IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PICKENS COUNTY BRANCH OF NAACP, *et al.*; Plaintiffs-Appellants, v. SCHOOL DISTRICT OF PICKENS COUNTY; Defendant-Appellee.	Case No. 23-1871

PLAINTIFFS-APPELLANTS' MOTION FOR SUMMARY VACATUR AND REMAND

Allen Chaney
AMERICAN CIVIL LIBERTIES UNION OF SOUTH CAROLINA
P.O. Box 1668
Columbia, SC 29202
Tel: (843) 282-7953
achaney@aclusc.org

Anna Kathryn Barry
NAACP
4805 Mt. Hope Drive
Baltimore, MD 21215
Tel: (410) 580-5777
abarnes@naacpnet.org

Attorneys for Plaintiffs-Appellants

Plaintiffs-Appellants ("Plaintiffs") respectfully move this Court, under Local Appellate Rule 27(f), to summarily vacate the district court's order denying Plaintiffs' Motion for Preliminary Injunction, Exhibits A & B, and to remand for further proceedings. Plaintiffs' counsel has conferred with counsel for Defendant-Appellee School District of Pickens County ("Defendant" or, "District"), and the District opposes this motion.

INTRODUCTION

Plaintiffs brought this lawsuit in response to the Defendant District's censorship of *Stamped: Racism, Antiracism, and You* ("*Stamped*"), a book about the history of race and racism in America. On September 26, 2022, the District's Board of Trustees ("Board") voted unanimously to remove all copies of *Stamped* from District libraries and prohibit any curricular use of *Stamped* in District classrooms. Plaintiffs contend that the District's censorship of *Stamped* violates their First Amendment rights to receive information in the school library and classroom because it was not reasonably related to a legitimate pedagogical interest and was decisively motivated by racial and political animus towards the opinions contained in *Stamped*. After filing their Complaint, Plaintiffs sought a preliminary injunction requiring the District to restore students' access to *Stamped* in advance of the 2023-24 school year.

On July 21, 2023, after receiving briefing and arguments, the district court denied Plaintiffs' motion. The court's ruling, which was announced from

the bench, did not contain any factual findings, did not state what legal standard the court applied to the merits of Plaintiffs' claims, and did not make specific findings regarding the irreparable injury to Plaintiffs or the balance of hardships. Rather, the court merely declared that Plaintiffs "have not made the requisite clear showing of each factor necessary for preliminary injunctive relief." ECF No. 17 (text order).

The district court's abuse of discretion leaps off the page. Because the district court failed to make particularized findings of fact and conclusions of law as required by Fed. R. Civ. P. 52(a), this Court is "constrained to conclude that the district court abused its discretion in denying the requested injunction." *Booker v. Timmons*, 644 F. App'x 219 (4th Cir. 2016) (per curiam) (vacating order denying preliminary injunction); *Bratcher v. Clark*, 725 F. App'x 203, 206 (4th Cir. 2018) (same); *Rullan v. Goden*, 782 F. App'x 285 (4th Cir. 2019) (same); *see also Wudi Industrial (Shanghai) Co., Ltd. v. Wong*, 70 F.4th 183, 192-93 (4th Cir. 2023) (reversing grant of preliminary injunction for failing to comply with Fed. R. Civ. P. 52).

Where, as here, the district court's error is manifest, formal briefing and argument is unnecessary and summary reversal should be granted. *See* Local R. 27(f)(1).

BACKGROUND

I. Statement of Facts

A. Stamped: Racism, Antiracism, and You

Stamped: Racism, Antiracism, and You is a #1 New York Times bestseller by Ibram X. Kendi and Jason Reynolds. ECF No. 7-1 at 2–3 (Memorandum of Law in Support of Preliminary Injunction). The book chronicles the history of racist ideas in America and explores how those ideas manifest today. *Stamped* is an adaptation of Kendi's seminal work, *Stamped from the Beginning*, and is written specifically for young adults. *Id.* The book received book-of-the-year honors from *Parents Magazine* and *Publishers Weekly*, was awarded Best Children's Book of the Year by *The Washington Post*, and was listed on *TIME Magazine*'s Ten Best Children's and Young Adult Books of the Year. *Id.* The National Educators Association ("NEA") categorizes *Stamped: Racism, Antiracism, and You* as a "young adult level" book and provides access to an educator guide, book club guide, and other classroom resources. *Id.* at 3–4.

B. The Challenge to Stamped: Racism, Antiracism, and You

In August 2022, three parents submitted written challenges to the use of *Stamped* in an English III course at D.W. Daniel High School. One parent argued that, although she had not read the book, it should be removed because it "promote[s] socialism." ECF No. 7-13 at 15 (Board Packet). Another parent, who is an officer with Pickens chapter of Moms For Liberty, a group dedicated to upholding a socially conservative ideology, ECF No. 7-1

at 16, argued that "no one should read [*Stamped*]," because "it demonstrates radical Marxism infecting our schools and our culture." ECF No. 7-13 at 5. A third parent challenged the book on grounds that it amounted to "objectible [sic] indoctrination." *Id.* at 17.

Following the three parental complaints, the school's principal appointed a book review committee to resolve the challenge. Per District policy, the review committee comprised of a teacher from the school, a media specialist/instructional coach, an administrator from the school, and a parent/legal guardian of a child enrolled in the school. Each member must read the book, consider the context of its use and any relevant instructional standards, then render a decision based on "the best interests of the students, the community, the school, and the curriculum." *See* ECF No. 7-14 (Policy IJ-R).

Following its review, the school review committee concluded that "[*Stamped*] is developmentally appropriate for high school students to analyze accuracy, tone, argument, and bias," and unanimously recommended that it "should remain available to students at Daniel High School, whether in a classroom or on a bookshelf." ECF No. 7-13 at 22–24. In support of its conclusion, the committee's written report cited 27 State English Language Arts ("ELA") standards that were furthered by the teacher's use of *Stamped*. *Id.*

After D.W. Daniel High School informed the parent-challengers of its decision to retain the book, one parent appealed to the District. ECF No. 7-

13 at 25–27. In response, the District superintendent convened a District-level book review committee. That committee conducted a new, independent review of the book. Like the school-level review committee, the District-level review committee unanimously recommended that *Stamped* be reinstated in the library and remain available as a "whole-class" instructional material in the classroom. *Id.* at 28–29. In explaining its decision, the District-level review committee noted that "[t]he teacher's communicated purpose for use and alignment with the [ELA] standards is important to articulate the intent for selection of this book." *Id.*

C. Political Pressure to Remove Stamped: Racism, Antiracism and You

While the school and District administration followed its policies in response to the challenges, political activists and elected officials lobbied the Board to remove *Stamped* for ideological reasons.

