UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:23-cv-01971-REB

LOGAN RUTHS,

Plaintiff,

v.

WOODLAND PARK SCHOOL DISTRICT RE-2;
WOODLAND PARK BOARD OF EDUCATION; and
SUPERINTENDENT KEN WITT, in his individual and official capacities,

Defendants.

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**PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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Pursuant to Federal Rule of Civil Procedure 65 and Local Civil Rule 65.1(a), Plaintiff Logan Ruths (hereinafter "Mr. Ruths" or "Plaintiff") moves for a temporary restraining order and preliminary injunction as set forth below:

Defendants the Woodland Park School District Re-2 ("WPSD" or the "District"), Woodland Park Board of Education (the "Board"), and Superintendent Ken Witt have purported to banish Plaintiff Logan Ruths from WPSD property and events for more than a year—because at a recent Board meeting, he made a sarcastic remark instead of applauding a public comment he disagreed with. Defendants' so-called "no trespass order" is unreasonable, retaliatory, and an unconstitutional prior restraint on Mr. Ruths' freedom of expression as guaranteed under the U.S. and Colorado Constitutions. It was designed to intimidate and silence Mr. Ruths and others like him who are critical of the controversial

decisions and policies of WPSD and the Board. The next Board meeting is scheduled to occur on August 9, 2023. Without immediate relief from this Court to preserve the status quo, Mr. Ruths will be unable to attend that meeting without fear of criminal prosecution.

Mr. Ruths therefore respectfully asks this Court to issue a temporary restraining order and preliminary injunction enjoining Defendants from enforcing their unconstitutional banishment order as to the August 9, 2023 board meeting and for the pendency of this lawsuit. Because Mr. Ruths (1) is likely to succeed on the merits of his claims, (2) his exclusion from upcoming board meetings would cause irreparable harm, and (3) the equities weigh overwhelmingly in favor of permitting Mr. Ruths to exercise his constitutional rights, the order should be enjoined.[1]

**CERTIFICATE OF CONFERRAL**

On August 1, 2023, counsel for Mr. Ruths emailed a letter to Brad Miller, the attorney for WPSD and the person who sent Mr. Ruths the "no trespass order," demanding that the order be rescinded with a public acknowledgement that Mr. Ruths may continue to exercise his constitutional rights on WPSD property and at WPSD events, including Board meetings. Plaintiff's counsel has received no response to date. Pursuant to D.C.Colo.L.CivR 7.1, before filing this Motion, Plaintiff's counsel emailed a copy of the Complaint and the Motion

[1] Given the urgent nature of this matter and to comply with all applicable federal and local rules, Plaintiff is simultaneously requesting a temporary restraining order and preliminary injunction. The first request is appropriate, under F.R.C.P. 65 and D.C.Colo.L.CivR 65.1, allowing the issuance of a temporary restraining order before, and in addition to, a preliminary injunction. If this Court denies Plaintiff's request for a temporary restraining order, Plaintiff requests an expedited hearing on the request for a preliminary injunction.

and attached exhibits to Mr. Miller and also called his office to alert him to the filing and the email.[2]

## STATEMENT OF FACTS

### I. BACKGROUND: MR. RUTHS VOICES CRITICISM OF WPSD LEADERSHIP AS A WPSD EMPLOYEE AND WOODLAND PARK RESIDENT

Mr. Ruths grew up in Woodland Park, attended the Woodland Park public schools, graduated from Woodland Park High School in 2015, and subsequently worked for the Woodland Park School District, most recently as its Network Administrator and Official Records Custodian. (Ex. 1, *Logan Ruths Decl.*, ¶¶ 3, 5.) In his role as Official Records Custodian, Mr. Ruths was responsible for processing and responding to requests to the District under the Colorado Open Records Act (CORA). (*Id*. ¶ 5.) Mr. Ruths served in this role from February 2022 until March 2023, during which time he processed and responded to an estimated 390 CORA requests. During his tenure as records custodian, Mr. Ruths grew concerned about District decisions to withhold or redact materials he thought were subject to disclosure under CORA. (*Id.* ¶ 6.)

Over the course of his employment with the District, Mr. Ruths interacted with Defendant Witt and WPSD-contracted attorney Brad Miller from time to time. Mr. Ruths raised his concerns about District CORA practices with Witt and Miller on multiple occasions. Mr. Ruths believes that both Witt and Miller were unhappy with his position regarding the District's CORA practices and the fact that Mr. Ruths voiced his opinion that

[2] Counsel for Mr. Ruths will further advise Defendants' counsel of the date and time of any hearing that the Court sets.

the District was not complying with its CORA obligations. The District terminated Mr. Ruths' employment on March 10, 2023. (*Id*. ¶ 9.)

Both before and after the termination of his employment, Mr. Ruths was actively engaged in District matters as a concerned alumnus, community member, and taxpaying resident of Woodland Park. Mr. Ruths has attended public Board meetings to engage with the District's policies and practices alongside other community members. (*Id*. ¶ 10) Like many others, Mr. Ruths uses the public comment section of these meetings to occasionally voice his opinion on the topics discussed by the Board.

