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 BRIEF IN OPPOSITION TO PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Defendant, Shenandoah County School Board (the "School Board"), by counsel, respectfully submits the following brief in opposition to Plaintiffs' proposed post-trial findings of fact and conclusions of law.

ARGUMENTS AND AUTHORITIES

I. Plaintiffs' conclusory assertions of disproportionate impact rest on a shaky foundation of unsubstantiated feelings, speculative opinions, and irrelevant facts.

A. Plaintiffs' feelings, though valid, do not rise to the level of harm to constitute a deprivation of their right to equal protection.

Throughout this case, Plaintiffs have talked a lot about their feelings and very little about actual harm they have suffered at the hands of the School Board. For example, Plaintiffs assert in conclusory fashion:

> Black students . . . are surrounded by Confederate symbology each school day and experience these effects: they *feel* like the School Board, teachers, and students *may* want Shenandoah County Public Schools to be segregated; *feel* unwelcome and uncomfortable attending school; *feel* inferior to their White peers; *feel* like they have less value than their White peers; are *unable* to trust peers and teachers at school; are *constantly* reminded of their ancestors' history of enslavement; and experience retaliation, harassment, and

> intimidation *in the community* for speaking out against the Confederate school names.

Pls.' Concl. Law, ECF 260, at ¶ 16 (emphasis added). These assertions are, by and large, Plaintiffs' feelings—not facts. They may feel that way, but it does not thus make it true. Plaintiffs are free to feel any way they want about the school names, but that does not mean that the names have to change in order to accommodate those feelings. "'[M]ere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable . . . are not permissible bases' for discrimination." *Grimm v. Gloucester Cty. Sch. Bd.*, 400 F. Supp. 3d 444, 461 (E.D. Va. 2019) (citing *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448, 105 S. Ct. 3249, 3259 (1985)). Feelings can be tools of control if so utilized.

Similarly, Plaintiffs assert:

> Black students . . . experience significant educational harm because of the School Board's restoration of the Confederate school names. They are distracted during class . . . , forced to put extra effort into their schoolwork, less likely to speak up in class, harbor a distrust of teachers and are less likely to seek out their teachers for fear they support the discrimination against Black students, and are forced to represent Stonewall Jackson while playing sports, which takes away from athletic achievements.

Pls.' Concl. Law at ¶ 17. Again, Plaintiffs may feel "distracted," "distrustful," and "forced" to do things, but, in order to be actionable, those feelings must have been caused by the School Board's decision to restore the school names. Unless the School Board intended for Plaintiffs to feel those feelings (and there is no evidence that it did), Plaintiffs' feelings are their prerogative and their responsibility alone. The mere fact that an action allegedly makes some individuals feel discriminated does not thus make the action inherently discriminatory toward those individuals. While it is true that harm caused by discrimination is a cognizable injury in fact, it has not been established that having schools named after Confederates constitutes discrimination *per se*.

Finally, Plaintiffs argue that they are disproportionately impacted by the restoration of the school names because it "emboldens race-based discrimination and harassment in Shenandoah County." Pls.' Concl. Law at ¶ 18. This is an easy allegation to make, but a much more difficult one to prove. One does not necessarily follow the other, and there is no evidence that any race-based discrimination or harassment in Shenandoah County was directly attributed to the School Board or its restoration of the school names. The School Board cannot predict, much less control, how others will react to its actions, and there is no evidence that the School Board intended to embolden racial discrimination in Shenandoah County.

B. B.B. and A.C.'s feelings regarding the school names are irrelevant because they have graduated and therefore no longer have standing to seek injunctive relief.

Briana Brown and A.D. Carter's feelings regarding the school names are referenced in support of Plaintiffs' argument that Black students at Stonewall Jackson High School and Ashby Lee Elementary School are disproportionately impacted by the school names, and therefore the names should be removed. *See generally*, Pls.' Concl. Law. But Ms. Brown and Mr. Carter are not students at either of those schools. In fact, both of them graduated from Strasburg High School and the Massanutten Regional Governor's School and are currently enrolled in competitive universities. They no longer have any stake in whether Stonewall Jackson High School's name is changed or remains the same. One of the requirements to seek injunctive relief is that the injury complained of will likely be redressed by a favorable decision. Therefore, Ms. Brown and Mr. Carter no longer have standing to seek an injunction.

Whether Ms. Brown "worr[ied] about racial prejudice" or felt that her school was "fostering a safe place for racists" or "considered leaving the prestigious Governor's School"—Pls.' Concl. Law at ¶ 21—is no longer relevant to the question of whether or not the name of

Stonewall Jackson High School should be changed. Ms. Brown is no longer affected, if she ever was, by the name of the high school she used to attend on a part-time basis. Whether Mr. Carter felt "the weight" of the Confederate school names, "ostracized" by them, or "unwelcome" because of them, is similarly not relevant. He too is no longer affected.

C. D.D. and J.D.'s feelings of being "unwelcome" and "inferior" at their schools are unfounded and, arguably, irrational.

D.D. and J.D. have both testified to feeling "unwelcome" at their schools, Stonewall Jackson High School and Ashby Lee Elementary School, respectively, and to feeling "inferior" to their White peers. Yet, they have also testified to being exceptional students—and in the case of D.D., a star athlete—who are treated with kindness by their teachers, coaches, and (for the most part) fellow students. These feelings of being unwelcome and inferior are based entirely on the names of their schools, which were named decades ago during a very different period in history.

