IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MELISSA WOOD, on behalf of her minor child, **C.W.**, and **JOHN KEVIN WOOD**, individually and on behalf of his minor child, **C.W.**,

Plaintiffs,

-v.-

CHARLES COUNTY PUBLIC SCHOOLS, **BOARD OF EDUCATION OF CHARLES COUNTY**, **EVELYN ARNOLD**, individually and as the Principal of La Plata High School, and **SHANNON MORRIS**, individually and as a Vice Principal of La Plata High School,

Defendants.

Civil Case No. 8: 16-cv-239

Judge George J. Hazel

PLAINTIFF JOHN KEVIN WOOD'S MEMORANDUM IN SUPPORT OF HIS MOTION FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

Defendants completely banned Plaintiff John Kevin Wood ("Mr. Wood") from his daughter's school based on false and misleading accusations by a Vice Principal, thereby depriving him of his right to speak at meetings open to parents that impact and influence the direction of his daughter's curricular and extracurricular activities. J.K. Wood Decl. ¶¶ 32, 34, 39-43; M. Wood Decl. ¶¶ 14-15; Ex. B. Mr. Wood did not receive a hearing before or after the deprivation of his First Amendment rights. J.K. Wood Decl. ¶¶ 37-38; M. Wood Decl. 16. Not only is Mr. Wood irreparably harmed by the denial of his First Amendment rights—taken from him without due process—but his family, particularly his daughter, also suffers because Defendants deny her the opportunity to share key milestones with her father. C.W. Decl. ¶¶ 18-20. Today, sixteen months after issuing the ban, Defendants still exclude Mr. Wood from all of the important family events of his daughter's senior year of high school. J.K. Wood Decl. ¶¶ 32, 34, 39-43; M. Wood Decl. ¶¶ 14-15; C.W. Decl. ¶¶ 13, 17-20; Ex. B. Mr. Wood seeks injunctive relief preventing Defendants from enforcing their categorical ban prohibiting him from entering school grounds in his daughter's final months of high school.

STATEMENT OF THE FACTS

Mr. Wood resides in Charles County, Maryland where his daughter attends La Plata High School. J.K. Wood Decl. ¶¶ 2, 4; M. Wood Decl. ¶ 5; C.W. Decl. ¶ 3. Mr. Wood is a Christian who practices his faith by trying to serve others in the model of Christ. J.K. Wood Decl. ¶ 9; *see also* Luke 22:26. For eight years, Mr. Wood served his country in the United States Marine Corps. J.K. Wood Decl. ¶ 10. As part of his service, Mr. Wood fought on behalf of the United States in Operation Desert Shield/Desert Storm. J.K. Wood Decl. ¶ 10. After being honorably discharged from the Marine Corps, Mr. Wood continued serving the people of our country as a

firefighter and first responder. J.K. Wood Decl. ¶ 12. This service included responding to the Islamic terrorist attack on September 11, 2001 at the Pentagon, where he witnessed destruction and carnage created in the name of Islam. J.K. Wood Decl. ¶ 13. Through these—and all difficult times in his life—Mr. Wood found strength is Jesus Christ. J.K. Wood Decl. ¶ 14; Phil. 4:13.

In the fall of 2014, Mr. Wood's daughter was a junior at La Plata High School enrolled in the 11th grade World History course. J.K. Wood Decl. ¶ 4; C.W. Decl. ¶ 6. On October 22, 2014, Mr. Wood and his daughter began discussing the assignments in her World History class after he picked her up from school. J.K. Wood Decl. ¶ 5; C.W. Decl. ¶ 7. During this discussion, Mr. Wood discovered that Defendants were promoting Islam and requiring his daughter to violate her faith for a grade. J.K. Wood Decl. ¶ 6; C.W. Decl. ¶ 7.

Defendants forced Mr. Wood's daughter to write out and profess "There is no god but Allah." J.K. Wood Decl. ¶¶ 17-18; C.W. Decl. ¶ 9. This statement is in direct contradiction to the Wood family's Christian faith and belief that it is sinful to express that there is any god but the Christian God. J.K. Wood Decl. ¶ 18; C.W. Decl. ¶ 9; *see also* Ex. 20:3; Mt. 22:37; Mark 14:66-72; Luke 22:54-62. Defendants also taught his daughter subjective and derogating statements, such as "Most Muslims' faith is stronger than the average Christian's." J.K. Wood Decl. ¶ 16; M. Wood Decl. ¶ 7; C.W. Decl. ¶ 8.

After this conversation, Mr. Wood called La Plata High School and left a voicemail requesting that his daughter receive an alternative assignment. J.K. Wood Decl. ¶ 21. On October 23, 2014 around 4:00pm, Defendant Morris called Mr. Wood while he was at work in the Fire Station bunkroom. J.K. Wood Decl. ¶¶ 22-23. The phone conversation started out politely, however, once Mr. Wood made it clear that he was insistent on an alternative

assignment, Defendant Morris became argumentative, contending that his daughter would receive failing grades on any incomplete assignment even if his daughter could not complete the answers because they violated her Christian faith by promoting Islam. J.K. Wood Decl. ¶¶ 24-25; M. Wood Decl. ¶ 9-10. Mr. Wood informed Defendant Morris that he would not force his daughter to violate her beliefs and that, if Defendants insisted on retaliating against her, he would contact the media and get lawyers involved. J.K. Wood Decl. ¶¶ 26-27; M. Wood Decl. ¶ 10.