Mr. Ruths spoke with multiple news outlets before June 2023 about his concerns regarding Defendants' CORA practices and the Board's goals and tactics more generally. (*Id*. ¶ 13) Upon information and belief, Defendants knew that Mr. Ruths was sharing his criticisms of the District with journalists and others. Mr. Ruths was named or identified in multiple news articles shining a critical spotlight on Defendants, including publications in statewide and nationwide circulation.[3]

## II. MR. RUTHS IS ASKED TO LEAVE THE JUNE 14, 2023 BOARD MEETING FOR MAKING A SARCASTIC REMARK IN RESPONSE TO ANTI-LGBTQ+ RHETORIC DURING PUBLIC COMMENT

On June 14, 2023, Mr. Ruths attended the monthly meeting of the Woodland Park School Board. He was especially interested in the scheduled budget discussion. (Ex. 1, ¶

[3] *See* Tyler Kingkade, *Trump was great at this': How conservatives transformed a Colorado school district*, NBC News (May 9, 2023, 6:00 AM), https://www.nbcnews.com/news/us-news/woodland-park-colorado-school-board-conservatives-rcna83311; Jenny Brundin, *Gag orders on teachers, cutting mental health support, operating in the dark — what's happening in Woodland Park?*, CPR NEWS (Apr. 20, 2023), https://www.cpr.org/2023/04/20/woodland-park-school-board/.

15.) During the public comment portion of the meeting, a speaker expressed his concerns about members of the community trying to undo the policies of the Board and re-introduce "gender confusion" and "anti-capitalist education" back into the District. (*Id*. ¶ 16.) Mr. Ruths understood the speaker's comment to convey anti-LGBTQ+ sentiments, with which he vehemently disagrees. (*Id*. ¶ 17.)

The speaker finished his comment and began distributing papers to Board members. During this pause, some attendees applauded. Mr. Ruths did not join in the applause; he wanted instead to convey his disapproval of the speaker's message. After the applause subsided, and while the speaker was still distributing his materials, Mr. Ruths cracked a joke from his seat, stating sarcastically but in an even voice: "Where else do you do comedy at? I'd love to come see your show sometime." The comment can be seen on WPSD's live-streamed video of the Board meeting at https://www.youtube.com/watch?v=K1fFRYEiGgI around the 16 minute mark. (*See* Ex. 2, *June 14, 2023 School Board Meeting Video Clip*.)[4] Mr. Ruths is seated in the front row, wearing a baseball cap.

Mr. Ruths' comment lasted about three seconds. While Mr. Ruths was speaking, the Board president, David Rusterholtz, banged his gavel three times. Holding his hand up to Mr. Ruths, Rusterholtz reprimanded him, "Hey, no more interruptions." Mr. Ruths responded that he did not realize that he was interrupting something. Around the same

[4] Board meetings are videotaped and made available to the public. Pursuant to F.R.E. 201(b)(2) and (c), Plaintiff requests that the Court take judicial notice of the video of the June 14, 2023 Board meeting and any other video of a board meeting cited in this motion.

time, Defendant Witt ushered over the security guard and, pointing to Mr. Ruths, said, "He's disrupting the meeting." To this, Mr. Ruths asked, "I'm disrupting? Excuse me?" (Ex. 1, ¶¶ 21-26.)

Perceiving that Witt was directing the security guard to escort him out, Mr. Ruths objected, "Oh, no, I'm going to stay and listen, actually. Because this is about the budget." Rusterholtz responded, "Go and talk to [the security guard] first and then he'll decide whether you can come back in." Again, Mr. Ruths stated, "I'm gonna sit and listen." Rusterholtz then threatened Mr. Ruths, "Then we're going to have to call the police and have you removed." Believing he had done nothing wrong, Mr. Ruths told him to "go ahead and call the police. I'm gonna sit here and listen." The security guard then sat down in the open seat next to Mr. Ruths. The two spoke to each other quietly. Mr. Ruths noted to the guard, "You're disrupting the meeting more than I am now." (Id.) While Mr. Ruths and the guard were talking, the next speaker was called and stepped up to the podium. She began her comment but was cut off by Rusterholtz, who said, "I don't want you to be interrupted, so let's just wait just a moment," pointing to Mr. Ruths. (Id. ¶ 27.)

Mr. Ruths understood from the guard's comments that he would face the threat of arrest if he didn't leave the meeting. (*Id*. ¶ 28.) Disturbed by the suggestion, Mr. Ruths responded incredulously, "You're not going to arrest me; I'm here for a public meeting." He stated his understanding that as a taxpayer, he was legally allowed to be present for the budget discussion. Rusterholtz then asked Mr. Ruths to step outside with the guard "so that the meeting doesn't have to continue to be interrupted," and Mr. Ruths responded, "I'm not interrupting right now; you guys are the ones interrupting." Someone else in attendance

called out, "He's a taxpayer," which Mr. Ruths echoed. (*Id*. ¶¶ 29-30.) Another Board member, David Illingworth, then suggested to Rusterholtz that he adjourn the meeting. Rusterholtz called a recess and, addressing Mr. Ruths, said, "I'm gonna call the police right now." As several Board members got up from their seats, one of them, Mick Bates, told Mr. Ruths that for the budget process, "there are no comments from you. You're here to observe." He told Mr. Ruths he needed to "be quiet and listen." The Board went into recess. (*Id*. ¶¶ 31-34.)

During the break in the meeting, Mr. Ruths was openly speaking with a local journalist about his ongoing concerns related to the Board. (*Id*. ¶ 33.) Also during the recess, Mr. Ruths briefly left the meeting room. As he went to return, he passed Rusterholtz, Illingworth, Miller, and the security guard in the lobby. Rusterholtz told Mr. Ruths the Board wouldn't resume the meeting if Mr. Ruths stayed. (*Id*. ¶¶ 34-35.) When Mr. Ruths asked why, Rusterholtz said he had been disruptive multiple times. Mr. Ruths inquired when else he had been disruptive, and Rusterholtz did not identify any prior occasion, merely responding, "It doesn't matter." Though he could not point to any particular wrongdoing by Mr. Ruths, Rusterholtz threatened he could face multiple criminal charges. (*Id*.)

