UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LUIS SOUSA, Plaintiff, v. SEEKONK SCHOOL COMMITTEE; RICH DROLET, in his personal and official capacities; KIMBERLY SLUTER, in her personal and official capacities, Defendants.	Civil Action No. 4:22-cv-40120-IT **RENEWED EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND FOR A PRELIMINARY INJUNCTION** **[REQUEST FOR ORAL ARGUMENT]**

Plaintiff, Luis Sousa, files this motion on an *emergency basis* for a temporary restraining order to enjoin Defendants from the enforcement of an unconstitutional and otherwise unlawful permanent no trespass order forbidding Plaintiff from entering upon the premises of Seekonk Public Schools, including the grounds and inside any building or attending any Seekonk Public Schools related functions or events, until a preliminary injunction issues, and otherwise for a preliminary injunction for the same purpose.[1] A temporary restraining order is necessary to permit Mr. Sousa to attend the November 14, 2022, School Committee meeting, and a preliminary injunction is needed to generally avoid the no trespass order during this litigation.

The prior iteration of this motion (ECF No. 2) was withdrawn (ECF No. 24) based on admonitions of the Court (ECF Nos. 11, 20 & 23) that it would not consider supplemental evidence counsel did not have at the time the original motion was filed due to the time constraints of seeking emergency relief shortly after being retained. However, the repeated indications by the Court in those orders that the original motion should be withdrawn in favor of a renewed motion now requires emergency action by the Court to issue a Temporary Restraining Order to avoid Mr. Sousa's denial of his right to attend the November 14, 2022, School Committee meeting.

[1] The Motion is to enjoin the Seekonk School Committee and Drolet (collectively "Defendants"). This Motion is not to enjoin Defendant Sluter.

As set forth in the accompanying memorandum, the order violates the First Amendment, the Fourteenth Amendment's Equal Protection Clause, and Title II of the Americans with Disabilities Act. This motion is based on all pleadings and papers on file herein and the attached Memorandum of Points and Authorities, and any further argument and evidence as may be presented at hearing.

CERTIFICATION

Pursuant to L.R. 7.1(a)(2), undersigned counsel certify that they have conferred with Defendants' counsel and have attempted in good faith to resolve or narrow the issue. Plaintiff has tried to work this out prior to seeking court intervention, but the Defendants have not assented to the relief requested. Defendants' counsel indicated that he left a message for Defendant Drolet as to the relief requested, but due to the rapidly approaching November 14, 2022, meeting, Plaintiff had no choice but to file this motion by 3:30 p.m. today to ensure that the Court might have sufficient time to consider it, especially as one of Plaintiff's attorneys is sabbath observant and might not be able to respond to the Court or Defendants were there any further delay. These issues are not new to the Court or Defendants and were anticipated in connection with the briefing on the original motion and indicated in the non-prejudicial withdrawal thereof.

REQUEST FOR ORAL ARGUMENT

Pursuant to L.R. 7.1(d), Plaintiff hereby requests oral argument and evidentiary hearing on the preliminary injunction request; the temporary restraining order to permit attendance at the November 14, 2022, meeting can be resolved with or without a hearing. Hearing may facilitate this Court's understanding of the factual and legal issues given the exigency of this motion, and impeach the credibility of Defendants' declaration(s) or other purported evidence in response. "[W]hen the parties' competing versions of the pertinent factual events are in sharp dispute, such that the propriety of injunctive relief hinges on determinations of credibility, the inappropriateness of proceeding on affidavits alone attains its maximum." *Campbell Soup Co. v. Giles*, 47 F.3d 467, 470 (1st Cir. 1995)(cleaned up).

WHEREFORE, Plaintiff respectfully requests this Honorable Court issue the requested Temporary Restraining Order and Preliminary Injunction.

Dated: November 11, 2022.

Respectfully Submitted,

/s/ Marc J. Randazza

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CERTIFICATE OF SERVICE

I hereby certify that on November 11, 2022 the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

/s/ Marc J. Randazza
Marc J. Randazza

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LUIS SOUSA, Plaintiff, v. SEEKONK SCHOOL COMMITTEE; RICH DROLET, in his personal and official capacities; KIMBERLY SLUTER, in her personal and official capacities. Defendants.	Civil Action No. 4:22-cv-40120-IT **MEMORANDUM IN SUPPORT OF RENEWED EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND FOR A PRELIMINARY INJUNCTION**

MEMORANDUM OF POINTS AND AUTHORITIES[1]

1.0 INTRODUCTION

Plaintiff Luis Sousa ("Sousa") is a parent who cares deeply for his 5- and 6-year-old children and their education.[2] In retaliation for Sousa's exercise of his First Amendment rights, treating him unequally to other citizens, and discriminating against him on the basis of his disability, Defendant Rich Drolet issued a Permanent No Trespass Order forbidding Sousa from entering Seekonk Public School grounds and from attending any school related functions or events. ECF No. 27-13. A temporary restraining order is necessary to permit Mr. Sousa to attend the November 14, 2022, School Committee meeting, and a preliminary injunction is needed to generally avoid the no trespass order during this litigation.

Through this unconstitutional action, Defendants have barred Sousa from participating in government meetings, picking his children up at school, attending community events, and have

[1] The prior iteration of this motion (ECF No. 2) was withdrawn (ECF No. 24) based on the admonitions of the Court (ECF Nos. 11, 20 & 23) that it would not consider supplemental evidence counsel did not have at the time the original motion was filed due to the time constraints of seeking emergency relief shortly after being retained. However, the repeated indications by the Court in those orders that the original motion should be withdrawn in favor of a renewed motion now requires emergency action by the Court to issue a Temporary Restraining Order to avoid Sousa's denial of his right to attend the November 14, 2022, School Committee meeting.