For example, although D.W. Daniel High School had only just received the parental challenges and there was not yet any reason for Board involvement, several individuals attended the Board's August 22, 2022, meeting to express their disapproval of *Stamped*.[1] Matthew Kutelick, a Republican politician who recently lost a campaign for the South Carolina House, appeared and testified that he would "fight to the death to ensure that [his] daughters and the sons and daughters of the people in [the] crowd .

[1] All District Board meetings are video recorded and made available on YouTube. Plaintiffs' Motion for Preliminary Injunction cites to those recordings extensively.

. . are not being indoctrinated by a racist, anti-American, Marxist ideology perpetrated by Ibram X. Kendi." ECF No. 7-1 at 12 (citing 8/22/22 Board Meeting at 1:20:28). Thomas Beach, a freshman state representative in the state's Freedom Caucus, spoke out against *Stamped* and warned that if the Board failed to remove the book it could provoke adverse action from the Freedom Caucus.[2] *Id.* at 1:25:26.

At the September 26, 2022, meeting, prior to the Board's resolution of the District-level challenge to *Stamped*, the Board again received overtly politicized condemnation of the book. Heather Mitchell, Chair for the Pickens County Moms for Liberty, argued that the book should be removed because it is "political and biased," "openly embrac[es] Marxism," and "idolizes Angela Davis," who she described as "a Marxist member of the Communist Party." Ms. Mitchell threatened that if the Board did not remove *Stamped*, she and Moms for Liberty would replace them with more "liberty-minded" candidates. ECF No. 7-1 at 13–14 (citing 9/26/22 Board Meeting at 1:22:00).

D. Removal of Stamped: Racism, Antiracism, and You

The Board resolved the District-level challenge to *Stamped* at its September 26, 2022, board meeting. After receiving public comments, the assistant superintendent presented the Board with the District-level review committee's findings and conclusions. ECF No. 7-1 at 14 (citing 9/26/22

[2] The South Carolina Freedom Caucus had, at the time, already sued two South Carolina school districts for conduct the Freedom Caucus believed was in violation of a vaguely worded "Anti-CRT" budget proviso. ECF No. 7-1 at 18.

Board Meeting at 2:12:40). After receiving the committee's unanimous recommendation to restore complete access to *Stamped*, the Board began its deliberation.

Almost immediately, one Board member moved to remove *Stamped* "from our classrooms and any use in our schools whatsoever for a period of five years." *Id.* The motion immediately received a second and was discussed by the Board. One Board member commented that "I don't think taxpayers should be paying [for *Stamped*]." *Id.* Another added that the book isn't appropriate "anywhere in any school in any district." Another brought up the Supreme Court case of *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853 (1982), but only for the purpose of arguing that the case is irrelevant because it was decided "back in 1982" and "now we have Amazon [and] public libraries." *Id.* at 14–15. Another Board member directly attacked the viewpoints expressed in *Stamped* and stated, "I think we all agree this is an opinion piece. I read it. It doesn't belong in the classroom." *Id.* at 14.

During discussion on the motion, Board members did not specify what they found objectionable about *Stamped*. The Board did not discuss how the book was being used in the classroom or for what purpose. The Board did not discuss any curricular priorities, concerns about inaccuracies, state learning standards, or the rights of students or teachers. And despite District policy requiring the Board's decision to be "based upon" the District-level book

review committee's report, the Board never mentioned its findings, analysis, or recommendation. *Id.* at 15.

At the request of two Board members, the Board briefly discussed allowing library access to *Stamped* subject to signed and witnessed parental consent. After that motion was voted down, the Board voted on the original motion to remove the book for five years. The motion passed unanimously, 7-0. *Id.*

II. Plaintiffs' Legal Claims

Based on the facts alleged above, Plaintiffs sued. They alleged that the District's censorship of *Stamped* was a brazen attempt to suppress specific views on race, politics, and national identity that the Board opposed. Plaintiffs asserted that the Board's action triggered First Amendment scrutiny because it infringed on their right to access information—like the ideas contained in *Stamped*—in their classrooms and libraries. They argued that removal of *Stamped* does not survive First Amendment scrutiny because the District cannot show that its curricular prohibition on *Stamped* was "reasonably related to legitimate pedagogical concerns," *Virgil v. Sch. Bd. of Columbia Cnty., Fla.*, 862 F.2d 1517, 1521-25 (11th Cir. 1989) (citing *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988)); *Arce v. Douglas*, 793 F.3d 968, 983 (9th Cir. 2015) (same), or that its removal of *Stamped* from the library was necessary to avoid "material and substantial interference with schoolwork and discipline," *Tinker v. Des Moines Comm. Sch. Dist.*, 393

U.S. 503, 511 (1969), and was not removed "because [the District] dislike[s] the ideas contained in th[e] book[] and seek[s] by [its] removal to prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." *Pico*, 457 U.S. at 872.

III. Preliminary Injunction Litigation

On June 26, 2023, Plaintiffs moved for a preliminary injunction ordering the District to restore students' access to *Stamped* for the 2023-24 school year. ECF No. 7. In support, Plaintiffs submitted four declarations and ten exhibits—including records showing the findings and conclusions of the school- and District-level book review committees. *See* ECF Nos. 7-2 through 7-15. The motion also extensively relies on the audiovisual recordings of the Board's August 22 and September 26 Board meetings, which are publicly available on YouTube.[3] Each Plaintiff alleged that the Board's action would irreparably harm their First Amendment right to access *Stamped* in the library. Additionally, two Plaintiffs declared that they were enrolled in the same English III Honors course where *Stamped* was assigned in the previous school year and that the District's curricular prohibition would irreparably harm their First Amendment right to access *Stamped* in the classroom. ECF Nos. 13-1 (Laurence Decl.) & 13-2 (Turner Decl.).

[3] *See* SDPC Board of Trustees Meeting (In-Person) - 08/22/22 - YouTube (last accessed Sept. 13, 2023); SDPC Board of Trustees Meeting (In-Person) - 09/26/22 - YouTube (last accessed Sept. 13, 2023).

Ten days later, at the District's July board meeting, the Board went into executive session along with its litigation counsel to address a motion "for legal matters." ECF No. 13 at 8 (citing SDPC Board of Trustees - Called Board Meeting (Virtual) - 7/6/23 - YouTube (last accessed Sept. 13, 2023)). That motion, which ultimately passed, restored library access to *Stamped* subject to parental consent. *Id.* The complete curricular prohibition remained intact. *Id.*

On July 10, the District filed its Opposition to Plaintiffs' Motion. ECF No. 9. There, it argued that because of its subsequent partial reinstatement of *Stamped*, Plaintiffs lack standing, that their claims are moot, and that their injuries are no longer sufficiently imminent to warrant preliminary relief. *Id.* The District also submitted nearly identical declarations from six Board members asserting that their secret, unspoken motivations for censoring *Stamped* were their independent analyses of the book's "factual errors and omissions." *Compare* ECF Nos. 9-5 at ¶¶ 8-13 *with* 9-6 at ¶¶ 9-14, 9-7 at ¶¶ 6-11, *and* 9-8 at ¶¶ 4-9. The District disputed whether the First Amendment was implicated by its removal of *Stamped*, but argued that even if it was, the book's factual inaccuracies justified its removal.