These feelings, though not necessarily invalid, are simply not rational in today's racial climate in Shenandoah County. Segregation has not existed in Shenandoah County for sixty years. D.D. and J.D., among other Black students who freely attend Shenandoah County schools, are by all accounts thriving, beloved, and valued by their faculty and peers. There is no good reason for either of them to feel unwelcome, much less inferior, at their respective schools. Such unfounded feelings are not sufficient to support an equal protection claim.

D. Dr. Spinks-Franklin's opinions regarding the student plaintiffs are speculative at best—at worst, unscientific.

Plaintiffs assert in conclusory fashion that "Black students experience race-based traumatic stress as a result of Defendant's decision to restore the Confederate school names." Pls.' Concl. Law at ¶ 14. Although they cite testimony of Dr. Adiaha Spinks-Franklin and multiple plaintiffs, those plaintiffs do not specifically mention race-based traumatic stress ("RBTS"), so this assertion

is in fact based entirely on the testimony of Dr. Spinks-Franklin. She based her opinion that Black students at Shenandoah County schools experience RBTS on an assumption that all Black students find the school names to be racist and discriminatory. However, we know from other testimony, such as Principal Mike Dorman's, that this is not actually the case. Principal Dorman testified that at least one Black student requested a diploma from Stonewall Jackson, as opposed to Mountain View, High School. Furthermore, Dr. Spinks-Franklin admitted that she never actually spoke to any of the Plaintiffs and based her opinions regarding their experience of RBTS and all its after-effects entirely on her review of their public statements and deposition testimony. She conducted zero interviews, administered zero questionnaires or surveys, and made zero physical or psychological evaluations of the student plaintiffs.

Plaintiffs also assert based on Dr. Spinks-Franklin's opinions that "White students do not experience the same impact from exposure to Confederate schools names [as Black students]." Pls.' Concl. Law at ¶ 14. However, Dr. Spinks-Franklin did not even interview the sole White student plaintiff, A.J., much less any other White students at the subject schools. Instead, she based her opinion regarding "White students" on generalities gleaned from "the literature."

Indeed, much of Dr. Spinks-Franklin's testimony regarding the effects of race-based trauma on "Black students who experience racism" is not applicable to the Black student plaintiffs in this case, none of whom has testified to experiencing overt racism in Shenandoah County schools. For example, Plaintiffs argue based on Dr. Spinks-Franklin's opinions that "medical research shows that some of the short-term effects of routine exposure to race-based traumatic stress are that Black students have trouble with peer relationships, feeling safe in the school environment, and speaking up when confronted with racism." Pls.' Concl. Law at ¶ 29. That may be true, but none of the Black student plaintiffs in this case have been diagnosed with RBTS. Dr.

Spinks-Franklin merely assumed they are suffering with RBTS, based on vague testimony from the Black student plaintiffs about their "anxiety" when talking to new people, feeling "introverted," and feeling "concerned" or "worried" about what others are thinking. Pls.' Concl. Law at ¶¶ 30, 31. But Dr. Spinks-Franklin admits that she did nothing to rule out alternate causes for these fairly typical symptoms of being a teenager.

Plaintiffs cite Dr. Spinks-Franklin's opinions regarding the "short-term impacts" of persistent exposure to "racially negative messages, images, and symbols" such as "headaches, stomachaches, and difficulty completing work." Pls.' Concl. Law at ¶ 35. But the first two short-term impacts are not reported by any of the Plaintiffs, and "difficulty completing work," while reported by Plaintiffs, could just as easily be due to other factors such as increased difficulty of the work itself (as Mr. Carter reported), or any one of the litany of distractions available to modern-day students, or any other stressors that are aplenty for the average high school student. Dr. Spinks-Franklin did nothing to rule these out before issuing her opinions.

Finally, Dr. Spinks-Franklin's opinion that Black students are susceptible to "internalized racism, which is an unconscious belief in their own inferiority [that] causes low self-esteem and poor racial identity" is unprovable and unfalsifiable. If Black students are, by definition, not conscious of a belief in their own inferiority, who is to determine that they are experiencing internalized racism? Dr. Spinks-Franklin just assumes they are.

E. Amy Bass's opinions are not applicable to the Plaintiffs.

Plaintiffs assert based on Dr. Bass's opinions that "Confederate symbols undermine inclusivity and discourage students' participation in sports, which can cause detrimental effects on physical health, cognitive development, and social emotional well-being." Pls.' Concl. Law at ¶ 27. Evidently, however, the Confederate school names did not discourage the student plaintiffs

in this case from participating in sports, as not one of them withdrew from any sport or extracurricular activity in which they participated prior to the name change. Dr. Bass opined Confederate symbols put Black students in the unfair position of having to choose between "representing symbols that encompass racist and oppressive ideologies" and forgoing the opportunity to participate at all. Pls.' Concl. Law at ¶ 27. Here, all of the student plaintiffs chose the former. Not one of them chose to forego participation because of the Confederate school names, which surely they would have done had they genuinely viewed their participation as representing racist ideologies.

F. Ty Seidule's and Professor Daugherity's opinions regarding the motivations of the School Board in naming the schools are speculative and conclusory.

With all due respect to these scholars and their credentials, Seidule's and Daugherity's opinions that the school names at issue in this case were originally chosen by segregationists to protest the Supreme Court's decision in *Brown* and to dissuade Black students from requesting transfers into the newly opened high school, *see, e.g.*, Pls.' Concl. Law at ¶¶ 8, 9, and 10, are speculative and based entirely on circumstantial evidence. There is not a scintilla of direct, primary-source evidence of the School Board's discriminatory motives in naming the schools at issue or that the School Board ever expressly prohibited Black students from attending Stonewall Jackson High School.