[2] The Motion is to enjoin the Seekonk School Committee and Drolet (collectively "Defendants"). This Motion is not to directed to Defendant Sluter.

even impeded his right to vote.[3] The only exceptions are that, upon at least forty-eight hours' written notice, Sousa may attend a parent-teacher conference or a back-to-school night and, at Drolet's discretion and upon forty-eight hours' written notice, Sousa may request to attend other events. Drolet has, in his sole discretion, banished Sousa from events like Halloween parties for his children – in the context of 5 and 6 year old children, this is far from frivolous. Drolet has also banished Sousa from attending school committee meetings. Sousa was denied the opportunity to attend the October School Committee Meeting, the October PTO meeting, the October "Fall of Flames" event, and the October "Trunk or Treat" event.[4] *See* ECF No. 27-19; *see also* First Amended Complaint "FAC" (ECF No. 27) at ¶ 77.[5] Drolet is prohibiting Sousa from attending the November 14 Seekonk School Committee meeting. *See* ECF No. 27-20; *see also* FAC at ¶ 80.

Drolet's purported justification for permanently banning Sousa is allegedly for "inappropriate and disruptive" behavior. In truth, Defendants are silencing Sousa because he disagrees with them, and they wish to govern without criticism, and because he is a disabled individual. M.G.L. c. 266, § 120 does not provide Defendants the unconstitutional and unlawful authority to arbitrarily banish outspoken or disabled parents from school grounds.

[3] Drolet wisely chose to use his unilateral and unfettered authority to grant Drolet the right to vote. However, no citizen should need to beg another to exercise that right.

[4] He can never re-experience these events, the harm is irreparable, though an amended complaint seeking monetary damages as a result of these past injuries against Drolet in his individual capacity has been filed. Even if Defendants lifted their unconstitutional order immediately, that would not rectify the past injuries. Moreover, given the predilection for Defendants to repeatedly, improperly, request law enforcement to remove Sousa for no valid reason, a voluntarily lifting of the unconstitutional order would probably just be for temporary show and the violations are capable of repetition without redress.

[5] All citations to the FAC should also be deemed to cite to and incorporate the analogous paragraph of the original verified complaint (ECF No. 1), treating such as an affidavit, incorporated herein by reference.

2.0 FACTUAL BACKGROUND

2.1 Seekonk School Committee BEDH Public Participation Policy

Pursuant to BEDH Public Participation Policy, "Public Speak" is time for public comment to the Committee. *See* ECF No. 27-12. The "Public Speak" Policy has two unconstitutional (facially and as-applied) rules:

- Rule 2: "All speakers are encouraged to present their remarks in a respectful manner."
- Rule 9: "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." ECF No. 27-12.

Committee custom is that each individual is allotted three minutes. ECF No. 27-12 at ¶ 5; FAC at ¶ 52. However, when the Committee likes a speaker's viewpoint, they get more time. ECF No. 27-16 at 52:38-59:10; *see also* ECF No. 27-17 at 27:45-33:08 & 56:45-1:03:15; *see also* FAC at ¶ 67-72.

2.2 Defendants' Unconstitutional Conduct

January 5, 2022

On January 5, 2022, the date of the "first incident" justifying Sousa's banishment, Sousa arrived at a Seekonk School Committee meeting and intended to address the Committee during Public Speak. ECF No. 27-3; FAC at ¶¶ 8-16. Defendant falsely claimed that there was no "Public Speak" at that meeting; at least one speaker was permitted. ECF No. 27-1 and ECF No. 27-12. Apparently, the meeting started promptly at 4:05 PM. ECF No. 27-2. The Board recognized a speaker and then the meeting went into a private session by 4:08 PM. *Id.*

During Public Speak, Sousa intended to address the mask mandate. COVID-19 restrictions have eased over time, and Sousa wished to be part of the discussion. *See* ECF No. 27-4; *see also* FAC at ¶ 13. Notably, one month later, Massachusetts lifted the mandate and other school districts

had previously voted to lift it.[6] Sousa arrived and the door was locked. ECF No. 27-4 at 2; *see also* FAC at ¶ 9. Sousa observed the Committee meeting inside the Superintendent's office. ECF No. 27-4 at 2; *see also* FAC at ¶ 10. He began protesting outside, and recorded his actions and the Committee's lack of response. ECF No. 27-3; *see also* ECF 27-4; FAC ¶¶ 9-10. Sousa wanted to know why the Committee meeting was canceled after two meetings had already been canceled. *Id.* Having been excluded and unaware the public meeting occurred and was recessed in such an uncharacteristically rapid fashion, Sousa stood on public grounds and protested that he could not participate. *Id.* That was his First Amendment right.

Soon thereafter, police officers arrived on the scene. *See* ECF No. 27-4; *see also* FAC at ¶¶ 11-16. Seekonk School Committee Member Kimberly Sluter falsely accused Sousa of "banging on the windows" and "screaming". ECF No. 27-4 at 2; *see also* FAC at ¶¶ 11-12, 16. According to the police, Sousa's interactions with them were calm and respectful. ECF No. 27-4 at 2; *see also* FAC ¶ 13. Sousa explained he wanted to address the Committee, and he showed the officers the video of the incident. ECF No. 27-4 at 2; FAC at ¶¶ 13-15. According to the police officers, Sousa was loudly speaking through the window at the Committee members, but he was not banging on the windows. ECF No. 27-4 at 2; FAC at ¶ 15.

January 10, 2022

Without cause, several days later, on January 10, 2022, Defendant Superintendent Drolet sent a letter to Sousa threatening to issue a **permanent** no trespass order pursuant to M.G.L. c. 266, § 120 for allegedly disturbing the Committee during the meeting, on January 5, 2022. ECF No. 27-5; FAC at ¶¶ 17-21.