On October 24, 2014 around 9:00am, Mr. Wood called the school to, again, plead for an alternative assignment. J.K. Wood Decl. ¶ 29. The school secretary transferred his call to Defendant Morris. J.K. Wood Decl. ¶ 29. Mr. Wood attempted to explain to Defendant Morris that the school assignments not only violated his daughter's faith but also her constitutional rights under the First Amendment. J.K. Wood Decl. ¶ 29. He also explained that, because of the separation of church and state, Defendants could not instruct his daughter in Islam while denigrating Christianity. J.K. Wood Decl. ¶ 29. Mr. Wood reiterated that he was only asking for an alternative assignment, yet Defendant Morris impolitely refused his request. J.K. Wood Decl. ¶¶ 29-31. When Mr. Wood again asserted that, if Defendant Morris insisted on refusing his simple request, he would contact the media and his lawyers, Defendant Morris responded by saying, "That's fine." J.K. Wood Decl. ¶ 30. Mr. Wood then wished Defendant Morris a "beautiful American day." J.K. Wood Decl. ¶ 30. This was the end of any interaction between Mr. Wood and Defendant Morris—all of it occurring over the telephone. J.K. Wood Decl. ¶ 32.

While Mr. Wood was very angry because his request for an alternative assignment was a simple solution, he never made threats to physically harm anyone at the school or the school itself. J.K. Wood Decl. ¶¶ 31-32. Mr. Wood also never indicated that he was coming to the school to discuss the matter further. J.K. Wood Decl. ¶ 32.

Around noon the same day, Mr. Wood received a phone call from Officer Mark Kaylor, the La Plata High School resource officer. J.K. Wood Decl. ¶ 33; M. Wood Decl. ¶ 11. Officer Kaylor informed Mr. Wood that Defendant Morris filed a complaint about their phone conversation and, as a result, Principal Arnold issued a no-trespass order against Mr. Wood. J.K. Wood Decl. ¶ 34; M. Wood Decl. ¶ 12-13. Mr. Wood explained his phone conversations with Defendant Morris to Officer Kaylor, stressing the fact that he made no physical threats to the school or anyone at the school, to no avail. J.K. Wood Decl. ¶ 35. Officer Kaylor informed Mr. Wood that the no-trespass order would remain in effect and, on October 27, 2014, Mr. Wood received the written order in the mail. J.K. Wood Decl. ¶ 36; Ex. A.

Defendants never gave Mr. Wood an opportunity to defend himself before or after they banned him from his daughter's school and the no-trespass order itself contains no information about how to contest or appeal the order. J.K. Wood Decl. ¶ 37; M. Wood Decl. ¶ 16; Ex. A. Because of the no-trespass order, Mr. Wood lost the opportunity to advocate for his daughter's education, the ability to bring his concerns with the curriculum to Parent Teacher School Organization ("PTSO") meetings and parent/teacher conferences, the opportunity to attend events celebrating his daughter's academic achievements, various other meetings about his daughter's education, and various other events with his daughter where he would have spoken. J.K. Wood Decl. ¶¶ 39-43; M. Wood Decl. ¶¶ 14-15, 17-20; C.W. Decl. ¶¶ 13-17; Ex. B. Defendants forced Mr. Wood's daughter to walk off the school campus alone to meet Mr. Wood in his car when the Woods could not find another family member or friend to give her a ride home from school. J.K. Wood Decl. ¶ 39; C.W. Decl. ¶¶ 14-15.

Defendants have deprived, and continue to deprive, Mr. Wood of his fundamental, constitutionally guaranteed freedom of speech without any process or hearing, necessitating this

Court to grant Mr. Wood's Motion for a Preliminary Injunction so that he can participate in and celebrate his only child's last days of high school.

ARGUMENT

In determining whether to grant preliminary injunctive relief, a Plaintiff "must demonstrate that (1) [he is] likely to succeed on the merits; (2) [he] will likely suffer irreparable harm absent an injunction; (3) the balance of hardships weighs in [his] favor; and (4) the injunction is in the public interest." *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 236 (4th Cir. 2014) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). Here, all four factors support granting Mr. Wood's Motion for a Preliminary Injunction to prevent further loss of his constitutional liberties.

I. MR. WOOD IS LIKELY TO SUCCEED ON THE MERITS

By prohibiting Mr. Wood from entering La Plata High School grounds, Defendants have deprived and are depriving Mr. Wood of his right to speak on and advocate for his daughter's curricular and extracurricular activities in violation of the First Amendment.

