

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

**MOMS FOR LIBERTY – WILSON
COUNTY, TN; ROBIN LEMONS; and
AMANDA DUNAGAN-PRICE,**

PLAINTIFFS

V.

No. 23-CV-00211

**Wilson County Board of Education,
also known as Wilson County Schools;
Jamie Farough, individually and in her
official capacity as a member of the
Wilson County Board of Education;
Kimberly McGee, in her official capacity
as a member and Vice Chairman of the
Wilson County Board of Education;
Melissa Lynn, in her official capacity
as a member of the Wilson County
Board of Education; Beth Meyers, in her
official capacity as a member of the
Wilson County Board of Education;
Joseph Padilla, in his official capacity
as a member of the Wilson County
Board of Education; Greg Hohman, in
his official capacity as a member of the
Wilson County Board of Education;
and, Donnie Self, in his official
capacity as a member of the
Wilson County Board of Education**

DEFENDANTS.

**DEFENDANTS' LIST OF UNDISPUTED MATERIAL FACTS IN MOTION FOR
SUMMARY JUDGMENT**

Now come Defendants, Wilson County Board of Education, also known as Wilson County Schools; Jamie Farough, individually and in her official capacity as a member of the Wilson County

Board of Education; Kimberly McGee, in her official capacity as a member and Vice Chairman of the Wilson County Board of Education; Melissa Lynn, in her official capacity as a member of the Wilson County Board of Education; Beth Meyers, in her official capacity as a member of the Wilson County Board of Education; Joseph Padilla, in his official capacity as a member of the Wilson County Board of Education; Greg Hohman, in his official capacity as a member of the Wilson County Board of Education; and, Donnie Self, in his official capacity as a member of the Wilson County Board of Education, by and through their undersigned counsel, pursuant to Rule 56 of the Federal Rules of Civil Procedure, respectfully submit the following Memorandum of Law in support of their Motion for Summary Judgment:

I. INTRODUCTION AND LEGAL BACKGROUND

This case arises from Plaintiffs' challenge to policies and practices of the Defendants that have not existed for over three years. The Plaintiffs initially filed this First Amendment action to challenge three historical public-comment policies or practices of the Wilson County Board of Education: (1) a requirement that speakers verbally disclose their home address before speaking ("address-disclosure requirement"); (2) a verbal admonition prohibiting "abusive" comments directed toward Board members or school employees ("abusive-comments restriction"); and, (3) a requirement that public comments given under a specific mechanism be in the "public interest." Within weeks of the initiation of this action, the Defendants finalized action they had already begun prior to this litigation and amended their policy and otherwise ceased enforcement of the address-disclosure requirement and the abusive-comments restriction. Likewise, Defendants eventually also amended their policy to remove the public interest requirement as well. To that end, the Court recently entered an Order dismissing the Plaintiffs' claims related to the public interest requirement. Only the Plaintiffs' claims regarding the address-disclosure requirement and the abusive comments restriction remain but, as the filing of this Motion demonstrates, they shouldn't. These remaining

claims, based solely upon policies and practices that have not existed for over three years, do not present a live case or controversy to the Court. They are moot in every sense of the word and, as a result, their dismissal is the only proper avenue before the Court.

A. Overview of Claims and Nature of the Challenges

As to these remaining claims in the Plaintiffs' Complaint that have not been dismissed, Plaintiffs assert both facial and as-applied challenges. It is critical at the outset to delineate the precise scope of each challenge, as conflating them distorts both the legal standard and the factual record.

The abusive-comments restriction is challenged only facially; that is, Plaintiffs contend that the provision is unconstitutional in every conceivable application. *See United States v. Salerno*, 481 U.S. 739, 745 (1987). This is the most demanding standard in constitutional law: a facial challenge fails unless the challenger demonstrates "that no set of circumstances exists under which the provision would be valid." *Id.*

The address-disclosure requirement receives both a facial and as applied challenge by the Plaintiffs. The as-applied challenge to the address-disclosure requirement relates solely to Plaintiff Lemons' speech at the October 3, 2022 Board meeting. Critically, the as-applied challenge is asserted by only one of the three Plaintiffs, Robin Lemons, and arises from a single, isolated incident in which Ms. Farough affirmed the Board's legal counsel's decision to stop Ms. Lemons' comments after legal counsel advised that Ms. Lemons was inappropriately speaking about an ongoing DCS child abuse case involving multiple children. The organizational Plaintiff Moms for Liberty and Plaintiff Dunagan-Price assert only facial challenges. While Ms. Lemons' as-applied challenges fail as the policy did not motivate the complained of conduct, all of the remaining facial challenges run into the same roadblock erected by the Defendants over three years ago: the Defendants voluntarily

ceased these policies and practices over three years ago and, further, there is no reasonable, plausible evidence of recurrence in the future.

B. Governing Legal Framework

The First Amendment prohibits governmental abridgment of free speech. U.S. Const. Amend. I. However, the government's power to regulate speech depends significantly upon the nature of the forum in which speech occurs. *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 800 (1985).

School board meetings that allot time for public comment constitute *limited public fora*. *Lowery v. Jefferson Cnty. Bd. of Educ.*, 586 F.3d 427, 432 (6th Cir. 2009). This Court so held at the outset of this litigation in connection with Defendants' opposition to Plaintiffs' motion for a preliminary injunction, and the Sixth Circuit affirmed that determination. *Moms for Liberty - Wilson Cnty. v. Wilson Cnty. Bd. of Educ.*, 155 F.4th 499 (6th Cir. 2025).

