

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

BONNIE WALLACE,

Plaintiff,

v.

HOUSTON INDEPENDENT SCHOOL
DISTRICT, et al.,

Defendants.

Case No.: 4:26-cv-03501

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS

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SUMMARY OF ARGUMENT

Bonnie Wallace signed up to speak at an HISD Board of Trustees meeting on March 19, 2026, on a posted agenda item concerning library book purchasing policies. She spoke calmly, stayed within her allotted time, and caused no disruption. Nevertheless, Flowers -- the presiding officer -- stopped her mid-speech and had her removed for reading aloud from a book that HISD itself approved and placed in at least three of its own school libraries. That removal is the violation at issue in this case.

(i) Content-Based and Viewpoint-Based Discrimination: HISD's decorum rule prohibits only "disruptions" that inhibit the Board's ability to conduct business. It contains no restriction on reading from texts. Under *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), any regulation that turns on the content of speech is presumptively unconstitutional. And under *Rosenberger v. Rector & Visitors of Univ. of Va*, 515 U.S. 819 (1995), removing a speaker because of which side of a debate she represents is viewpoint discrimination -- the most invidious form. Both theories independently defeat the Motion. HISD's reliance on *Fraser* and *Ginsberg* is misplaced: those cases address the captive-audience rights of schoolchildren, not adult citizens at a public board meeting. HISD's invocation of *Free Speech Coalition v. Paxton* is self-defeating: HISD is the entity that placed the book in its own libraries for children.

(ii) Retaliation: Ms. Wallace engaged in protected speech on a matter of public concern and suffered removal as an immediate adverse action. Dr. Scarborough -- a fellow opponent of HISD's library policies who spoke on the same topic without reading from the book -- was not interrupted. That contrast confirms but-for causation at the pleading stage.

(iii) Monell: HISD's BED(LOCAL) and BED(LEGAL) policies vest the presiding officer with unbridled discretion to interrupt and remove speakers based on subjective

assessments of "decorum." Unbridled discretion in the regulation of speech is independently unconstitutional under *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750 (1988). Flowers acted pursuant to, not in derogation of, HISD's written policies.

(iv) Texas Open Meetings Act: Section 551.007(b) of the Texas Government Code independently prohibits a presiding officer from preventing a member of the public from addressing a posted agenda item. Wallace complied with all requirements and was removed solely because of the content of her remarks.

(v) Texas Constitution: Flowers acted ultra vires by exceeding authority delegated under BED(LOCAL), which authorizes removal only for conduct that is "disruptive or abusive." Ms. Wallace's conduct was neither. Plaintiff relies on Section 1983 for monetary relief; the Texas Constitution supports the ultra vires claim independently.

Standing: Ms. Wallace has credibly alleged intent to return to HISD board meetings and to engage in the same speech. Under *Susan B. Anthony List v. Driehaus*, 573 U.S. 149 (2014), that suffices for prospective relief. The constitutional violation flows from written board policies that remain in force.

Qualified Immunity: The Fifth Circuit held in *Heaney v. Roberts*, 846 F.3d 795 (5th Cir. 2017) that it is "beyond cavil" that removing a speaker based on the message she conveys violates clearly established First Amendment law. In *Biggers v. Massingill*, No. 23-11023, 2025 WL 429974 (5th Cir. Feb. 7, 2025), the Fifth Circuit reaffirmed that invoking a decorum rule as pretext to silence a disfavored viewpoint clearly violates the First Amendment. No reasonable official could have believed the removal was lawful.

INTRODUCTION

Plaintiff Bonnie Wallace respectfully submits this Response in Opposition to Defendants' Motion to Dismiss (Dkt. 11). Defendants' Motion improperly invites the Court to resolve disputed facts and credit their characterization of the video recording. At the pleading stage, the Court must accept Plaintiff's well-pleaded allegations as true unless the video "blatantly contradicts" them. *Scott v. Harris*, 550 U.S. 372, 380 (2007). It does not. The recording confirms Ms. Wallace spoke calmly, in a normal tone, on a posted agenda item, and within time until interrupted upon reading passages from an HISD-approved library book. See Compl. ¶¶ 19-21 (Dkt. 4). The Motion should be denied.

