IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISON

VIRGINIA STATE CONFERENCE NAACP, *et al.*,	)	
Plaintiffs,	)	
v.	)	Case No. 5:24-cv-00040
COUNTY SCHOOL BOARD OF SHENANDOAH COUNTY,	)	
Defendant.	)	

DEFENDANT SHENANDOAH COUNTY SCHOOL BOARD'S PROPOSED CONCLUSIONS OF LAW

Defendant, Shenandoah County School Board (the "School Board"), by counsel, respectfully proposes the following post-trial conclusions of law for the Court's consideration:

INTRODUCTION

Stonewall Jackson High School has been the name of Shenandoah County's southern campus high school since 1959. Ashby Lee Elementary School has been the name of Shenandoah County's southern campus elementary school since 1974. Generations of Shenandoah County residents have since attended and graduated from those schools, and they have fond memories that are associated with—and memorabilia that expressly display—*those* names. To them, the names of the schools *are* the schools. When asked where they attended high school, they invariably reply, "I went to Stonewall." Many of these folks' highest degree in life is their diploma from Stonewall Jackson High School. Perhaps these diplomas hang in their offices, or are proudly displayed above their mantels.

In the summer of 2020, amid the peak of the COVID-19 emergency—when government bodies were mandated against meeting in person and were only to meet virtually for the purpose

of addressing the emergency—the Shenandoah County School Board decided it was time to erase the names of those schools. They did so over the span of one week in a single meeting that was announced on the July 4th (Independence Day) holiday and was held virtually on July 9, 2020.

In a flurry of emails among the school board members and the superintendent on July 2nd regarding the wording of a motion to remove the names of both schools as well as the Rebels mascot of North Fork Middle School, board members acknowledged the potential for public backlash if they were to "rush[] it through." Nevertheless, board members and the superintendent at that time suggested that the meeting to raise the motion be set for July 9th, and that one particular board member be kept in the dark, in order to "condense the time that folks [have to] contact [them]" and thereby reduce the volume of public input. One board member suggested that "it would[] be best to delay the action until August and give the community an opportunity to be heard." However, the superintendent argued that it is best not to delay so that "outsiders" would not have time to get involved.

This, despite the fact that it was the School Board's practice, for items of public interest such as this one, to place the item on the agenda first as an informational item, second for public comment, and third as an action item. This process typically occurs over three separate meetings spanning at least one month. The purpose of this policy is to allow sufficient time for the public to become aware of, and informed regarding, the item, to form or assess their views on the item, and to offer their comments to the board.

Yet, less than a week after publicizing the agenda that announced (rather vaguely) the intent to take "Next Steps for Resolution condemning racism and affirming the division's commitment to an inclusive school environment for all"—a resolution that had only recently been passed on June 25, 2020 in reaction to the George Floyd debacle and resulting nation-wide protests—the

School Board decided to "retire" the names of two schools that had been as familiar to the residents of Shenandoah County as the names of their family pets.

Two days prior to the meeting, the board had been made aware of a community petition consisting of thousands of signatures of Shenandoah County residents who opposed changing the names of the schools. The board remained undeterred. Before the vote was taken, one board member, Marty Helsley—the one who'd been kept in the dark until the agenda was publicized—offered a motion to delay the vote until the August meeting for the purpose of allowing the public to make their voices heard. As current School Board member, Gloria Carlineo, put it in her 2024 Freedom Press article titled, "The Truth Behind the 2020 Name Change":

> [Helsley's] motion failed 5-1 without the courtesy of ANY comments from the other school board members who summarily rejected it. Instead, the board quickly moved to change the names, with the school board members going through the theatrics of how hard the decision was for them, likely unaware that their true feelings would soon be exposed by the FOIA request of a community member. And while our recent [May 9, 2024] meeting to [restore] the names lasted well past midnight as we listened to every single constituent and "outsider" who wanted to speak on the issue, the 2020 meeting without the public input was a very short one. In fact, by 9:30 PM, [Superintendent Mark] Johnston and one of the constituents who led the movement to change the names, were celebrating via email the board's decision. In what will perhaps be one of the most ironic exchanges of the entire process, the constituent celebrates how he was "*proud that representative democracy worked*." Mr. Johnston promptly agrees.
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> Tellingly, after the process was exposed, some tried to argue that even if the process was "flawed" we should have ignored it in favor of the outcome. Not only does the end NOT justify the means, but the process is an integral part in our nation of laws. Ignoring this would only encourage our leaders and other rogue boards to act against the wishes of their constituents with the hope that their mistakes will be ignored and never rectified. Instances like this erode the citizens' trust in our governmental systems and must never be accepted.

This brazen act by the 2020 School Board was nothing short of a slap in the face of the residents of the southern campus of Shenandoah County, who had known and loved the names of their schools for decades.

Of course, there was tremendous public backlash—including planned protests, threats of removal, and a lawsuit—in the days and weeks that followed. Still, the School Board—with some public input—proceeded to rename the southern campus high school "Mountain View High School" and the southern campus elementary school "Honey Run Elementary School" in January 2021, which names took effect later that year on June 1, 2021.

During the 2021 campaign for the Shenandoah County School Board, politically conservative candidates campaigned on the name change issue, positioning themselves against "cancel culture," "woke ideology," and "political correctness." One such candidate was Dennis Barlow, who stated that the "school name-change issue caught [his] attention" and that he became concerned that "an era of political indoctrination was in full swing and [he] want[ed] to return [Shenandoah County] schools to quality objective teaching." Another such candidate was Brandi Rutz, who said in no uncertain terms, "I am absolutely against 'retiring' the name of Stonewall Jackson" and, if elected, would "openly support a move to change the names back." Rutz also endorsed Barlow and fellow conservative candidate, Kyle Gutshall, for School Board in their respective districts.