In a limited public forum, the government may impose two categories of restrictions: (1) content-based restrictions that are reasonable in light of the forum's purpose and viewpoint-neutral; and (2) content-neutral time, place, and manner restrictions that are narrowly tailored to serve a significant governmental interest and leave open ample alternative channels for communication. *Ison v. Madison Local Sch. Dist. Bd. of Educ.*, 3 F.4th 887, 893 (6th Cir. 2021). The government is *not* required to allow any and all speech in a limited public forum. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

The Sixth Circuit has expressly recognized that school boards may "set reasonable, viewpoint-neutral limits on the subject matter of and the process by which members of the public may provide comment, as well as on the time, place, and manner of said comments." *Moms for Liberty*, 155 F.4th at 508. Without such authority, members of the public could "raise idiosyncratic, personal complaints and air irrelevant grievances, thereby derailing or delaying a school board's

work, frustrating the purpose of the meeting, and denying other citizens the chance to make their voices heard.” *Id.*

II. FACTS

The Defendants direct the Court to their contemporaneously filed Statement of Undisputed Material Facts, which establishes the relevant, undisputed facts in this action.

III. ARGUMENT

A. Standard of Review

Federal Rule of Civil Procedure 56 provides that summary judgment shall be granted when “the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a) and (c). *See also Ohio Citizen Action v. City of Englewood*, 671 F.3d 564, 569 (6th Cir. 2012); *Estate of Smithers ex rel. Norris v. City of Flint*, 602 F.3d 758, 761 (6th Cir. 2010). If the burden of persuasion at trial would be on the non-moving party, the moving party can meet its burden of production by either: (1) submitting affirmative evidence that negates an essential element of the nonmoving party's claim; or, (2) demonstrating to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. *Vaughn v. United States*, 34 F.Supp.3d 773, 776 (N.D. Ohio 2014), *aff'd*, 635 F. App'x 216 (6th Cir. 2015). Conclusory assertions, supported only by Plaintiff's own opinions, cannot withstand a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-52 (1986). Rather, “the nonmoving party must put forth ‘significant probative’ evidence in support” of his position in order to avoid summary judgment. *Wright v. Murray Guard, Inc.*, 455 F.3d 702, 706 (6th Cir. 2006). *See also Anderson*, 477 U.S. at 249-50.

B. Plaintiffs’ 42 U.S.C. § 1983 First Amendment Claims Fail as a Matter of Law.

42 U.S.C. § 1983 provides that every person who, acting under color of state law, deprives another of rights secured by the Constitution and laws of the United States shall be liable to the injured party. 42 U.S.C. § 1983. To prevail on a claim under § 1983, Plaintiffs must establish the deprivation of a constitutional right caused by a person acting under color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

The undisputed record establishes that Ms. Price repeatedly addressed the Board concerning controversial matters, including curriculum issues, removal of books from school libraries, criticism of school officials, and even read pornographic, sexually explicit content aloud without being prevented from speaking or denied their allotted speaking time. (Statements of Undisputed Fact 23-26). Plaintiff Lemons further admitted that after declining to provide her address during the October 3, 2022 meeting, she was nevertheless permitted to continue speaking and did not believe her First Amendment rights had been violated at that time. (Statements of Undisputed Fact 41-43). It was only after she began speaking about an active Tennessee Department of Children's Services case into allegations of child abuse involving multiple students that Board legal counsel stopped Lemons from speaking and advised that such speech was inappropriate in that forum. (Statements of Undisputed Fact 44-46). Chairperson Farough acted upon the advice of counsel and echoed her counsel's instruction by requesting that Ms. Lemons to stop speaking at that time. (Statements of Undisputed Fact 48-52). The as applied challenges, then, are unavailing as, while it is admitted that Ms. Farough casually referenced the address-disclosure requirement while speaking with Ms. Lemons, it is clear that the requirement did not motivate Ms. Lemons' request. (Statements of Undisputed Fact 53-54).

As to the facial challenges, which comprise the entirety of the claims asserted by both Moms for Liberty as well as Ms. Dunagan-Price, we must remember that this action was filed over three years ago. The Plaintiffs can point to nothing further to indicate that any of their rights secured

under Section 1983 have been abridged by the policies or practices of the Defendants. To the contrary, the proof adduced in this action demonstrates that the Defendants began the process of changing these complained of policies and practices on their own accord, without being requested to do so by the Plaintiffs, months before the Plaintiffs filed this action. (Statements of Undisputed Fact 55-57). However, in timing that tests the boundaries of the term “coincidental,” the Plaintiffs filed this action prior to the Defendants being able to complete that process. (Statements of Undisputed Fact 58-59). Despite the intervening litigation, the Defendants finished what they started and, soon after this matter was filed, removed the complained of policies and practices. (Statement of Undisputed Fact 60). They have not returned in the three years since their removal and the Plaintiffs can point to nothing more than baseless speculation that they could ever return. (Statements of Undisputed Fact 61-65). It is for this reason that the facial claims are moot and, as a result, should be dismissed.

Before we delve further into this mootness argument however, even if they weren’t moot, Ms. Dunagan-Price and Moms for Liberty – Wilson County are not entitled to nominal damages in any event since they bring only facial challenges in this action. To survive summary judgment on a claim for nominal damages under 42 U.S.C. § 1983, a plaintiff cannot merely point to a policy on paper; they must prove they suffered a concrete, individualized “injury in fact” under Article III. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Here, by electing to pursue only a facial challenge to the policies and practices of the Defendants and explicitly foregoing an as-applied challenge, these Plaintiffs severed their ability to establish standing for nominal damages as a matter of law. As the Court knows, Article III standing is not dispensed in gross; a plaintiff must demonstrate standing separately for each form of relief sought. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000).