G. Acts of racism by random community members and students, Nazis, the "Dixiecrats," the KKK, and other hate groups have absolutely nothing to do with the School Board.

Plaintiffs attempt to conflate the use of Confederate symbols by various "hate groups" (and potentially hateful individuals) with the use of the school names at issue by the School Board simply because both the symbols and the school names are associated with the Confederacy. Pls.' Concl. Law at ¶¶ 11 (discussing "Nazis" and "hate groups"), 12 (discussing "the Dixiecrats" and

"the KKK"), 13 (discussing "White community members" and "students at Stonewall Jackson High School" and "[t]he Does' neighbors," all of whom flew Confederate flags for various reasons). But there is zero evidence that these groups or individuals (or their interpretation of the Confederacy and its symbols) have anything to do with the School Board, or that the School Board has anything to do with them.

H. The alleged impact on the VA NAACP itself is not only unsubstantiated, it is irrelevant.

Plaintiffs assert in conclusory fashion that the School Board's "reinstatement of the Confederate school names also impacted the VA NAACP by *impairing its mission* to fight for the rights of Black people in Virginia by forcing Black students to attend school in a building that serves as a monument to slavery . . . ." Pls.' Concl. Law at ¶ 44 (emphasis added). On the contrary, reinstating the Confederate school names *enabled* the VA NAACP to fight for the rights of Black people in Virginia, thus *expanding* its mission.

Plaintiffs also assert that the School Board's restoration of the school names "drain[s] the VA NAACP's resources." Pls.' Concl. Law at ¶ 44. Not only is there no proof of this allegation, but it is irrelevant to the question of whether the NAACP's Black student members in Shenandoah County were disproportionately impacted by the restoration of the school names. Without its Black student members, the NAACP would have no standing to sue the School Board. And there is no evidence that the School Board anticipated, much less intended, to have the effect of draining the NAACP's resources. Ultimately, the School Board did not ask to be sued, and it has been forced to defend itself against the NAACP's lawsuit at great expense to its own resources. It is the NAACP's prerogative whether and where it spends its resources.

I. *Brown I* applies to *segregation* in schools, not Confederate names of schools.

Plaintiffs argue that the Supreme Court held in *Brown I* that the Equal Protection Clause prohibits "racial discrimination in public education" because it "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" and acknowledges that a Black student's feeling of "inferiority affects the motivation of a child to learn." Pls.' Concl. Law at ¶ 2. But the Supreme Court in *Brown I* was more specific than that. The Court held specifically that *segregation* based on race generates this feeling of inferiority that affects Black students' motivation to learn. *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954) ("To separate them 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."). This holding did not apply to all forms of alleged discrimination in schools generally, much less discrimination via Confederate school names specifically.

II. Plaintiffs' false accusations of discriminatory intent by the School Board rely on false assumptions, false characterizations, and false equivalencies.

A. Plaintiffs conflate the views expressed by individual School Board members with formal recognitions by the School Board.

Plaintiffs frequently assert that the 2020 School Board made statements that the names were adopted to promote segregation and Black inferiority. *See, e.g.*, Pls.' Concl. Law at ¶¶ 14, 60 ("Defendant School Board publicly remarked that it was impossible to detach the Stonewall Jackson and Ashby-Lee names from their racist and discriminatory connotations, and that retaining the names would mean encouraging a school ethos marked by 'inequality and racism.'"), 65, 121 ("This connection of the Confederate school names to the period of segregation and Massive Resistance was acknowledged by the School Board in 2020."). However, the School Board made

no such statements. Rather, individual members of the 2020 School Board did. These individual members do not speak for the School Board as a whole, and there are no formal Board actions that acknowledge the discriminatory nature of the school names.

B. The 2020 School Board's resolution condemned racism *and promoted inclusivity*, but Plaintiffs suppose the names were retired "to condemn racism."

Plaintiffs assert that the 2020 School Board retired the school names "acknowledging the[ir] discriminatory nature." Pls.' Concl. Law at ¶ 60. It is true that the School Board retired the names pursuant to its 2020 "Resolution condemning racism and affirming the division's commitment to an inclusive school environment for all." Pls.' Concl. Law at ¶ 61. But that is not necessarily a statement by the School Board that the names are racist. It could just as easily be a statement "affirming the division's commitment to an inclusive school environment for all."

In fact, 2020 Board member Andrew Keller explained his vote to retire the school names thusly: "You can't claim to be *inclusive*, which we do, and have students who feel like they're excluded. . . . Which is more important? Someone's heritage regarding a school name or someone's *inclusion* into that school, their right to feel welcome?" ECF No. 242-28 (emphasis added); ECF No. 242-1, at #22 (emphasis added). 2020 School Board member, Cynthia Walsh explained her vote: "Here we are, present day, and we're still struggling to make sure that every student in our school feels safe, welcome, and *included*." ECF No. 242-28 (emphasis added).

Barlow's alleged testimony that the 2020 School Board retired the school names "because they were discriminatory, noninclusive, and had a negative impact on Black students"— Pls.' Concl. Law at ¶ 11—is pure speculation. Barlow was not on the Board in 2020 and thus cannot speak to that Board's motivations for retiring the school names.