On July 17, Plaintiffs filed their Reply. ECF No. 13. Plaintiffs argued that the District's partial reinstatement of *Stamped* still infringed their First Amendment rights and, even if not, that the District failed to carry its "formidable burden" to prove that it is "absolutely clear that the alleged wrongful behavior could not be reasonably be expected to recur." *Friends of*

the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 190 (2000). On the merits, Plaintiffs argued that the District's pretextual, *post hoc* justifications for removing *Stamped* were incredible and, in any event, were nonresponsive to the curricular purpose of the book (which did not rely on the book's factual accuracy). ECF No. 13 at 10-14.

On July 21, the district court heard arguments on Plaintiffs' Motion. Immediately following arguments, the Motion was denied. *See* Ex. A (Tr. 7/21/23, pp 30:11–31:18).

IV. The District Court's Order

Following the Parties' arguments, the district court orally announced its ruling.

> THE COURT: After a thorough consideration of the record and the arguments and the applicable law, I'm going to deny the plaintiff's motion for preliminary injunction, ECF No. 7, because I find that plaintiffs have not made the requisite clear showing of each factor necessary for preliminary injunctive relief with respect to their claims. First, this case involves complicated First Amendment issues. And it's clear that both sides can point to law that favors their arguments. On the one hand, plaintiffs have certain rights under the First Amendment. While on the other hand, local school boards also have broad discretion in the management of the school affairs. And while states and local school boards must exercise that discretion in a manner that comports with the imperatives of the First Amendment, there are simply too many factual questions here for me to conclude that plaintiffs have made the requisite clear showing of a likelihood of success on the merits. And, likewise, I don't think plaintiffs have made a clear showing of a likelihood of suffering irreparable harm in the absence of preliminary relief. As for the balance of equities in the public

> interest, I actually think these factors slightly favor the district because preliminary injunctive relief would dramatically change the status quo. In other words, the district has a strong interest in controlling its schools by its duly elected officials. And this Court is very reluctant to unnecessarily usurp that authority, especially at this preliminary stage where there are several questions of fact that need to be resolved. And so, for these reasons, I'm going to deny the plaintiffs' motion. We will be at recess.

Tr. 7/21/2023, pp 30:11–31:18 (emphasis added).

Later that day, the district court issued a text ruling stating:

> For the reasons stated on the record during the hearing, the Court finds that Plaintiffs have not made the requisite clear showing of each factor necessary for preliminary injunctive relief with respect to their claims. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Accordingly, the Court denies Plaintiffs' motion.

ECF No. 17 (Text Order).

LEGAL STANDARD

The Court reviews the district court's denial of a preliminary injunction for abuse of discretion, "examining all factual findings for clear error and legal conclusions *de novo*." *dmarcian, Inc. v. dmarcian Eur. BV*, 60 F.4th 119, 138 (4th Cir. 2023) (citing *Leaders of a Beautiful Struggle v. Baltimore Police Dep't*, 2 F.4th 330, 339 (4th Cir. 2021)).

To facilitate meaningful appellate review, the district court's decision must be supported by a full, written explanation of its particularized findings

of fact and conclusions of law. Fed. R. Civ. P. 52(a); *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 423 (4th Cir. 1999).

ARGUMENT

I. The district court abused its discretion by denying Plaintiffs' Motion without adequate findings of fact or conclusions of law.

Compliance with Fed. R. Civ. P. 52(a) "is of the highest importance." *Mayo v. Lakeland Highlands Canning Co.*, 309 U.S. 310, 316 (1940). As this Court has explained, Fed. R. Civ. P. 52(a) "requires a district court to give a full, written explanation supporting its preliminary injunction order." *Hoechst Diafoil Co.*, 174 F.3d at 423. The rule "allows the parties to better understand the reasons for the court's actions," and protects the losing party's right to seek "meaningful review of that decision." *Id.* When a district court's preliminary injunction order lacks the particularized findings of fact and conclusions of law, this Court is "constrained to conclude that the district court abused its discretion." *Booker*, 644 F. App'x 219; *Bratcher*, 725 F. App'x at 206; *Rullan*, 782 F. App'x 285.

As the district court acknowledged, this case presents "complicated First Amendment issues." Tr. 7/21/2023 at 30:18-19. But the complexity of the legal issue does not preclude injunctive relief. *See Scheck v. Baileyville Sch. Comm.*, 530 F. Supp. 679, 684 (D. Me. 1982) (granting preliminary injunction against removal of school library book); *see also Citigroup Glob. Markets, Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010) ("Preliminary injunctions should not be mechanically

confined to cases that are simple or easy."). Rather, the complexity merely sharpens the need for the district court to *resolve* the legal dispute in a manner that is understandable and reviewable. Here, the district court denied Plaintiffs' Motion without articulating what legal standard governs the merits of their First Amendment claims. And though the court conceded that the Board's curricular discretion is limited by "the imperatives of the First Amendment," *id.* at 30:24-31:1, it failed to explain what those imperatives require. That—by itself—is a reversible abuse of discretion.

But the error goes further. Without a legal test, there is no way to judge what facts must be proven and, just as importantly, which party carries the burden of proving them. Here, Plaintiffs allege that Defendant carries the burden of showing that its censorship of *Stamped* was reasonably related to a legitimate pedagogical interest and was not motivated by a desire to enforce political orthodoxy. If correct, that means factual disputes bearing on the Board's motivation for removing *Stamped* do not, as the district court presumed, weigh against Plaintiffs' likelihood of success on the merits.

The district court's finding that "there are simply too many factual questions here" further impedes meaningful review. The district court is the factfinder. Its job is to resolve factual disputes. When the parties introduce competing evidence bearing on the same material fact, the district court must weigh the evidence and make a finding. Once it makes those findings, they are reviewed by this Court for clear error. *Pashby v. Delia*, 709 F.3d

307, 319 (4th Cir. 2013). But in the absence of such findings, there is nothing to review.

