

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Marshall Concerned Citizens, Grant  
Blomberg, individually and as next friend  
for A.B. and B.B.,

Court File No. \_\_\_\_\_

Plaintiffs,

**Complaint**

v.

**Jury Trial Demanded**

Marshall School District, Independent  
School District No. 413, Mary Kay  
Thomas, principal of Marshall Middle  
School, in her official capacity,

Defendants.

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The Plaintiff Marshall Concerned Citizens, Grant Blomberg, individually and as next friend for A.B. and B.B. allege for their complaint as follows.

**Introduction**

Students do not shed their constitutional rights to freedom of speech at the schoolhouse gate. Marshall Middle School put up a display of over 20 non-European flags in the school's cafeteria depicting student heritage as a campaign to promote inclusiveness—including countries with oppressive and hostile policies against human rights. The flag display also promoted other selected social, political, and cultural movements while excluding others. The cafeteria display invited discourse regarding what the flags represent that are issues of public concern. Yet, when students protested through a seven-word petition to take down a flag—without any disturbance to classrooms, instructors, or students—school officials confiscated the petition. Then school officials, to counter the

students' petition, offered to staff and others, free bumper-type stickers favoring one particular cultural movement for distribution to display throughout the school. During the controversy, school officials refused to include a flag representing the protestors' cultural individuality and the principal characterized protesting students as white supremacists. Notably, the school's flag campaign of inclusiveness was neither formally announced to the student body nor adopted as a curriculum activity prior to the petitioning activities.

The school district eventually accepted the middle school's flag campaign, and in an effort to circumvent the instant litigation, adopted it as a curriculum activity and declared all acts related to it as "government speech." Yet, the students' petitioning activities were protected free speech activities. And, the government's non-curriculum speech was not viewpoint neutral and contained no procedural safeguards to avoid an unbridled discretion.

The motivation of school officials to interfere with student rights was partisan and political and beyond legitimate school concerns. The school officials suppressed the expression of an unpopular point of view that challenged one flag displayed in a cafeteria as part of a school-sponsored campaign.

The school's suppression of speech in an atmosphere of invited discourse created by school officials regarding social, cultural, and political subject matters, which were non-curriculum subject matters, cannot result in the complete deprivation of student rights as protected political speech activities under the First Amendment.

### **Jurisdiction**

1. This Court has jurisdiction under 28 U.S.C. § 1331 (federal-question jurisdiction), 28 U.S.C. § 2201 (declaratory-judgment jurisdiction), and 42 U.S.C. §§ 1983, 1988 (civil-rights statutes).

2. Venue is proper in this Court under 28 U.S.C. § 1391 because the Defendant Marshall School District is a public school district situated within this district, and because the events or omissions giving rise to the claims presented occurred within this district.

### **Parties**

3. Marshall Concerned Citizens is an unincorporated association of Marshall School District employees, volunteers, parents, and students concerned about issues related to or otherwise affecting constitutional rights within the District. Members of the association also include parents of children that currently attend or will attend Marshall School District in the future. Moreover, as parents, they have taught and imposed upon their respective children certain cultural and religious beliefs consistent with their own and which they expect or hope their children will carry forward even if those beliefs may reflect a different viewpoint than others.

4. Marshall Concerned Citizens have standing through the association because their constitutional rights are infringed by the School District's policies restricting counterspeech, notably here, on non-curriculum cultural issues of public concern or importance. The members of Marshall Concerned Citizens have standing because of the Marshall School District's policies or customs or both infringe upon constitutionally protected rights.

5. Grant Blomgren, A.B., B.B. and others, including other Marshall school district students, are members of Marshall Concerned Citizens. Grant Blomberg is the parent of A.B. and B.B. A.B. and B.B. are public school students of the Marshall School District.

### **Defendants**

6. Marshall School District, Independent School District No. 413, is a Minnesota public school district, organized under state law, to serve the people within the school district inclusive of Marshall, Minnesota.

7. Mary Kay Thomas is the principal of Marshall Middle School.

### **Factual Background**

#### **I. Tolerance includes accepting debate of differing opinions in the marketplace of ideas.**

8. “Tolerance” means accepting that something different has a right to exist, whether or not a person agrees with it. “Respect” means a high regard for that something.

9. Desmond Tutu once described the meaning of tolerance as “like saying, ‘I do not like you, but I have to live with the fact that you exist. I may agree to be tolerant of you, but I don’t have to be your friend—I don’t even have to speak to you at all. I just have to accept that you have the same right to your life choices as I do to mine.’”

10. Not every type of criticism or questioning of a belief or opinion constitutes intolerance or disrespect.

11. Criticism (not the type that simply says something negative for the sake of saying something negative) is a necessary part of a strong society.

12. Members of a society must be able to discuss and question and to openly air their opinions without fear of retribution.

13. A society that is able to discuss and question and to openly air their opinions without fear of retribution is a society which fits the definition of tolerance.

14. However, a person does not have to hold another person in high regard in order to tolerate that person's right to hold a belief the other person disagrees with.

## **II. Flags represent ideas, beliefs, and passions.**

### **Human rights and social movements are matters of public concern.**

15. Tim Marshall, author of "Worth dying for: The Power and Politics of Flags" recently stated that "Flags are about extremes of passion and extremes of belief."

16. The suppression of human rights by government is a matter of public concern.

17. "The doctrine of human rights has come to play a distinctive role in international life. This is primarily the role of a moral touchstone—a standard of assessment and criticism for domestic institutions, a standard of aspiration for their reform, and increasingly a standard of evaluation for the policies and practices of international economic and political institutions. International practice has followed the controlling documents of international law in taking a broad view of the scope of human rights." Human Rights as a Common Concern, Charles R. Beitz, *The American Political Science Review*, Vol. 95, No. 2 (Jun., 2001) (abstract), <https://www.jstor.org/stable/3118120> (last visited Mar. 19, 2021).

18. The Universal Declaration of Human Rights and other documents lay out five kinds of human rights: economic, social, cultural, civil, and political. Economic, social, and

cultural rights include the right to work, the right to food and water, the right to housing, and the right to education. “Universal Declaration of Human Rights.” *United Nations*. 1948.

<https://www.un.org/en/universal-declaration-human-rights/>; “Fact Sheet No.2 (Rev.1),

The International Bill of Human Rights.” *OHCHR.org*. United Nations Human Rights: Office of the High Commissioner, 1996.

<https://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>; “Human Rights.” United Nations: Global Issues [https://www.un.org/en/sections/issues-](https://www.un.org/en/sections/issues-depth/human-rights/)

[depth/human-rights/](https://www.un.org/en/sections/issues-depth/human-rights/) ; “Convention on the Rights of the Child.” *United Nations*. 1989.

<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>; “Convention on the

Elimination of All Forms of Discrimination Against Women.” *United Nations Entity for Gender Equality and the Empowerment of Women*. 1979.

<https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

19. “LGBTQ” means lesbian, gay, bisexual, transgender, queer or questioning. *See e.g.* <https://ok2bme.ca/resources/kids-teens/what-does-lgbtq-mean/>. LGBTQ can also include “LGBTQA” or “LGBTQ+” to symbolize other communities. *Id.*

20. An “Ally” is a person who considers themselves a friend to the LGBTQ+ community. *Id.*

21. Issues regarding the LGBT communities are matters of public concern or of public importance.

22. LGBT issues are matters of public concern because for instance, research suggests that LGBT individuals face health disparities linked to societal stigma, discrimination, and denial of their civil and human rights. *See* “Lesbian, Gay, Bisexual, and

Transgender Health;" <https://www.healthypeople.gov/2020/topics-objectives/topic/lesbian-gay-bisexual-and-transgender-health>.

23. LGBT issues are matters of public concern because, for instance, discrimination against LGBT persons has been associated with high rates of psychiatric disorders, substance abuse, and suicide. *Id.*

24. LGBT issues are matters of public concern because for instance, LGBT persons have often encountered experiences of violence and victimization that long-lasting effects on the individual and the community. For instance, personal, family, and social acceptance of sexual orientation and gender identity affects the mental health and personal safety of LGBT individuals. *Id.*

25. Part of the LGBT history, includes a "Pride" month reflecting upon their support of all similarly identified persons.

26. While the origins of Pride Month span back to the 1950's, President Bill Clinton officially made it "Gay and Lesbian Pride Month" in 2000. President Barack Obama would later make it more inclusive in 2011, calling it "Lesbian, Gay, Bisexual, and Transgender Pride Month."

27. Part of the LGBT history include symbolisms such as the rainbow flag.

28. The rainbow flag is also known as the "gay pride" flag or the "LGBT pride" flag.

29. The rainbow flag is a symbol of lesbian, gay, bisexual, transgender, and queer or questioning pride and LGBT social movements.

30. The original rainbow flag was devised by artist Gilbert Baker. The rainbow flag, debuting in 1978, had eight colors, but the traditional and most common variant consists of six stripes: (1) red—symbolizing “life;” (2) orange—symbolizing “healing;” (3) yellow—symbolizing “sunlight;” (4) green—symbolizing “nature;” (5) blue—symbolizing “serenity;” and (6) violet—symbolizing “spirit.”

31. There are no less than 24 “Pride” flags that exist that are used as an outward symbol of their identity or support. 24 Different Pride Flags and What Each Represents, Inclusivity matters,” Katherine J. Igoe (June 126, 2020); <https://www.marieclaire.com/culture/g32867826/lgbt-pride-flags-guide/?slide=1>.

32. In short, LGBT issues and symbols are part of a social movement.

### **III. An idea is born to display flags in the Middle School’s cafeteria.**

33. On December 6, 2019, Marshall Middle School’s Principal’s Assistant, Abbie Boelter, sent a message via text to Mary Kay Thomas, Marshall Middle School’s Principal, with an “[lightbulb symbol] idea!! We should hang flags of students’ home countries in the cafeteria.” (Ex. 16).

34. On the same day, Principal Thomas messaged back, “Cool idea! [heart symbol]” (Ex. 170).

35. Later the same day, on December 6, 2019, Principal Assistant Boelter sent another message to Principal Thomas suggesting adding a rainbow flag: “We could maybe add a rainbow flag! [rainbow flag symbol]” (Ex. 18, App. 166)

36. On December 10, Principal Thomas emailed to Marshall Middle School employees Warren Buchholz, Bruce Garrels, Caron Dion, and Principal Assistant Boelter

regarding the purchase of flags. (Ex. 19, App. 167-70). Thomas reported that the school had ordered “*flags to represent counties in which our students/ staff have immigrated.*” *Id.* (Emphasis added). Between 20 to 22 flags were anticipated to be displayed in the school’s cafeteria. *Id.* *See also* (Ex. 22, App. 174).

37. Attached to Principal Thomas’s email was a partial list of flags purchased. *Id.* *See also* (Ex. 20, App. 171-72).

**A. The flag display of countries is expanded to include social movements.**

38. Previous to the purchase of the flags, Principal Assistant Boelter emailed a Marshall High School teacher, Karrie Alberts, who was the faculty person for the high school’s LGBTQ+ Alliance group. Boelter inquired about which flag would “best represent the LGBTQ+ population.” (Ex. 21, App. 173).

39. Alberts emailed Boelter identifying the “new ‘official’” flag to represent the LGBTQ+ “population.” (Ex. 23).

40. The flag Alberts identified is referred to as the “Progressive Pride” flag. *See id.*

41. The Progress Pride flag added five arrow-shaped lines to the six-colored rainbow flag. The flag includes black and brown stripes to represent marginalized LGBT communities of color, along with the colors pink, light blue and white, which are used on the transgender pride flag.

42. The Progress Pride flag was unveiled in 2018.

43. The Progress Pride flag, when unveiled in 2018, was met with mixed reactions. Some people loved the bold inclusivity in addressing racism in the community, while others considered the new stripes’ inclusion needlessly divisive or just badly designed. As one

article noted, “Now, a queer, non-binary demisexual designer in Oregon, Daniel Quasar, has created the ‘progress Pride flag’ with its brown and black stripes shaped into an arrow alongside pink and baby blue stripes from the transgender flag, to show the need for progress among HIV-positive, trans and QPOC communities.” “A New ‘Progress Pride’ Flag Acknowledges Trans and Queer People of Color With an Arrow,” Daniel Villarreal (June 8, 2018); <https://hornet.com/stories/progress-pride-flag/>.

44. The Progress Pride flag does not represent Principal Thomas’s initial purpose of flags being displayed in the Marshall Middle School’s cafeteria “*to represent different countries in which our students/staff have immigrated.*” (Ex. 19, 167, emphasis added).

