UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MOMS FOR LIBERTY – BREVARD COUNTY, FL; AMY KNEESSY; ASHLEY HALL; KATIE DELANEY; and JOSEPH CHOLEWA,

Plaintiffs,

v. Case No. 6:21-cv-1849-RBD-RMN

BREVARD PUBLIC SCHOOLS; and MISTY HAGGARD-BELFORD,

Defendants.

TEMPORARY RESTRAINING ORDER

Before the Court is Plaintiffs' motion for temporary restraining order ("TRO"). (Doc. 137.) The motion is due to be granted.

BACKGROUND

This is a First Amendment case involving public comments at Brevard County School Board ("Board") meetings. Plaintiffs Moms for Liberty sued Defendants Brevard Public Schools and individual members of the Board seeking declaratory and injunctive relief, along with nominal damages.[1] (Docs. 1, 78.) Plaintiffs claimed that the Board Policy's prohibitions against abusive and

[1] The Court dismissed the claims against the individual members of the Board, excluding the Chair, because they were not the officials enforcing the policies. (Doc. 63.)

personally directed speech violate the First Amendment both facially and as applied, the prohibition on obscene speech is unconstitutional as applied, and all three prohibitions are void for vagueness. (*Id.*) Plaintiffs moved for a preliminary injunction against the Policy's enforcement (Doc. 3), which this Court denied (Doc. 46), and the Eleventh Circuit affirmed (Doc. 99). This Court then granted Defendants' motion for summary judgment, finding the Policy constitutional. (Docs. 90, 115.)

On October 8, 2024, the Eleventh Circuit reversed, finding that school board meetings are limited public fora in which "the government's restrictions on speech must not discriminate against speech on the basis of viewpoint and must be reasonable in light of the purpose served by the forum." (Doc. 131, p. 14 (cleaned up).) The Eleventh Circuit held that: the Policy's prohibition on "abusive" speech was facially unconstitutional because it was viewpoint-based and an "undercover ban on offensive speech" (*id.* at 18–22), the prohibition on "personally directed" speech was facially unconstitutional because it was both unreasonable and vague (*id.* at 25–28), and the prohibition on "obscene" speech was unconstitutional as applied to reading portions of books from school libraries (*id.* at 30).

The Board has yet to amend or eliminate the Policy. (Doc. 137-7; Doc. 139-1, ¶¶ 13–16.) At the November 19 and December 10, 2024 Board meetings, the current Board Chair, Gene Trent, affirmatively said that the unconstitutional parts of the

Policy—including the prohibitions on abusive, personally directed, and obscene speech—continued to apply. (*See* Doc. 137, pp. 2–3; Doc. 139-1, ¶ 8.) At the hearing, Trent did not deny that these parts of the Policy were read to the general public at these meetings. (*See* Doc. 138.)

Following the Eleventh Circuit mandate, this Court directed the parties to provide briefing on next steps. (Docs. 133, 135.) While the parties initially seemed to agree on a resolution, Defendants' counsel refused to confirm that the policies would not be implemented at future Board meetings. (Doc. 137-2, ¶¶ 2–4; Doc. 137-3, ¶¶ 2–5; Doc. 137-4.) In a January 10, 2025 call between the parties, defense counsel said that the Board would need to formally adopt new policies before stopping its use of the Policy containing the prohibitions at issue. (Doc. 137-3, ¶¶ 3–4.) When one of the plaintiffs, Amy Kneessy, spoke to Trent about the upcoming January 21 Board meeting, Trent said the same thing. (Doc. 137-1, ¶ 6.)

On Friday, January 17, 2025, around 3:00 p.m., Plaintiffs filed the instant motion seeking a TRO prohibiting Defendants from enforcing the Policy at the next Board meeting, set for tonight, Tuesday, January 21, 2025. (Doc. 137.) On the holiday Monday, January 20, 2025, Defendants responded. (Doc. 139.) They attached a declaration from Trent in which he seemingly reversed course, saying he did not intend to enforce the Policy. (Doc. 139-1.) The Court held a hearing at 1:00 p.m. today, Tuesday, January 21, 2025, at which it took evidence and heard

argument. (*See* Doc. 138.) After considering the record, the Court orally issued a TRO, which this written Order memorializes, for the reasons described at the hearing and further below.

STANDARDS

To be entitled to a TRO, the movant must show: "(1) a substantial likelihood of ultimate success on the merits; (2) the TRO is necessary to prevent irreparable injury; (3) the threatened injury outweighs the harm the TRO would inflict on the non-movant; and (4) the TRO would serve the public interest." *Ingram v. Ault*, 50 F.3d 898, 900 (11th Cir. 1995); *see also* Local Rule 6.01(b).

