UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LUIS SOUSA, *Plaintiff,*	)	
vs.	)	C.A. NO. 1:22-cv-40120-IT
SEEKONK SCHOOL COMMITTEE, RICH DROLET, in his personal and official capacities, and KIMBERLY SLUTER, in her personal and official capacities, *Defendants*.	)	

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DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

On November 23, 2022, Superintendent Dr. Rich Drolet issued a Modified No Trespass Order ("Modified Order") to plaintiff, Luis Sousa, a true and accurate copy of which is attached hereto as Exhibit 1. In the Modified Order, the Superintendent rescinded the prohibitions set forth in the Permanent No Trespass Order dated October 4, 2022 and, instead, advised plaintiff that he was forbidden from attending meetings of the Seekonk School Committee for a period of one (1) year, until November 23, 2023. Plaintiff, still refusing to accept any consequences for his behavior at previous School Committee meetings, now seeks a preliminary injunction enjoining continued enforcement of Rules 2 and 9 of the Seekonk School Committee's Public Participation Policy. The Court should deny such relief.

I. INTRODUCTION

On September 26, 2022, plaintiff, Luis Sousa, disrupted a Seekonk School Committee ("School Committee") by yelling and screaming at the School Committee members from the back of the meeting room. He did not approach the podium and had not been recognized by the Chair to speak. When asked to leave, Mr. Sousa refused to do so but, instead, kept yelling from the back of the room. The School Resource Officer eventually escorted plaintiff from the meeting. This was the second time plaintiff disrupted a School Committee meeting in nine months. On October 4, 2022, Superintendent of Schools Dr. Rich Drolet issued a No Trespass Order to plaintiff pursuant to M.G.L. c. 266, § 120. On November 23, 2022, Dr. Drolet modified the Order. Plaintiff now brings this action against the School Committee, the Superintendent and former School Committee Chair Kimberly Sluter, for the alleged violation of his rights to free speech as protected under the First Amendment, for handicap discrimination under Title II of the Americans with Disabilities

Act ("ADA"), and for the alleged deprivation of his rights to equal protection as guaranteed under the Fourteenth Amendment. (ECF Doc. No. 27).

In a Renewed Emergency Motion for a Temporary Restraining Order and a Preliminary Injunction (ECF Doc. No. 28), plaintiff sought injunctive relief in the form of an order enjoining defendants from enforcing the No Trespass Order. Because that No Trespass Order was rescinded on November 23, 2022, plaintiff's Renewed Emergency Motion addressed (by necessity) the Modified Order with the one-year School Committee meeting ban. (See Exhibit 1). On December 8, 2022, this Court held a hearing on plaintiff's Renewed Emergency Motion for a Temporary Restraining Order and a Preliminary Injunction. At the hearing, plaintiff argued that Rules 2 and 9 of the Seekonk School Committee's Public Participation Policy are unconstitutional facially and as applied to plaintiff. However, plaintiff did not specifically seek injunctive relief as to the Rules in his pending motion. (See ECF Doc. No. 28). On December 9, 2022, this Court issued an order temporarily staying the Modified Order to allow plaintiff to attend the December 19, 2022, meeting of the Seekonk School Committee, subject to the Committee's Public Participation Policies, and setting a hearing for December 22, 2022, to determine whether the Temporary Restraining Order should be continued. (ECF Doc. No. 54). Following the hearing held on December 22, 2022, the Court did not extend the temporary restraining order beyond 14 days but scheduled the matter for another hearing on January 17, 2023. (ECF Doc. No. 69).

On December 16, 2022, plaintiff filed another motion for injunctive relief – this time seeking a preliminary injunction enjoining defendants from enforcing Rules 2 and 9 of the Public Participation Policy. (ECF Doc. No. 61). In Count II of his First Amended Complaint, plaintiff challenges the Public Participation Policy under the free speech clause of the First Amendment. Specifically, Rule 2 of the Policy (plaintiff maintains) is "unconstitutionally vague and void on its

face," as the term "'respectful' appears to mean anything the [School] Committee may happen to approve of at the moment." (ECF Doc. No. 27, ¶ 107). Further, Rule 9 of the Policy is "an unconstitutional content-based restriction of the freedom of speech and petition." (Id., ¶ 110). Plaintiff seeks both a declaration that Rules 2 and 9 are void and an injunction enjoining the enforcement of Rules 2 and 9 by the School Committee.

