

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

COALITION FOR TJ,

Plaintiff,

v.

FAIRFAX COUNTY SCHOOL BOARD,
and DR. SCOTT BRABRAND, in his
official capacity as Superintendent of the
Fairfax County School Board,

Defendants.

Civil No. 1:21-cv-00296-CMH-JFA

**BRIEF IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS**

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INTRODUCTION

The plaintiff “Coalition for TJ” seeks in this case to invalidate the Fairfax County School Board’s current admissions policy for the Thomas Jefferson High School for Science and Technology (TJ). Although the Coalition acknowledges that the admissions policy is facially race-neutral, it claims that the School Board enacted it to discriminate against Asian-American students and to engage in “racial balancing” at TJ. Inexplicably, the complaint fails to mention that the policy expressly forbids racial balancing and racial targets.

The complaint fails to state a claim and should be dismissed. The Coalition lacks associational standing because it is not a membership association or its functional equivalent. On the merits, the complaint fails to allege an Equal Protection Clause violation. The admissions policy not only forbids racial balancing, it prevents admissions evaluators from even knowing the race of the applicant. And if that fact alone were not dispositive, the Coalition also fails to plead facts that plausibly allege that the School Board enacted the policy to discriminate against Asian Americans.

STATEMENT OF FACTS

The facts set forth below are taken from the complaint, matters of public record of which the Court may take judicial notice, and documents specifically cited or referenced in the complaint. *See Philips v. Pitt Cty. Mem’l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009).

A. The School Board adopts a new admissions policy for TJ.

The Fairfax County School Board has 12 elected members, and its division superintendent is Dr. Scott Brabrand, also sued here in his “official capacity.” The School Board operates TJ—the Thomas Jefferson High School for Science and Technology—a Virginia Governor’s school that is “the top-ranked public high school in the nation.” Compl. ¶¶ 22, 24. The complaint describes the racial demographics of Fairfax County and of TJ as follows:

Race/Ethnicity	Fairfax County (as of 2019)	TJ (as of 2020)
Black	10%	1%
Hispanic or Latino	16%	3.3%
Asian/Pacific Islander	19%	73.0%
White	61%	17.7%

Compl. ¶¶ 23, 25.

The Coalition challenges the admissions process for TJ that the School Board adopted at its meetings on October 6, 2020 and December 17, 2020. Compl. ¶¶ 34, 36. The Coalition claims that the School Board adopted these changes with a “discriminatory intent” to “intentionally harm[] Asian-American students,” *id.* ¶¶ 62–63.

As evidence of alleged anti-Asian bias, the complaint cites specific statements by Dr. Brabrand and by certain School Board members at various meetings. *E.g.*, Compl. ¶¶ 42, 45. The complaint contains url hyperlinks to video recordings of those meetings and pinpoint citations to the relevant portions. For the Court’s convenience, Exhibit A to the Declaration of Cynthia C. Smoot (Exhibit 4) transcribes the quoted statements from the cited video clips; the video clips themselves are appended as Exhibit B to her declaration.¹

At an August 5, 2020 “town hall” hosted by the local chapter of the NAACP, Dr. Brabrand described as inequitable the fact that wealthy parents but not poor parents could fund expensive test-prep classes to help their children gain admission to TJ. Compl. ¶ 41. The Coalition characterizes that comment as “laying the groundwork for negative stereotyping of TJ’s majority Asian-American student body.” *Id.* ¶ 41 & n.31 (citing video). But it was clear that the Superintendent’s comments had no racial overtones:

¹ The complaint also cites several allegedly anti-Asian statements made by others, such as a retired FCPS teacher in 2018, Compl. ¶ 37. Because the complaint does not show that those statements or views were adopted by any member of the School Board, they are not included in Exhibit A.

[O]ur TJ admissions right now leans heavily on a test, and to be the highest score on a test. So if you have test prep access, you have a big leg up. And some families have the money and resources to spend thousands and thousands of dollars each year to get their kid TJ-test ready. And I think we've got to look hard at that and say is that the most equitable way to run our admissions process.

Ex. 4, Smoot Decl. Ex. A at 1.

On September 15, 2020, the staff and the School Board conducted a public work session to review the TJ admissions process. Compl. ¶ 42 & n.33. Dr. Brabrand proposed to eliminate the standardized test required of applicants, eliminate the application fee, and create five “regional pathways” to channel applicants for admission based on the location of their middle school. Compl. ¶ 31. He presented a slide projecting that his proposal could increase the percentage of Black students from 1% to 7%; increase the percentage of Hispanic students from 3% to 8%; increase economically disadvantaged students from 0.6% to 10.3%; and increase the percentage of English Language Learners from 0.6% to 3.4%. *Id.* The same slide projected that the percentage of Asian students would decrease from 73% to 54%, while the percentage of white students would increase from 18% to 25%. *Id.*

On October 6, 2020, the School Board voted unanimously at a work session to eliminate the application fee and the standardized-test requirements for admission to TJ, leaving the other elements of the admissions policy undecided. Compl. ¶ 33.² There is no truth to the Coalition's assertion that Dr. Brabrand at that meeting “directly attack[ed] the Asian-American families” by “demeaning” their sacrifices as ‘pay to play,’” Compl. ¶ 47 & n.50, as if he were saying that Asian-American families alone were the ones paying for expensive test-prep classes for their children. This is what Dr. Brabrand actually said:

² See also Minutes at 2, Fairfax County School Board, Oct. 6, 2020, <https://tinyurl.com/5e99tren> (cited at Compl. ¶ 33 n.23).

Merit is in the pool, and merit and talent is removed from the pool through the testing process. I just want to make one comment on the testing process. I know and received feedback through my own town halls that I talked about “pay-to-play” and many perceived that those were comments against parents and students who did support, as part of getting in TJ, taking those tests. I did not mean in any way to make comments that were disparaging against them at all. I do not support an industry that prays on the hopes and dreams of students and parents and requires thousands of dollars to be shelled out for students to be successful. But the students and their parents are simply playing by the rules—the rules that we set up here in Fairfax County.

Ex. 4, Smoot Decl. Ex. A at 3.

The complaint further alleges that certain School Board members made comments at the October 6 meeting showing their alleged bias against Asian-American students, but none of the cited statements supports the Coalition’s inference of racism. Paragraph 45 claims that Board Member Meren “described majority-Asian-American TJ’s culture as ‘toxic’ for Black students.” Compl. ¶ 45. But Meren was not criticizing Asian Americans; she was empathizing with the plight of a Black student who felt isolated at TJ:

We’ve heard from a student, whom I’ve spoken with many times now, who tried to bleach her skin, because she didn’t feel welcome as a Black student in the school. It’s toxic for those students who feel left out.

Ex. 4, Smoot Decl. Ex. A at 5.

Likewise, Paragraph 45 falsely accuses Member Frisch of criticizing the Asian-majority “culture” at TJ. He said no such thing. Rather, Frisch expressed concern that some parents used bigoted stereotypes to explain the low numbers of “Black and Brown” students at TJ:

Let me just say this is not a pipeline issue, and it’s not a testing issue, it’s both, and it’s way more than that. It’s a problem with the message that we send our kids, the students, our underrepresented students, and the culture that we allow in this system. I’ve received, I can’t even count the number of emails I’ve received, from parents telling me that the real reason we have an underrepresentation is because Black and Brown families don’t care, or they are culturally

disinclined from pursuing STEM. That's the sort of bigotry pointed at members of our own community is why we are here in the year 2020 asking for data about access to AAP and STEM and other opportunities, and for generations why they haven't had access to these opportunities, and why they've been denied the same dreams as everybody else has.

Ex. 4, Smoot Decl. Ex. A at 5.

The Coalition claims that another member (School Board Chair Ricardy Anderson) criticized "Asian-American students" as having "earned their places at TJ" because they were in "Test Prep since second grade." Compl. ¶ 47 & n.49. But Anderson said nothing about "Asian-American" students; she said that, assuming "TJ is for the gifted," then the standardized admissions tests required for admission did not fairly measure giftedness for students who had been "test-prepped since second grade." Ex. 4, Smoot Decl. Ex. A at 6.

The Coalition similarly claims that Board Member Keys-Gamarra admitted to "discriminatory language towards Asian Americans." Compl. ¶ 47 & n.51. But the cited video does not support that statement either. Keys-Gamarra instead called for respectful dialogue from community members so as to avoid unintended racial stereotypes:

I also want to address this issue of what diversity means. I've heard a number of comments from letters . . . and it all seems to equate diversity, some of it, with "Oh my God, are we're going to lower our standards." And I want to say that, just as we are concerned about certain communities feeling that we are maligning them by talking about tests, we must be very careful and cognizant about how demeaning these types of comments are and that many people consider these comments to be rooted in racism. I'm not saying that it's intentional, but we need to be mindful.³

The Coalition also complains that Board Member Omeish suggested at the October 6 meeting that the student population at TJ "should be proportional to the population numbers."

³ Ex. 4, Smoot Decl. Ex. A at 4–5.

Compl. ¶ 46. It is not apparent that Omeish was talking about *racial* proportionality, rather than regional representation.⁴ (Indeed, Omeish later joined her colleagues in voting to prohibit racial balancing and racial targets, noted below.) The complaint, however, does not attribute any anti-Asian comments to Omeish.

On December 7, 2020, the Superintendent presented two admissions-policy alternatives to the Board, a hybrid lottery plan and a holistic review process.⁵ His recommendations included increasing the minimum GPA required for admission to TJ from 3.0 to 3.5, as well as requiring full-year honors algebra or higher; honors science; and one other honors course or participation in the Young Scholars Program. *See* Ex. 1 at 5 (referencing 3.5 GPA).

On December 17, 2020, the Board adopted the holistic review plan but added its own requirement that the top 1.5% of students at each middle school be offered admission to attend TJ, if they wished to attend. Ex. 1 at 4. The 1.5% plan would expand “the pipeline for each middle school” and provide “equity of access and opportunity.” *Id.* The percentage plan replaced the Superintendent’s previously proposed “Regional pathway.” *Id.*

The Board also made clear that the TJ admissions process must “use only race-neutral methods.” *Id.* The policy specifically prohibits the use of “any specific racial or ethnic mix,

⁴ Member Omeish stated: “A school-by-school approach would allow us to have more diversity, more proper outreach, and it’s not really just having diversity, to Mr. Smith’s point about the region selection, but doing it right, and if you think about what is it that is going to effectively reach every child and make sure there is representation, that’s a key point, and I would add that it should be proportional to the population numbers, not just by middle schools.” Ex. 4, Smoot Decl. Ex. A at 6.

⁵ The complaint does not mention the December 7 meeting, but the Superintendent’s presentation is mentioned in the minutes of the December 17 meeting, which the complaint incorporates by reference. *See* Compl. ¶ 36 n.27 (citing Minutes, Fairfax County School Board, Dec. 17, 2020, [https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/BY5JH34D3388/\\$file/12-17-20%20ERM%20FINAL.pdf](https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/BY5JH34D3388/$file/12-17-20%20ERM%20FINAL.pdf)). A copy of those minutes is attached as Exhibit 1.

balance, or targets,” *id.*; *see also id.* at 5 (same), a key fact that the Coalition fails to mention.

The Board approved the top-1.5% plan and the race-neutral mandate by a vote of 10-1, with one abstention. *Id.* at 5.

On April 28, 2021, FCPS staff updated the regulation governing admissions to TJ to bring the regulation in line with the School Board’s adopted policy. *See* Ex. 2, FCPS Regulation 3355.14, <https://tinyurl.com/yhv764jk>. The regulation implements the race-neutrality requirement as follows:

[T]he admission process must use only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets. Candidate name, race, ethnicity, or sex collected on the application form will not be provided to admissions evaluators. Each applicant will be identified to the evaluators only by an applicant number (student ID number for FCPS students; applicant ID number for non-FCPS students).

Id., FCPS Reg. 3355.14.V.A.3.b.

B. Multiple parents file suit in *K.C. v. Fairfax County School Board* but are denied a preliminary injunction to block the new policy.

On November 4, 2020, 34 parents (and their children) sued the School Board in Fairfax Circuit Court, seeking to reverse the School Board’s October 6, 2020 decision to not require standardized testing for admission to TJ. *K.C. v. Fairfax Cty. Sch. Bd.*, No. 2020-17283. The plaintiffs included 14 of the parents whom the Coalition for TJ claims to be its “members” in this case.⁶ On January 7, 2021, the *K.C.* plaintiffs filed an amended complaint to add a challenge to the top-1.5% Plan that the School Board adopted on December 17. Ex. 3, *K.C.* First Am. Compl. ¶ 82.

⁶ The following parents who are named as Coalition members in paragraph 13 and 14 of the complaint are plaintiffs in *K.C.*: Hanning Chen; Justin Jia; Raja Kakayadi; Dheeram Kaleem; Yuhong Lin; Ying Y. McCaskill; Mahua Mitra; Hemang Nagar; James Pan; Mayuri Prodhuturi; Vijay Raghavan; Tilak Venigalla; Sampath Yarlagaadda; and Srinivas Akella. *See* Ex. 3, First Am. Comp., *K.C. v. Fairfax Cty. Sch. Bd.*

None of the *K.C.* plaintiffs claimed that the TJ admissions policy discriminates against Asian Americans. They principally argued that the policy violated Virginia law by not requiring a standardized test for gifted students seeking admission to a Governor’s school. *Id.* ¶ 91.

After a day-long evidentiary hearing, however, the circuit court denied the parents’ preliminary-injunction motion, finding that “plaintiffs have not clearly shown that they are likely to succeed on the merits nor have they shown that it is in the public interest to restore standardized testing as a prerequisite for admission to the class of 2021–2022.” *See K.C. v. Fairfax Cty. Sch. Bd.*, No. CL 2020-17283, 2021 Va. Cir. LEXIS 32, at *28 (Fairfax Feb. 2, 2021).

C. The Coalition files suit here, claiming that the TJ admissions policy discriminates against Asian Americans.

After the parents lost their preliminary-injunction motion in *K.C.*, the “Coalition for TJ” filed this case on March 10, 2021. The Coalition claims to have 5,000 members, Compl. ¶ 11, but it does not appear to be a traditional membership association or its functional equivalent. *See* Ex. 4, Declaration of Cynthia Smoot, ¶ 8. The Coalition admits that the School Board’s new policy is “facially race-neutral” but claims that “it was enacted with discriminatory intent” to “intentionally harm[] Asian-American students.” Compl. ¶¶ 62–63. The complaint alleges a single cause of action under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause. Among other relief, the Coalition seeks to enjoin the School Board to return to the prior admissions policy for TJ for the 2021-22 school year. Compl. at 25.

STANDARDS OF REVIEW

A motion to dismiss for lack of jurisdiction under Rule 12(b)(1) can be based either on the allegations in the complaint or on evidence outside of the pleadings. *Reyes v. Saldana*, No. 1:16-cv-734, 2017 WL 102967, *2 (E.D. Va. Jan. 10, 2017) (Hilton, J.) (citing *Richmond, Fredericksburg, & Potomac R.R. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991)), *aff’d sub*

nom. Reyes v. Homan, 700 F. App'x 311 (4th Cir. 2017). Either way, the plaintiff “bears the burden of establishing the court’s subject matter jurisdiction.” *Id.*

“To survive a motion to dismiss [under Rule 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The court must accept all well-pleaded factual allegations as true but does not accept “‘naked assertions devoid of further factual enhancement’” nor “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.” *Lewis v. Anthem Health Plans of Va., Inc.*, No. 1:20-cv-773, 2020 WL 5884290, *1 (E.D. Va. Aug. 31, 2020) (Hilton, J.) (quoting *Iqbal*, 556 U.S. at 678). The plaintiff must allege “‘a *plausible* claim for relief,’” and not merely “leave open ‘the possibility that a plaintiff might later establish some set of undisclosed facts to support recovery.’” *Id.* (quoting *McCleary-Evans v. Md. Dep’t of Transp.*, 780 F.3d 582, 587 (4th Cir. 2015)). And without converting the motion to one for summary judgment, the Court may consider documents that are “integral to and explicitly relied on” in the complaint, and whose authenticity is not in question. *Zak v. Chelsea Therapeutics Int’l Ltd.*, 780 F.3d 597, 606–07 (4th Cir. 2015); *Philips*, 572 F.3d at 180. If there is a discrepancy between a document or exhibit cited in the complaint and how the plaintiff characterizes it, the document or exhibit itself controls. *See, e.g., Massey v. Ojaniit*, 759 F.3d 343, 347 (4th Cir. 2014); *Am. Chiropractic Ass’n v. Trigon Healthcare, Inc.*, 367 F.3d 212, 234 (4th Cir. 2004).

ARGUMENT

I. The Coalition lacks associational standing.

The plaintiff bears the burden to prove standing. *White Tail Park, Inc. v. Stroube*, 413 F.3d 451, 459 (4th Cir. 2005). Citing *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333 (1977), the Coalition invokes “associational standing” to bring this case on behalf

of the parents of Asian-American students applying to TJ. Compl. ¶ 12. *Hunt* recognized that “an *association* has standing to bring suit on behalf of its *members* when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Id.* at 343 (emphasis added).

At a minimum, the Coalition fails both the preamble and element (c) of *Hunt*.

A. The Coalition is neither a traditional membership organization nor its functional equivalent.

To represent “members” in litigation, an association must be either “a traditional voluntary membership organization,” like a trade association or union, or “its equivalent.” *Id.* at 344–45. The plaintiff in *Hunt*—a State advertising commission that promoted Washington apples—was the functional equivalent of a traditional membership organization because the apple growers and retailers it served “alone elect the members of the Commission; they alone may serve on the Commission; [and] they alone finance its activities, including the costs of this lawsuit, through assessments levied upon them.” *Id.* Functional equivalency existed because, “[i]n a very real sense . . . the Commission represents the State’s growers and dealers and provides the means by which they express their collective views and protect their collective interests.” *Id.* at 345.