When Mr. Ruths saw that an officer had arrived at the school, he became so intimidated and scared that he left the building. At his car, Mr. Ruths could barely get the keys in the ignition because he was shaking from fear. (*Id*. ¶¶ 36-37.)

## III. MR. RUTHS RECEIVES A LETTER PURPORTING TO BANISH HIM FROM WPSD PROPERTY AND EVENTS FOR MORE THAN A YEAR

The following day, on June 15, 2023, Mr. Ruths received an email with an attached letter from attorney Brad Miller (*See* Ex. 3, June 15, 2023 Letter.) The email was cc'd to Superintendent Witt and Aaron Salt, the District's Chief Operations Officer.

The letter, titled "Notice pursuant to C.R.S. 18-9-109, and Claire Davis Safety Act, C.R.S. 24-10-106.3," purported to be a "no trespass order" banning Mr. Ruths from any Woodland Park School District property or hosted event until July 1, 2024. (*Id*.) The letter states that its terms are "effective immediately." (*Id*.) The effect of the order is to prevent Mr. Ruths from attending or participating in any Woodland Park School Board meetings during the covered period. It also precludes Mr. Ruths from entering WPSD property for any reason, including to watch sporting events or plays, visit old teachers or friends, or volunteer at any school events.

The letter warns that the "Woodland Park School District will take any violation of this order as an intentional effort to disrupt the educational environment and will take necessary actions, including but not limited to reporting the violation of Colorado criminal code pursuant to C.R.S. 18-9-109." (*Id*.) To ensure that its message of intimidation is clear, the letter declares: "To be clear, violation of this notice could subject you to criminal prosecution." (*Id*.)

The letter fails to provide any plausible justification for its harsh terms. The letter posits without any evidence or elaboration that "on multiple occasions [Mr. Ruths has] acted in a manner that was verbally aggressive and, sometimes, physically aggressive towards board members and staff members." (*Id*.) This unsubstantiated accusation is

simply false. The letter further alleges that Mr. Ruths' actions violated Colorado Revised Statute § 18-9-109(2), which states:

> No person shall, on the premises of any educational institution or at or in any building or other facility being used by any educational institution, willfully impede the staff or faculty of such institution in the lawful performance of their duties or willfully impede a student of the institution in the lawful pursuit of his educational activities through the use of restraint, abduction, coercion, or intimidation or when force and violence are present or threatened.

Mr. Ruths has never violated this provision or any other subsection of C.R.S. § 18-9-109, nor has he has ever been physically or verbally aggressive towards Board or staff members. (Ex. 1, ¶¶ 42-43.) The letter claims that Mr. Ruths' June 14, 2023 joke was "determined to be in serious violation of law." (Ex. 3.) The letter provides no explanation of who made this "determination," how making a joke during a pause in a Board meeting could be in "serious violation of law," or even what law was "seriously" violated.

The letter also claims that on "at least two prior occasions," Mr. Ruths "vocally disrupted" Board meetings. (*Id.*) The letter provides no description or detail of these purported prior occasions, but it does assert that these prior unnamed occasions "technically w[ere] in violation of law." (*Id.*) Here again, the letter does not explain what law was "technically" violated or how.

The letter further mischaracterizes Mr. Ruths' behavior during the June 14, 2023 Board meeting. Among other things, it states that Mr. Ruths "raised [his] voice to comment directly to the board of education," even though the recording of the meeting clearly demonstrates that Mr. Ruths never raised his voice and that he only responded to individual Board members after first being addressed by them. The letter claims that Mr. Ruths declined to stop "the interruption" when asked by the Board president, even though

Mr. Ruths never did so. Indeed, Mr. Ruths did not interrupt any Board business, he did not interrupt any speaker, and he did not even interrupt other attendees' applause. He made a joke that lasted three seconds during a pause when no one else was speaking. The comment lasted less time than the applause that preceded it. (*See* Ex. 2.)

Contrary to the letter's unfounded allegations, it was actually the Board members, not Mr. Ruths, who interrupted the meeting by escalating the interaction through their outsized response. Board members involved the security guard and reprimanded and threatened Mr. Ruths even after he stated his intention was simply to "sit and listen." While the letter claims that "the Board was forced to enter into recess," the video recording illustrates that Mr. Ruths repeatedly indicated his intention to sit and listen. In fact, the next speaker was ready to address the Board when the Board interrupted her to insist that Mr. Ruths leave. (Ex. 1, ¶¶ 21-31.)

The letter then alleges that there was "clear evidence of [Mr. Ruths'] willful intent to disrupt the meeting," even though there was nothing of the sort. The letter concludes that Mr. Ruths' joke at the June 14, 2023 meeting "create[d] a reasonable apprehension that you [Mr. Ruths] intend to not cooperate with Woodland Park School District's safety protocols." (Ex. 3.) The letter supplies zero evidence to support this assertion, and there is none.

The letter also asserts that Mr. Ruths' joke "represents a willful choice to interfere with the safety and educational environment for the students/staff at Woodland Park School District." (*Id.*) Again, the letter supplies zero evidence to support this assertion, and there is

none. Mr. Ruths has never interfered with the safety and educational environment of the students or staff of the District.