Defendants hereby oppose plaintiff's Motion for a Preliminary Injunction and submit this Memorandum of Reasons in support of their Opposition. In further Opposition to plaintiff's Motion, defendants rely upon the Affidavit of Richard Drolet and Exhibits A – F thereto submitted on November 7, 2022. (ECF Doc. No. 16-1).

II. BACKGROUND

The School Committee conducts the business of Seekonk Public Schools ("SPS") in meetings held open to the public pursuant to the Massachusetts Open Meeting Law, M.G.L. c. 30A, §§ 18 – 25 ("OML"). Typically, such meetings include two periods known as "Public Speak" which shall last no longer than fifteen (15) minutes apiece. Public Speak affords members of the Seekonk school community an opportunity to address the School Committee on matters not on the School Committee's agenda but otherwise within the scope of the School Committee's authority. Public Speak is governed by the "Public Participation at School Committee Meetings" policy ("Public Participation Policy") which includes a set of rules designed to ensure that those who wish to speak will be heard without interfering with the ability of the School Committee to conduct SPS business "in an orderly manner." (ECF Doc. No. 16-1, Ex. "A," ¶ 4). Pursuant to the Public Participation Policy, speakers are allotted three minutes apiece, subject to the time

limitations of the fifteen-minute period.[1] All speakers "are encouraged to present their remarks in a respectful manner," and the Chair may terminate any speech that is not constitutionally protected. (Id.) Notably, "Public Speak is not a time for debate or response to comments by the School Committee." (Id., ¶ 5).

On October 21, 2019, the Seekonk School Committee adopted and approved its Public Participation Policy. (ECF Doc. No. 16-1, Ex. "A"). The Public Participation Policy was adopted to ensure that "all who wish to be heard before the chance and to ensure the ability of the Committee to conduct the District's business in an orderly manner[.]" (Id.) The Public Participation Policy further states that the School Committee "desire members of the Seekonk school community to attend its meetings so that they may become better acquainted with the operations of the Seekonk Public Schools." (Id.) Furthermore, it states that the "Committee would like the opportunity to hear the wishes and ideas of members of the Seekonk school community on matters within the scope of their authority." (Id.)

Rule 2 of the Public Participation Policy states, simply, that "[a]ll speakers are encouraged to present their remarks in a respectful manner." (Id., ¶ 2). Rule 9 of the Public Participation Policy is a disclaimer, which provides:

> Disclaimer: Public Speak is not a time for debate or response to comments by the School Committee. Comments made at Public Speak do not reflect the views or the positions of the School Committee. Because of Constitutional free speech principles, the School Committee does not have the authority to prevent all speech that may be upsetting and/or offensive at Public Speak.

(Id., ¶ 9). Although not challenged by plaintiff in his Motion for a Preliminary Injunction, Rule 8 of the Public Participation Policy provides as follows:

[1] If five or six speakers sign up for Public Speak, each speaker is allotted up to two minutes to present their material. No more than six speakers are accommodated during any single Public Speak segment. (ECF Doc. No. 16-1, Ex. "A," Rule 5).

> The Chair of the meeting may not interrupt speakers who have been recognized to speak, except that the Chair reserves the right to terminate speech which is not constitutionally protected because it constitutes true threats, incitement to imminent lawless conduct, comments that were found by a court of law to be defamatory, and/or sexually explicit comments made to appeal to prurient interests. Verbal comments will also be curtailed once they exceed the time limits outlined in paragraphs 5 and 7 of this policy and/or to the extent they exceed the scope of the School Committee's authority.

(Id., ¶ 8).

As the Court is aware, Superintendent Dr. Drolet issued the Modified No Trespass Order to plaintiff in response to two inappropriate and disruptive incidents on SPS property. The first occurred on January 5, 2022, when the School Committee was holding a meeting in executive session. Although the meeting was not open to the public, plaintiff nonetheless attempted to enter. When he was unsuccessful, plaintiff approached the meeting room from outside the school building and began to record the proceedings through the windows. As he did so, plaintiff yelled: "Why are we not allowed at the meeting? You cancelled two meetings. Why can't we go?" (ECF Doc. No. 16-1, ¶¶ 6 & 7). The School Committee Chair suspended the meeting and called the Seekonk Police Department. Plaintiff admitted to the responding officer that he was upset because he had wanted to speak to the School Committee about the SPS mask mandate for school children but was unable to do so. The SPS mask mandate was not on the agenda. Nor was Public Speak. (Id., Ex. "B"). Plaintiff also admitted yelling at the School Committee to ask why it was meeting in "secret." (Id., ¶ 8, Ex. "C").