45. At some point, the underlying initial thought about having a flag display, was expanded to include “other identifying flags...i.e. autism, special Olympics, tribal association.” (Ex. 26, 178).

46. The Progress Pride flag does not represent a country.

47. The Progress Pride flag does not represent a country from which a student or staff or both has immigrated from.

48. At some point prior to December 27, 2019, the flags were hung in the Marshall Middle School cafeteria.

**B. A school employee objects to the display of the flag of Myanmar (Burma) as offensive and is removed.**

49. On December 27, during the school’s winter holiday break, Principal Assistant Boelter emailed to Marshall Middle School employee Bruce Garrels about an issue raised about a complaint of one of the hung flags: “We have heard flags are up in the cafeteria. Thank you! In hearing this, we have been told that one of the flags is seen as offensive to

some of our population, which were not aware of. Would you please remove that flag before students return? I've included a picture. [picture of objected-to national flag]" (Ex. 24, App. 176) The objected-to national flag was later removed. (Ex. 25, App. 177)

50. The objectionable flag was from the county of Myanmar. (Exs. 24, 176).

51. Myanmar was previously known as Burma.

52. The country flag of Myanmar was part of the Marshall Middle School's flag display.

53. The current Myanmar flag was adopted in October of 2010.

54. Previous versions of the Burma flag have existed since 1943 for the State of Burma or the Union of Burma.

55. Principal Thomas had stated in an email that "[w]e initially had a Burma flag up over the holiday identifying for some of our Karen population, but Hsa [Mu] found it, corrected us with the corrected version and we'll have that replaced soon." (Ex. 31, 188).

56. Myanmar has been engrossed in ethnic strife and its myriad ethnic groups have been involved in one of the world's longest-running ongoing civil wars. During this time, the United Nations and several other organizations have reported consistent and systematic human rights violations in the country.

57. Hence, taking down and replacing the Myanmar flag was to avoid controversy or misrepresentation of Karen population.

58. The Karen are an ethnolinguistic group of Sino-Tibetan language-speaking peoples.

59. The group as a whole is heterogeneous and disparate as many Karen ethnic groups do not associate or identify with each other culturally or linguistically. These Karen groups reside primarily in Kayin State, southern and southeastern in present-day Myanmar. The Karen, approximately five million people, account for approximately seven per cent of the Burmese population.

**C. Flags are not removed of countries with governments known to suppress and violate human rights, albeit no one has complained to date.**

60. The country flag of Honduras was part of and remains a part of the Marshall Middle School's flag display.

61. Notably, however, the flag of Honduras was not taken down, albeit no one had objected to that flag. Honduras, as one publication noted, is known for its "impunity for human rights abuses remain the norm in Honduras. Despite a downward trend in recent years, the country's murder rate is among the highest in the world. Efforts to reform the institutions responsible for providing public security have made little progress. Marred by corruption and abuse, the judiciary and police remain largely ineffective." Human Rights Watch; <https://www.hrw.org/americas/honduras>.

62. Human rights are issues of public concern. A student or teacher could petition to take down the display of the Honduras flag for reasons, including but not limited to, alleged human rights violations.

63. A.B., like many other students, is interested in human rights issues and other matters of public concern. Hence, any student may have an interest in petitioning to take down the Honduras flag display as a manner to protest alleged violations of human rights.

64. Likewise, Marshall Concerned Citizens which consists of parents with children attending Marshall Middle School or will be attending the School, have taught their children about human right abuses and encouraged them to speak out about political, religious, or human right abuses regardless of the country or group and the differences between violent protests and peaceful protests which is of particular importance in light of local and global events. Moreover, parents have taught their children about tolerance of other cultural differences of children from other countries or economic backgrounds. The parents would also encourage and support their children to petition on matters that concern them within the Middle School.

65. A request to take down the Honduras flag display would not mean A.B. or any other student is intolerant of students from Honduras or even those that may support the Honduras government.

66. The country flag of Venezuela was part of and remains a part of the Marshall Middle School's flag display

67. Notably, however, the flag of Venezuela was not taken down because of human rights violations, albeit no one had objected to that flag. Venezuela, as one publication noted is known for its "accumulation of power in the executive branch that began during the presidency of Hugo Chávez has enabled Venezuelan authorities to intimidate, censor, and punish its critics. A brutal crackdown on dissent that intensified since 2014 has led to the arbitrary prosecution of political opponents, dozens of killings, thousands of arrests, and abuses against detainees that in some cases amount to torture." Human Rights Watch; <https://www.hrw.org/americas/venezuela>.

68. Human rights are issues of public concern. A student or teacher could petition to take down the display of the Venezuela flag for reasons, including but not limited to, alleged human rights violations.

69. A.B., like many other students, is interested in human rights issues and other matters of public concern. Hence, any student may have an interest to petition to take down the Venezuela flag display as a manner to protest alleged violations of human rights.

70. A request to take down the Venezuela flag display would not mean A.B. is not tolerant of students from Venezuela or even those that may support the Venezuela government.

71. Likewise, Marshall Concerned Citizens which consists of parents with children attending Marshall Middle School or will be attending the School, have taught their children about human right abuses or violations and encouraged them to speak out about political, religious, or human right abuses regardless of the country or group. Parents have also taught or spoken to their children about the differences between violent protests and peaceful protests which is of particular importance in light of local and global events. Moreover, parents have taught their children about tolerance of other cultural differences of children from other countries or economic backgrounds. The parents would also encourage and support their children to petition on matters that concern them within the Middle School.

72. The country flag of El Salvador was part of and remains a part of the Marshall Middle School's flag display.

73. Notably, however, the flag of El Salvador was not taken down, albeit no one had objected to that flag. El Salvador, as one publication noted is known for "one of the

world's highest homicide rates, partially due to corruption and impunity. State security forces have committed egregious abuses, including extrajudicial executions, sexual assaults, and enforced disappearances. They have failed to investigate crimes and collaborated with gangs. Gangs exercise territorial control, extort residents, and kill, disappear, rape, or displace those who resist them. Girls and women alleged to have had abortions are imprisoned for homicide.” Human Rights Watch; <https://www.hrw.org/americas/el-salvador>.

74. Human rights are issues of public concern. A student or teacher could petition to take down the display of the El Salvador flag for reasons, including but not limited to, alleged human rights violations.

75. A.B., like many other students, is interested in human rights issues and other matters of public concern. Hence, any student may have an interest to petition to take down the flag of El Salvador display as a manner to protest alleged violations of human rights.

76. A request to take down the El Salvador flag display would not mean A.B. is not tolerant of students from El Salvador or even those that may support the El Salvador government.

77. Likewise, Marshall Concerned Citizens which consists of parents with children attending Marshall Middle School or will be attending the School, have taught their children about human right abuses and encouraged them to speak out about political, religious, or human right abuses regardless of the country or group. Parents have also taught or spoken to their children about the differences between violent protests and peaceful protests which is of particular importance in light of local and global events. Moreover, parents have taught their children about tolerance of other cultural differences of children from other countries

or economic backgrounds. The parents would also encourage and support their children to petition on matters that concern them within the Middle School.

78. The country flag of the Philippines was part of and remains a part of the Marshall Middle School's flag display.

79. Notably, however, the flag of Philippines was not taken down, albeit no one had objected to that flag. Philippines, as one publication noted is known for President Rodrigo Duterte, having taken office in June 2016, who "has carried out an abusive "war on drugs" resulting in the deaths of more than 5,500 suspected drug dealers and users during police operations. Thousands more, among them children, have been killed by "death squads" or unidentified gunmen linked to the police or local authorities. No meaningful investigation into the killings has taken place. Duterte has sought to silence critics of the anti-drug campaign, notably Senator Leila de Lima and news organizations such as Rappler. Extrajudicial killings targeting leftist activists, tribal leaders, and others have continued." Human Rights Watch; <https://www.hrw.org/americas/philippines>.

80. A.B., like other students, is interested in human rights issues and other matters of public concern. Hence, any student may have an interest to petition to take down the flag of Philippines display as a manner to protest alleged violations of human rights.

81. A request to take down the Philippines flag display would not mean A.B. is not tolerant of students from Philippines or even those that may support the Philippine government.

82. Likewise, Marshall Concerned Citizens which consists of parents with children attending Marshall Middle School or will be attending the School, have taught their children

about human right abuses and encouraged them to speak out about political, religious, or human right abuses regardless of the country or group. Parents have also taught or spoken to their children about the differences between violent protests and peaceful protests which is of particular importance in light of local and global events. Moreover, parents have taught their children about tolerance of other cultural differences of children from other countries or economic backgrounds. The parents would also encourage and support their children to petition on matters that concern them within the Middle School.

83. The country flag of Mexico was part of and remains a part of the Marshall Middle School's flag display.

84. Notably, however, the flag of Mexico was not taken down, albeit no one had objected to that flag. In Mexico, as one publication noted, "Mexican security forces have been implicated in numerous serious human rights violations—including extrajudicial killings, enforced disappearances, and torture—in the course of efforts to combat organized crime. Nevertheless, the government has officially sanctioned military involvement in domestic law enforcement activities, without including meaningful measures to strengthen civilian police institutions, and there has only been limited progress in prosecuting those responsible for abuses. Recently passed laws on torture and enforced disappearances contain positive provisions, but their implementation remains pending. Other continuing problems include violence against journalists and limits on access to reproductive rights and health care." Human Rights Watch; <https://www.hrw.org/americas/mexico>.

85. A.B, like other students, is interested in human rights issues and other matters of public concern. Hence, any student may have an interest to petition to take down the flag of Mexico display as a manner to protest alleged violations of human rights.

86. A request to take down the Mexico flag display would not mean A.B. is not tolerant of students from Mexico or even those that may support the Mexican government.

87. Likewise, Marshall Concerned Citizens which consists of parents with children attending Marshall Middle School or will be attending the School, have taught their children about human right abuses and encouraged them to speak out about political, religious, or human right abuses regardless of the country or group. Parents have also taught or spoken to their children about the differences between violent protests and peaceful protests which is of particular importance in light of local and global events. Moreover, parents have taught their children about tolerance of other cultural differences of children from other countries or economic backgrounds. The parents would also encourage and support their children to petition on matters that concern them within the Middle School.

88. The country flag of Mexico was part of and remains a part of the Marshall Middle School's flag display.

89. Persons who immigrate from countries of their ancestry—of their national origin—to the United States, do not necessarily agree with the politics of that government. It is, nonetheless, the student's country of their origin, whether born there or having parents who immigrated from there or may still have family and relatives residing there.

90. National origin discrimination does exist in the United States.

91. To discriminate because of a person's national origin is against the law. *See e.g.* Title VI of the Civil Rights Act of 1964.

92. However, a person who agrees or disagrees about a country's governmental policies does not mean that person is discriminating against the other person because of their national origin or other rights entitled to them.

#### **IV. Objections begin to surface about the Progress Pride flag.**

93. Meanwhile, on January 3, Principal Thomas emailed Ronald Schultz (the Marshall Middle School custodian) writing that: "I understand you have some concerns for a particular flag in the cafeteria. *Several people have voiced their 'discomfort' with your response to the flag.* Could you please stop in and visit with me? I'd like to better understand your concerns. *In the meantime, there's no reason for you to have conversations about the flag.*" (Ex. 29, 185 (emphasis added)).

94. Here, Principal Thomas is directing custodian and Marshall Middle School and School District employee Schultz, not to speak. *Id.*

95. There is no evidence that Schultz's conversations with others were disruptive.

96. There is no evidence that Schultz's conversations with others encouraged or suggested illegal activities, acts, or actions.

97. There is no evidence that Schultz's conversations with others encouraged or suggested disruptive acts or actions.

98. On the same day, Education Association building representative Emily Pollock (a Marshall Middle School teacher) met with Principal Thomas to discuss two

teachers' objections to the Progress Pride flag display. "Ms. Thomas said she would have to give it some thought but initially would not remove the flag." (Ex. 26).

99. Association Representative Pollock recorded the two teachers concerns and Principal Thomas's responses. (Ex. 30, App. 186-87).

100. Principal Thomas asserted that the flag display is not about nationality, but "about inclusive-ness." (Ex. 30, App. 187).