January 18, 2022

On January 18, 2022, Sousa and Drolet met regarding the protest. *See* ECF No. 27-6; *see also* FAC ¶¶ 22-29. Drolet confirmed and agreed that Sousa did not bang on the windows or

[6] *See* J. Siegel, *Massachusetts School Mask Mandate Lifted*, Reporter Today, Feb. 9, 2022, https://reportertoday.com/seekonk/seekonk/stories/massachusetts-school-mask-mandate-lifted,38482, (accessed Nov. 10, 2022).

scream during the incident, on January 5, 2022. ECF No. 27-6 at 3:02 ("One thing I wanted to clarify, I made sure in the letter that it didn't say you were banging or screaming."). Drolet has now, apparently, changed his story to include "screaming." ECF No. 27-11 at 1:47-2:22; *see also* FAC at ¶ 47. However, he has not adopted Sluter's false statement about "banging on the windows." ECF No. 27-4; FAC at ¶¶ 11-12, 16.

January 24, 2022

Sousa attended a School Committee meeting where he played the video demonstrating that Sluter lied to the police, and questioned her about it. ECF No. 27-14 at 52:00 (meeting video); *see also* ECF No. 27-15 (meeting minutes); *see also* FAC at ¶¶ 58-66. Drolet began to address Sousa, "I will say this based on your behavior that day there were people scared." ECF No. 27-14 at 54:43; *see also* FAC at ¶ 59. Sluter, seeking to cover up her lies to the police, interjected, banged the gavel and prevented Drolet and Sousa from speaking to each other. ECF No. 27-14 at 54:52 ("That's enough. The comments need to come through the chair and you have twenty seconds left."); FAC at ¶ 51. Sousa then addressed his questions to Sluter. ECF No. 27-14 at 54:55. Sluter then stated, "Your time is up, if you don't leave we will ask the officer to remove you." ECF No. 27-14 at 55:19; FAC at ¶ 63. Sousa began leaving the podium and responded, "Of course you will. It's not the first time you called them." ECF No. 27-14 at 55:24; FAC at ¶ 64. Sluter immediately orders the officer to remove Sousa from the meeting. ECF No. 27-14 at 55:30. Plaintiff can find no other instances where a public speaker was given a countdown, where all communications were routed directly through the chair, or where immediately upon the expiration of 3 minutes police were called to remove a speaker. To the contrary, as evidenced below, Defendants never give a countdown, allow cross-talk, and don't call the police at the three minute mark.

May 23, 2022 and June 27, 2022 Meetings

During both the May 23, 2022, and June 27, 2022, meetings the Chair allowed a speaker to go over the three-minute time period. ECF No. 27-16 at 52:38-59:10; ECF No. 27-17 at 27:45-33:08 & 56:45-1:03:15; *see also* FAC at ¶¶ 67-72. On May 23, 2022, a member of the public

requested to use the tennis courts for pickle ball. ECF No. 27-16 at 56:45-1:03:15; FAC at ¶¶ 67-69 . The speaker was granted more than 6 minutes, and there was spirited discussion between the speaker, Chair, and Drolet. *Id.* On June 27, 2022, the same person was allowed to speak twice and spoke for more than three minutes both times. *See* ECF No. 27-17. In the first instance, there was discussion between the speaker, a committee member, and Drolet for more than 5 minutes. ECF No. 27-17 at 27:45-33:08; FAC at ¶ 71. In the second instance, there was discussion between the speaker, the Chair, and Drolet for more than 6 minutes. ECF No. 27-17 at 56:45-1:03:15; FAC at ¶ 72. All of these rules were relaxed when the Committee wanted to hear what the citizen had to say.

August 22, 2022

Sousa attended a school committee meeting and attempts to donate a book to the school library and address school safety. ECF No. 27-18 at 37:27-40:08 & 1:33:10-1:36:36; *see also* FAC ¶¶ 73-74. During these discussions, Drolet and Sousa engaged in spirited debate. *Id.* However, Sousa was not ejected.

September 26, 2022

This is the "second incident" the Defendants rely on to justify his banishment. Sousa attended the September 26, 2022, meeting, and he patiently waited while his wife spoke. ECF No. 27-7 (committee meeting audio) at 1:17:05-1:19:50; ECF No. 27-8 (committee meeting video) at 2:02:10-2:05:50; ECF No. 27-9 (meeting minutes); *see also* FAC ¶¶ 30-43. Sousa's wife, Kanessa Lynn, addressed the Committee regarding the book "Johnny the Walrus" and why Seekonk Public School refused to allow this book in the school library. *See* ECF No. 27- 7 at 1:17:05-1:19:50. It is certainly a valid question to address to a school committee, when they engage in book banning. After three minutes, the Committee strictly enforced the time limit, because Lynn was challenging the Committee's decision to ban this book. When his wife's time was cut to a strict three minutes, Sousa, who was called upon next to speak, protested loudly (necessary as he did not have use of the microphone yet). ECF No. 27-7 at 1:17:40; FAC at ¶¶ 33-34. The Chair asked, "Is there any

additional public comment this evening?" *Id.* Sousa said, "Yeah, I'll wait until my wife's done." *Id.* Sousa raised his voice in order to be heard and his bipolar disorder causes pressured speech, which manifests in raised volume. *See* ECF No. 27-11 at 2:08, 9:40, & 12:37; *see also* FAC at ¶¶ 48, 52. The meeting went into recess on account of Lynn running over the three minutes, and the Chair repeatedly asking Lynn to take a seat. ECF No. 27-7 at 1:17:10, 1:17:20, 1:17:48, 1:17:57. The committee members said "Cut the camera." *Id.* at 1:18:03. The Chair then moved to recess. *Id.* at 1:18:05. Sousa protests. *Id.* at 1:18:07-10; FAC at ¶¶ 38-39. At this point, Drolet intervened and asked Sousa to leave the meeting. FAC at ¶ 41. Upon being told to leave, Sousa promptly returned to his seat to collect his belongings and leave the premises. *Id.* at ¶ 42. As Sousa gathered his belongings, a resource officer entered the room and followed Sousa out of the building. *Id.* The Committee then reconvened and continued the meeting. *Id.* at ¶ 43. Sousa was ejected during the recess when no rules governing meetings could possibly be broken.