ANALYSIS

Here, Plaintiffs have established each of the four requirements for issuance of a TRO. As to the substantial likelihood of success on the merits, Plaintiffs point to the Eleventh Circuit's decision finding the Board's prohibitions against abusive and personally directed speech facially unconstitutional and the Board's prohibition against obscene speech unconstitutional as applied. (Doc. 131; Doc. 137, p. 6.) Essentially, Plaintiffs have more than established a substantial likelihood that they will succeed on the merits of their claims—they have already succeeded. (Doc. 131.) Simply because the Board has not yet had time to adopt a new policy does not mean that they can keep enforcing the old unconstitutional one in the meantime. (*See* Doc. 137, pp. 2–3; Doc. 139-1, ¶ 8); *Barrett v. Walker Cnty.*

Sch. Dist., 872 F.3d 1209, 1230 (11th Cir. 2017) ("The problem here, rather, is the fact that the Board allows public comment at its meetings but then maintains policies that have a significant potential to chill speech on the basis of content and viewpoint.").

Plaintiffs have also established imminent irreparable harm. A school board policy that chills a plaintiff's right to speak at future meetings and could prevent that speech altogether causes irreparable injury. *See Barrett*, 872 F.3d at 1229; *see also Siegel v. LePore*, 234 F.3d 1163, 1178 (11th Cir. 2000). Here, Plaintiffs have shown that they are likely to suffer immediate and irreparable harm due to the potential for Defendants to continue enforcing the unconstitutional Policy at the scheduled Board meeting tonight. (Doc. 137, pp. 6–7); *see Barrett*, 872 F.3d at 1229. The Court is unconvinced by Defendants' counterargument that there is no longer a threat of irreparable harm to Plaintiff following the Chair's eleventh-hour pledge not to enforce the unconstitutional prohibitions. (Doc. 139, pp. 9–12; Doc. 139-1, ¶¶ 6, 16.) Prior to Plaintiffs' motion, Defendants refused to commit to non-enforcement. (Doc. 137-2, ¶¶ 2–4; Doc. 137-3, ¶¶ 2–5; Doc. 137-4; Doc. 139-1, ¶ 8.) Changing course in an attempt to avoid an injunction does not erase the threat. *See Nat'l Ass'n of Bds. of Pharmacy v. Bd. of Regents of the Univ. Sys. of Ga.*, 633 F.3d 1297, 1312 (11th Cir. 2011). And inconsistent enforcement of these prohibitions contributed to the Eleventh Circuit's finding that they were unconstitutional in the first place.

(*See* Doc. 131.) Trent's vacillation does not allay that threat—it makes it all the more likely. So the imminent threat that the prohibitions may be unconstitutionally enforced, irreparably harming Plaintiffs, remains.

Next, a school board's hardship in needing to redraft part of its policy is greatly outweighed by the deprivation of free speech rights. *See Barrett*, 972 F.3d at 1229–30. So any harm or inconvenience to Defendants caused by issuing this TRO is far outweighed by the irreparable injury likely to befall Plaintiffs if the unconstitutional policy continues to be enforced. *See id.*

Finally, an injunction protecting free speech covered by the First Amendment always serves the public interest. *See id.* at 1230. So Plaintiffs have shown that the public interest is served by a TRO. With all four requirements met, Plaintiffs are entitled to a TRO against Defendants.

CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED**:

1. Plaintiffs' motion for temporary restraining order (Doc. 137) is **GRANTED**.

2. Defendants Brevard County Public Schools, current Board Chair Gene Trent, and all other persons or entities acting in active concert or participation with them, *see* Fed. R. Civ. P. 65(d)(2), are **TEMPORARILY RESTRAINED AND ENJOINED** from:

a. Enforcing Brevard Public Schools Public Participation Policy's prohibition on "personally directed" speech against any person (including Board members, other staff, or any other person) during any public-comment period at Brevard Public Schools' Board meetings, including but not limited to the meeting scheduled for Tuesday, January 21, 2025;

b. Enforcing Brevard Public Schools Public Participation Policy's prohibition on "abusive" speech against any person during any public-comment period at Brevard Public Schools' Board meetings, including but not limited to the meeting scheduled for Tuesday, January 21, 2025;

c. Enforcing Brevard Public Schools Public Participation Policy's prohibition on "obscene" speech against any person reading from books from the school library during any public-comment period at Brevard Public Schools' Board meetings, including but not limited to the meeting scheduled for Tuesday, January 21, 2025; and

d. Reciting Brevard Public Schools Public Participation

Policy's prohibitions on "abusive," "personally directed," and "obscene" speech contained in Brevard Sch. Bd. Policy Manual § 0000 Bylaws, Code po0169.1 ¶¶ E. and H. at Brevard Public Schools' Board meetings, including but not limited to the meeting scheduled for Tuesday, January 21, 2025.[2]

3. The Court declines to require a bond given the constitutional rights at issue. *See* Fed. R. Civ. P. 65(c).

4. This TRO was issued on **Tuesday, January 21, 2025, at 3:00 p.m.** It expires on **Tuesday, February 4, 2025, at 3:00 p.m.**, subject to the Court's extension for good cause. *See* Fed. R. Civ. P. 65(b)(2). The parties are **DIRECTED** to file a joint notice by **Monday, February 3, 2025, at noon**, indicating whether they have resolved the issue. If not, the motion will be converted to a motion for preliminary injunction, with additional briefing and hearing as needed.

DONE AND ORDERED in Chambers in Orlando, Florida, on January 21, 2025.

ROY B. DALTON, JR.
United States District Judge

[2] The remainder of the Policy is not cabined by this TRO.