101. Principal Thomas would later explain that it was her intent to implement "different ways to ensure all students feel included in the building." *Id.*

102. Thomas also wrote that the "other area to provide 'inclusive-ness' is by identifying and placing flags in the cafeteria in which each student or staff person can identify. Most of the flags would be identified as national flags; however, that was not the primary intent. We also have an LGBTQ flag, and were in the process of ordering the 'disability' flag. I imagine we'll have a variety of others in the future..." *Id.*

103. Thomas would also write, "Anyway, (sic) intent was to provide a way that everyone could identify with one or more flags in the cafeteria." *Id.*

**A. Concern raised about a flag to represent the Hmong people.**

104. Principal Thomas asserted, in response to a concern that not all nationalities are represented, for example, the Hmong, because the "Hmong is not a nationality, it is a racial subgroup. Hmong people are usually Thai, Chinese, Laotian, Vietnamese or (*sadly*) Burmese." *Id.* Emphasis added.

105. Indeed, the Hmong are an Asian ethnic group in China and Southeast Asia. They are a subgroup of Miao people, and live mainly in southern China, Vietnam, Laos,

Thailand, and Myanmar. They have been members of the Unrepresented Nations and Peoples Organization (UNPO) since 2007.

106. During the first and Second Indochina Wars, France and the United States' Central Intelligence Agency recruited thousands of Hmong people in Laos to fight against forces from North and South Vietnam and the communist Pathet Lao insurgents. This CIA operation is known as the "Secret War."

107. Many Hmong refugees resettled in the United States, including Minnesota, after the Vietnam War.

108. The Unrepresented Nations and Peoples Organization is an international organization established to facilitate the voices of unrepresented and marginalized nations and peoples worldwide. It was formed on 11 February 1991 in The Hague, Netherlands. Its members consist of indigenous peoples, minorities, and unrecognized or occupied territories.

109. The Unrepresented Nations and Peoples Organization offers an international forum for occupied nations, indigenous peoples, minorities, and even oppressed majorities who currently struggle to regain their lost countries, preserve their cultural identities, protect their basic human and economic rights and safeguard the natural environment. It currently has 50 members representing over 100 million people.

110. Unrepresented Nations and Peoples Organization has a flag. It was adopted on August 5, 1991, and modified in 2005.

111. The Unrepresented Nations and Peoples Organization flag is not displayed at the Marshall Middle School.

112. However, Marshall Middle School does display the flag of Laos to represent Hmong students' national origin. Principal Thomas explained to the school's faculty about the Laotian flag: "The Hmong are an ancient culture located predominantly in the mountains of Northwest Vietnam, Northeast Laos and areas of China bordering Vietnam and Laos." She also identified the link from which the information was obtained.

113. In Laos, authorities have frequently labeled as national security threats anyone peacefully expressing dissenting views, criticizing the government, or simply calling for respect for human rights and democratic rule. Laos has failed to address its growing number of enforced disappearances. A number of people who have criticized the government have been forcibly disappeared, defined as the detention of a person by state officials and a refusal to acknowledge the detention or to reveal the person's fate or whereabouts.

<https://www.hrw.org/news/2019/11/16/laos-democracy-activists-arrested>.

114. A.B., like other students, is interested in human rights issues and other matters of public concern. Hence, any student may have an interest to petition to take down the flag of Laos as a manner to protest alleged violations of human rights.

115. A request to take down the Laos flag display would not mean A.B. is not tolerant of students from Laos or even those that may support the Honduras government.

116. Likewise, Marshall Concerned Citizens which consists of parents with children attending Marshall Middle School or will be attending the School, have taught their children about human right abuses and encouraged them to speak out about political, religious, or human right abuses regardless of the country or group. Parents have taught or have spoken to their children about the differences between violent protests and peaceful protests which

is of particular importance in light of local and global events. Moreover, parents have taught their children about tolerance of other cultural differences of children from other countries or economic backgrounds. The parents would also encourage and support their children to petition on matters that concern them within the Middle School.

**V. Students begin debates about the flag display which leads to opportunities for discussion on issues of public concern.**

117. In addition, there were concerns about the display of the Progress Pride flag which led to “Kids...talking about it at, poking fun and calling others ‘gay.’ It has created an atmosphere and questions that teachers were not prepared to answer.” (Ex. 30, 187).

118. Principal Thomas noted that, “If we are not prepared, we need to get there. Our Mn teaching licenses depend on it. So does our ability to protect and serve students in a public school.” *Id.*

119. Principal Thomas also stated that “LGBTQ is not a religion.” *Id.*

120. Principal Thomas’s statement that “LGBTQ is not a religion” is correct.

121. Principal Thomas stated, relating to the LGBTQ community that “Nobody is to remain neutral when our students inclusivity is at stake.” *Id.*

122. Principal Thomas’s statement that “no one is to remain neutral” represents here, on the one hand, an *invitation* for discourse and comments on issues of matters of public concern.

123. On the other hand, Thomas’s statement also signifies that criticism of issues of public concern will not to be tolerated.

124. However, not everyone in Marshall Middle School, whether student or teacher is a “straight ally” of the LGBTQ community. Not being identified as a “straight ally” of the

LGBTQ community does not mean the person is intolerant of the LGBTQ community. In other words, the LGBTQ movement does not necessarily reflect the political or religious views of all others considered outside the LGBTQ community.

125. A.B. does not identify himself as a “straight ally.”

126. Other Marshall Middle School students or teachers or both do not identify themselves as “straight allies.”

127. Not identifying with the LGBTQ community does not mean an intolerance of that community.

128. A.B. does not have an intolerance toward the LGBTQ community.

129. Other Marshall Middle School students or teachers or both are tolerant of the LGBTQ community.

130. Having differing political or religious views does not mean intolerance of other communities holding differing viewpoints of a movement whether it be LGBTQ or other movements, such as, the environmental or human rights movements.

131. Yet, Principal Thomas stated that “LGBTQ is not a movement, but Black Lives Matter and Me Too are both movements that are controversial.” *Id.*

132. Principal Thomas’s statement that “LGBTQ is not a movement” is incorrect.

133. A.B. is tolerant of others holding differing viewpoints of a movement whether it is LGBTQ or, for example, the environmental or human rights movements.

134. Unlike her previous statement about not remaining neutral on issues of public concern relating to LGBTQ community inclusivity, Principal Thomas stated as to other matters of public concern—such as other types of movements—that “We should all be

prepared to explain what they mean and why they exist but should remain neutral on those matters. They are movements.” *Id.*

135. Meanwhile, Education Association building representative Emily Pollock, having contacted the Association’s president, was advised that it would not support the request to modify the Middle School’s flag display. (Ex. 26, App. 179).

136. Principal Thomas remained “reluctant to make a change with [the Progress Pride] flag as the modification could divide staff and students, and most importantly it can give a message of LGBTQ students that they are not accepted here.” (Ex. 31, 188-89).

**VI. An issue of allowing a “straight pride flag” is raised and defeated by the Middle School.**

**Hints of the acceptability of what flags and for what cause will be displayed is provided.**

137. On January 5, 2020, Monica Doom, a Marshall Middle School paraprofessional, emailed Marshall School District Superintendent Scott Monson and asked if a “Straight Pride flag” could be displayed in the cafeteria since a “Gay Pride flag” was also displayed. Doom also attached examples of the “Straight Pride flag.” (Ex. 32, App. 190–91).

138. Superintendent Monson directed Principal Thomas to address the Middle School’s paraprofessional Doom’s request. (Ex. 33, App. 192).

139. Meanwhile, Karrie Alberts (previously identified as the Marshall High School teacher and advisory to the LGBTQ+Alliance Group) wrote to Principal Thomas stating that “Straight pride and its flag was created by the alt-right, and for one reason only—to fight the lgbt pride parade in Boston.” (Ex. 34, App. 194).

140. Thomas responded to Alberts asking “[W]ould the top one [Straight Ally flag] be all-inclusive?” (Ex. 35, App. 195).

141. Alberts answered Thomas, “Yes—it would be meant and is used to be all encompassing for lgbtq people and their straight allies. But so is the flag that I previously approved that is hanging in your cafeteria that was sent by Abbie weeks ago.” *Id.*

142. The Pride Progress Flag, therefore, by Alberts’ answer to Thomas, is not all-inclusive.

143. One meaning of a “straight person” is a heterosexual person; someone having a sexual orientation to persons of the opposite sex.

<https://www.thefreedictionary.com/straight+person>.

144. One meaning of “ally” means “to unite oneself with another to promote a common interest. As shown by previous definitions stated, people who are allies are not only helpers, but also have a common interest with those they desire to help. In an alliance, both parties stand to benefit from the bond or connection they share.” [https://opseu.org/wp-content/uploads/2015/10/what\\_does\\_it\\_mean\\_to\\_be\\_an\\_ally.pdf](https://opseu.org/wp-content/uploads/2015/10/what_does_it_mean_to_be_an_ally.pdf).

145. Not all “straight” persons would consider themselves allies of the LGBTQ movement. In other words, they cannot be identified as a “straight ally.”

146. A.B. was not an ally of the LGBTQ movement and would not identify himself as a “straight ally.”

147. Although not a “straight ally,” A.B. remains tolerant of LGBTQ people as he respects their opinions or beliefs, but disagrees with those opinions and beliefs.

148. Monica Doom emailed Principal Thomas on January 7, 2020 and wrote that based upon her research, the suggested “Straight Pride flag” “excludes many and could cause feeling of not being welcomed, included or offensive to some.” (Ex. 33, App. 192; *see also* Ex. 34, App. 194).

149. Doom responded to Thomas, “I’m still missing the representation of the straight community.” (Ex. 33, App. 192-93).

150. Principal Thomas’s rejection of the “Straight Pride flag” in a meeting with paraprofessional Doom, was evaluated two days later on January 9, 2020, by Darci Love, another principal and President of the local Principal Association. Darci Love interpreted the Straight Pride flag as “rooted in white nationalism” and “exclusionary.” (Ex. 26, App. 179)

151. On January 6, Thomas emailed to Alberts about the flag proposal in support of traditional marriage.

152. Additionally, parents expressed concern about hanging flags in the Marshall Middle School that did not represent the “acceptance of all.” For instance, on January 7, 2020, Middle School parent Grant Blomberg emailed to Principal Thomas (with a carbon copy to School District Superintendent Monson) regarding the cafeteria flags:

[W]hat are the reasons for hanging a gay pride flag in middle school? Also if we are a school that accepts all then we should have all flags put up not just the ones that you think should be put up.

(Ex. 36, App. 197)

153. On January 7, Principal Thomas wrote to all Marshall Middle School faculty. Thomas wrote that “the idea with adding flags in the cafeteria was/is completely about

inclusive-ness...[t]o represent where students/staff were born if different than the US.”  
(Ex. 39, App. 201-08).

154. In the same email, Thomas would also write that the flags are “[f]or students to find and relate to flags that would recognize/support students, possible commonalities, and their ‘inclusive-ness’ within the building... More importantly, it was an inclusion activity to ensure we do what we can to include all students in our building in one way or another. It was not intended for any of us to find a moral compass for the details of any of the flags, but provide inclusion.” *Id.*

155. The email included an attachment that identified 27 flags displayed or to be displayed in the cafeteria, including an “Ecology” flag. (Ex. 39, App. 204).

156. The Ecology flag is a cultural symbol used primarily in the 1970s by American environmentalists. It is commonly thought of as a symbol of people's commitment to clean up the environment.

157. The Ecology flag’s green and white colors symbolize “the pure air and the green land.” The oval with a line through the middle is a stylized symbol combining the initial letters in the words “environment” and “organism.” This stylized symbol also resembles the Greek letter “theta” which is associated with the Greek word “thanatos” (death). This symbol, therefore, implies mankind’s threat to the environment.

<https://flagsinternational.com/history-of-the-ecology-flag/>. The flag continues to be used as a symbol of concern for the planet.

158. The environmental movement continues to exist today. For example, in the United States, the organized environmental movement is represented by a wide range of

non-governmental organizations existing on local, national, and international scales. These organizations vary widely on political views and on whom they seek to influence whether local, national, or international governments.

159. Not all persons agree with or associate with the environmental movement, the politics of the movement or its objectives.

160. The flag display list also included the flag of the United States. The list included an explanation of the meaning of the American flag as it relates to its colors, red, white, and blue. (Ex. 39, App. 203).

161. Besides the meaning of the colors of the flag of the United States, to some, the flag symbolizes freedom, liberty, and opportunity in the United States.