September 27, 2022

The next day, on September 27, 2022, Defendant Superintendent Drolet sent a letter to Sousa admonishing him for his alleged "highly inappropriate and disruptive behavior that required the School Committee to temporarily enter into a recess." ECF No. 27-10; FAC ¶¶ 44-45. Drolet threatened to issue a Permanent No Trespass Order against Sousa. *Id.* Drolet also requested a meeting with Sousa before Drolet made his final decision. *Id.* This meeting was pretextual. Drolet's mind was made up before the meeting occurred.

October 3, 2022

On October 3, 2022, Drolet met with Sousa. *See* ECF No. 27-11; *see also* FAC at ¶¶ 46-55. Drolet cited Rule 2, Rule 7, and Rule 9 of the BEDH Public Participation Policy as reasons for issuing a Permanent No Trespass Order against Sousa. *See* ECF No. 27-12; *see also* FAC at ¶¶ 51-52. Drolet claimed that Sousa was argumentative during Public Speak but cited no examples. ECF No. 27-11 at 6:50; FAC at ¶ 52. Drolet also took issue with Sousa's inability to adhere to Rule 2. ECF No. 27-11; ECF No. 27-11 at 4:00. Rule 2 states that "[a]ll speakers are encouraged

to present their remarks in a respectful manner." During that meeting, Drolet demonstrates shifting narratives as to what occurred before, and what his justifications for the banishment were. ECF No. 27-11 at 1:47-2:22. Drolet, contradicting his earlier statements, claimed that Sousa was screaming outside the window during the January 5 protest. *Id*.

October 4, 2022

Drolet unilaterally decided that Sousa is banished from school property based on his protest on January 5, 2022 and his speech at the meeting on September 26, 2022. No other conduct was mentioned. Sousa was not only banned from any school property, but "[Sousa is] not allowed to attend any Seekonk Public Schools *related* functions or events." ECF No. 27-13. Drolet stated that Sousa may attend *some* events, if he gives Drolet 48 hours' notice, and in Drolet's unfettered discretion, he wishes to permit Sousa to attend.[8]

Regarding the September 26 meeting, Defendants claimed the right to eject Sousa from the meeting is derived from M.G.L. c. 30A, § 20(g) which states the following:

> (g) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings **of a meeting** of a public body. If**, after clear warning from the chair**, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.

(emphasis added).

The evidence shows that there was no "clear warning." ECF No. 27-7 (audio) at 1:17:05-1:19:50. Nor was there disruption *of the meeting*, as the meeting had been put in recess *not on account of him*. *Id.* at 1:18:05. Sousa has been **permanently** banished from public participation unless Drolet himself makes an exception. ECF No. 27-13. His children are five and six years old. Sousa cannot pick them up at school. Sousa cannot attend their school plays or other events. And since the punishment is permanent, it bans him from attending his now five-year-old's high school graduation. Should Drolet see fit, under his banishment decree, Sousa will not even be able to

[8] As noted above, Sousa asked to be permitted to attend a "Trunk or Treat" event and another event for his 5- and 6-year-old children. Drolet refused.

attend his grandchildren's graduations. All this because Sousa and his wife dared to challenge the School Committee's views on book banning.

3.0 LEGAL STANDARDS

Rule 65 of the Federal Rules of Civil Procedure provides for temporary restraining orders and preliminary injunctions in federal courts upon notice to the adverse party. *See* Fed. R. Civ. P. 65(a) and (b). A temporary restraining order or preliminary injunction must (1) state the reasons why it issued; (2) state its specific terms; and (3) describe in reasonable detail the act or acts restrained or required. Fed. R. Civ. P. 65(d). Injunctive relief should be issued if: (1) the plaintiff is likely to succeed on the merits; (2) the plaintiff is likely to suffer irreparable harm if the injunction did not issue; (3) the balance of equities tips in plaintiff's favor; and (4) the injunction is in the public interest. *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008).

"In the First Amendment context, the likelihood of success on the merits is the linchpin of the preliminary injunction analysis." *Sindicato Puertorriqueño de Trabajadores v. Fortuño*, 699 F.3d 1, 10 (1st Cir. 2012) (*per curiam*). At this stage, the "court need not conclusively determine the merits of the movant's claim; it is enough for the court simply to evaluate the likelihood . . . that the movant ultimately will prevail on the merits." *Ryan v. U.S. Immigr. & Customs Enf't*, 974 F.3d 9, 18 (1st Cir. 2020).

4.0 LEGAL ARGUMENT

4.1 Plaintiff Has Standing

In First Amendment cases, there is standing when the plaintiff intends to engage in a Constitutionally protected activity, which has been proscribed by the government and there is a credible threat of prosecution. *Mangual v. Rotger-Sabat*, 317 F.3d 45, 56-57 (1st Cir. 2003) (standing when a plaintiff "is chilled from exercising her right to free expression or forgoes expression in order to avoid enforcement consequences).

The harm is readily apparent. Defendants issued a lifetime No Trespass Order against Sousa that prohibits him from entering Seekonk Public School grounds and entering any school

building or even attending school related events, unless Drolet himself gives him a pass. ECF No. 27-13. Sousa is prohibited from petitioning his government at Committee meetings, picking up his children from school, and attending school functions with his elementary school-aged children.