Here, for example, the Board's September 26, 2022, deliberation that led to its censorship of *Stamped* (which was contemporaneously recorded) contained *no* comment by *any* Board member about the book's historical accuracy or its bearing on the book's educational suitability for English III Honors. But rather than weighing the strength and credibility of competing evidence and then making a factual finding, the district court took no position on what motivated the Board's censorship. If embraced by this Court, the district court's lackadaisical approach to factfinding would allow a defendant to defeat *any* motion for preliminary relief merely by manufacturing a factual dispute.

Finally, the district court's ruling that Plaintiffs failed to carry their burden on the other *Winter* factors does not salvage its paltry ruling on the merits. Here, because First Amendment violations are *per se* irreparable injuries, *Johnson v. Bergland*, 586 F.2d 993, 995 (4th Cir. 1978), the likelihood of irreparable harm is indistinguishable from the likelihood of success on the merits. Similarly, the balance of equities favors injunctive relief "when there is a likely First Amendment violation," because the Defendant is "in no way harmed by issuance of a preliminary injunction which prevents [it] from enforcing restrictions likely to be found unconstitutional." *Centro Tepeyac v. Montgomery Cty.*, 722 F.3d 184, 191 (4th Cir. 2013) (quoting *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521

(4th Cir. 2002)). Because the non-merits *Winter* factors each collapse into Plaintiffs' likelihood of success on the merits, the district court's abuse of discretion on that element demands reversal.

CONCLUSION

The district court's abuse of discretion is readily discernible on the face of its ruling. The Federal Rules of Civil Procedure demand that orders denying injunctive relief contain reviewable findings of fact and conclusions of law. Because the district court's cursory ruling plainly shirks that obligation, this Court should conserve its judicial resources, forgo additional briefing and arguments, and summarily vacate and remand.

Dated: September 14, 2023

Respectfully submitted,

ACLU OF SOUTH CAROLINA

/s Allen Chaney

Allen Chaney
Fed. Id. 13181
P.O. Box 1668
Columbia, SC 29202
Tel: (843) 282-7953
achaney@aclusc.org

NAACP

Anna Kathryn Barry**
4805 Mt. Hope Drive
Baltimore, MD 21215
Tel: (410) 580-5777
abarnes@naacpnet.org
mtiku@naacpnet.org

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

PICKENS COUNTY BRANCH OF THE NAACP, REBECCA TURNER, BRANDON TURNER, SUSANNA ASHTON, PETER LAURENCE, REBA KRUSE, and DERRICK KRUSE, Plaintiffs, vs. SCHOOL DISTRICT OF PICKENS COUNTY, Defendant.	Docket No. 8:23-cv-01736 Columbia, SC Date: July 21, 2023

BEFORE THE HONORABLE BRUCE HOWE HENDRICKS
UNITED STATES DISTRICT JUDGE, PRESIDING
MOTION HEARING

Electronically recorded by Doneshia Gardner

Transcribed by Karen V. Andersen, RMR, CRR
United States Court Reporter
901 Richland Street
Columbia, SC 29201

EXHIBIT A

A P P E A R A N C E S:

For the Plaintiffs:

DAVID ALLEN CHANEY, JR.
ACLU of South Carolina
P.O. Box 1668
Columbia, SC 29202
864-372-6681
Email: achaney@aclusc.org

ANNA KATHRYN BARRY and MARTINA TIKU
NAACP
4805 Mount Hope Drive
Baltimore, MD 21215
410-580-5777
Email: abarnes@naacpnet.org; mtiku@naacpnet.org

For the Defendant:

MILES EDWARD COLEMAN
Nelson Mullins Riley and Scarborough
P.O. Box 10084
2 West Washington Street, Suite 400
Greenville, SC 29601
864-373-2352
Email: miles.coleman@nelsonmullins.com

EXHIBIT A

THE COURT: Thank you, take your seats, please. Good morning. Madam Court Reporter, are you ready.

THE COURT REPORTER: Yes, ma'am.

THE COURT: Okay. Let's see who we have here for the plaintiffs.

MR. CHANEY: Good morning, Your Honor. Allen Chaney. I'm with the ACLU of South Carolina. I represent the plaintiffs. With me is Anna Katheryn Barry and Martina Tiku, both general counsel for NAACP. We did file yesterday afternoon motions for admissions pro hac on behalf of both Ms. Barry and Ms. Tiku. I think those motions are (inaudible) for the Court's consideration.

THE COURT: Okay. Have you got it, Virginia?

THE COURT DEPUTY: (Inaudible).

THE COURT: All right then. And for the defendant.

MR. COLEMAN: Good morning, Your Honor. Wallace Coleman. I'm from the Greenville office of Nelson Mullins on behalf of the defendant, School District of Pickens County.

THE COURT: Okay. Thank you.

MR. COLEMAN: And, briefly, Your Honor, on the topic of pro hac motions, this is noted, I think, in the motion. We don't oppose them. So if that eases the Court's consideration, we have no objection to that.

EXHIBIT A

THE COURT: I will go ahead and grant it. Appreciate that.

All right. I think it's the plaintiff's motion. So I'm happy to hear from you.

MR. CHANEY: Thank you, Your Honor. I just want to start by saying thank you to the Court for hearing us on such short order. It's not lost on us that the Court has lots of things going on, and that the Court set a hearing so quickly in this matter. Additionally, we're here to be helpful for the Court and help the Court consider the issues presented. And so if there's particular portions of our brief or our argument that the Court wants us to focus on in our timeline, I'm happy to oblige.

THE COURT: No, I think go with what you feel you need to. I appreciate that. I may redirect you at some point, but we will see.

MR. CHANEY: Understood. I want to start sort of with a broad framing point. It's in our briefs, but maybe it isn't as explicit as it should be. In this case, as in all First Amendment cases, plaintiffs carry an initial burden to prove that the defendants took some conduct that implicates a right of protection by the First Amendment. Here we believe that that's satisfied by facts that are agreed upon by the parties.

EXHIBIT A

On September 26th of 2022, the School District of Pickens County, acting through its board of trustees, voted to remove *Stamped: Racism, Antiracism, and You* from every district library, and prohibited its use in the classroom. That action implicates the right to access information that is protected by the First Amendment on behalf of the plaintiffs that are in court here today. So we believe that those facts alone carry an initial burden under the rights identified in *Pico* and *Kuhlmeier* and a number of different cases that we've cited in our brief.

The next question is, and I think the really vital question is, since the First Amendment implicated, what is the First Amendment's test that applies to the defendant. And the parties have submitted argument as to what burdens should apply. And I think both parties agree that the burden differs between the curricular coefficient on the one hand and the repeal from the library on the other. I will circle back to that issue in just a moment. But I just want to assert the third step would be the defendant's job, the defendant's burden to demonstrate that their action comports with whatever the level of scrutiny is appropriate for the context.