The second disruptive incident occurred on September 26, 2022, at a School Committee meeting held in open session. During the first Public Speak segment, plaintiff addressed the School Committee without interruption. During the second Public Speak segment, however, when the School Committee Chair twice attempted to advise plaintiff's wife that her allotted time had expired, plaintiff disrupted the meeting by yelling and screaming from the back of the room: "I'll

wait till my wife's done." "Then you should have had the meeting two weeks ago … you're gonna let her talk now!" (Id., ¶ 12). When plaintiff's wife continued to address the School Committee without surrendering the podium, a member of the School Committee attempted to call a recess. Plaintiff yelled "No!" "So who's checking on that child that is so distraught?" "This meeting's a joke!" (Id., ¶ 13). Superintendent Dr. Drolet asked plaintiff to leave the meeting because of his outbursts. Plaintiff refused and continued yelling from the back of the room. The School Resource Officer then entered the meeting room and escorted plaintiff out. Plaintiff continued yelling as he was escorted from the room. (Id., ¶ 14).

On October 4, 2022, the Superintendent issued a Permanent No Trespass Order to plaintiff barring plaintiff from SPS property. (Id., ¶ 17, Ex. "F"). The Permanent No Trespass Order was subsequently rescinded on November 23, 2022, and Superintendent Dr. Drolet issued to plaintiff a Modified No Trespass Order. Under the Modified Order, plaintiff is forbidden from attending meetings of the Seekonk School Committee for a period of one (1) year, until November 23, 2023. (ECF Doc. No. 41-1).[2]

In his Motion for a Preliminary Injunction, filed on December 16, 2022, the plaintiff seeks a preliminary injunction to enjoin defendants from enforcing Rules 2 and 9 of the Public Participation Policy. (ECF Doc. No. 61). Plaintiff argues that Rules 2 and 9 are facially unconstitutional, and to whatever extent they could be interpreted to be constitutional on their face, they were unconstitutional as applied to plaintiff. (ECF Doc. No. 61). Plaintiff has not established that he is entitled to the extraordinary relief of a preliminary injunction and, therefore, his Motion for Preliminary Injunction should be denied.

[2] The Court issued an order temporarily staying the Modified Order to allow plaintiff to attend the December 19, 2022 School Committee Meeting. Plaintiff attended the December 19, 2022 School Committee Meeting and spoke during the first Public Speak segment of that meeting.

III. ARGUMENT

A. PRELIMINARY INJUNCTION STANDARD.

To obtain a preliminary injunction, plaintiff bears the burden of demonstrating "(1) a substantial likelihood of success on the merits, (2) a significant risk of irreparable harm if the injunction is withheld, (3) a favorable balance of hardships, and (4) a fit (or lack of friction) between the injunction and the public interest." NuVasive, Inc. v. Day, 954 F.3d 439, 443 (1st Cir. 2020). See Corp. Techs., Inc. v. Harnett, 731 F.3d 6, 9 (1st Cir. 2013); Nieves-Marquez v. Puerto Rico, 353 F.3d 108, 120 (1st Cir. 2003). Plaintiff bears the burden of demonstrating that each of the four factors weighs in his favor. Esso Std. Oil Co. v. Monroig-Zayas, 445 F.3d 13, 18 (1st Cir. 2006). However, "the four factors are not entitled to equal weight in the decisional calculus; rather, '[l]ikelihood of success is the main bearing wall of the four-factor framework.'" Corp. Techs., Inc., 731 F.3d at 9-10 (quoting Ross-Simons of Warwick, Inc. v. Baccarat, Inc., 102 F.3d 12, 16 (1st Cir. 1996)). See CVS Pharmacy, Inc. v. Lavin, 951 F.3d 50, 55 (1st Cir. 2020) (substantial likelihood of success "weighs most heavily in the preliminary injunction analysis."); Baptiste v. Kennealy, 490 F. Supp. 3d 353, 380 (D. Mass. 2020) (substantial likelihood of success on merits is the "sine qua non for obtaining a preliminary injunction").

Further, a preliminary injunction is an "extraordinary and drastic remedy." Voice of the Arab World, Inc. v. MDTV Medical News Now, Inc., 645 F.3d 26, 32 (1st Cir. 2011) (quoting Munaf v. Geren, 553 U.S. 674, 689-90 (2008)). Such an extraordinary remedy "may only be awarded upon a clear showing that the plaintiff is entitled to such relief." Nieves-Marquez, 353 F.3d at 120.

