

No. 23-1389

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

SHAWN MCBREAIRTY,

Plaintiff-Appellant,

v.

HEATH MILLER, in his personal and official capacities, and
SCHOOL BOARD OF RSU 22,

Defendants-Appellees.

On Appeal from the United States District Court for the District of Maine
No. 1:23-cv-00143
Hon. Nancy Torresen

**BRIEF *AMICUS CURIAE* FOR THE NATIONAL EDUCATION
ASSOCIATION AND THE MAINE EDUCATION ASSOCIATION
SUPPORTING DEFENDANTS-APPELLEES AND AFFIRMANCE**

Alice O'Brien
Jason Walta
Philip A. Hostak
Nicole Carroll
National Education Association
1201 16th Street, NW
Washington, D.C. 20036
(202) 822-7035
phostak@nea.org

Benjamin K. Grant
Maine Education Association
35 Community Drive
Augusta, Maine 04330
(207) 888-3914
bgrant@maineea.org

Attorneys for *Amici Curiae* National Education Association
and Maine Education Association

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STATEMENT OF INTEREST OF *AMICI CURIAE*¹

The National Education Association (“NEA”) is a national membership organization with three million educator members, the overwhelming majority of whom serve our nation’s students in public school districts, colleges, and universities. Since its founding over a century and a half ago, NEA has worked to advocate for public education and education professionals, improve the quality of teaching, increase student achievement, and make schools safe places for educators and students. The Maine Education Association (“MEA”) is a membership organization with more than 25,000 educator members who teach and support the education of students in public schools, colleges, and universities throughout Maine that advocates statewide for public education and education professionals, improve the quality of teaching, increase student achievement, and make schools safe places for educators and students.

Amici are united in their commitment to the First Amendment’s protection of the right of citizens to protest government actions and to petition governmental bodies for redress of grievances; indeed, *amici* frequently organize and engage in such First Amendment protected activity themselves. *Amici* also are aware that

¹ No party’s counsel authored this brief in whole or in part; no party or party’s counsel contributed money to fund the brief’s preparation or submission; and no person other than the *amici* contributed money to fund the brief’s preparation or submission.

protests against the government are not always polite affairs and that strong language is often essential to communication on vital issues. At the same time, *amici* recognize the legitimate limits on speech and expressive activity, particularly in limited public fora like school board meetings, including the fact that some extreme types of speech are categorically unprotected, such as speech that is defamatory or that incites violence. And *amici* are united in their commitment to ensuring that schools are safe places in for educators to work in and for students to learn in.

In furtherance of these commitments, *amici* submit this brief to highlight the broader context in which this case arises—namely, the recent and intensifying phenomenon of disruptive attacks by members of the public on educators and school administrators at school board meetings. While *amici* agree with the Appellees that the school board policy at issue here, and its application to Plaintiff Shawn McBreairty, are constitutionally sound based on the record before the District Court, *amici* believe that this Court will benefit in its consideration of the issues on appeal from an understanding of the wider problem of which the events at issue here are just one example.

INTRODUCTION

At issue in this case is a policy adopted by Regional School Unit 22 (“RSU 22” or “the School District”) providing that personnel matters—and, specifically,

comments regarding named employees of the School District—may not be discussed at public meetings of RSU 22’s board. Plaintiff-Appellant Shawn McBreairty asks this Court to rule that RSU 22’s policy violates the First Amendment on its face and as the School District applied it to him when he attacked particular educators by name during school board meetings by baselessly referring to a named educator as “groomer ... of the year” who “should be locked up and not allowed within 500 feet of the school” and accusing another named educator of being part of an “after-school cult pushing sex and enabling mental illness in our youth.” Appendix (“App.”) 014 at timestamp 2:12-2:21, 2:22-2:27, 021 at timestamp 2:00-2:32.

Unfortunately, Mr. McBreairty’s calumnies against specific, named RSU 22 educators are not isolated events. As we detail in Part I below, these kinds of inflammatory, disruptive, and harmful attacks on educators and school administrators at school board meetings are a widespread and growing phenomenon that not only impedes school boards’ ability to conduct their proceedings in an orderly manner but endangers educators’ privacy and well-being and harms children’s education. All this being so, as *amici* show in Part II, school districts have a legitimate interest in limiting discussion of specific personnel matters in their public business meetings, and they are not compelled by the First

Amendment to open their public business meetings to scurrilous and harmful campaigns of vilification against educators and school officials.