Finally, the letter states, without explanation or elaboration, that Mr. Ruths' behavior "appears to have violated" two statutes. (*Id*.) But the letter supplies no evidence to support this assertion, and there is none. The letter also falsely, and without evidence, suggests that Mr. Ruths' behavior showed "disregard toward student safety." (*Id*.) Mr. Ruths' behavior did not show a disregard for student safety in the least. On the contrary, Mr. Ruths' joke was a reaction to what he perceived to be the public commenter's harmful anti-LGBTQ+ rhetoric. (Ex. 1, ¶¶ 16-17.)

On these pretextual and unsupported bases, the letter imposes an immediate "no trespass order" for an entire year, revoking Mr. Ruths' "privilege" to "enter or attend any District property or hosted event, without prior written permission from the superintendent." (Ex. 3.) The order invokes and is clothed with the authority of WPSD and state law.

There have been many other people who have spoken out of order at Woodland Park School Board meetings. (Ex. 1, ¶ 14.) On information and belief, the Board has not sent them one-year banishment orders.

During public comment sessions, the Board regularly permits attendees to react audibly to speakers' remarks in a positive manner through applause and cheer. Board members also regularly engage in back-and-forth with attendees during Board meetings during times not specifically designated for public comment. Here, however, the Defendants' decision to issue a banishment order against Mr. Ruths was in retaliation for his constitutionally protected activities. Other community members with views critical of

Defendants' policies and practices witnessed the June 14, 2023, meeting and have learned of Mr. Ruths' one-year banishment from District property and events. Community members with views critical of Defendants' policies and practices are afraid of facing similar retaliation.

The next regular Board meeting is set for August 9, 2023, at 6:00 PM. Mr. Ruths would like to attend the August 9, 2023 meeting, but has a credible fear of further retribution from Defendants as promised in the banishment letter.

## LEGAL STANDARD

The purpose of emergency injunctive relief is to preserve the status quo and the relative positions of the parties until a trial on the merits can be held. *See Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1258–59 (10th Cir. 2005); *DTC Energy Grp., Inc. v. Hirschfeld*, 912 F.3d, 1263, 1269 (10th Cir. 2018). Under Rule 65, the Court may grant a temporary restraining order and preliminary injunction where the movant demonstrates the following factors: (1) a likelihood of success on the merits; (2) a likelihood that the movant will suffer irreparable harm in the absence of relief; (3) the balance of equities tips in the movant's favor; and (4) the injunction is in the public interest. *Hirschfeld*, 912 F.3d at 1270; *DoubleClick Inc. v. Paikin*, 402 F. Supp. 2d 1251, 1255 (D. Colo. 2005). These factors are all satisfied here.

## ARGUMENT

### I. INJUNCTIVE RELIEF WILL PRESERVE THE STATUS QUO

The status quo means the "last peaceable position" existing between the parties before the dispute developed. *Dry Cleaning To-Your-Door, Inc. v. Waltham Ltd. Liab., Co.*,

No. 07-cv-01483-WDM-MJW, 2007 WL 4557832, at *2 (D. Colo. Dec. 20, 2007); *Beltronics USA, Inc. v. Midwest Inventory Distribution, LLC*, 562 F.3d 1067, 1070 (10th Cir. 2009). Here, the last peaceable position was the world as it existed before Defendants attempted to unlawfully prohibit Mr. Ruths from attending School Board meetings or otherwise coming onto WPSD property. An injunction barring enforcement of the banishment order will preserve the status quo and immediately prevent additional harm to Mr. Ruths. *See Dry Cleaning To-Your-Door, Inc.*, 2007 WL 4557832, at *2; *Beltronics USA, Inc.*, 562 F.3d at 1070; *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 1013 (10th Cir. 2004) (McConnell, J., concurring) (explaining that requiring a party who disturbed the status quo to reverse its actions "restores, rather than disturbs, the status quo").

## II. PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIMS

Mr. Ruths is likely to succeed on his claims asserting violations of the First Amendment of the United States Constitution and Article II, sections ten and twenty-four of the Colorado Constitution.[5] (Compl. ¶¶ 92-127.) To demonstrate a likelihood of success on the merits, Mr. Ruths must "present 'a prima facie case showing a reasonable probability that [he] will ultimately be entitled to the relief sought.'" *Salt Lake Tribune Pub. Co., LLC v. AT & T Corp.*, 320 F.3d 1081, 1100 (10th Cir. 2003); *Cont'l Oil Co. v. Frontier Ref. Co.*, 338

[5] This Motion focuses on Mr. Ruths' claims under the First Amendment, which protects rights similar to those enumerated in Article II, sections ten and twenty-four of the Colorado Constitution. Because the Colorado Constitution is generally more protective of the right of freedom of speech than the First Amendment, proving that Mr. Ruths is entitled to a temporary restraining order and/or preliminary injunction on his First Amendment claims is enough to show he is entitled to the same on his Colorado Constitution claims. *See Lewis v. Colo. Rockies Baseball Club, Ltd.*, 941 P.2d 266, 271 (Colo. 1997).