C. Plaintiffs conflate the views of the 2020 School Board with the 2024 School Board.

Plaintiffs argue: "The School Board embraced and championed the school names it had found to be discriminatory a mere four years earlier, without any justification or explanation negating the discriminatory impact of the names." Pls.' Concl. Law at ¶ 57. But that assumes the School Board members in 2024 agreed with the characterization of the school names by members of the 2020 School Board. Obviously, they did not. The 2020 School Board members' statements regarding the school names are not even attributable to the 2020 School Board, much less "fairly attributable to the School Board as a whole, regardless of change in membership." Pls.' Concl. Law at ¶ 67.

Yet Plaintiffs argue that by "restoring" the school names, the School Board "imported this history [of resistance to segregation] into the 2024 naming decision." Pls.' Concl. Law at ¶ 122. But if the School Board wanted to import this history with the names, it could have passed a resolution doing so, or built the history into the motion restoring the names. It did no such thing. Rather, it merely restored the previous names.

D. Public comments that the school names are discriminatory are *opinions*, not proof of discriminatory impact.

Plaintiffs argue that the 2024 School Board was "well-aware of the discriminatory legacy animating the Confederate school names when it voted to restore them" because "public commentary and correspondence to the School Board, including from Plaintiffs and the VA NAACP[,] also put the School Board on notice of the discriminatory nature of the school names." Pls.' Concl. Law at ¶ 54; *see also,* Pls.' Concl. Law at ¶ 66. But public opinions regarding the school names vary. The 2024 School Board was also aware of the non-discriminatory legacy of the school names.

For example, Gloria Carlineo was aware of newspaper articles from the time of Stonewall Jackson High School's naming that show a Shenandoah County resident named Coiner Rosen

campaigned for the name due to local connections to Confederate military history, particularly with respect to General Stonewall Jackson. Plaintiffs counter with the fact that Rosen was an avowed segregationist who "*likely* flew Confederate flags as the school's foundation was laid to protest desegregation," , but there is no evidence that Carlineo was aware of Rosen's status as a segregationist when she voted to restore the names, much less that Rosen flew Confederate flags at the school's founding.

E. Plaintiffs confuse empathy with agreement, disagreement with apathy.

Plaintiffs argue:

> Perhaps most significant, however, are the contemporaneous statements by members of the 2024 Defendant School Board, which demonstrate that the School Board unequivocally considered race when voting to reinstate the Confederate school names; demonstrate that Defendant had knowledge of the discriminatory impact of the school names; and, in the case of some members, demonstrate their apathy or antagonism towards the perspectives of Black students and their families.

Pls.' Concl. Law at ¶ 78. Plaintiffs cite as an example Dennis Barlow's acknowledgement of the potential impact on Black students and parents of the restoration of the school names: "[Y]es, I did say I would feel unsettled if I were Black and going through this." Pls.' Concl. Law at ¶ 11. But this statement is pure speculation by Barlow, and more importantly, merely an expression of empathy for the Black students as opposed to a statement of agreement with their views on the names.

Plaintiffs further cite Barlow's statement: "I understand . . . that there were people using the school system at that point for kind of a last-ditch effort to save what they saw as their world." Pls.' Concl. Law at ¶ 80. Again, this is merely Barlow's speculation, and he does not even imply that the School Board members at the time were a part of those "people" trying to "save what they saw as their world."

Plaintiffs also cite statements from 2024 Board members, Gloria Carlineo and Thomas Streett, as evidence that the School Board was apathetic (or even antithetic) to the testimony of Black community members opposing the Confederate school names. Pls.' Concl. Law at ¶¶ 82, 83. However, these statements merely indicate these Board members' disagreement with the perspectives of some Black community members that racism is alive and well in the United States and needs to be actively stopped. Plaintiffs confuse disagreement for apathy or, worse, antipathy.

F. Plaintiffs mischaracterize certain School Board members' public (and private) statements to imply "coded" racism.

Plaintiffs assert that some School Board members displayed "racial animus" through their use of "racially charged phrases or 'code words' when talking about Black people or people of color." Pls.' Concl. Law at ¶¶ 104–05. They cite as examples (1) Gloria Carlineo's criticisms of Diversity Equity & Inclusion and Black Lives Matter, (2) Dennis Barlow's inside joke made privately to his daughter, (3) an obviously sarcastic statement by Brandi Rutz that is taken completely out of context, and (4) Dennis Barlow's criticism of Critical Race Theory and Transgender issues. Pls.' Concl. Law at ¶ 105. It is unclear how any of these are examples of "racially charged phrases" or "code words" that demonstrate racial animus toward Black people. Regardless, "[d]iscriminatory purpose for constitutional analysis is to be gleaned not from individual officials but from the relevant governmental institutions." *Vaughns v. Bd. of Educ. of Prince George's Cnty.*, 574 F. Supp. 1280, 1370 (D. Md. 1983). Though these Board members are clearly not racist, their being racist would not mean the School Board acted in a discriminatory manner.

G. The School Board had no relationship with the Coalition for Better Schools either before or after its vote to restore the names.

Despite Plaintiffs' portrait of the School Board's "entanglement with the Coalition for Better Schools as a key driver of the reinstatement of the Confederate School names"—Pls.' Concl. Law at ¶ 89—the only School Board members who were actually involved with this organization were Dennis Barlow and, arguably, Brandi Rutz. Barlow's relationship with the Coalition ended prior to his election to the School Board. There is no evidence that Rutz communicated with the Coalition regarding the name change issue. [confirm]

Finally, it is irrelevant that Superintendent Melody Sheppard attended a single meeting of the Coalition at the invitation of School Board member, Marty Helsley, when she was first appointed to the position. Dr. Sheppard testified that she did not even know at the time she attended that meeting that there was a group calling themselves the Coalition for Better Schools.