On November 3, 2021, Rutz, Barlow and Gutshall were all elected to replace three members of the Shenandoah County School Board who had voted to retire the school names in 2020. These three took their seats on the board in January 2022, and months later, at the public's urging, the School Board noticed reconsideration of the school names as an informational item on the May 12, 2022 agenda.

At that meeting, the School Board received public comments on and discussed the item, including discussing whether to conduct a county-wide survey of the community's views on reversion to the original names. Unlike the board in July of 2020, the May 2022 board took no official action at that meeting, merely directing the superintendent to research and prepare a proposal regarding the survey. Next, the school board held a special called meeting on June 1, 2022, to determine whether and how to conduct the previously-discussed survey. However, suddenly and without explanation, the School Board Chairman, who at the time was Marty Helsley, indicated before the meeting got started that he and the other two members who were on the board in 2020 no longer wished to proceed with the survey, and so the survey was "scotched"—as School Board member Dennis Barlow later put it. Nevertheless, the conservative members of the board indicated that a motion would be made at the next School Board meeting on June 9, 2022 to restore the original school names. The motion was made and seconded at that meeting; however, with a 3-3 tie vote, the motion failed.

During the 2023 campaign for Shenandoah County School Board, Gloria Carlineo, Michael Rickard, and Thomas Streett all ran in a sort of "conservative bloc," all indicating their desire to consider restoring the original school names. For example, Carlineo told the Freedom Press that she would "seriously consider any requests submitted to the board" to restore the school names. During his campaign, Streett referred to Mountain View High School exclusively as Stonewall Jackson High School. On November 7, 2023, Carlineo, Streett and Rickard were all elected to replace the remaining three members of the School Board who had been on the board in 2020 when the names were retired. A conservative supermajority had been achieved. Rutz, Barlow, Gutshall, Carlineo, Streett, and Rickard. All six had campaigned, in part, to at least reconsider the name-change issue if the public raised it.

Unsurprisingly, when a request from the Coalition for Better Schools, a conservative citizens' group, to consider restoring the original school names was received by the School Board on April 3, 2024, the School Board placed the request on the April 11, 2024 agenda as an informational item. The Coalition's request contained the results of an unsolicited survey they had conducted of the southern campus regarding their choice of school names. The survey results indicated overwhelming support—91.3% of all respondents—for the restoration of the original names. Importantly, no one on the School Board or in the Superintendent's office had requested this survey.

The board also received a request on April 8, 2024, from a group of concerned citizens calling themselves "Claim the Names for Shenandoah County Public Schools" requesting that the board leave the current, "[n]on-divisive" names alone. No specific action was requested of the school board, considering the school names were already what the group wanted them to be. So the board elected not to place this request on the agenda.

Following the April 11, 2024 School Board meeting at which the Coalition's request was discussed as an informational item, the School Board heard public comment on the item at its April 22, 2024 work session, and individual members expressed their views on the topic. While some members touched on the survey conducted by the Coalition (some downplaying its importance), most members highlighted the "completely rushed", "unethical", "unfair" and "sneaky" way in which the 2020 School Board had acted to retire the original school names as their main reason for reconsidering the name-change.

Finally, the School Board placed the request from the Coalition to restore the school names as an action item on the May 9, 2024 School Board meeting agenda. The recommended action for that item was that the names be restored and that "[t]he funds required to implement the restoration

[] be provided by private donations exclusively and not be borne by the school system or government tax funds, though the SCPS [Shenandoah County Public Schools] will oversee disbursements relating to restoration costs."

After listening to even more (over three hours' worth from a total of 78 separate people) of public comments at that meeting, Tom Streett moved, and Gloria Carlineo seconded, a motion that the original names be restored at no cost to the school system or County. In the wee hours of May 10, 2024, the School Board finally took a vote. Other than Kyle Gutshall, who noted, in spite of his personal views, that residents in his district were "overwhelmingly in support of keeping the names the way they are", the School Board voted 5-1 to restore the original names to Stonewall Jackson High School and Ashby Lee Elementary School. Over the summer of 2024, the names of these schools were completely restored, and all costs were borne by the Coalition for Better Schools. Unlike the 2021 name change, which cost the Shenandoah County school system over $300,000 in unbudgeted funds, the 2024 name restoration did not cost the school system or the County a single penny.

The NAACP caught wind of this vote and—through counsel (of two separate DC law firms)—it promptly threatened to sue the Shenandoah County School Board "[a]bsent an immediate resolution". Shortly thereafter, it followed through. The NAACP and five of its student members alleged constitutional and other federal law violations because, essentially, the school names make them feel bad—"unwelcome"—"unheard—"inferior"—"distracted"—"hurt". Why? Because of their connection to the Confederacy and what that represents (to them). How? By simply being displayed around the schools and in announcements and on uniforms and other apparel.

It makes no difference, they claim, that all of these student plaintiffs are highly accomplished students, and in some cases, star athletes. It makes no difference that none of the student plaintiffs ever complained of overt racism by any member of the staff or faculty at either of these schools or by any member of the School Board. It makes no difference that 60 years have passed since Shenandoah County Public Schools were desegregated or that 160 years have passed since slavery ended in the United States. The NAACP, the parents of the minor plaintiffs, and the now university-enrolled student plaintiffs are offended by the school names. Therefore, the NAACP insisted that despite the valid vote of a democratically elected School Board to restore the names, they *must* be changed (again).