4.2 Plaintiff is Likely to Prevail on the Merits of His Claims

4.2.1 Plaintiff's First Amendment Rights were Violated

In seeking a preliminary injunction, the plaintiff has the burden to show the state action infringes on their First Amendment rights, at which point the state must then justify its actions. *Comcast of Maine/New Hampshire, Inc. v. Mills*, 435 F. Supp. 228, 233 (D. Me. 2019) (citing *Reilly v. City of Harrisburg*, 858 F.3d 173, 180 (3d Cir. 2017)). *See also United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 816 (2000) ("When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions."); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.,* 393 U.S. 503, 509 (1969) ("In order for the State . . . to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.").

Defendants violated Plaintiff's constitutional rights by issuing a retaliatory Permanent No Trespass Order and threatening to enforce it against Plaintiff for his conduct protected under the First Amendment of the U.S. Constitution. Sousa's protest on January 5, 2022 was protected activity. Similarly, expressing displeasure (even rudely) during the September 26 meeting was First Amendment protected. *See City of Madison, Joint Sch. Dist. No. 8 v. Wis. Emp. Rels. Comm'n,* 429 U.S. 167, 174–75 (1976) (holding that the First Amendment protects the rights of speakers at school board meetings that were opened for direct citizen involvement and permitted public participation). And his participation in future events, including town meetings, school board meetings, or simply assemblies with his children are similarly First Amendment protected, and depriving him of his right to participate is an unlawful prior restraint.

4.2.2 Sousa was Retaliated Against on the Basis of His Speech

Government actions that infringe upon free speech in a public forum are evaluated under strict scrutiny if they are content-based. Content-neutral time, place, and manner restrictions are subject to intermediate scrutiny, meaning they must be "narrowly tailored to serve and significant government interest, and … leave open ample alternative channels for communication of the information." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). A limited public forum exists "where the government opens a non-public forum but limits the expressive activity to certain kinds of speakers or to the discussion of certain subjects." *Hotel Emples & Rest. Emples Union, Local 100 v. City of N.Y. Dep't of Parks and Rec.*, 311 F.3d 534, 545 (2d Cir. 2002) (internal quotation marks and citation omitted). In such public forums, regulation of the designated subject matter of the forum receives strict scrutiny, but regulation of matters outside of that forum's purpose must only be "viewpoint neutral and reasonable." *Id.* at 546. Legislative meetings that permit public comment are typically considered limited public forums. *See, e.g.*, *City of Madison Joint Sch. Dist. No. 8 v. Wis. Emp't Relations Comm'n*, 429 U.S. 167, 174-76 (1976).

Outside the school building is a public forum. The exterior of the school building is open to the public, and there is no rule restricting protesting on school grounds when school is not in session. Even if the outside of the school was a "nonpublic forum" the government can only restrict speech there if the restrictions are "reasonable and [are] not an effort to suppress expression merely because public officials oppose the speaker's view." *Perry Ed. Assn. v. Perry Local Educators' Assn*, 460 U.S. 37, 46 (1983); *see also Minn. Voters All. v. Mansky*, 138 S. Ct. 1876, 1885 (2018) ("The government may reserve such a forum 'for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view.' " (quoting *Perry*, 460 U.S. at 46)). Since there are no rules regarding protesting on school grounds, any "regulation" that the government seeks to uphold would be ad hoc, and thus unconstitutional.

But, even if we credit the government's arguments as "time place and manner" restrictions – the only thing that Sousa did during his January 5 protest was "yelling."[10] "Singing . . . whistling, shouting, [and] yelling" are forms of speech protected by the First Amendment. *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 772 (1994). Listening to citizens seeking redress of grievances is part of a public official's job. Accordingly, as to January 5, 2022, the only purported justification for the banishment was that Sousa was protesting too loudly for the government's liking. ECF No. 27-5 at 1. Defendants used the excuse of citing to the school meeting rules but *Sousa was part of no meeting*. ECF No. 27-12. He was *protesting outside*. The alleged violation was pretextual.

Prohibiting someone from testifying at a public meeting because they have disrupted or otherwise interrupted that particular meeting is a "[r]easonable time, place and manner restriction[] on speech in limited public fora." *See Devine v. Village of Port Jefferson*, 849 F. Supp. 185, 190 (E.D.N.Y. 1994). There is no support, however, for permanent banishment from all school grounds for all purposes by relying on unconstitutionally vague regulations or rules.

For time, place, and manner restrictions to be valid they must not delegate overly broad discretion to a government official, must be narrowly tailored to serve a substantial governmental interest, and must leave open ample alternatives for communication. *See Globe Newspaper Co. v. Beacon Hill Architectural*, 100 F.3d 175, 182 (1st Cir. 1996). In order for a time, place, or manner restriction to be narrowly tailored it must further a substantial government interest. *See Gay Students Org. of Univ. of N.H. v. Bonner*, 509 F.2d 652, 660 (1st Cir. 1974). The BEDH Public Participation Policy delegates overly broad discretion to the Defendants. In the letter of September 27, 2022, Drolet putatively admonished Sousa for his "highly inappropriate and disruptive behavior." ECF No. 27-10 at 1. During the meeting between Drolet and Sousa, on October 3,

[10] As to the January 5 protest, Drolet's narrative is fixed on Sousa "yelling." He seems to have abandoned the position that there was banging on the windows. However, he does claim that "the room had to be evacuated." ECF No. 16-2 at 19. There is no explanation as to why the melodramatic narrative is that the room "had to be evacuated." It seems that the "evacuation" was merely government officials who did not wish to hear a citizen protesting outside the building.