But not every association is the “functional equivalent of a traditional membership organization.” *Heap v. Carter*, 112 F. Supp. 3d 402, 418 (E.D. Va. 2015). “An organization must do more than merely have members to establish the existence of a membership organization.” *Small Sponsors Working Grp. v. Pompeo*, No. 1:19-2600-STA-jay, 2020 WL 2561780, at *5 (W.D. Tenn. May 20, 2020). In other words, “every group that is not a corporation or partnership is not automatically an unincorporated association.” *Brown v. Fifth*

Jud. Dist. Drug Task Force, 255 F.3d 475, 477 (8th Cir. 2001) (citation omitted) .

The Coalition fails the functional-equivalence test here. At the outset, the Coalition “has not provided any information that would indicate whether it meets [the] requirements” for associational standing. *In re Holocaust Victim Assets Litig.*, 225 F.3d 191, 196 (2d Cir. 2000). Just as in *Heap*, the Coalition “has provided no *details* about who the membership is or whether [plaintiff] truly can be considered a voluntary membership organization or a functional equivalent.” *Heap*, 112 F. Supp. 3d at 418 (emphasis added). That failure alone requires dismissal because the Coalition has the burden to prove its associational standing. *Id.*; *White Tail*, 413 F.3d at 459; *Md. Highways Contractors Ass’n, Inc. v. Maryland*, 933 F.2d 1246, 1252–53 (4th Cir. 1991).

The Coalition is obviously not a “traditional membership organization,” like a labor union or trade association. It appears to lack even the basic formalities of a membership organization, such as identified officers, a board of directors, or bylaws. *Small Sponsors*, 2020 WL 2561780, at *6; *see* Ex. 4, Smoot Decl. ¶ 8. What can be gleaned from its homepage and Facebook page suggests that the Coalition is also not “the functional equivalent of a traditional membership organization.” *Heap*, 112 F. Supp. 3d at 418 (quoting *Wash. Legal Found. v. Leavitt*, 477 F. Supp. 2d 202, 208 (D.D.C. 2007)). As this Court explained in *Heap*, “[f]unctional equivalency is determined if the organization (1) serves a specialized segment of the community; (2) represents individuals that have all the indicia of membership, including (i) electing the entity’s leadership, (ii) serving in the entity, and (iii) financing the entity’s activities, and (3) its fortunes are tied closely to those of its constituency.” *Id.*

In this case, all of those elements are missing. The second element is most obviously absent because the Coalition does not show any indicia of traditional membership, let alone “all

the indicia of membership” listed in items 2(i)–(iii) of *Heap*. The Coalition’s homepage and Facebook page do not identify “the entity’s leadership.” Ex. 4, Smoot Decl. ¶ 8. There is no link through which one could apply for membership. *Id.* The website does not indicate whether or how the unidentified leadership was elected by members (element 2(i)), nor how members are eligible to serve in the entity (element 2(ii)). *Id.* Nor does it show how the members finance the Coalition’s activities (element 2(iii)). *Id.* ¶ 4. There is no mention of dues paid by members, only an invitation to click and donate. *Id.* But donations go to a *different* unincorporated association with a confusingly similar name: “Coalition for *Truth and Justice*.” *Id.* (emphasis added). That entity also has a *different* mission: “to conduct original research, journalism, and advocacy about significant public issues relegated to education, contribute to sound public policy decisions and protect gifted and STEM education and the legal defense of the rights of students.” *Id.* ¶ 5. The funding page instructs that: “You can make your tax-deductible donation through Coalition for Truth and Justice, a program of United Charitable, a 501(c)3.” *Id.* ¶ 4. But the website does not explain the financial arrangements by which United Charitable transfers money to the Coalition for Truth and Justice, nor how the latter transfers funds to the plaintiff. *Id.* ¶ 5. In any case, the “Coalition for TJ” does not appear to be funded by traditional member dues, but instead by small-donor contributions and by one “generous donor who will match donations up to \$100,000.” *Id.* ¶ 4.

The Coalition’s structure, moreover, does not appear to provide a “means by which [the members] express their collective views and protect their collective interests.” *Hunt*, 432 U.S. at 344–45. To have associational standing, the members must “exercise a certain measure of control over the organization.” *Grp. Health Plan, Inc. v. Philip Morris, Inc.*, 86 F. Supp. 2d 912, 918 (D. Minn. 2000). “This requirement assures the substantial nexus between the organization

and its members necessary to meet the Article III injury requirement.” *Id.*; see also *Funeral Consumers All., Inc. v. Serv. Corp. Int’l*, 695 F.3d 330, 344 n.9 (5th Cir. 2012) (“If the association seeking standing does not have traditional members, as here, the association establishes its standing by proving that . . . its members . . . finance the organization’s activities, including the case’s litigation costs.”).

Like other organizations denied associational standing, the Coalition appears to be “run by people who are self-appointed, a fact which weighs heavily against its being considered a membership organization.” *Package Shop, Inc. v. Anheuser-Busch, Inc.*, CIV. A. No. 83-513, 1984 WL 6618, at *40-41 (D.N.J. Sept. 25, 1984). There is no indication that the 5,000+ alleged members of the Coalition, Compl. ¶ 11, took any “vote to bring this lawsuit,” or even that “a majority of the membership would have approved this lawsuit” had a vote been taken. *Id.* at 41. See Ex. 4, Smoot Decl. ¶ 8. “There is an important difference between having the opportunity to express opinions through letters or telephone calls and the power to control the activities of an organization.” *Package Shop*, 1984 WL 6618, at *40-41; *id.* at *41 (rejecting association’s standing where it did not “appear that the membership can control the actions of the officers and trustees, most of whom they did not elect”); see also *Sorenson Commc’ns, LLC v. FCC*, 897 F.3d 214, 225 (D.C. Cir. 2018) (holding that online-information forum with email “subscribers” and Facebook followers did not qualify as a membership association); *Gettman v. DEA*, 290 F.3d 430, 435 (D.C. Cir. 2002) (holding that *High Times Magazine* lacked standing to represent the interests of its readership because it failed to show that “its ‘readers and subscribers’ played any role in selecting its leadership, guiding its activities, or financing those activities”).

The Coalition’s allegedly broad membership also undermines the first and third elements of *Heap*, which condition representational standing on the association’s serving “a specialized

segment of the community,” such that the association’s “fortunes are tied closely to those of its constituency.” 112 F. Supp. 3d at 418. The Coalition’s membership is not so “specialized” or aligned with the relief sought here. While the complaint alleges that the Coalition’s members include current parents of seventh- and eighth-grade students planning to apply to TJ, Compl. ¶¶ 12–13, the Coalition’s Facebook pages reflect a much broader constituency, calling the Coalition for TJ “a network of parents, students, staff, alumni and community members dedicated to advocating for diversity and excellence” at TJ. Ex. 4 Smoot Decl. ¶ 6. Providing a “diverse student body that includes a wide variety of backgrounds, experiences and skills [that] enriches the learning environment for the students” was a stated purpose of the admissions policy adopted by the School Board. Ex. 1 at 4. The School Board is elected by Fairfax County voters, and many parents, alumni and community members likely *support* the admissions policy to advance those purposes. Yet nothing on the Coalition’s social media pages says that its membership is limited to only those who oppose TJ’s admissions policy. Ex. 4, Smoot Decl. ¶ 8. The resulting “diversity of views within its membership” prevents this entity from adequately representing its broad membership. *Int’l Woodworkers of Am. v. Chesapeake Bay Plywood Corp.*, 659 F.2d 1259, 1267 n.12 (4th Cir. 1981).

In reality, the Coalition appears to be the kind of “loose-knit association” that cannot facilitate representational standing. *Small Sponsors*, 2020 WL 2561780, at *6. Loosely affiliated groups are unlike other activist entities that have taken more formal steps to establish their membership bona fides. *Id.* For instance, the association representing Asian Americans challenging Harvard’s admissions process is a “validly incorporated 501(c)(3) nonprofit organization,” with actual voting members, bylaws, and a defined mission to oppose Harvard’s affirmative-action policy. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard*

Coll., 980 F.3d 157, 164, 184 (1st Cir. 2020), *petition for cert. filed* (U.S. Mar. 1, 2021) (No. 20-1199). Similarly, the association had standing in *Center for Sustainable Economy v. Jewell*, 779 F.3d 588 (D.C. Cir. 2015), because “all” of [its] current members [were] voting members entitled to elect its Board, no new voting members [could] join the organization unless approved by the present voting membership, and Board membership [was] limited to individuals who ‘have demonstrated a commitment to the mission and purposes of’ [the organization].” *Id.* at 598. The Coalition lacks any such membership control or clearly defined mission statement.

B. The participation of individual members is required.

The breadth of the Coalition’s membership and the relief it requests also render it unable to satisfy element (c) of *Hunt*, which requires that “neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” 432 U.S. at 343. We assume for argument’s sake that the parents of eighth-grade students currently applying to TJ, Compl. ¶ 13, would have standing in their own right to challenge the new admissions process, and that their claimed injury would be redressed if the Coalition prevailed. Nonetheless, the Coalition fails element (c) for at least two reasons.

First, “conflicts of interest among members of the association require that the members must join the suit individually in order to protect their own interests.” *Md. Highways*, 933 F.2d at 1252. As noted above, the members of the Coalition support excellence and diversity at TJ, not simply opposing the current admissions policy. It is doubtful that the Coalition asked its 5,000 members to “vote[] *unanimously* to prosecute this action.” *Retail Indus. Leaders Ass’n v. Fielder*, 475 F.3d 180, 188 (4th Cir. 2007). The breadth of the Coalition’s membership and the potential for opposing views among 5,000 members thus pose “actual conflicts of interest [that] would require that the individual members come into the lawsuit to protect their interests.” *Md. Highways*, 933 F.2d at 1253.

And second, the vague membership of the Coalition, combined with the specific Coalition “members” identified in the complaint, create claim-splitting problems that require the participation of individual members as plaintiffs. Fourteen of the Coalition’s members identified in paragraphs 13 and 14 of the complaint are current plaintiffs in the lawsuit pending in Fairfax County Circuit Court that seeks to invalidate the TJ admissions policy on different, State-law grounds. *Supra* at 7 & n.6. To the extent the Coalition claims to represent them here, they have now split their claims by failing to include their State-law claims in this case and by omitting their federal claims in State Court. *See* Va. R. Sup. Ct. 1:6(a) (requiring plaintiffs to join all claims arising from the “same conduct, transaction or occurrence”). The Coalition’s alleged representation of 5,000 members also poses a challenge to identifying *who* is in privity with the Coalition for purposes of claim- and issue-preclusion. Will all 5,000 members be bound by the judgment here? Does a person become a Coalition “member” if he or she simply “liked” or “followed” the Coalition’s Facebook page or Twitter post? Who among the Coalition’s members will pay any costs that may be awarded against the Coalition? Avoiding these conundrums calls for requiring individual, natural-person plaintiffs.

In sum, because the Coalition fails the requirements of *Hunt* and *Heap*, it “does not have associational standing.” *Heap*, 112 F. Supp. 3d at 419.

II. The complaint fails to state a claim for intentional racial discrimination.

The complaint also fails to show a violation of the Equal Protection Clause, which provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. Courts evaluating Equal Protection claims apply different levels of scrutiny depending on whether the challenged law in question uses a suspect classification or impairs a fundamental right. Because the complaint in this case fails to plead facts that plausibly allege that the School Board adopted the TJ admissions policy for the

purpose of discriminating against Asian Americans, the plan is subject only to rational-basis review, which it easily satisfies.

A. The rules governing strict scrutiny and rational-basis review are well-settled.

Because the explicit use of race is inherently suspect, “all racial classifications imposed by government ‘must be analyzed by a reviewing court under strict scrutiny.’” *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003) (quoting *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995)). Such race-based classifications “are constitutional only if they are narrowly tailored to further compelling governmental interests.” *Id.* But “official action will not be held unconstitutional solely because it results in a racially disproportionate impact.” *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264–65 (1977) (following *Washington v. Davis*, 426 U.S. 229 (1976)). “Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.” *Id.*

To be sure, a facially neutral law may sometimes have such an overwhelmingly disparate racial impact that it cannot be explained on nonracial grounds and amounts to “an obvious pretext for racial discrimination.” *Personnel Adm’r of Mass. v. Feeney*, 442 U.S. 256, 272 (1979). For instance, when the City of Tuskegee changed its political boundaries from a square to “an uncouth twenty-eight-sided figure,” excluding all but four of the city’s 400 Black voters and none of the white voters, the conclusion was “irresistible” that the redistricting was for racially discriminatory purposes. *Gomillion v. Lightfoot*, 364 U.S. 339, 340–41 (1960). The same inference was compelled in *Yick Wo*, where San Francisco’s vague licensure requirement was used to put 200 Chinese-owned laundries out of business but not their 80 white-owned competitors. *Yick Wo v. Hopkins*, 118 U.S. 356, 374 (1886).

But “such cases are rare.” *Arlington Heights*, 429 U.S. at 266. “Absent a pattern as stark as that in *Gomillion* or *Yick Wo*, impact alone is not determinative, and the Court must look to

other evidence.” *Id.* (footnote omitted). Thus, in *Arlington Heights*, no invidious racial purposes could be inferred from a rezoning denial that disproportionately affected minority tenants in a nearly all-white community. *Id.* at 269–70. And in *Washington v. Davis*, no invidious purpose could be inferred from the fact that the written-examination requirement disproportionately excluded minority applicants from becoming police officers in Washington, D.C. 426 U.S. at 246.

Absent a “suspect” classification like race, a facially neutral measure will be upheld if there is a “rational basis” to support it. *Heller v. Doe by Doe*, 509 U.S. 312, 319–20 (1993). The government’s action is “presumed constitutional” and must be upheld if it “is ‘rationally related to a legitimate government interest.’” *United States v. Spruhan*, 989 F.3d 266, 270 (4th Cir. 2021) (citation omitted); *Heller*, 509 U.S. at 319 (“strong presumption of validity”). This is often called the “conceivable basis” test. *Heller*, 509 U.S. at 320. The action must be upheld “if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.” *Id.* (citations omitted). “The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it.” *Id.* (quoting *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973)); *Spruhan*, 989 F.3d at 270 (same).

B. A race-neutral admissions plan is not subject to strict scrutiny even when adopted in the hope of improving racial diversity.

Importantly for this case, there is a meaningful difference between (1) the government’s explicit use of race when drawing legislative classifications, and (2) the government’s use of race-neutral measures with a consciousness or hope that it will improve racial diversity. The first triggers strict scrutiny; the second does not. Thus, the Supreme Court has made clear that “race may be considered in certain circumstances and in a proper fashion.” *Tex. Dep’t of Hous. &*

Cnty. Affairs v. Inclusive Cmty. Project, Inc., 576 U.S. 519, 545 (2015).

For instance, “local housing authorities may choose to foster diversity and combat racial isolation with race-neutral tools, and mere awareness of race in attempting to solve the problems facing inner cities does not doom that endeavor at the outset.” *Id.* Similarly, the Court has long recognized a distinction “between state action that discriminates on the basis of race and state action that addresses, in neutral fashion, race-related matters.” *Crawford v. Bd. of Ed.*, 458 U.S. 527, 538 (1982). As the Court said in *Crawford*, “certainly the purposes of the Fourteenth Amendment would not be advanced by an interpretation that discouraged the States from providing greater protection to racial minorities.” *Id.* at 539.

In fact, race-neutral measures that could help minorities are typically used as the *benchmark* for assessing whether explicit, race-based measures are needed and, if so, whether they can survive strict scrutiny. In *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), the Court found that Richmond’s 30% set-aside for minority contractors failed strict scrutiny because the city had not considered “race-neutral means to increase minority business participation in city contracting.” *Id.* at 507. The Court never suggested that the goal “to increase minority” participation was invalid or that such race-neutral means themselves would be subject to strict scrutiny.

In *Grutter*, the Bush administration argued that the explicit consideration of race as a factor in determining admission to the law school at the University of Michigan failed strict scrutiny because Michigan could have used a race-neutral plan instead. *See* Br. for the United States as Amicus Curiae Supporting Pet’r 14–19, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02-241), <https://tinyurl.com/dda527sd>. Solicitor General Olson touted Texas’s top “Ten Percent” plan, Florida’s “top 20%” plan, and California’s “top 4%” plan as examples of “race-

neutral programs”—plans admitting students at the top of their high-school class—arguing that those plans effectively increased racial diversity without requiring the explicit consideration of race. *Id.* at 14–17, 19.⁷ In holding that the law school’s admissions plan survived strict scrutiny, the Court found that the race-neutral alternative proposed by the Government would not be workable for the law school. Such plans may work for admission to college from high school, but not for admission from college to “graduate and professional schools.” *Grutter*, 539 U.S. at 340. Importantly, not a single Justice in *Grutter* or *Gratz* suggested that strict scrutiny would apply to a top-percentage plan adopted to improve racial diversity. *See, e.g., Gratz v. Bollinger*, 539 U.S. 244, 297 (2003) (Souter, J., dissenting) (“[T]here is nothing unconstitutional about such a practice.”).