In *Uzuegbunam v. Preczewski*, the Supreme Court clarified the specific constitutional function of nominal damages: they exist to vindicate a "completed violation of a legal right." 141 S. Ct. 792, 802 (2021). They are inherently retrospective. They are not a bounty awarded simply because a plaintiff identifies an unconstitutional policy on the books; rather, they are a remedy for a specific, historical instance where a policy was unlawfully weaponized against the plaintiff to cause a concrete harm. Therefore, to have standing for nominal damages, a plaintiff must prove a specific, completed past application of the law against them.

These Plaintiffs' decision to pursue only facial challenges is fatal to their demand for nominal damages. A facial challenge is an assertion that a law is unconstitutional in all its applications, or that it is overbroad on its face. It is uniquely suited for *prospective* relief—such as a declaratory judgment or an injunction—where a plaintiff seeks to prevent future harm or remove a chilling effect. Conversely, an as-applied challenge asserts that a law was unconstitutional *as enforced against the plaintiff's specific conduct*. By declining to bring an as-applied challenge, these Plaintiffs essentially disclaim the specific, fact-bound inquiry required to prove that the Defendants weaponized the policy or practices against them in the past.

Because these Plaintiffs bring only facial challenges, they are litigating the abstract text of these long abrogated policies and practices rather than a specific, historical enforcement action. Without litigating a specific enforcement action against their own conduct, these Plaintiffs cannot prove the "completed violation of a legal right" required by *Uzuegbunam*. Simply put, a plaintiff cannot recover retrospective damages for a purely prospective, abstract grievance. Because these Plaintiffs have failed to plead and prove an as-applied constitutional violation, they have suffered no past, individualized injury capable of being redressed by nominal damages. Consequently, these Plaintiffs lack Article III standing to pursue nominal relief, and this claim must be dismissed.

(1) Plaintiffs’ Facial Claims Regarding the Address-Disclosure Requirement Are Moot and the As Applied Claims Fail as the Requirement Did Not Motivate the Defendant’s Complained of Conduct.

Plaintiffs challenge the Board’s former address-disclosure requirement. Because the Board has permanently removed that requirement, and because it is absolutely clear that the requirement cannot reasonably be expected to recur, these claims are moot.

The Legal Standard for Mootness and Voluntary Cessation.

As a general rule, voluntary cessation of allegedly illegal conduct does not automatically moot a case. *Speech First, Inc. v. Schlissel*, 939 F.3d 756, 767 (6th Cir. 2019). Voluntary cessation will moot a case only where there is “no reasonable expectation that the alleged violation will recur,” and “interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.” *Los Angeles Cty. v. Davis*, 440 U.S. 625, 631 (1979).

However, the burden is materially lower when it is the government, rather than a private party, that has voluntarily ceased the challenged conduct. The Sixth Circuit has recognized that “cessation of the allegedly illegal conduct by government officials has been treated with more solicitude by the courts than similar action by private parties” and that the government’s “self-correction provides a secure foundation for a dismissal based on mootness so long as it appears genuine.” *Bench Billboard Co. v. City of Cincinnati*, 675 F.3d 974, 981 (6th Cir. 2012).

This solicitude rests on the presumption that the government acts in good faith and that the same allegedly wrongful conduct by the government is unlikely to recur. *Speech First*, 939 F.3d at 767–68. The Sixth Circuit has applied this solicitude to both legislative and non-legislative governmental actions. *Id.* at 767-68. However, if the action is legislative, “[l]egislative action ordinarily moots a case midstream, when a challenged provision is repealed or amended during the pendency of the litigation” as has happened here. *Hill v. Snyder*, 878 F.3d 193, 204 (6th Cir. 2017).

Indeed, to moot an action, the governmental entity “need not do much more than simply represent that it would not return to the challenged policies.” *Speech First*, 939 F.3d at 768. Furthermore, when the challenged governmental entity is a popularly elected body, and when there are intervening changes in the makeup of that body based upon the passage of time as well as the democratic process, there are further presumptions in favor of mootness. *See Youngstown Publ’g Co. v. McKelvey*, 189 F. App’x 402, 405 (6th Cir. 2006); 13C Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. Juris. § 3533.7 (3d ed. 2008).

Application.

The Wilson County Board of Education is a governmental entity comprised of popularly elected representatives and, furthermore there have been significant changes to its composition since the filing of this action as is discussed *infra*. It is further considered a legislative body when engaging in legislative actions such as the adoption and amendment of BOE policy. *Smith v. Jefferson County Bd. of Sch. Commissioners*, 641 F.3d 197, 216-17 (6th Cir. 2011); *See generally Southern Constructors, Inc. v. Loudon County Board of Education*, 58 S.W.3d 706 (Tenn. 2001)(discussing the broad autonomy granted to local boards of education to manage and control the local school system). Defendants have testified that there has been no action, or even discussion of resuming the challenged policies and practices after their voluntary cessation over three years ago and the Plaintiffs have no proof to the contrary. (Statements of Undisputed Fact 60-68). Its removal of the challenged provisions is therefore entitled to the highest level of solicitude the Sixth Circuit affords government actors under *Speech First*, *Hill*, and *Bench Billboard*. As such, the Board’s self-correction “provides a secure foundation for a dismissal based on mootness” because it is genuine. *Bench Billboard Co. v. City of Cincinnati*, 675 F.3d 974, 981 (6th Cir. 2012). The record compels this conclusion.