I. UNRULY PROTESTS AT SCHOOL BOARD MEETINGS FEATURING VERBAL ABUSE AND THREATS DIRECTED AT EDUCATORS AND SCHOOL ADMINISTRATORS ARE WIDESPREAD AND HARM NOT ONLY THE TARGETED INDIVIDUALS AND THE ORDERLY ADMINISTRATION OF SCHOOLS BUT ALSO CHILDREN’S EDUCATION

The past two-and-a-half years have seen a gathering wave of disruptive and sometimes violent protests by members of the public at school board meetings throughout the country.² Beginning in the spring of 2021, when most school boards began resuming in-person business meetings, these protests initially focused on issues relating to COVID-19 mitigation measures and spread to protests targeting teaching and instructional materials that deal with issues of race in America, which protestors inaccurately characterize as teaching “Critical Race Theory.”³ More recently, the focus of such protests has turned to opposing

² See Nicole Carr and Lucas Waldron, *How School Board Meetings Became Flashpoints for Anger and Chaos Across the Country*, ProPublica (July 19, 2023), <https://projects.propublica.org/school-board-meetings-flashpoints-for-anger-chaos/>; Gabriella Borter, *et al.*, *School Boards Get Death Threats Amid Rage Over Race, Gender, Mask Policies*, Reuters (Feb. 15, 2022), <https://www.reuters.com/investigates/special-report/usa-education-threats/>.

³ In reality, Critical Race Theory is a body of academic work initially developed by legal scholars such as Derrick Bell, Kimberlé Crenshaw, and Richard Delgado, that explores the proposition that racism is not just a set of ideas and attitudes but structures embedded in American institutions—the law in particular. *See generally* Cynthia Elaine Tompkins, *Critical Race Theory (CRT) in the Legal Academy:*

(continued . . .)

educators and school officials’ efforts to create safe and welcoming learning and working environments for LGBTQ+ members of the school communities. While unruly protests featuring verbal attacks and threats against educators and school administrators have often characterized these protests from the beginning,⁴ such personal attacks have intensified as school-board protesters turned their focus to LGBTQ+ issues.⁵

Derrick Bell’s Seminal Law Review Articles and Critical Race Theorists Scholarship, 74 Mercer L. Rev. 1079 (2023). This body of legal scholarship is not, of course, taught in K-12 schools. Rather, the term Critical Race Theory “is used by its critics as a convenient political catch-all term to encompass topics they find divisive, like antiracism and social justice.” Brooks R. Cain, *Critical Erase Theory: The Assault on Public School Curriculum*, 75 Okla. L. Rev. 623, 627 (2023).

⁴ See, e.g., Adele Uphaus-Conner, *Unruly crowd causes Spotsylvania Board Meeting about masks to adjourn after 13 minutes*, Roanoke Times (Aug. 25, 2021; updated May 17, 2023), https://roanoke.com/news/state-and-regional/unruly-crowd-causes-spotsylvania-school-board-meeting-about-masks-to-adjourn-after-13-minutes/article_943fc999-91a6-5476-a323-de8344736c45.html; Eesha Pendharkar, *Backlash, Hostility, and Safety Fears: What It’s Like to Be a Chief Equity Officer in the Anti-CRT Era*, Education Week (July 19, 2022), <https://www.edweek.org/leadership/backlash-hostility-and-safety-fears-what-its-like-to-be-a-chief-equity-officer-in-the-anti-crt-era/2022/07>; Holly Kurtz, *Just How Widespread Are the Threats to Educators Over COVID Policies?*, Education Week (Nov. 11, 2021), <https://www.edweek.org/leadership/just-how-widespread-are-the-threats-to-educators-over-covid-policies/2021/11>.