Drolet alleged that Sousa violated Rule 2 by yelling on January 5, and for raising his voice on September 26, after the Committee told him he was not permitted to speak during Public Speak. ECF No. 27-3. These justifications were purportedly confirmed in Drolet's letter of October 4. ECF No. 27-13.

Rule 2 is vague and unconstitutional facially and as applied to Sousa. First, in neither incident was Sousa properly considered a "speaker" presenting during Public Speak because Defendants twice denied Sousa an opportunity to speak before the Committee. Second, Rule 2 encourages the public to present remarks in a "respectful manner" – a vague standard that encourages arbitrary and discriminatory enforcement while failing to provide a reasonable opportunity for the public to understand what conduct is prohibited. However, Defendants apply Rule 2 as a mandate that any speech that does not comport with their definition of "respectful" will not be tolerated. This is vague. *See Cohen v. California*, 403 U.S. 15, 25 (1971) ("one man's vulgarity is another's lyric."). Drolet claimed that Sousa was not "respectful" as one of the reasons to banish him. However, now the government the claimed that this "respectful" requirement is merely a "suggestion." ECF No. 16 at 17. If it is merely a suggestion, it is unenforceable. If it is unenforceable, it cannot be the pillar of this lifetime banishment.

Rule 9 is also unconstitutional as applied to Sousa. Rule 9 prohibits "debate or response to comments by the School Committee." ECF No. 27-12 at ¶ 9. It appears that Defendants have interpreted this to mean that Sousa is not allowed to engage in debate or respond to comments made by the Committee, despite this being common-place. On May 23, 2022, during a committee meeting, a member of the public engaged in discussion with the Chair and Drolet for more than 6 minutes about using the school tennis court for pickle ball. ECF No. 27-16 at 52:38-59:10; FAC at ¶¶ 69-71. On June 27, 2022, an individual engaged with Drolet, the Chair, and a committee member during Public Speak on two occasions, both for longer than 5 minutes. ECF No. 27-17 at 27:45-33:08 & 56:45-1:03:15; FAC at ¶¶ 72-74. On August 22, 2022, Sousa and Drolet engaged in debate during Public Speak. ECF No. 27-18 at 37:27-40:08 & 1:33:10-1:36:36; FAC at ¶¶ 75-

76. Rule 9 is an unconstitutional content-based restriction on speech and petition. Moreover, that Drolet's issue with Sousa's argumentativeness is an admission that Drolet disagrees with Sousa's viewpoints and opinions and seeks to silence him.

The School Committee believes that it can simply shift the goalposts on any subject being out of bounds by merely opining on it, and then banning debate on it under their rules, ECF No. 27-12 at ¶ 9, or by claiming that the debate was not "respectful." *Id.* at ¶ 2. The heart of the issue is Defendants do not like Sousa, his opinions, or his viewpoints. They do not like him challenging mask mandates or book banning, or shining light into the shadowlands of the educational curriculum of the Seekonk Public School system. Right before the Committee prevented Sousa from speaking on September 26, 2022, his wife questioned why the Seekonk Public School banned the book "Johnny the Walrus."[11] The School Committee regularly permits people to speak longer than three minutes, when it is a viewpoint they want to hear, as noted above. Meanwhile, the Committee holds opposing viewpoints to a strict three minutes. Sousa's wife, Ms. Lynn, got to the end of her three minutes and then the Committee cut her off. ECF No. 27-7 at 1:17:10; ECF No. 27-8 at 2:02:11. She continued to speak, and they applied their ire at her to Sousa. ECF No. 27-7 at 1:17:40-1:18:10; FAC at ¶¶ 31-41. Defendants' issuance of a Permanent No Trespass Order against Sousa for purported rule violations is mere pretext to silence viewpoints and opinions.

4.2.3 Rule 2 is Facially Unconstitutional

"[P]ublic bodies may confine their meetings to specified subject matter . . . ." *Madison Joint Sch. Dist. v. Wis. Emp't Relations Comm'n*, 429 U.S. 167, 175 n.8 (1976). But the metes and bounds of such confinement must be viewpoint neutral. "[U]nder the Equal Protection Clause, not to mention the First Amendment itself, government may not grant the use of a forum to people

[11] Drolet also alleged that Sousa had violated Rule 7, which prohibits speakers from assigning time to another speaker and prohibits extensions of time without permission from the Chair. But, Sousa had not assigned his time and he is entitled to speak on the same issues as his wife or raise a concern as to how the Committee treated her, just as he is entitled to speak on issues raised by or concerning other members of the public. Coverture, treating spouses as one person, was abolished in the mid-nineteenth century. *Smith v. Cole*, 27 LCR 232, 232 (Mass. Land Ct. 2019).

whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views." *Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 96 (1972).

Rule 2 is impermissibly vague if (1) "it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits" or (2) "it authorizes or even encourages arbitrary and discriminatory enforcement." *Hill v. Colorado*, 530 U.S. 703, 732 (2000). Out of concern or arbitrary suppression of free speech, "the Constitution requires a 'greater degree of specificity' in cases involving First Amendment rights." *Nat'l Org. for Marriage v. McKee*, 649 F.3d 34, 62 (1st Cir. 2011). "The vagueness of such a regulation raises special First Amendment concerns because of the obvious chilling effect on speech." *Reno v. ACLU*, 521 U.S. 844, 872 (1997). This is highlighted when such rules are used to punish speakers for viewpoints.