More recently, the Supreme Court in *Fisher* upheld the constitutionality of Texas’s Top-Ten Percent plan, which filled 75% of the freshman class at the University of Texas with students drawn from the top 10% of the State’s public high schools, with the remaining 25% filled through a holistic evaluation that took race into account to improve racial diversity. *Fisher v. Univ. of Tex.*, 136 S. Ct. 2198, 2206 (2016). The Court said that the purpose of the Top Ten Percent Plan was “to boost minority enrollment.” *Id.* at 2213. Yet neither the litigants nor any justice questioned its constitutionality or suggested that it triggered strict scrutiny. The Court instead addressed only the explicit use of race as part of a holistic review to fill the remaining 25% of the class, *id.* at 2209, which the Court upheld under strict scrutiny, *id.* at 2214–15.

⁷ The Government also argued in the companion case that the University’s mechanical use of race in determining admission to the college failed strict scrutiny for the same reason. *See* Br. for the United States as Amicus Curiae Supporting Pet’r 13–14, 18, *Gratz v. Bollinger*, 539 U.S. 244 (2003) (No. 02-516), <https://tinyurl.com/y3vfek5e>.

Justice Kennedy's concurrence in *Parents Involved* synthesizes the law that applies to this case. *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 782 (2007) (Kennedy, J., concurring in part and concurring in the judgment). Four justices there would have upheld the use of race-based student-assignment plans to advance what they found to be a compelling state interest in integrating public schools. *Id.* at 806 (Breyer, J., dissenting, joined by Stevens, Souter and Ginsburg, JJ.). Four other justices concluded that *Grutter*'s recognition of racial diversity as a compelling state interest in higher education did not answer whether it was compelling at the elementary and secondary-school level. *Id.* at 724–25 (Roberts, C.J., joined by Scalia, Thomas, and Alito, JJ.). And even if it were compelling, they found that the race-based assignment plans were not narrowly tailored to further that interest. *Id.* at 727.

The outcome thus hinged on Justice Kennedy's concurrence. He agreed with the plurality that strict scrutiny applied to the attendance plans because they explicitly invoked race, and he further agreed that the challenged plans failed strict scrutiny because the use of race was not narrowly tailored. *Id.* at 786–87 (Kennedy, J., concurring in part and concurring in the judgment). But he rejected the plurality's view that promoting racial diversity could not be a compelling state interest in public schools. *Id.* at 783. And he wrote separately to explain that public schools may adopt facially race-neutral policies to enhance racial diversity. *Id.* at 787–89.

Justice Kennedy gave specific examples of race-neutral measures to increase racial diversity that would *not* trigger strict scrutiny:

School boards may pursue the goal of bringing together students of diverse backgrounds and races through other means, including strategic site selection of new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; allocating resources for special programs; recruiting students and faculty in a targeted fashion; and tracking enrollments, performance, and other statistics by race. These mechanisms are race conscious but do not lead to different treatment based on a

classification that tells each student he or she is to be defined by race, so it is unlikely any of them would demand strict scrutiny to be found permissible.

Id. at 789. He added that such measures have been considered “for generations” and that governmental actors “should be permitted to employ them with candor and with confidence that a constitutional violation does not occur whenever a decisionmaker considers the impact a given approach might have on students of different races.” *Id.*

As one academic commentator has observed, after *Parents Involved*, “[s]chool officials can be confident that they can take race-neutral steps to try to achieve racial integration.” James E. Ryan, *The Supreme Court and Voluntary Integration*, 121 Harv. L. Rev. 131, 138 (2007). Indeed, four federal circuits have followed Justice Kennedy’s *Parents Involved* opinion to hold that race-neutral public-school student-assignment plans are subject only to rational-basis review, even if adopted with the hope or goal of improving racial diversity. *See Anderson ex rel. Dowd v. City of Boston*, 375 F.3d 71, 87 (1st Cir. 2004) (“Contrary to plaintiffs’ arguments, the mere invocation of racial diversity as a goal is insufficient to subject the New Plan to strict scrutiny.”); *Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 553 (3d Cir. 2011) (upholding redistricting plan that was race neutral on rational-basis review, despite the school district’s awareness of racial consequences); *Lewis v. Ascension Parish Sch. Bd.*, 806 F.3d 344, 357 (5th Cir. 2015) (agreeing that “a school zoning plan that assigns students to schools based on their home addresses is facially race neutral, and the rezoning body’s consideration of demographic data in drawing the relevant geographic boundaries does not amount to making an express classification”); *Spurlock v. Fox*, 716 F.3d 383, 395 (6th Cir. 2013) (upholding geographic assignment plan); *see also Christa McAuliffe Intermed. Sch. PTO, Inc. v. de Blasio*, 364 F. Supp. 3d 253, 279–80 (S.D.N.Y.) (finding equal-protection challenge unlikely to succeed

against race-neutral program designed to increase racial diversity at specialized public high schools), *aff'd*, 788 F. App'x 85 (2d Cir. 2019).

This Court recently followed *Parents Involved* in a very similar case. *Boyapati v. Loudoun Cty. Sch. Bd.*, No. 1:20-cv-01075 (AJT/IDD), 2021 WL 943112, at *9 (E.D. Va. Feb. 19, 2021) (Trenga, J.). The *Boyapati* plaintiffs challenged the Loudoun County School Board's decision to change the admissions policy at its exclusive STEM school to allot 75% of the seats to qualified students based on the geographic location of the student's middle school. *Id.* at *2. Judge Trenga found that the plaintiffs had plausibly alleged "that the new Plan would have a disproportionately negative effect on Asian students, when compared with previous admission levels at certain middle schools." *Id.* at *8. But even so, he concluded that "[s]trict scrutiny . . . is . . . not warranted unless there have been alleged facts that make plausible that the revised Plan has a disproportionate impact on Asian students, *coupled with a discriminatory intent*." *Id.* at *8 (emphasis added). The "discriminatory intent" allegations fell short. Such discriminatory intent could not be inferred simply because school officials engaged in outreach "to promote the racial and ethnic diversity of . . . black and brown students." *Id.* at *9. Those outreach efforts were specifically protected by *Parents Involved*. *Id.*

And just last month, the district court upheld the Boston school system's zip-code-based student-assignment plan for its prestigious "Exam" schools. *Boston Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of Boston*, No. 21-10330-WGY, 2021 WL 1422827, *13 (D. Mass. Apr. 15, 2021), *stay denied*, No. 21-1303, 2021 WL 1656225 (1st Cir. Apr. 28, 2021). Citing Justice Kennedy's opinion in *Parents Involved*, the district court applied rational-basis review despite that school board members expressed hope that the race-neutral plan would increase the number of historically underrepresented Black and Hispanic students. *Id.* at *12–13

& nn. 16–17. In declining to stay that ruling, the First Circuit blasted the plaintiff’s “purported ‘rule’” that a facially race-neutral admissions plan adopted to increase the percentage of an underrepresented minority would automatically trigger strict scrutiny. 2021 WL 1656225, at *7. The court of appeals refused to be the first in the country to adopt a rule requiring strict scrutiny whenever “anyone involved in designing [a race-neutral admissions plan] happened to think that its effect in reducing the underrepresentation of a group was a good effect.” *Id.* at *8.

C. Because the TJ admissions policy expressly prohibits the consideration of race and forbids racial balancing and racial targets, it does not intentionally discriminate against Asian Americans.

The Coalition fails to mention the single most important detail about the TJ admissions policy as it relates to this case. The School Board expressly directed that “[t]he admission process must use only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets.” Ex. 1 at 5. To effectuate that directive, the implementing regulation prohibits TJ admissions evaluators from even knowing the name, gender, or race of any applicant. Ex. 2, FCPS Reg. 3355.V.A.3.b. Because admissions evaluators do not know an applicant’s race or ethnicity, the Coalition’s central claim—that the “new TJ admissions process *intentionally* harms Asian-American students,” Compl. ¶ 62 (emphasis added), and that the School Board intended “to racially balance” TJ, *id.* ¶¶ 10, 30, 61—is demonstrably false.

“[A] law directing state actors to provide equal protection is (to say the least) facially neutral, *and cannot violate* the Constitution.” *Schuetz v. BAMN*, 572 U.S. 291, 318 (2014) (Scalia, J., concurring). In other words, “any law expressly requiring state actors to afford all persons equal protection of the laws . . . does not—*cannot*—deny ‘to any person . . . equal protection of the laws,’ regardless of whatever evidence of seemingly foul purposes plaintiffs may cook up in the trial court.” *Id.* at 331–32 (citation omitted). As applied here, the School

Board's directive to the TJ admissions evaluators *not* to engage in race-based admissions is likewise constitutional as a matter of law.

D. The complaint fails to plead facts that plausibly allege that any School Board member, let alone a majority, intended to discriminate against Asian-American students.

Even assuming for argument's sake that a plaintiff could challenge an explicitly race-neutral and race-blind admissions process on the theory that it was intended to discriminate against Asian-American students, the complaint does not plead facts that come close to plausibly alleging that here. Importantly, the Coalition must allege facts showing "but for" causation—that is, that the School Board would not have changed the admissions process "but for" an intent to discriminate against Asian Americans. "It is 'textbook tort law' that a plaintiff seeking redress for a defendant's legal wrong typically must prove but-for causation." *Comcast Corp. v. Nat'l Ass'n of African American-Owned Media*, 140 S. Ct. 1009, 1014 (2020). Claims under § 1983 are no different: the plaintiff must "show that his injury would not have occurred *but for* the defendant's conduct." *Wright v. Lassiter*, 921 F.3d 413, 419 (4th Cir.) (emphasis added), *cert. denied*, 140 S. Ct. 165 (2019); *Evans v. Chalmers*, 703 F.3d 636, 647 (4th Cir. 2012) ("[C]onstitutional torts, like their common law brethren, require a demonstration of both but-for and proximate causation.").

The pleaded facts miss the mark. Of course, the Court must disregard the Coalition's statements that the policy "was enacted with discriminatory intent." Compl. ¶ 63. "These bare assertions . . . are conclusory and are not entitled to be assumed true." *Iqbal*, 556 U.S. at 680–81. The Court must also disregard "unwarranted inferences" and "unreasonable conclusions," *Philips*, 572 F.3d at 180, such as the Coalition's snide assertion that Dr. Brabrand and Member Keys-Gamarra "carried the tone of racial discrimination back to Fairfax County." Compl. ¶ 39. *See Anthem Health Plans*, 2020 WL 5884290, at *1 (rejecting "naked assertions").

In evaluating whether the Coalition has adequately alleged racially discriminatory intent, the Court should focus on the School Board members who voted to change the admissions policy. The Coalition cites statements by non-school personnel, such as a former FCPS teacher who supposedly described Asian-American parents as “ravenous” in comments to a State legislative panel. Comp. ¶ 37 & n. 29. But such alleged statements, even if uttered, are no more imputable to the School Board than the bigoted statements by some community members in *Arlington Heights* who opposed integrated housing. 429 U.S. at 257–58, 269.

Similarly, although the Coalition does not identify Asian-American animus in statements by any School Board *employee* (Superintendent Brabrand, Chief Operating Officer Marty Smith, or TJ Principal Dr. Ann Bonitatibus), the statements of such subordinates are also not imputed to the School Board unless ratified by its members. For “when a subordinate’s decision is subject to review by the municipality’s authorized policymakers, they have retained the authority to measure the official’s conduct for conformance with *their* policies.” *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988). Thus, it is only if the School Board approves both the “subordinate’s decision *and the [unconstitutional] basis for it*” that such “ratification would be chargeable” to the Board. *Id.* (emphasis added); *see, e.g., Riddick v. Sch. Bd. of Portsmouth*, 238 F.3d 518, 523–24 (4th Cir. 2000) (holding that school board could not be liable for decisions by superintendent and principal to retain athletic coach who secretly videotaped female athletes); *cf. Boston Parent Coal.*, 2021 WL 1422827, *16 (finding that anti-Asian statements by a citizen-committee chairman who resigned could not be imputed to the school board members who voted for the race-neutral assignment plan).

The Coalition faces particular difficulty trying to show that *any* School Board member—let alone a majority—acted with prejudice against Asian Americans. All twelve members voted

to approve the elimination of the application fee and the standardized-testing requirement for admission to TJ;⁸ ten voted to adopt the top-1.5% plan, Ex. 1 at 5. The complaint says nothing about seven of the twelve Board members: McLaughlin, Sizemore Heizer, Tholen, Derenak-Kaufax, Corbett Sanders, Cohen and Pekarsky.

What is more, the statements the Coalition attributes to the *other* five Board members reflect no discriminatory animus against Asian Americans. Meren did not call the Asian-American “culture” at TJ “toxic,” Compl. ¶ 45, but expressed concern about an African-American student feeling so isolated that she felt the need to bleach her skin. Ex. 4, Smoot Decl. Ex. A at 5. Frisch expressed his concerns about the “underrepresentation” of “Black and Brown families” and voiced alarm about bigoted emails he received blaming the low numbers on these students being “culturally disinclined from pursuing STEM.” *Id.* at 5. While the Coalition complains that Omeish suggested at the October 6 work session that the student population at TJ “should be proportional to the population numbers,” Compl. ¶ 46, it is not apparent that she was talking about *racial* proportionality. Ex. 4, Smoot Decl. Ex. A at 6. In any case, Omeish was among the ten members who specifically voted two months later, on December 17, to *forbid* staff from attempting any “racial balancing” or using any racial “targets.” Ex. 1 at 5.

The Coalition takes similar liberties with Keys-Gamarra’s statement to incorrectly suggest that she admitted that Board members had engaged in “discriminatory language towards Asian Americans.” Compl. ¶ 47 & n.51. Not so. In the passage Plaintiff cites, Keys-Gamarra was instead calling for respect from all community members so as to avoid racial stereotyping, as some community members had complained that increasing diversity would “lower” the standards

⁸ See Minutes at 2, Fairfax County School Board, Oct. 6, 2020, <https://tinyurl.com/5e99tren> (cited at Compl. ¶ 33 n.23).

at TJ. Ex. 4, Smoot Decl. Ex. A at 4–5.

Finally, the complaint cites a statement from the School Board chairman, Dr. Anderson, to suggest that she was biased against Asian-American students, Compl. ¶ 47, but her statement showed nothing of the sort. Anderson simply said that true giftedness was not being measured by the standardized tests used for TJ admissions because the students had “been test-prepped since second grade.” Ex. 4 Smoot Decl. Ex. A at 6. She did not attribute that practice, as Plaintiff insinuates, to “Asian-American students.” Compl. ¶ 47.

On a Rule 12(b)(6) motion, the Court must disregard unreasonable inferences, *Philips*, 572 F.3d at 180, and the text of the documents cited by a plaintiff control over the plaintiff’s efforts to change their characterization, *Massey*, 759 F.3d at 347; *Am. Chiropractic Ass’n*, 367 F.3d at 234. No fair-minded observer could view the actual statements cited in the complaint—collected in Exhibit A to the Smoot Declaration (Ex. 4)—and conclude that *any* of these five School Board members was expressing prejudice against Asian Americans, let alone that any voted for the new admissions policy to harm Asian-American students.

Even assuming for argument’s sake that a majority of the Board supported the new race-neutral admissions plan in the hope that it would improve the representation of Black and Hispanic students at TJ, that would not translate to discrimination against Asian Americans. The Supreme Court rejected similar reasoning in *Feeney*. Even though the Massachusetts legislature there knew that giving veterans a preference in public-sector hiring would disproportionately benefit men, that reality did not transform the legislature’s desire to benefit veterans into unconstitutional discrimination against women. 442 U.S. at 278–79. “‘Discriminatory purpose’ . . . implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part ‘because

of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.” *Id.* at 279 (citation omitted). Just as there was nothing in *Feeney* to suggest that benefitting veterans was a ploy to harm women, there is no plausible allegation here that any hoped-for increase in the representation of Black and Hispanic students at TJ is a ploy to harm Asian Americans.

Indeed, the same claim was recently rejected in *Christa McAuliffe*. Like the Coalition, the plaintiffs there saw anti-Asian prejudice in the statements of the New York City mayor and schools chancellor, both of whom “laud[ed] how the program changes [would] increase Black and Latino enrollment at the specialized schools.” 364 F. Supp. 3d at 278. Coupling those statements with the projected reduction in Asian-American students who would be admitted, the plaintiffs insisted that discrimination against Asians was afoot. *Id.* But the court rejected the notion that increasing the enrollment of historically underrepresented minorities means discriminating against Asian Americans. *Id.*

E. The TJ admissions policy survives rational-basis review.

Because the Coalition has not pleaded facts that plausibly allege that the School Board would not have enacted the TJ admissions policy but for an intention to discriminate against Asian Americans, the policy is subject only to rational-basis review. Indeed, every other court to consider similar claims has so held. *See Spurlock*, 716 F.3d at 402; *Lower Merion Sch. Dist.*, 665 F.3d at 556; *Anderson*, 375 F.3d at 90; *Lewis*, 806 F.3d at 363; *Boston Parent Coal.*, 2021 WL 1422827, at *13; *Boyapati*, 2021 WL 943112, at *10; *Christa McAuliffe*, 364 F. Supp. 3d at 279–80. “Rational-basis review is ‘highly deferential’” and will result in a holding of unconstitutionality “‘only in rare or exceptional circumstances.’” *Spurlock*, 716 F.3d at 403 (citation omitted).