⁵ See, e.g., Nicole Carr, *How Parents Outraged by Library Books, Diversity Initiatives and Sex Ed Transformed One New Jersey School Board*, ProPublica (June 29, 2023), <https://www.propublica.org/article/conservative-transformation-wayne-new-jersey-school-board>; Sergio Olmos, *Protests Against LGBTQ Inclusivity in Schools Have Turned Violent in LA County*, NPR Morning Edition (June 20, 2023), <https://www.npr.org/2023/06/28/1184726301/protests-against-lgbtq-inclusivity-in-schools-have-turned-violent-in-la-county>; Kiara Alfonseca,

(continued . . .)

Media reports of unruly protests at school board meetings, often featuring harassment and threats targeting educators and school administrators, are too legion to fully catalogue here. But a handful of comprehensive reports on the subject provide a window into the overall scope and severity of the problems these incidents pose for educators and school administrators.

In the most recent such report, published on July 19, 2023, the non-profit investigative journalism organization ProPublica examined public records and hundreds of hours of footage—from school board meeting feeds, social media, and police bodycam videos—showing how “protesters have derailed school board meetings across the country,” turning the meetings into “polarized battlegrounds over COVID-19 safety measures, LGBTQ+ student rights, ‘obscene’ library books

Protesters Clash For 2nd Time At California School Board Meeting Over Pride Month, ABC News (June 21, 2023); <https://abcnews.go.com/US/protesters-clash-2nd-time-california-school-board-meeting/story?id=100271785>; Lois Beckett, *Outrage as Anti-LGBTQ+ Protest at California School Board Turns Violent*, The Guardian (June 7, 2023), <https://www.theguardian.com/us-news/2023/jun/07/lgbtq-violence-protest-glendale-unified-school-district>; Kiara Alfonseca, *Teachers, Librarians Targeted by Angry Parents Over LGBTQ Books Speak Out*, ABC News (May 19, 2023), <https://abcnews.go.com/US/teachers-librarians-targeted-angry-parents-lgbtq-books-speak/story?id=99390577>; Niraj Warikoo, *Protesters Shut Down Dearborn School Board Meeting Over LGBTQ Books*, Detroit Free Press (Oct. 11, 2022), <https://eu.freep.com/story/news/local/michigan/wayne/2022/10/11/dearborn-school-board-meeting-protestors-lgbtq-books/69554361007/>.

and attempts to teach children about systemic racism in America.”⁶ ProPublica’s analysis “identified nearly 90 incidents in 30 states” involving “[a]ssaults, threats, and disruption, including an instance in which attendees took over the meeting,” many of which “escalated into not just shouting matches and threats but also arrests and criminal charges.”⁷ Indeed, the report uncovered that “at least 59 people were arrested or charged” over misbehavior as school board meetings over the course of the 18-month period from May 2021 to November 2022.⁸

An earlier special report from Reuters in 2022, based on public records and interviews with dozens of school board members from 15 states, uncovered 220 examples of threats and intimidation directed at school officials.⁹ The report also found the same trajectory of protest activity as that documented by ProPublica, as illustrated by the experience of school board members in Loudon County, Virginia: “The board in Loudoun County, a Washington suburb, first came under fire in 2020 over pandemic school closures. Anger built as the district implemented anti-racism efforts in August of that year, including teacher training. By June 2021,

⁶ Carr & Waldron, *How School Board Meetings Became Flashpoints for Anger and Chaos Across the Country*, *supra* note 2.

⁷ *Id.*

⁸ *Id.*

⁹ Borter, *et. al.*, *School Boards Get Death Threats Amid Rage Over Race, Gender, Mask Policies*, *supra* note 2.

many parents were also incensed by a proposed policy to allow transgender students to use bathrooms matching their preferred gender identity.”¹⁰

Reports dating from the first phase of unrest before school boards—which focused mainly on COVID-19 precautions and the notion that K-12 schools were teaching Critical Race Theory—paint a similarly alarming picture. A survey by the American Psychological Association (“APA”) of school staff and administrators from July 2020 to July 2021 found that 29% of teachers, 22% of school psychologists or social workers, 18% of education support staff, and 42% of administrators reported being the victim of “verbal or threatening violence” from parents.¹¹ And a 2021 survey by Education Week found that “[s]ixty percent of principals and district leaders who responded to the survey said at least one of their staff members has faced threats from people who are dissatisfied with their district’s approach for dealing with COVID-19.”¹² To be sure, not all of the threats and harassment directed at educators and school administrators documented in these reports were made at school board meetings. But it is clear that inflammatory attacks on educators and school administrators at school board

¹⁰ *Id.*

¹¹ APA Task Force on Violence Against Educators and School Personnel, *Violence Against Educators and School Personnel: Crisis During COVID*, at 2 (2022), <https://www.apa.org/education-career/k12/violence-educators.pdf>.