The term "respectful" is not defined in the policy, but the dictionary defines it as (1) "a feeling of admiring someone or something that is good, valuable, important, etc."; (2) "a feeling or understanding that someone or something is important, serious etc., and should be treated in an appropriate way"; or (3) "a particular way of thinking about or looking at something."[12] In other words, Rule 2 expects the public to hold a certain viewpoint during Public Speak and is unconstitutional on its face. *Matal v. Tam*, 137 S. Ct. 1744, 1763 (2017) ("Giving offense is a viewpoint.") Presumably, this bans sarcasm, it bans even "dirty looks" or rolling ones eyes. To the extent that "respectful manner" does not require a certain viewpoint, it fails to provide the public a reasonable opportunity to understand what conduct is prohibited. The vague wording permits arbitrary and discriminatory enforcement.

4.2.4 Defendants' Selective Enforcement Violates Equal Protection

Defendants violated Sousa's right to equal protection under the Fourteenth Amendment to the U.S. Constitution. As the Court is aware:

> To state an equal protection claim for selective enforcement, a plaintiff must show that "(1) the person, compared with others similarly situated, was selectively treated; and (2) that such selective treatment was based on impermissible considerations such as race, religion, intent to inhibit or punish the exercise of constitutional rights, or malicious or bad faith

[12] https://www.britannica.com/dictionary/respect

> intent to injure a person." *Freeman v. Town of Hudson*, 714 F.3d 29, 38 (1st Cir. 2013) (internal quotations omitted). Although the "formula for determining whether individuals or entities are 'similarly situated' . . . is not always susceptible to precise demarcation," the "test is whether a prudent person, looking objectively at the incidents, would think them roughly equivalent and the protagonists similarly situated." *Aponte-Ramos v. Álvarez-Rubio*, 783 F.3d 905, 909 (1st Cir. 2015) (internal quotations omitted). "In other words, apples should be compared to apples." *Id*. (internal quotations omitted).

Gattineri v. Town of Lynnfield, 2021 U.S. Dist. LEXIS 154902 at *28-29 (D. Mass. Aug. 17, 2021) (Talwani, U.S.D.J.). Here, Sousa was selectively treated—he was singled out for a no trespass order. It was for the punishment of his constitutional rights and to otherwise maliciously injure him. If Defendants were acting in good faith, they would not lie and constantly shift their explanations. A prudent person would think the other individuals who ran over time or engaged in back-and-forth discussions, but who agreed with the Government, were roughly equivalent and similarly situated. No one else was given a 20 second countdown. No one else was immediately ejected with the use of law enforcement at three minutes and one second. No one else has been given a lifetime ban—Defendants do not punish their friends, only their perceived enemies. Sousa is similarly situated in all relevant respects to other speakers. Thus, Plaintiff has a strong likelihood of success on his equal protection claim.

4.2.5 Defendants Discriminated Against Sousa on the Basis of his Disability

Sousa suffers from bipolar disorder. Bipolar disorder "can qualify as a disability within the meaning of the ADA." *Wight v. D'Amante Pellerin Assocs.,* 2018 U.S. Dist. LEXIS 200072 at *14 (D. N.H. Nov. 27, 2018) (*citing Reed v. LePage Bakeries, Inc.,* 244 F.3d 254, 257 & n.1 (1st Cir. 2001)). He advised Drolet that he suffers from bipolar disorder. ECF No. 27-11 at 2:08, 9:40, & 12:37; FAC at ¶¶ 48 & 52. Loud speech is a component of Pressured Speech, a symptom of bipolar disorder. FAC at ¶ 48 n. 2. Enforcement of Rule 2, to the extent a person's volume of voice is considered, has a disparate impact on persons with bipolar disorder and Sousa was otherwise denied a reasonable accommodation to permit him to speak in an elevated volume without retaliation.

To prevail on a "disparate impact" claim under the ADA, a plaintiff must "(1) identify the challenged … policy, and pinpoint the defendant's use of it' (2) 'demonstrate a disparate impact on a group characteristic … that falls within the protective ambit of [the A'A]'; and (') 'demonstrate a causal relationship between the identified practice and the disparate impa'".'" *Femino v. NFA Corp*., 274 Fed. Appx. 8, 10 (1st Cir. 2008) (*quoting E.E.O.C. v. Steamship Clerks Union, Local 1066*, 48 F.3d 594, 601 (1st Cir. 1995)) (further citations omitted). Here, Rule 2 is the challenged policy to the extent it restricts a speaker's volume. It has a disparate impact on those with bipolar disorder more than the general populace. And, there is a direct relationship between enforcement of a volume restriction and the issuance of no-trespass orders/ejection from meetings. Thus, Sousa is likely to prevail under a disparate impact theory.

Similarly, Defendants failed to accommodate Sousa's disability. "Federal regulations implementing Title II require public entities 'to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.'" *Kiman v. N.H. Dep't of Corr*., 451 F.3d 274, 283 (1st Cir. 2006) (quoting 28 C.F.R. § 35.130(b)(7)). Here, Defendants could have chosen not to place a volume limit on Sousa. Doing so would not alter the nature of Public Speak at School Committee meetings. The only two instances were when the Committee was not even in public session. Government meetings universally have the occasional loud person, yet they proceed on. Thus, Sousa is likely to prevail on his failure to accommodate claim.

4.3 Sousa Will Suffer Irreparable Injury Without an Injunction

The "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). When a plaintiff seeks injunctive relief for "an alleged violation of First Amendment rights, a plaintiff's irreparable harm is inseparably linked to the likelihood of success on the merits of plaintiff's First Amendment claim." *WV Assn'n of Club Owners and Fraternal Srvs., Inc. v. Musgrave*, 553 F.3d 292, 298 (4th

Cir. 2009). Thus, if the plaintiff demonstrates a likelihood of success on the merits of its First Amendment claim, they necessarily also establish irreparable harm. *Fortuño, 699 F.3d at 15*.

Here, Defendants deprived Sousa of his First Amendment rights by not allowing him to address the Committee and petition his government. Sousa is not permitted to pick his children up from school or attend activities on school grounds with his children. ECF No. 27-13; FAC at ¶¶ 57, 75-82. These restrictions are neither narrowly tailored nor rationally related to any purported government policies. These fascist restrictions placed on Sousa and his family are retributive and punitive.