A. Defendants' No Trespass Order Violated, and Continues to Violate, Mr. Wood's First Amendment Rights Without Due Process of Law

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech." U.S. Const., amend. I. This prohibition is applied to States and their subdivisions, including public schools, through the Fourteenth Amendment. *See Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506-07 (1969).

i. *Defendants Banned Mr. Wood's Protected Speech Because of his Viewpoint that Promotion of Islam in Public Schools is Unconstitutional*

There is a categorical ban on viewpoint discrimination in all types of government property. *Child Evangelism Fellowship v. Anderson Sch. Dist. Five*, 470 F.3d 1062, 1067 (4th

Cir. 2006). The government, including public schools, cannot ban "speech based on its substantive content or the message it conveys." *Id*. (quoting *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995)). The principal inquiry in determining that a restriction on speech is imposed based on the speaker's viewpoint "is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

This rule's corollary is that "administrators may not possess unfettered discretion to burden or ban speech, because 'without standards governing the exercise of discretion, a government official may decide who may speak and who may not based upon the content of the speech or viewpoint of the speaker.'" *Child Evangelism Fellowship*, 470 F.3d. at 1068 (quoting *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 763-64 (1988)). Unless there are standards in place to protect speech, "*post hoc* rationalizations by [a school principal] and the use of shifting or illegitimate criteria are far too easy, making it difficult for courts to determine in any particular case whether the [principal] is . . . suppressing unfavorable[] expression." *Id*. (quoting *City of Lakewood*, 486 U.S. at 758-59). These "difficulties of proof and the case-by-case nature of 'as applied' challenges render the [principal's] action in large measure effectively unreviewable." *Id*. (quoting *City of Lakewood*, 486 U.S. at 759). Absent ascertainable criteria and clear standards, "speakers might engage in self-censorship out of fear they would be discriminated against based upon their views." *Id*.

In *Child Evangelism Fellowship*, the Fourth Circuit Court of Appeals reviewed a fee waiver system that allowed school administrators to waive fees "as determined to be in the district's best interest." *Id*. at 1069. This "carte blanche" standard could not satisfy the requirement—so important to viewpoint neutrality—of "narrow, objective, and definite

standards." *Id*. (quoting *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 151 (1969)); *see also Forsyth Cty. v. Nationalist Movement*, 505 U.S. 123, 127 (1992) (holding "maintenance of public order" is not a sufficiently definite standard).

Here, Defendants Arnold and Morris banned Mr. Wood from the grounds of his daughter's school because they disagreed with his viewpoint that his daughter should receive alternative assignments to Defendants' unconstitutional promotion of Islam. J.K. Wood Decl. ¶¶ 22-27, 29-30, 32, 33-36. Their disagreement with Mr. Wood's message is the sole reason for the no-trespass order. *See, e.g.*, J.K. Wood Decl. ¶ 32.

Defendant Arnold exercised unfettered discretion[1] to ban Mr. Wood from his daughter's school because she and Defendant Morris wanted to quash criticism of their pro-Islamic curriculum. J.K. Wood Decl. ¶¶ 34, 37-38; M. Wood Decl. ¶ 16; Ex. A. This exercise of unfettered discretion allowed Defendants Arnold and Morris to create *post hoc* rationalizations for the no-trespass order banning Mr. Wood for "threatening" the school *with a lawsuit and media coverage* to expose Defendants' unconstitutional practices. J.K. Wood Decl. ¶¶ 27, 30, 32. This is comparable to the carte blanche standard prohibited in *Child Evangelism Fellowship*. Between the time of Mr. Wood's phone conversations with Defendant Morris and the issuance of the no-trespass order, *Mr. Wood did not step foot on or near La Plata High School grounds*. J.K. Wood Decl. ¶ 32.

[1] While Md. Educ. Code Ann. § 26-102, which Defendant Arnold cited as her authority for banning Mr. Wood, does contain some standards, Mr. Wood's telephone conversation clearly does not fall within any of the behaviors subject to a no-trespass order. The only behavior applicable to non-students is "[acting] in a manner that disrupts or disturbs the normal educational functions of the institution." Md. Educ. Code Ann. § 26-102(b)(3). "The only sensible reading of the statute is that there must . . . be an 'actual disturbance.'" *In re Jason W.*, 837 A.2d 168, 175 (Md. 2003). Mr. Wood never disrupted or disturbed the normal educational functions of La Plata High School as he never stepped foot on the grounds after his phone conversation with Defendant Morris. Defendant Arnold banned Mr. Wood from the school grounds based exclusively on Defendant Morris' opinion of a telephone conversation. "The absence of constraining standards . . . in administrators' practice renders [a policy] incompatible with the First Amendment." *Child Evangelism Fellowship*, 470 F.3d at 1072.