To that end, the Board’s Rule 30(b)(6) representative testified that the Board finalized its removal of all references to the address-disclosure requirement (as well as the abusive-speech rule)

from its policies and materials almost immediately upon the filing of this litigation and that he is unaware of any discussion or proposal to reinstate the provision. (Statements of Undisputed Fact 60-62, 66). It is on that same basis that the Sixth Circuit has already recognized that “the Board subsequently removed all mention of the address-disclosure requirement and abusive-comments restriction from its policies and materials,” *Moms for Liberty - Wilson Cnty. v. Wilson Cnty. Bd. of Educ.*, 155 F.4th 499, 506 (6th Cir. 2025), and affirmed denial of preliminary injunctive relief because there was “no evidence that Defendants would enforce either abrogated rule while the case continued.” *Id.* at 507. The removal has remained in effect for over three years without any move toward reinstatement.

Consistent with the good-faith presumption that courts extend to government actors, *Speech First*, 939 F.3d at 767–68, the record contains affirmative evidence that the cessation is genuine and durable. Both Plaintiffs testified they possess no factual basis to believe either provision will be reinstated. (Statements of Undisputed Fact 63-65). The Board’s Rule 30(b)(6) representative likewise testified he is unaware of any discussion or proposal to reinstate either provision. (Statement of Undisputed Fact 65). Ms. Farough further testified that, in addition to believing that the challenged policies and provisions would never be reinstated, that the Board’s voting pattern since the policy changes has been overwhelmingly unanimous, that a majority of Board members have turned over since the lawsuit was filed, and, that the new Board members have not reinstated any of the removed provisions. (Statements of Undisputed Fact 67-68). Further, Ms. Farough was already in the process of removing the challenged provisions and practices before the lawsuit was filed, undercutting the Plaintiffs’ claims that the revisions were made solely to obtain an advantage in litigation. (Statements of Undisputed Fact 55-57). This is precisely the type of durable, board-wide, multi-year cessation that the Sixth Circuit recognize as sufficient to support mootness.

Particularly significant is the composition of the current Board. In the three years that this matter has been pending, three of the seven members of the Wilson County Board of Education have changed. (Statement of Undisputed Fact 3). It will likely continue to change as the members who represent Zones 2, 4, 5, and 6 will be up for election in this year's election cycle and one of the current members, Ms. McGee, who represents Zone 6, has already notified other Board Members that she will not be seeking re-election this year. (Statement of Undisputed Fact 4). As a result, at the conclusion of this year's election cycle, a majority of the membership of the Wilson County Board of Education will be different from that at the time of the filing of this action. (Statement of Undisputed Fact 5). Additionally, as the Court has noted, the chair and vice chair assignments on the Board of Education have changed as well during the pendency of this action. (Statements of Undisputed Fact 69-70).

As to the current Board then, it is significant to note that Plaintiff Dunagan-Price confirmed she had no knowledge of any Board member intending to reinstate either challenged provision and acknowledged she had not heard the abusive-comments language read at any Board meeting after the lawsuit was filed. (Statement of Undisputed Fact 65). This is not surprising, as there is a significant connection between the Plaintiffs and the current Chair and Vice Chair of the Board of the Wilson County Board of Education to such an extent that Ms. Dunagan-Price canvassed for both men while they were running for their board seats. (Statements of Undisputed Fact 27, 70). Likewise, mere weeks prior to the filing of this Motion, Ms. Lemons changed her publicly viewable Facebook profile information to serve as an endorsement for Chairman Padilla (whom she referred to as her "friend" in her deposition) and to encourage her fellow citizens to vote for him in this year's election, and alongside Ms. Price, has appeared in numerous social media campaign photos for Mr. Padilla's reelection campaign. (Statements of Undisputed Fact 30-31, 73). Under these circumstances, it defies credulity to suggest that the Board, as it now exists, would take action

adverse to Moms for Liberty or its members by reinstating policies that the organization challenged in this very lawsuit. The probability of recurrence required to defeat mootness is simply absent here.

Even applying the more demanding standard applicable to private parties under *Friends of the Earth*, the result is the same. The record establishes that it is “absolutely clear” that the allegedly wrongful behavior could not reasonably be expected to recur: three years of non-enforcement, unanimous board voting, significant membership turnover, zero evidence of any proposal to reinstate, and Plaintiffs’ own admissions that they have no basis to believe either provision will return. *Friends of the Earth Inc. v Laidlaw Environmental Serv.*, 528 U.S. 167, 189 (2000). Plaintiffs’ claims regarding the address-disclosure requirement are moot under either standard.

The Address-Disclosure Requirement did not motivate Ms. Farough’s challenged conduct at the October, 2022 Board meeting.

As referenced above, the proof is also clear here that neither any sort of viewpoint based discrimination nor the Address-Disclosure requirement had anything to do with Ms. Farough’s request that Ms. Lemons stop speaking regarding the DCS investigation at the October 3, 2022 Board meeting.

Significantly, prior to the October 3, 2022 Board meeting, Plaintiff Lemons contacted Defendant Padilla, informed him of the subject matter of her intended remarks, even went as far as to send him the script from which she would read, and was thereafter placed on the speaker list and permitted to address the Board. (Statements of Undisputed Fact 33-35). The fact that Defendant Padilla, knowing in advance the subject matter of her remarks, placed her on the agenda is wholly inconsistent with any theory of viewpoint-based exclusion as to either Mr. Padilla or the Board as a whole. As Mr. Padilla is now the Board Chairperson responsible for running meetings, it also further works against the Plaintiffs continued insistence that they require a permanent injunction to protect their constitutional rights from the continued chilling effect of policies and practices that haven’t

existed for over three years and are enforced by a Chairman for which Ms. Dunagan-Price campaigned and for which Ms. Lemons considers a friend and actively endorses. (Statements of Undisputed Fact 27, 30-31, 61, and 73).