This case arises from two independent and overlapping First Amendment violations: content-based discrimination and viewpoint discrimination. Either independently commands strict scrutiny and compels denial of the Motion. Together, they represent what the Supreme Court has called "an egregious form" of censorship. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). Ms. Wallace was removed from an HISD Board meeting solely because she read aloud passages from an HISD-approved library book to illustrate the inconsistency in HISD's own policies. She spoke calmly, remained within her allotted time, addressed a posted agenda item, and caused no disruption. She was removed only after she began reading content that HISD found politically inconvenient. HISD's action was content-based because it was triggered by the subject matter of Ms. Wallace's quotation — explicit passages from a library book. It was viewpoint-based because Ms. Wallace was speaking to criticize HISD's library policy, and HISD silenced precisely the evidence she needed to make that criticism. Both forms of discrimination are independently subject to strict scrutiny, which Defendants make no attempt to satisfy. The First Amendment does not permit the government to

silence a speaker because it dislikes the content or viewpoint of her speech, and it certainly does not permit a school district to remove a speaker for quoting from books the district itself approved for minors.

Defendants attempt to reframe this case as one about "graphic sexual language," "decorum," and "meeting management." But the Complaint alleges — and the video does not contradict — that Ms. Wallace engaged in no disruptive behavior whatsoever. Defendants' Motion improperly asks the Court to adopt their own interpretation of the video and their own characterization of Ms. Wallace's speech. At this stage, the Court must accept Plaintiff's allegations as true unless the video "blatantly contradicts" them. It does not. *See Scott*, 550 U.S. at 380. The video shows Ms. Wallace speaking in a normal tone of voice, reading from a book, and being interrupted solely because of the content she was quoting. It does not show disruption, disorder, refusal to yield, or any violation of meeting rules.

Defendants' reliance on HISD's "decorum script" is equally misplaced. The script was read aloud at the beginning of the meeting. Its relevant text is as follows: "Verbal and other disruptions by persons during a school board meeting are not acceptable as they inhibit the board's ability to conduct business and the public's ability to observe those processes. Persons who participate in such behaviors will be given one warning and if behavior is repeated they will be asked to leave the meeting." The script contains no reference to graphic language, explicit content, sexual language, reading from books, or the substance of a speaker's remarks in any form.

The script authorizes a warning and removal only for persons who "participate in such behaviors" — where "such behaviors" refers exclusively to "disruptions." Ms. Wallace's calm, on-topic recitation from a district-approved library book was not a disruption by any definition of

that word. Flowers therefore acted entirely outside the scope of the decorum script when she interrupted and removed Ms. Wallace based solely on the content of her speech.

Defendants' heavy reliance on the video and transcript (Dkt. 11 at 4 n.3) does not change the analysis. Indeed, Defendants' own footnote impeaches their account: it places the start of Ms. Wallace's remarks at approximately 02:30:45 and the start of Dr. Scarborough's remarks at approximately 02:31:15 — a span of thirty seconds into which Defendants compress a point-of-order announcement, two escalating warnings between readings, an order of removal, and an escort from the chamber by three police officers. Dkt. 11 at 4 n.3. A timeline that is internally impossible cannot "blatantly contradict" a verified complaint; it confirms only that Defendants' characterization of the record is unreliable and that any dispute over what the recording shows must be resolved in Plaintiff's favor at this stage. While the recording shows warnings were issued, it also shows the trigger was the content of Ms. Wallace's demonstration—the very passages from the District's own libraries. She caused no actual disruption to the Board's business. Defendants' interpretation of 'disruption' as 'offensive content' is precisely the content-based (and viewpoint-based) restriction the First Amendment prohibits. The factual dispute over motive and characterization cannot be resolved against Plaintiff at this stage.

Defendants' Motion also ignores the Supreme Court's 2026 decision in *Chiles v. Salazar*, 607 U.S. ___, 146 S. Ct. 1010 (2026), which — though arising in a different regulatory context — directly supports Plaintiff's position. *Chiles* holds that speech does not become "conduct" merely because the government says so or affixes a regulatory label to it. The Court explained that the First Amendment "is no word game, and the exercise of constitutional rights cannot be circumscribed by mere labels." *Id.* at 1023 (quoting *NAACP v. Button*, 371 U.S. 415, 429 (1963)). The same principle applies here: HISD cannot convert its content-based removal of Ms.

Wallace into a neutral “disruption” enforcement action simply by labeling her speech “disruptive.” Defendants do not cite *Chiles*.

The Fifth Circuit's decision in *Heaney v. Roberts*, 846 F.3d 795 (5th Cir. 2017) is equally fatal to Defendants' position. *Heaney* holds that a presiding officer violates clearly established law by removing a speaker from a limited public forum because of her viewpoint. That is exactly what happened here. Ms. Wallace was removed because she chose to criticize HISD by reading aloud from HISD-approved books. The next speaker, who criticized the same books but did not read from them, was permitted to speak without interruption. This is classic selective enforcement and classic viewpoint discrimination.