Defendant Arnold, pursuant to the policies and practices of the Board of Education of Charles County, exercised her unfettered discretion to ban Mr. Wood from the school premises for pointing out the unconstitutionality of her school's curriculum. J.K. Wood Decl. ¶¶ 32, 34, 37-38; M. Wood Decl. ¶ 16; Ex. A. This suppression of Mr. Wood's speech is unconstitutional viewpoint discrimination.

ii. *Defendants Suppression of Mr. Wood's Protected Speech with a Categorical Ban from a Limited Public Forum is Not the Least Restrictive Means of Furthering a Compelling Governmental Interest*

Even if this Court determines that Defendants did not silence Mr. Wood based on his viewpoint, Defendants' restrictions on his speech still cannot withstand the demands of the constitution. The Fourth Circuit utilizes a three part test to determine that a plaintiff has been deprived his freedom of speech. First, the court must determine that "the plaintiff has engaged in 'protected speech.'" *Goulart v. Meadows*, 345 F.3d 239, 246 (4th Cir. 2003) (quoting *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 797 (1985)). Second, "the court 'must identify the nature of the forum.'" *Id*. (quoting *Cornelius*, 473 U.S. at 797). Third, the court "'must assess whether the justifications for exclusion from the relevant forum satisfy the requisite standard.'" *Id*. (quoting *Cornelius*, 473 U.S. at 797).

1. Mr. Wood Engaged in Protected Speech

The category of "protected speech" is so vast that "even dry information, devoid of advocacy, political relevance, or artistic expression, has been accorded First Amendment protection." *Id.* at 248. When a person engages or attempts to engage in "pure speech," unlike expressive conduct, it is not difficult to establish that the First Amendment applies and protects the speech at issue. *Id*. at 247. Undoubtedly, speech concerning "instruction of the young," *see id.* (quoting *Roberts v. United States Jaycees*, 468 U.S. 609, 636 (1984) (O'Connor, J.

concurring), and "the advancement of truth" are topics protected under the First Amendment. *Id*. (quoting *Roth v. United States*, 354 U.S. 476, 484 (1957)).

Here, not only did Defendants ban Mr. Wood *for* exercising his First Amendment right to free speech, but the no-trespass order is also a prior restraint on his ability to exercise his First Amendment rights on school grounds in the future. *C.f. Near v. Minn.*, 283 U.S. 697, 718 (1931) ("The fact that for approximately one hundred and fifty years there has been almost an entire absence of attempts to impose previous restraints upon publications relating to the malfeasance of public officers is significant of the deep-seated conviction that such restraints would violate constitutional right."); J.K. Wood Decl. ¶ 32. Defendants banned Mr. Wood from school grounds—effectively and categorically banning all speech, including protected speech. *Huminski v. Corsones*, 396 F.3d 53, 92 (2d Cir. 2004); *Wilson v. N. E. Indep. Sch. Dist.*, 2015 U.S. Dist. LEXIS 132324, at *8 (W.D. Tex. Sep. 30, 2015). Had Defendants not banned Mr. Wood, he would have advocated his position against promoting Islam in the schools at PTSO meetings and other events. J.K. Wood Decl. ¶¶ 39-43; M. Wood Decl. ¶¶ 15, 17-20; Ex. B. The First Amendment unquestionably protects this speech activity.

2. La Plata High School is a Limited Public Forum

A limited public forum "is not traditionally public, but the government has purposefully opened [it] to the public, *or some segment of the public*, for expressive activity." *ACLU v. Mote*, 423 F.3d 438, 443 (4th Cir. 2005) (emphasis added) (finding a school campus a limited public forum). "[P]ublic school facilities [like La Plata High School] during after school hours . . . clearly are limited public fora." *Goulart*, 345 F.3d at 246. Therefore, because Defendants opened La Plata High School grounds for parents to receive information and exchange ideas, they created a limited public forum. *See* Ex. B; J.K. Wood Decl. ¶ 42.

3. Defendants Cannot Exclude Speech Based on the Speaker or the Content of his Speech in a Limited Public Forum

When the government opens its property and creates a limited public forum, it "is not required to . . . allow persons to engage in every type of speech . . . [and] may be justified in reserving its forum for certain groups or for the discussion of certain topics." *Goulart*, 345 F.3d at 249-50 (internal citations, quotation marks, and brackets omitted). When "the government excludes a speaker who falls within the class to which a designated [limited] public forum is made generally available . . . the government's action is subject to strict scrutiny." *Id.* at 250; *Mote*, 423 F.3d at 444; *see also Henrico Prof'l Firefighters Asso. v. Bd. of Supervisors*, 649 F.2d 237, 242-43 (4th Cir. 1981) (holding "the status of the speaker . . . [cannot] be invoked as the reason for denying [] the opportunity to present views which the [government entity] would listen to if presented by others").

Mr. Wood is the parent of a student at La Plata High School, undoubtedly within the class to whom parent/teacher conferences, Parent Teacher School Organization meetings and events, and celebratory events honoring his daughter at the school are made generally available. Ex. B. Therefore, Mr. Wood's exclusion from these events for over a year "must be narrowly tailored to serve a compelling governmental interest." *Greater Balt. Ctr. for Pregnancy Concerns v. Mayor & City Council*, 683 F.3d 539, 552 (4th Cir. 2012). When, as here, the regulation curtailing free speech is against an individual, and not the public generally, the Court must use a "more stringent application" of strict scrutiny—"the most demanding test known to constitutional law." *Madsen v. Women's Health Ctr.*, 512 U.S. 753, 765 (1994); *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997).

