 95:4–11.⁹

So Farough started her deposition by saying she chose not to enforce the address rule to protect Lemons's safety. She then shifted to saying she could not have enforced it all because it's only a guideline. And then she conceded that some guidelines can be enforced, even though this one cannot (but could not say what the dividing line was). All that, of course, comes in the wake of a video that indisputably shows Farough stating that she was interrupting Lemons at least in part because she "refused to adhere to the guidelines of giving [her] address." Doc. 17-13 at 40:28–45 (1:15:46–16:03). "In the face of such contradictions, no reasonable fact finder would credit her allegation that" she did not enforce the address rule against Lemons on October 3. *Reich v. City of Elizabethtown*, 945 F.3d 968, 981 (6th Cir. 2019). Lemons is thus entitled to nominal damages for the actual censorship on October 3, in addition to the chilling effect it caused.

2. *The plaintiffs are entitled to a permanent injunction.*

"A party is entitled to a permanent injunction if it can establish that it suffered a constitutional violation and will suffer continuing irreparable injury for which there is no

⁹ Despite Farough's contradictory claims otherwise, the Board concedes that the chair has the authority to terminate remarks if a speaker does not abide by the Board's policies, including the former requirement to state one's address. Exhibit 2, WCS Depo., pp. 32:16–33:10.

adequate remedy at law.” *Saig v. City of Dearborn*, 641 F.3d 727, 733 (6th Cir. 2011). The ban on abusive speech and the address rule facially violate the First Amendment, and “[t]he loss of First Amendment freedoms, for even minimal periods of time,’ amounts to irreparable injury.” *Sisters for Life, Inc. v. Louisville-Jefferson Cnty.*, 56 F.4th 400, 408 (6th Cir. 2022) (quoting *Roman Catholic Diocese v. Cuomo*, 592 U.S. 14, 19 (2020)). Price and Lemons both continue to want to speak at Board meetings. SUMF 20; Doc. 17-1, PageID#116–17 (¶¶28–29); Doc. 17-2, PageID#125 (¶25–26); Exhibit 12, Lemons Depo., pp. 81:19–25; Exhibit 13, Price Depo., pp. 67:25–68:5. Because their claims are not moot, and the Board has not shown that its unlawful action “could not reasonably be expected to recur,” *West Virginia*, 597 U.S. at 720, the plaintiffs are entitled to a permanent injunction to prevent further constitutional harm after this litigation ends.

III. THE DEFENDANTS VIOLATED THE FIRST AMENDMENT WHEN THEY ENFORCED THE ADDRESS RULE AGAINST LEMONS.¹⁰

Even if the address rule did not facially violate the First Amendment, the defendants’ enforcement against Lemons on October 3 was unconstitutional viewpoint discrimination because they invoked the rule to stop her from criticizing specific officials, including the Director of Schools. SUMF 11.

An as-applied challenge requires showing that Lemons “was prevented from speaking while someone espousing another viewpoint was permitted to do so.” *McCullen v. Coakley*, 573 U.S. 464, 485 n.4 (2014). Throughout 2022, the Board heard 45 comments across its 12 regularly scheduled meetings. Doc. 17-2, PageID#126 (¶28). In 26 of those comments, the speaker never disclosed an address. *Id.* Yet the chair only enforced the address rule once, when Lemons began

¹⁰ Doc. No. 1 (Counts Two and Four).

criticizing the Director of Schools—an individual who happened to be sitting next to the chair who interrupted her. *Id.*

The discriminatory enforcement is apparent from how it actually happened. When Lemons first declined to state her address, she was treated just like any other speaker and allowed to continue speaking for almost a minute. Doc. 17-13 at 38:52–39:39 (1:14:10–1:14:57). Then, after the Board’s attorney interrupted and said she should stop talking for confidentiality purposes, Lemons explained that she would not be saying any student names, and Farough still allowed her to continue to speak. *Id.* at 40:02–15 (1:15:20–33). Farough terminated Lemons’s speaking time when she began criticizing the Director of Schools, Jeff Luttrell, by invoking her earlier refusal to state her address as grounds for ordering her to sit down. *Id.* at 40:24–45 (1:15:43–1:16:04).

Farough denies that this is why she terminated Lemons’s remarks, but this is “internally contradictory deposition testimony” that “cannot, by itself, create a genuine dispute of material fact” on summary judgment. *Bush*, 683 F. App’x at 449. Consider first that Farough denies she enforced the address rule *at all*, even though she clearly identifies that rule when ordering Lemons to sit down. Exhibit 3, Farough Depo., pp. 41:20–42:1; 67:10–15. Farough also denies she ever enforced it later, even though—after October 3—she repeatedly interrupted speakers and demanded that they state their address on multiple occasions. *See, e.g.*, Exhibit 6, January 18, 2023 Board Meeting Video at 2:14–44, 14:08–14:32; 30:27–31:00; Exhibit 7, February 6, 2023 Board Meeting Video at 43:08–43; 1:04:46–50; 108:49–1:09:08; Exhibit 8, March 13, 2023 Board Meeting Video at 19:00–35; 24:50–55; 30:18–24. Not to mention that, as discussed above, Farough repeatedly changed her story during her deposition, claiming first that she chose not to enforce the rule when Lemons started speaking, stating later that she could not enforce it because the rule was a “guideline,” and then shifting again to state that some guidelines can be enforced.

Her self-serving, inconsistent attempts to avoid liability are not enough to create a genuine factual dispute when the evidence is otherwise clear: “After permitting some commenters to proceed without disclosing their addresses, [the chair] appears to have enforced the requirement midway through a controversial comment, precisely because it was likely to deter the speaker.” *Moms for Liberty*, 155 F.4th at 517 (Thapar, J., and Murphy, J., concurring). That kind of discriminatory enforcement violates the First Amendment and entitles Lemons to nominal damages.

CONCLUSION

The Court should enter summary judgment in Plaintiffs’ favor.

Dated: July 30, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the above document was served electronically through the Court's CM/ECF system upon counsel for the defendants identified below on July 30, 2023. I further certify that on July 30, 2023, I served copies of the videos marked as Exhibits 6, 7, 8, and 11 electronically and by U.S. mail upon the same counsel listed below.

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