Defendants' *Monell* arguments fare no better. Plaintiff alleges that HISD's BED(LEGAL) and BED(LOCAL) policies vest the presiding officer with unbridled discretion to interrupt, silence, or remove speakers based on subjective judgments of "decorum," "offensiveness," or "inappropriate content." Unbridled discretion is independently unconstitutional under *City of Lakewood v. Plain Dealer*. Plaintiff further alleges that these policies were the moving force behind her removal. At the pleading stage, these allegations are more than sufficient to state a *Monell* claim.

Defendants' qualified immunity argument also fails. Qualified immunity does not apply where the facts alleged show a constitutional violation and the right was clearly established. Both prongs are satisfied here. The Fifth Circuit has clearly established that removing a speaker from a limited public forum because of her viewpoint violates the First Amendment. No reasonable official could believe that removing a calm, non-disruptive speaker addressing a posted agenda item was lawful.

Plaintiff also states valid claims under the Texas Open Meetings Act and the Texas Constitution. TOMA requires governmental bodies to allow public comment on posted agenda items. Ms. Wallace complied with all requirements and was removed solely because of the content of her remarks. Texas free-speech protections are broader than those under the First Amendment, and Defendants do not meaningfully address Plaintiff's Texas constitutional claims.

For all these reasons, Defendants' Motion to Dismiss should be denied.

STANDARD OF REVIEW

On a 12(b)(6) motion to dismiss, “the issue for the court is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. The court must accept all well-pleaded facts as true, viewing them most favorably to the plaintiffs.” *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). A complaint does not need to include detailed factual allegations; instead, it must provide enough facts that, when presumed true, rise to a right to relief beyond a mere speculative level. *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007). Accordingly, to survive a 12(b)(6) motion, “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

To establish liability under 42 U.S.C. § 1983, the plaintiff must show three elements: (1) a deprivation of a right secured by federal law, (2) that occurred under color of state law, and (3) was caused by a state actor. *See Victoria W. v. Larpenter*, 369 F.3d 475, 482 (5th Cir. 2004). In *Monell v. New York City Dep't. of Soc. Servs.*, the United States Supreme Court determined “that municipalities and other local governmental bodies are ‘persons’ within the meaning of § 1983.” *Bd. of Cnty. Comm'rs of Bryan Cnty., Okl. v. Brown*, 520 U.S. 397, 403 (1997) (citing *Monell*, 436 U.S. 658 (1978)). The Supreme Court also determined that, to hold a municipality

liable, the plaintiff must “identify a municipal ‘policy’ or ‘custom’ that caused the plaintiff’s injury.” *Id.* (citing *Monell*, 436 U.S. at 694; *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480–81 (1986); *City of Canton v. Harris*, 489 U.S. 378, 389 (1989)). This, however, does not require a formal guidance or policy by the City or a decisionmaker as “an act performed pursuant to a ‘custom’ that has not been formally approved by an appropriate decisionmaker may fairly subject a municipality to liability on the theory that the relevant practice is so widespread as to have the force of law.” *Id.* at 404 (citing *Monell*, 436 U.S. at 690–91).

The same pleading standards apply in a claim, such as this one, against a school district. “There is no heightened pleading standard for § 1983 claims against school districts. To survive a motion to dismiss, the complaint need not contain detailed factual allegations but still must state sufficient facts to establish a plausible claim on its face.” *Hutcheson v. Dall. Cnty., Tex.*, 994 F.3d 477, 482 (5th Cir. 2021) (citing *Littell v. Hous. Indep. Sch. Dist.*, 894 F.3d 616, 622 (5th Cir. 2018)).

ARGUMENT

A. COUNT I STATES A PLAUSIBLE FIRST AMENDMENT CLAIM OF CONTENT-BASED AND VIEWPOINT-BASED DISCRIMINATION.

Preliminary Note: Content-Based and Viewpoint-Based Discrimination Are Distinct But Cumulative Violations.

The Court should not conflate content-based and viewpoint-based discrimination, as Defendants do throughout their Motion. Content-based discrimination occurs when the government restricts speech because of the topic or subject matter conveyed — here, sexually explicit passages from a library book. Viewpoint-based discrimination occurs when the government restricts speech because of the particular perspective the speaker takes on that topic

— here, criticism of HISD's library acquisition decisions. *Reed v. Town of Gilbert*, 576 U.S. 155, 163–64 (2015). Both forms of discrimination are subject to strict scrutiny. Viewpoint discrimination carries an additional constitutional dimension: it is presumptively unconstitutional under any standard of review. *Rosenberger*, 515 U.S. at 829. Flowers' removal of Ms. Wallace satisfies both definitions independently. The government restricted the subject matter of Ms. Wallace's demonstration (content-based), and it did so specifically because she was using that subject matter to criticize HISD's policies (viewpoint-based). Plaintiff does not need to choose between these theories; both survive.