Instead, the true sequence of events at the meeting is as follows: Plaintiff Lemons declined to provide her address, citing privacy concerns. (Statement of Undisputed Fact 41). Chairperson Farough respected that decision and permitted Plaintiff Lemons to continue speaking. (Statement of Undisputed Fact 42). Plaintiff Lemons spoke for nearly a full minute about an ongoing DCS investigation involving allegations of child abuse at an elementary school. (Statements of Undisputed Fact 43-44). At that point, Board counsel intervened and, after clarifying that the matter had been referred to the appropriate agency, advised that Ms. Lemons should cease discussing this topic at this time, as public discussion of the investigation could implicate confidentiality concerns as well as the interests of other students involved in the matter, and no one had ever attempted to speak about an active DCS child abuse investigation at a board meeting before. (Statements of Undisputed Fact 44-47). When Plaintiff Lemons continued speaking in the face of counsel's statement, Chairperson Farough, acting on the advice of counsel and in her capacity as Board Chairperson, reiterated her counsel's instructions that Plaintiff Lemons cease speaking. (Statements of Undisputed Fact 48-52). Critically, Chairperson Farough is not an attorney and was acting in good-faith reliance on contemporaneous legal guidance from Board counsel as well as her reasonable belief that Ms. Lemons was speaking regarding an active DCS case involving multiple minors and alleged child abuse. (Statement of Undisputed Fact 54). Notably, even Ms. Lemons herself did not know whether the school system was aware that the underlying DCS investigation had concluded, and she acknowledged that Chairperson Farough could have reasonably believed the investigation remained ongoing. (Statement of Undisputed Fact 39). While Ms. Lemons believed the investigation itself had

already concluded and been substantiated, she did not know whether DCS had formally closed the case file. (Statements of Undisputed Fact 36-38).

The undisputed record further demonstrates that any interruption of Plaintiff Lemons occurred only after discussion concerning the ongoing DCS investigation involving students. *Moms for Liberty - Wilson Cnty. v. Wilson Cnty. Bd. of Educ.*, 155 F.4th 499, 506 (6th Cir. 2025); (Statements of Undisputed Fact 42-54).

Although Chairperson Farough referenced Plaintiff's earlier refusal to disclose her address when directing her to stop, the undisputed facts establish that the address-disclosure requirement was not the operative reason for the interruption. (Statements of Undisputed Fact 42-54). Had the address-disclosure requirement been enforced as a condition of speaking, Plaintiff Lemons would have been stopped immediately upon her refusal to provide an address, which did not occur. *Id.* Instead, Plaintiff was permitted to continue speaking until it became clear that she was speaking regarding an active DCS child abuse case involving multiple students. *Id.* At that time, Board counsel clarified the inappropriate nature of these remarks and advised that Ms. Lemons should cease such speech given its content as well as the public nature of the context in which she chose to exercise. (Statement of Undisputed Fact 46). Any reference to the address-disclosure requirement must be understood in context as Farough invoking available procedural authority to comply with counsel's legal advice. (Statements of Undisputed Fact 49-54).

(2) Plaintiffs' Claims Regarding the Abusive-Comments Restriction Are Moot and Otherwise Fail.

Plaintiffs separately challenge the Board's former verbal admonition prohibiting "abusive" comments directed toward Board members or school employees. This challenge is a facial challenge only, as no Plaintiff asserts an as-applied claim based on enforcement of the abusive-comments

restriction. For the same reasons set forth in Section III(B)(1) above, claims regarding the abusive-comments restriction are also moot.

Beyond mootness, the facial challenge fails on the merits. Despite claiming otherwise in their Complaint, Plaintiffs cannot establish viewpoint discrimination in the application of the abusive-comments restriction. The Sixth Circuit specifically recognized that Plaintiff Dunagan-Price repeatedly addressed the Board concerning controversial topics, including school curriculum and library materials, and “the Board has permitted her to speak for her full allotted time each time without interruption.” *Moms for Liberty - Wilson Cnty. v. Wilson Cnty. Bd. of Educ.*, 155 F.4th 499, 505 (6th Cir. 2025). Plaintiff Dunagan-Price testified that during each Board meeting at which she provided public comment, including meetings in August 2021, October 2021, November 2021, and November 2022, she was permitted to speak for her entire allotted time without interruption. (Statement of Undisputed Fact 24). She further admitted that no Board member invoked the challenged abusive-comments restriction against her, even during comments in which she accused Board members of “entertaining minors by sexually arousing them” while reading passages from library books aloud that she herself characterized as pornography. (Statements of Undisputed Fact 24, 26).

Critically, the “abusive-comments” language never appeared within the text of Board Policy 1.404 itself, it was a verbal admonition read by the Chairperson at the outset of public comment periods. (Statements of Undisputed Fact 18-19). Moreover, Policy 1.404 specifically cited Tennessee Code Annotated § 39-17-306, a criminal disorderly conduct statute, as the legal basis for the Board’s authority to terminate remarks of disruptive speakers. *Id.* Both the Board’s Rule 30(b)(6) representative and Chairperson Farough testified that the term “disruptive” in the policy was understood to refer to conduct criminalized by that statute, that is, conduct rising to the level of criminal disorderly conduct, and not to mere criticism of Board members or school officials. *Id.*

Additionally, both Mr. Green and Ms. Farough testified that they interpreted the term “abusive” within the verbal admonition given by the Chairperson to be synonymous with the term “disruptive” in Board Policy. *Id.* That interpretation is both legally defensible and viewpoint-neutral.