162. To others, the flag of the United States represents military presence around the world or economic dominance.

163. It is not uncommon to see *other countries* burn the flag of the United States in protest.

164. It is not uncommon to see the flag of the United States burned in protest *in the United States*.

165. Burning the flag of the United States is a protected right under the First Amendment of the U.S. Constitution.

166. The list of flags Principal Thomas forwarded to all Marshall Middle School faculty included an explanation of the meaning of the “Progress Pride Flag.” The attachment states, “LGBTQA (A—Ally is for all of us—supporters of kids regardless of their identities.) Each of the colors has a meaning: red means life, orange means healing, yellow

means sunshine, blue means harmony, and purple means spirit. The chevron variation along the hoist that features black, brown, light blue, pink, and white stripes adds those marginalized communities to the forefront.” (Ex. 39, App. 207).

**VII. A seven-word petition is drafted to take down the Progress Pride flag.**

167. On January 8, Plaintiff A.B. drafted a petition with the words “Petition to take down LGBT (sic) Pride Flag” on an 8 ½” by 11 sheet of paper. (Ex. 40, App. 209). There was only one original petition.

168. The petition did not state any language regarding the LGBTQ movement.

169. The petition did not state any language regarding intolerance toward LGBTQ people.

170. The A.B. petition represented a protest to the *display* of the Progress Pride flag in the Middle School cafeteria.

171. The A.B. petition did not advocate or encourage illegal activities, acts, or actions. *Id.*

172. The A.B. petition did not advocate or encourage disruption of school activities. *Id.*

173. The A.B. petition did not advocate or encourage harm of any kind to other students. *Id.*

174. The A.B. petition did not advocate or encourage intolerance to the LGBTQ community. *Id.*

175. The A.B. petition did not advocate or encourage harm to any other person in the school or outside the school. *Id.*

176. The A.B. petition did not advocate or encourage the burning of the Progress Pride flag. *Id.*

177. The A.B. petition did not advocate or encourage any type of desecration of the Progress Pride flag. *Id.*

178. The A.B. petition did not advocate or encourage disrespectfulness of anyone associated with the LGBTQ community.

179. The A.B. petition was not displayed or posted or placed in internal staff or student mailboxes.

180. The A.B. petition was not copied.

181. On January 8, A.B. and another friend offered to fellow students an opportunity to read and sign the original A.B. petition.

182. The A.B. petition was offered *before* class or after class. *Id.*

183. A.B. and his friend *did not* seek to obtain signatures on the petition *during* class instructional time.

184. Once the class period began, A.B. and his friend stopped asking for petition signatures.

185. Six students signed the A.B. petition before class. *Id.*

186. One student signed the A.B. petition and then scratched his or her name off the petition before class. *Id.*

187. A.B. did not distribute the petition.

188. A.B. did not circulate the petition.

**A. The petition did not meet the requirements of School District policies to suggest any violation of those policies.**

189. Under Marshall School District Policy 505, III.A., “‘Distribute’ or ‘Distribution’ means circulation or dissemination of material by means of handing out free copies, selling or offering copies for sale, accepting donations for copies, posting of displaying material, or placing material in internal staff or student mailboxes.”

190. On the same day, January 8, Marshall Middle School teacher, Derek Long, emailed another Middle School teacher, Taylor Johnson, regarding A.B.’s petition: “Update on Flag gate: Apparently, there is a petition going around in the upper grades between students to get it taken down...” (Ex. 41, App. 210).

191. The Long email did not state that any type of disruption in the classroom had occurred related to the A.B. petition. *Id.*

192. The Long email did not state that any type of disruption outside the classroom had occurred related to the A.B. petition. *Id.*

193. The Long email did not state that any type of disruption outside the school building had occurred related to the A.B. petition. *Id.*

194. Soon thereafter, another Marshall Middle School teacher, Kelsea Anderson, took the petition from A.B.

195. Anderson, in turn, gave the confiscated A.B. petition to Principal Thomas. She would later allege that A.B. sought signatures during the class period, hence, suggesting the activity as disruptive.

196. After school, A.B. and his friend asked Anderson to return the petition. Anderson refused. She told them to see Principal Thomas to get the petition back.

**B. Principal Thomas reacts to the petition to take down the Progress Pride flag by countering the speech activity with rainbow stickers for distribution.**

197. Meanwhile, on January 8, the same day Anderson confiscated A.B.'s petition and gave it to Principal Thomas, Thomas wrote to Karrie Alberts (Marshall High School teacher and faculty advisor to the LBGTQ+ Alliance Group), asking "Where can I order rainbow stickers for the glass windows to our rooms/offices?" (Ex. 42, App. 211).

198. Alberts responded to Thomas, "I just print them and laminate them." *Id.*

199. Thomas replied to Alberts, "I'd like 20 if you can spare that many." (*Id.*

200. Then, Alberts wrote back to Thomas, "they should be in the afternoon delivery." *Id.*

201. After receiving the requested rainbow stickers from Alberts, Principal Thomas distributed them to Marshall Middle School teachers to display throughout the schools' halls and classrooms.

**C. Ironically, Principal Thomas as a middle-school aged student, used the petitioning process in school to have a substitute teacher fired.**

202. The next day, January 9, Principal Thomas texted to another Marshall Middle School employee (unidentified) regarding A.B.'s petition, "I don't know. When I was their age i (sic) sent a petition around to get a sub fired. So...[angry face emoji] In my nine years here, this is the first time I've been so taken back by a student's action. Can we visit in person when you have time? Anytime this week. The flag should wave!" (Ex. 43, App. 212). Thomas then writes, "It's not the process that worries me, it's the content."

203. Notably, Principal Thomas, as a *student*, participated in obtaining signatures on a petition that apparently contributed to the firing of a substitute teacher.

204. The Thomas petition sought the *removal* of a school district *employee* resulting in the loss of that district employee's job.

205. Meanwhile, the A.B. petition, on the other hand, in seven words, sought to take down the *display* of the Progress Pride flag.

206. At or about the same time as the A.B. petition was created, Principal Thomas ordered, obtained, and distributed laminated rainbow stickers to faculty for display outside or inside the Marshall Middle School classrooms. Faculty members did display the rainbow stickers.

#### **VIII. Middle School flag display becomes politically controversial outside the school and into the community.**

207. On January 9, Jeff Chapman, Marshall School District Board President, contacted Tricia Stelter, School District Superintendent Monson's Executive Assistant, stating that he was on his way to Marshall Middle School to "divert a crisis." (Ex. 26, App. 180).

208. Later that day, a meeting took place with Board President Chapman, Principal Thomas, Superintendent Executive Assistant Stelter, and Jeremy Williams, Curriculum Director, since Superintendent Monson was out of the district. *Id.*

209. Chapman said he had visited with a pastor who was representing between three to five other pastors in the community who wanted the Progress Pride flag removed. (Ex. 26, App. 181).

210. Chapman said the pastors had been contacted by five Marshall Middle School teachers and parents who also wanted the Progress Pride flag removed. (Ex. 26, App. 181).

211. Chapman said “the directive to remove the flag was based on the relationship we have [with] the community and we need to maintain that relationship.” (Ex. 26, App. 181).

212. Thomas responded to Chapman that she would not remove the flag as it represents an already marginalized group of people. (Ex. 26, App. 181).

213. Superintendent Monson was then conferenced called into the conversation and asked Board President Chapman what he wanted. (Ex. 26, App. 181).

214. Chapman stated he wanted the Progress Pride flag removed or all of them removed. Chapman then stated to Thomas, “you [Thomas] heard him, remove the flags or flag.” (Ex. 26, App. 181).

215. Principal Thomas said she wasn’t sure she could do that and needed some time and wanted to know what would happen if she chose not to. (Ex. 26, App. 181).

216. If Thomas had chosen not to take down the Progress Pride flag, it would have been because of her *protest* against the School Board Chair’s request and demand to take down the flag.

217. Superintendent Monson said that it would be insubordination and disciplinary action would follow. *Id.* The meeting ended. (Ex. 26, App. 181).

218. If Thomas had chosen not to take down the Progress Pride flag, it would have been because of her *protest* against Superintendent Monson’s decision to abide by the School Board Chair’s request and demand to take down the flag.

219. Immediately following the meeting, Love, as President of the Local Principal Association and Thomas called John Millenhagen, who advised to remove the Progress Pride flag and call “Roger for legal advice.” *Id.*

220. After the meeting, Superintendent Monson and Principal Thomas agreed not to follow School District Board President Chapman’s request and direction. Although Thomas would send an email to the Marshall Middle School’s custodian Bruce Garrels to take down the flags, Monson would email Thomas and Garrels to hold off until after the weekend: “Let’s wait until the weekend if/to do anything with them.” (Ex. 44, App. 213).

**IX. The flag controversy evolves to include teachers and a threat to school district employees by one teacher.**

221. On January 9, Dana Moore, a Marshall Middle School teacher, petitioned in writing to Catherine Crouse and Taylor Johnson about her proposed email to Superintendent Monson and the District’s School Board “about what is the right thing to do in this situation,” implying that the Board should not adversely affect a “vulnerable group of kids” of the LGBTQ community. In support of her proposed course of action, Moore threatened other school district employees: “P.S. I will go Shawshank (sic) on your asses and send you a letter every day that says I hope a gay kid doesn’t kill themselves today if you give in to fear.” (Ex. 45, App. 214).

222. “Shaw Shank” is a slang phrase meaning to get forcefully screwed up the butt without lube (references the movie *The Shaw Shank Redemption* in which the main character got “Shaw Shanked” in prison). *See e.g.*

*<https://www.urbandictionary.com/define.php?term=Shawshanked>.*

223. In sharp contrast to Moore's statement of action, the A.B. petition politely sought to take down a flag *display* with seven words: "Petition to take down LGTB (sic) Pride Flag." (Ex. 40, App. 209).

224. Meanwhile, the day after requesting and obtaining rainbow stickers (January 8, 2020, *see* Ex. 42, App. 211), on January 9, Principal Thomas investigated the origins of the A.B. petition for violations of the School District policies and customs.

225. For example, Thomas investigated A.B., his friends, and others who signed the confiscated A.B. petition. Thomas interrogated the eighth grade boys basketball team with questions about the extent of A.B.'s, his friends' and other students' protest via the A.B. petition. Thomas told the eighth grade basketball coach that the interrogation was necessary because a lot of team members had an interest in the A.B. petition. Thomas went so far as to ask the basketball coach if he knew the student-athletes supporting the A.B. petition.

226. The flag display generated discussion among teachers. For instance, on January 10, fifth grade teacher Rachel Hanson wrote to her colleague Samantha Downing explaining the inclusive nature of the Pride flag. (Ex. 46, App. 217). She notes that the "flags are not meant mainly for curriculum but are about the inclusion project being implemented at our school." *Id.*

227. However, Principal Thomas was not as forthright with parents regarding the flag display. On January 13, Marshall Middle School parent, Grant Blomberg sent a second email to Thomas regarding the flag display: "I guess if you are not willing to give me an answer to my questions [regarding the Progress Pride flag] I will have to come and talk with you about this." (Ex. 36, App. 197).

228. On January 14, parent Blomberg met with Principal Thomas. Blomberg and Thomas discussed the students' petition. Thomas said she would discuss the students' petition with A.B. and his friend agreeing to meet with them together.

229. On January 16, A.B. and his friend were scheduled to meet with Principal Thomas in her office to discuss the A.B. petition. However, on the appointed day, Thomas failed to meet with A.B. and his friend. A.B. and his friend were confused about Thomas's failure to meet as scheduled.

230. On about January 16, another student, who was critical of the Marshall Middle School's flag display, is disciplined by Principal Thomas based on an anti-bullying complaint by an LGBT student. A.B. and his friend would later learn about the disciplinary action taken.

**X. With no curriculum and no notice of such to students or parents, Principal Thomas seeks approval of flag display from the District's Superintendent to no avail.**

231. On January 16, 2020, Principal Thomas wrote to District Superintendent Monson that "[w]e have several more flags to hang, and I don't believe any of them contain controversy. Can you please give your stamp of approval to hang the flags below." (Ex. 49, App. 222). The flags listed were the "Karen National flag," Sri Lanka, Poland, England, and the Ecology flags. *Id.*

232. The next day, January 17, Superintendent Monson responded to the Thomas email and wrote, "Until there is a well-defined process to determine if and what flag/s are hung up, I'm not ready to approve this." (Ex. 49, App. 222). He stated that Thomas should craft a process, including criteria for review to make flag decisions. *Id.*

233. Hence, at the time of the A.B. petition, Marshall Middle School nor the Marshall School District had a policy in place regarding the display of flags.

**XI. Principal Thomas suggests minors A.B. and his friend have “white supremacist” views among other unflattering labels and characterizations.**

234. On January 21, A.B. and his friend finally met with Thomas to discuss their petition after her failure to meet with them almost one week earlier. (Ex. 52, App. 230)

This is the first of two actual meetings that they have with Thomas to discuss their petition.