There is simply no evidence on the record that any of the School Board's members in May of 2024 had discriminatory intent, much less *animus*, when voting to restore the names. To the contrary, the evidence shows that many of the members were cognizant of the potential emotional impact and sympathetic toward those who might experience it before casting their votes; yet, they persisted for other valid reasons.

Regarding the issue of whether the current school names are "vestiges" of segregation, they could not possibly be so. When the School Board voted to name these schools in May 2024, Shenandoah County schools had already been fully integrated, and for quite some time. Any causal connection to segregation that might have existed had been broken when the schools were integrated, and certainly when the School Board retired the names in July 2020. Even assuming *arguendo* it had not been broken, there is simply no direct, primary-source evidence that either of the schools was named after Confederates in order to maintain segregation. Historical opinions to the contrary are nothing more than biased interpretations based on circumstantial evidence.

With respect to Ashby Lee Elementary School in particular, segregation in Shenandoah County had been over for ten years before that school was so named. It could not possibly be a vestige of segregation because it has never been segregated in its entire history. Yes, Massive Resistance was occurring when Stonewall Jackson High School was named, but only four years later, Stonewall Jackson High School desegregated. In fact, Shenandoah County was only the second county in Virginia to desegregate its schools.

Thus, the facts and the law do not support the plaintiffs' claims under the Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, or the Equal Educational Opportunities Act. Accordingly, the Court should rule in favor of the School Board on those claims. After all, the Court's prior ruling on the First Amendment compelled speech claim—albeit disappointing as it was to the School Board—is sufficient to grant the plaintiffs' requested relief with respect to Stonewall Jackson High School, where the bulk of the plaintiffs' attention in this case has been focused.

ARGUMENTS AND AUTHORITIES

I. Plaintiffs failed to meet their burden on their Equal Protection claim.

The Equal Protection Clause provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. "An equal protection violation occurs in one of two ways: (1) when the government explicitly classifies people based on race, or (2) when a law is facially neutral, but its administration or enforcement disproportionately affects one class of persons over another and a discriminatory intent or animus is shown." *Monroe v. City of Charlottesville*, 579 F.3d 380, 388 (4th Cir. 2009); *see also Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977) ("Proof of racially discriminatory intent or purpose is required to show a violation of

the Equal Protection Clause."). Equal protection violations on the basis of race are subject to strict scrutiny. *Fisher v. Univ. of Tex.*, 570 U.S. 297, 307-08, 133 S. Ct. 2411, 2417 (2013).

The Equal Protection Clause applies to local government bodies, like the School Board. *See Brown v. Bd. of Educ.*, 347 U.S. 483, 493, 74 S. Ct. 686, 691 (1954). In *Brown*, the Supreme Court held that the Equal Protection Clause prohibits segregation based on race in public education, and in so doing, noted that "[t]o separate [children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." *Id.* at 494.

However, this case differs from *Brown*, which involved a facial classification: explicit segregation of schools by race. *Id.* The Confederate school names here are facially neutral because White as well as Black children are exposed to the names Stonewall Jackson High School and Ashby Lee Elementary School. The only Equal Protection claim available on these facts is thus one relying on the disparate impact Confederate school names have on Black students. *See Va. State Conference NAACP v. Cty. Sch. Bd. of Shenandoah Cty.*, No. 5:24-cv-040, 2025 U.S. Dist. LEXIS 11726, at *32-33 (W.D. Va. Jan. 22, 2025). Accordingly, the relevant question is whether the Confederate school names and the "General" mascot disproportionately affect Black students.

A. Plaintiffs failed to establish that their Black members were disproportionately impacted by the School Board's decision to restore the school names.

In order to show disparate impact, it is not enough to show that Black students are impacted by the schools' and mascot's names; Plaintiffs must plausibly show that *its Black members* were impacted disproportionately, or in a wholly different manner, than students of other races *and* that such disparate impact was intentional. *See Hanover Cty. Unit of the NAACP v. Hanover Cty.*, 461 F. Supp. 3d 280, 297 (E.D. Va. 2020).

Plaintiffs' Black members are D.D., J.D., Briana Brown, A.D. Carter, and other "members of the Virginia State Conference NAACP [which] include Black . . . families whose students attend Mountain View H[igh]S[chool] and Honey Run E[lementary]S[chool]." Complaint, ECF 1, ¶ 18. Regarding this latter group of unidentified "families," we do not know much about the impact of the school name restoration on them, other than that they claimed it was "hurtful" because they felt "othered [sic]", and that they were "devastated." Because they were not named as plaintiffs, however, the School Board was not given the opportunity to subject these individuals' claims to the crucible of cross-examination. In other words, they are hearsay.

The named (or pseudonymously named) Black plaintiffs also attest to feeling hurt, unwelcomed, "inferiorized," ignored, and so on, by the School Board's decision to restore the school names. However, they also attest to the fact that they are all exceedingly high achieving students, and in some cases, star athletes. For example, D.D., in addition to being a straight-A student at Stonewall Jackson High School, is a star athlete and leader among her peers. She also plays for the women's varsity soccer team. D.D.'s younger sister J.D. is already, at the age of eleven, a very good student at Ashby Lee Elementary School, earning mostly As and Bs. Briana Brown was an excellent student at the Massanutten Regional Governor's School within Stonewall Jackson High School while she was co-enrolled there along with Strasburg High School. Briana is now thriving as a first-year student at the prestigious University of Virginia. A.D. Carter was similarly a very good student while co-enrolled at the Governor's School along with Strasburg High School, and he is also thriving now as a freshman at the well-regarded James Madison University.