Just as in those cases, the Board’s policy here “clearly passes muster.” *Boyapati*, 2021 WL 943112, at *10. The purpose of the policy was to create a “diverse student body that

includes a wide variety of backgrounds, experiences and skills,” one that “enriches the learning environment for the students” and “prepares them to be science and technology leaders in an increasingly diverse workforce.” Ex. 1 at 4–5. That is precisely the type of interest that Justice Kennedy described not simply as rational and legitimate, but “compelling.” *Parents Involved*, 551 U.S. at 788–90 (Kennedy, J., concurring in part and concurring in the judgment). Similarly, this Court found that Loudoun’s geographic student-assignment plan served a rational basis in “achieving socio-economic and geographic diversity . . . particularly given the deference given to legislating bodies in making these policy decisions.” *Boyapati*, 2021 WL 943112, at *10. “In the absence of any constitutional infirmity, it is not the province of the courts to dictate and supervise local school policy.” *Spurlock*, 716 F.3d at 403.

III. The official-capacity claim against Brabrand should be dismissed as duplicative.

Finally, Dr. Brabrand should be dismissed as a defendant because he is named only in his “official capacity” as the Superintendent of the School Board, the principal defendant. Compl. ¶¶ 21, 57. Such official-capacity designations “represent only another way of pleading an action against an entity of which an officer is an agent.” *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (quoting *Monell v. N.Y. City Dep’t of Soc. Servs.*, 436 U.S. 658, 690 n.55 (1978)). “It is *not* a suit against the official personally, for the real party in interest is the entity.” *Id.* at 166. Accordingly, courts routinely dismiss official-capacity defendants as “duplicative.” *Love-Lane v. Martin*, 355 F.3d 766, 783 (4th Cir. 2004) (affirming dismissal of official-capacity claim against school superintendent); *see also Z.G. v. Pamlico Cty. Pub. Schs. Bd.*, 744 F. App’x 769, 780 (4th Cir. 2018) (same); *Emesowum v. Arlington Cty.*, No. 1:20-cv-113, 2020 WL 3050377, *6 (E.D. Va. June 5, 2020) (dismissing duplicative official-capacity defendants with prejudice).

CONCLUSION

The complaint should be dismissed.

Exhibits

- 1) Approved Minutes of Dec. 17, 2020 Meeting of the Fairfax County School Board
- 2) FCPS Regulation 3355.14 (Apr. 28, 2021)
- 3) First Am. Compl., *K.C. v. Fairfax Cty. Sch. Bd.*, No. 2020-17283 (Fairfax Cir. Ct. Jan. 7, 2021).
- 4) Declaration of Cynthia C. Smoot

MINUTES
Fairfax County School Board
Electronic Regular Meeting
Virtual

Electronic Regular Meeting

December 17, 2020

Board members and Division staff participated electronically via Blackboard Collaborate Ultra due to the COVID-19 emergency and the Governor of Virginia's amended Order of the Governor and State Health Commissioner Declaration of Public Health Emergency, Order of Public Health Emergency One issued March 20; Executive Order Number 53: Temporary Restrictions On Restaurants, Recreational, Entertainment, Gatherings, Non-Essential Retail Businesses, And Closure Of K-12 Schools Due To Novel Coronavirus (Covid-19) issued March 23; Order of the Governor and State Health Commissioner Order of Public Health Emergency Two, issued March 25. Members of the public attended virtually via Public Access Channel 99 and at FCPS.EDU/TV.

1. CLOSED MEETING

Ms.Derenak Kaufax moved, and Mrs. Corbett Sanders seconded, that the Board will now make a motion to go into closed meeting to c to 1) consult with legal counsel regarding litigation or specific legal matters requiring the provision of legal advice by such counsel pursuant to Sections 2.2-3711(A)(7) and (A)(8) of the Code of Virginia, specifically *Q.T., et al. v. School Board, et al.*, Case No. 1:19-cv-1285; and 2) consult with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel pursuant to Section 2.2-3711 (A)(8) of the Code of Virginia, specifically personnel, Title IX and other federal matters. The motion **passed 10-0-0**: Ms. Omeish, Ms. Pekarsky, Ms. Tholen, Ms. Meren, Ms. Derenak Kaufax, Mrs. Corbett Sanders, Ms. McLaughlin, Ms. Cohen, Mr. Frisch, and Dr. Anderson voted "aye"; Ms. Sizemore Heizer, and Ms. Keys-Gamarra were not present for the vote,

The Board met in closed session from 5:01 p.m. to 7:09 p.m. and took a brief recess from 7:09 p.m. to 7:17 p.m.

2. REGULAR MEETING

2.01 Call to Order/Pledge of Allegiance/Moment of Silence

Chairman Anderson called the meeting to order at 7:17 p.m. with the following Board members present:

Karen Corbett Sanders (Mt. Vernon)	Megan O. McLaughlin (Braddock)
Tamara Derenak Kaufax (Lee)	Melanie Meren (Hunter Mill)
Ricardy Anderson (Mason)	Abrar Omeish (At Large)
Laura Jane Cohen (Springfield)	Stella Pekarsky (Sully)
Karl Frisch (Providence)	Rachna Sizemore Heizer (At Large; arr:5:04)
Karen Keys-Gamarra (At Large; arr:5:04)	Elaine Tholen (Dranesville)

Also present were Division Superintendent Scott Brabrand; Deputy Superintendent Frances Ivey; Clerk of the Board Ilene Muhlberg; Deputy Clerk of the Board Beverly Madeja; Chief Operating Officer Marty Smith; Assistant Superintendent, Jeff Platenberg; Assistant Superintendent, Facilities and Transportation and certain other members of staff both in-person and virtually. The Student Representative to the School Board Nathan Onibudo was present.

Nathan Onibudo led the Pledge of Allegiance and the moment of silence.

2.03 Certification of Closed Meeting Compliance (Exhibit A)

Ms. Omeish moved, and Ms. Derenak seconded, that the Board in order to comply with Section 2.2-3712 (D) of the Code of Virginia, it is necessary for the Board to certify that since the Fairfax County School Board convened a closed meeting on December 17, 2020, to the best of each member's knowledge, only public business matters lawfully exempted from open meeting requirements and only such public business matters as were identified in the motion convening the closed meeting were heard, discussed, or considered by the Board during the closed meeting. The motion passed unanimously.

2.04 Announcements (Exhibit B)

Nathan Onibudo announced that FCPS will celebrate National Mentoring Month in January 2021.

3. PRESENTATIONS TO THE SCHOOL BOARD

3.01 Citizen Participation (Exhibit C)

Nine citizens addressed the Board in the time reserved for citizen participation and three citizens delivered video testimony. Kimberly Adams addressed Agenda Item 4.05 – Superintendent Contract; Asra Nomani, Zia Tompkins, and Harry Jackson addressed Agenda Item 5.01 Monthly Report on Employee Separation; Akshay Deverakonda, Paul Thomas, Jun Wang, Srilekha Palle, and Michelle Cades addressed Agenda Item 4.02 – TJHSST Admissions; Jorge Torrico addressed Agenda Item 6.04 - Award of Contract- Robinson Secondary School Synthetic Turf Field Replacement Project. Video testimony was given by Norma Margulies on Agenda Item 5.01- Monthly Report on Employee Separation, and Teddy Geis and Fatimah Salem on Agenda Item 4.02 – TJHSST Admissions.

3.02 Student Representative Matters (Exhibit D)

The School Board congratulated Nathan Onibudo for his early acceptance into the University of Virginia. Student Representative Nathan Onibudo made brief comments.

3.03 FY 2022-2026 Capital Improvement Program (Exhibit E)

The Chair introduced the Superintendent to begin the presentation of the CIP. The Superintendent welcomed Jeff Platenberg, assistant superintendent, Facilities, who presented the FY 2022- 2026 Capital Improvement Program while highlighting the impact of COVID 19.

The Board discussed a new elementary school in the Providence district with possible funding source; COVID impacts on September 30 enrollement compared to the current overall enrollment; repurposing existing buildings; and outdoor learning spaces.

Mr. Platenberg announced that the Board will discuss the CIP in-depth at the January 5 work session, and then the CIP public hearing will be held on January 7, with Board action scheduled on February 4, 2021.

4. ACTION ITEMS

4.01 Confirmation of Action taken In Closed Meeting (Exhibit F)

Ms. McLaughlin moved, and Ms. Cohen seconded, that the Board authorize the Superintendent to execute the resolution agreement, according to the terms and conditions discussed in closed session. The motion passed unanimously.

4.02 Thomas Jefferson High School for Science and Technology (TJHSST) Admissions {TJ; WS 9/15/20; 10/6/20 WS; 11/17/20 WS; 12/7/20 WS} (Exhibit G)

[Clerk's note:Chair Anderson passed the gavel to Vice-Chair Pekarsky.]

Ms.Omeish moved, and Dr. Anderson seconded, that the Hybrid Merit Lottery presented to the School Board by the Superintendent on December 7 will ensure that the Thomas Jefferson High School for Science and Technology continues to provide a high-quality STEM education. A diverse student body that includes a wide variety of backgrounds, experiences and skills enriches the learning environment for the students at TJ and prepares them to be science and technology leaders in an increasingly diverse workforce. I therefore move to direct the Superintendent to revise the admissions process for TJHSST utilizing the Hybrid Merit Lottery of the Superintendent's presentation to the Board on December 7. The admission process must use only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets. These changes are effective with the admissions process for the class entering TJHSST in the Fall of 2021.

The Board discussed that merit indicates that a student must meet eligibility for TJHSST admissions before entering the admissions lottery, that this has been recommended by community and national groups and noted the importance of giving every student an opportunity.

The motion that the Hybrid Merit Lottery presented to the School Board by the Superintendent on December 7 will ensure that the Thomas Jefferson High School for Science and Technology continues to provide a high-quality STEM education. A diverse student body that includes a wide variety of backgrounds, experiences and skills enriches the learning environment for the students at TJ and prepares them to be science and technology leaders in an increasingly diverse workforce. I therefore move to direct the Superintendent to revise the admissions process for TJHSST utilizing the Hybrid Merit Lottery of the Superintendent's presentation to the Board on December 7. The admission process must use only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets. These changes are effective with the admissions process for the class entering TJHSST in the Fall of 2021, **failed**
4-8-0: Dr. Anderson, Ms. Omeish, Mr. Frisch, and Ms. Keys-Gamarra voted "aye;" Ms. Sizemore Heizer, Ms. Tholen, Ms. Meren, Ms. Derenak Kaufax, Mrs. Corbett Sanders, Ms. McLaughlin, Ms. Cohen, and Ms. Pekarsky voted "no."

[Clerk's note: Vice-Chair Pekarsky passed the gavel back to Chair Anderson.]

Ms. Tholen, moved, and Ms. Pekarsky seconded, that the Holistic Review process presented to the School Board by the Superintendent on December 7 will ensure that the Thomas Jefferson High School for Science and Technology continues to provide a high-quality STEM education. A diverse student body that includes a wide variety of backgrounds, experiences and skills enriches the learning environment for the students at TJ and prepares them to be science and technology leaders in an increasingly diverse workforce. I therefore move to direct the Superintendent to revise the admissions process for TJHSST utilizing the Holistic Review Process outlined on pages 10 , 11 and 12 of the Superintendent's presentation to the Board on December 7. The Superintendent's Holistic Review process must be modified to establish that, as part of the review process, the top 1.5% of the 8th grade class at each public middle school who meet the minimum standards--based on GPA in core classes, student portrait sheet, problem-solving essay and experience factors--will be eligible for admission. The admission process must use only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets. These changes are effective with the admissions process for the class entering TJHSST in the Fall of 2021.

The Board discussed that the top 1.5% from each middle school could replace the previously discussed Regional pathway and expanding the pipeline for each middle school and all elementary school AAP programs, while providing STEM opportunities at all levels and equity of access and opportunity with additional experience factors.

The motion that the Holistic Review process presented to the School Board by the Superintendent on December 7 will ensure that the Thomas Jefferson High School for Science and Technology continues to provide a high-quality STEM education. A diverse student body that includes a wide variety of backgrounds, experiences and skills enriches the learning environment for the students at TJ and prepares them to be science and technology leaders in an increasingly

diverse workforce. I therefore move to direct the Superintendent to revise the admissions process for TJHSST utilizing the Holistic Review Process outlined on pages 10, 11 and 12 of the Superintendent's presentation to the Board on December 7. The Superintendent's Holistic Review process must be modified to establish that, as part of the review process, the top 1.5% of the 8th grade class at each public middle school who meet the minimum standards--based on GPA in core classes, student portrait sheet, problem-solving essay and experience factors--will be eligible for admission. The admission process must use only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets. These changes are effective with the admissions process for the class entering TJHSST in the Fall of 2021, **passed 10-1-1**: Ms. Omeish, Mr. Frisch, Ms. Keys-Gamarra, Ms. Sizemore Heizer, Ms. Tholen, Ms. Meren, Ms. Derenak Kaufax, Mrs. Corbett Sanders, Ms. Cohen, and Ms. Pekarsky voted "aye;" Dr. Anderson voted "no;" and Ms. McLaughlin abstained from the vote.

Ms. Omeish moved, and Ms. Cohen seconded, to require that the test (essay and SIS) be administered locally, at each middle school, to all eligible students (i.e. who meet the 3.5 GPA and Algebra 1 requirements), and to provide the opportunity to opt-out of taking the test should they so choose, by the admissions cycle for the class of 2026 (next year). To opt-out would be to eliminate oneself from consideration for TJ.

The Board stressed the need to decrease barriers by providing problem solving essay at all middle schools. The Board discussed that the ability to be automatically entered into admissions pool by meeting eligibility requirements could be more inclusive than opting in to the admissions process.

Ms. McLaughlin moved, and Ms. Meren seconded, to amend the main motion to remove the requirement that the problem-solving exams be administered at every single middle school.

The Board discussed the possibility of providing transportation to local test sites, and the need to be inclusive by providing access at every middle school to eliminate barriers to TJHSST admission.

The motion to amend the main motion, to remove the requirement that the problem-solving exams be administered at every single middle school, **failed 0-12-0**: Ms. Omeish, Ms. Pekarsky, Ms. Tholen, Ms. Meren, Ms. Derenak Kaufax, Mrs. Corbett Sanders, Ms. McLaughlin, Ms. Cohen, Mr. Frisch, Dr. Anderson, Ms. Sizemore Heizer, and Ms. Keys-Gamarra voted "no."

The main motion, to require that the test (essay and SIS) be administered locally, at each middle school, to all eligible students (i.e. who meet the 3.5 GPA and Algebra 1 requirements), and to provide the opportunity to opt-out of taking the test should they so choose, by the admissions cycle for the class of 2026 (next year). To opt-out would be to eliminate oneself from consideration for TJ, **passed 11-1-0**: Ms. Omeish, Dr. Anderson, Mr. Frisch, Ms. Tholen, Ms. Derenak Kaufax,

Ms. McLaughlin, Ms. Keys-Gamarra, Ms. Sizemore Heizer, Mrs. Corbett Sanders, Ms. Cohen, and Ms. Pekarsky voted “aye;” and Ms. Meren voted “no.”

Ms. Omeish moved, and Ms. Cohen a follow-on motion to establish that, as part of the holistic review process, by the process for the 2027 class, the top percent of the 8th grade class at each public middle school in Fairfax County who meet minimum standards - based on GPA in core classes, student portrait sheet, problem-solving essay, and experience factors - shall be eligible for admission according to the percentage that is proportional to their population. This reflects the existing holistic review plan but calculates allotments of gifted students by school rather than by region.

The Board discussed that the percentage of individual middle schools reflect their percentage of FCPS population increase diversity and the feasibility of completing this work in 3 years. The Board discussed the variability in TJHSST's class population year to year.

Ms. Omeish moved, and Ms. Cohen seconded, to amend the follow-on motion to establish a goal of equitable representation by middle school for the class 2027 cohort.

The Board discussed the definition of equitable representation and that this goal was aspirational and would be clarified further at a later date.

The motion to amend the follow-on motion to establish a goal of equitable representation by middle school for the class 2027 cohort, **passed 7-4-1**: Ms. Omeish, Dr. Anderson, Mr. Frisch, Ms. Keys-Gamarra, Mrs. Corbett Sanders, Ms. Cohen, and Ms. Pekarsky voted “aye;” Ms. McLaughlin, Ms. Tholen, Ms. Meren, and Ms. Derenak Kaufax voted “no;” and Ms. Sizemore Heizer abstained from the vote.

The follow-on motion to establish that, as part of the holistic review process, by the process for the 2027 class, the top percent of the 8th grade class at each public middle school in Fairfax County who meet minimum standards - based on GPA in core classes, student portrait sheet, problem-solving essay, and experience factors - shall be eligible for admission according to the percentage that is proportional to their population. This reflects the existing holistic review plan but calculates allotments of gifted students by school rather than by region, as amended, **passed 7-4-1**: Ms. Omeish, Dr. Anderson, Mr. Frisch, Ms. Keys-Gamarra, Mrs. Corbett Sanders, Ms. Cohen, and Ms. Pekarsky voted “aye;” Ms. Tholen, Ms. Meren, Ms. McLaughlin, and Ms. Derenak Kaufax voted “no;” and Ms. Sizemore Heizer abstained from the vote.

Ms. Cohen moved, and Ms. Meren seconded, a follow-on motion to amend the family outreach/communication plan to include: Number of middle school students (by grade) interested in attending; Number of families who attend TJHSST outreach meetings; Number of applicants from first time (non-legacy) families;

Number of applicants from underrepresented student populations; Climate survey of TJHHST students; Parent engagement survey.

The Board discussed the need to set intentional goals and continue to increase accountability while improving community outreach and communication.