235. Principal Thomas refused to return the A.B. petition as he had requested.

236. Principal Thomas stated at the meeting with A.B. and his friend that:

- Petition will do nothing.
- Nothing is going to change.
- The flag is not coming down.
- Since you are Christian, you should be accepting of the LGBT flag.
- You must love other people as Christians by liking the LGBT flag.
- You support “white supremacy” if you support a straight flag or traditional marriage flag.
- Gay pride flag is a flag of inclusion. It’s not political.
- They are born that way.
- You enjoy “white privilege” as straight, white, males (without asking A.B. and his friend to identify their ancestry or sexual orientation).
- Straight white males like you don’t need a flag.
- The forty or so LGBTQ students have a right to the flag.
- Be thankful as straight, white males, you don’t need a flag.

237. “White supremacy” is defined as “a person who believes that the white race is inherently superior to other races and that white people should have control over people of other races.” <https://www.merriam-webster.com/dictionary/white%20supremacist>.

238. Another source, defined “white supremacy” as “a term used to characterize various belief systems central to which are one or more of the following key tenets: 1) whites

should have dominance over people of other backgrounds, especially where they may co-exist; 2) whites should live by themselves in a whites-only society; 3) white people have their own 'culture' that is superior to other cultures; 4) white people are genetically superior to other people. As a full-fledged ideology, white supremacy is far more encompassing than simple racism or bigotry. Most white supremacists today further believe that the white race is in danger of extinction due to a rising 'flood' of non-whites, who are controlled and manipulated by Jews, and that imminent action is need to 'save' the white race."

<https://www.adl.org/resources/glossary-terms/white-supremacy>.

239. A.B. never thought of himself as "white supremacist" regardless of his beliefs.

240. At one point during Principal Thomas's accusations, A.B.'s friend, a Catholic, suggested a Vatican flag hang amongst the school's flag.

241. Thomas responded, "Then, we would have to have a flag depicting hell."

242. A.B.'s friend responded, "You've proved our point; then there should be a straight flag next to the rainbow flag."

243. Nevertheless, A.B. and his friend disagreed with Principal Thomas's white supremacist or white privileged characterizations of them as individuals and were insulted by some of her comments regarding their political beliefs, their religious beliefs, their skin color, their sexual orientation, and unsupported and unsupportable accusations because they may support traditional heterosexual marriages and related flags.

244. A.B. and his friend understood that Principal Thomas not only disagreed with the A.B. petition, but instructed them to stop all activities relating to their desire to have the Progress Pride flag display taken down.

245. Thomas would not relent with her investigation of A.B.'s and his friend's petitioning activities. The investigation and threat of punishment for continuing conduct indicated the school district's intolerance to A.B.'s petitioning activities.

246. Thomas met again with A.B. and his friend on January 25, 2020. Thomas reiterated what she had previously told them.

247. Again, A.B. and his friend disagreed with Principal Thomas's white supremacist or white privileged characterizations of them as individuals and were insulted by some of her comments regarding their political beliefs, their religious beliefs, their skin color, their sexual orientation, and unsupported and unsupportable accusations of A.B. and his friend because they may support traditional heterosexual marriages.

248. Again, A.B. and his friend requested the return of their petition and Thomas refused. In response, Thomas announced that she no longer had the original but only a copy.

**XII. Classroom discussions arise regarding issues of public concern, but teacher fails to guide students in handling the debates.**

249. Later, on January 21, 2020, unrelated to A.B.'s petition activities back in early January, an unidentified teacher sent an email to Principal Thomas regarding a classroom discussion about Martin Luther King, Jr. and a description of issues fought for then as "today issues" or "olden day issues." (Ex. 53, App. 232 (heavily redacted)). The discussion led to alleged racism and a request to students to consider their comfort levels where they would be freely able to sit and with whom, as opposed to the teacher assigning seats. *Id.*

250. At one point in the classroom discussion, "[o]ne student asked where racism came from and while I said I don't exactly know, I have to believe it stemmed fear, much in

the same way that we feel a sense of fear or anxiousness when we are put in situations where we interact with people outside of our comfort zone at school.” *Id.* The teacher then brought up the Middle School’s flag display as representing diversity, “yet how we are fundamentally still the same in our needs for love, shelter, connections, etc.” *Id.* Then a student the teacher described as “[not knowing I had an outspoken student (and identifying his or her name (redacted)) who said, ‘I didn’t realize Gay was a country.’” *Id.* The teacher immediately stopped the discussion. *Id.*

251. The unidentified teacher who stopped the discussion was fearful of “backlash” from the administration regarding whether she or he should have brought up the discussion that resulted in an outspoken student’s counterspeech comment that had initially started with Martin Luther King, Jr. and racism. *Id.*

252. Martin Luther King, Jr. led the civil rights movement during a time in which not everyone agreed with that movement.

253. Notably, the “civil rights” movement continues today and not everyone totally agrees with the movement. For instance, not everyone agrees with all the goals of Black Lives Matter, which is part of the present-time civil rights movement, however worthy the goals may be. The president of Greater New York Black Lives Matter, Hawk Newsome said “If this country doesn’t give us what we want, then we will burn down this system and replace it. All right? And I could be speaking figuratively. I could be speaking literally. It’s a matter of interpretation.” “BLM leader: If change doesn’t happen, then ‘we will burn down this system,’” Mark Moore (June 25, 2020) <https://nypost.com/2020/06/25/blm-leader-if->

change-doesnt-happen-we-will-burn-down-this-system/ Hawk Newsome. Not everyone is supportive of “burning down the system,” figuratively or literally.

**XIII. Again, community involvement included churches voicing concerns regarding Marshall Middle School’s flag display.**

254. On January 27, Marshall community member Pastor Don LeClere, the leader of Marshall Concerned Citizens, representing ten other churches, sent a letter to District Superintendent Monson. (Ex. 54, App. 233-35).

255. Pastor LeClere expressed the concerns of the Marshall Middle School’s decision to “put up a single lifestyle flag....” specifically identifying the Progress Pride flag as the “LGBTQ flag. *Id.* at 233. His first concern was the belief the display violated Title IX, quoting that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of , or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” *Id.* LeClere wrote that straight kids are being denied their right to express their own sexual preference through a flag of their own. *Id.* He wrote that the exclusion is not consistent with the inclusiveness objectives of the “project launched by the Middle School Principal.” *Id.*

256. Pastor LeClere’s second concern, express on behalf of the group, identified a violation of the freedom of religion under the First Amendment. *Id.*

257. Pastor LeClere asserted that Marshall Middle School had coerced the conscience of the students who held different religious beliefs that did not hold the LGBTQ lifestyle as acceptable:

It would appear with the public posting of only one lifestyle flag in the cafeteria...the school actually does “coerce the conscience of our students’ toward acceptance of a lifestyle that they believe is unacceptable. The school

also does ‘convey official endorsement of religion’ which would be those churches who accept the LGBTQ lifestyle and, in fact, does “discriminate against private religious expression during the school day” of those children from churches that do not teach the LGBTQ lifestyle as normative....

*Id.* at 234.

258. Pastor LeClere’s third concern, expressed on behalf of the group, involved protocol. He referenced past divisiveness of sexuality and sexual education in schools and community before the instant issues relating to the Marshall Middle School’s flag display. *Id.*

He wrote:

I would think with a subject as violative as sexual preference in a small town in southwest Minnesota that student’s parents would have been notified, that teachers would have been notified, that the school board would have been notified...Some may ask why make an issue of this, since it [the Progress Pride flag] is only a flag. Yet, flags are powerful symbols of firmly held convictions in national, political and social realms. Proof that this is true is seen in those parents whose faith opposes the meaning behind a flag being unwillingly thrust upon them.

*Id.*

**XIV. Middle School discusses proposal for flag display eligibility.**

259. On January 27, 2020, 25 days after the flag display was initiated, Marshall Middle School’s Administrative Assistant Boelter emailed to Catherine Crouse and Principal Thomas regarding a proposed flow chart process for “Flag Eligibility.” (Ex. 55, App. 236-37).

260. On January 27, Principal Thomas emailed to Crouse and Boelter about the Flag Eligibility flow chart process and wrote, “Now we just need to include a piece that would eliminate a flag founded by white supremists (sic) (‘straight flag’). That’s why we were playing with [the] rest.” (Ex. 56, App. 238).

261. Crouse responded to Thomas's reference to the "straight flag" as founded by "white supremists (sic)," "'Does the flag have its roots in white supremacy.' I suppose that's too easy..." (Ex. 57, App. 240).

262. On January 31, A.B. and his friend, knowing that students have a custom in the school of expressing themselves on the outside of their lockers, engaged in another protest—putting up Christian flags on the outside of their respective lockers.

263. The Christian flags were not taped to the lockers, but put up with small flagpoles, secured with duct tape to the locker, holding up the flags, and extended outwardly and angled upward toward the ceiling. (Ex. 58, App. 242-46).

264. The Christian flags did not impede any person from walking in the hallway immediately in front of the lockers.

265. The Christian flags were secured well enough to ensure they would not fall down on their own or cause any other danger to any other person walking in the hallway.

266. The Christian flags did not pose a fire hazard, nor did they cause any disruption in the hallways where they were erected.

267. Soon after the Christian flags were up, Marshall Middle School teacher Denise Smith took the Christian flags down. Smith told the students the flags were "dangerous" without any explanation as to the "danger" the flags posed.

268. In fact, Marshall Middle School employees had noted that some of the erected flags in the cafeteria had fallen down or in the process of falling down without identifying the situation as "dangerous" to others. (*See* Exs. 49, 50, 51, App. 223, 224, 225).

269. Meanwhile, after taking the Christian flags down, Smith sent a text message to Principal Thomas regarding her conversation with A.B. and his friend about taking their Christian flags down. “\_\_\_\_\_ wasn’t happy about it, but he tried to put it up again, \_\_\_\_\_ told him to just keep it in his locker and they could talk to Ms. Thomas about it.” (Ex. 59, App. 247-48 (redacted)).

270. Over an hour later, Thomas sent Smith an email stating, “[t]he boys should and can have their religious flags on the outside of their lockers,” but Thomas would not allow the Christian flags to be returned to their previously-secured positions because it was a “safety issue.” (Exs. 60 and 61, App. 249-50).

271. Another teacher, Ms. Seewold, later helped A.B. and his friend to secure the flags to the outside of the lockers with tape, but not in the previously-secured positions.

**XV. After discouraging opposing political speech activities, school administrators create their own counterspeech by making for in-school distribution to staff, rainbow colored peace symbol cards.**

272. Two days after A.B. and his friend displayed their Christian flags outside their lockers on January 31st, Principal Thomas, on February 1st, printed out rainbow-colored peace symbol cards to distribute and put inside the Marshall Middle School classrooms.

273. These rainbow-colored peace symbol cards were printed on school district machines.

274. The rainbow-colored peace symbol cards were stacked in the school’s front office for teachers to take, distribute and put inside their classrooms.

275. Many Marshall Middle School teachers posted the rainbow-colored peace symbol card inside their respective classrooms.

276. Principal Thomas's actions of printing rainbow-colored peace symbol cards was an action in direct response to A.B. and his friend erecting Christian flags outside their lockers.

**XVI. Student's passive protests of displaying Christian flags is thwarted.**

277. Then on February 3, Thomas sent an email to Dave Adney of the Minnesota Association of School Principals, recognizing the opposition by A.B. and his friend based on the students' struggles with the Progress Pride flag and their opinions regarding the issues of that community, as a matter of public concern:

"I've talked to these boys twice now, and they seem to have difficult time understanding the 'marginalized' conversation. I've used different examples, including our special needs (marginalized) population and flag when they struggle with the LGBTQ+ flag. I believe they understand fully, but are pushing back with as much muscle as they can (at this time)."

(Ex. 62, App. 251).

278. Even after downsizing their Christian flags and taping them to the outside of their lockers, Marshall Middle School teachers took them down and instructed A.B. and his friend to keep them inside their lockers. *Id.* Meanwhile, Principal Thomas searched to see if the Christian flags were appropriate—even if hung inside their lockers— or whether there “[i]s anymore or any less that [she] should advocate and/or enforce” and also asked if there were “any laws/policies or background [she] should reference.” *Id.*

279. On February 3, the flag policy proposed by Mary Kay Thomas (Principal) was submitted to Scott Monson (Superintendent) with an accompanying request for approval to hang the Karen flag in the school's cafeteria. (Ex. 1A, App. 1). Monson approved the hanging of the Karen flag. (Ex. 1B, App. 3).