H. The survey was merely supplementary to the Coalition's request to restore the school names.

Much ado is made about the survey conducted by the Coalition and the School Board's discussion thereof, Plaintiffs calling it "anomalous." Pls.' Concl. Law at ¶ 91. It is true, the survey *was* anomalous. But the Board's discussion of it was expected considering the Coalition's request— which had been placed on the agenda—expressly included the results of the survey.

In fact, several of the Board members downplayed the importance of the survey to their decision. Accordingly, none of them did any serious investigation into the survey's validity. It simply did not matter, because they were not considering restoring the school names because of any survey results. They had already been considering this action for years since the names were retired in 2020. The Coalition's survey was only discussed as supplementary evidence supporting the Coalition's request, which the Board already knew had wide support in the community.

I. The School Board's process to restore the names in 2024 was far superior to that of the 2020 School Board in retiring the names.

i. The 2024 School Board waited months after gaining a supermajority in favor of reconsidering the name change, until the community formally requested restoration of the school names, *before* placing the issue on the agenda.

Plaintiffs argue that "[b]y 2024, the 2020 School Board had been replaced with a new slate of members—all of whom had opposed the 2020 School Board's retirement of the Confederate school names" and that "[a]lmost *immediately*, the newly constituted Board set out to readdress the issue of the school names." Pls.' Concl. Law at ¶ 64 (emphasis added). But in fact, the 2024 School Board was constituted in January 2024 and did not place the name change issue on the agenda until April 2024 when the citizen group, Coalition for Better Schools, requested that it do so. Rather than a "strange about-face," , this action by the School Board was entirely predictable. Years had passed since the names were retired in 2020 in which the community had expressed their outrage, had elected the 2024 Board members (three in 2021, three in 2023) with the expectation that they would reconsider the name change, and had petitioned the School Board to restore the original school names.

Plaintiffs take issue with the fact that the School Board did not place on the agenda the request from the group called "Claim the Names" asking that the Board maintain the non-Confederate names. Pls.' Concl. Law at ¶ 93. They assert that "[t]his differed from the 2020 vote to retire the school names, where the School Board considered dueling resolutions: one to change the names and one to postpone taking action." Pls.' Concl. Law at ¶ 93. This is false.

The School Board published an agenda for the May 9, 2024 School Board meeting that included the action item: "Request from the Coalition of Better Schools to Restore School Names." In the agenda for the May 9, 2024 meeting, the "Recommended Action" for the resolution

described above was either: (1) "that the names of Stonewall Jackson High School and Ashby Lee Elementary School be restored to the schools now named Mountain View High School and Honey Run Elementary School respectively"; or (2) "to retain the current names of Mountain View High School and Honey Run Elementary School." May 9, 2024 School Board Meeting Minutes. The 2024 School Board also considered dueling actions.

ii. Unlike the 2020 School Board, the 2024 School Board followed the Board procedures for voting on "matters of public interest."

The School Board's procedures for voting on a resolution or action item that is a matter of public interest (or that requires, mandates, or recommends that public input be taken before any action is taken) are as follows: (1) it is first placed on the agenda as an informational item; (2) then it is placed on the agenda for a subsequent meeting in order to garner public comment; and (3) finally it is placed on the agenda for a subsequent meeting as an action item. DFF, ECF 261, at ¶ 7. An informational item is an agenda item upon which no action is taken at the meeting but rather upon which staff can present a certain topic and the public can provide input. DFF at ¶ 8. The School Board typically gathers public input through written comments and direct outreach from members of the public, along with public comment at School Board meetings. DFF at ¶ 9. The 2024 School Board followed this process exactly when it restored the school names. DFF at ¶ 87.

The 2020 School Board, on the other hand, 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.

iii. The 2024 School Board did not expend any public funds to restore the names, unlike the 2020 School Board, which spent an exorbitant amount of unbudgeted public funds to change the names.

In accordance with the School Board's 2024 motion to restore the school names, all costs to restore the names Stonewall Jackson High School and Ashby Lee Elementary School were paid with private donations from the Coalition for Better Schools. DFF at ¶ 90.

Whereas, when the School Board proceeded to vote on September 10, 2020 regarding the process to change the school names they had retired, the funds were not available in the current school budget or in the following year's budget, and private donations were not nearly enough to cover the over $300,000 in costs that the 2020 School Board incurred to change the names. DFF at ¶ 31.

iv. The 2024 School Board did not need to solicit community input on new names because it merely restored the original names.

Plaintiffs argue that the School Board's implementation of its restoration of the original school names "also deviated from its standard practice" because—unlike the 2020 School Board who "engaged in a year-long process, governed by the School Board policy, to solicit community input and vote on the new names"—the 2024 School Board "followed none of these procedures in 2024." Pls.' Concl. Law at ¶ 94. Of course they did. The 2020 School Board had to select "new names." The 2024 School Board merely restored the old names. It would not make much sense to expend the time and resources seeking public input on new names when the Board had just restored the original names.

Plaintiffs also take issue with the fact that the Coalition, as opposed to the County, funded the name restoration, as if it were a bad thing that Shenandoah County taxpayers did not have to pay for it. Pls.' Concl. Law at ¶ 92. They also assert that the School Board granted the Coalition authority to implement the name change, which simply did not happen. In fact, the Superintendent

and the principal of Stonewall Jackson High School, in coordination with the Coalition, implemented the name change. As Superintendent Sheppard and several Board members testified, the School Board had nothing to do with implementing the name restoration after its vote.