a. The No-trespass Order Does Not Serve a Compelling Governmental Interest

Defendants have no interest, much less a compelling one, for banning a father from the grounds of his daughter's school because he disagrees with the school's unconstitutional curriculum. For Defendants to demonstrate a compelling interest, they "must specifically identify an actual problem in need of solving." *Ctr. for Pregnancy Concerns*, 683 F.3d at 556 (quoting *Brown v. Entm't Merchants Ass'n*, 131 S. Ct. 2729, 2740 (2011)) (internal quotation marks and citations omitted). Mere "anecdote[s] and supposition [do not] support a speech restriction." *Id*. (quoting *United States* v. *Playboy Entertainment Group, Inc.*, 529 U.S. 803, 822 (2000)). "Where the State has opened a forum for direct citizen involvement, it is difficult to find justification for excluding [those] . . . who are most vitally concerned with the proceedings." *Madison Joint Sch. Dist. v. Wis. Emp't Relations Comm'n*, 429 U.S. 167, 175 (1976).

Furthermore, it is antithetical to the principals of the First Amendment and to the interests of the government to prohibit speech pointing out corruption and unconstitutional practices. *C.f. Lane v. Franks*, 134 S. Ct. 2369, 2379 (2014) ("It would be antithetical to our jurisprudence to conclude that the very kind of speech necessary to prosecute corruption by public officials—speech by public employees regarding information learned through their employment—may never form the basis for a First Amendment retaliation claim."). "It is essential" that "members of a community most likely to have informed and definite opinions" are able to "speak out freely" without fear of retaliation. *Pickering v. Bd. of Educ.*, 391 U.S. 563, 572 (1968).

Here, Mr. Wood was expressing his concerns with the unconstitutional promotion of Islam in Defendants' school by subjective and offensive statements such as "Most Muslims' faith is stronger than the average Christian's." J.K. Wood Decl. ¶¶ 22-27, 29-32. The only claim Defendants made to support the no-trespass order was that Mr. Wood "made verbal threats

against the school"—conveniently leaving out the fact that his "threats" were media coverage and a lawsuit based on the school's unconstitutional curriculum. Ex. A; J.K. Wood Decl. ¶ 32. Defendants' conclusion that Mr. Wood "made verbal threats against the school" "ignore[s] the ancient wisdom that calling a thing by a name does not make it so." *Madison*, 429 U.S. at 174. Defendants' vague statement does not identify any specific threat that Mr. Wood posed to Defendants, as is required of Defendants to prove a compelling governmental interest. *See Ctr. for Pregnancy Concerns*, 683 F.3d at 556; *Cyr v. Addison Rutland Supervisory Union*, 60 F. Supp. 3d 536, 548 (D. Vt. 2014). The "cryptic" statement conveyed to Defendant Arnold by Defendant Morris is a mere anecdote that cannot support a restriction on Mr. Wood's speech, especially considering Mr. Wood never actually threatened the school or anyone at the school physically. J.K. Wood Decl. ¶ 32; *see Madison*, 429 U.S. at 174; *Ctr. for Pregnancy Concerns*, 683 F.3d at 556.

Rather than thanking Mr. Wood for pointing out the Islamic propaganda in their school curriculum, Defendants banned Mr. Wood from the school grounds to suppress his protected speech. Ex. A. Defendants cannot consider silencing speech or attempting to prevent the "threat" of media coverage and a lawsuit compelling governmental interests. The First Amendment safeguards protect not just the constitutional rights of individuals, but also the ability of teachers, school administrators, and school boards to perform their functions competently. *See Madison*, 429 U.S. at 177 ("restraining teachers' expressions to the board on matters involving the operation of the schools would seriously impair the board's ability to govern the district"). Defendants have a compelling interest in having parents express their views and bring constitutional violations to light. Defendants have no interest is silencing Mr. Wood or banning him from school grounds.

b. Defendants' Absolute Ban is Not Narrowly Tailored

Even if the Court assumes that Defendants had an interest in eliminating Mr. Wood's access to La Plata High School grounds, the absolute, categorical ban is not tailored at all—let alone narrowly tailored—as it entirely forecloses any means of communication. *C.f. Hill v. Colo.*, 530 U.S. 703, 726 (2000) ("when a content-neutral regulation ***does not*** entirely foreclose any means of communication, it may satisfy the tailoring requirement even though it is not the least restrictive or least intrusive means of serving the statutory goal") (emphasis added); *see also Cyr*, 60 F. Supp. 3d at 548. In order for a restriction on speech to be narrowly tailored, it must be the "least restrictive alternative" to serve the government's purpose. *Ctr. for Pregnancy Concerns*, 683 F.3d at 556. "A statute is narrowly tailored if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." *Id.* at 557 (quoting *Frisby v. Schultz*, 487 U.S. 474, 485 (1988)). A regulation on speech is not narrowly tailored when it is "overinclusive" or "when the government has other, less speech-restrictive alternatives available." *Id.* (citing *Simon & Schuster, Inc. v. Members of the N.Y. State Crime Victims Bd.*, 502 U.S. 105, 120-21 (1991); *Playboy Entm't Group*, 529 U.S. at 816-17). The no-trespass order encompasses both indicators.