1. The Removal Was Independently Both Content-Based and Viewpoint-Based — Either Theory Alone Defeats the Motion.

Defendants argue that because Dr. Scarborough spoke immediately after Ms. Wallace without interruption, viewpoint discrimination is impossible. This argument misunderstands the constitutional defect — and it addresses only one of two independently sufficient grounds for liability.

First, the removal was content-based. The government engages in content-based discrimination when it restricts speech “based on its communicative content” — that is, because of the subject matter or message conveyed. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Flowers did not intervene until Ms. Wallace began reading explicit passages from a specific book. That trigger — the content of the words being spoken — is the textbook definition of a content-based restriction, and it is independently subject to strict scrutiny regardless of whether viewpoint discrimination is also present.

Second, the removal was viewpoint-based. The difference between Ms. Wallace and Dr. Scarborough was not their viewpoint — both opposed HISD's library policies. The difference

was that Ms. Wallace demonstrated her viewpoint by reading directly from a district-approved book. That distinction reflects the government's preference for one mode of political argument over another based on its communicative impact, which is viewpoint discrimination. Viewpoint discrimination is “an egregious form of content discrimination.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). The government may not suppress the method of expression that is the very point of the speaker's criticism: Ms. Wallace's argument — that the book's content is too explicit for children — depended on demonstrating that content. Prohibiting the demonstration while permitting the conclusion is not viewpoint neutrality; it is viewpoint suppression dressed as decorum.

Because either theory independently defeats the Motion, the Court need not resolve which label is more apt. Both apply. The Fifth Circuit's decision in *Heaney v. Roberts*, 846 F.3d 795 (5th Cir. 2017), confirms rather than undermines Plaintiff's position. In *Heaney*, the presiding officer removed a speaker from a city council meeting by labeling him “hostile” — a characterization the speaker disputed on the record. The Fifth Circuit affirmed the denial of qualified immunity, adopting the district court's conclusion that “it is beyond cavil that a reasonable government official in Roberts' position would have known that it would be impermissible under the First Amendment to prevent Heaney from speaking and to eject him from the meeting based on the message he was conveying.” *Id.* at 802. The parallel to this case is direct: Flowers removed Ms. Wallace by labeling her conduct “disruptive” — a characterization the video record does not support. Both Ms. Wallace and Dr. Scarborough expressed the same core viewpoint—opposition to explicit books in school libraries. The sole material difference was Ms. Wallace's decision to demonstrate that viewpoint by reading the District's own material. Silencing the demonstration while permitting the abstract criticism is viewpoint

discrimination. *Heaney* held that this factual dispute alone is sufficient to defeat qualified immunity — and at the Rule 12(b)(6) stage, the Court must accept Plaintiff's version of those facts as true, making Plaintiff's position stronger than *Heaney*'s was at summary judgment.

2. The “Manner vs. Viewpoint” Distinction Collapses Here Because the Reading Was the Viewpoint.

Defendants' central argument is that Flowers regulated the manner of Ms. Wallace's speech, not her viewpoint. But this recharacterization cannot withstand scrutiny. Ms. Wallace's entire purpose was to demonstrate, by reading aloud from a district-approved library book, that HISD approved for children, content that the district found too offensive for adults at a public meeting. The act of reading was not incidental to her viewpoint — it was her viewpoint. A government that silences the demonstration necessarily silences the argument.

That conclusion follows directly from controlling precedent. Suppressing speech because it gives offense is itself viewpoint discrimination. *Matal v. Tam*, 582 U.S. 218, 243 (2017); see *Iancu v. Brunetti*, 588 U.S. 388, 393–94 (2019) (restriction on “immoral” or “scandalous” expression is viewpoint-based). Nor may the government forbid particular words as a shortcut to suppressing the message they carry, because “words are often chosen as much for their emotive as their cognitive force.” *Cohen v. California*, 403 U.S. 15, 26 (1971). Flowers did not object to Ms. Wallace's position; she objected to the words — the District's own words — that proved it.