While these young people testified that the Confederate school names distracted them and made it a little more difficult to focus on their school work and made them feel unwelcome, they

nevertheless all managed to overcome these stressors to succeed in both their academic and extracurricular endeavors. All of them are extraordinarily successful and well-adjusted young people who make the School Board proud to call them students and alumnae of Shenandoah County schools.

The opinion testimony of Dr. Spinks-Franklin does not change these facts or in any way negate them. As the doctor admitted at trial, she never opined that any of the Black student plaintiffs in this case were actually suffering from the sort of adverse effects of "cultural racism," "internalized racism," "toxic stress" or "race-based trauma" she described in her report and testimony. She did not interview them or administer questionnaires to determine whether any of the Black student plaintiffs were in fact impacted at all by the cultural racism and race-based stress she assumed to exist in the subject schools.

Indeed, her written report did not mention the plaintiffs in this case until close to the very end, where she off-handedly included them with other "Black students in Shenandoah County" who are presumably suffering from cultural, and possibly internalized, racism and any number of the litany of adverse effects described in her report that, according to "the literature," arise therefrom. It is unscientific to assume, as Dr. Spinks-Franklin did, that all Black students at Stonewall Jackson High School and Ashby Lee Elementary School would perceive the Confederate school names as racist and therefore suffer physical and psychological harm. Nor is it scientific to conclude therefrom that Black students at these schools are impacted disproportionately to—or "in a wholly different manner" than—their White peers (e.g. Plaintiff A.J.) who perceive the names in a wholly *similar* manner.

B. Plaintiffs have failed to establish that the 2024 School Board acted with discriminatory intent in restoring the school names.

"To prevail on an equal-protection-based race discrimination claim, the plaintiff must establish a discriminatory motive or purpose behind the challenged conduct, not just a discriminatory effect." *Lambert v. Bd. of Trs.*, 793 F. App'x 938, 942 (11th Cir. 2019) (citing *Dayton Bd. of Educ. v. Brinkman*, 433 U.S. 406, 413, 97 S. Ct. 2766, 53 L. Ed. 2d 851 (1977)). In identifying discriminatory intent in the Equal Protection context, the Fourth Circuit has consistently reaffirmed that "the ultimate question remains: did the legislature enact a law 'because of,' and not 'in spite of,' its discriminatory effect." *N.C. State Conference of the NAACP v. McCrory*, 831 F.3d 204, 220 (4th Cir. 2016) (citing *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279, 99 S. Ct. 2282, 60 L. Ed. 2d 870 (1979)). "Stated differently, that a given law or policy may foreseeably have some adverse impact on a particular racial or ethnic group is not sufficient to demonstrate invidious discriminatory intent — the 'decisionmaker' must set out with that very purpose in mind." *Coal. for TJ v. Fairfax Cty. Sch. Bd.*, 68 F.4th 864, 883 (4th Cir. 2023).

However, even *Feeney* does not require a showing of "racial hatred or animosity." *McCrory*, 831 F.3d at 233. And the plaintiffs "need not show that discriminatory purpose was the 'sole[]' or even a 'primary' motive for the [school name restoration], just that it was a 'motivating factor.'" *McCrory*, 831 F.3d at 220 (citing *Arlington Heights*, 429 U.S. at 266).

Determining whether discriminatory intent was a motivating factor calls for "a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Coal. for TJ*, 68 F.4th at 883 (quoting *Arlington Heights*, 429 U.S. at 266). The inquiry considers non-exhaustive factors set out by the Supreme Court in *Arlington Heights*: (1) whether the policy is "unexplainable on grounds other than race," (2) the policy's "historical background," (3) the "specific sequence of events leading up to" the policy's enactment, (4) "any departures from the

normal procedural sequence," and (5) the "legislative or administrative record." *Arlington Heights*, 429 U.S. at 266-68. Not only is there no direct evidence of discriminatory intent being a motivating factor for the School Board's decision to restore the school names, but each of the *Arlington* factors weighs in favor of the School Board.

i. The 2024 School Board, in line with their electorate, took issue with the rushed and undemocratic way the 2020 School Board retired the school names.

As is clearly evident from their contemporaneous, public statements leading up to and during the May 9, 2024 School Board meeting regarding the restoration of the school names, the 2024 School Board members all took issue with the process used by the 2020 School Board to retire the names of Stonewall Jackson High School and Ashby Lee Elementary School.

For example, School Board member Michael Rickard stated that "nobody from th[e] local community was heard" and that he was "sorry that four years ago, the process wasn't followed." School Board member Brandi Rutz stated that "to do things the way [the 2020 School Board] did, and the way it was done, was wrong"; that the "name changed in six days, over a holiday weekend, violating Virginia laws"; and that she "wish[ed] the process four years ago wasn't what it was." School Board member Thomas Streett opined that the 2020 vote simply was not done "right," "fair" or "ethically." Streett thought it was "improper" and "secretive" and showed a "lack of accountability, [] lack of respect, [] lack of loyality, integrity." School Board chair, Dennis Barlow, stated that he "watched the process unfold in 2020 from afar" and "it was awfully disconcerting to watch what was a case study in tamping down democracy . . . [b]ecause during a nine [] day window, something was . . . put on an agenda over the Fourth of July weekend with three days off, and it was voted on the next week and went into effect in that one-week span." School Board member Kyle Gutshall referred to the process in 2020 as "broken" and "unethical and unfair."

School Board member Gloria Carlineo called the process used in 2020 "sneaky" and "not an innocent mistake by some inexperienced school board" but rather "carefully choreographed machinations of a school board colluding to ignore the people they represent."