F.2d 780, 781 (10th Cir. 1964). This burden is lower than showing an "overwhelming" likelihood of success, or "positively" establishing a right to relief on the merits. *Atchison, Topeka and Santa Fe Ry. Co. v. Lennen*, 640 F.2d 255, 261 (10th Cir. 1981). And where, as here, the three "harm" factors tip "decidedly" in the moving party's favor, the "probability of success requirement" is relaxed further; the moving party "need only show questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation." *Heidemann v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003) (internal quotation marks omitted). Mr. Ruths satisfies this burden.[6]

**A. Mr. Ruths is likely to prevail on his First Amendment claim.**

When the government restricts speech, it bears the burden of proving the constitutionality of its actions. *United States v. Playboy Entm't Grp.*, 529 U.S. 803, 816-17 (2000). The banishment order violates Mr. Ruths' right to freedom of expression set out in the First Amendment to the United States Constitution because it (1) is an unlawful prior restraint on Mr. Ruths' freedom of expression, (2) is neither reasonable nor viewpoint neutral, and (3) is retaliatory. Any one of these factors is sufficient to establish a constitutional violation.

1. <u>The Banishment Order Constitutes an Unlawful Prior Restraint</u>

The banishment order is a prior restraint that is presumptively unconstitutional. For First Amendment purposes, "a 'prior restraint' restricts speech in advance on the basis of

[6] Even if the Court concludes that the "relaxed" standard does not apply, Plaintiff still meets the traditional standard.

content and carries a presumption of unconstitutionality." *Taylor v. Roswell Indep. Sch. Dist.*, 713 F.3d 25, 42–43 (10th Cir. 2013). Traditionally, prior restraints take on two forms: judicial injunctions and administrative licensing schemes. *Id*. Courts have, however, applied the prior restraint jurisprudence outside of these two forms in analogous situations. *Id*.

While this case does not present the classic example of a judicial injunction or administrative licensing scheme, the banishment order bears the hallmark concerns of a prior restraint: its scope, preemptive nature, and individualized manner of enforcement. By ordering Mr. Ruths to stay off District property and away from District-sponsored events, the order effectively bans him from engaging in protected expression, subject to the unfettered, unreviewed discretion of the Superintendent and the District. The Tenth Circuit has applied the prior restraint test in strikingly similar circumstances. For instance, in *Taylor v. Roswell Indep. School District,* plaintiffs, high school students, challenged their school's rule that it must preapprove a student's non-school related speech before permitting said speech on campus. *Id*. In considering the plaintiffs' case, the court likened this preapproval rule to an administrative licensing scheme and ultimately found that the rule was subject to "prior restraint scrutiny." However, unlike the case at hand, the preapproval rule included procedural safeguards and substantive constraints on the discretion afforded to the school in prohibiting students' speech. According to the court, these two considerations—the procedural safeguards and limitations on discretion—"saved" the preapproval policy from constitutional attack. *Id*.

This case differs from *Taylor* because the banishment order prohibits Mr. Ruths from attending future Board meetings and other District events and it has ***complete, unfettered***

discretion to make this initial decision and reconsider or otherwise revise this order. Such a prior restraint, without procedural safeguards or other limitations, is unconstitutional. *See id*. (element of discretion in district preapproval policy calls for prior restraint scrutiny). For this reason, courts have found bans or orders similar to the one here to be unconstitutional. *See, e.g., Wilson v. N. E. Indep. Sch. Dist.*, 5:14-CV-140-RP, 2015 WL 13716013, at *3 (W.D. Tex. Sept. 30, 2015) ("While the [trespass notice] issued here does not explicitly contemplate restricting Wilson's speech, because it acts to exclude her from school board meetings, it is effectively a categorical ban on all speech—including speech that would be protected in the context of a school board meeting."); *Hirt v. Unified Sch. Dist. No. 287*, 2:17-CV-02279-HLT, 2019 WL 1866321, at *16 (D. Kan. Apr. 24, 2019), *aff'd sub nom. Clark v. Unified Sch. Dist. No. 287*, 822 Fed. Appx. 706 (10th Cir. 2020).

Defendants will be unable to justify their prospective, year-long, total exclusion of Mr. Ruths from Board meetings and all other WPSD events and property. First, the breadth of the exclusion cannot be said to be narrowly tailored—to burden no more speech than necessary to accomplish its objective. *Madsen v. Women's Health Ctr.*, 512 U.S. 753, 765 (1994); *see also Carroll v. President & Comm'rs of Princess Anne*, 393 U.S. 175, 183 (1968) (Prior restraints must be "couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate and the essential needs of the public order."). Worse, the asserted objective of the banishment order—to protect the safety of students and staff—has no basis in fact connecting Mr. Ruths to any risk or threat. In this case, Defendants will be unable to show that "[their] recited harms are real." *Brewer v. City of Albuquerque*, 18 F.4th 1205, 1244 (10th Cir. 2021).

For all these reasons, the banishment order constitutes an unconstitutional prior restraint and the Court should grant Mr. Ruths' Motion.

2. The Banishment Order is Not Reasonable or Viewpoint-Neutral

Second, the banishment order is not reasonable or viewpoint-neutral. Generally, in considering whether a restraint on speech is improper, courts must analyze the type of forum in which the speech is restricted. This is because the type of forum affects the extent a government is permitted to limit a person's speech. The Board meeting and events on District property or any other events hosted by the District are subject at least to the protections that apply in limited public forums. *Christian Legal Soc'y Chapter of the Univ. of Cal., Hastings Coll. of Law v. Martinez*, 561 U.S. 661, 679 n. 11 (explaining that limited public forums are forums opened by governmental entities but "limited to use by certain groups or dedicated solely to the discussion of certain topics"). In a limited public forum, a governmental entity may impose restrictions on speech that are reasonable in light of the purpose served by the forum and neutral as to viewpoint. *Id*. Mr. Ruths is likely to succeed in demonstrating that Defendants violated his First Amendment rights, as the banishment order is neither reasonable nor viewpoint-neutral.