280. The Marshall School District heard public comments in February 2020 regarding the Marshall Middle School actions to hang the flags in the cafeteria under the guise of an inclusionary project, including post-District meeting communications. Ex. 63-minutes, App. 252-53; Ex. 64-Marshall Independent article, App. 254-57; Ex. 65, App. 258-260 (including a suggestion that the Middle School's flag display violated the School District's Equal Educational Policy (Policy 102)); Ex. 55, App. 261 (a community signed petition proposing the addition of a Gadsden Flag and the National Organization for Marriage Flag); Ex. 67, App. 262; Ex. 68-minutes, App. 263-268; Ex. 69-Marshall Independent article, App. 269-273; Ex. 70, App. 274-75 (Feb. 19, 2020).

281. The next day, after one such board meeting, Middle School teacher Anderson, in two successive classroom periods called A.B. s "a liar" for A.B.'s public comments made at the board meeting. Another student joins in accusing A.B. of lying with Anderson in an agreement stating, "That isn't the first time he lied this week."

282. Meanwhile, the District investigated the controversy within Marshall Middle School and concluded no student's constitutional rights were violated although interviews with A.B. and his friend were never completed. (*See* Ex. 81, App. 306).

283. At one point, due to the public controversy created by Marshall Middle School and the School District regarding the Middle School's flag display, increased police presence was requested for a couple of weeks after the last District Board meeting: "A couple of our para-educators at the middle school who supervise student/bus drop off and pick up in the morning and afternoon shared with me today that they are fearful of what drivers and/or people might do because of all the tension the LGBTQ flag situation has caused...I think

that an increase police presence for the next couple of weeks at the middle school would be greatly appreciated by them and others.” (Ex. 74, App. 285-86).

284. Then, on February 26, 2020, Progress Pride Flag supporters contacted the non-profit employer of Zana Blomberg, a parent of a Middle School student opposed to the School’s flay policy, by email accusing Blomberg’s support of her child’s position during public comment at the February 8th District meeting as bigoted. The employer took no action.

285. On March 2, the Marshall School District held its last public meeting to hear public comment regarding the Middle School’s flag display. (Ex. 78-District minutes, App. 294-98; Ex. 79-Marshall Independent article, App. 299-303).

286. Doubt about the Middle School’s flag display and its message continued among teachers and whether students can feel safe in the school because of their personal beliefs:

Where do we draw the line on ‘stickers’ by our doors. All kids should feel safe. I need a black lives matter, special ed sticker, refugee sticker, illegal alien sticker, feminist sticker, not a white male privileged sticker...come on. All kids should feel safe in all rooms. I have to wonder if my Christian “IN CHRIST” student feels safe in the Spanish department. UGH

(Ex. 80, App. 304-05)

287. On April 13, Monson sent a letter to A.B. and another student summarizing that no constitutional violations of A.B.’s and his friend’s rights occurred. (Ex. 81, App. 306-07).

288. On June 1, the Marshall School District announced its policy position regarding the Marshall Middle School’s flag display. (Ex. 13, App. 151). The District

identified the Middle School’s flag display as “part of the school’s inclusion project...in order to help connect students, and provide visible identifiers that students could see and would make everyone welcomed and supported...to help signify the national origin or ancestry of students...along with the flags of Native American tribes...[i]n addition...the LGBTQ flag, a Special Olympics Flag, flags supporting student with disabilities, and several other flags to signify the District’ commitment to inclusion pursuant to School Board Policy 102....” *Id.*

289. The District’s Policy 102 is to “welcome and provide[] equal educational opportunities of all students, regardless of race, color, creed, religion, national origin, sex, martial statuts, parental stat us, status with regard to public assistance, disability, sexual orientation, or disability.” *Id.* (*See also* Ex. 83-minutes, App. 316-19; Ex. 84; Ex. 84-Marshall Independent article, App. 320-323)).

290. The District then condemned and denounced any further opposition to the acts or actions of any District employee, inclusive of administrators of the Marshall Middle School regarding treatment of students, teachers, or others regarding the Middle School’s flag display. The District announced the acts and actions of District employees at the Middle School as protected government speech:

The inclusion project and hanging of those flags in the school is consistent with the School Board’s policies and constitutes “government speech” under the law.

(Ex. 13, App. 151).

291. The District explained that no flag policy was necessary and that it would decide what is or is not government speech:

Because of [government speech], the District has not created an open forum for all speech in its schools. Similarly, the District maintains the authority to decide what official speech it will make, in much the same way as the District has the right to determine the academic curriculum for its students.

*Id.*

292. As part of the District’s interpretation of the government speech doctrine, the District also announced that the decision-making process would be the exclusive domain of the school, here, the Middle School, on a case-by-case basis and that the community had no role in the process:

To help provide clarity on this issue, the School Board is formally announcing that it will not be acting on any community requests or requests from outside the school to hang additional flags or take any further action related to the inclusion project.

*Id.*

293. The District reiterated that Marshall Middle School did not create a public forum related to the flag display dispute:

Because the school has not created a public forum for speech within its schools related to the flags, the District will be declining to open the floodgates to community requests for additional flags.

*Id.*

294. The Marshall School District further declared that it “does not need a policy on what government speech it will make or the flags or signs that it chooses to display in its schools...” *Id.*

295. For all intents and purposes, the Marshall School District declared that for its non-curriculum government speech relating to race and LGBTQ issues, it was not required

to be viewpoint neutral and it was not required to have administrative safeguards to avoid an unbridled discretion.

296. Students of the Marshall School District are members of the community.

297. The District's adoption of a government speech doctrine over the flag display policy of the Marshall Middle School as part of an inclusion project precludes any counterspeech or petitioning process.

298. The District's adoption of a government speech doctrine over the flag display policy of the Marshall Middle School as part of an inclusion project precludes any counterspeech or petitioning process of any kind by students whether on campus or off-campus.

299. The District's adoption of a government speech doctrine over the flag display policy of the Marshall Middle School as part of an inclusion project precludes any student-led political protest of any kind whether on campus or off-campus.

300. A.B. seeks and plans to continue their protest of flags that reflect countries or social policies that exclude others.

301. A.B. seeks and plans to protest the flag display policy of the Marshall Middle School as part of an inclusion project off-campus.

302. A.B. seeks to protest the flag display policy of the Marshall Middle School as part of an inclusion project on-campus.

303. A.B. seeks to ensure tolerance of the free marketplace of ideas which includes the inclusion of opposing viewpoints in the display of the Marshall Middle School and Marshall School District limitation of flag displays.

304. Because of the hostile environment created by the Marshall Middle School and endorsed by the Marshall School District, namely when characterizing A.B. as “white privileged” or a “white supremacist,” he is fearful of retaliation under for instance, the District’s bullying policies.

305. Because of the hostile environment created by the Marshall Middle School and endorsed by the Marshall School District, namely when characterizing A.B. as “white privileged” or a “white supremacist,” and the District’s adoption of the government speech doctrine over the flag display policy of the Marshall Middle School as part of an inclusion project, A.B.’s speech has been chilled on the subject matter and he is fearful to express any opposing ideas with fellow students, teachers, administrators, or others for fear of retaliation or punishment under, for instance, the District’s bullying policies.

306. Plaintiff B.B. is a student with the Marshall School District.

307. B.B. is a student in Marshall Middle School.

308. B.B. is the brother of A.B. and as a family member is aware of what has happened to A.B. regarding the petition to remove a flag from the Middle School’s display in the cafeteria.

309. B.B. is opposed to certain flags being displayed in the Marshall Middle School’s cafeteria.

310. After experiencing what has occurred at the Middle School, and in particular to his brother A.B., B.B. is fearful of protesting or protesting through a petitioning process similar to how A.B. had conducted himself as described in this Complaint, for fear of retaliation.

311. B.B. is fearful that any petitioning process he would conduct would result in similar treatment as A.B. experienced, such as the confiscation of a petition without justification, having school officials retaliating against him, mischaracterizing his character or attacking his character, or taking any other action that would harm his reputation because of his social, political, or cultural beliefs.

312. Therefore, B.B. has curtailed his First Amendment protected speech activities for fear of retaliation of school officials mischaracterizing his character or attacking his character, or taking any other action that would harm his reputation because of his social, political, or cultural beliefs.

### **Claim I**

#### **Violation of the First Amendment**

**The right to petition remains intact within the public school and the protected right is violated when school officials take possession of the petition prohibiting the right to obtain signatures to redress grievances.**

313. All previous paragraphs are incorporated as if fully restated as allegations to support the instant claim of a First Amendment violation as asserted.

314. The First Amendment of the U.S. Constitution protects free speech.

315. The First Amendment of the U.S. Constitution protects core political speech activities.

316. The First Amendment of the United States Constitution provides:

Congress shall make no law...abridging the freedom of speech, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

317. Petitioning is a core political speech activity.

318. The First Amendment of the U.S. Constitution protects the right to petition.

319. “Petition” is defined as “a formal written request presented to a court or other official body.” Bryan A. Garner, *Black’s Law Dictionary* 1182 (8th ed. West 2004).

320. The A.B. petition stated seven words on one sheet of paper: “Petition to take down LGBT (sic) Pride Flag.” Exhibit 40, App. 209.

321. The word “petition” as found within the seven word phrase of the A.B. petition does not direct others, such as students, teachers, or staff of the Marshall Middle School, or anyone else outside the school building to take action such as “to take down LGBT (sic) flag.” Instead, the word “petition” refers to a written request for a school official or officials to “take down [the] LGBT (sic) flag.” *Id.*

322. A flag is not a person.

323. For example, most countries around the world have flags. The flags have different colors as well as designs. Colors and designs of flags are actually symbolic representations of the values, ideals, and allegiance of those countries, among other things. *Symbolic Usage of Colors in Flags*, <https://elmersflag.com/symbolic-usage-of-colors-in-flags/> (last visited Feb. 11, 2021)

324. The colors of flags are also used to express religious symbolism. This is a phenomenon that is common to flags that belong to Islamic or Arab countries such as Saudi Arabia, Pakistan and Libya. *Id.*

325. Colors in flags may also be used to symbolize a passionate feeling towards something, for instance a nation, organization or belief. Shapes or numbers that the flags are

comprised of also have their meanings. For example, blue in the flags symbolizes ethnic heritage, determination, or defeating one's enemies. Green in the flags can symbolize agriculture, earth, fertility or a Muslim religion. *Id.*

326. Blue, in many cases, is used to represent freedom, justice, perseverance, vigilance, peace, prosperity, or patriotism. Red is also a common color in flags and it is used to symbolize blood, revolution, hardiness, or valor. The color white in a flag is most likely being used to represent peace, mountain snow, purity, or innocence. It may also represent surrender. *Id.*

327. Combinations of color in the flags of the world are also symbolic. For instance red, yellow, or gold and green are colors that are common to many flags of African countries as found for the countries of Cameroon, Benin, Ethiopia, Mali, Guinea, just to mention a few. They are often referred to as the Pan-African colors. Red, white, black and green is a color combination that is common to most Arab countries such as United Arab Emirates and Syria among others. They are commonly referred to as the Pan-Arab colors. *Id.*

328. The American flag is comprised of thirteen alternating horizontal stripes that are all of equal height. Seven of these stripes are red while the remaining six are white. There is a blue rectangle in the upper left corner on which there are fifty white five-pointed stars. Every color and symbol has meaning to it. In this case, red symbolizes hardiness and valor. White symbolizes purity and innocence. Blue signifies perseverance, vigilance and justice. The American flag in general is a symbol of national unity as well as pride for the country. The fifty stars in the blue rectangle are used to represent the fifty states. *Id.*

329. The meaning of the colors and symbols may vary from country to country. For instance, what red stands for in the American flag may not necessarily be the same thing as what that same color symbolizes in the Ethiopian flag. Finally, a person may also find different interpretations of these colors from different people based on events that happened in the past or philosophical values.