J. The school names are not tantamount to the Confederate flag.

Plaintiffs frequently and falsely equate "Confederate symbols" such as the Confederate flag with the school names in order to argue that courts have recognized their discriminatory nature. *See, e.g.*, Pls.' Concl. Law at ¶¶ 7, 12, 97, 98. However, no court has recognized that school names associated with the Confederacy are inherently discriminatory. Indeed, the cases cited by Plaintiffs, such as *Crosby v. Holsinger*, 816 F.2d 162 (4th Cir. 1987), dealt specifically with Confederate symbols like the Confederate flag and the mascots "Johnny Reb" and "the Confederettes."

Plaintiffs argue that the school names are Confederate "symbols of a belief in the inferiority of Black people" because "Stonewall Jackson, Robert E. Lee, and Turner Ashby[] are key figures in the Lost Cause/White supremacist mythos" and "Lee and Jackson in particular were the Christ- and disciple-like figures of the Lost Cause movement, and proponents of the Lost Cause commemorated them in innumerable ways . . . ." Pls.' Concl. Law at ¶ 51. But that is not necessarily the case—different groups can honor people for different reasons. There is no evidence the School Board restored the school names because of a belief in White supremacy.

Principal Michael Dorman's testimony that he removed the Confederate flag from the gym floor because "hate groups, Nazis and folks, [] would use that flag"— Pls.' Concl. Law at ¶ 11—is irrelevant because (1) he is not a School Board member, and (2) neither of the schools at issue currently display Confederate flags.

III. Even if Plaintiffs had met their burden to show disparate impact and discriminatory intent, the School Board would have restored the names regardless of racial considerations.

A. Correcting the rushed and undemocratic retirement of the school names by the School Board in 2020 is a legitimate, non-discriminatory basis to restore the school names.

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. 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.

And as argued in the School Board's previous memorandum, 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, considering 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.

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 undemocratic actions, it would only serve to further erode the public trust and delegitimize the School Board.

B. The individual School Board members, not the School Board itself, invoked their legislative privilege.

Legislative privilege belongs to the individual board members, not to the School Board itself. To the extent the School Board objected to discovery requests on the basis of legislative privilege, it did so with the understanding that the individual Board members intended to invoke their legislative privilege and with the desire to not selectively waive that privilege. The School

Board is not an individual asserting legislative privilege on behalf of other individuals. It did not even assert the privilege on behalf of its members. The School Board merely preserved its members' right to invoke the privilege themselves and its right not to waive their privilege against their will by disclosing their privileged communications. Unless the individual members waive their privilege, they have the right to invoke their privilege regardless of whether it is to the benefit or harm of the School Board as the defendant.

C. The individual School Board members' invocation of legislative privilege did not prevent the Plaintiffs from discovering the School Board's legitimate, non-discriminatory bases for restoring the school names.

The Court's memorandum opinion on the School Board's motion for protective order based on legislative privilege (ECF 169) detailed five exclusions from the legislative privilege to which the School Board members were otherwise entitled. The Court (1) ordered the production of documents and communications created, and permitted inquiry into the 2024 School Board members' actions, statements, and opinions, *after the May 2024 vote*, including inquiry into their present opinions; (2) ordered the production of documents and communications produced by current School Board members, and permitted inquiry into opinions current School Board members held and statements they made, *before they were elected to the School Board*; (3) ordered the production of documents or communications shared with, or received from, *individuals and organizations other than the School Board members*, and permitted inquiry into the School Board members' *dealings with outside individuals or organizations*; (4) ordered the production of evidence of purely factual information *available to the School Board at the time it voted to restore the names*; and (5) permitted discovery concerning documents or communications involving one or more School Board members regarding, and permitted inquiry into, School Board members' statements and opinions regarding, whether *race or awareness of the impact of the school names*

on Black students or the differential impact of the school names on children of different racial backgrounds was considered by them prior to the May 2024 vote. Mem. Op. Leg. Priv. at 14-17 (emphasis added). These broad exclusions enabled Plaintiffs to obtain and inquire into more than enough evidence of the factual information available to the School Board and factual bases for the vote to restore the school names in 2024.

The allegation that the School Board somehow utilized its members' independent, voluntary assertions of legislative privilege as a "shield" to prevent discovery into these topics is incorrect, as proven by the School Board members' and employees' deposition transcripts as well as the School Board's discovery responses. Regardless, the privilege is not the School Board's to wield, either as a shield or a sword.

Plaintiffs already had access to the relevant meeting minutes and recordings in which the board members offered, via their public statements, their contemporaneous thoughts and impressions while deliberating on which way to vote regarding the school names. The parties even stipulated to many of those statements as facts. Plaintiffs had evidence of the current School Board members' campaign promises and election results. Plaintiffs had countless email correspondences between board members and members of the public regarding the name changes, many of which include board members' thoughts, impressions, and motivations for voting the way they did. In short, Plaintiffs already had everything they needed before trial to assess the motives of the School Board members. It was neither necessary nor called for to pry into the privileged communications or *post-facto* thoughts of the board members for further evidence of their motivations.

D. The individual School Board members' invocation of legislative privilege did not completely prevent the School Board from offering evidence at trial of its legitimate, non-discriminatory bases for restoring the school names.