First, courts have generally been skeptical of the reasonableness of prospectively banning an individual from school board and other public meetings. *See, e.g.*, *McBreairty v. Sch. Bd. of RSU 22*, 616 F. Supp. 3d 79, 96 (D. Me. 2022) (eight-month ban from school-related meeting or function based on single instance of noncompliance fails reasonableness requirement); *Reiland v. Indep. Sch. Dist. No. 11 of Tulsa Cnty., Oklahoma*, 22-CV-484-JFH-JFJ, 2022 WL 16921211, at *4 (N.D. Okla. Nov. 14, 2022) (ban

based on allegedly aggressive comments after school board meeting was not reasonable; school's safety justifications were unsupported and pretextual); *Coffelt v. Omaha Sch. Dist.*, 309 F. Supp. 3d 629, 638, 643 (W.D. Ark. 2018) (questioning whether "sweeping and restrictive" ban from school board meetings, athletic events, and other school functions was reasonable); *Reza v. Pearce*, 806 F.3d 497, 503–05 (9th Cir. 2015) (total exclusion from limited public forum based on single disruptive incident exceeded bounds of reasonableness); *Barna v. Bd. of Sch. Dirs. of the Panther Valley Sch. Dist.*, 143 F. Supp. 3d 205, 213-14, 222-23 (M.D. Pa. 2015), *rev'd on other grounds*, 877 F.3d 136 (3d Cir. 2017) (noting that school board meetings create limited public forums and finding that many cases have concluded that "outright, content neutral bans and prohibitions on speech and attendance that are directed at and prohibit future expressive activity are unlawful"); *Cyr v. Addison Rutland Supervisory Union*, 60 F. Supp. 3d 536, 549 (D. Vt. 2014) ("[A] categorical ban on expressive speech singling out an individual does not even satisfy the lower threshold of reasonableness review."). Some courts have stated that reasonableness review is particularly rigorous when applied to the restriction of a single individual's speech. *See, e.g.*, *Wilson v. N. E. Indep. Sch. Dist.*, 5:14-CV-140-RP, 2015 WL 13716013, at *5 (W.D. Tex. Sept. 30, 2015).

Like the prospective bans in the cases above, the banishment order here is unreasonable. To begin, the letter makes unsupported claims that Mr. Ruths has caused "multiple disruptions" and somehow threatens the safety of students and staff. But it provides no evidence of this, and there is none. Moreover, the letter's characterizations of Mr. Ruths' conduct at the June 14, 2023 meeting is flatly contradicted by WPSD's public

video of the meeting. The video makes clear that Mr. Ruths was not disruptive, did not interrupt the speaker, and did not speak to anyone in a threatening manner. Instead, Mr. Ruths waited until the speaker concluded his comments, spoke briefly during a pause when that speaker was handing out materials, stayed seated the whole time, and didn't even raise his voice. Mr. Ruths even waited for audience cheer to subside before weighing in with his joke, which lasted all of three seconds. It was the actions of the Board members and security guard, not Mr. Ruths, that raised the temperature of the meeting and created a meaningful disruption.[7]

Additionally, on information and belief, the Board has routinely addressed people speaking out of turn or otherwise departing from the Board's expectations during meetings without banishing them from the property for a year. The unreasonableness of the Board's conduct toward Mr. Ruths is demonstrated by its past use of less restrictive means to address more disruptive expression.

The banishment order is also unreasonable because it relies on statutes that do not provide ***any*** authority to ban a citizen from District property for a year. First, the letter cites C.R.S. § 18-9-109, a criminal statute. Defendants misread the law. That statute imposes criminal sanctions on a person who uses "restraint, abduction, coercion, . . . intimidation, or [] force and violence," or threat of force and violence. C.R.S. § 18-9-109 (2). As established *supra*, Mr. Ruths did not engage in any such behavior. Additionally, the subsection of that

[7] To be clear, the test here is not whether Mr. Ruths was being disruptive at the June 14, 2023, meeting. Instead, it is whether banning him from school property for a year is reasonable. Even if his comments had been mildly disruptive, that would not justify prospective exclusion.

statute forbids a person from "willfully refus[ing] or fail[ing] to leave the property of or any building or other facility used by any educational institution upon being requested to do so . . . if such person is committing, threatens to commit, or incites others to commit any act which would disrupt impair, interfere with, or obstruct the lawful missions, processes, procedures, or functions of the institutions." C.R.S. § 18-9-109 (3). As already enumerated, there is no evidence whatsoever that Mr. Ruths acted in a threatening manner. In fact, the video of the June 14, 2023 meeting demonstrates he was calm and collected. However, even assuming that Defendants could prove that Mr. Ruths acted in a manner described in subsection three, the statute does not permit the School Board to ban Mr. Ruths from future School Board meetings or school events.

Next, the letter cites Claire Davis Safety Act, C.R.S. § 24-10-106.3. That statute imposes a duty of care on school districts in Colorado to protect students, faculty, and staff from reasonably foreseeable harm. Again, however, this statute does not affirmatively grant the District discretion to ban citizens from School Board meetings and other events for any reason it wants, let alone for cracking a joke during a meeting. The letter's reliance on C.R.S. § 24-10-106.3 and C.R.S. § 18-9-109 is misleading and pretextual, as those statutes in no way support the banishment order. Simply put, Plaintiff's counsel is not aware of any case in which a court upheld the reasonableness of a year-long prospective ban of an individual from a public forum on bases as scant as these.