¹² Holly Kurtz, *Just How Widespread Are the Threats to Educators Over COVID Policies?*, *supra* note 4.

meetings form a significant part of the overall pattern of abuse directed at educators and school administrators, and it can scarcely be doubted that such misconduct at school board meetings can spill over into other settings, influencing and emboldening those who beleaguer educators and school administrators with threats and harassment through other means.

The harms that such campaigns of abuse and harassment have inflicted on educators, school administrators, and public school students have been, as one would expect, dire. In the APA study discussed above, nearly half of all teachers interviewed (49%) stated that they desired or planned to quit or transfer jobs “due to concerns about school climate and school safety.”¹³ And a study investigating shifts in political conflict in schools between 2018 and 2022, showed that school principals in Tennessee, Nebraska, and Massachusetts all observed an increase in hostility towards educators since the pandemic worsened working conditions in schools have made it harder to recruit and retain educators.¹⁴

¹³ APA Task Force on Violence Against Educators and School Personnel, *Violence Against Educators and School Personnel*, *supra* note 11.

¹⁴ John Rogers & Joseph Kahne, *Educating for a Diverse Democracy: The Chilling Role of Political Conflict in Blue, Purple, and Red Communities*, UCLA Institute for Democracy & University of California Riverside Civic Engagement Research Group 11 (2022), <https://idea.gseis.ucla.edu/publications/educating-for-a-diverse-democracy/publications/files/diverse-democracy-report>.

Attacks on educators and school administrators, and the attendant harms from those attacks, have only become more virulent as school board protests have focused increasingly on schools' approach to their LGBTQ+ students and staff, leading school districts to introduce security measures for board meetings—such as metal detectors, mandatory bag checks, and the posting of security guards or police in meeting rooms—and to adopt limitations on public comment at board meetings.¹⁵ Again, media reports of individual incidents prompting such measures are too voluminous to cite here, but suffice to say for present purposes that the last source cited above, by itself, documented such conduct as: death threats delivered to school administrators' homes, a statement at a school board meeting that transgender people “deserve death,” the allegation that an educator is a “sexual predator” because of their work with LGBTQ+ students, and physical confrontations and assaults at board meetings, including one at which “angry parents attempted to make a ‘citizen’s arrest’ of a school principal, using zip ties as handcuffs.”¹⁶

¹⁵ Caitlynn Peetz, *After Threats and Unruly Meetings, School Boards Invest in Security*, Education Week (April 18, 2023), <https://www.edweek.org/leadership/after-threats-and-unruly-meetings-school-boards-invest-in-security/2023/04>; Evie Blad, *School Boards Are Limiting Public Comment. Will That Erode Trust?*, Education Week (Jan. 18, 2023), <https://www.edweek.org/leadership/school-districts-are-limiting-public-comment-will-that-erode-trust/2023/01>.

¹⁶ Blad, *School Boards Are Limiting Public Comment. Will That Erode Trust?*, *supra* note 15.

A prevalent theme of the current wave of school board protests—one that is reflected in the comments at issue in this case—is the hurling of accusations that educators and school administrators are “groomers” or “sexual predators” simply because they, for example, serve as advisors to student LGBTQ+ support groups, assign materials that touch on LGBTQ+ identity, or have any discussions that involve LGBTQ+ identity, including those aimed at preventing or addressing bullying of LGBTQ+ students.¹⁷ These spurious accusations are especially harmful because they misappropriate and weaponize terms for behaviors associated with child sexual abuse. “Grooming”—a term that has become “ubiquitous” in protests against schools’ approach to LGBTQ+ members of school