The follow-on motion a follow-on motion to amend the family outreach / communication plan to include: Number of middle school students (by grade) interested in attending; Number of families who attend TJHSST outreach meetings; Number of applicants from first time (non-legacy) families; Number of applicants from underrepresented student populations; Climate survey of TJHHST students; Parent engagement survey, **passed unanimously.**

Ms. Cohen moved, and Ms. Meren seconded, a follow-on motion to direct the superintendent to present an annual report in a public meeting to the board on TJ Admissions to include: diversity of admitted class, attrition rates and reason for students not attending or leaving the school, remediation efforts, STEM class offerings and participation in enrichment clubs, the preparation of this report will include input from the Chief Equity Officer on the ongoing efforts to enhance and diversify the educational environment of TJ, and input from stakeholders and community members, including from the Minority Student Achievement Oversight Committee and the Advanced Academic Program Advisory Committee reports. If adequate progress is not made on improving diversity, the board directs the Superintendent to propose additional tools available to obtain the goal of improving diversity which could include increased outreach, piloting a lottery or other tools that may be recommended by the Superintendent.

The Board stressed the need to evaluate the progress of these changes to TJHSST admission and discussed the importance of evaluating the impact of these changes and the continued importance of transparency in a public meeting.

The follow-on motion to direct the superintendent to present an annual report in a public meeting to the board on TJ Admissions to include: diversity of admitted class, attrition rates and reason for students not attending or leaving the school, remediation efforts, STEM class offerings and participation in enrichment clubs, the preparation of this report will include input from the Chief Equity Officer on the ongoing efforts to enhance and diversify the educational environment of TJ, and input from stakeholders and community members, including from the Minority Student Achievement Oversight Committee and the Advanced Academic Program Advisory Committee reports. If adequate progress is not made on improving diversity, the board directs the Superintendent to propose additional tools available to obtain the goal of improving diversity which could include increased outreach, piloting a lottery or other tools that may be recommended by the Superintendent, **passed unanimously.**

Ms. Meren moved, and Ms. McLaughlin seconded to reconsider the vote on the motion to require that the test (essay and SIS) be administered locally, at each middle school, to all eligible students (i.e. who meet the 3.5 GPA and Algebra 1

requirements), and to provide the opportunity to opt-out of taking the test should they so choose, by the admissions cycle for the class of 2026 (next year). To opt-out would be to eliminate oneself from consideration for TJ.

The Board discussed possible confusion due to the discrepancy between the motion displayed on BoardDocs and the motion stated by the member and considered if a second vote was necessary for confirmation of the wording.

The motion to reconsider the vote **failed 2-9-1**: Ms. Meren and Ms. McLaughlin voted “yes;” Ms. Omeish, Dr. Anderson, Mr. Frisch, Ms. Keys-Gamarra, Mrs. Corbett Sanders, Ms. Cohen, Ms. Pekarsky, Ms. Tholen, and Ms. Derenak Kaufax voted “no;” and Ms. Sizemore Heizer abstained from the vote.

4.03 FY 2021 Midyear Budget Review [FNS; NB 12/3/20; WS 12/15/20] (Exhibit H)

Ms. Meren moved, and Ms. Derenak Kaufax seconded, that the School Board approve revenue and expenditure changes reflected in the FY 2021 Midyear Budget Review as detailed in the agenda item.

The Board discussed the expenditures included in the food and nutrition program and the increase from previous years, due to the pandemic.

The motion that the School Board approve revenue and expenditure changes reflected in the FY 2021 Midyear Budget Review as detailed in the agenda item, **passed 8-3-1**: Ms. Omeish, Dr. Anderson, Mr. Frisch, Ms. Tholen, Ms. Derenak Kaufax, Ms. Meren, Ms. Cohen, and Ms. Pekarsky voted “aye;” Ms. McLaughlin, Ms. Keys-Gamarra, and Ms. Sizemore Heizer voted “no;” and Mrs. Corbett Sanders abstained from the vote.

4.04 PXXXX, New Policy Restraint and Seclusion [DSS NB 12/3/20/ PH 12/11/20] (Exhibit I)

Ms. Sizemore Heizer moved, and Ms. Omeish seconded, that the School Board approve the new Restraint and Seclusion Policy as presented and as detailed in the agenda item.

The Board expressed appreciation for the work of staff to further the goal of a caring culture by using positive intervention. The Board thanked the community, staff, and stakeholders’ whose input help shaped this policy.

The motion that the School Board approve the new Restraint and Seclusion Policy as presented and as detailed in the agenda item, **passed unanimously.**

4.05 Consideration of extension to Superintendent contract (Exhibit J)

Ms. Omeish moved, and Ms. Sizemore Heizer seconded, that the School Board renew its contract with Dr. Scott Brabrand as Superintendent, and authorize the Chairman to execute the amended contract, as detailed in the agenda item.

The Chair stated that the Superintendent's contract will be extended for 1 year beyond the June 30, 2021 end date.

The motion that the School Board renew its contract with Dr. Scott Brabrand as Superintendent, and authorize the Chairman to execute the amended contract, as detailed in the agenda item, passed unanimously.

5. CONSENT AGENDA

5.01 Monthly Report on Employee Separation- Confirm the separations for the period beginning November 1, 2020 and ending November 30, 2020. (Exhibit K)

Vice Chair Pekarsky stated that, without objection, the one item on the consent agenda would be adopted. Hearing no objections, the consent agenda was adopted.

6. NEW BUSINESS

6.01 FY 2022-2026 Capital Improvement Program [FTS; WS 1/5/21; 1/7/21 PH; Action 2/4/21; approve the Proposed FY 2022-2026 Capital Improvement Program.]- Approve the Proposed FY 2022-2026 Capital Improvement Program. (Exhibit L)

There was no discussion on this item.

7. SUPERINTENDENT MATTERS

The Superintendent made brief comments.

8. BOARD COMMITTEE REPORTS (Exhibit M)

December 8, 2020

Governance Committee - Karl Frisch, Chair

December 9, 2020

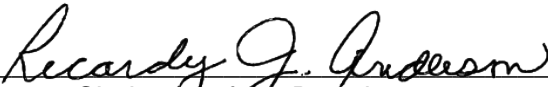
Audit Committee, Karen Keys-Gamarra, Chair

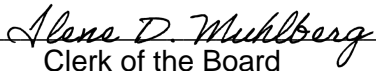
9. BOARD MATTERS

The Board agreed to cancel Board Matters due to the late hour.

10. ADJOURNMENT

The meeting was adjourned at 12:30 a.m. on December 18, 2020.


Chairman of the Board


Clerk of the Board
Approved January 21, 2021

Regulation 3355.14
Superintendent's Office
TJHSST Admissions
Effective 04/28/2021

INSTRUCTION

Special Programs

Thomas Jefferson High School for Science and Technology (TJHSST)

This regulation supersedes Regulation 3355.13.

I. PURPOSE

To establish TJHSST as a Fairfax County public school and as one of the academic-year regional governor's schools for science and technology.

II. SUMMARY OF CHANGES SINCE LAST PUBLICATION

- A. Sections V.A.1., V.A.3.a., V.A.5.b., and V.A.6.a. have been updated.
- B. Sections V.B.1., V.B.2.a. (4), V.B.3., and V.B.4. have been revised for clarity.
- C. Section VI has been revised to reflect updates in staff titles and department changes.
- D. Section VII.B. has been updated.
- E. Section IX.A. has been updated to reflect new graduation requirements.
- F. Section IX.C. has been revised for clarity.
- G. Section X.B.2. has been revised for clarity.

III. DESIGNATION AS A FAIRFAX COUNTY PUBLIC SCHOOL

TJHSST is a Fairfax County public school, having opened in 1985 under the sole direction and control of the Fairfax County School Board. As a Fairfax County Public Schools (FCPS) institution, all policies and regulations governing FCPS are applicable to TJHSST, with exceptions listed in this regulation and in annual notices issued in connection with this regulation.

IV. DESIGNATION AS AN ACADEMIC-YEAR GOVERNOR'S SCHOOL FOR SCIENCE AND TECHNOLOGY

TJHSST is annually designated by the Virginia Department of Education as an academic-year regional governor's school for science and technology. Such

designation:

- A. Provides certain state funding for the operation of the school.
- B. Requires that the school be available to eligible students whose parent(s) and/or legal guardian(s) is a full-time resident(s) of, and meets all the residency requirements of, the counties and cities of Northern Virginia under the following provisions:
 - 1. That each of the school divisions decide annually whether or not to participate in the regional school. School divisions choosing to participate are designated as cooperating school divisions.
 - 2. That eligible students from each cooperating school division may apply and be considered for admission to the school. The Division Superintendent may return a student to the cooperating jurisdiction with a prorated share of the tuition reimbursed.
- C. Requires a cooperative agreement regarding such control and operation of the school, which includes, but is not restricted to, provisions that:
 - 1. The school is a FCPS institution under the sole direction and control of the Fairfax County School Board.
 - 2. Superintendents or their respective designees from cooperating school divisions may, at their discretion, serve as an advisory group to the Superintendent of FCPS.
 - 3. FCPS will call and conduct meetings of the advisory group defined in Section IV.C.2. above.
 - 4. Each cooperating school division must pay a per student tuition charge that will be fixed annually by the cooperative agreement.
 - 5. The nonrefundable tuition paid by cooperating school divisions will be due December 1 of each year for the students from that school division who are enrolled in the school on September 30 of that year.
 - 6. Transportation for students attending TJHSST is the responsibility of, and is at the discretion of, the cooperating school division in which the student resides.
 - 7. FCPS will provide the necessary forms and materials and staff orientation, as required, and will schedule and conduct requisite examinations, scoring, and reporting of admissions results.

V. STUDENT SELECTION AND ADMISSIONS PROCEDURES

Each year TJHSST will admit approximately 550 ninth-grade students who have

committed to an intensive program focused on science, technology, engineering, and mathematics. No twelfth-grade students will be admitted; however, tenth or eleventh-grade students may be admitted by a placement process. See Section IV.B.

A. Selection of Ninth-Grade Students

1. Eligibility Requirements

- a. **Residency.** To be eligible for consideration, all applicants for admission to the school must reside with a parent and/or legal guardian who is a full-time resident of, and meets all of the residency requirements of, one of the cooperating school divisions throughout the application and decision process. Applicants enrolled in private school or homeschooled will be required to submit proof of residency in one of the cooperating school divisions at the time of application. Applicants must be enrolled in grade 8 in any private, homeschool or public school in the academic year preceding the year for which admission is sought. A student may not apply twice as an eighth grader into the ninth grade except in the case of extenuating circumstances.
- b. **Course Prerequisites.** To be eligible for consideration, applicants must be: (1) currently enrolled in, or have previously completed algebra 1, (2) enrolled in a full-year course of honors-level algebra 1 or a higher level honors mathematics course; (3) enrolled in honors science and one additional course or identified as a “Young Scholar”; and (4) have a 3.5 or higher GPA in all four core academic courses (math, science, history/civics, English/language arts and world language if taken for high school credit) at the time of application.

2. Selection Criteria

Applicants will be selected using criteria that consider only the following:

- a. Aptitude for successful study of science, technology, engineering, and mathematics.
- b. Record of exceptional academic achievement.
- c. Commitment, intellectual curiosity, passion, and creativity in the study of science, technology, engineering, and mathematics.
- d. Background, skills, or experiences that promote 21st Century Skills and develop future leaders; demonstrate the outstanding attributes of a communicator, collaborator, an ethical and global citizen, a creative and critical thinker, and a goal-directed and resilient individual; and qualities that enrich and cultivate diversity to enhance the learning experience for all students.

3. Methods and Instruments of Measurement

(a) In addition to each applicant's academic record, including GPA and coursework, admissions evaluators will consider:

- (1) Applicant responses to one problem-solving essay question.
- (2) Applicant responses on a student portrait sheet.
- (3) Background of educational challenges, specifically whether students are (or were) identified as English language learners, economically disadvantaged, eligible for special education services or attending a historically under-represented public middle school.

A public school is considered historically "underrepresented" if its average number of attending students offered admission to TJHSST based on the previous five years is at least three standard deviations below the school with the highest average number during the same period. For example, based on 9th grade admissions for the five years comprising the Classes of 2019 through 2024, the middle school with the highest five-year average of admitted students averaged 44 admission offers per year. Among all FCPS middle schools, the standard deviation of these five-year averages during the same period was 13. Based on this data, for Class of 2025 admissions, a middle school will be considered "underrepresented" if its average number of students offered admission to the Classes of 2019 through 2024 was five students or less per year (highest average minus three standard deviations, i.e., $44 - (3 \times 13)$). This same approach will be applied to other sending school divisions to identify underrepresented public schools in all participating jurisdictions, except Falls Church City, which has only one middle school. Underrepresented public schools will be identified each year based on the last five years of admissions data. The schools that are considered "underrepresented public middle schools" for that admissions cycle will be identified on the TJHSST admissions site and updated annually.

(b) In accordance with the policy directive of the School Board, the admission process must use only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets. Candidate name, race, ethnicity, or sex collected on the application form will not be provided to admissions evaluators. Each applicant will be identified to the evaluators only by an applicant number (student ID number for FCPS students; applicant ID number for non-FCPS students).

4. Admissions Calendar

The application deadline dates will be set each year and published in Notice 3355, Thomas Jefferson High School for Science and Technology Admissions Procedures. Starting with applicants for the Class of 2026, the application deadline for all eligible students seeking admission to the ninth grade will be no later than December 15 of the year preceding the year for which admission is sought. See Section V.A.6.

5. Ninth-Grade Admissions Process—Winter Round

The admissions process will be conducted by the admissions office of TJHSST. The admissions process will be completely independent of the TJHSST staff, except that the principal or designated school staff members will provide each year for the admissions office a profile of the last class of ninth, tenth, and eleventh grade successful applicants. This profile, along with other related data, will provide information and recommendations for improvement and refinement of the admissions process.

(a) Admissions Process

- (1) Students are assisted in making application by a local school counselor designated as that school's official contact with the admissions office.
- (2) Applications are screened for eligibility by admissions staff (See section V.A.1.a & b).
- (3) Students who meet the eligibility criteria are administered short answer and essay exams in a proctored environment (See Notice 3355) [See section V.3.a.(1) & (2)].
- (4) Complete application packets are provided to admissions evaluators. Admissions evaluators are appointed by the Division Superintendent or his or her designee. Evaluators will include school-based and central-administration personnel, such as teachers, counselors, or administrators (retired or active), from FCPS or from the cooperating school divisions.
- (5) Starting with the Class of 2026, Applicant notification of the decisions regarding admissions will be no later than April 30 each year.

(b) Seat Allocation Process. Each public school within Fairfax County and each cooperating school division will be presumptively allocated a number of seats equal to 1.5% of that school's 8th grade student population ("Allocated Seats"). The remainder of seats will not be allocated to any specific public school ("Unallocated Seats"). In the event a school has fewer eligible applicants than its number of Allocated Seats, the difference will be treated as Unallocated Seats.

- (1) Allocated Seats. Applicants attending public school will be first evaluated against other applicants from the same school, and students with the strongest evaluated applications from that school will be offered admission.
- (2) Unallocated Seats. All remaining public school applicants and applicants who do not attend public school in Fairfax County or in a

cooperating division will be considered for the Unallocated Seats, which will be offered to the highest evaluated applicants in that group.

(c) Admissions Decisions. All applicants will receive a decision on their application; Offer, Waitpool or No Offer.

- (i) **Offer:** Applicants offered admission for the upcoming Fall (9th grade) year must accept or decline by the stated deadline. Accepting the offer means the applicant is choosing to attend TJHSST the next school year. No deferrals are permitted. Students who accept the offer will go through the registration process. Declining the offer means the applicant has decided not to attend TJHSST. The decision to decline the offer is final, and applicants will not be provided with an option to receive the offer at a later date.
- (ii) **Waitpool:** A waitpool of students will be created to offer additional students an opportunity to attend TJHSST when admitted applicants decline the offer of admission. Offers of admissions to students who have accepted to stay in the waitpool will be provided to the highest evaluated students remaining in the waitpool. Waitpool offers will continue to be made until all seats have been filled or until the beginning of the school year, which occurs first.
- (iii) **No Offer:** Some applicants will not receive an offer to attend or be included in the waitpool. No Offer applicants are eligible to re-apply for the Sophomore Round of Admissions the following year contingent they maintain eligibility.

B. Placement of Tenth and Eleventh-Grade Students

Eligible ninth and tenth-grade students may be considered for admission as tenth or eleventh grade students respectively at TJHSST, if space is available. Spaces available will be determined by the admissions office and the principal, taking into account attrition rates. Applications for admission to the tenth or eleventh grades will not be considered midyear.

1. Eligibility Requirements

Applicants for admission to the school must reside with a parent and/or legal guardian who is a full-time resident of, and meets all the residency requirements of, one of the cooperating school divisions throughout the application and decision process. Proof of residency in one of the cooperating school divisions will be required at the time of application for students enrolled in private schools or homeschooled. Applicants to grade 10 must be enrolled in grade 9 in any private or public school during the academic year preceding the year for which admission is requested. Applicants to the eleventh grade must be enrolled in grade 10 in any private or public school during the academic year preceding the year for which admission is requested. Eligible tenth graders applying to the eleventh grade are

those who have not applied previously to TJHSST or those who have just moved to a cooperating school division.

2. Evaluation of Sophomore and Junior Applications

Sophomore and junior applicants are evaluated on the basis of:

- a. Aptitude, achievement, and interest in the study of science, mathematics, computer science, and related technological fields evidenced by:
 - (1) A student-authored information and data sheet and essays.
 - (2) Marks in mathematics, science, computer science, English, social studies, foreign language, and technology-related courses.
 - (3) Recommendations from current mathematics teacher, current science teacher, and one other adult chosen by the applicant.
 - (4) Test scores, as deemed appropriate (optional for Sophomore applicants).
- b. Readiness for research, experimentation, or independent study in one of the school's technology laboratories, evidenced by successful science fair projects and/or other experiences, activities, or projects (in or out of school) in science, engineering, computer science, and other areas of technology.