Finally, Defendants' actions and the banishment order are not viewpoint neutral. The Board singled Mr. Ruths out and is attempting to limit Mr. Ruths' freedom of speech because it does not appreciate Mr. Ruths' beliefs. Indeed, Mr. Ruths' three-second joke

expressing disagreement with the prior speaker's comment directly followed a ***longer*** duration of audience cheer apparently expressing approval of the remarks. The Board tolerated the positive reaction and disciplined the negative one. More broadly, during the June 14, 2023 meeting and almost every other School Board meeting in 2022-2023, people whose views the Board approved of spoke out of turn, yelled loudly, made jokes, etc., without being singled out, being asked to leave the meeting, or, on information and belief, being banished from further meetings for a year. Mr. Ruths is likely to succeed in showing he has been singled out for his beliefs and his speech.

In sum, it is not reasonable to prohibit a citizen from attending future Board meetings, school events, or other District-sponsored events based on a wise-crack that lasted just a few seconds during a natural pause in a prior meeting; and it is not permissible to tolerate off-hand remarks only when the Board likes their content. If allowed to stand, Defendants' unreasonable and targeted banishment order will serve not only to unconstitutionally restrict Mr. Ruths' right to free speech, but also to chill the expressive activities of others whose criticisms the Board wishes to silence.

3. The Banishment Order is Retaliatory

Finally, Mr. Ruths is likely to succeed in proving that the banishment order was unconstitutionally retaliatory. To succeed on a First Amendment retaliation claim, a plaintiff must show "that (a) he or she was engaged in constitutionally protected activity; (b) the defendant's actions caused the plaintiff to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity; and (c) the defendant's adverse action was substantially motivated as a response to the plaintiff's exercise of

constitutionally protected conduct." *Van Deelen v. Johnson*, 497 F.3d 1151, 1155–56 (10th Cir. 2007).

Here, the extreme and disproportionate banishment order was an adverse action taken as a result of Mr. Ruths' outspoken opposition to the School Board. Mr. Ruths regularly engages in constitutionally protected activity in attending School Board meetings: he is known to be a vocal critic of the Board, regularly partakes in School Board meetings to monitor the Board's actions, is associated with several pieces of the Board's negative media coverage, and was openly speaking to a reporter in attendance at the June 14, 2023 Board meeting. Mr. Ruths' criticisms of Defendants have addressed matters of public concern, expression situated at the core of our First Amendment values. Such "speech concerning public affairs is more than self-expression; it is the essence of self-government." *Burson v. Freeman*, 504 U.S. 191, 196 (1992) (quotations omitted); *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) ("Speech deals with matters of public concern when it can 'be fairly considered as relating to any matter of political, social, or other concern to the community,' or when it 'is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public[.]'(quoting *Connick*, 461 U.S. at 145)); *id.* at 444 ("[S]peech on public issues occupies the 'highest rung of the hierarchy of First Amendment values' and is entitled to special protection." (quoting *Connick*, 461 U.S. at 145)).

Second, the banishment order clearly injured Mr. Ruths, as he is no longer permitted to attend Board meetings or other District-sponsored events. *See, e.g., Reiland*, 2022 WL 16921211 at *5 (concluding exclusion from participation in school board meetings constitutes sufficient injury that would chill a person of ordinary firmness and support

retaliation claim against school district and superintendent). Furthermore, the threats of criminal prosecution in the letter would chill a person of ordinary firmness from continuing to engage in protected activities, particularly given the Board's demonstrated willingness to call on law enforcement to aid in its intimidation tactics. *See Hodgkins ex rel. Hodgkins v. Peterson*, 355 F.3d 1048, 1056 (7th Cir. 2004) (observing that "the Supreme Court has often noted that a realistic threat of arrest is enough to chill First Amendment rights"). The Board's response at the June 14, 2023, meeting and subsequent banishment order will also likely have a chilling effect on other concerned community members who fear similar retribution for speaking out.

Finally, evidence that other vocalization and speaking out-of-turn were tolerated or even encouraged for other people at Board meetings (both at the June 14, 2023 meeting and, on information and belief, at prior meetings), and the absence of any evidence supporting the school's pretextual safety concerns, discussed above, support a showing that the banishment order was a retaliatory response to views Defendants want to suppress.

## III. PLAINTIFF WILL SUFFER IMMEDIATE AND IRREPARABLE HARM ABSENT INJUNCTIVE RELIEF

As a general rule, a "plaintiff suffers irreparable injury when the court would be unable to grant an effective monetary remedy after a full trial because such damages would be inadequate or difficult to ascertain." *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001) *abrogated on other grounds by Free the Nipple-Fort Collins v. City of Fort Collins, CO*, 916 F.3d 792, 797 (10th Cir. 2019). First Amendment rights are a classic example of this. "When an alleged constitutional right is involved, most courts hold that no further

showing of irreparable injury is necessary." *Id*. The Tenth Circuit has held that "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Pacific Frontier v. Pleasant Grove City,* 414 F.3d 1221, 1235 (10th Cir. 2005), quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976); s*ee also Heidemann,* 348 F.3d at 1190 (holding that even a "minimal restriction" on the manner in which dancers may convey their artistic message constitutes irreparable injury). When government action threatens First Amendment rights, as in this case, there is a presumption of sufficient irreparable injury to warrant interim injunctive relief. *Cmty. Commc'ns Co. v. City of Boulder*, 660 F.2d 1370, 1376 (10th Cir. 1981).