¹⁷ See, e.g., Kelsey Childress, *‘We are not predators:’ Emotions Flare at Roanoke Co. School Board Meeting Over Controversial Comments on LGBTQ+ Staff*, WSET ABC13 News (June 16, 2023), <https://wset.com/news/local/we-are-not-predators-emotions-flare-roanoke-county-school-board-meeting-controversial-comments-lgbtq-staff-glen-clove-elementary-virginia-june-2023> (quoting statement by school board meeting attendee that, ““What I’m here to talk about is the child abuse, grooming, conditioning and indoctrination by sexual predators disguised as teachers at Glen Clove Elementary,””); Sam Sachs, *Gay Sarasota School Board Member Walks out of Meeting after Homophobic Remarks*, WFLA News Channel 8 (March 22, 2023), <https://www.wfla.com/news/sarasota-county/gay-sarasota-school-board-member-walks-out-of-meeting-after-homophobic-remarks/> (documenting remarks by school board meeting attendees accusing openly gay board member of being “a supporter of LGBTQ grooming events” and a “lawbreaker and LGBTQ groomer”); Chris Lange, *Mom Accuses CA School Board of ‘Pimping Out’ and ‘Grooming’ Kids*, FISM News (Oct. 18, 2022), <https://fism.tv/mom-accuses-ca-school-board-of-pimping-out-and-grooming-kids/>.

communities¹⁸—describes manipulative techniques used typically by child sex offenders to initiate contact and build trust with their intended victims.¹⁹ As confirmed by a leading researcher in the field, David Finkelhor, professor of sociology and director of the Crimes against Children Research Center at the University of New Hampshire, these behaviors are not typically conducted in public or as a part of ordinary school activities and are “unrelated to current debates about curriculum and classroom discussions.”²⁰

Such extreme and inflammatory rhetoric is not only obviously harmful to the educators and school administrators against whom it is directed but also to the

¹⁸ Kimberlee Kruesi and Karena Phan, ‘*Grooming*’: *The ubiquitous buzzword in LGBTQ school debate*, AP (March 29, 2022), <https://apnews.com/article/education-gender-identity-adf10ff5f169fae9c9af4d08a7b0c2bc> (“[I]n heated debates at school board meetings and in statehouses across the country, the argument ... repeatedly put forth is that they are trying to prevent children from being ‘groomed’—the same term commonly used to describe how sex offenders initiate contact with their victims.”).

¹⁹ America’s largest nonprofit anti-sexual assault organization, the Rape, Abuse & Incest National Network (“RAINN”), defines “grooming” as “manipulative behaviors that the abuser uses to gain access to a potential victim, coerce them to agree to the abuse, and reduce the risk of being caught.” RAINN, *Grooming: Know the Warning Signs* (July 10, 2020), <https://www.rainn.org/news/grooming-know-warning-signs>.

²⁰ Evie Blad, *Why Misusing ‘Groomer’ as a Political Smear Is Especially Dangerous*, Education Week (April 26, 2022), <https://www.edweek.org/leadership/why-misusing-groomer-as-a-political-smear-is-especially-dangerous/2022/04>. See also Madison Czopek, *Why it’s not ‘grooming’: What research says about gender and sexuality in schools* (May 11, 2022), <https://www.politifact.com/article/2022/may/11/why-its-not-grooming-what-research-says-about-gend/>.

children whom the protestors claim to be advocating for. As Professor Finkelhor points out, the use of such rhetoric has the effect of “escalating parents’ anxieties” and “could have a chilling effect, causing educators to fear a backlash for ordinary sex education lessons.”²¹ “Because most sexuality education really teaches kids about things like consent, sexual abuse, and the dangers of early sexual activity,” Finkelhor continues, “these kinds of things are protecting kids from being abused and coming to harm,” and thus extreme rhetoric around LGBTQ+ identity and sex education can undercut such important instruction and harm students.²²

More generally, a raft of studies shows that “[t]he mental health of LGBTQ+ teens and young adults continues to suffer as political debates over banning discussion of LGBTQ+ issues in schools add more stress.”²³ Beyond the devastating mental health implications of being the object of inflammatory campaign of vilification, the physical safety LGBTQ+ students is also at risk. As the Anti-Defamation League (“ADL”), one of the nation’s premier ant-hate organizations, has found:

²¹ Blad, *Why Misusing ‘Groomer’ as a Political Smear Is Especially Dangerous*, *surpa* note 20.

