



Gennifer L. Bridges
gbridges@burr.com
Direct Dial: (407) 540-6687

Burr & Forman LLP
200 South Orange Avenue
Suite 800
Orlando, FL 32801

Office (407) 540-6600
Fax (407) 540-6601

BURR.COM

September 23, 2024

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

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

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

Dear Mr. Smith:

The public comments section of BPS meetings is a limited public forum. (Appellees' Br. 36.) In a recent *en banc* decision, this Court confirmed that the limited public forum is distinct from a designated public forum, and the "reasonable-and-viewpoint neutral standard" applies to restrictions on speech in a limited public forum. *McDonough v. Garcia*, --- F.4th ---, 2022 WL 4195557, at *4 (11th Cir. Sept. 16, 2024). School board meetings are "often" limited public forums, provided they are limited to a specific class of speakers or to speech on specific topics. *Id.* at *7. Here, BPS' Policy provides that members of the public may be heard on "a proposition before the Board" and "agenda action item[s]." (Doc. 20 at 113-14.) Because the public comments section of BPS meetings is limited to speech on specific topics, it is a limited public forum.

As such, *McDonough* makes clear that BPS' Policy, and the application thereof, must only be reasonable in light of the purpose served by the forum and must not discriminate against speech based on viewpoint. *McDonough*, 2022 WL 4195557, at *7. On its face, the Policy does not target any viewpoint. (Appellees' Br. 37-47.) The language of the Policy is reasonable to promote BPS' significant governmental interest in maintaining decorum, preventing disruption, and ensuring efficient meetings. (*Id.* at 36-37.) Furthermore, as reflected by the many hours of BPS meeting videos, BPS' Chair applied the Policy judiciously and evenhandedly to speakers espousing various, and at times opposing, viewpoints. (*Id.* at 54-57.) On the very few occasions on which the Chair interrupted an Appellant, it was due to a violation of the viewpoint-neutral Policy and not for the viewpoint expressed. (*Id.*)

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Accordingly, *McDonough* confirms that BPS meetings are limited public forums and that the viewpoint-neutral and reasonable Policy, both on its face and as-applied, is constitutional. This Court should thus affirm.

Sincerely,

/s/ Gennifer L. Bridges

Gennifer L. Bridges

cc: All counsel (via ECF)