Here, ostensibly because Defendant Morris claimed Mr. Wood's protected free speech was a "threat," Defendants unconditionally banned Mr. Wood from school grounds at all hours of the day for an indefinite period of time. Ex. A. The ban is still in place over a year later with no sign of ending absent this Court's intervention. Ex. A. There are many less restrictive means Defendants could have used to protect against a perceived "threat," such as, have the no-trespass in effect only during school hours, post a police officer at meetings open to parents, move parent meetings to a neutral location, require Mr. Wood to maintain a certain distance from Defendants

Arnold and Morris, limit the no-trespass order's indefinite ban to a specified time, or at least allow Mr. Wood on school grounds if he remained in his car so he could pick his daughter up from school protecting her from walking off campus unaccompanied. The sweeping, categorical ban against Mr. Wood's speech is overinclusive and not the least restrictive means available. Therefore, it is not narrowly tailored and violates Mr. Wood's First Amendment rights. *Bd. of Airport Comm'rs v. Jews for Jesus*, 482 U.S. 569, 575 (1987) ("We think it obvious that ["a sweeping"] ban [on First Amendment activities] cannot be justified even [in a] nonpublic forum because no conceivable governmental interest would justify such an absolute prohibition of speech."); *Huminski*, 396 F.3d at 92 (holding that categorical no-trespass orders "do not meet the test for reasonableness") (emphasis in original); *Barna v. Bd. of Sch. Dirs*., 2015 U.S. Dist. LEXIS 151129, at *35-36 (M.D. Pa. Nov. 6, 2015) (holding that an absolute ban from school grounds is not narrowly tailored); *Wilson*, 2015 U.S. Dist. LEXIS 132324, at *17 (holding that a categorical ban from school grounds has *no* tailoring); *Cyr*, 60 F. Supp. 3d at 548 (holding that a categorical ban from school grounds is not tailored in response to the threat when the parent visited the school almost every day, stalked school employees, and shook his fist at school employees); *Stevens v. Sch. City of Hobart*, 2015 U.S. Dist. LEXIS 106349, at *36 (N.D. Ind. Aug. 6, 2015) (holding that the categorical ban of a teacher who molested a student from school grounds was not narrowly tailored); *Brown v. City of Jacksonville*, 2006 U.S. Dist. LEXIS 8162, at *2 (M.D. Fla. Feb. 16, 2006) (holding that a "sweeping ban" from city council meetings that lasted only three months was not narrowly tailored).

Defendants' violation of the First Amendment is an ongoing and continuing offense as they still prohibit Mr. Wood from entering La Plata High School grounds. Ex. A; J.K. Wood Decl. ¶ 39. Without this Court granting his Motion for a Preliminary Injunction, he will lose his

last opportunity to contribute to his daughter's high school education since she graduates this May. C.W. Decl. ¶¶ 13-20; J.K. Wood Decl. ¶ 41; M. Wood Decl. ¶ 21. Mr. Wood will be forced, not only to endure continued deprivation of his constitutionally guaranteed rights, but will also miss once-in-a-lifetime moments in his only child's life. C.W. Decl. ¶¶ 13-20; M. Wood Decl. ¶ 21.

B. Defendants Deprived, and Continue to Deprive, Mr. Wood of his First Amendment Rights Without Procedural Due Process

The right to procedural due process is triggered when a person is deprived of his liberty, such as the liberty of free speech guaranteed under the First Amendment. *See First Nat'l Bank v. Bellotti*, 435 U.S. 765, 779 (1978). Once a plaintiff establishes that he has been deprived of his First Amendment rights, "the right to some kind of prior hearing is paramount." *Bd. of Regents v. Roth*, 408 U.S. 564, 569-70 (1972); *Morrash v. Strobel*, 1987 U.S. App. LEXIS 18790, at *12 (4th Cir. Oct. 6, 1987). As explained in Part I.A above, Defendants deprived, and continue to deprive, Mr. Wood of his First Amendment right to free speech by banning him from school grounds, causing him to miss countless PTSO meetings, parent/teacher conferences, and other meetings and events where parent input is vital and influential to the functioning of his daughter's school. When analyzing a procedural due process claim, the court should generally consider three factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

Here, all three factors support Mr. Wood's assertion that Defendants violated his right to procedural due process. First, "the liberty of speech . . . which the First Amendment guarantees against abridgment by the federal government is within the *liberty* safeguarded by the Due Process Clause of the Fourteenth Amendment from invasion by state action." *Bellotti*, 435 U.S. at 779 (emphasis in original). This due process factor favors Mr. Wood as freedom of speech is "the matrix, the indispensable condition, of nearly every other form of freedom," *Palko v. Conn.*, 302 U.S. 319, 327 (1937), and "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Mr. Wood was, and continues to be, deprived of his fundamental freedom of speech. His interest in its protection is superior to virtually every other interest.