²² *Id.*

²³ Arianna Prothero, *Political Anger Directed at LGBTQ+ Youth Is Stressing Them Out. How Schools Can Help*, Education Week (May 2, 2023), <https://www.edweek.org/leadership/political-anger-directed-at-lgbtq-youth-is-stressing-them-out-how-schools-can-help/2023/05/>.

The result of this widespread hateful rhetoric has been a spike in harassment, threats and violence targeting the LGBTQ+ community. This dangerous development increases the risks facing an already marginalized group by falsely accusing them of one of the vilest behaviors imaginable, in a way that implicitly (and sometimes explicitly) condones violence.²⁴

Leading school administrators have testified to the toll that such extremist rhetoric, coupled with disorderly conduct at school board meetings, has taken on students and educators. A panel of finalists for the National Superintendent of the Year recounted their experiences with the effects of unruly and abusive community members at school board meetings, with one noting that “when discussions turn hostile or meetings lose decorum, it shifts the focus away from students and their academic needs” and that “it’s affecting students when their identity, their humanity, who they are, where they come from, what they believe in, and essentially who they are as a human being is being questioned by individuals” and another relating their experience with educators declining to take leadership positions or simply leaving the profession for other careers as a result of abuse by community members.²⁵

²⁴ ADL Center on Extremism, *What is “Grooming?” The Truth Behind the Dangerous, Bigoted Lie Targeting the LGBTQ+ Community* (Sept. 16, 2022), <https://www.adl.org/resources/blog/what-grooming-truth-behind-dangerous-bigoted-lie-targeting-lgbtq-community>.

²⁵ Caitlynn Peetz, *Top Superintendents Detail the Toll of Divisive Politics—And How They’ve Responded*, Education Week (Jan. 17, 2023), <https://www.edweek.org/leadership/top-superintendents-detail-the-toll-of-divisive-politics-and-how-theyve-responded/2023/01>.

To conclude this discussion, there is perhaps no more compelling and relevant account of the devastating effects of the current wave of vilification campaigns against educators and school administrators than the testimony of the 2022 Maine Teacher of the Year, who was the subject of some of Mr. McBreairty's inflammatory remarks at RSU 22's board meetings, supporting legislation to extend existing legal protections against the harassment and abuse of public servants to include public school educators and officials:

I have been subject to verbal and written targeting behavior that has impacted me personally and professionally. For the first time, I considered leaving the profession that I have fully invested myself into. On local radio, in print, and even on national television, my first and last name has been used in attempts to discredit my knowledge and practice in the profession and damage my reputation by spreading misinformation and hyperbole around my philosophy of education and what occurs in my classroom.

If it is not enough to explain what has occurred to me personally, the domino effect and how my experience has impacted others, including students, teachers, and administration in my district should further persuade you as to the importance of this bill passing. Having to deal with the attempts to discredit me and my practice has taken significant time that I would normally spend on other classroom obligations, has instilled fear in educators across the state that have heard what is being wrongfully projected about me and others, and has taken an immense amount of time of administrators in my district and surrounding districts to manage these situations.²⁶

²⁶ Kelsey Stoyanova, Written Testimony in Support of LD 1939 An Act to Protect School Administration Officials from Harassment and Abuse (Feb. 16, 2022), <https://legislature.maine.gov/testimony/resources/CJPS20220218Stoyanova132896024068213190.pdf>.

II. SCHOOL DISTRICTS HAVE LEGITIMATE INTERESTS IN LIMITING DISCUSSION IN THEIR PUBLIC BUSINESS MEETINGS, AND THEY ARE NOT COMPELLED BY THE FIRST AMENDMENT TO OPEN THEIR BUSINESS MEETINGS TO SCURRILOUS AND HARMFUL CAMPAIGNS OF VILIFICATION AGAINST EDUCATORS AND SCHOOL OFFICIALS

Inasmuch as the Appellees’ Brief and the District Court’s opinion have extensively and ably discussed the application of First Amendment principles to the particular facts of this case, *amici* will not burden the Court with a further iteration of those arguments. Instead, *amici* pause here only to make a few general points in favor of the proposition that school districts in general—and RSU 22 in particular—have legitimate interests in limiting public comment in their business meetings and are not compelled by the First Amendment to open their public meetings to scurrilous and harmful campaigns against individual educators and school officials.