The Complaint's most telling allegation makes the point decisive. Flowers ordered officers to remove Ms. Wallace only after she had complied with the warnings, returned to her seat, and fallen silent. Compl. ¶ 21. Whatever authority a presiding officer holds to manage a speaker at the podium, none of it extends to ejecting a seated, silent attendee. Removal at that moment could not preserve order — there was no speech left to manage. It could only punish

speech that had already occurred. That allegation alone takes this case outside any “meeting management” rationale.

Defendants' reliance on *Fairchild v. Liberty Indep. Sch. Dist.*, 597 F.3d 747 (5th Cir. 2010), is misplaced. *Fairchild* upheld rules restricting speakers from identifying particular employees — a restriction targeting no viewpoint whatsoever. Here, in contrast, Flowers did not apply a neutral rule against all graphic language; she intervened only after Ms. Wallace began reading from a specific book to make a specific political point. The decorum script does not prohibit reading from books, quoting district-approved materials, or using language that the district itself approved for minors. The script prohibits “disruptive” behavior — and Ms. Wallace caused none.

Moreover, HISD's own BED(LEGAL) policy expressly provides that “[a] board may not prohibit public criticism of the board, including criticism of any act, omission, policy, procedure, program, or service.” BED(LOCAL) limits the presiding officer to adjustments necessary for “effective meeting management” and authorizes removal only upon “disruptive or abusive” conduct following a warning. Ms. Wallace's calm recitation of district-approved library text is not disruptive or abusive by any objective standard. Flowers therefore acted outside the scope of HISD's own policies.

3. *Fraser and Ginsberg Do Not Apply to Adult Citizens at a Public Board Meeting.*

Defendants invoke *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986), and *Ginsberg v. New York*, 390 U.S. 629 (1968), to argue that the government may regulate explicit speech in school-related settings. Both cases are plainly inapposite. *Fraser* governs the speech of students in a school-sponsored assembly — not adult citizens exercising their First Amendment right to address a public governmental body. *Ginsberg* addresses state authority to restrict

minors' access to sexually explicit materials — not the right of a speaker to criticize government policy at a public meeting. Neither case holds that a government body may silence an adult speaker during a public comment period because it disfavors the content she quotes.

The Supreme Court's decision in *Chiles v. Salazar*, 607 U.S. ___, 146 S. Ct. 1010, 1020-23 (2026), provides further support, even though it arises in a different context. *Chiles* holds that speech does not lose First Amendment protection merely because the government characterizes it as something other than speech — there, a “therapeutic modality”; here, “disruptive conduct.” The Court was emphatic: the First Amendment “is no word game,” and constitutional rights “cannot be circumscribed by mere labels.” *Id.* at 1023. Ms. Wallace's calm, on-topic reading did not become a “disruption” because Flowers said it was. And regardless of the label, HISD's removal of Ms. Wallace is subject to strict scrutiny — scrutiny Defendants make no attempt to satisfy.

4. HISD's Reliance on *Free Speech Coalition v. Paxton* Is Self-Defeating.

Defendants also invoke *Free Speech Coalition v. Paxton*, 606 U.S. ___, 145 S. Ct. 2291 (2025), apparently for the proposition that the government has a compelling interest in protecting minors from exposure to sexually explicit material. Plaintiff does not dispute that abstract principle. What Plaintiff argues, and what Defendants conspicuously fail to address is that HISD itself is the entity that placed the very books at issue in its school libraries, making them accessible to the minor students it now claims to be protecting. HISD cannot simultaneously invoke a constitutional doctrine shielding minors from explicit content and rely upon an explicit-content policy that it has already violated by stocking those materials for children. The government does not acquire the power to censor adult speakers at public meetings by first exposing the children in its care to the same material it claims adults cannot utter. *Free Speech*

Coalition licenses content restrictions to protect minors from exposure — it does not authorize viewpoint suppression of adults who are exposing the government's own hypocrisy.

The irony of HISD's position is not merely rhetorical — it is legally dispositive. Ms. Wallace, exercising more caution than HISD itself had shown, specifically asked that any minors present be removed from the room before she began reading. HISD's response was to remove the speaker rather than the minors. HISD thus rejected even the content-neutral protective measure Ms. Wallace herself proposed, making unmistakably clear that the removal was not about protecting minors at all — it was about silencing a critic. A government actor who refuses a speaker's own precautionary measures and then invokes minor-protection doctrine to justify the removal has forfeited any colorable claim that the removal was content-neutral or viewpoint-neutral.

B. COUNT II STATES A PLAUSIBLE FIRST AMENDMENT RETALIATION CLAIM.

Defendants argue that (1) reading explicit passages may not constitute protected activity, and (2) causation is lacking because Scarborough was not removed. Both arguments fail.