For the same reasons, Sousa is irreparably harmed by the denial of equal protection and disability discrimination. There should be no question that attendance at school events and government meetings is of "such qualitative importance as to be irremediable by any subsequent relief." *Pub. Serv. Co. of New Hampshire v. West Newbury*, 835 F.2d 380, 382 (1st Cir. 1987); *see also Vaqueria Tres Monjitas, Inc. v. Irizarry*, 587 F.3d 464, 485 (1st Cir. 2009) (addressing when denial of equal protection may rise to irreparable harm). A showing of a substantial likelihood that a defendant has violated federal anti-discrimination law is sufficient, by itself, to create a presumption of irreparable harm. *See Silver Sage Partners v. City*, 251 F.3d 814, 827 (9th Cir. 2001) (in a case under the FHA holding "irreparable injury may be presumed from the fact of discrimination"). And, violation of the Open Meetings Law "implies a real and imminent danger of irreparable injury." *Mockeridge v. Alcona Cty.,* No. 1:21-cv-12896, 2022 U.S. Dist. LEXIS 70704, at *23 (E.D. Mich. Apr. 18, 2022) (discussing implications of violation of similar Michigan open meetings law).[13] While constitutionally speaking, attending children's holiday events at a public school may not seem lofty, they are of great importance to parents and children alike. Drolet and the School Committee are effectively holding Sousa's children's well-being hostage so that they can teach him "who is the boss."

[13] Although Sousa individually might not be able to enforce the Open Meetings Law (*see* Mass. Gen. Laws, ch. 30A, sec. 23), this does not mean his right to attend meetings of public bodies, guaranteed by Mass. Gen. Laws. ch. 30A, sec. 20 ("all meetings of a public body shall be open to the public"), have not been violated.

4.4 The Balance of Equities Tips in Plaintiff's Favor

When a government action restricts First Amendment activity, the balance of hardships tips toward the Plaintiff. *See Firecross Ministries v. Municipality of Ponce*, 204 F. Supp. 2d 244, 251 (D.P.R. 2002) (holding that "insofar as hardship goes, the balance weighs heavily against Defendants, since they have effectively silenced Plaintiffs' constitutionally protected speech").

The balance of equities is in Sousa's favor. Failing to grant the injunction will continue to deprive Sousa of his rights to assemble, petition, and speak. Defendants will suffer no harm if Sousa is granted the requested injunctive relief. The "hardship" to the government is that the officials involved will have their pride bruised. A citizen's exercise of his rights is no hardship to the government at all.

4.5 Injunctive Relief is in the Public Interest

Generally, the public interest "favors protecting First Amendment rights." *Kelly v. City of Parkersburg*, 978 F. Supp. 2d 624, (S.D. W.V. 2013); *see also Carey v. FEC*, 791 F. Supp. 2d 121, 135-36 (D. D.C. 2011); *Mullin v. Sussex Cnty., Del.*, 861 F. Supp. 2d 411, 428 (D. Del. 2012). The public interest is served by issuing an injunction where "failure to issue the injunction would harm the public's interest in protecting First Amendment rights in order to allow the free flow of ideas." *Magriz v. union do Tronquistas de Puerto Rico, Local 901*, 765 F. Supp. 2d 143, 157 (D.P.R. 2011) (citing *United Food & Commer. Workers Union, Local 1099 v. Sw. Ohio Reg'l Transit Auth.*, 163 F.3d 341, 363 (6th Cir. 1998)).

The ban is based on shifting narratives that all make it clear that it is truly viewpoint based. *See, e.g., McBreairty v.School Bd. of RSU22*, No. 1:22-cv-00206-NT, 2022 U.S. Dist. LEXIS 128353 (D. Me. July 20, 2022) (in a similar case court enjoined banishment). Unconstitutional regulations have the potential to harm nonparties to the case because it will limit or infringe upon their rights. *See Wolfe Fin. Inc. v. Rodgeres*, 2018 U.S. Dist. LEXIS 64335, at *49 (M.D. N.C. April 17, 2018) (*citing McCarthy v. Fuller*, 810 F.3d 456, 461 (7th Cir. 2015). "Protecting rights to free speech is ipso facto in the interest of the general public." *Cutting v. City of Portland*, No.

2:13-cv-359-GZS, 2014 WL 580155, at *10 (D. Me. Feb. 12, 2014) (internal quotation marks omitted), *aff'd*, 802 F.3d 79 (1st Cir. 2015). The public interest favors the issuance of the injunction.

4.6 At Most, a Minimal Bond Should Be Required

Under Fed. R. Civ. P. 65(c) a bond should only be required if the enjoined party will suffer any harm from the issuance of the injunction. *See Scotts Co. v. United Indus. Corp.*, 315 F.3d 264, 285 (4th Cir. 2002). Defendants will suffer no damages if the Court issues the injunction, which will simply allow Sousa to attend Committee meetings, pick his children up from school, and attend school-related activities with his children. The injunction will repair the *status quo*. For this reason, Sousa requests that the injunction issue with no bond. If a bond is required, Sousa requests that it be minimal and no more than $10.00.

5.0 CONCLUSION

For the foregoing reasons, the Court should immediately enter a temporary restraining order permitting him to attend the next Committee meeting on November 14, 2022, and participate in Public Speak, without him being disruptive. And, a preliminary injunction, against the Defendants from enforcing a Permanent No Trespass Order against Sousa, permitting him to pick his children up from school, and attend other school-related activities, should issue.

Dated: November 11, 2022.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 11, 2022, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

/s/ Marc J. Randazza
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