The parties agree—and the case law is quite clear—that school board meetings are limited public fora. *See Joint Sch. Dist. No. 8 v. Wisconsin Emp. Rels. Comm’n*, 429 U.S. 167, 176 n.8 (1976) (“Plainly, public bodies may confine their meetings to specified subject matter and may hold nonpublic sessions to transact business.”); *Davison v. Rose*, 19 F.4th 626, 635 (4th Cir. 2021) (“[T]he school board meetings are limited public fora ...”); *Fairchild v. Liberty Indep. Sch. Dist.*, 597 F.3d 747, 759 (5th Cir. 2010) (“The Board meeting here—and the comment session in particular—is a limited public forum for the limited time and

topic of the meeting.”) (citation and quotation marks omitted). Accordingly, a school board may restrict speech in such a forum, including on the basis of content, provided that the restriction is viewpoint neutral and “reasonable in light of the purpose served by the forum.” *City of Madison*, 429 U.S. at 107 (citation and quotation marks omitted).

Although this Court has not yet had occasion to apply the limited-public-forum principles to school board policies of this kind, two sister circuits have upheld similar subject matter restrictions on public comment as reasonable given the purposes of school board meetings. In *Davison*, the Fourth Circuit had no difficulty upholding a school board policy prohibiting comments “that are harassing or amount to a personal attack against any identifiable individual” on the rationale that such comments cause “unnecessary delay or disruption to a meeting.” 19 F.4th at 635-36. Likewise, in *Fairchild*, the Fifth Circuit upheld a policy that personnel matters will only be discussed in closed meetings and that public complaints are allowed at public meetings only so long as they do not name particular employees or students. 597 F.3d at 760. The court based that holding on the sound principle that the school board “has a legitimate interest, if not state-law duty, to protect student and teacher privacy and to avoid naming or shaming as potential frustration of its conduct of business.” *Id.* See also *Steinburg v. Chesterfield Cnty. Plan. Comm’n*, 527 F.3d 377, 385 (4th Cir. 2008) (“[A]

government entity such as the Commission is justified in limiting its meeting to discussion of specified agenda items and in imposing reasonable restrictions to preserve the civility and decorum necessary to further the forum’s purpose of conducting public business.”)

This Court’s decision in *Ridley v. Mass. Bay Trans. Authority*, 390 F.3d 65 (1st Cir. 2004), is consistent with the Fourth and Fifth Circuits’ approach. In *Ridley*, this Court upheld a state agency’s rejection of an advertisement from a public transportation system advertising program on the ground that the agency’s determination that the ads were demeaning and disparaging was “eminently reasonable” based on the transit agency’s stated purposes, which included “maintaining a safe and welcoming environment.” *Id.* at 93.

Given the scope and severity of the wave of unruly protests that has engulfed school boards over the past two-and-a-half years, *amici* submit that it is entirely reasonable for school districts in general to limit public discussion at their board meetings to the subject matter that those meetings are convened to address and to prohibit abusive attacks on particular educators and school officials. And *amici* further submit that RSU 22’s policy barring comments on individual educators and school officials, and its application of the policy to Mr. McBreairty’s baseless and scurrilous comments about named educators at two of the School District’s board meetings, do not run afoul of the First Amendment.

The policy at issue here is quite measured, particularly when considered in light of the overall problems canvassed in Part I above, of which Mr. McBreairty's inflammatory attacks on named educators are a part. RSU 22's policy, as of the events at issue here, states that "[n]o complaints or allegations will be allowed at Board meetings concerning any person employed by the school system or against particular students," while going on to provide that "[p]ersonnel matters or complaints concerning student or staff issues will not be considered in a public meeting but will be referred through established policies and procedures." App. 065.

In applying this policy during the two board meetings at issue, the School District permitted public commentary about LGBTQ+ issues in general, including inflammatory comments by Mr. McBreairty and others alleging such matters as the school library being "full of kiddie porn," App. 014 at timestamp 0:01-1:55; App. 022 at timestamp 0:08-2:27, and only acted to prevent Mr. McBreairty from continuing to speak after he began to launch diatribes about particular, named educators, referring to one as "groomer of the year" who "should be locked up and not let within 500 feet of a school," and accusing another of displaying "an LGBTQ cult war flag on the classroom wall" while connecting them to a "nationally sponsored group of groomers" operating an "after-school cult pushing

sex and enabling mental illness in our youth,” App. 014 at timestamp 2:12-2:30; App. 022 at timestamp 0:08-2:27, 2:33-2:36.