B. PLAINTIFF FAILS TO MEET THE PRELIMINARY INJUNCTION STANDARD AND, THEREFORE, HIS MOTION SHOULD BE DENIED.

1. Plaintiff Fails to Show a Substantial Likelihood of Success on the Merits Under Count II of his First Amended Complaint.[3]

a. Plaintiff Lacks Standing to Challenge the Public Participation Policy.

"It is beyond dispute that when a litigant wishes to pursue a claim in a federal court, justiciability principles require the existence of an actual case or controversy." Ramirez v. Sanchez Ramos, 438 F.3d 92, 97 (1st Cir. 2006). This requirement applies through all stages of federal judicial proceedings. Id. (citing Lewis v. Cont'l Bank Corp., 494 U.S. 472, 477 (1990)). "To satisfy Article III's "personal stake" requirement vis-à-vis a statutory challenge, "plaintiff bears the burden of demonstrating that (i) she has suffered an actual or threatened injury in fact, which is (ii) fairly traceable to the statute, and (iii) can be redressed by a favorable decision." Ramirez, 438 F.3d at 97.

In the context of a preliminary injunction, "the merits on which plaintiff must show a likelihood of success encompass not only substantive theories but also establishment of jurisdiction," including standing. New Hampshire Hosp. Ass'n v. Burwell, 2016 WL 1048023, at *5 (D.N.H. Mar. 11, 2016) (quoting Obama v. Klayman, 800 F.3d 559, 565 (D.C. Cir. 2015) (Williams, J., concurring in part and dissenting in part)). Mr. Sousa is unable to make such a showing here because he lacks standing to challenge Rules 2 and 9 of the Public Participation Policy.

In order to have standing to mount a facial challenge to a statute, the plaintiff must show an injury in fact. Osediacz v. City of Cranston, 414 F.3d 136, 141 (1st Cir. 2005) (concluding that

[3] Defendants addressed the merits of each count of plaintiff's First Amended Complaint in their previous Oppositions to Plaintiff's Motions for Injunctive Relief. (ECF Doc. Nos. 30; 41). This Opposition focuses in particular on plaintiff's constitutional challenges to Rules 2 and 9, as plead in Count II of plaintiff's First Amended Complaint.

even though prudential standing concerns are relaxed in the First Amendment context, a litigant must still show an injury in fact). Here, plaintiff is unable to show an injury in fact as to Rules 2 and 9 because the Public Participation Policy is directed towards the Public Speak segment of School Committee meetings. (ECF Doc. No. 16-1, Ex. "A"). Plaintiff conceded this point at this Court's December 8, 2022 hearing. (ECF Doc. No. 55, p. 33-34). At the September 26, 2022 School Committee meeting, plaintiff was not a recognized speaker at the podium for Public Speak. Instead, plaintiff shouted from the back of the room after plaintiff's wife exceeded the allowable speaking time during the Public Speak segment. (ECF Doc. No. 16-1, ¶¶ 12 & 13). Shortly thereafter, plaintiff was escorted from the room due to his outbursts and his refusal to leave. Nor was plaintiff a recognized Public Speak speaker when he shouted at the School Committee from outside Hurley Middle School "Why are we not allowed at the meeting? You canceled two meetings? Why can't we go?" while the Committee was meeting in executive session on January 5, 2022. Thus, as an unrecognized and disruptive shouter, plaintiff is unable to show an injury in fact to support his facial challenge to Rules 2 and 9. Osediacz, 414 F.3d at 142 ("[i]t is apodictic that a mere interest in seeing the government turn square corners is not the kind of particularized interest that can satisfy the most basic constitutional prerequisite for standing"). The Public Participation Policy, and Rules 2 and 9 specifically, were not applied to plaintiff. Plaintiff was not a recognized speaker at Public Speak at the September 26, 2022 School Committee meeting. It is undisputed that the Public Participation Policy applies to Public Speak. (ECF Doc. No. 55, p. 34). As the Public Participation Policy was not applied to plaintiff, plaintiff is unable to establish an injury in fact fairly traceable to the policy. See Ramirez, 438 F.3d at 97. Thus, his as-applied challenge must also fail. See Faustin v. City, Cnty. of Denver, Colorado, 268 F.3d 942, 948 (10th Cir. 2001) (holding plaintiff lacked standing to challenge the unconstitutionality of statute where

the statute was not applied to plaintiff). Cf. Ramirez, 438 F.3d at 97 (concluding plaintiff had standing for as-applied challenge because at the time plaintiff filed complaint, criminal charges under challenged statute were pending against her).[4]

b. Even Assuming He Has Standing, Plaintiff Fails to Show a Substantial Likelihood of Success on the Merits Under Count II of his Complaint.