Instructive on this point is the *Loverly* matter. *Loverly v. Jefferson County Board of Education*, 586 F.3d 427 (6th Cir. 2009). That case, like this one, arises from the conduct of a Tennessee Board of Education during a school board meeting. *Id.* In that case, the plaintiffs, upset that their sons had been dismissed from the high school football team, spoke at a board meeting in which, through their attorney, they criticized school officials for the manner in which they operated the football team. *Id.* at 430-31. The plaintiffs then requested to speak at the next month’s board meeting regarding the exact same topic but were denied the opportunity to do so. *Id.* at 431. As a result, they filed a First Amendment action under §1983 challenging the board’s decision to completely disallow their speech at the second board meeting. *Id.* The plaintiffs lost at trial and then appealed to the 6th Circuit which affirmed the jury’s verdict. *Id.* at 430.

The same result should occur here, minus the jury verdict. While the *Loverly* case would certainly suggest that, if the complete disallowance of speech at a board meeting in similar circumstance is acceptable, the facts here in which a plaintiff was only stopped when she began discussing an active DCS child abuse case would militate even more strongly towards the dismissal of the action. However, most relevant here is the *Loverly* court’s reliance upon the school board’s policy and practice of the allowance of “*ample alternative channels of communication*” for the board’s stakeholders to speak with their board members. *Id.* at 434. In describing those modes of communication, the *Loverly* court stated that “Tennessee law allows citizens to contact members of public bodies like the school board...an opportunity that the plaintiffs took ample advantage of here.” *Id.*

The Defendants would show that factor to be particularly important in the instant matter. The proof in this matter thus far has demonstrated the myriad alternative channels available to Plaintiffs to petition their elected officials as there was significant discussion during those depositions, as well as accompanying exhibits, which detailed their continued communication with the Defendants through telephone, text message, email, social media, and in person communication. (Statements of Undisputed Fact 28, 30-34, 71-72, 76-80).

Although Ms. Farough was not required to do things like operate a public Facebook page on which Plaintiff Dunagan-Price posted without moderation by Ms. Farough, she did so. (Statements of Undisputed Fact 76-80). Similarly, although Mr. Padilla was not required to allow Plaintiff Lemons to participate on his Facebook page or refrain from moderating her comments there, he never moderated or censored any of her comments. (Statement of Undisputed Fact 72). Additionally, the record is replete with communications between the Plaintiffs and Board Chairperson Padilla, both before and after this action was filed. (Statements of Undisputed Fact 27-28, 30-34, 71-73, 76-77). Indeed, despite claiming a chilling effect upon their speech, the Plaintiffs have had no qualms about continued emails, texts, phone calls, and Facebook conversations with the Defendants, and particularly Ms. Farough, throughout the pendency of this action. (Statements of Undisputed Fact 28, 30-34, 71-72, 76-80).

The Sixth Circuit expressly acknowledged that school boards possess constitutional authority to impose reasonable limitations necessary to prevent disruption and ensure orderly proceedings within a limited public forum. *Moms for Liberty - Wilson Cnty. v. Wilson Cnty. Bd. of Educ.*, 155 F.4th 499, 507-08 (6th Cir. 2025). A restriction tethered to criminal disorderly conduct plainly falls within that authority and, if the Plaintiffs disagree with that premise, they should have taken steps to challenge the constitutionality of the criminal statute cited by the policy but they have not done so.

For these reasons, Plaintiffs' claims regarding the abusive-comments restriction fail both as moot and on the merits.

(3) Plaintiffs Cannot Establish Municipal Liability Under Monell.

A municipality or other governmental entity cannot be held liable under §1983 based upon respondeat superior. *Monell v. Department of Social Services*, 436 U.S. 658, 690–92 (1978). Rather, Plaintiffs must establish that a constitutional deprivation resulted from an official policy, practice, or custom. Absent an underlying constitutional violation, municipal liability cannot attach. *Robertson v. Lucas*, 753 F.3d 606, 622 (6th Cir. 2014). Because Plaintiffs cannot establish any underlying constitutional violation for the reasons set forth above, *Monell* liability cannot attach.

Furthermore, even assuming *arguendo* that Plaintiffs could establish an underlying constitutional violation, a single isolated incident is generally insufficient to establish a municipal policy or custom. *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823–24 (1985). The sole alleged enforcement action at issue, the interruption of Plaintiff Lemons' remarks during the October 3, 2022 Board meeting based upon her discussion of an active child abuse case, constitutes precisely the type of isolated incident that is insufficient to establish municipal liability. The challenged provisions and practices were removed the onset of this litigation over three years ago, meaning no ongoing policy or custom exists to support a continuing *Monell* claim. *Moms for Liberty - Wilson Cnty. v. Wilson Cnty. Bd. of Educ.*, 155 F.4th 499, 513 (6th Cir. 2025)

(4) The Individual Defendants Are Entitled to Qualified Immunity, and Official-Capacity Claims Against Individual Defendants Are Duplicative.

As a threshold matter, it bears noting that there is only one individually named defendant in this action: Jamie Farough, who is sued both in her individual and official capacities. All remaining individual defendants are named in their official capacities only. Official-capacity claims against individual government officials are duplicative of the claim against the governmental entity itself,

here, the Wilson County Board of Education. *Kentucky v. Graham*, 473 U.S. 159, 165–66 (1985). Accordingly, the official-capacity claims against all individual defendants other than Farough are subsumed within the claims against the Board and should be dismissed on that basis alone.