The 2024 School Board members who voted to restore the names (all but one) were also motivated to do so by the will of their electorate, which will they had discerned while on their campaigns for School Board, from their frequent interactions with and communications from their constituents, and of course via the overwhelmingly favorable election results. This electorate had been unceasingly vocal about the 2020 name change ever since it took place, demonstrating their discontent. The lone dissenting board member (Gutshall) also acted in accordance with his view of his constituents' position on the matter.

There was also the survey conducted by the Coalition for Better Schools, which, despite its flaws, was overwhelmingly (90+%) in favor of restoring the names. The Coalition's willingness to conduct the survey *pro bono* and furthermore to fund the entire name restoration process further demonstrated the strong public will to reverse the 2020 School Board's unilateral action and restore the school names.

Not only was the 2024 School Board's decision to restore the names *not* "unexplainable on grounds other than race," but it is most logically explainable on grounds other than race. The vast majority of Shenandoah County's southern campus (if not the entire county) was outraged by the 2020 Board's rushed and undemocratic actions, which outrage either already burned within or bled into candidates for School Board, who were consequently elected by large margins, and who promptly carried out the mandate of their constituents as soon as they were formally requested to do so by a group of citizens. Notwithstanding the Plaintiffs' allegations of racial motivations, there is simply no proof of discriminatory intent.

ii. The historical background of the original school names is open to varied interpretation.

There is no dispute that Stonewall Jackson High School was constructed and so named between 1957 and 1959 amidst a period in Virginia referred to as "Massive Resistance." This period began in 1956 in Virginia when a Democrat Senator of Virginia, Harry Flood Byrd, coined the phrase and conceived of a set of policies and legislation that could be utilized to prevent school desegregation in Virginia following the Supreme Court's *Brown v. Board of Education* decision in 1954. To that end, the General Assembly enacted approximately two dozen laws, including the Pupil Placement Act.

The Pupil Placement Act created the Pupil Placement Board, which was a three-person state agency appointed by the governor that was charged with assigning all public school students in the state of Virginia to schools. Between 1956 and 1960, the Pupil Placement Board had sole jurisdiction to make school assignment decisions for all public school students, both Black and White, in Virginia, who sought to transfer schools or apply to attend school for the first time.

The Pupil Placement Act and Board were immediately challenged in federal court by the NAACP, and over time, the authority and decision-making processes of the Pupil Placement Board were severely limited by the federal courts, so much so that school desegregation began in Virginia on February 2, 1959 despite the Pupil Placement Board's efforts to maintain segregation. Around that time, the General Assembly reconvened and altered its Pupil Placement Board policies to allow localities to opt out of the Pupil Placement Board's assignment processes and take control over the pupil placement process themselves. Localities, such as Shenandoah County, did not have the ability to opt out of the Pupil Placement Board until 1960.

When Stonewall Jackson High School was so named on January 12, 1959, in a motion made by the Chairman and unanimously passed, the School Board minutes do not expressly reflect

the School Board's intent in doing so. The School Board is currently not aware of any connection between Massive Resistance and the naming of Stonewall Jackson High School. To the contrary, historical records indicate that a certain D. Coiner Rosen proposed the high school be named Stonewall Jackson High School in honor of General Stonewall Jackson's military service in the immediate area in order to serve as an inspiration to those who would attend. The high school also sat within what was then called Jackson District.

When the Stonewall Jackson High School opened to students in the fall of 1959, the Pupil Placement Board still had jurisdiction over all pupil placements in Virginia. Accordingly, Stonewall Jackson High School was segregated by race and all-White when it first opened. In 1962, Shenandoah County Public Schools began to desegregate, and Black students began enrolling at Stonewall Jackson High School in the fall of 1963.

Ashby Lee Elementary School was built between 1973 and 1975. On November 11, 1974, School Board member, Reverend Pendleton, moved to name the southern campus elementary school—previously referred to as Stonewall Jackson Primary—Ashby Lee Elementary School, which motion was seconded and unanimously adopted. As was the case with Stonewall Jackson High School, the School Board minutes do not expressly reflect the School Board's intent in naming Ashby Lee Elementary School, and the School Board is currently not aware of any connection between Massive Resistance and the naming of that school. To the contrary, the elementary school served two districts, which were at that time called Ashby District and Lee District. Furthermore, school segregation had not existed in Shenandoah County for ten years prior to the naming of Ashby Lee Elementary School.

iii. The sequence of events leading up to the 2024 vote support a legitimate, non-discriminatory basis for restoring the school names.

As detailed previously in Section I.B.i., the record supports the fact that the 2024 School Board members: (1) campaigned in part on the promise to reconsider the school names; (2) were elected by comfortable margins; (3) were prompted by a citizens' group, the Coalition for Better Schools, to put the name restoration on the agenda; (4) did so in accordance with campaign promises and the public's will, as demonstrated by the election results; (5) placed the request on the agenda first as an informational item, allowing public comment; (6) placed the request on the agenda a second time specifically in order to garner public comments; (7) placed the request on the agenda a third time in order to gather further public comment and to take a vote; and (8) listened to over three hours of public comments and publicly explained their reasoning before voting. The specific sequence of events leading up to the May 9, 2024 vote to restore the names of Stonewall Jackson High School and Ashby Lee Elementary School support a legitimate, non-discriminatory basis for the vote.

iv. As per normal practice, the 2024 School Board gave public notice of, and considered public comments regarding, the request to restore the school names over three separate meetings.

In accordance with Board norms and procedures on items of public interest, such as whether to change the school names, the 2024 School Board placed the Coalition for Better Schools' request, first, on the April 11, 2024 board meeting agenda as an informational item, second, on the April 22, 2024 work session agenda in order to receive public comment, and, third, on the May 9, 2024 board meeting agenda to receive additional public comments and to take action. Three separate meetings over the span of about a month. Not to mention the intervening 4 years since the school names were retired during which members of the public had continuously expressed their discontent.