And so as Judge Lewis identified in other First Amendment litigation I've had in this district, the First Amendment really requires a multi-step analysis. We

EXHIBIT A

believe the Court should be satisfied in the facts that the book was removed and prohibited from the classroom that that first step is satisfied. And so I will talk now about what is the appropriate level of scrutiny that applies to the curricular prohibition and the removal from the library.

I will start with the curricular prohibition. The Supreme Court in *Kuhlmeier*, *Hazelwood* -- the parties refer to it as *Hazelwood* or *Kuhlmeier*. Courts as well refer to it both as *Hazelwood* or *Kuhlmeier*. But in that case, the Supreme Court looked at a curricular decision, or rather, a limitation posed by a principal on a school newspaper. The Court ultimately concluded that because that paper carried the imprimatur of the school district itself, that the school had some interest in moderating that speech. It applied the test that the limitation on the First Amendment rights of a student was justified so long as it was reasonably related to a legitimate pedagogical interest.

Now, the Supreme Court has not itself addressed whether or not that test applies to the question posed here, being a curricular prohibition that's being challenged by a student under this right of access theory.

THE COURT: Let me just stop you right here for a second and ask you and defense counsel, before we go on,

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about standing. How do you feel -- obviously, you must feel you have standing.

MR. CHANEY: Absolutely.

THE COURT: And under what authority? And then I will hear from defense counsel.

MR. CHANEY: Right. In our complaint -- I will start with the library access. Our complaint alleges on behalf of our individual plaintiffs, which are the parents representing their children, which is recognized in the district, in this circuit, as an appropriate way to proceed, that these students -- that the parents on behalf of their students want their students to be able to have access to this book in the public library -- or, excuse me, in the public school library. And the -- I understand the defendant's point that they haven't said that on August 17th at 2 p.m. they are going to try to check out the book. But that's not what's required. That's not what's been required. In many cases that we've cited in our briefs, the -- and I think one point that's particularly instructive in the case of *Counts*, which is cited in our reply repeatedly, there the question was a parental consent issue. And the Court there recognized that right of access isn't a one-time thing. It's not the right to go check out a book, and then when you return it to the library, you sort of checked the mark of you've

EXHIBIT A

accessed the book and it goes away.

The right of access is a continuing right of access. The fact that a student can swing by their local library or their school library, check out a book, maybe just review a few pages, and return it to the shelf. And that's the sort of right of access that's infringed upon here. It's the sort of access that's asserted to be gained by the plaintiffs in this case. So I think under standing principles, particularly given that injury-in-fact is treated more leniently within the context of First Amendment case, that we've established standing as to that.

When it comes to the curricular prohibition, in our complaint we allege at least two of our individual plaintiffs attend school at D.W. Daniel High School, which is the high school where the book was originally challenged, in the book where one particular teacher was being -- was assigning a portion of the book as part of her class curriculum. But I think it's a reasonable inference drawn from that complaint that those students would potentially end up in that class. That is a reasonable inference that has, in fact, come to fruition, as we've identified in our supplemental declarations where both plaintiff Lawrence and plaintiff Turner had children that are enrolled in the English III honors course

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starting on August 1st.

THE COURT: Okay. Let me hear from defense counsel.

MR. COLEMAN: Thank you, Your Honor. As Mr. Chaney has mentioned, there's two aspects to this. There's the curricular piece of it and there's the library piece of it. I will take them in the reverse order of what he did. Let's start with the curriculum. The problem with the curriculum as far as standing is concerned is that the injury is too speculative. We explain that in our briefing in the reply, ECF No. 13, plaintiffs attach the supplemental declarations that Mr. Chaney just mentioned, which narrows our focus -- right? -- to two particular students who, though they are about to begin 10th grade, will be enrolled in an 11th grade English class, a class that at times in the past has used an optional supplemental test.

Your Honor, I had hoped this morning to have a witness attend here with us from the school district who could speak to that point. Due to the logistics and the location, she was not able to attend. I did, however, receive a declaration late last night that I haven't e-filed and I haven't shared with opposing counsel yet. If you are willing, I will give a copy and hand one up.

THE COURT: Sure. That's fine.

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MR. COLEMAN: May I approach?

THE COURT: You may.

MR. COLEMAN: Just to briefly orient the Court, this is a declaration from Shannon Sharkey, who is the associate superintendent of academic services.

THE COURT: So I'm happy to hear a little more, but I think my main focus today is really to get down to the bottom line up front on it all today, is the only issue is whether mandatory preliminary injunction is necessary. That's what I'm -- that's what I'm -- what I'm going to get my arms around, that issue. And, you know, I'm going to be looking at the *Winter* factors. That's what I really want y'all to argue about.

MR. COLEMAN: Understood, Your Honor.

THE COURT: And the heightened requirements under the *Wetzel* case to impose a mandatory preliminary injunction, an injunction that would mandate specific action to be taken. That's really all I want to deal with.

MR. COLEMAN: Understood, Your Honor.

THE COURT: Okay. So --

MR. COLEMAN: And the relevance of this declaration to the standing topic is in the paragraph 5.

THE COURT: Okay.

MR. COLEMAN: The specific teachers that these

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two students will have didn't use *Stamped* last year, even before this controversy arose, even before the board made its decision. And there's no reason beyond mere speculation to think that even if this Court granted the injunction plaintiffs seek and those teachers could choose to use *Stamped* as an optional, supplemental text, there's no reason to think that they would. Their injury and the relief they seek is still speculative.

THE COURT: All right.

MR. COLEMAN: So it's a standing on --

THE COURT: I appreciate that. And I want to hear again from plaintiff, in particular about the preliminary injunction.

MR. CHANEY: Sure. And when I started my presentation, I really was focusing to the likelihood of success on the merits, to spend time there. If the Court wants me to move to one of the other *Winter* factors, I can. I think when you look at the irreparable injury question under *Winter*, the fact that the Fourth Circuit and the Supreme Court has recognized that a First Amendment injuries per se is irreparable is really vital.

THE COURT: I think you are right. I think you have to have, you know -- you have to show a likelihood of success. So that's what you need to focus on.

MR. CHANEY: Right. And so --

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THE COURT: Along with all of the *Winter* factors.

MR. CHANEY: Excuse me?

THE COURT: Along with all of the *Winter* factors.

MR. CHANEY: Yes. So I will start with the likelihood of success on the merits and go back to the second step of the question being what is the appropriate scrutiny that applies to the defendant's decision here.

THE COURT: Yes.

MR. CHANEY: And I will start with the lighter burden that they would have to satisfy, and that would be the burden to demonstrate that their curricular decision was reasonably related to a legitimate pedagogical interest. And what we have here factually is that every time the board has considered this decision, it has been recorded on camera for the public to see. We know from the mouths of these board members themselves what they were considering when they were making this decision to both remove *Stamp* from the library and prohibit its use in the classroom.