330. The seven words of the A.B. petition requesting the removal of a flag are not vulgar, lewd, profane, or plainly offensive. *Id.*

331. The seven words of the A.B. petition do not advocate the use of illegal drugs. *Id.*

332. The seven words of the A.B. petition do not advocate doing any illegal activity of any kind, either in Marshall Middle School or anywhere else. *Id.*

333. The seven words of the A.B. petition do not advocate bullying of any member of the student community within Marshall Middle School, or anywhere else. *Id.*

334. The seven words of the A.B. petition do not advocate any violence of any kind against any member of the student community within Marshall Middle School, or anywhere else. *Id.*

335. The seven words of the A.B. petition did not advocate or encourage any type of desecration of the Progress Pride flag. *Id.*

336. The seven words of the A.B. petition did not state any offensive language regarding the LGBTQ movement. *Id.*

337. The seven words of the A.B. petition did not state any language showing intolerance toward LGBTQ people. *Id.*

338. The A.B. petition represented a protest to the *display* of the Progress Pride flag in the Middle School cafeteria. *Id.*

339. The A.B. petition did not advocate or encourage illegal activities, acts, or actions. *Id.*

340. The A.B. petition did not advocate or encourage disruption of school activities. *Id.*

341. The A.B. petition did not advocate or encourage harm of any kind to other students in Marshall Middle School, outside the school, or anywhere else. *Id.*

342. The A.B. petition did not advocate or encourage intolerance to the LGBTQ community. *Id.*

343. The A.B. petition did not advocate or encourage intolerance to the LGBTQ philosophy or movement.

344. The A.B. petition did not advocate or encourage the burning of the Progress Pride flag. *Id.*

345. The A.B. petition did not advocate or encourage any type of discretion of the Progress Pride flag. *Id.*

346. The A.B. petition did not advocate, encourage, or suggest violence of any kind or to any person or to any building or structure.

347. The A.B. petition did not advocate or encourage disrespectfulness of anyone associated with the LGBTQ community or any other member of a community, group, or other person associated with a country, movement, religion, race, ethnicity, or political belief.

348. The A.B. petition was not copied and copies were not offered to others, or offered for sale.

349. The A.B. petition was not posted or displayed or placed in any Marshall Middle School staff or student mailbox.

350. A.B. did not accept donations for copies of the A.B. petition.

351. A.B. did not seek to obtain student signatures on the petition during class instructional time. Once the class period began, A.B. stopped seeking signatures.

352. A.B. did not establish a website or any other type of social medium that would be disruptive to Marshall Middle School.

353. No teacher reported that A.B. had disrupted the instructional time of a class to obtain student signatures on the petition.

354. A.B., in seeking student signatures on his petition, did not materially or substantively interfere with any operation or program of the Marshall Middle School.

355. A.B., in seeking student signatures on his petition, did not disrupt the ability of other students at Marshall Middle School to attend class, to learn, or engage in any other activity appropriately attributed to the operation and objectives of the school.

356. One objective of a student's education, in part, is to prepare him or her for his or her role in society and in life, to understand society is relatively permissive and often disputatious.

357. The petition does specifically request the removal of the LGBTQ Progressive Pride flag.

358. The LGBTQ movement is a political issue. Ben Smitton, *The LGBTQ Movement Inside the United States Government: Analysing Social Movement Networks in Political Spatialities* (“This paper explores the relationship between the Lesbian, Gay, Bisexual and Transgender movement and the United States Government in Washington, District of Columbia. It makes the argument that the LGBTQ movement has established itself in the political spatialities found in Washington D.C. in order to create pro-equality social reform. The paper identifies a new trend in the LGBTQ movement whereby the movement uses networks to maneuver in political spaces and places to bring about political change.”), *J. of Young Investigators* (Nov. 2, 2017), <https://www.jyi.org/2017-november/2017/11/2/the-lgbt-movement-inside-the-united-states-government-analysing-social-movement-networks-in-political-spatialities> (last visited Feb. 10, 2021); Royal G. Crave, *Political Behavior of Sexual and Gender Minorities*, (“From the late 20th and into the early 21st centuries, scholars in the field of lesbian, gay, bisexual, transgender, and queer (LGBTQ) politics have produced a substantial body of literature that explores and explains the political attitudes and behavior of sexual and gender minorities. The interdisciplinary nature of the field is reflected in the broad range of approaches and theories that attempt to explain political phenomena among LGBTQ people. The majority of the literature reveals sexual minorities to be politically distinct from heterosexuals, in that sexual minorities are more ideologically liberal and, in the United States, more likely to support Democratic partisans. Largely because of heterosexism, sexual and gender minorities are also more likely to participate in political activities that directly implicate their sexual orientation or gender identity, such as volunteering with LGBTQ interest groups or attending “Pride” events,

although sexual orientation and gender identity are significant predictors of a variety of attitudes and behavior. Recent research has demonstrated that LGBTQ people also participate in politics by running for office, mounting legal challenges to discriminatory laws or government actions, and collectively organizing locally, nationally, and internationally.”)

Oxford U. Press (Apr. 30, 2021),

<https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1252> (last visited Feb. 10, 2021).

359. The A.B. petition expressed political advocacy on a question of public consequence involving a particular political movement specifically identified and actively supported by school officials in public schools.

360. The petition contributed to the political debate regarding how the school and school officials are to handle other social movements in their inclusiveness objectives as social issues by including some but not all flags representing movements, beliefs, or culture.

361. The petition contributed to the political debate regarding how the school and school officials are to handle other social movements regarding the acceptance of competing viewpoints or the tolerance or intolerance of the certain movements regarding the harm or good such movements are to society.

362. The petition itself did not provide any basis for the school or school officials to lead to a specific or significant fear of disruption regarding such symbolism of the flags nor promote apprehension or disturbance among the student body.

363. With Principal Thomas countering the petition's political statement for the Progressive Pride flag removal with the distribution of rainbow stickers, she invited more political debate on the subject of flag removal, for cause, and on the LGBTQ movement.

364. The flags of the countries and movements are only in the cafeteria. The cafeteria is not a classroom, but an area in which students gather for activities such as lunch and to engage among themselves; as such, it is a limited public forum.

365. The flag display in the cafeteria represents the school's encouragement to allow students to discuss and debate the symbolism of each flag if they so desire in a less restrictive area than that of a classroom when class instruction is in session.

366. The cafeteria flag display also represents that the school or school officials did not have a specific or significant fear of disruption regarding such symbolism of the flags.

367. The petition contributes to the political debate regarding how the school and school officials are to handle other cultural issues or political issues such as human rights, by the representations of those countries who have reported human right abuses with the display of those flags in the cafeteria as ethical, political, global, or local social issues.

368. A.B. had wanted to offer the petition to other students to sign his petition and to continue his protest regarding the LGBTQ Progressive Pride flag; however, school officials took possession of his petition.

369. The principal of Marshall Middle School, Thomas, refused to return the petition to A.B.

370. Principal Thomas knew that A.B., as a student, had a protected First Amendment right to petition in the school under the circumstances she created.

371. In fact, Principal Thomas, as a student, engaged in petitioning activities when she was a student that apparently resulted in the firing of a substitute teacher.

372. Once the A.B. petition was in Principal Thomas's possession, she sought and ordered rainbow stickers to have available for distribution to staff and teachers to display throughout the Marshall Middle School.

373. The rainbow stickers are symbolic. The rainbow is a symbol of lesbian, gay, bisexual, and transgender pride.

374. Principal Thomas's distribution of the rainbow sticker reflects not only support of a social or political movement, but also an engagement in the marketplace of ideas as an apparent core political activity as a response to the A.B. petition requesting the removal of the Progressive Pride flag.

375. A.B. did not object to Principal Thomas's distribution of the rainbow stickers, respecting her right to exercise core political activities in the school as an apparent response to his petition.

376. A.B. had wished to continue his protest or similar protests regarding the flag display.

377. Principal Thomas knew A.B. had a constitutional right to petition.

378. Principal Thomas by taking possession of the A.B. petition and refusing to return the petition to A.B. to allow him to obtain other signatures and to present his and others grievances to school authorities, under the circumstances presented in this complaint, denied A.B. the protected right to petition under the First Amendment of the U.S. Constitution.

379. Plaintiff B.B. is a student with the Marshall School District.

380. B.B. is a student with Marshall Middle School.

381. B.B. is the brother of A.B. and as a family member is aware of what has happened to A.B. regarding the petition to remove a flag from the Middle School's display in the cafeteria.

382. B.B. is opposed to certain flags being displayed in the Marshall Middle School's cafeteria.

383. After experiencing what has occurred at the Middle School, and in particular to his brother A.B., B.B. is fearful of protesting or protesting through a petitioning process similar to how A.B. had conducted himself as described in this Complaint, for fear of retaliation.

384. B.B. is fearful that any petitioning process he would conduct would result in similar treatment as A.B. experienced, such as the confiscation of a petition without justification, having school officials retaliating against him, mischaracterizing his character or attacking his character, or taking any other action that would harm his reputation because of his social, political, or cultural beliefs.

385. Therefore, B.B. has curtailed First Amendment protected speech activities for fear of retaliation of school officials mischaracterizing his character or attacking his character, or taking any other action that would harm his reputation because of his social, political, or cultural beliefs.

386. Because the First Amendment rights of A.B. protected under 42 U.S.C. § 1983 were violated, he is entitled to at least nominal damages, attorney fees, costs, and disbursements.

387. Because the First Amendment rights of B.B. protected under 42 U.S.C. § 1983 were violated, he is entitled to declaratory relief to prevent school officials from interfering with his protected core political speech activities.

## Claim II

### Violation of the First Amendment

**The right to petition remains intact within the public school when its prohibition was the result of political motivation which is a motive not within legitimate school concerns.**

388. All previous paragraphs are incorporated as if fully restated as allegations to support the instant claim of a First Amendment violation as asserted.

389. The First Amendment of the U.S. Constitution protects free speech.

390. The First Amendment of the U.S. Constitution protects core political speech activities.

391. The First Amendment of the United States Constitution provides:

Congress shall make no law...abridging the freedom of speech, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

392. Petitioning is a core political speech activity.

393. A.B.'s petitioning activities disagreed with the display of flags in the Marshall Middle School cafeteria.

394. A.B.'s petitioning activities disagreed with the representation of one political movement, represented by a LGBTQ Progressive Pride Flag.

395. A.B.'s petition activities requested the removal of the LGBTQ Progressive Pride Flag since the displayed flags in the cafeteria did not represent other movements that had different views on marriage, religion, or political philosophies, including countries that support regimes that violate human rights.

396. A.B. petition requesting the removal of a LGBTQ Progressive Flag represented a desire to express an unpopular point of view that the flag did not represent all interests or viewpoints of all people in Marshall Middle School.

397. In response to the petition, the Principal of Marshall Middle School, Thomas, took possession of the petition and refused to return the petition to allow additional signatures to be gathered.

398. Instead, A.B. was discouraged from petitioning activities by threats or intimidation by Principal Thomas to the extent it chilled his core political activity of petitioning. Principal Thomas, for instance, questioned and attacked A.B.'s authenticity, cultural, and religious beliefs asserting,

- that the petition will do nothing, that nothing will change, and that the flag would not be coming down;
- that LGBTQ students had a right to the flag;
- that as a Christian, he should be accepting of the LGBTQ Progressive Pride flag;
- that he supports "white supremacy" if he supports a straight flag or traditional marriage flag;

- that he enjoys “white privilege” as a straight, white male, without knowledge of his sexual orientation; and
- that he should be thankful that because he was a white male, he didn’t need a flag.

399. Principal Thomas was clear to A.B. of her hostility to A.B.’s petitioning activities.

400. Principal Thomas was clear to A.B. that her possession of the petition was to deter the continued expression of an unpopular point of view.

401. Meanwhile, Principal Thomas permitted the expression of what she believed to be the dominant opinion regarding the LGBTQ movement.

402. In representing the dominant opinion regarding the LGBTQ movement, Principal Thomas suppressed A.B.’s counter-speech.

403. Principal Thomas refused A.B.’s friend’s verbal request for a Vatican flag be displayed.

404. Principal Thomas, in a rhetorical statement regarding the Vatican flag request, that should there be a Vatican flag displayed, a flag depicting hell should also have to be displayed.

405. Principal Thomas would then continue her investigation of A.B. reiterating her earlier comments about his political beliefs, religious beliefs, skin color, sexual orientation, and support of white supremacy views because he supported what he believed to be traditional heterosexual marriage.

406. A.B. never had an opportunity to freely exercise his right to petition.

407. Others, like A.B. attending Marshall Middle School wish to challenge certain aspects of the flag display, to include or exclude certain flags through the petitioning process.

408. Principal Thomas sought and ordered rainbow stickers to be available for distribution to staff and teachers to display throughout the Marshall Middle School.

409. The rainbow stickers are symbolic. The rainbow is a symbol of lesbian, gay, bisexual, and transgender pride.

410. Principal Thomas's distribution of the rainbow sticker reflects not only support of a social or political movement, but also an engagement in the marketplace of ideas as an apparent core political activity as a response to the A.B. petition requesting the removal of the Progressive Pride flag.