Second, the risk of erroneous deprivation is high when an administrative official has broad, unilateral, unfettered discretion to withhold access to public places. *Cf. Shuttlesworth*, 394 U.S. at 153 ("[This Court] ha[s] consistently condemned licensing systems which vest in an administrative official discretion to grant or withhold a permit upon broad criteria unrelated to proper regulation of public places.") (quoting *Kunz v. New York*, 340 U.S. 290, 294 (1951)); *see also Saia v. New York*, 334 U.S. 558, 559 (1948) (holding unconstitutional an ordinance that placed free speech "in the uncontrolled discretion of the Chief of Police" because free speech deserves "preferred treatment" that cannot be subject to the "whim or caprice of the Chief of Police."). Additionally, prohibitions against an individual's liberty of speech "carry greater risks of censorship and discriminatory application than do general ordinances." *Madsen*, 512 U.S. at 764. Defendant Arnold, at her whim and caprice, unilaterally banned Mr. Wood based on Defendant Morris' unfounded account of a *telephone* conversation where, although upset, *Mr. Wood made no physical threats against any person or the school*. J.K. Wood Decl. ¶ 32; Ex. A.

The only "threat" Mr. Wood made was that he planned to contact lawyers and the media if Defendants forced his daughter to violate her faith and promote Islam. J.K. Wood Decl. ¶¶ 27, 30, 32.

The Fourth Circuit Court of Appeals has discussed the *minimum* due process afforded to parents in relation to depriving them of involvement in their child's education. In *Pleasant View Elementary Sch. PTA v. Grp. 1 Defendants,* 763 F.2d 652 (4th Cir. 1985), parents contested that school officials made the decision to close schools in violation of the due process clause of the Fourteenth Amendment. *Id*. at 654. The Fourth Circuit held that due process was not violated because "the defendants had complied with the ***minimal*** elements of due process, notice and an opportunity for a hearing." *Id*. at 655 (emphasis added); *see also Goodrich v. Newport News Sch. Bd.*, 743 F.2d 225, 227 (4th Cir. 1984) (holding, *at minimum,* due process requires notice and a hearing), *Grimes v. Nottoway Cty. Sch. Bd.*, 462 F.2d 650, 651 (4th Cir. 1972) (same). Mr. Wood received neither notice nor a hearing, even after Defendant Arnold issued a no-trespass order. Defendants banned Mr. Wood from significant involvement in his child's education and deprived him of his liberty of free speech at the whim of Defendant Arnold.

Defendants did not give Mr. Wood any opportunity to refute unfounded and vague allegations, appeal his ban from his daughter's school, or have an impartial review of the ban. J.K. Wood Decl. ¶¶ 37-38; M. Wood Decl. ¶ 16. This lack of even post-deprivation procedure demonstrates an extremely high risk of erroneous deprivation as it gives school officials, such as Defendant Arnold, unfettered discretion to silence all speech on school grounds with which they disagree. Due process ***requires*** "the opportunity to be heard at a *meaningful time* and in a *meaningful manner*." *Mathews*, 424 U.S. at 333 (emphasis added) (citations omitted). Mr. Wood was denied any opportunity to be heard ***at all*** because he espoused a Christian message

and disagreed with Defendants' Islamic indoctrination of his daughter. J.K. Wood Decl. ¶¶ 22-27, 29-32, 37-38; M. Wood Decl. ¶ 16. Any additional review would provide a safeguard against a lone individual's abuse of her unfettered discretionary authority to silence all persons with whom she disagrees. A preliminary injunction is vital to prevent further deprivation of Mr. Wood's liberty and to allow him to participate in and contribute to the last few months of his only child's high school experience.

Finally, even assuming Defendants had an interest in banning Mr. Wood after a telephone conversation threatening *a lawsuit*, **not** any physical harm to a person, object, or the school grounds, the interest can only override the necessity of the **pre**deprivation process, not any due process at all. *See Braswell v. Haywood Reg'l Med. Ctr.*, 234 Fed. Appx. 47, 54 (4th Cir. 2007); *see also Gilbert v. Homar*, 520 U.S. 924, 930 (1997). Requiring Principal Arnold to explain her order, providing Mr. Wood with a hearing, or some other pre or post-deprivation protocol would not have excessively burdened Defendants. *See Stevens*, 2015 U.S. Dist. LEXIS 106349, at *38. Notably, the no-trespass order gave Mr. Wood no information on a procedure to appeal his ban. Ex. A.

Even where parents threatened actual physical violence in person, physically assaulted someone on school grounds, and stalked teachers and school administrators, courts have held that the school's interest does not override the parent's interest in attending school board meetings. *Cyr*, 60 F. Supp. 3d at 550-53, *Wilson*, 2015 U.S. Dist. LEXIS 132324, at *20-23; *see also Barna*, 2015 U.S. Dist. LEXIS 151129, at *35-36. Here, Defendant Arnold had no reason to deny Mr. Wood his First Amendment liberty of speech by eliminating all access to school grounds without a predeprivation hearing, let alone no hearing at all. J.K. Wood Decl. ¶ 32. The core elements of procedural due process are "the right to pre-deprivation notice and opportunity

to be heard." *Consolidation Coal Co. v. Borda*, 171 F.3d 175, 183 (4th Cir. 1999); *see also Ridpath v. Bd. of Governors Marshall Univ.*, 447 F.3d 292, 313 (4th Cir. 2006) (holding that allegations in a complaint that the plaintiff "was not provided notice or an opportunity to be heard . . . sufficiently alleged the violation of his Fourteenth Amendment right to due process when a liberty interest is at stake.").