The admissions committee will consider the entire application, including all these factors, as part of an individualized and holistic review designed to identify a talented, committed, and diverse student body consistent with the school's mission.

- c. The evaluation process will use only race-neutral methods that do not seek to achieve any specific racial or ethnic mix, balance, or targets.

3. Credits Required for Grade 10 Application

Completion of the following specified graduation credits prior to the beginning of the sophomore year is required for those requesting placement into the tenth grade:

English 9	1 credit
World Language	1 credit
Mathematics (Algebra 1, Geometry)	2 credits
Biology	1 credit
Health and Physical Education	1 credit
Elective (Technology preferred)	1 credit

4. Credits Required for Grade 11 Application

Completion of the following specified graduation credits prior to the beginning of the junior year is required for those requesting placement into the eleventh grade:

English 9 and 10	2 credits
Biology	1 credit
Chemistry	1 credit
World Language	1 credit (2 recommended)
Mathematics (Alg. 1, Geom., Alg. 2)	3 credits
Health and Physical Education	2 credits
World History and Geography 2	1 credit
Elective (Technology preferred)	1 credit

Students accepted into the eleventh grade with all the above credits would still need to take at least 13 additional credits to complete the graduation requirements for the TJHSST diploma. (See Section IX, Graduation Requirements.)

5. Tenth and Eleventh Grade Admission Process

The admissions process for tenth and eleventh grade students will be conducted by the admissions office of TJHSST.

a. Application Calendar

An application deadline for eligible ninth and tenth grade students will be set each year and published in Notice 3355. The application deadline for all eligible students seeking admission to the tenth or eleventh grade will be no later than June 15 immediately preceding the academic year for which admission is sought.

b. Admissions Process

Eligible students are assisted in making request for placement by the admissions office or by a local school counselor designated as that school's official contact with the admissions office.

c. Selection Procedure

- (1) Students' records are reviewed by the admissions office and by a committee of faculty and staff members of TJHSST to determine which students have met all prerequisite courses and educational experience requirements.
- (2) All students requesting placement will be notified of decisions by the admissions office no later than July 15 of each year.

VI. Appeals

A. Exceptional Circumstances Appeal

1. An Exceptional Circumstances Appeal form must be submitted within 10 business days after receiving official notice of the admissions decision. The Appeal form will ask the parent and/or guardian to provide a written explanation of the exceptional

circumstance that the Appeals Committee should consider.

2. The Appeal form must be submitted to the TJHSST Admissions Office. The TJHSST Admissions Office will ensure that all appeal documents are submitted to the Appeals Committee. The parent and/or guardian is not allowed to submit additional credentials, documents, or letters of recommendation.
3. The Appeals Committee will review the appeal.
4. The decision of the Appeals Committee will be communicated to the parent and/or guardian in writing and the Appeals Committee decision is final.

VII. RESIDENCY REQUIREMENTS

A. Continuing Residency Requirement

1. A parent and/or legal guardian of an admitted student must complete a residency verification form in order to register the student at TJHSST.
2. A student who is admitted to TJHSST must at all times continue to reside with a parent and/or guardian who is a full-time resident and meets the residency requirements.

B. Change of Address Within Cooperating School Divisions

1. All changes of address from the time of application through graduation must be reported to the student services office immediately upon change of address. If there is a change of address, a parent and/or legal guardian must complete a new Residency Verification form with the school student services department.
2. If a student and his or her parent(s) or legal guardian(s) change their domicile to a location in another cooperating school division, the parent(s) and/or legal guardian(s) must verify the cooperating school division's percentage has not been exceeded for the student's class at TJHSST before any change of domicile. Note: This requirement will end with the Class of 2024 (selection process changed for Class of 2025).
3. A student who changes his or her domicile to a cooperating school division that has exceeded its percentage for the student's class at TJHSST may not continue to attend TJHSST. Note: This requirement will end with the Class of 2024 (selection process changed for Class of 2025).

VIII. STUDENT WITHDRAWAL, REENTRY AND DEFERMENT

A. Permanent Withdrawal

A student who is enrolled in TJHSST may at any time, with parental permission, voluntarily withdraw from the school and enroll in the public high school that serves the student's residential location or in the private school of his or her choice. A

student who voluntarily withdraws from TJHSST during grade 9 is eligible to reapply for admission to grade 10 at TJHSST, but readmission is not guaranteed. A student who voluntarily withdraws after grade 9 is not eligible to reapply to TJHSST.

B. Temporary Withdrawal

A student enrolled for at least one full academic year in TJHSST may withdraw for only one full academic year and be guaranteed automatic reentry provided all three following conditions are met:

1. The student and parents change their domicile to a location outside the boundaries of the cooperating jurisdictions for one full academic year but return to a cooperating school division whose percentage has not been exceeded for the class that the student seeks to reenter prior to reentry.
2. The student obtains (prior to the temporary withdrawal date), from the principal, written approval of the plan for the student's academic program during the withdrawal period.
3. The student successfully completes the proposed academic program and can meet the graduation requirements of TJHSST at the expected time of graduation for the class in which the student was originally enrolled.

B. Deferment of Admissions

1. Students who are offered admissions are not permitted to defer the offer. The selection process will continue to offer any open seat to students in the waitpool. Therefore, students who do not accept admission would be required to reapply (if eligible) for the Sophomore Round.

IX. GRADUATION REQUIREMENTS

- A. The requirements for a student to earn a diploma are those in effect when the student enters the 9th grade for the first time. The following applies to 9th grade students who enter high school in 2013-14 and beyond.

To graduate from high school with an Advanced Studies Diploma, students must meet the minimum requirements as outlined below, which include 26 credits, 9 of which must be verified credits. A **standard** credit is earned when a student passes a course. A **verified** credit is earned when a student passes a course and the associated end-of-course SOL test. In some cases, students may utilize substitute tests or certifications to earn verified credits. State guidelines prescribe the number of verified credits required for graduation for students entering a Virginia public high school for the first time during tenth grade or after. Consult your school counselor for specific information.

Students receive credit toward graduation for high school courses taken and passed in middle school. These courses count toward credits in the required sequences as well as toward the total number of credits required for graduation and calculation of the grade point average (GPA). **Middle school parents may request that grades for any high**

school credit-bearing course taken in the middle school be removed from the student's high school transcript, any removed grades will not earn high school credit for the course. In addition, the student will not be eligible for a verified credit in any course that has been removed from the transcript. The request to remove a course from the transcript must be made in writing to the middle or high school that the student will attend in the next school year no later than nine weeks after that school year begins.

Advanced Studies Diploma Course Requirements (8 VAC 20-131-50)			
Subject Area	Standard Credits	Verified Credits	Jefferson Diploma ¹
English	4	2	4
Mathematics ¹	4	2	4 ⁷
Laboratory Science ²	4	2	4
History and Social Science ³	4	2	4 ⁸
*World Language ⁴	3		3 ⁹
Health and Physical Education	2		2
Fine Arts or Career and Technical Ed.	1		1 ¹⁰
Economics and Personal Finance	1		1
Electives	3		3 ¹¹
Student Selected Test ⁵		1	
Total Credits ⁶	26	9	26

*Foreign Language is designated World Language in FCPS.

1 Courses completed to satisfy this requirement will include at least three different course selections from among: algebra I, geometry, algebra II, or other mathematics courses above the level of algebra II. The Board of Education shall approve courses to satisfy this requirement.

2 Courses completed to satisfy this requirement will include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics or completion of the sequence of science courses required for the International Baccalaureate Diploma. The Board will approve courses to satisfy this requirement. Biology, chemistry, physics, and geosystems are required courses for all students.

3 Courses completed to satisfy this requirement will include U.S. and Virginia history, U.S. and Virginia government, and world history/geography I and world history/geography II. AP world history satisfies the requirement for world history/geography II.

4 Courses completed to satisfy this requirement will include three years of one language or two years of two languages.

5 A student may utilize additional tests for earning verified credit in computer science, technology, career or technical education, economics, or other areas as prescribed by the Board in 8 VAC 20-131-110.

6 Students must successfully complete one virtual course, which may be a noncredit-bearing course, or may be a course required to earn this diploma that is offered online.

7 Does not include algebra I, which is required for application and/or admission. Math sequence must terminate in at least AP calculus (AB or BC)

8 World history & geography 2, US/VA history, US/VA government. The fourth social studies requirement may be acquired by any non-AP social studies credit available at TJHSST.

9 Must have three consecutive years of the same language – Footnote #4 does not apply for the

TJ Diploma.

10 The credit is earned via design & technology required for all matriculating students.

11 Computer science, senior research/mentorship, and an additional credit in math, science, technology, fine arts, or a fourth consecutive credit in world language must be taken to fulfill these 'elective' credits.

B. Exemption from the TJHSST Diploma Requirement

An enrolled student in the senior year may be granted an exemption, under exceptional circumstances, by the director of student services and the principal, from meeting the requirements for graduation from TJHSST if the student meets local and state requirements for graduation. A student who is granted an exemption from the TJHSST diploma may receive a generic diploma from FCPS and may participate in the TJHSST graduation ceremony.

C. Graduation Credit by Alternate Methods

Alternate methods of earning credit for graduation from TJHSST require approvals, before beginning any study or program, of the director of student services and the principal. Alternate methods must be ones sanctioned by the Virginia Board of Education and Fairfax County School Board directives.

X. ACADEMIC STANDARDS AND PROCEDURES

A. Academic Standards

An enrolled student must maintain a cumulative B average (unweighted 3.0 grade point average) at the end of each school year to remain a student in good standing at TJHSST.

B. Academic Standards Procedure

1. For any student who is experiencing academic difficulty during the school year, TJHSST teachers and staff members will develop and document intervention strategies to help the student be academically successful at TJHSST.
2. At the end of the school year, if the student does not maintain the needed course of studies or fails to maintain a cumulative B average (unweighted 3.0 grade point average), the student may return to his or her base school. When there are exceptional circumstances, the parent may request an exception from the director of student services, the principal, and the regional assistant superintendent or his or her designee.

XI. CURRICULUM

The curriculum for TJHSST includes selected courses prescribed in the FCPS Program of Studies, as well as courses designed to explore new structures and methods in the sciences, technology, mathematics, humanities, and the arts. The curriculum for TJHSST

must meet state governor's high school and FCPS academic requirements.

XII. PROGRAM

The eight-period day consists of seven academic classes and one required activity period. Students do not attend each course every day. Flexible scheduling allows all classes to meet for two double periods and one single period each week.

XIII. EXTRACURRICULAR ACTIVITIES

The extracurricular activities program for TJHSST is the same comprehensive extracurricular activities program, including athletics, as that approved for other high schools in FCPS. Any approved activity will be provided if sufficient student interest and participation exist.

Any student who transfers from TJHSST with no legal change in domicile will be ineligible, according to the Virginia High School League transfer rules, to participate for one semester in Virginia High School League-sanctioned activities of any Virginia high school.

XIV. PERSONNEL AND STAFFING

Staffing and personnel policies for TJHSST that differ from staffing and personnel policies for other Fairfax County public schools include the following:

- A. All instructional staff members will be employed for at least eight hours each working day.
- B. All instructional staff members will receive a salary scale adjustment.
- C. Criteria by which instructional staff members are selected will be determined by the Department of Human Resources with assistance from the administrative staff of TJHSST.

Legal reference: 8 VAC 20-131-110

See also the current version of:

Notice 3355, Thomas Jefferson High School for Science and Technology
Admissions Procedures

Notice 5922, Student Fees

Policy 3355, High School for Science and Technology Notice 5533, Thomas
Regulation 2431, Middle School Teacher's Guide: Grading and Reporting to
Parents

Regulation 2460, Requirements for Graduation and Graduation Seals of
Achievement

FAIRFAX COUNTY PUBLIC SCHOOLS

VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

**K.C., a minor, by and through
her parent and next friend,
HANNING CHEN,**

**HANNING CHEN,
in his own right,**

**A.Y., a minor, by and through
her parent and next friend,
YUHONG LIN,**

**YUHONG LIN,
in her own right,**

**D.M., a minor, by and through
her parent and next friend,
YING McCASKILL,**

Civil Action No. 2020-17283

**YING McCASKILL,
in her own right,**

**S.S., a minor, by and through
his parent and next friend,
MAHUA MITRA,**

**MAHUA MITRA,
in her own right,**

**A.N., a minor, by and through
his parent and next friend,
HEMANG NAGAR,**

**HEMANG NAGAR,
in his own right,**

**S.K., a minor, by and through
his parent and next friend,
TILAK VENIGALLA,**

**TILAK VENIGALLA,
in his own right,**

**H.P., a minor, by and through
his parent and next friend,
JAMES PAN,**

**JAMES PAN,
in his own right,**

**A.B., a minor, by and through
his parent and next friend,
MAYURI PRODHUTURI,**

**MAYURI PRODHUTURI,
in her own right,**

**V.V., a minor, by and through
her parent and next friend,
VIJAY RAGHAVAN,**

**VIJAY RAGHAVAN,
in his own right,**

**A.Y., a minor, by and through
his parent and next friend,
SAMPATH YARLAGADDA,**

**SAMPATH YARLAGADDA,
in his own right,**

**C.J., a minor, by and through
his parent and next friend,
JUSTIN JIA,**

**JUSTIN JIA,
in his own right,**

**A.K., a minor, by and through
her parent and next friend,
RAJA KAKAYADI,**

**RAJA KAKAYADI,
in his own right,**

**K.S., a minor, by and through
his parent and next friend,
SRIHARI SIRUVURI,**

SRIHARI SIRUVURI,
in his own right,

A.J., a minor, by and through
her parent and next friend,
PUNNAM JONNALA,

PUNNAM JONNALA,
in his own right,

T.K., a minor, by and through
his parent and next friend,
DHEERAM KALEEM,

DHEERAM KALEEM,
in his own right,

V.J., a minor, by and through
her parent and next friend,
HARRY JACKSON,

HARRY JACKSON,
in his own right,

R.A., a minor, by and through
his parent and next friend,
SRINIVAS AKELLA, and

SRINIVAS AKELLA,
in his own right,

Plaintiffs,

v.

THE FAIRFAX COUNTY SCHOOL BOARD,

and

SCOTT S. BRABRAND,

Superintendent
of the Fairfax County Public Schools,

Defendants.

FIRST AMENDED COMPLAINT¹

Plaintiffs, by counsel, bring this First Amended Complaint (“Complaint”) against the Fairfax County School Board (“FCSB”) and the Superintendent of Fairfax County Public Schools (the “Superintendent”) in order to vacate, nullify and reverse their actions (a) to abolish the administration of certain well-recognized standardized tests as part of the admissions process for the Thomas Jefferson High School for Science and Technology (a/k/a Thomas Jefferson Governor’s School or “TJ”), and (b) to implement in its place an admissions process that discriminates against gifted students and is educationally inappropriate. Plaintiffs also seek preliminary and permanent injunctions requiring FCSB and the Superintendent to reinstate such testing as part of the admissions process and to discontinue use of the discriminatory and educationally inappropriate admission process for the Thomas Jefferson Governor’s School. In support whereof, the Plaintiffs say as follows:

The Thomas Jefferson Governor’s School

1. The Thomas Jefferson Governor’s School is a public high school, operated by FCSB and the Superintendent, and serving Fairfax County as well as several other school districts, including Arlington, Loudoun, and Prince William counties, as well as the cities of Fairfax and Falls Church (collectively, the “Thomas Jefferson School Districts”).

2. Founded in 1985, the Thomas Jefferson Governor’s School has long been recognized as one of the best high schools in the nation. According to the rankings published in 2020 by the *U. S. News and World Report*, the Thomas Jefferson Governor’s School ranks *number one* among public high schools in the United States.

¹ Pursuant to Rule 3.2, this pleading is styled a “Complaint.” Insofar as it seeks relief pursuant to Virginia Code § 22.1-87, it is filed as, and is intended to constitute, a “petition” within the meaning of that statute.

3. The Thomas Jefferson Governor's School's educational excellence is due, in large part, to the high caliber of its student body. As explained by this Complaint, the Thomas Jefferson Governor's School has been devoted to the education of students qualifying as "gifted," a term having specific meaning in the law.

4. The term "Governor's School" is not merely an honorary designation. Academic Year Governor's Schools (a/k/a regional Governor's Schools), such as the Thomas Jefferson Governor's School, receive certain benefits from the Commonwealth of Virginia, including but not limited to special funding. At the same time, school districts that operate such Governor's Schools have certain obligations, including but not limited to operating them as schools for gifted students within the meaning of Virginia law.

5. At issue is whether the Thomas Jefferson Governor's School will continue to educate gifted students, or whether it will be diverted to other uses, contrary to the requirements of the law.

The Plaintiffs

6. Plaintiffs are middle school students residing in one of the Thomas Jefferson School Districts and their parents (the "Students" and "Parents"). Students, all minors, sue by and through their respective Parents (as set forth below) as next friends. Parents also sue in their own right.

7. Each of the Students has been recognized by Fairfax County Public Schools as gifted and/or attends a school for the gifted. Each of the Students is now in the seventh or eighth grade. Each of the Students wishes to attend the Thomas Jefferson Governor's School for his/her high school education, and to obtain the very high quality of gifted education currently available there.

8. Each of the Students intends to apply – and will apply – for admission to the Thomas Jefferson Governor's School, so as to be part on the class entering in the fall of their ninth-

grade year. Under the admissions process, as it existed before the actions by FCSB and Superintendent that are the subject of this Complaint, each of the Students had a high likelihood of admission to the Thomas Jefferson Governor's School.