As to Defendant Farough in her individual capacity, she is entitled to qualified immunity. Qualified immunity shields government officials performing discretionary functions unless their conduct violates clearly established constitutional rights of which a reasonable official would have known. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). Qualified immunity analysis proceeds in two steps: first, whether the alleged conduct violated a constitutional right; and second, whether that right was clearly established at the time of the alleged violation. *Id.* At 232. Both prongs must be satisfied to overcome qualified immunity, and courts may address them in either order. *Id.* at 236.

As to the first prong, for the reasons set forth above, Plaintiffs cannot establish that Defendant Farough violated any constitutional right. The Board's procedures governing public participation were constitutionally permissible regulations within a limited public forum, and the undisputed record establishes that Plaintiffs were permitted to speak on controversial topics without viewpoint-based censorship. Chairperson Farough testified that she understood the "disruptive" language in Policy 1.404 as referring to conduct criminalized by the statute the policy cited, not as authorizing censorship of criticism directed toward Board members or school officials. (Statements of Undisputed Fact 14, 18). Moreover, the undisputed testimony of Chairperson Farough establishes that her decision to support her board counsel's instruction to Plaintiff Lemons to stop speaking was motivated by her good-faith reliance on contemporaneous advice of counsel during the meeting regarding the subject matter of Plaintiff's remarks and the ongoing DCS investigation. (Statements of Undisputed Fact 17, 44-54). Chairperson Farough is not an attorney, and she acted as she reasonably understood her role required, in compliance with legal guidance provided by the Board's counsel. *Id.* Further, it was her concern regarding the inappropriate nature of Ms. Lemons'

discussion of an ongoing child abuse case by DCS involving multiple students that motivated her request that Ms. Lemons cease her comments. (Statements of Undisputed Facts 49-54). Had Ms. Farough merely been enforcing the address-disclosure requirement, she would have stopped Ms. Lemons' comments before they even began as Ms. Lemons refused to verbally disclose her address immediately upon her obtaining the floor to speak that night. (Statements of Undisputed Fact 17, 42, 53-54). Instead, as Ms. Farough found it imminently reasonable to refuse to verbally divulge one's address out of safety concerns, Ms. Farough allowed Ms. Lemons to continue with her remarks until she was advised by Bboard counsel to do otherwise. (Statements of Undisputed Fact 17, 42-54).

As to the second prong, Plaintiffs cannot identify any controlling Supreme Court or Sixth Circuit precedent clearly establishing that a school board chairperson violates the First Amendment by directing a speaker to stop when Board counsel advises that the speaker's comments implicate an ongoing child-protection investigation involving multiple students. Courts have consistently recognized that school boards may regulate the time, place, and manner of speech so long as the regulation is content-neutral, narrowly tailored, and leaves open ample alternative channels. *See Lowery*, 586 F.3d at 432–33. The Sixth Circuit's opinion in this very matter confirms the constitutional legitimacy of the Board's authority to regulate public participation. *Moms for Liberty*, slip op. at 7–8.

Reasonable officials in Defendant Farough's position could therefore have believed that directing Plaintiff Lemons to stop speaking, on advice of counsel and during an active discussion of an ongoing DCS investigation involving multiple minor students, was constitutionally permissible. Accordingly, Defendant Farough is entitled to qualified immunity as a matter of law.

(5) The Individual Defendant is Entitled to Legislative Immunity

In addition to qualified immunity, Ms. Farough is also entitled to legislative immunity as to the claims brought against her in her individual capacity. As the 6th Circuit has explained, “local legislators may invoke legislative immunity to insulate themselves as individuals from liability based on their legislative activities.” *Smith v. Jefferson County Bd. of Sch. Commissioners*, 641 F.3d 197, 218 (6th Cir. 2011). Importantly, this immunity, which “applies whether the relief sought is money damages[,] or [declaratory or] injunctive relief” is available to officials, such as Ms. Farough, who are not part of the legislature per se but are performing “legislative functions” pursuant to their official duties. *Id.* Such immunity is important as it “exists so that individuals can feel more comfortable volunteering to perform public-service functions, such as serving on their local school board. Because ‘the threat of liability may significantly deter service in local government, where’ legislative immunity continues to play an important role.” *Id.* at 219. As the Complaint implicates the legislative functions of the Board, for reasons discussed *supra*, “the Board members may be sued in their official capacities but may not be sued as individuals for money damages or declaratory or injunctive relief.” *Id.* As a result, the individual capacity claims against Ms. Farough must be dismissed.

C. Plaintiffs Are Not Entitled to Declaratory or Injunctive Relief.

To obtain prospective equitable relief, Plaintiffs must demonstrate a real and immediate threat of future injury. *City of Los Angeles v. Lyons*, 461 U.S. 95, 101–02 (1983). Because the Board, which was already in the process of removing all references to the challenged address-disclosure requirement and abusive-comments restriction from its policies and materials prior to this matter even being filed, and as a result did so at the beginning of this litigation, over three years ago, and because the voluntary cessation of this practice remains ongoing, there is no real and immediate threat of future injury warranting equitable relief. *See Friends of the Earth*, 528 U.S. at 189. A court’s equitable jurisdiction does not extend to issuing relief against conduct that has ceased and poses no credible threat of recurrence. *Bench Billboard*, 675 F.3d at 981.