In Count II of his Complaint, plaintiff asserts facial and as applied challenges to Rules 2 and 9 of the Public Participation Policy. As to Rule 2, plaintiff alleges that Rule 2 of the Public Participation Policy is unconstitutionally vague and void because the word "respectful" can and has been used "pretextually and inconsistently." (ECF Doc. No. 27, ¶ 107). Plaintiff further contends that Rule 2 was unconstitutionally applied to him. (ECF Doc. No. 27, ¶ 108). Plaintiff additionally mounts facial and as applied challenges to Rule 9 of the Public Participation Policy, criticizing it as an unconstitutional content-based restriction because if a Committee member broaches a subject first, the Rule can foreclose a member of the public from speaking on that same subject. (ECF Doc. No. 27, ¶ 110). Plaintiff also contends that Rule 9 of the Public Participation Policy was unconstitutionally applied to him because he "was punished for the content of his speech.". (ECF Do. No. 27, ¶ 111). Even assuming, *arguendo*, he has standing to challenge the Public Participation Policy, plaintiff fails to show a substantial likelihood of success under Count II, as Rules 2 and 9 are not unconstitutional on their face, nor were they unconstitutionally applied to him.

[4] Plaintiff will likely argue that Superintendent Dr. Drolet's statement at the October 3, 2022 meeting that plaintiff had violated two Public Participation Policy Rules is sufficient to confer an injury in fact to support his standing to challenge those rules. (ECF Doc. No. 27, ¶¶ 46-52). However, none of the No Trespass Orders issued, including the operative Modified Order, was based upon or references Rules 2 or 9 of the Public Participation Policy. (ECF Doc. No. 16, Ex. 5, 10, 13; ECF Doc. No. 41, Ex. 1).

At the outset, a facial challenge to a statute, regulation or policy is "the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the [statute, regulation or policy] would be valid." United States v. Salerno, 481 U.S. 739, 745 (1987). See Washington v. Glucksberg, 521 U.S. 702, 739-740 & n.7 (1997) (Stevens, J., concurring) (facial challenge must fail where statute has a "plainly legitimate sweep"); Hightower v. City of Boston, 693 F.3d 61, 77-78 (1st Cir. 2012) (facial challenge fails where plaintiff fails to demonstrate statute lacks any "plainly legitimate sweep"). This burden of showing no "plainly legitimate sweep" is heightened in the context of the First Amendment where a statute will not be struck down as facially invalid unless "it prohibits a substantial amount of protected speech." Doe v. Hopkinton Pub. Schools, 19 F.4th 493, 509 (1st Cir. 2021) (quoting United States v. Williams, 553 U.S. 285, 292 (2008)).

Moreover, facial challenges are "disfavored," as they often rest on speculation and, as a result, "raise the risk of 'premature interpretation of statutes on the basis of factually barebones records.'" Washington State Grange v. Washington State Republican Party, 552 U.S. 442, 450 (2008) (quoting Sabri v. United States, 541 U.S. 600, 609 (2004)). Such challenges also "run contrary to the fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." Id. (quoting Ashwander v. TVA, 297 U.S. 288, 346-347 (1936)) (quotations omitted). See Libertarian Party of N.H. v. Gardner, 843 F.3d 20, 25 (1st Cir. 2016) (Court views facial challenge with "some skepticism" absent actual demonstration of constitutional violation).

Finally, courts are obligated, whenever possible, to construe statutes narrowly so as to avoid constitutional difficulties. Boos v. Barry, 485 U.S. 312, 331 (1988). See National

Pharmacies, Inc. v. Feliciano-de-Melecio, 221 F.3d 235, 241 (1st Cir. 2000) (federal courts render interpretations of state law using same methods as state courts, including principle that statutes should be given constitutional interpretations where possible); O'Brien v. Borowski, 461 Mass. 415, 422 (2012) (Massachusetts courts construe statutes narrowly to avoid unconstitutional results).