Particularly in light of the overall problems documented in Part I above, the School District’s measured policy and its measured application of that policy to Mr. McBreairty’s comments, are, in the words of this Court in *Ridley*, “eminently reasonable.” The School District allowed general commentary on LGBTQ+ issues, notwithstanding that such commentary was baseless and inflammatory, and only stepped in when McBreairty’s remarks targeted individual educators by name.

It also bears noting that the policy expressly provides an alternative means for Mr. McBreairty to pursue complaints against individual School District employees—namely, Board Policy KE, App. 062, 076, which governs the process by which citizens can bring complaints against individual district employees. *See Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the L. v. Martinez*, 561 U.S. 661, 690 (2010) (finding law school policy in limited public forum “all the more creditworthy in view of the substantial alternative channels that remain open” for plaintiffs’ speech) (citation and quotation marks omitted).

The conclusion that the School District’s policy is reasonable on its face and as applied here is all the more unavoidable when one considers the harms to educators from baseless and inflammatory personal attacks such as Mr. McBreairty

made here, in combination with school districts’ legal obligations to address harassment and abuse of their employees.

Maine law requires districts to adopt policies that protect employees from workplace bullying, including by parents and “all other individuals associated with the public school.” Me. Rev. Stat. tit. 20-A, § 1000(22). In compliance with this statute, RSU22 has adopted a policy prohibiting “parents, community members, and all others involved with the schools” from engaging in workplace bullying. App. 061, 067. School Districts also have an obligation under federal anti-discrimination laws—notably, Title IX of the Education Amendments Act of 1972, 20 U.S.C. §§ 1681-1688, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e17—to address known harassment based on certain protected characteristics. Hence, where, as here, personally directed harassment occurs at a school board meeting, a school district is on notice of the harassment and thus is well within its rights and legal obligations to take action to address it.

In sum, the School District’s policy, and its application to Mr. McBreairty, are entirely consistent with the First Amendment, and the District Court’s denial of injunctive relief should be affirmed.

CONCLUSION

For the foregoing reasons, and those set forth in the District Court's opinion and the Brief of Appellees, *amici* urge this Court to affirm the District Court.

Respectfully submitted,

/s/ Jason Walta

Alice O'Brien

Jason Walta

Philip A. Hostak

Nicole Carroll

National Education Association

1201 16th Street, N.W.

Washington, D.C. 20036

Phone: (202) 822-7035

aobrien@nea.org

phostak@nea.org

/s/ Benjamin K. Grant

Benjamin K. Grant

Maine Education Association

35 Community Drive

Augusta, ME 04330

Phone: (207) 888-3914

bgrant@maineea.org

Attorneys for *Amici Curiae* National
Education Association and Maine
Education Association

Dated: Sept. 1, 2023

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/s/ Jason Walta

Jason Walta

National Education Association

1201 16th Street, N.W.

Washington, D.C. 20036

Phone: (202) 822-7035

jwalta@nea.org

/s/ Benjamin K. Grant

Benjamin K. Grant

Maine Education Association

35 Community Drive

Augusta, ME 04330

Phone: (207) 888-3914

bgrant@maineea.org

Attorneys for *Amici Curiae* National
Education Association and Maine
Education Association

Dated: Sept. 1, 2023

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of September, 2023, a copy of the foregoing document was filed electronically. Service of this filing will be made on all ECF-registered counsel by operation of the court's electronic filing system.

/s/ Jason Walta

Jason Walta
National Education Association
1201 16th Street, N.W.
Washington, D.C. 20036
Phone: (202) 822-7035
phostak@nea.org

/s/ Benjamin K. Grant

Benjamin K. Grant
Maine Education Association
35 Community Drive
Augusta, ME 04330
Phone: (207) 888-3914
bgrant@maineea.org

Attorneys for *Amici Curiae* National
Education Association and Maine
Education Association