And so if you look at the September 26th, 2022, board meeting, you see when the issue is called, when it's finally ripe for consideration for the board, they receive a presentation from the assistant superintendent that walks them through the district's book review committee findings. And at the end of that presentation, where the

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board receives the unanimous recommendation of its unreviewed committee that they should retain access to the book because it's educational and suitable because it aligns with 27 ELA priority and support standards, because it does not (inaudible) or indoctrination, they brush that aside and never address that recommendation. And then they start making sort of vague offhand comments, like: The book, I read it, it's an opinion piece; it doesn't belong in the classroom; I can't believe the district spends any money on that; I don't want any money spent on that book.

These are all comments on the viewpoints contained in the book. They aren't comments on the factual accuracy of the book. And it's important to consider that the moment, assuredly, was not lost on these board members. They were making a decision that was very much in the public eye. Right? So this case doesn't arise in a vacuum. There are efforts across the south, across South Carolina, Florida, to suppress certain viewpoints in library books and in classrooms. This was yet another instance of that occurring. And it was against the backdrop of community members, including politicians, coming in, each weighing in and telling the board members what they should be doing. They recognized that their decision was going to be scrutinized by

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whomever was upset with their decision.

So the fact that they did not in that moment say, what's really driving this decision was my concern -- is my concern over the factual inaccuracies of the book, and then specify what those factual inaccuracies are, I think is really revealing and undermines their after-the-fact justification that they now put forward that actually what was motivating them was their independent examination of the book's factual accuracy.

What we can, I think -- I think the Court can infer is that against the backdrop of people concerned with educational suitability recommending one thing, and politicians, other politically involved members of the community coming in and saying the book should be removed because of these very discrete ideological and political reasons, and then citing with one instead of the other, that we can impute those motives, those justifications to the board. And as the Court is considering that fact, I think it is really important to consider it's the defendant's burden to show.

THE COURT: Well, the huge, huge, huge problem in this is that what motivated the board is a factual question that should not be resolved on a motion for preliminary injunction.

MR. CHANEY: I would say but for the fact that we

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have the entire deliberation presented in video format for the Court to review. I think that that sets this case apart and sets it distinct, where ordinarily, at this stage of litigation, it might be very unclear as to what was motivating the board. But what the Court has is a contemporaneous recording of the board members telling each other and the community, this is what's motivating my decision.

THE COURT: The problem is, we have contradictory declarations now. There are questions of fact here.

MR. CHANEY: I think that the cases that we cite in the administrative law context and other First Amendment context and other discrimination context should give the Court some comfort that the federal judiciary is often in a place of setting aside justifications that only come in in the wake of litigation for which there is no contemporaneous factors. And I think the Court would be well within its discretion to do so here. And that's what we are encouraging.

THE COURT: Okay. Thank you.

All right. Yes, sir.

MR. COLEMAN: Thank you, Your Honor. You are right. The plaintiffs bear a heavy burden to demonstrate that they are clearly entitled to the relief that they seek. And that burden is particularly heavy here because

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the injunction the plaintiffs seek wouldn't maintain the status quo. It would alter the status quo.

I don't think they can make that showing for a couple of reasons. One, which you mentioned a moment ago and Mr. Chaney has discussed, is that there is no -- I would disagree with him on this point -- I don't think that there is any factual evidence that indicates an illicit motivation. The only board member who explained her reasoning for her vote was Amy Williams, who said, and this is nearly an exact quote, Your Honor, that she's reviewed the book and found error after error, errors of omission, errors of commission, and that she determined, as a result of that, that it wasn't educationally suitable for the district.

To the extent that someone else has commented about it being matters of opinion, again, I think that's consistent saying that this book has matters of opinion as opposed to historical fact. I think those are consistent.

And more importantly, both the contemporaneous record and the declarations indicate that the board members had First Amendment neutral legitimate pedagogical reasons. I don't think on that factual record the Court can grant a preliminary injunction.

But it's not just the facts, Your Honor. I don't think they have a likelihood of success on the law. Even

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if we assume that plaintiffs' own recounting the law is correct, and I may disagree with aspects of it, in their reply brief, they say there's no controlling Fourth Circuit case and that other circuits are select. That's on a clearly established right to relief and a clear showing of a likelihood of success on the merits.

In fact, Your Honor, I think that the law is stronger for the district than it is for the plaintiffs. The case that we are referring to either as *Hazelwood* or *Kuhlmeier*, that's an U.S. Supreme Court case. That's binding precedent. It involved a student newspaper. That's a harder case than we have here, a student newspaper. That looks an awful lot more like student speech. And even in that context, the Court held that the school could have authority, content-based authority, to restrict, regulate, or limit the student newspaper as long as it had the imprimatur of the school on it. That's certainly true here.

Plaintiffs point to the 1982 Supreme Court case of *Pico*, one that resulted in no binding opinion. But every justice in *Pico* agreed on at least one thing, that the school has broad, broad, extraordinarily broad authority over the curriculum. That piece of it, no likelihood of success on the merits.

THE COURT: I'm not sure that either side has a

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clear-cut winner on this, but --

MR. COLEMAN: And that may be. I will reserve the right to argue that point vigorously months or years from now. But for today, that alone is a reason to deny the preliminary injunction. It's not a clearly established right to relief.

MR. CHANEY: Your Honor, I just want to make a couple of sort of distinguishing points from what Mr. Coleman just shared. The first, going back to Amy Williams, the comments they cite about Ms. Williams, who's a board member, about noting certain factual inaccuracies that she had uncovered, was on August 22nd, the same day -- excuse me, the day after the initial parent challenge was submitted to the school. It wasn't even while the board was deliberating any action. There wasn't a question -- there wasn't a decision to be made by the board.

It's also somewhat peculiar that Ms. Williams is the only board member we don't have a declaration from. So I just want to make that point, that Ms. Williams does not, on September 26th, when the question is actually before the board what to do about this book, raise this as a concern of hers.

The next distinguishing point I wanted to raise is that when we are talking about the facts, it is really

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vital to consider whose burden it is on the facts. So the plaintiffs, I think, can meet their initial burden to say that the defendants took some action that implicates the First Amendment by the action itself of removing the book from the library and its use. It then becomes the defendant's burden to prove that they took that action for a legitimate, constitutional and permissible reasons. And so if there are factual issues that the Court can't resolve here, it's the defendant's problem, not the plaintiffs'.

And then I also want to point out how important it is to consider the context of how this book is being used. So let's even take at face value this allegation that there was factual accuracy that drove the board's decision.

THE COURT: And also, you know, as to what you've just said a second ago, I mean, the plaintiffs have the burden to show and make clear the *Winter* factors.