Compare that with the 2020 School Board's decision to retire the school names, where the board published an agenda for the July 9, 2020 virtual board meeting just five days earlier on the July 4th holiday that included the action item, "6.5 *Next Steps* for Resolution condemning racism and affirming the division's commitment to an inclusive school environment for all," heard virtual-only public comment, and voted to retire the school names, *all* over a one-week span and a single meeting.

Unlike the 2020 vote, the lack of procedural departures in the 2024 vote by the School Board, which allowed for ample public input—including fierce opposition to restoration of the original names—supports a non-discriminatory basis for the School Board's decision to restore the school names.

v. The 2024 School Board is not on record acknowledging that the school names are racially discriminatory and is not bound by the 2020 School Board's action taken pursuant to its resolution.

As the School Board has argued throughout this case, it would be impractical and nonsensical to hold every government body to the resolutions of its predecessors. The legislative record of the 2024 School Board supports a legitimate, non-discriminatory basis for restoring the school names, i.e., the need to correct a rushed, undemocratic action taken by the 2020 School Board. While some 2024 School Board members acknowledged the emotional impact that restoring the names could cause Black students, Plaintiffs offered no evidence that the board members individually, or the School Board as a collective, agreed with the 2020 School Board's view that the Confederate school names are discriminatory toward Black students. Nor is a School Board composed of entirely different individuals, with very different viewpoints on the names than the 2020 board members, bound by the 2020 School Board's action taken pursuant to its resolution against racism and for an inclusive school environment. Does Congress' passage of the Fugitive

Slave Act in the 19th century mean all congresses since are racist? The 2024 School Board's legislative record supports only one conclusion: that it does not view the Confederate school names as racist or otherwise discriminatory to Black students, and its issue with the name change was largely about the process.

C. To the extent the plaintiffs have met their burden of proof on discriminatory intent, the name restoration was narrowly tailored to achieve a compelling government interest.

While a state government may not arbitrarily treat people within its jurisdiction differently, it is well recognized that this proposition "must coexist with the practical necessity that most legislation classifies for one purpose or another, with resulting disadvantage to various groups or persons." *Romer v. Evans*, 517 U.S. 620, 631, 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996). In recognition of the practical necessity of some classification, courts employ different levels of scrutiny for different types of classifications.

There are three levels of scrutiny, of which two apply in the context of the Fourteenth Amendment. First, there is rational basis scrutiny. If a case does not involve a suspect classification or a fundamental right, under Fourteenth Amendment case law, rational basis scrutiny will be employed. *Clark v. Jeter*, 486 U.S. 456, 461, 108 S. Ct. 1910, 1914, 100 L. Ed. 2d 465 (1988). The general rule under rational basis scrutiny is that legislation is presumed to be valid and will be upheld if the classification is rationally related to a legitimate state interest. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440, 105 S. Ct. 3249, 3254, 87 L. Ed. 2d 313 (1985); *Schweiker v. Wilson*, 450 U.S. 221, 230, 101 S.Ct. 1074, 1080, 67 L.Ed.2d 186 (1981); *United States Railroad Retirement Board v. Fritz*, 449 U.S. 166, 174-175, 101 S.Ct. 453, 459-460, 66 L.Ed.2d 368 (1980); *Vance v. Bradley*, 440 U.S. 93, 97, 99 S.Ct. 939, 942, 59 L.Ed.2d 171 (1979); *New Orleans v. Dukes*, 427 U.S. 297, 303, 96 S.Ct. 2513, 2516, 49 L.Ed.2d 511 (1976).

Second, there is strict scrutiny. Strict scrutiny asks whether a law is narrowly tailored to achieve a compelling government interest. *Citizens United v. FEC*, 558 U.S. 310, 340, 130 S.Ct. 876, 898, 175 L.Ed.2d 753, 782 (2010). In the Fourteenth Amendment context, if a classification discriminates on race, national origin, or alienage, collectively known as suspect classifications, a court will apply strict scrutiny. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 61, 93 S. Ct. 1278, 1311, 36 L. Ed. 2d 16 (1973); *see Loving v. Virginia*, 388 U.S. 1, 11, 87 S.Ct. 1817, 1823, 18 L.Ed.2d 1010 (1967).

i. The School Board merely restored the original names, which were then implemented with private donations at no cost to the taxpayers.

The 2024 School Board took a very narrow approach to renaming Mountain View High School and Ashby Lee Elementary School. School Board policy FFA allowed it to implement whatever names the board and the local community saw fit, within reason. Using the name of a general who conducted a brilliant military campaign in the area is not indicative of a discriminatory intent. The School Board merely restored the original names that were known and loved by the vast majority of the local community.

Furthermore, the School Board restored the names under the express condition that no public funds would be expended in order to implement the restoration and that it would instead be entirely funded through private donations. Not one penny of County funds was used to physically restore the school names. In short, the 2024 School Board took the most narrowly tailored action it possibly could in order to correct what it saw as a grievous error by the 2020 School Board.

ii. The 2024 School Board reversed the 2020 School Board's undemocratic act of public betrayal to restore the public's trust in their government.

As mentioned previously, the "compelling government interest" in the restoration of the school names was indeed the restoration of public trust in the legitimacy of the School Board,

whose members are elected to represent and serve their constituents. The citizens of Shenandoah County's southern campus in particular were, by and large, outraged by their perceived lack of opportunity to participate in the School Board's decision to retire the school names in 2020.