Reading verbatim from a district-approved library book to criticize a government body's procurement and placement decisions is core political speech. The passages Ms. Wallace read were not her own words; they were the district's own library material. Her recitation was intended to demonstrate a political point — that HISD approved content for children that it found too offensive to be read aloud to adults. That is a paradigmatic exercise of First Amendment rights. The fact that the content was explicit does not strip it of protection; the Supreme Court has long held that even offensive speech on matters of public concern is fully protected. *See Snyder v. Phelps*, 562 U.S. 443, 451–52 (2011).

On causation, the but-for standard is satisfied. Defendants' own account — and the video record they cite — confirms that Flowers did not intervene until Ms. Wallace began reading the explicit passages. That is textbook but-for causation: the adverse action would not have occurred absent the protected speech. The Complaint further alleges that Dr. Scarborough, who expressed the same position without reading from the book, was not interrupted. That contrast confirms that the specific communicative content of Ms. Wallace's reading — not any behavioral deficiency — caused the removal.

The timing of the removal eliminates any remaining doubt. Ms. Wallace was ordered removed while seated and silent, after her comments had ended. Compl. ¶ 21. Action taken against a citizen who is no longer speaking is not forward-looking meeting management; it is retrospective punishment for the content of completed speech. In any event, once a plaintiff plausibly alleges that protected speech was a substantial or motivating factor in the adverse action, the burden shifts to the defendant to prove that the same action would have been taken absent the protected speech — a quintessential question of fact that cannot be resolved on the pleadings. *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977).

C. COUNT III STATES A VIABLE *MONELL* CLAIM AGAINST HISD.

1. The Underlying Constitutional Violation Is Adequately Alleged.

The *Monell* count rises and falls with the merits of Counts I and II. For the reasons stated above, both counts are adequately pleaded. The Court should therefore proceed to the *Monell* analysis.

2. HISD's *BED(LOCAL)* and *BED(LEGAL)* Policies Are the Unconstitutional Moving Force.

Plaintiff's *Monell* claim rests on two related theories: (a) HISD's policies vest the presiding officer with unbridled discretion over speaker content, which is independently

unconstitutional under *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 757–58 (1988); and (b) those policies, as applied, were the moving force behind Ms. Wallace's removal. See *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690–94 (1978). These are precisely the kinds of standardless terms the Supreme Court has condemned. A single application of a facially unconstitutional policy that grants unbridled discretion is sufficient for Monell liability. See *id.*

On the first theory: neither BED(LEGAL) nor BED(LOCAL) defines “decorum,” “disruptive,” “abusive,” or “inappropriate content.” A regulatory scheme that vests government officials with standardless discretion over First Amendment-protected expression is facially unconstitutional under *City of Lakewood* and *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 133 (1992). Defendants contend that their policies set objective standards, but the language they quote — “necessary for effective meeting management” and “disruptive or abusive” — contains no definitional floor or ceiling. These are precisely the kinds of standardless terms the Supreme Court has condemned.

On the second theory: Defendants argue that Ms. Wallace's Complaint simultaneously alleges Flowers violated HISD policy and that the policy caused the violation — and that these allegations are “irreconcilable.” They are not. As a threshold matter, Rule 8(d)(2) expressly permits a party to plead alternative — even inconsistent — claims and theories, so the coexistence of these allegations is no basis for dismissal. Fed. R. Civ. P. 8(d)(2). On the merits, the theories are complementary. The Complaint alleges that HISD's facially vague policies granted Flowers the discretion she exercised; her exercise of that discretion in a viewpoint-discriminatory manner is both a violation of the First Amendment and the direct product of the policy's unconstitutional vagueness. A facially unconstitutional policy causes violations by authorizing them.

3. Flowers Acted Pursuant to HISD Policy, Not in Derogation of It.

Defendants argue that Flowers lacked final policymaking authority for HISD, so *Monell* liability cannot attach. But that argument conflicts with their own position. Defendants contend both that Flowers acted within the authority delegated to her under BED(LOCAL) and BED(LEGAL), and that she was not a policymaker. If, as Defendants insist, Flowers implemented Board-adopted policy, then that policy caused the violation and HISD may be liable. Defendants cannot claim that Flowers acted pursuant to Board policy to shield the District while also denying that the policy can support *Monell* liability.