MR. CHANEY: Yes, that they are likely to prevail on the merits. I think one way to demonstrate that we are likely to prevail on the merits is to demonstrate that the defendant's cannot carry their burden. Agreed?

THE COURT: I don't know about that. Go ahead.

MR. CHANEY: Okay. The context of the way the book is being used, and so they kind of put all of their

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eggs into the factual inaccuracy basket. It's not -- it's not true that the factual accuracy of a piece of persuasive writing is reasonably related to a legitimate pedagogical interest. The manner in which this book was being used in the classroom, as is reflected in both the school-level and district-level book review committees, was that it was being assigned in an advanced English class to further standards to help students identify rhetoric, persuasive writing, point of view, to consider how somebody's argument, their purpose in making an argument, might, in fact, shade their characterization of the facts, but support them.

And so given the context of that book, it's not clear -- excuse me, it's not true that the justification, the purported justification of factual accuracy, actually connects with the classroom. And if it doesn't connect with the classroom how this book is being used in this case, then it's not reasonably related to a legitimate pedagogical interest under *Kuhlmeier*.

The district-level book review committee makes this point very clear. And it says -- and this is in our exhibits where we have the *Stamped* board packet, which is the packet that's submitted to the board in advance of their decision, the district review committee says it's really vital to consider the context in which the book is

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being used. And so I wanted to make that point here.

As to the split of authority, the split of authority only bears on the curricular decision. The removal of the book from the library, while it is true in some sense that *Pico* doesn't give us the clearest test and is a plurality opinion, there's not a single case in the federal register that I found or that the defense has found that doesn't follow its guidance. There's not a removal of a book from the school library that says -- there's not a case that considers that set of facts, the facts presented to the Court here, and says First Amendment isn't concerned with this question and we are just going to throw *Pico* out and attempts to apply this test.

So it is clear the First Amendment applies, but it demands some degree of scrutiny on the decision. And so I would dispute that there's actually an unclear question of whether or not we have asserted a pedagogical right under the First Amendment sufficient to warrant the imposition of preliminary injunction.

MR. COLEMAN: Your Honor, if I may, four points that I will try to make as briefly as a lawyer can be. First, in response to the comments Mr. Chaney made a moment ago that every case in federal register follows *Pico*, I will give you an example that doesn't. *ACLU v.*

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Miami-Dade, Eleventh Circuit case from 2009 that we cited. Here's what the majority said in that case. They looked at *Pico*. They looked at *Hazelwood*. And then they said, we don't need to decide what the controlling standard is here because the plaintiffs lose under either of those. So there's at least one example.

Point two would be the burden shifting that plaintiffs, particularly in their reply and argument today, have attempted to make. It's absolutely not our burden today to prove anything. It's the plaintiffs'. And, frankly, Your Honor, perhaps I'm mistaken on this point, but I'm not sure at any point in the litigation it becomes our burden to prove anything. The burden rests on the plaintiff.

Third, Mr. Chaney has emphasized that perhaps factual accuracy isn't important in this particular context, that this book is being used as an example of persuasive writing. I disagree with that. And I believe the Fourth Circuit does as well. In the *Boring* case, which didn't involve a book in the library, it involved a school play, and toward the end of -- and to be clear, the name of the case is *Boring*. I am not describing it projoratively as uninteresting. But towards the end of it, the Fourth Circuit cites to Plato's *Republic*, it cites to Edmund Burke, and talks about the fact that even a

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play, right, that's not a history, that's not science, that's not math, it's a dramatic production, but even there, it's important. And the school district has a legitimate pedagogical interest in its accuracy, its veracity, and its truth.

I think even in this context, these lessons to recognize and respond to persuasive writing, that can be taught with a book that's factually accurate. It doesn't need to be taught with one that's not.

And the fourth point I will make right now, this is also in response to something the plaintiff replied and argued today. The second witness I had hoped to have here today is an expert who can speak from his professional training, experience, and his own independent review of the book, *Stamped*, prior to our involvement, prior to this controversy, as to its historical errors, omissions, and distortions. He's from out of state. He wasn't able to make it here on short notice. But, again, if the Court would permit, I would like to hand up a declaration that represents what he could have said had he been able to attend today.

THE COURT: I don't think it's necessary.

MR. COLEMAN: All right. May I proffer it on the record even if Your Honor doesn't consider it?

THE COURT: I don't think that's necessary

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either.

MR. COLEMAN: Thank you, Your Honor.

THE COURT: But I want to hear all the arguments on all the *Winter* factors.

MR. CHANEY: Understood. And before I go to that, just a brief comment on the Miami-Dade -- *ACLU vs. Miami-Dade* case. In that case, the Eleventh Circuit makes very clear that it would not apply *Kuhlmeier* because it was a library book that was being removed and not a curricular decision. It concluded, as many cases make the point, that the school has quite a bit more discretion in the curricular context than it does in the school library book removal.

And as to whether to apply *Pico, we* leave the Court to decide -- this is a quote from the Eleventh Circuit: The real issue for the federal courts is whether the board's decision to remove the book from the school library shelf was motivated by its inaccuracies concerning life in Cuba or by a desire to promote political orthodoxy in opposition to the viewpoint of the book. It did apply *Pico*. It talks about why it's a plurality and doesn't control, but it certainly does apply.

THE COURT: All right. Thank you for that.

MR. CHANEY: As to the remaining factors --

THE COURT: Yes.

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MR. CHANEY: -- I think the consideration of the status quo is a little bit of a fluid concept here in this particular context because the board took action that distorted the status quo for quite some time. So we know from the defendant's declarations that -- well, we know that *Stamped* was published in 2020, even though some time thereafter, at least two copies of the book were purchased by the district. They were placed in the library. We know that following its publication in 2020, at least one English honors teacher, I think in high school, was using the book as part of her instructional curriculum, and that the board took action that removed that access.

The plaintiffs are now asking to restore plaintiffs access to the book to what it was before. And I think it's really important to not fall into the trap of thinking that we are asking for a right to have a particular book available that hadn't been available in the past. I think the cases are really clear that a student can't walk into court and demand that a school go buy a specific library book that it's never had before. That's not what we are talking about here. We are talking about a right that vested when the district purchased the book, made it available to its students, that was then violated by its removal.

And given that the book, during -- there's no

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allegation that during the time in which it was available, that there was some problem caused to the administration of the classroom or of the school, to believe that anything that was happening other than three parents being upset that it was being taught in a particular classroom. It's difficult, I think, to articulate any sort of harm to the district for the Court to step in and say for the pendency of this, while this is ongoing, we are going to restore the access that you deprived the students of before an ultimate decision in the case.