The parties do not dispute that meetings of the Seekonk School Committee are a limited public forum. See Galena v. Leone, 638 F.3d 186, 199 (3rd Cir. 2011) (county council meeting held a limited public forum); Steinburg v. Chesterfield Cty. Planning Comm'n, 527 F.3d 377, 385 (4th Cir. 2008) (planning commission meeting held a limited public forum); Fairchild v. Liberty Ind. Sch. Dist., 597 F.3d 747, 759 (5th Cir. 2010) (public comment session of school board meeting held a limited public forum); Youkhanna v. City of Sterling Heights, 934 F.3d 508, 518-519 (6th Cir. 2019), *cert. den.*, 140 S.Ct. 1114 (2020) (city council meeting held limited public forum); Rowe v. City of Cocoa, Fla., 358 F.3d 800, 803 (11th Cir. 2004) (public comment session of city council meeting held a limited public forum). Plaintiff conceded as much at the December 8, 2022 hearing. (ECF Doc. No. 55, p. 28:8-10). As the Seekonk School Committee meeting is a limited public forum, control over access "can be based on subject matter and speaker identity so long as the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint-neutral." Cornelius v. NAACP Legal Def. & Educ. Fund, Inc., 473 U.S. 788, 808 (1985), 473 U.S. at 806; Good News Club v. Milford Cent. Sch., 533 U.S. 98, 106-107 (2001). The Public Participation Policy satisfies these Constitutional requirements.

Here, the Public Participation Policy does not lack any "plainly legitimate sweep." Hightower, 693 F.3d at 77-78. As a public body, the School Committee is clearly permitted to adopt reasonable rules of order and decorum to conduct SPS business. Specifically, Rule 2 of the

Public Participation Policy "encourages," *but does not require*, all Public Speak participants to "present their remarks in a respectful manner." Rule 2 does not, on its face, compromise First Amendment values. National Endowment for the Arts v. Finley is instructive. See generally Nat'l Endowment for the Arts v. Finley, 524 U.S. 569, 583 (1998). There, the Supreme Court addressed a facial challenge to 20 U.S.C. § 954(d)(1), which directs the Chairperson of the National Endowment for the Arts ("NEA") to ensure that grant applications to the NEA are judged by their "artistic excellence and artistic merit," while taking into consideration "general standards of decency and respect for the diverse beliefs and values of the American public." See 20 U.S.C. § 954(d)(1). The Supreme Court held that § 954(d)(1) is facially valid, as it neither inherently interferes with First Amendment rights nor violates Constitutional vagueness principles. Nat'l Endowment for the Arts, 524 U.S. at 573. The Court noted that § 954(d)(1), like Rule 2, "admonished the NEA *merely* to take 'decency and respect' *into consideration*" and was aimed at reforming procedures rather than precluding speech. Id. at 582 (emphasis added). The Court further concluded that the "decency and respect" criteria do not censor or silence speakers; therefore, the Court did not "perceive a realistic danger that § 954(d) will compromise First Amendment values." Id. at 583.

The same analysis applies here. First, Rule 2 merely *encourages* speakers to present their remarks in a respectful manner. In short, it is aspirational and does not prohibit or restrict any types of speech. Mama Bears of Forsyth County v. McCall, cited by plaintiff in his Notice of Supplemental Authority in further support of his original Motion for a Preliminary Injunction, highlights this crucial distinction. (ECF Doc. No. 40-1). In Mama Bears, the District Court upheld a facial challenge to a public participation policy requirement that the public "shall conduct themselves in a respectful manner" when addressing the Board of Education of the Forsyth County

School District. In the Court's view, such a requirement "impermissibly targets speech unfavorable to or critical of the Board while permitting other positive, praiseworthy, and complimentary speech." But see Davis v. Colerain Township, 551 F. Supp. 3d 812, 821 (S.D. Ohio 2021) (upholding restriction on "disrespectful" comments during township meetings as reasonable regulation designed "to further the government's purpose of conducting an orderly, efficient and productive meeting"). Again, the Seekonk Public Participation Policy contains no such requirement. On the contrary, the Seekonk Public Participation Policy merely "*encourage[s]* [speakers] to present their remarks in a respectful manner." (ECF Doc. No. 16-1, Exhibit A). In short, "respectful" public discourse is a request, not a command. In Mama Bears, the Court expressly recognized the difference between policy "requirements" and "aspirational provisions." While the former may render a participation policy unconstitutional, the latter, noted the Court, may not. "[I]t can be acceptable for the Board to seek and request a certain level of decorum during its meetings, so long as that aspiration is not impermissibly treated as a mandate." See Mama Bears at 24. The Seekonk School Committee encourages "respectful" conduct but does not mandate it. The Mama Bears Court went on to reject plaintiffs' challenge to the Forsyth County public participation policy on the grounds it requested speakers to keep their remarks civil, prohibited the use of obscene language, and prohibited loud and boisterous conduct or comments. See Mama Bears at 38-39. In short, the Mama Bears decision does nothing to advance Mr. Sousa's cause. Rather, it supports defendants' position.