At trial, the School Board introduced evidence, which was either produced to Plaintiffs during discovery or publicly available and obtained by Plaintiffs, of factual information supporting a legitimate, non-discriminatory basis for voting to restore the names. This evidence included, for example: emails between 2020 School Board members leading up to the 2020 vote to retire the school names and to which the 2024 members gained access by way of a community member's FOIA request; a July 2020 community petition containing thousands of signatures opposing the 2020 name change; testimony from School Board members regarding their opinions and election campaigns regarding the 2020 name change prior to joining the School Board; election results from the 2021 and 2023 School Board elections; and the results of the survey regarding the school names conducted by the Coalition for Better Schools.

This evidence, all of which Plaintiffs had obtained through discovery, and only some of which was admitted into evidence, provided both parties the ability to argue regarding the bases for the 2024 School Board vote to restore the school names. Plaintiffs had ample opportunity to inquire into such evidence. The legislative privilege was not used as a sword or a shield by the School Board at trial.

IV. Complaints about the 2020 School Board's process in retiring the names are well-founded.

A. The 2020 process violated the Board Norms.

Plaintiffs assert that "[t]he evidence shows that the School Board's decision to retire the Confederate school names prompted an organized backlash by individuals who opposed the racial justice movement and viewed the removal of Confederate symbols as a threat to their preferred historical narrative, many asserting unfounded complaints about the Board's process." Pls.' Concl.

Law at ¶ 62. What's unfounded is Plaintiffs' accusation that those who opposed the rushed removal of the school names could only have opposed it because they viewed the racial justice movement as a threat to their Lost Cause mythos. On the other hand, there is plenty foundation for complaints about the 2020 Board's process.

To start, the 2020 process violated the Board procedures, which call for items of public interest to go through a 3-step process: first, as an informational item; second, as an item for public comments; and third, as an action item. Three separate meetings. Plenty of time for the public to weigh in. There is no question the 2020 School Board did not follow that process, and what's more, they knew it.

Plaintiffs admit that "the School Board's 2020 decision to retire the Confederate school names did not occur in isolation, but rather as part of a well-documented sequence of events catalyzed by the nationwide racial justice movement that followed the killing of George Floyd in the summer of 2020." Pls.' Concl. Law at ¶ 59. In other words, the decision did not happen organically. It was not a result of racism or discrimination that was occurring in Shenandoah County. It was spurred into motion by a nationwide movement following a controversial event that occurred half-way across the country.

B. The 2020 process violated FOIA.

On July 4, 2020, the School Board in place at the time published an agenda for the July 9, 2020 School Board meeting, which was to be held virtually due to COVID-19, that included the action item "Next Steps for Resolution condemning racism and affirming the division's commitment to an inclusive school environment for all."—a resolution the Board had just passed on June 25, 2020. At the July 9 virtual meeting, the School Board in place at the time voted 5-1 to retire the names Stonewall Jackson High School and Ashby-Lee Elementary School.

In July of 2020, the Virginia Freedom of Information Act (VFOIA) stated that, absent proper invocation of a statutory exception, "every meeting shall be open to the public" and "[a]ll public records and meetings shall be presumed open[.]" Va. Code § 2.2-3700(B). The School Board is a "public body" for the purposes of VFOIA. The July 9, 2020 School Board meeting was a "meeting" for the purposes of VFOIA. Accordingly, the July 9, 2020 School Board meeting was subject to VFOIA's open meeting requirements set forth in Va. Code § 2.2-3707.

Va. Code § 2.2-3707(A) provides that "[a]ll meetings of public bodies shall be open, except as provided in §§ 2.2-3707.01 and 2.2-3711." Va. Code § 2.2-3707(B), as it existed on July 9, 2020, provided that "[n]o meeting shall be conducted through telephonic, video, electronic or other electronic communication means where the members are not physically assembled to discuss or transact public business, except as provided in § 2.2-3708.2[.]"

Va. Code § 2.2-3708.2, as it existed on July 9, 2020, articulated various circumstances in which a public body may hold a meeting by electronic means, and the circumstance applicable to the situation in this case, the COVID-19 pandemic, is set forth in § 2.2-3708.2(A)(3). Va. Code § 2.2-3708.2(A)(3), as it existed on July 9, 2020, provided, in part, that "[a]ny public body may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17, provided that (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) *the purpose of the meeting is to address the emergency*." (Emphasis added.)

In early 2020, the COVID-19 pandemic emerged, prompting the Governor to declare a state of emergency pursuant to Va. Code § 44-146.17. The purpose of the July 9, 2020 School Board meeting, according to the July 9, 2020 School Board meeting agenda, apparently was not

to address the COVID-19 emergency. The action of retiring the names of Stonewall Jackson High School and Ashby-Lee Elementary School was certainly not undertaken to address the COVID-19 emergency.

Therefore, the action by the 2020 School Board to "retire" the school names violated VFOIA and was void *ab initio*. *See Berry v. Bd. of Supervisors*, 302 Va. 114, 134-35, 884 S.E.2d 515, 524 (2023). But for the General Assembly's HB 816 and SB 244, enacted during the 2024 General Assembly session, which validated otherwise lawful actions taken by public bodies during electronic meetings held during the COVID-19 state of emergency—and which was a direct response to the Supreme Court of Virginia's *Berry* case to ensure past pandemic-era virtual decisions remained valid—the 2020 School Board's action to retire the school names would have violated VFOIA and been void *ab initio*.

V. Plaintiffs failed to establish that the School Board's restoration of the school names violated the Equal Educational Opportunities Act.