Plaintiffs present no evidence that Defendants intend to reinstate or enforce the removed provisions. (Statements of Undisputed Fact 63-65). The Board's Rule 30(b)(6) representative testified he is unaware of any proposal or discussion concerning reinstatement. (Statement of Undisputed Fact 66). Plaintiff Lemons admitted she possesses no factual basis to believe either provision will be reinstated especially since her "friend," Mr. Padilla, is now the Board Chairperson. (Statements of Undisputed Fact 64 and 73). Plaintiff Dunagan-Price similarly testified that she has no knowledge of any Board member intending to reinstate either challenged provision. (Statement of Undisputed Fact 65). Plaintiff Lemons further testified that she has no factual basis to believe current Board Chairperson Joseph Padilla, whom she recently publicly endorsed during his reelection campaign, would prevent her from speaking at future Board meetings, stating: "I don't. It's just my opinion." (Statements of Undisputed Fact 30-31, 73). Plaintiff Dunagan-Price likewise testified that she has never seen Mr. Padilla stop anyone from speaking at a Board meeting. (Statement of Undisputed Fact 74). Indeed, Ms. Price indicated that, as a goal of this lawsuit was to get rid of the policies and practices with which she disagreed, she has now achieved that aim. (Statement of Undisputed Fact 75). Additionally relevant is the solicitude and presumed good faith given governmental actions such as these which is discussed in depth *supra*.

Article III of the Constitution limits the jurisdiction of federal courts to actual, ongoing cases or controversies. When the issues presented are no longer "live," or when a defendant formally and permanently ceases the challenged conduct such that it cannot reasonably be expected to recur, the claims must be dismissed as moot. While the burden of demonstrating mootness through voluntary cessation is heavy, the Defendants have undeniably met it here by enacting formal, multi-year policy changes that completely eradicated the challenged policies and practices.

A federal court's jurisdiction cannot be sustained on the mere philosophical "possibility" that a government actor might change its mind. The Wilson County Board of Education formally

removed the challenged policies years ago, has operated without them ever since, and has sworn under oath that there are no plans to resurrect them. Because it is absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur, the Plaintiffs' claims for declaratory and injunctive relief are constitutionally moot and must be dismissed as a matter of law.

MOMS FOR LIBERTY – WILSON COUNTY LACKS ORGANIZATIONAL STANDING AND IS OTHERWISE DUPLICATIVE AND MUST BE DISMISSED

Finally, Moms for Liberty – Wilson County lacks organizational standing in this matter and must be dismissed from this action. In addition to its claims being mooted by the actions of the Defendants as discussed *supra*, Article III standing is a threshold jurisdictional requirement that must be established for each distinct claim and form of relief sought. *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000). While an organization may assert associational standing on behalf of its members, it must strictly satisfy the tripartite test established in *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333 (1977). Under the third prong of the *Hunt* doctrine, an organization has standing only if "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Id.* at 343. Here, Moms for Liberty – Wilson County fails this mandatory third prong with respect to its claim for nominal damages.

The Supreme Court and the Sixth Circuit have held that an organization loses associational standing whenever it seeks monetary relief. As established in *Warth v. Seldin*, associational standing generally permits an organization to seek only prospective, equitable relief—such as a declaration or an injunction—when damages claims are not “common to the entire membership” and, as a result, “whatever injury may have been suffered is peculiar to the individual member concerned, and both the fact and extent of injury would require individualized proof.” 422 U.S. 490, 515–16 (1975).

Plaintiffs cannot circumvent this jurisdictional bar by framing their damages request as merely “nominal.” While nominal damages do not require calculating the monetary *extent* of an

injury, they remain fundamentally individualized and retrospective. In *Uzuegbunam v. Preczewski*, the Supreme Court clarified that nominal damages satisfy Article III redressability precisely because they are designed to vindicate a "completed violation of a legal right." 141 S. Ct. 792, 802 (2021). Thus, unlike prospective injunctive relief that protects an organization's membership as a collective, nominal damages in this matter redress a past, historical injury suffered by a specific individual. Proving an entitlement to nominal damages here inherently requires litigating the specific historical facts of the individual co-plaintiff's past interaction with Defendants. Because the individual member's active participation is indispensable to establishing the fact of that completed violation, the claim fails the third prong of *Hunt*.

This friction between organizational representation and backward-looking individualized relief is precisely what the Sixth Circuit cautioned against in *Association of American Physicians & Surgeons v. United States Food & Drug Administration*, 13 F.4th 531 (6th Cir. 2021). There, the Sixth Circuit underscored the strict limits of Article III representation, heavily scrutinizing associational standing where there is an "inherent mismatch between the plaintiff and the remedy." *Id.* at 540–43. Because a claim for nominal damages here seeks to remedy a completed historical violation unique to the individual co-plaintiff, it cannot be pursued by an organizational surrogate. Going further, Defendants submit that the association Plaintiff's continued presence in this action is wholly duplicative and unnecessary as the entirety of its claims rest upon damages allegedly suffered by the two individual Co-Plaintiffs.

Therefore, because Moms for Liberty – Wilson County cannot satisfy the third prong of the *Hunt* doctrine for backward-looking monetary relief, and since its inclusion in this matter is entirely duplicative of the other Plaintiffs, there is no genuine dispute of material fact that it lacks subject matter jurisdiction to pursue nominal damages or to remain at all. It should be dismissed as a result.

IV. CONCLUSION

For the foregoing reasons, Defendants Wilson County Board of Education, also known as Wilson County Schools; Jamie Farough; Kimberly McGee; Melissa Lynn; Beth Meyers; Joseph Padilla; Greg Hohman; and, Donnie Self respectfully request that the Court grant summary judgment in their favor on all claims asserted in Plaintiffs' Complaint and dismiss this action with prejudice.

RESPECTFULLY SUBMITTED,
SELLERS, CRAIG & HAYDEN, INC.

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was forwarded by electronic means.

s/Christopher C. Hayden
SELLERS, CRAIG & HAYDEN, INC.

Date: July 30, 2026