411. A.B. did not object to Principal Thomas's distribution of the rainbow stickers, respecting her right to exercise core political activities in the school as an apparent response to his petition.

412. By taking possession of A.B.'s petition, it was Principal Thomas's intent to prohibit the expression of an unpopular view.

413. By taking possession of A.B.'s petition, A.B. was denied his right to free speech as protected under the First Amendment.

414. By taking possession of A.B.'s petition, A.B. was denied his right to petition as protected under the First Amendment

415. There was nothing to suggest that the petitioning activities would lead to substantial disruption of or material interference with school activities.

416. As a result, the prohibition of A.B.'s petitioning activities was a violation of the First Amendment of the U.S. Constitution.

417. B.B. is the brother of A.B. and as a family member is aware of what has happened to A.B. regarding the petition to remove a flag from the Middle School's display in the cafeteria.

418. B.B. is opposed to certain flags being displayed in the Marshall Middle School's cafeteria.

419. After experiencing what has occurred at the Middle School, and in particular to his brother A.B., B.B. is fearful of protesting or protesting through a petitioning process similar to how A.B. had conducted himself as described in this Complaint, for fear of retaliation.

420. B.B. is fearful that any petitioning process he would conduct would result in similar treatment as A.B. experienced, such as the confiscation of a petition without justification, having school officials retaliating against him, mischaracterizing his character or attacking his character, or taking any other action that would harm his reputation because of his social, political, or cultural beliefs.

421. Therefore, B.B. has curtailed First Amendment protected speech activities for fear of retaliation of school officials mischaracterizing his character or attacking his character, or taking any other action that would harm his reputation because of his social, political, or cultural beliefs.

422. Because the First Amendment rights of A.B. protected under 42 U.S.C. § 1983 were violated, he is entitled to at least nominal damages, attorney fees, costs, and disbursements.

423. Because the First Amendment rights of B.B. protected under 42 U.S.C. § 1983 were violated, he is entitled to declaratory relief to prevent school officials from interfering with his protected core political speech activities.

### **Claim III**

#### **Violation of the First Amendment**

##### **The right to expressive association remains intact within the public school and protected under the First Amendment.**

424. All previous paragraphs are incorporated as if fully restated as allegations to support the instant claim of a First Amendment violation as asserted.

425. The First Amendment guarantees that “Congress shall make no law...abridging the right of the people to peaceably assemble.” U.S. Const. Amend. I.

426. A.B. and other students sought to act in a collective effort on behalf of their shared goals by signing the A.B. petition to have the Progressive Pride flag removed.

427. The purpose of the petition was engaging in associative speech activity protected by the First Amendment.

428. The right to petition is a protected core political activity to redress their shared beliefs, whether political or religious, to have the Progressive Pride flag removed.

429. When the petition was taken from A.B. and the principal refused to return the petition to him, A.B. was prevented from associating with other like-minded students to collectively seek the Progressive Pride flag's removal by obtaining signatures for the petition.

430. As a result, preventing A.B. from associating with students to petition school officials for the redress of grievances was a violation of the First Amendment of the U.S. Constitution.

431. B.B. is the brother of A.B. and as a family member is aware of what has happened to A.B. regarding the petition to remove a flag from the Middle School's display in the cafeteria.

432. B.B. is opposed to certain flags being displayed in the Marshall Middle School's cafeteria.

433. After experiencing what has occurred at the Middle School, and in particular to his brother A.B., B.B. is fearful of protesting or protesting through a petitioning process similar to how A.B. had conducted himself as described in this Complaint, for fear of retaliation.

434. B.B. is fearful that any petitioning process he would conduct would result in similar treatment as A.B. experienced, such as the confiscation of a petition without justification, having school officials retaliating against him, mischaracterizing his character or attacking his character, or taking any other action that would harm his reputation because of his social, political, or cultural beliefs.

435. Therefore, B.B. has curtailed First Amendment protected speech activities, such as the right to associate, for fear of retaliation of school officials mischaracterizing his

character or attacking his character, or taking any other action that would harm his reputation because of his social, political, or cultural beliefs.

436. Because the First Amendment rights of A.B. protected under 42 U.S.C. § 1983 were violated, he is entitled to at least nominal damages, attorney fees, costs, and disbursements.

437. Because the First Amendment rights of B.B. protected under 42 U.S.C. § 1983 were violated, he is entitled to declaratory relief to prevent school officials from interfering with his protected core political speech activities, including his right to associate.

#### **Claim IV**

##### **Violation of the First Amendment**

**The right to petition remains intact within the public school and remains protected under the First Amendment.**

438. All previous paragraphs are incorporated as if fully restated as allegations to support the instant claim of a First Amendment violation as asserted.

439. The First Amendment of the U.S. Constitution protects free speech.

440. The First Amendment of the U.S. Constitution protects core political speech activities.

441. The First Amendment of the United States Constitution provides:

Congress shall make no law...abridging the freedom of speech, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

442. Petitioning is a core political speech activity.

443. The cafeteria flag display remains in the Marshall Middle School.

444. The flags displayed represent certain political movements.

445. The flags displayed also represent countries of the world.

446. Some of the countries represented in the cafeteria flag display represent governments that also violate human rights.

447. The flags displayed in the cafeteria are not in the classrooms of the middle school.

448. The Marshall Concerned Citizens group includes parents who have children who attend the Marshall Middle School or who will attend the school.

449. The parents of Marshall Concerned Citizens group hold differing political views regarding government policies or other political movements.

450. The parents of Marshall Concerned Citizens group have taught their children about tolerance, non-violence, respect for others, and the democratic form of government. They have also been taught that while they must follow rules of the school and other matters such as not to disrupt school classroom activities or other school activities, they should also feel unafraid to represent beliefs that they have been taught at home.

451. Such beliefs include presenting their views regarding subjects discussed either in the classroom, the playground, or cafeteria even if it is opposite to what other children or adults believe as long as it does not materially or substantively disrupt the school's operation or program, for instance. In other words, their opinions mean something and can be presented as long as they are not material or substantive disruption of school activities.

452. However, the Marshall School District, through and including Principal Thomas, have prohibited the right of their children to petition to challenge what the children

perceive as requiring action for the removal of flags in the cafeteria the children may find offensive, or for that matter, express an unpopular point of view against a political opinion, position, or movement which the School District or the Marshall Middle School officials believe is a dominate opinion.

453. The School District has a policy, 505, governing the distribution of “non-school-sponsored” materials on school premises by students and employees. (Ex. 10, App. 130–135).

454. Policy 505, regulates petitioning. *Id.*

455. Policy 505 is overly broad and vague because it prohibits petitioning activities during school hours, including lunch times or after-hours where students are likely to gather.

456. Policy 505 is overly broad and vague because it does not limit “school activities” to the extent any student would have notice of what “but not limited to” means. For instance, A.B.’s petitioning activities included times between class instructional times. As a result, his petition was taken from him and remained in the possession of school officials to prevent him from continuing those activities.

457. Likewise, Policy 505 fails to describe or give notice to any student as to what “reasonable time, manner, and place” means. It is particularly vague when compared to the equally vague and broad definition of “school activities.” For instance, time in the hallway between classes is not an “educational program.” Time prior to the beginning of class instruction is not an “educational program.” The lunch period in which students gather but are not subject to class instruction, is not an “educational program.”

458. Policy 505 is a policy of the Marshall School District last adopted in November 2017. *Id.*

459. Policy 505 is enforced and implemented through principals of schools within the School District. *Id.*

460. The Marshall Concerned Citizens also includes student members. These students are prohibited from petitioning activities they wish to engage in. Should they do so in violation of Policy 505, they are subject to disciplinary action under the school district's

461. Policy 505 is violative of the First Amendment of the U.S. Constitution.

462. The Court should declare Policy 505 as unconstitutionally overbroad or vague or both.

463. The Court should declare that students in the Marshall School District have a right to petition.

464. The Court should declare that the Marshall Middle School cannot prohibit any Marshall School District student's right to petition under the First Amendment of the U.S. Constitution.

## Claim V

### Violation of the First Amendment

**As a limited public forum, the government's non-curriculum speech lacks viewpoint neutrality and procedural safeguards to prevent unbridled discretion.**

465. All previous paragraphs are incorporated as if fully restated as allegations to support the instant claim of a First Amendment violation as asserted.

466. The First Amendment of the U.S. Constitution protects free speech.

467. The First Amendment of the U.S. Constitution protects core political speech activities.

468. The First Amendment of the United States Constitution provides:

Congress shall make no law...abridging the freedom of speech, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

469. When a public school district establishes a limited public forum, its government non-curriculum speech under the First Amendment must be viewpoint neutral and have procedural safeguards to avoid unbridled discretion.

470. When the Marshall school district adopted its non-curriculum flag policies about social, cultural, or political movements or issues, that is, civil rights, to improve the school's environment, it established a limited public forum.

471. As a limited public forum, Marshall school district's non-curriculum flag policy on social, cultural, or political movements or issues is constitutionally required to be viewpoint neutral and to have procedural safeguards to avoid unbridled discretion.

472. In this case, the Principal was allowed by the School Board to operate with unbridled discretion when introducing a non-curriculum flag policy on social, cultural, or political movements or issues; there were no administrative procedural safeguards to avoid an unbridled discretion regarding petition and counter-speech.

473. When the school board addressed the issue in its memorandum, instead of ensuring the flag policy's viewpoint neutrality and protecting petitioning and counter-speech, the school board endorsed its handling of these constitutionally-protected speech activities

by interpreting the government speech doctrine so broadly to exonerate itself from any responsibility under the First Amendment:

The inclusion project and hanging of those flags in the school is consistent with the School Board's policies and constitutes "government speech" under the law...

Because of [government speech], the District has no created an open forum for all speech in its schools. Similarly, the District maintains the authority to decide what official speech it will make, in much the same way as the District has the right to determine the academic curriculum for its students.

(Ex. 13, App. 151).

474. Marshall school district's non-curriculum flag policy social, cultural, or political issues is not viewpoint neutral.

475. The Marshall school district's policy is to confiscate petitions to remove flags that represent controversial social, cultural, or political movements from the viewpoint of the petitioner or petitioners.

476. The Marshall school district's policy is to suppress speech counter to the school's flag policy on social, cultural, or political movements.

477. Marshall school district's non-curriculum flag policy on social, cultural, or political movements or issues has no procedural safeguards to avoid an unbridled discretion against petitions regarding controversial social, cultural, or political movements or issues and counterspeech.

478. When the Plaintiffs complained about the one-sidedness of Marshall school district's policy, the Marshall school district and the school board either criticized or ignored the complaints.

479. No one on behalf of the Marshall school district, nor on the school board, took seriously the Plaintiffs' complaints of lack of viewpoint neutrality.

480. It is as if the Marshall school district did not want to consider whether its own flag policy regarding social, cultural, or political movements or issues violated the First Amendment.

481. So, the Marshall school district did not consider it.

482. The Court should declare Marshall school district's flag policy on social, cultural, or political movements or issues as violative of First Amendment viewpoint neutrality.

483. The Court should enjoin Marshall school district's flag policy on social, cultural, or political movements as violative of First Amendment viewpoint neutrality.

### **Jury Trial Demanded**

484. The Plaintiffs Marshall Concerned Citizens, Grant Blomberg, individually and on behalf of A.B. and B.B., demand a jury trial.

### **PRAYER FOR RELIEF**

The Plaintiffs Marshall Concerned Citizens, Grant Blomberg, individually and on behalf of A.B. and B.B., respectfully request this Court to:

1. Declare that the prohibition of A.B.'s petitioning activities was a violation of the First Amendment of the U.S. Constitution.
2. Declare that because Principal Thomas prohibited the expression of an unpopular point of view through A.B.'s petitioning activities, he was denied protected free

speech and the right to petition under the First Amendment of the U.S. Constitution.

3. Because the First Amendment rights of Plaintiffs under 42 U.S.C. § 1983 were violated, the Plaintiffs are entitled to at least nominal damages, attorney fees, costs, and disbursements.
4. Declare that the Marshall School District's Policy 505 is unconstitutional.
5. Declare that the Marshall School District's non-curriculum flag policy social, cultural, or political movements or issues is unconstitutional because it lacks viewpoint neutrality and has no procedural safeguards to prevent unbridled discretion.
6. Issue an appropriate injunction; and
7. Award the Plaintiffs all further relief as this Court deems necessary or just or both.

Dated: April 22, 2021

/s/Erick G. Kaardal  
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