Moreover, Rule 2 is not directed at the content of speech but, instead, was implemented to ensure School Committee business is conducted in an orderly manner. Courts have repeatedly held that government rules prohibiting disruption in limited public forums and requiring participants to maintain order and decorum are content-neutral and, therefore, constitutional. Dyer

v. Atlanta Ind. Sch. System, 852 Fed. App'x 397, 402 (11th Cir.), *cert. denied*, 142 S.Ct. 484 (2021); Moms for Liberty – Brevard County, FL v. Brevard Public Schools, 582 F. Supp. 3d 1214, 1218 (M.D. Fla. 2022). Plaintiff cannot show a substantial likelihood of success on the merits of Count II.

Nor is Rule 2 unconstitutionally vague. As an initial matter, the mere fact that a regulation or law contains some ambiguity is not sufficient to make it unconstitutional. See Caribbean Int'l News Corp. v. Fuentes Agostini, 12 F. Supp. 2d 206, 216 (D.P.R. 1998) (quoting United States Civil Service Comm'n v. Nat'l Ass'n of Letter Carriers, 413 U.S. 548, 578–79 (1973) (provision will survive vagueness review if it is sufficient for an ordinary person exercising common sense to understand)). As the Court noted at the December 8, 2022 hearing, the term "respect" can be understood in common-sense terms. (ECF Doc. No. 55, p. 48:17-25). To the extent that individuals may have differing interpretations of "respect," such differing interpretations and the Rule's encouraging versus mandating nature make it unlikely that the Rule, as applied, will unconstitutionally limit speech. See Nat'l Endowment for the Arts, 524 U.S. at 583-84 (quoting FCC v. Pacifica Foundation, 438 U.S. 726, 743 (1978) (noting Court's reluctance to invalidate legislation on the basis of its hypothetical application to situations not before the Court).

Likewise, Rule 9 of the Public Participation Policy is not unconstitutional on its face. First, Rule 9 is a disclaimer. Notwithstanding the plea for civility set forth in Rule 2, the School Committee warns the public that comments made at Public Speak do not reflect the views of the School Committee, and that because of "Constitutional free speech principles, the School Committee does not have the authority to prevent all speech that may be upsetting and/or offensive at Public Speak." And although plaintiff characterizes Rule 9 as an unconstitutional restriction on a member of the public's ability to speak during Public Speak, Rule 9 actually limits the *School*

Committee's ability to respond to comments made during Public Speak. Rule 9 states "Public Speak is not a time for debate or *response to comments by the School Committee*. Comments made at Public Speak do not reflect the views or the positions of the School Committee." Reading Rule 9 in its entirety, it is evident that "comments" refers to comments made by recognized speakers during Public Speak, and that Rule 9 is intended as a disclaimer that the *School Committee* will not respond to comments made during Public Speak. This interpretation is reinforced by referencing Rule 8, which states "[t]he Chair of the meeting may not interrupt speakers who have been recognized to speak[,]" and notes the Chair's authority to terminate *"comments"* which are not constitutionally protected. Schuster v. Harbor, 471 F. Supp. 3d 411, 419 (D. Mass. 2020) (quoting Simmons v. Galvin, 575 F.3d 24, 35 (1st Cir. 2009) ("[a]s 'the meaning of statutory language, plain or not, depends on context,' we must 'look not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy.'") (additional citation omitted)). In light of such limitations, it is abundantly clear that disrespectful remarks which are otherwise protected by the First Amendment *are not prohibited* by the Public Participation Policy.

Nor were Rules 2 and 9 of the Public Participation Policy unconstitutionally applied to the plaintiff. As discussed above, Rules 2 and 9 were not applied to plaintiff. As conceded by plaintiff, the Public Participation Policy applies to the Public Speak segment of School Committee meetings. (ECF Doc. No. 16-1, Ex. "A"; ECF Doc. No. 55, p. 33-34). Plaintiff was not a recognized speaker during the Public Speak segment of the September 26, 2022 School Committee meeting; but instead disrupted the meeting but shouting from the back of the room after plaintiff's wife exceeded the allowable speaking time during the Public Speak segment. (ECF Doc. No. 16-1, ¶¶ 12 & 13). Shortly thereafter, plaintiff was escorted from the room due to his outbursts and his

refusal to leave. Nor was plaintiff a recognized Public Speak speaker when he disrupted the School Committee's Executive Session meeting from outside Hurley Middle School on January 5, 2022. (ECF Doc. No. 16-1, ¶¶ 6 & 7). As rules 2 and 9 were not applied to plaintiff, he is unable to demonstrate a substantial likelihood of success on the merits under Count II. March v. Frey, 458 F. Supp. 3d 16, 42 (D. Me. 2020) (concluding there is no evidence that Attorney General caused a deprivation of plaintiff's free speech or equal protection rights where plaintiff attempted to bring an as applied challenged against a party who has not applied the law to him).