A. Plaintiffs cannot escape the *jointly stipulated fact* that all Shenandoah County schools are "integrated" and therefore—according to their own expert—have removed *all vestiges* of segregation.

Plaintiffs argue that "[s]tudents may still be denied equal educational opportunity under the EEOA even if they attend *integrated* programs that fail to remove the vestiges of the program's former dual system." Pls.' Concl. Law at ¶ 113. According to their own expert, Professor Daugherity, "integrated" programs are, by definition, free of vestiges of the program's former dual system. That is what makes them "integrated" as opposed to merely "desegregated." As the parties stipulated, Shenandoah County schools are fully integrated. Plaintiffs cannot escape this fact.

Additionally, Plaintiffs argue that "[p]ost-*Brown* actions that have the effect of increasing or perpetuating segregation constitute a violation of the affirmative duty" to eliminate all vestiges of the dual system. Pls.' Concl. Law at ¶ 113. They argue that the "reinstatement both perpetuates

segregation and has produced 'current conditions' that 'require desegregation remedies.'" Pls.' Concl. Law at ¶ 124. How can this be the case if the schools are and have been long ago integrated? The school names cannot possibly increase or perpetuate segregation in 2024 in Shenandoah County, where segregation ended over 60 years ago.

B. The Black student plaintiffs in this case were not deprived of *any* educational opportunities because of their race.

The closest the Black student plaintiffs have come to being truly deprived of any educational opportunities is when they "considered" not attending the Governor's School within Stonewall Jackson High School, or considered not participating in sports or other extracurricular activities, because of the association of the school and mascot names to the Confederacy.

Plaintiffs argue that the names deprive them of educational opportunities by inflicting "physical and psychological harm from constant exposure to symbols denoting their inferiority and [] thus prevent[] [them] from fully accessing the equal educational experience to which they are entitled." Pls.' Concl. Law at ¶ 125. But this supposed harm is based entirely upon Dr. Spinks-Franklin's unsubstantiated assumptions about the Black student plaintiffs and conclusions drawn from their vague unsupported statements about feeling "unwelcome," "devalued" and "distracted." In reality, those same plaintiffs earned great grades, performed well in sports and extracurricular activities, and were treated with respect and admiration by their faculty and peers.

Though Briana Brown "considered leaving the Governor's School because of the name change," Pls.' Concl. Law at ¶ 126, ultimately she did not. She graduated and was accepted to University of Virginia. Though D.D. "even considered whether to participate in sports because of the association with the Confederate school names," Pls.' Concl. Law at ¶ 128, ultimately she did participate, and even thrived. Though Confederate school names and mascots allegedly "discourage Black students from participating in extracurricular and athletic activities," Pls.'

Concl. Law at ¶ 127, evidently none of the Black student plaintiffs were discouraged enough to quit any of their extracurricular or athletic activities in which they participated prior to the name restoration.

C. Even if Ashby Lee Elementary School was not integrated when it opened, it was most certainly desegregated, and thus its name could not have been a "vestige of segregation."

Plaintiffs argue that "[a]t Ashby-Lee Elementary School's founding, in 1975, although Black students were permitted to attend, it was still not an integrated school by the standards of the day." Pls.' Concl. Law ¶ 10. That may be true. However, it is irrelevant to the question of whether the name of that school is a vestige of *segregation*. It is self-evident that, in order for the name of the school to have been a "vestige of segregation," the school system must have been segregated at the time of naming. And even if it had been segregated at its naming, the fact that the Shenandoah County school system is fully integrated, as the parties have stipulated, means that there are no longer any vestiges of segregation at the school.

Plaintiffs argue that the School Board "maintained conditions that reproduced racial inequities" at Ashby Lee Elementary School. Pls.' Concl. Law at ¶ 118. They cite as evidence of this the fact that "[n]o Black teachers or administrators were employed in the school system, and no Black individuals served on the School Board during when Ashby-Lee was named." *Id.* Plaintiffs produced no evidence, however, that any qualified Black teachers applied to teach at Ashby-Lee and were denied or that there were any Black candidates for School Board in 1974 when Ashby-Lee was named. It is pure speculation to insinuate that the lack of Black teachers and School Board members in Shenandoah County during the naming of Ashby-Lee was due to "racial inequities within its schools."

VI. Plaintiffs are not *irreparably* harmed by the names of their schools.

In order to issue an injunction, a court must first ascertain whether the plaintiff has shown that it has suffered an irreparable injury. *See Wudi Indus. (Shanghai) Co. v. Wong*, 143 F.4th 250, 260 (4th Cir. 2025). Plaintiffs have failed to show that they have suffered anything other than uncomfortable feelings. Furthermore, Plaintiffs have failed to prove any "injury in fact that is both concrete and particularized, actual or imminent." While it is true that "[i]t has long been established that the loss of constitutional freedoms, 'for even minimal periods of time, unquestionably constitutes irreparable injury," *Leaders of a Beautiful Struggle v. Balt. Police Dep't*, 2 F.4th 330, 346, there is no constitutional freedom to have a school name that does not offend particular individuals.

Furthermore "the balance of hardships between the plaintiff and the defendant" favors the School Board here. If the names are not removed, at worst Plaintiffs' feelings will be hurt, whereas if the names are removed again, the Shenandoah County school system will be forced to withstand yet another costly and unpopular name-change debacle.

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.

SHENANDOAH COUNTY SCHOOL BOARD

By: /s/ John R. Fitzgerald

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CERTIFICATE OF SERVICE

I hereby certify on the 23rd 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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