To the extent Defendants argue that a single misapplication of policy by a non-policymaker cannot create *Monell* liability, Plaintiff's primary theory is not a custom/practice theory but a facial policy theory. The facial unconstitutionality of BED(LOCAL) and BED(LEGAL) does not require a pattern of incidents. A single application of a facially unconstitutional policy to an individual speaker is sufficient to establish *Monell* liability when the policy itself — adopted by the governing Board — is the constitutional defect. *See City of Lakewood*, 486 U.S. at 757–58.

D. COUNT IV STATES A CLAIM UNDER THE TEXAS OPEN MEETINGS ACT.

Defendants argue that Count IV is entirely derivative of Count I and therefore fails for the same reasons. Because Count I survives, so does Count IV.

But Count IV also has independent force. Texas Government Code § 551.007(b) requires a governmental body to “allow each member of the public who desires to address the body regarding an item on an agenda for an open meeting to address the body regarding the item at the meeting before or during the body’s consideration of the item.” Ms. Wallace signed up to speak on Agenda Item No. 2, addressed only that item, remained within her allotted time, and caused

no disruption. The statute does not condition the right to speak on using only language the presiding officer approves. Removing a speaker who is addressing a posted agenda item without disruption — regardless of the content of her remarks — violates the plain text of § 551.007(b). Subsection (e) goes further still: “[a] governmental body may not prohibit public criticism of the governmental body, including criticism of any act, omission, policy, procedure, program, or service.” Tex. Gov’t Code § 551.007(e). That subsection is the statutory source of the very BED(LEGAL) language Defendants themselves quote, and it independently prohibits what occurred here — the silencing of criticism of a District policy and service because of its content. Defendants identify no provision of TOMA that authorizes content-based removal. Mandamus or injunctive relief under § 551.142 is the appropriate remedy.

E. COUNT V STATES CLAIMS UNDER THE TEXAS CONSTITUTION.

1. Flowers Acted Ultra Vires by Exceeding the Scope of Her Delegated Authority.

Defendants argue that Flowers had authority to preside over the meeting and therefore cannot be subject to an ultra vires claim. But the ultra vires doctrine is not satisfied merely by showing that an official held some authority; it requires that the official act within the scope of authority lawfully delegated to her. *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 158 (Tex. 2016). BED(LOCAL) authorizes the presiding officer to remove speakers who are “disruptive or abusive” — not speakers who are reading quietly from a book within the District’s collection, in a normal tone of voice. By removing Ms. Wallace for the content of her speech rather than for any disruptive behavior, Flowers acted beyond the scope of the authority BED(LOCAL) actually delegated. That is precisely the kind of excess-of-authority conduct the ultra vires doctrine addresses.

Defendants further argue that HISD is not a proper defendant for Texas constitutional equitable relief, and that Flowers was sued only in her individual capacity. Plaintiff acknowledges the Texas Supreme Court's holding in *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372–73 (Tex. 2009), and the associated line of authority. To the extent amendment is needed to re-plead the Texas constitutional equitable claim as an official-capacity ultra vires action against Flowers, Plaintiff respectfully requests leave to amend under Rule 15(a)(2), which provides that the court “should freely give leave when justice so requires.”

2. No Damages Are Sought Under the Texas Constitution Alone; the § 1983 Remedy Is Sufficient.

Defendants correctly note that the Texas Supreme Court held in *City of Beaumont v. Bouillion*, 896 S.W.2d 143, 149 (Tex. 1995), that there is no implied private right of action for damages under Article I, Sections 8 and 27. Plaintiff does not dispute this principle as applied to a standalone Texas constitutional damages claim. However, Plaintiff's damages claims are independently grounded in 42 U.S.C. § 1983, which provides a complete damages remedy for the federal constitutional violations alleged in Counts I and II. Count V's primary purpose is to obtain declaratory and injunctive relief on broader Texas constitutional grounds and to preserve any ultra vires equitable claim. The dismissal of any Texas-law damages portion of Count V does not affect Plaintiff's § 1983 damages recovery.

F. PLAINTIFF HAS STANDING TO SEEK PROSPECTIVE DECLARATORY AND INJUNCTIVE RELIEF.

Defendants invoke *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983), to argue that past injury does not confer standing for prospective relief. But *Lyons* addressed a plaintiff who was subjected to a random police chokehold with no assurance he would encounter the same officer

again. This case is categorically different. Ms. Wallace is not seeking relief based on a random past encounter. She is a regular participant at School Board meetings who intends to continue attending and speaking. See Declaration of Bonnie Wallace ¶¶ 3-5 (Ex. A). Because Defendants raise standing under Rule 12(b)(1), the Court may consider evidence beyond the pleadings in resolving the jurisdictional question. She faces the same presiding officer, the same policies, and the same forum, at regularly scheduled recurring meetings. The Complaint alleges that she reasonably fears she will again be censored or removed if she attempts to criticize HISD library policies — including by reading from district-approved books. Compl. ¶ 29.