2. The Balance of Hardships and the Public Interest Weigh Against an Award of Injunctive Relief to Plaintiff.

As stated above, plaintiff bears the burden of establishing that the four factors of a preliminary injunction weigh in his favor. Esso Std. Oil, 445 F.3d at 18. Insofar as the third factor is concerned – the balance of hardships – the standard to be applied is a "stringent" one, requiring a court to carefully weigh the interests on both sides. Rushia v. Town of Ashburnham, Mass., 710 F.2d 7, 10 (1st Cir. 1983) (citing Doran v. Salem Inc, Inc., 422 U.S. 922, 931 (1975)). Here, the purpose of the September 26, 2022 School Committee was to conduct SPS business. Although the School Committee invited the Seekonk school community to participate in the meeting by including Public Speak on the agenda, it was not required to do so. To be clear, members of the public do not have a guaranteed right "to be heard by public bodies making decisions of policy." Minnesota State Bd. for Community Coll. v. Knight, 465 U.S. 271, 284 (1984). See Heffron v. International Soc. for Krishna Consciousness, 452 U.S. 640, 647 (1981) ("First Amendment does not guarantee [persons] the right to communicate [their] views at all times and places or in any manner that may be desired."); Kindt v. Santa Monica Rent Control Board, 67 F.3d 266, 269 (1995) ("Citizens are not entitled to exercise their First Amendment rights whenever and wherever they wish.").

Admittedly, when government creates a forum for citizen input at public meetings such as Public Speak, constitutional guarantees apply. Still, government may require speakers to adhere to reasonable rules of civility during its meetings or proceedings, provided it does not do so in a way that silences viewpoints it disfavors. Rules 2 and 9 further the School Committee's interest in conducting its business in an orderly and efficient manner. See Rowe, 358 F.3d at 803 ("There is a significant governmental interest in conducting orderly, efficient meetings of public bodies."); Steinburg, 527 F.3d at 387 ("[A] content-neutral policy against personal attacks is not facially unconstitutional" so long as it serves "the legitimate public interest … of decorum and order"); White v. City of Norwalk, 900 F.2d 1421, 1426 (9th Cir. 1990) (rules of decorum that proscribe against "personal, impertinent, slanderous or profane" remarks at city council meeting held not unconstitutional).

"[L]ocal entities can adopt rules of decorum that require speakers at government meetings to maintain relevancy and civility when commenting." T. Day & E. Bradford, "Civility in Government Meetings: Balancing First Amendment, Reputational Interests, and Efficiency," 10 First Amend. L. Rev. 57, 63 (2011).

> The "policy against 'personal attacks' focuses on two evils that could erode the beneficence of orderly public discussion." These policies further the dual interests of keeping public discussion on topic and reducing defensiveness and counter-argumentation. Both of these interests serve to maintain the orderly conduct of the meeting.

Id., at 63-64 (footnotes omitted). And any public speaker who violates such rules or policy may be excluded from a meeting provided the exclusion is not an effort to suppress the expression of views contrary to public officials. Cornelius, 473 U.S. at 800.

Defendants do not take lightly plaintiff's protected right of free speech. But where plaintiff exercises that right while simultaneously engaging in inappropriate conduct that disrupts the School Committee's ability to conduct important SPS business, the School Committee cannot (and

should not) overlook the misbehavior simply because it accompanies a message. The public has a right to attend School Committee meetings without disruption. The School Committee has a right to conduct SPS business without disruption, and Rules 2 and 9 were adopted in furtherance of that right. Plaintiff has failed to make a "clear showing" that he is entitled to the "extraordinary and drastic" relief of a preliminary injunction and, therefore, his Motion should be denied.

IV. CONCLUSION

For the reasons set forth above, this Honorable Court should deny plaintiff's Motion for a Preliminary Injunction.

Respectfully submitted,

The Defendants,
SEEKONK SCHOOL COMMITTEE, KIMBERLY SLUTER, in her personal and official capacities, and RICH DROLET, in his personal and official capacities,

By their Attorneys,

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Dated: December 30, 2022

CERTIFICATE OF SERVICE

I hereby certify that the foregoing, filed through the Electronic Case Filing System, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and that a paper copy shall be served upon those indicated as non-registered participants on December 30, 2022

/s/ Matthew J. Hamel

Matthew J. Hamel, Esq.