And I think given the very pretextual post hoc justifications that the district is pinning its case to, the Court would be well-within its discretion to override preliminary injunction in this case.

I do want to -- if the Court wants to hear it, I don't want to tell the Court something it is not interested in hearing, but I think that there's a strong argument that *Tinker* should apply to the removal of the book from the library for a couple of reasons. And we cited the Fourth Circuit case of *Hardwick*. That's the case that dealt with whether or not students could wear confederate flag apparel.

In evaluating First Amendment juris prudence in the context of the school, the Fourth Circuit said there's four categories that the Supreme Court has recognized.

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They recognize the category in *Kramer* -- is that right? *Kramer*? *Frazier*, excuse me, that the school could limit students using vulgar or exceeding language in the school environment. Then it said in *Kuhlmeier* that the school could limit so long as it could demonstrate a reasonable basis -- reasonably related to a legitimate pedagogical basis to limit curricular speech or speech that carries (inaudible) school itself.

But then it said in *Morris* that it could limit the students' speech around illegal drug use. But the Fourth Circuit said, and it followed the Third Circuit in this fashion, says *Tinker* is what applies to every other situation that arises between First Amendment context and the school when it involves student speech. And there's no reason to distinguish student speech from student access for the reasons we've set forth in our brief.

So that's one reason. I think that a clear application of *Hardwick* and *Tinker* should apply to this question of library book removal.

But that's not the only reason. Another reason is that several cases, like *Romano*, *Pratt*, identify that school districts have quite a bit more discretion in fashioning their curricula than they do in limiting access to a book in a library, and that the First Amendment is necessarily, because of that, going to take a more

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scrutinizing eye at a school official or school board's removal decision as it applies to a library.

So with *Tinker*, I think one reason that *Tinker* is an appropriate test, is that it's clearly a more rigorous test than *Kuhlmeier*. And it's not clear to me that *Pico*, for whatever test it is, is actually -- you know, satisfies that threshold of being a more rigorous test than, I think, *Kuhlmeier*.

And then I would say, lastly, and this is relying on a Sixth Circuit case that's cited in our reply brief, *Marciano* (sic).

The Sixth Circuit there recognizes that a school library book removal actually is more -- it encroaches more on the student's First Amendment rights than limiting their ability to, for example, wear a (inaudible) in class, because it freezes the upstream consideration of specific ideas. And that has more deleterious effect on the free expression and exchange of ideas that's protected by the First Amendment in the school context.

And so I think the weight of the right at stake, along with its relationship with the curricular discretion, and then Fourth Circuit precedent all point to applying substantial disruption test as to the removal of the book from the library.

THE COURT: Okay. Is that all you have on

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everything?

MR. CHANEY: I believe so, Your Honor. As it comes to the irreparable injury, obviously, I have not had any more time with this declaration than the Court has had. So I am not prepared to respond to these new factual assertions. I will say that it's clear that any person in an injury is irreparable. And that as I understand it, two of our plaintiffs are about to start a class that has used this book in the past and will not have access to it because of the defendant's conduct.

THE COURT: So I am not even going to consider the new declarations and I don't need to hear anything further.

MR. COLEMAN: Thank you, Your Honor.

THE COURT: So plaintiffs today asked the Court to order that all copies of *Stamped: Racism, Antiracism, and You* that were available prior to August 22nd, 2022, be returned to their previous locations and be made available to the students in the districts and to enjoin the defendant, School District of Pickens County, from taking any action to prohibit or discourage the use of *Stamped: Racism, Antiracism, and You* in high school classrooms in the district, enter any other such relief that the Court deems necessary to protect the plaintiffs from ongoing injury.

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And I note again that preliminary injunction is an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief and may never been awarded as a right. That's under *Winter*. A preliminary injunction should issue only when the moving party clearly establishes that it is likely to succeed on the merits, it is likely to suffer irreparable harm in the absence of preliminary relief, the balance of equities tips in its favor, and injunctive relief is in the public interest.

After a thorough consideration of the record and the arguments and the applicable law, I'm going to deny the plaintiff's motion for preliminary injunction, ECF No. 7, because I find that plaintiffs have not made the requisite clear showing of each factor necessary for preliminary injunctive relief with respect to their claims.

First, this case involves complicated First Amendment issues. And it's clear that both sides can point to law that favors their arguments.

On the one hand, plaintiffs have certain rights under the First Amendment. While on the other hand, local school boards also have broad discretion in the management of the school affairs. And while states and local school boards must exercise that discretion in a manner that

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comports with the imperatives of the First Amendment, there are simply too many factual questions here for me to conclude that plaintiffs have made the requisite clear showing of a likelihood of success on the merits. And, likewise, I don't think plaintiffs have made a clear showing of a likelihood of suffering irreparable harm in the absence of preliminary relief.

As for the balance of equities in the public interest, I actually think these factors slightly favor the district because preliminary injunctive relief would dramatically change the status quo. In other words, the district has a strong interest in controlling its schools by its duly elected officials. And this Court is very reluctant to unnecessarily usurp that authority, especially at this preliminary stage where there are several questions of fact that need to be resolved.

And so, for these reasons, I'm going to deny the plaintiffs' motion. We will be at recess.

MR. COLEMAN: Thank you, Your Honor.

(Whereupon, proceedings are adjourned.)

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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter, Certified Realtime Reporter for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate and complete Transcript of Record of the proceedings.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

EXHIBIT B

Activity in Case 8:23-cv-01736-BHH Pickens County Branch of the NAACP et al v. School District of Pickens County Order on Motion for Preliminary Injunction

SCDEfilingstat@scd.uscourts.gov <SCDEfilingstat@scd.uscourts.gov>
Fri 7/21/2023 11:00 AM
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U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 7/21/2023 at 11:00 AM EDT and filed on 7/21/2023

Case Name: Pickens County Branch of the NAACP et al v. School District of Pickens County
Case Number: 8:23-cv-01736-BHH
Filer:
Document Number: 17(No document attached)

Docket Text:
TEXT ORDER denying [7] Plaintiffs' motion for preliminary injunction. For the reasons stated on the record during the hearing, the Court finds that Plaintiffs have not made the requisite clear showing of each factor necessary for preliminary injunctive relief with respect to their claims. Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 22 (2008). Accordingly, the Court denies Plaintiffs' motion. IT IS SO ORDERED. Signed by Honorable Bruce Howe Hendricks on 7/21/2023. (nsw)

8:23-cv-01736-BHH Notice has been electronically mailed to:

Miles Edward Coleman miles.coleman@nelsonmullins.com, fran.smith@nelsonmullins.com

David Allen Chaney, Jr achaney@aclusc.org, pbowers@aclusc.org

8:23-cv-01736-BHH Notice will not be electronically mailed to:

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