9. Each of the Students is aggrieved by the actions of FCSB and the Superintendent because those actions will (a) make it substantially less likely that they will be admitted into the Thomas Jefferson Governor's School, and (b) likely – indeed, inevitably – lower the quality of education available there, even if they are admitted.

10. Each of the Parents supports their Student's desire to attend the Thomas Jefferson Governor's School, and each of the Parents is aggrieved because of the effects the actions of FCSB and the Superintendent will have on their Student.

11. The "primary role of the parents in the upbringing of their children is now established beyond debate," *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972), and is broad enough to give the Parents standing to bring this Complaint in their own right. *See also* Va. Code § 22.1-87 (affording parents a right to bring action against school board).

12. Almost all of the Students attend public school in in Fairfax County, and all of them have worked hard to excel and to prepare themselves for admission to the Thomas Jefferson Governor's School based on their individual merit.

13. The Students are gifted learners as demonstrated by the following:

- a. Almost all of the Students (16 of the 17) have been previously identified as gifted by the Fairfax County Public Schools (the final Student was never tested by the Fairfax County Public Schools, but attends a private school for the gifted);
- b. Almost all of the Students (15 of the 17) have been admitted into the Advanced Academic Program provided by the Fairfax County Public Schools; the two other Students attend a private school for the gifted; and

- c. All of the Students have impressive grade point averages; most have a 4.0 or 3.9 (on a four-point scale).

14. K.C. is an eighth grader at Cooper Middle School in Fairfax County. She was identified as a gifted learner in second grade by Fairfax County Public Schools and admitted into its Advanced Academic Program. K.C.'s father, Mr. Hanning Chen, is a professor of chemistry at American University. Mr. Chen has lived in Fairfax County, Virginia, since 2012.

15. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that K.C. would be admitted.

16. A.Y. is an eighth grader at Rachel Carson Middle School in Herndon, Virginia. She was identified as a gifted learner in second grade by Fairfax County Public Schools and admitted into its Advanced Academic Program. In the sixth grade, A.Y. was recognized as being in the top 2 percent *around the world* in the Math Olympiad. A.Y.'s mother, Ms. Yuhong Lin, is vice president of technology services in an informational technology company. Ms. Lin has lived in Fairfax County since 1998.

17. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that A.Y. would be admitted.

18. D.M. is an eighth grader at Rachel Carson Middle School in Herndon, Virginia. D.M. was identified as a gifted learner in second grade by Fairfax County Public Schools and admitted into its Advanced Academic Program. D.M. has received straight As in seventh grade and up to the date of this Complaint in eighth grade. D.M. participated in Math Olympiad and American Mathematics Competitions (AMC) 8, earning high results. The mother of D.M., Ms. Ying McCaskill, was a high school English teacher and has lived in Fairfax County since 2003.

19. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that D.M. would be admitted.

20. S.S. is an eighth grader at Kilmer Middle School in Vienna, Virginia. S.S. was identified as a gifted learner in second grade by Fairfax County Public Schools and admitted into its Advanced Academic Program. S.S.'s mother, Ms. Mahua Mitra, is a federal government employee and a science and technology professional. Ms. Mitra has lived in Fairfax County since 2001.

21. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that S.S. would be admitted.

22. A.N. is an eighth grader at Rachel Carson Middle School in Herndon, Virginia. A.N. was identified as a gifted learner in third grade by Fairfax County Public Schools and admitted into its Advanced Academic Program. A.N.'s father, Mr. Hemang Nagar, is a software professional. Mr. Nagar has lived in Fairfax County since 2004.

23. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that A.N. would be admitted.

24. S.V. is an eighth grader at Rachel Carson Middle School in Herndon, Virginia. S.V. was identified as a gifted learner in second grade by Fairfax County Public Schools and admitted into its Advanced Academic Program. S.V. has participated in several math and science competitions as early as the second grade, winning first or second places consistently. S.V.'s father,

Mr. Tilak Venigalla, is an informational technology professional who has lived in Fairfax County since 2009.

25. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that S.V. would be admitted.

26. H.P. is an eighth grader at Nysmith School for the Gifted in Herndon, Virginia. H.P. was identified as a gifted learner in second grade by Fairfax County Public Schools and admitted into its Advanced Academic Program. H.P. has attended the Johns Hopkins Center for Talented Youth and the University of Virginia Summer Enrichment Program and been recognized as a History Bee national finalist. H.P.'s father, Mr. James Pan, has lived in Fairfax County since 1974.

27. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that H.P. would be admitted.

28. A.B. is an eighth grader at Rocky Run Middle School in Chantilly, Virginia. A.B. was identified as a gifted learner in second grade by Fairfax County Public Schools and admitted into its Advanced Academic Program. The mother of A.B., Ms. Mayuri Prodhuturi, is an information technology professional, working in higher education and has lived in northern Virginia since 2001.

29. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that A.B. would be admitted.

30. V.V. is an eighth grader at Rocky Run Middle School in Chantilly, Virginia. V.V. was identified as a gifted learner in third grade by Fairfax County Public Schools and admitted into its Advanced Academic Program. The father of V.V., Mr. Vijay Raghavan, is a small business owner and information technology professional who has lived in Fairfax County since 1997.

31. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that V.V. would be admitted.

32. A.Y. is an eighth grader at Rocky Run Middle School in Chantilly, Virginia. A.Y. was admitted to the Fairfax County Advanced Academic Program in third grade. A.Y. has been a grade winner in his school spelling bee for five years and two times as a school winner. A.Y. also participates in extracurricular activities related to science, technology, engineering and mathematics and has won many prizes in the activities. The father of A.Y., Mr. Sampath Yarlagadda, is an information technology professional. Mr. Yarlagadda has lived in Fairfax County since 2003.

33. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that A.Y. would be admitted.

34. C.J. is an eighth grader at Longfellow Middle School in Falls Church, Virginia. C.J. enjoys math and participates in Math Counts and American Mathematics Competition 10. The father of C.J., Mr. Justin Jia, is a structural engineer and has lived in Fairfax County since 2018.

35. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that C.J. would be admitted.

36. A.K. is an eighth grader at Nysmith School for the Gifted in Herndon, Virginia. She is a straight-A student with a passion for math and science, competing at the state level in her school's Science Bowl team. The father of A.K., Mr. Raja Kakayadi, is a software developer and has lived in Fairfax County since 2005.

37. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that A.K. would be admitted.

38. K.S. is an eighth grader at Rachel Carson Middle School in Herndon, Virginia. He was admitted into the Advanced Academic Program in third grade. The father of K.S., Mr. Srihari Siruvori, is an information technology professional who has lived in Fairfax County since 1998.

39. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that K.S. would be admitted.

40. A.J. is an eighth grader at Rocky Run Middle School in Chantilly, Virginia. A.J. is currently taking Algebra 2 math and enjoys math and science. In her elementary and middle school, A.J. participated in various extracurricular math activities like Math Kangaroo, Math Counts and American Mathematics Competition 8. She also participated in Girls Code competition and placed in the finals. The father of A.J., Mr. Punnam Jonnala, is an information technology specialist and has lived in Fairfax County since 2017.

41. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that A.J. would be admitted.

42. T.K. is an eighth grader at Rachel Carson Middle School in Herndon, Virginia. T.K. has been involved in numerous activities related to math and science including, First Lego League, American Mathematics Competitions, Mathcounts, Math Kangaroo, and Science Olympiad. During the current pandemic, T.K. has been doing programming in Java and Python, he has built robots using Lego EV3, is doing Ecybermission, and is learning Autodesk Inventor, a CAD software. T.K. was identified as a gifted learner by Fairfax County Public Schools and admitted into its Advanced Academic Program. The father of T.K., Mr. Dheeram Kaleem, currently works for the federal government as an information technology consultant and currently lives in Fairfax County, Virginia.

43. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that T.K. would be admitted.

44. V.J. is a seventh grader at Rachel Carson Middle School in Herndon, Virginia. V.J. was identified as a gifted learner by Fairfax County Public Schools and admitted into its Advanced Academic Program. V.J. attends the Summer Institute for the Gifted. The father of V.J., Mr. Harry Jackson, is an information technology consultant who has lived in Fairfax County since 2012.

45. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that V.J. would be admitted.

46. R.A. is a seventh grader at Rachel Carson Middle School in Herndon, Virginia. R.A. was identified as a gifted learner in third grade by Fairfax County Public Schools and admitted into its Advanced Academic Program. In fifth grade, John Hopkins University awarded R.A. its Grand Honors Award. The father of R.A., Mr. Srinivas Akella, is an enterprise owner. Mr. Akella has lived in Fairfax County since 2009, primarily because of the education opportunities that Fairfax County Public Schools provides to his children through the Advanced Academic Program and at Thomas Jefferson Governor's School.

47. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that R.A. would be admitted.

The Defendants

48. The Defendants are the Fairfax County School Board ("FCSB") and Scott S. Brabrand, Superintendent of the Fairfax County Public Schools (the "Superintendent").

49. FCSB is charged with establishing the policies for the operation of the Fairfax County Public Schools (including the Thomas Jefferson Governor's School), within the parameters established by federal and state law.

50. The Superintendent is charged with the operations of the Fairfax County Public Schools (including the Thomas Jefferson Governor's School), including implementation of the policies of FCSB, within the parameters established by federal and state law.

Legal Background of Standardized Testing For Admission to the Thomas Jefferson Governor's School

51. The Thomas Jefferson High School for Science and Technology (a/k/a the Thomas Jefferson Governor's School) is classified as an Academic Year Governor's School within the meaning of Virginia law, and it must be operated as such.

52. This classification is shown, for example, by FCSB Regulation 3355.13, which says that its purpose is “[t]o establish TJHSST [Thomas Jefferson High School for Science and Technology] as a Fairfax County public school and as one of the *academic year regional governor’s schools for science and technology*.” Emphasis added. The same regulation also acknowledges that “TJHSST is annually designated by the Virginia Department of Education as an *academic-year regional governor’s school for science and technology*.” Emphasis added.

53. The Virginia Department of Education (“VDOE”) has established certain requirements for the operation of Academic Year Governor’s School within the Commonwealth, including the Thomas Jefferson Governor’s School. Those requirements include the following:

The Academic-Year Governor's School Programs shall provide educational options not available in home schools for *students identified as gifted or eligible to be so designated*. These programs will provide students with the following opportunities:

Administrative Procedures Guide for the Establishment of Academic Year Governor’s Schools, at 3 (emphasis added).

Academic-Year Governor's Schools:

The *Department of Education sponsors regional Governor's Schools*, which serve gifted high school students during the academic year. These schools create special educational opportunities for *gifted students* in science, mathematics, technology, social sciences, the humanities, and the arts. Students at each of these schools concentrate on their specific areas of interest while obtaining well-balanced instruction in other areas of study, either through the Governor's School or at their base school.

Id., at 9 (emphasis added).

54. In other words, in order to operate as an Academic Year Governor's School, the Thomas Jefferson Governor's School must operate as a high school for *gifted* students.

55. FCSB is subject to other regulations promulgated by the VDOE, including regulations defining what it means for any given student in the public schools of the Commonwealth of Virginia to be classified as "gifted."

56. Among the regulations implicated by this Complaint are those specific regulations found in Chapter 40 of the VDOE regulations, which is entitled "Regulation Governing Educational Services for Gifted Students" ("Chapter 40").

57. Chapter 40 includes, *inter alia*, 8 VAC 20-40-10, 8 VAC 20-40-20, 8 VAC 20-40-40, and 8 VAC 20-40-70.

58. **8 VAC 20-40-10** states: "This chapter *shall apply to all local school divisions* in the Commonwealth, regarding their *gifted education services* for students from kindergarten through twelfth grade." Emphasis added. Thus, 8 VAC 20-40-10 makes compliance with Chapter 40 mandatory for all school divisions.

59. **8 VAC 20-40-20** provides definitions and says, in pertinent part:

"Gifted students" means those students in public elementary, middle, and secondary schools beginning with kindergarten through twelfth grade who demonstrate high levels of accomplishment or who show the potential for higher levels of accomplishment when compared to others of the same age,

experience, or environment. Their aptitudes and potential for accomplishment are so outstanding that they require special programs to meet their educational needs. *These students will be identified by professionally qualified persons through the use of multiple criteria as having potential or demonstrated aptitudes in one or more of the following areas:*

1. General intellectual aptitude. Such students demonstrate or have the potential to demonstrate superior reasoning; persistent intellectual curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression across a broad range of intellectual disciplines beyond their age-level peers.

2. *Specific academic aptitude.* Such students demonstrate or have the potential to demonstrate superior reasoning; persistent intellectual curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression beyond their age-level peers in selected academic areas that include English, history and social science, *mathematics, or science.*

* * * * *

Emphasis added.²

60. **8 VAC 20-40-40** requires school divisions to identify their gifted students and provide special educational services to them. The regulation says, in pertinent part:

A. Each school division shall establish uniform procedures for screening, referring, identifying, and serving students in kindergarten through twelfth grade who are *gifted in general intellectual or specific academic aptitude.*
...

* * * * *

D. 3. The identification process used by each school division must ensure that no single criterion is used to determine a student's eligibility. The identification process shall include at least three measures from the following categories:

² This regulation also identifies two other categories of aptitude not implicated here, "Career and technical aptitude" and "Visual or performing arts aptitude."

- a. Assessment of appropriate student products, performance, or portfolio;
 - b. Record of observation of in-classroom behavior;
 - c. Appropriate rating scales, checklists, or questionnaires;
 - d. Individual interview;
 - e. *Individually administered or group-administered, nationally norm-referenced aptitude or achievement tests;*
 - f. Record of previous accomplishments (such as awards, honors, grades, etc.); or
 - g. Additional valid and reliable measures or procedures.
4. If a program is designed to address general intellectual aptitude, an individually administered or group-administered, *nationally norm-referenced aptitude test shall be included as one of the three measures used* in the school division's identification procedure.
5. If a program is designed to address *specific academic aptitude*, an individually administered or group-administered, *nationally norm-referenced aptitude or achievement test shall be included as one of the three measures used* in the school division's identification procedures.
- E. ... Identified gifted students *shall be offered placement* in an instructional setting that provides:
- 1. *Appropriately differentiated curriculum and instruction provided by professional instructional personnel trained to work with gifted students;* and
 - 2. Monitored and assessed student outcomes that are reported to the parents and legal guardians

Emphasis added.

61. **8 VAC 20-40-70** states: “Funds designated by the Virginia General Assembly for the education of gifted students shall be used by school divisions in accordance with the provisions of the appropriation act.”

62. For many years, the school boards in the Thomas Jefferson School Districts (including FCSB) have relied on the Thomas Jefferson Governor's School as a key means of discharging their obligations under state law with respect to identifying and educating gifted high school students, especially those with specific academic aptitude in the areas of mathematics or science.

63. For previous years (including the ninth-grade class that entered in the fall of 2020) and consistent with Virginia regulations for identifying "gifted" students, the admissions process to the Thomas Jefferson Governor's School has included administering certain standardized tests, including Quant-Q, ACT Aspire Reading and ACT Aspire Science, which are well-recognized among educational experts.

64. The Quant Q test consists of 28 multiple-choice math problems progressing from easier to harder with 50 minutes to complete; the ACT Aspire Reading test consists of 32 questions with 65 minutes to complete; and the ACT Aspire Science test consists of 40 questions with 60 minutes to complete.

65. The Quant-Q, ACT Aspire Reading and ACT Aspire Science standardized tests meet the requirements of 8 VAC 20-40-40(D) for identifying "gifted" students demonstrating specific academic aptitude in science and math in that those standardized tests are "nationally norm-referenced aptitude or achievement test[s]."

66. For current eighth-grade students seeking admission to the Thomas Jefferson Governor's School for the ninth-grade class entering in the fall of 2021 – and before the actions that are the subject of this Complaint – the admissions tests (Quant-Q, ACT Aspire Reading and ACT Aspire Science) were going to be administered in the fall of 2020.

67. The Students who filed this Complaint were planning to take those admissions test when administered this fall. Just as students planning to try out for a sports team may spend weeks or months in training and preparation for the team try-out, many of the Students spent weeks or months in preparation for those admissions tests.

The October 6 Meeting and Its Aftermath

68. On October 6, 2020, FCSB held a “work session” – not a regular school board meeting.

69. A work session is different from a regular school board meeting in several ways. In a work session, there are typically no votes, and no opportunity for the public to comment on matters before the school board.

70. For the October 6, 2020 work session, the published agenda did not advise the public that potential changes in the admissions policy would be brought to a vote. On the contrary, the published agenda made it appear that potential changes would only be a matter of information and discussion: “Today’s presentation will provide an update to the September 15, 2020, work session on the effort of continuous improvement of the Admissions Process for TJHSST. The presentation will *provide information* regarding the current admissions process and proposed changes for future admissions processes.” FCSB Agenda (Oct. 6, 2020) (emphasis added).³

71. During the October 6, 2020 work session, there was no opportunity for the public to comment on matters before the school board.

72. During the October 6, 2020 work session, however, FCSB voted to abolish the administration of standardized tests as part of the admissions process for the Thomas Jefferson Governor’s School (the “No-Testing Decision”). The No-Testing Decision eliminated the

³ Available at <https://go.boarddocs.com/vsba/fairfax/Board.nsf/goto?open&id=BSVH99475F46>.

administration of Quant-Q, ACT Aspire Reading and ACT Aspire Science, and did not provide for the administration of any other nationally norm-referenced standardized tests.