II. MR. WOOD HAS SUFFERED AND WILL CONTINUE TO SUFFER IRREPARABLE HARM ABSENT INJUNCTIVE RELIEF

Mr. Wood will be irreparably harmed unless this Court grants him injunctive relief. Defendants' no-trespass order deprives Mr. Wood of his fundamental right to free speech guaranteed and protected by the constitution. *See* U.S. Const. amend. I. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod*, 427 U.S. at 373; *Newsom v. Albemarle Cty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003). Defendants' no-trespass order, implemented against Mr. Wood without a hearing and still in place, continues to irreparably harm Mr. Wood by violating his First Amendment freedoms.

III. THE BALANCE OF HARDSHIPS WEIGHS IN MR. WOOD'S FAVOR

If this Court denies Mr. Wood's Motion for a Preliminary Injunction, he will suffer further irreparable injury by loss of his constitutionally protected rights. *See Elrod*, 427 U.S. at 373. Not only this, but Mr. Wood also faces the loss of fundamental, once-in-a-lifetime moments in his daughter's life, such as the culmination of her entire academic career at her high school graduation and honors convocation. M. Wood Decl. ¶ 21; C.W. Decl. ¶¶ 17-20; Ex. B.

Defendants will suffer no harm. Mr. Wood never threatened any physical harm to Defendants or the school. J.K. Wood Decl. ¶ 32. Even still, it has been over a year since the phone conversation about contacting lawyers and the media. J.K. Wood Decl. ¶¶ 22, 29. In that time, Mr. Wood has faithfully obeyed the unconstitutional no-trespass order, even making his

daughter walk alone to a location off school grounds when he could not find a family member or friend to pick her up from school. J.K. Wood Decl. ¶ 39; C.W. Decl. ¶¶ 14-15. Mr. Wood clearly poses no threat to the school, yet the ban has remained in place to prevent him from questioning Defendants pro-Islamic agenda. Denying his Motion for Preliminary Injunction will cause Mr. Wood and his family to suffer greatly, while granting the Motion for Preliminary Injunction will not cause Defendants any hardship at all.

IV. GRANTING INJUNCTIVE RELIEF IS IN THE PUBLIC INTEREST

Freedom of speech is "the matrix, the indispensable condition, of nearly every other form of freedom." *Palko*, 302 U.S. at 327. Safeguarding the right to free speech is always in the public's interest since the protection is necessary "'to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail'" and is, therefore, "a virtue, not a vice." *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014) (quoting *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 377 (1984)). "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system." *Stromberg v. California*, 283 U.S. 359, 369 (1931).

Educational institutions provide the training for this country's future leaders. *Grutter v. Bollinger*, 539 U.S. 306, 332 (2003). Mr. Wood simply wanted to contribute his opinion in opposition to Defendants' promotion of Islam and degradation of Christianity in his daughter's World History class. "To permit one side of a debatable public question to have a monopoly in expressing its views to the government is the antithesis of constitutional guarantees." *Madison*, 429 U.S. at 175-76. It is necessary for this Court to restrict Defendants' abuse of power that is

contrary to the proper functioning of our country and the proper education of our children. The public's interest in safeguarding free speech favors granting injunctive relief.

CONCLUSION

Defendant Arnold used her unfettered discretion to deprive Mr. Wood of his rights to free speech and procedural due process based on the unfounded and false accusations of Defendant Morris. Courts that have looked at the same or comparable issues have found First Amendment and due process violations. *See Huminski*, 396 F.3d 53 (holding that a categorical no-trespass order violates the First Amendment; no due process claim asserted); *Barna*, 2015 U.S. Dist. LEXIS 151129 (holding that a person's ban from school grounds violates the First Amendment; no due process claim asserted); *Wilson*, 2015 U.S. Dist. LEXIS 132324 (holding that a categorical ban from school grounds violates both the First Amendment and due process); *Cyr*, 60 F. Supp. 3d 536 (holding that a person's categorical ban from school grounds violates both the First Amendment and due process); *Stevens*, 2015 U.S. Dist. LEXIS 106349 (holding that the categorical ban of a teacher who molested a student from school grounds violates both the First Amendment and due process); *Brown*, 2006 U.S. Dist. LEXIS 8162 (holding that a person's ban from city council meetings violates the First Amendment; no due process claim asserted); *Princeton Educ. Asso. v. Princeton Bd. of Educ.*, 480 F. Supp. 962 (S.D. Ohio 1979) (holding that prohibiting non-residents from speaking at school board meetings violates the First Amendment; no due process claim asserted).

Accordingly, for the reasons stated herein, Plaintiff John Kevin Wood requests this Court grant his Motion for a Preliminary Injunction and enjoin enforcement of the no-trespass order so that he can again exercise his free speech rights by participating in his daughter's education and important family events on the La Plata High School grounds.

Date: February 19, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2016 a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I certify that a copy of the foregoing has been served by ordinary U.S. Mail and electronic mail upon all parties for whom counsel has not yet entered an appearance electronically:

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