This erosion of public trust undoubtedly bleeds out into other areas of the county as those in the central and northern campuses of Shenandoah County witness their School Board disregard the views of those served by the very schools whose names it so suddenly and surreptitiously erased. If the members of the School Board who campaigned and were elected to replace the 2020 School Board members on a commitment to reconsider the school names were to excuse or overlook the 2020 Board's most irregular and undemocratic actions, it would only serve to further erode the public trust and delegitimize the School Board. Eschewing that is most certainly a compelling government interest.

II. Plaintiffs have similarly failed to meet their burden on their Title VI claim.

Title VI of the Civil Rights Act of 1964 provides that no person shall, "on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. "[P]rivate individuals may sue to enforce [Title VI] and obtain both injunctive relief and damages." *Alexander v. Sandoval*, 532 U.S. 275, 279-80, 121 S. Ct. 1511, 149 L. Ed. 2d 517 (2001). Title VI applies to federally financed educational programs, *Peters v. Denney*, 327 F.3d 307, 315 (4th Cir. 2003), which include Shenandoah County Public Schools.

The Fourth Circuit has held that, similar to an Equal Protection Clause claim under the Fourteenth Amendment, a claim brought under Title VI of the Civil Rights Act must show not only disparate impact, but "intentional discrimination."

> It is well-settled that there is an implied private right of action to enforce § 601's core prohibition of discrimination in federally

> financed programs. *Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 582, 610-611, 77 L. Ed. 2d 866, 103 S. Ct. 3221 (1983); cf. *Cannon v. Univ. of Chicago*, 441 U.S. 677, 699, 60 L. Ed. 2d 560, 99 S. Ct. 1946 (1979) (addressing Title IX, and suggesting that a private right of action exists with respect to Title VI). It is equally clear that § 601 *prohibits only intentional discrimination, not "disparate impact" practices. Alexander v. Sandoval*, 532 U.S. 275, 280, 149 L. Ed. 2d 517, 121 S. Ct. 1511 (2001); *cf. Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 287, 57 L. Ed. 2d 750, 98 S. Ct. 2733 (§ 601 "proscribes only those racial classifications that would violate the Equal Protection Clause or the Fifth Amendment") (opinion of Powell, J.).

Peters v. Jenney, 327 F.3d 307, 315 (4th Cir. 2003) (emphasis added).

Because Plaintiffs have failed to establish a violation of the Equal Protection Clause, for the reasons argued previously, they have also failed to establish a Title VI claim. *Students for Fair Admissions. Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 198 n.2 (2023) ("We have explained that discrimination that violates the Equal Protection Clause of the Fourteenth Amendment committed by an institution that accepts federal funds also constitutes a violation of Title VI.") (quoting *Gratz v. Bollinger*, 539 U.S. 244, 276 n.23 (2003)).

III. Plaintiffs' EEOA claim fails because the 2024 names of what are now integrated schools could not possibly be "vestiges" of segregation, which ended 60 years prior in 1964.

"As a substantive matter, the EEOA provides protections similar to those provided by the Equal Protection Clause." *United States v. City of Yonkers*, 96 F.3d 600, 620 (2d Cir. 1996). The underlying "purpose of the EEOA is equality of educational opportunity." *Jackson v. Waller Indep. Sch. Dist.*, No. H-07-3086, 2009 U.S. Dist. LEXIS 88062, 2009 WL 3078489, at *14 (S.D. Tex. Sept. 24, 2009). An EEOA claim differs from an ordinary disparate impact constitutional claim because "the existence of [a] former *de jure* dual school system [can] suppl[y] the necessary element of intentional discrimination and gives rise to the affirmative duty to eliminate all vestiges of the dual system." *Stanley v. Darlington Cnty. Sch. Dist.*, 879 F. Supp. 1341, 1413 (D.S.C.

1995), *rev'd in part on other grounds*, 84 F.3d 707 (4th Cir. 1996). The issue is instead whether the defendant has failed to eliminate vestiges of *de jure* segregation. States cannot deny equal educational opportunity by "the failure of an educational agency which has formerly practiced such deliberate segregation to take affirmative steps . . . to remove the vestiges of a dual school system." 20 U.S.C. § 1703(b).

Within the school segregation context, "vestiges are those effects of intentional discrimination, which, if left unremedied, perpetuate the hallmarks of the regime of school segregation." G. Scott Williams, *Unitary School Systems and Underlying Vestiges of State-Imposed Segregation*, 87 Colum. L. Rev. 794, 800 (1987). "The vestiges of segregation that are the concern of the law in a school case may be subtle and intangible but nonetheless they must be so real that they have a causal link to the *de jure* violation being remedied." *Freeman v. Pitts*, 503 U.S. 467, 496, 112 S. Ct. 1430, 118 L. Ed. 2d 108 (1992); *see also United States v. City of Yonkers*, 197 F.3d 41, 46 (2d Cir. 1999) (requiring "an adequate causal link between the regime of *de jure* segregation and any ongoing remediable deficiency"). "The causal link between current conditions and the prior violation is even more attenuated if the school district has demonstrated its good faith." *Freeman*, 503 U.S. at 496. "It need not be shown that such vestiges have a discriminatory purpose, only that they have a discriminatory effect." *City of Yonkers*, 197 F.3d at 50.

Consequently, "there must first be a finding that there are vestiges of the former dual school system and that the educational agency failed to take affirmative steps . . . to remove those vestiges." *Jackson* 2009 WL 3078489, at *13. "[P]ost-Brown actions that have the effect of increasing or perpetuating segregation constitute a violation of the affirmative duty." *Stanley*, 879 F. Supp. at 1412.

A. The school names chosen in 2024 cannot be "vestiges" of segregation that are "so real that they have a causal link to the *de jure* violation being remedied."