That is not the speculative future harm *Lyons* condemned. It is a credible, well-founded threat of enforcement arising from HISD's continuing enforcement of the same policies that caused the March 19 violation. See *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158–60 (2014) (credible threat of future enforcement is sufficient to establish standing for prospective relief). Ms. Wallace also alleges an ongoing chilling effect — a present, concrete injury that independently establishes standing. See *Speech First, Inc. v. Fenves*, 979 F.3d 319, 330–31 (5th Cir. 2020).

G. FLOWERS IS NOT ENTITLED TO QUALIFIED IMMUNITY.

Qualified immunity does not protect Flowers because (1) the Complaint plausibly alleges a First Amendment violation, and (2) the right to be free from viewpoint-based removal during a public comment period was clearly established as of March 19, 2026.

On the clearly established prong, Defendants bear the burden of showing that the law was not clearly established. Defendants acknowledge that *Heaney v. Roberts*, 846 F.3d 795, 801–02 (5th Cir. 2017), holds that removing a speaker from a limited public forum because of her viewpoint violates clearly established law. Defendants attempt to narrow *Heaney* by arguing that

this case involves “explicit language” rather than viewpoint. But as shown above, the explicit language was inseparable from Ms. Wallace's viewpoint: she was reading from a district-approved book to make a political point. The specific conduct alleged — removing a calm, non-disruptive adult speaker during a public comment period because the presiding officer found the speaker's demonstration of her political argument offensive — was clearly prohibited under *Heaney*, *Chiu v. Plano Indep. Sch. Dist.*, 260 F.3d 330, 346 (5th Cir. 2001), *Fairchild v. Liberty Indep. Sch. Dist.*, 597 F.3d 747, 758 (5th Cir. 2010), and *Robinson v. Hunt County*, 921 F.3d 440, 447 (5th Cir. 2019). Defendants’ own authority confirms the point: in *Gonzales v. Dankel*, 2024 WL 2958958, at *7–9 (E.D. Tex. June 12, 2024) — a decision Defendants themselves cite — the court held that a reasonable factfinder could infer selective enforcement of decorum rules against speakers who opposed sexually explicit books in school libraries, and reiterated that the right to be free from viewpoint discrimination in a limited public forum is beyond debate.

Critically, the Fifth Circuit's decision in *Biggers v. Massingill*, 2025 WL 429974, at *2 (5th Cir. Feb. 7, 2025) (unpublished), is squarely on point. In *Biggers*, the Fifth Circuit reversed a grant of qualified immunity where a presiding officer silenced a speaker under a purportedly neutral “decorum” rule, holding that “if proved, that would clearly violate the First Amendment.” Defendants cite only the district court's decision on remand, *Biggers v. Massingill*, 2026 WL 1346923 (N.D. Tex. May 14, 2026). That decision arose in a different procedural posture and on materially different facts — the plaintiff there was alleged to have violated the body’s meeting rules, while the verified Complaint here alleges that Ms. Wallace violated none. A district-court opinion, moreover, neither constitutes clearly established law nor displaces the Fifth Circuit’s earlier holding in the same case that plausibly alleged viewpoint discrimination defeats qualified immunity at the pleading stage. The Fifth Circuit's holding in *Biggers* directly controls here. A

reasonable presiding officer as of March 19, 2026, was on notice that using a “decorum” label to silence a non-disruptive speaker expressing a disfavored viewpoint violated clearly established First Amendment law.

CONCLUSION

Plaintiff has plausibly alleged that Defendants violated her First Amendment rights by removing her from a public meeting solely because of the content and viewpoint of her speech, as confirmed by the Complaint and the video record itself. The Complaint sets out specific factual allegations — the book she quoted, the district's approval of that book for minors, the calm manner of her delivery, the contrast with the uninterrupted next speaker — that far exceed the plausibility threshold of *Twombly* and *Iqbal*. Defendants' Motion to Dismiss relies on factual characterizations inappropriate for resolution on a Rule 12(b)(6) motion, misstates or ignores controlling authority, and fails to undermine any of Plaintiff's five counts. The Motion should be denied in its entirety. In the alternative, should the Court find any pleading deficiency in Count V, Plaintiff respectfully requests leave to amend.

Respectfully submitted,

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Certificate of Service

I certify that on July 13, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notice to all counsel of record.

/s/ Martin K. Etwop

Martin K. Etwop