Mr. Ruths' irreparable harm is real, imminent, and not compensable through damages. Mr. Ruths is banished, upon threat of criminal prosecution, from any Board meeting or District event. This unwarranted restriction on Mr. Ruths' constitutional rights to freedom of expression has already caused irreparable injury and will continue to do so if not enjoined. No post-trial award of money can turn back time and restore Mr. Ruths' lost rights.

## IV. THE HARM TO PLAINTIFF FAR OUTWEIGHS THE HARM TO DEFENDANTS CAUSED BY THEIR MISCONDUCT

The balance of harms in this case tips overwhelmingly in Mr. Ruths' favor. Restoring Mr. Ruths' ability to attend School Board meetings will hurt no one. As discussed above, the letter's assertions about the past and anticipated harms caused by Mr. Ruths' speech are baseless. Moreover, even in the unlikely event that Mr. Ruths were actually to disrupt a future meeting, the Board would retain the ability to take reasonable steps to preserve order and decorum.

On the other hand, if the banishment order is not lifted, Mr. Ruths will be immediately and irreparably harmed. He will be prevented from participating in School Board meetings—in the months leading up to a critical School Board election.

"[W]hen plaintiff is claiming the loss of a constitutional right, courts commonly rule that even a temporary loss outweighs any harm to defendant and that a preliminary injunction should issue." 11A Charles Alan Wright et al., Federal Practice and Procedure § 2948.2. Here, the challenged order heavily burdens Mr. Ruths' First Amendment rights—a burden that constitutes irreparable injury as a matter of law—and the order is likely unconstitutional.

Injunctive relief will simply preserve the status quo as it was before Defendants began flagrantly violating Mr. Ruths' constitutional rights. Accordingly, the balance of equities tips sharply in Plaintiff's favor. *See American Civil Liberties Union v. Johnson*, 194 F.3d 1149, 1163 (10th Cir. 1999) ("the threatened injury to Plaintiffs' constitutionally protected speech outweighs whatever damage the preliminary injunction may cause Defendants' inability to enforce what appears to be an unconstitutional statute").

## V. INJUNCTIVE RELIEF SERVES THE PUBLIC INTEREST

The temporary injunction Plaintiff seeks, which preserves First Amendment rights, is clearly in the public interest. "It is always in the public interest to prevent the violation of a party's constitutional rights." *Awad v. Ziriax*, 670 F.3d 1111, 1132 (10th Cir. 2012). "[A]s far as the public interest is concerned, it is axiomatic that the preservation of First Amendment rights serves everyone's best interest." *Local Org. Comm., Denver Chapter, Million Man March v. Cook*, 922 F. Supp. 1494, 1501 (D. Colo. 1996); accord El*am Constr., Inc. v. Reg.*

*Transp. Dist.*, 129 F.3d 1343, 1347 (10th Cir. 1997) ("The public interest . . . favors plaintiffs' assertion of their First Amendment rights"). To this end, if the Court does not issue a temporary injunction, such inaction will likely harm the public by further chilling citizens from expressing any frustrations during School Board meetings. *See Van Deelen*, 497 F.3d at 1155 ("When public officials feel free to wield the powers of their office as weapons against those who question their decisions, they do damage not merely to the citizen in their sights but also to the First Amendment liberties and the promise of equal treatment essential to the continuity of our democratic enterprise.")

## VI. MR. RUTHS SHOULD NOT BE REQUIRED TO POST SECURITY

Federal Rule of Civil Procedure 65(c) references "security in an amount that the [C]ourt considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." The Court may, in exercise of discretion, determine a bond is unnecessary to secure an injunction "if there is an absence of proof showing a likelihood of harm." *Coquina Oil Corp. v. Transwestern Pipeline Co.,* 825 F.2d 1461, 1462 (10th Cir. 1987).

Here, for the reasons discussed, Defendants will not suffer any undue harm if the requested relief is granted. Instead, injunctive relief will preserve the status quo by restoring the parties to the "last peaceable position" existing between them before the dispute developed. *Dry Cleaning*, 2007 WL 4557832, at *2. The last peaceable position was the world as it existed before Defendants began unlawfully prohibiting Mr. Ruths from attending School Board meetings, visiting District property, or attending District sponsored events. An injunction barring this conduct will not affect the Defendants' future interests. Accordingly,

no bond should be required.

## CONCLUSION

For all the reasons stated in this Motion, Mr. Ruths respectfully requests that the Court grant a temporary restraining order and preliminary injunction enjoining enforcement of Defendants' unconstitutional banishment order as to the August 9, 2023 School Board meeting and for the pendency of this lawsuit.

Dated: August 3, 2023.

Respectfully submitted,

*s/ Craig R. May*

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**CERTIFICATE OF SERVICE (CM/ECF)**

I HEREBY CERTIFY that on August 3, 2023, I electronically filed the foregoing **PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** using the CM/ECF system.

I FURTHER CERTIFY that I emailed the foregoing document and a copy of the **COMPLAINT AND JURY DEMAND** to the following:

- Brad Miller
  Miller Farmer Carlson Law
  brad@millerfarmercarlson.com

*s/ Craig R. May*