Whether names and mascots of a school can constitute vestiges of segregation appears to be an issue of first impression. Courts have considered whether something is a vestige on a case-by-case basis. *See, e.g.*, *City of Yonkers*, 197 F.3d at 45-46, 51-53 (concluding that "low teacher expectations for minority students" and "insufficiently multi-cultural approach to curriculum and teaching techniques" were not vestiges because of lack of evidence); *Jackson*, 2009 U.S. Dist. LEXIS 88062, 2009 WL 3078489, at *13-14 (rejecting argument that "relatively poorer physical facility of a historically black school, standing alone, would violate the statute" because there was evidence that school was either equal or as good as other schools).

To make out a *prima facie* case based on a failure to take affirmative steps to remove the vestiges of a segregated school system, the plaintiff must show (1) that the relevant "schools were racially segregated by law at the time of *Brown* (which requires little proof because that is a matter of undisputed historical fact)" and (2) "that current conditions within the District continue to require desegregation remedies." *Id.* at 1412 (citing *Dayton Bd. of Educ. v. Brinkman*, 443 U.S. 526, 537 (1979)). Once this required showing is made, a presumption arises that present conditions are causally linked to the former dual school system, and the defendant has the burden of showing that current conditions are not the result of "the former state-imposed dual system." *Id.* If the causal connection does exist, then "[t]he remoteness in time of the school authorities' intentionally discriminatory actions is irrelevant." *Jacksonville Branch, NAACP v. Duval Cnty. Sch. Bd.*, 883 F.2d 945, 951 (11th Cir. 1989).

As to the first prong of the *prima facie* case, Stonewall Jackson High School and Ashby Lee Elementary School did not exist at the time of *Brown*. Stonewall Jackson High School opened in 1959 and Ashby Lee Elementary School opened in 1974. Arguably, the first prong of the *prima*

facie case is not satisfied by either school. However, Shenandoah County Public Schools were segregated at the time of *Brown* and remained segregated through 1962. Stonewall Jackson High School in particular was segregated when it opened and remained so until it desegregated in 1963. The first prong of the *prima facie* case is, seen that way, arguably satisfied with respect to Stonewall Jackson High School. Ashby Lee Elementary School, on other hand, was never segregated in its entire history, and Shenandoah County Public Schools had all been desegregated for 10 years when it opened in 1974. The first prong of the *prima facie* case is, therefore, not satisfied with respect to Ashby Lee Elementary School.

The second prong is whether the School Board's restoration of the Confederate school names in 2024, after they had been retired in 2020, qualifies as "perpetuating segregation" or has produced "current conditions . . . continu[ing] to require desegregation remedies." *Stanley*, 879 F. Supp. at 1412. Obviously, neither of these can possibly be the case considering all Shenandoah County Public Schools, including Stonewall Jackson High School, have been desegregated since 1964, and Ashby Lee Elementary School was never segregated. The restoration of the school names 60 years later is far too attenuated from the school system's former dual school status in order to be causally connected thereto. *See, e.g.*, *Will Gray v. Lowndes Cty. Sch. Dist.*, 900 F. Supp. 2d 703, 712 (N.D. Miss. 2012) (finding that "the limited use of the Confederate nickname and the playing of Dixie [were] not vestiges of segregation that [were] 'so real that they have a causal link to the *de jure* violation being remedied'") (citing *Freeman v. Pitts*, 503 U.S. 467, 485-486 (1992)).

B. By integrating its schools, Shenandoah County has, by definition, removed ALL vestiges of segregation.

According to Plaintiffs' segregation expert, Dr. Brian Daugherity, "integration" refers to "the federal compliance requirement that emerged in the late 1960s that schools no longer reflect their previous dual school status and promote a unitary school system in which *all vestiges of the*

segregated system were eliminated." By 1964, all Shenandoah County Public Schools were desegregated, and sometime later, the parties agree, they were fully integrated. When Stonewall Jackson High School and Ashby Lee Elementary School became integrated, they, by definition, eliminated all vestiges of the formerly segregated system in Shenandoah County. Accordingly, the school names cannot be vestiges of segregation.

C. The retirement of the school names in 2020 cut any causal link to Shenandoah County schools' former status of *de jure* segregation that might have still existed.

Assuming *arguendo* that Plaintiffs have made out a *prima facie* case, they are entitled to a presumption that present conditions are causally related to the former segregation of Shenandoah County Public Schools, and the burden then shifts to the School Board to make a contrary showing. *Stanley*, 879 F. Supp. at 1412. The fact that the Confederate names were retired in 2020 before being restored in 2024 cuts the causal link binding the alleged present discrimination and past *de jure* segregation, for two simple reasons: (1) when the names of the schools were restored in 2024, Shenandoah County Schools had already been desegregated for 60 years; and (2) notwithstanding the original purpose for naming the schools after Confederates, restoring the names in 2024 is exceedingly unlikely to cause the schools to become segregated again.

CONCLUSION

For the foregoing reasons, the Shenandoah County School Board respectfully requests that the Court adopt its proposed findings of fact and conclusions of law, enter judgment in its favor on the Fourteenth Amendment Equal Protection claim, Title VI claim, and Equal Educational Opportunities Act claim, order the NAACP to reimburse Shenandoah County for all attorneys' fees and court costs beyond those covered by the School Board's contract with its self-insurance pool, and award such further relief as the Court deems just and appropriate.

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CERTIFICATE OF SERVICE

I hereby certify on the 2nd day of March, 2026, I electronically filed the foregoing using the CM/ECF system, which will send notification of such filing to all counsel of record.

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