73. On October 7, 2020, the Superintendent announced that he was going to implement the No-Testing Decision made by FCSB the previous night and/or otherwise acted to abolish the administration of standardized tests (including Quant-Q, ACT Aspire Reading and ACT Aspire Science) as part of the admissions process for the Thomas Jefferson Governor's School. The Superintendent announced the cancelation of any and all admission tests for the Thomas Jefferson Governor's School for the ninth-grade class that will enter in the fall of 2021 (or thereafter), and he has acted – and continues to act – to implement that cancelation.

74. The purpose and effect of the No-Testing Decision – and its implementation by the Superintendent – are to alter fundamentally the character of the Thomas Jefferson Governor's School by eliminating its role and purpose as a high school for gifted students.

75. On information and belief, the purpose of the No-Testing Decision is to substitute in its place a system where a great many students not previously eligible for the Thomas Jefferson Governor's School will be deemed eligible (without demonstrating that they meet the criteria for gifted) and then selected for admission by a new system involving (a) some combination of quotas and a lottery (the "Quota/Lottery System") or (b) some combination of a quota and other criteria not involving identification of the student as gifted ("Hybrid Quota System").

76. On October 8, 2020, at a regular school board meeting, FCSB took votes on various matters related to the Thomas Jefferson High School. Consistent with its arbitrary and capricious action in adopting the No-Testing Decision on October 6 *without public comment*, these votes

included *defeating* a measure that would have *called for public comment* on admissions to the Thomas Jefferson Governor's School.⁴

77. The records of the October 8, 2020 regular school board meeting do not contain any vote to repeat, ratify, or affirm the No-Testing Decision that was made on October 6, 2020. In the alternative, to the extent that any action taken by FCSB at that October 8 meeting (or thereafter) may be construed as having such purpose or effect, then the Complaint shall be construed as challenging that action as arbitrary and/or capricious, and/or an abuse of discretion and the term "No-Testing Decision" shall be construed as encompassing such action.

78. Defendants are fully aware that the regulations issued by VDOE for the identification of gifted students require a "nationally normed aptitude test." For example, a recent FCSB work session included a slide presentation addressing "VDOE Regulations Governing Services for Gifted Student," which stated, *inter alia*, that "screening" for gifted students "must include a nationally-normed aptitude test." AAP External Review, School Board Work Session, October 27, 2020, at 5 (emphasis in original).

79. Even so, and despite the applicable regulations, one or more members of the FCSB have failed or refused to recognize that the Thomas Jefferson Governor's School is required to be a high school for gifted students. For example, during the October 6 work session, Karen Keys-Gamarra, said: "We've also talked about the purpose of TJ. The purposes of TJ is not, as far as I

⁴ The defeated motion read: "I move to direct the Superintendent to develop and implement a public engagement plan regarding TJ admissions prior to bringing the updated TJ plan to the Board in December. This plan should allow for more thorough community input and dialogue on TJ admissions. This public engagement can include public hearings, interviews, panel and focus group discussions and other forms of collaborative discourse. At minimum input should be solicited on how to best determine merit, design an admissions process aimed at ensuring the demographics at TJ are more representative of our regional student demographics, and how to communicate the TJ opportunity to our communities."

understand, is *not for gifted students* but is for students with an aptitude for STEM, and science.”
Emphasis added.

The December 17 Meeting

80. On December 17, 2020, FCSB held a regular meeting, at which time FCSB took additional action to implement the No-Testing Decision and adopted a new plan for admission to the Thomas Jefferson Governor’s School. (The plan adopted by FCSB is herein referred to as the “Hybrid Quota Plan”).

81. The Hybrid Quota System would establish a two-tiered admissions process.

82. First, the Hybrid Quota System would establish a quota, under which the “top” 1.5% of students in each public middle school operated by FCSB would be admitted to the Thomas Jefferson Governor’s School.

83. The method for determining which students are in the “top” 1.5 % was not explained by the December 17 actions of FCSB and, in response to a question, the Chief Operating Officer of the Fairfax County Public Schools refused to say, claiming that the method is not “appropriate to share in a public setting.”

84. In the second tier of the admissions process, the Hybrid Quota System would allocate the remaining seats through a process that is highly subjective and educationally inappropriate.

85. Neither tier of the Hybrid Quota System would use the identification of a student as gifted as a criterion for admission to the Thomas Jefferson Governor’s School, and neither tier of the Hybrid Quota System would require the administration of a “nationally norm-referenced aptitude or achievement test,” as a criterion for such admission. In fact, in “New Requirements for 2020/21,” the TJ Admissions Office has now even stated that it will issue “potential waivers” to

students who fail to meet its minimum requirements of being enrolled in “both math and science honors courses.”⁵

86. All of the Students filing this Complaint have a high probability of being admitted into the Thomas Jefferson Governor’s School, *if* admissions are based on the applicant’s status as a gifted student, as measured by the types of tests required by applicable state regulations.

87. If the No-Testing Decision is not overturned and admission to the Thomas Jefferson Governor’s School is based on the Quota/Lottery System or a Hybrid Quota System – or on any other system deviating from state law and regulations – then each Student filing this Complaint will probably *not* be admitted. The odds of not being picked under any such system will weigh heavily against them.

88. The allegations of the foregoing two paragraphs are not speculation, but are supported by the analysis of an expert in gifted education. For example:

a. Expert testimony will show that, if administered a nationally norm-referenced aptitude or achievement test (including but not limited to the Quant-Q, ACT Aspire Reading and ACT Aspire Science), each of the Students would perform very well and score in the very highest percentiles.

b. Expert testimony will show that, if admission to the Thomas Jefferson Governor’s School were governed by the lawful procedures used before the unlawful changes at issue in this case, then for each of the Students, there is a high probability that he or she would be admitted. Indeed, there is a high probability that the majority or all of these Students would be admitted.

⁵ <https://www.fcps.edu/registration/thomas-jefferson-admissions/eligibility-requirements>

c. Expert testimony will show that, if admission to Thomas Jefferson Governor's School is governed by the new unlawful procedures at issue in this case, then for each of the Students, there is a high probability that he or she would not be admitted. Indeed, there is a high probability that the majority of these Students would not be admitted.

89. In addition, each Student has a legal right to participate in an admissions process that is conducted according to law, and each Parent has a legal right for his or her Student to participate in an admissions process that is conducted according to law. By the actions of FCSB and the Superintendent, as described in this Complaint, these rights have been violated.

COUNT I
The Fairfax County School Board
No-Testing Decision

90. Plaintiffs re-allege, as if set out in full, all allegations of the foregoing paragraphs.

91. Under the No-Testing Decision, the Thomas Jefferson Governor's School will no longer be a high school devoted to the education of *gifted* students. This violates the requirements of applicable Virginia law, including but not limited to the above-cited provisions of Chapter 40. The violation arises in different ways, including but not necessarily limited to the following:

(a) Under state law, the Thomas Jefferson Governor's School is required to be operated as a high school for gifted students, especially given (i) VDOE's designation and sponsorship of the Thomas Jefferson Governor's School as a high school for gifted students, and (ii) the appropriation of funds for that purpose by the General Assembly and the acceptance of those funds by FCSB. The No-Testing Decision violates these requirements.

(b) Under the requirements of 8 VAC 20-40-40(D), in order for students to be deemed "gifted" in a "specific academic aptitude" such as "science and math" (the purpose of

Thomas Jefferson Governor's School), "an individually administered or group-administered, nationally norm-referenced aptitude test *shall be included* as one of the three measures used in the school division's identification procedure" for such gifted students. Emphasis added. The No-Testing Decision violates these requirements.

(c) If Thomas Jefferson Governor's School is no longer a high school for gifted students, then FCSB will not adequately provide gifted students the educational services required by state law.

92. By making the No-Testing Decision, FCSB violated Virginia law and has exceeded its authority, acted arbitrarily and/or capriciously, and/or abused its discretion.

93. Decisions by a local school board that conflict with state law are obviously null and void. *See* Virginia Code § 22.1-78 ("A school board may adopt bylaws and regulations, *not inconsistent with state statutes and regulations of the Board of Education*, for its own government, for the management of its official business and for the supervision of schools....") (emphasis added); *King v. Arlington Cty.*, 195 Va. 1084, 1090 (1954) ("It is, of course, fundamental that local ordinances must conform to and not be in conflict with the public policy of the State as embodied in its statutes.").

94. Under Virginia Code § 22.2-87, and following the procedures set forth therein, this Court should review the No-Testing Decision and declare that action by FCSB to be unlawful.

COUNT II
The Fairfax County School Board
Hybrid Quota System

95. Plaintiffs re-allege, as if set out in full, all allegations of the foregoing paragraphs.

96. Even if the No-Testing Decision were lawful, FCSB exceeded its authority, acted arbitrarily and/or capriciously, abused its discretion and/or otherwise acted unlawfully when it adopted the Hybrid Quota System. This is so for at least five reasons, as explained in the following paragraphs.

97. First, the Hybrid Quota System has the purpose and effect of unlawfully discriminating against students previously identified as gifted, and who attend a public middle school.

98. Gifted students are not proportionately distributed throughout the middle schools operated by FCSB. Instead, FCSB has concentrated gifted middle school students into selected schools that offer certain gifted programs. By allocating seats to the “top” 1.5 percent of each middle school, FCSB unlawfully discriminates against students attending those schools where gifted students have been concentrated.

99. Fifteen (15) of the 17 Students who are Plaintiffs in this case attend one of the FCSB middle schools where gifted students have been concentrated. Eight of those 15 Students attend the *same* middle school, Rachel Carson Middle School.⁶

100. Second, the Hybrid Quota System has the purpose and effect of unlawfully discriminating against students who, as the result of educational choices made by their parents, attend private middle school.

101. The Hybrid Quota System does not make any provision for allocating tier-one admissions to any student who attends a private middle school, even though the student resides in

⁶ See *supra* at ¶¶ 16, 18, 22, 24, 38, 42, 44, 46 (noting middle school attended by A.Y., D.M., A.N., S.V., K.S., T.K., V.J., R.A., H.P., A.K.).

Fairfax County and even though his or her parents support the Fairfax County Public Schools with their tax dollars.

102. Two of the 17 Students who are Plaintiffs in this case attend a private middle school, Nysmith School for the Gifted in Herndon, Virginia.⁷

103. With respect to paragraphs 97 – 102, by penalizing Parents and their Students, based on the middle school educational choices made by the Parents for their children, the Hybrid Quota System violates the protections of the Virginia constitution with respect to equal protection as well as state constitutional rights of Parents to freedom of speech and freedom to direct the care, upbringing and education of their children.

104. Third, by failing to specify the method for how the “top” 1.5 percent of each middle school will be selected, tier one of the Hybrid Quota System injects a high degree of subjectivity and secrecy into what should be an objective and transparent process, and is otherwise educationally inappropriate.

105. Fourth, tier two of the Hybrid Quota System also injects a high degree of subjectivity and secrecy into what should be an objective and transparent process, and is otherwise educationally inappropriate.

106. Fifth, the Hybrid Quota System is otherwise educationally inappropriate.

107. Under Virginia Code § 22.2-87, and following the procedures set forth therein, this Court should review the Hybrid Quota System and declare that action by FCSB to be unlawful.

⁷ See *supra* at ¶¶ 26 and 36 (noting middle school attended by H.P. and A.K.).

COUNT III
The Fairfax County School Board
Irregular Meeting and Procedures

108. Plaintiffs re-allege, as if set out in full, all allegations of the foregoing paragraphs.

109. By making the No-Testing Decision in a work session (without prior notice to the public that a vote would be taken and without an opportunity for the public to be heard), FCSB exceeded its authority, acted arbitrarily and/or capriciously, and/or abused its discretion.

110. Under Virginia Code § 22.2-87, and following the procedures set forth therein, this Court should review the No-Testing Decision and declare that action by FCSB to be unlawful.

COUNT IV
The Superintendent

111. Plaintiffs re-allege, as if set out in full, all allegations of the foregoing paragraphs.

112. The Superintendent acted and continues to act unlawfully by implementing the No-Testing Decision and/or otherwise acting to abolish the administration of nationally norm-referenced standardized tests as part of the admissions process for the Thomas Jefferson Governor's School.

113. The Superintendent acted and continues to act unlawfully by implementing the Hybrid Quota System.

114. As evidenced by FCSB Regulation 3355.13, *supra*, the Thomas Jefferson Governor's School is an "academic year regional governor's school[] for science and technology" and must be operated as such. Compliance with this regulation – and the provisions of state law that apply to governor's schools – requires FCSB and the Superintendent to operate the Thomas Jefferson Governor's School as a high school for gifted students, which in turn requires the administration of nationally norm-referenced standardized tests. By abolishing the use of such tests as part of the admissions process (and by implementing the Hybrid Quota System), the

Superintendent has exceeded his authority, acted arbitrarily and/or capriciously, and/or abused its discretion, and/or otherwise acted unlawfully.

115. This Court should enter a permanent injunction requiring the Superintendent to reverse any and all actions taken by him to implement the No-Testing Decision (and the Hybrid Quota System) and to take such steps as are necessary to ensure that standardized tests (within the meaning of applicable Virginia law, including 8 VAC 20-40-40) are used as an admission criterion for the Thomas Jefferson Governor's School on the same basis as such tests were used for the ninth grade class entering in the fall of 2020.

COUNT V All Defendants – Preliminary Injunction

116. Plaintiffs re-allege, as if set out in full, all allegations of the foregoing paragraphs.

117. As this Court has explained: “Although the Supreme Court of Virginia has not definitively set out a standard for awarding injunctive relief, this Court follows the four-part test delineated by the Supreme Court of the United States.” *Martinson v. Evans*, No. CL-2017-12308, 2018 Va. Cir. LEXIS 18, at *14 (Fairfax Cir. Ct. Feb. 15, 2018). That standard is found in *Winter v. National Resources Defense Council, Inc.*, 555 U.S. 7 (2008), which established a four-part test for determining whether to grant a preliminary injunction. *Id.*

118. Under *Winter*, the test contains these elements: “(1) the likelihood of success on the merits; (2) the likelihood of irreparable harm to the plaintiff if relief is denied; (3) the balance of equities tips in the plaintiff's favor; and (4) the injunction is in the public interest.” *Martinson*, *supra* (citing *Winter*, 555 U.S. at 20).

119. Plaintiffs meet all four parts of the *Winter* test for a preliminary injunction.

120. First, Plaintiffs are likely to succeed on the merits of their claim, as shown by the law and facts set forth in this Complaint (and as shall be further shown by additional proceedings in this case).

121. Second, there is a high likelihood of irreparable harm to the Plaintiffs if a preliminary injunction is denied. Without such an injunction, by the time this litigation is finally resolved, FCSB will have already implemented the Hybrid Quota System or some other new and unlawful admissions system, and it will likely be too late in the admissions cycle to return to the previous selection process for the ninth-grade class entering the Thomas Jefferson Governor's School on the fall of 2021.

122. Wrongfully denied the opportunity for admission based on the correct legal criteria, the Students will be forced to attend high school elsewhere, forever losing the opportunity to attend the Thomas Jefferson Governor's School and obtain the incomparable benefits available from the best public high school in the nation. The losses they will incur are incalculable and, in any event, those losses cannot be remedied by a money judgment, given the immunity from such judgments for the state law claims raised here. *Kellam v. Sch. Bd. of the City of Norfolk*, 202 Va. 252, 254 (1960).

123. Third, the balance of equities tips in the Plaintiffs' favor, especially since (a) there is no harm to FCSB or the Superintendent in requiring them to maintain the same admissions standards that has been followed for years and that have contributed to the Thomas Jefferson Governor's School's ranking as the best public high school in the nation, and (b) if FCSB and the Superintendent ultimately prevail, they will then be able to implement the Hybrid Quota System or some other new system for future classes.

124. Fourth, the public interest favors a preliminary injunction, which would preserve the *status quo*. *E.g., Md. Undercoating Co. v. Payne*, 603 F.2d 477, 481 (4th Cir. 1979) (describing the “public interest” as “preserving the status quo ante litem until the merits of a serious controversy can be fully considered by a trial court.”). For purposes of a preliminary injunction, the “status quo” is not things as they stand on the day this Complaint is filed, but things as they stood before the challenged actions of FCSB and the Superintendent. *E.g., League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 236 (4th Cir. 2014) (defining the status quo for purposes of a preliminary injunction to be “the last uncontested status between the parties which preceded the controversy”) (citations omitted); *Aggarao v. MOL Ship Mgmt. Co., Ltd.*, 675 F.3d 355, 378 (4th Cir. 2012) (“To be sure, it is sometimes necessary to require a party who has recently disturbed the status quo to reverse its actions... [but]... [s]uch an injunction restores, rather than disturbs, the status quo ante.”) (internal quotation marks and citation omitted).

125. In addition, a preliminary injunction would benefit the many gifted students (not just those filing this complaint) whose avenue of access to the Thomas Jefferson Governor’s School will be preserved. Moreover, in the unlikely event it is ultimately determined that FCSB may take the action at issue, a preliminary injunction would promote the public interest by providing time for public debate and discussion of an issue that FCSB’s action in a work session – rather than a regular board meeting – unfairly foreclosed.

126. This Court should enter a preliminary injunction requiring all Defendants (a) to reverse any and all actions to implement the No-Testing Decision, (b) to reverse any and all actions to implement the Hybrid Quota System, and (c) to take such steps as are necessary to ensure that standardized tests (within the meaning with applicable Virginia law, including 8 VAC 20-40-

40(D)) are used as an admission criterion for the Thomas Jefferson Governor's School on the same basis as such tests were used for the ninth grade class entering in the fall of 2020.

WHEREFORE Plaintiffs request that the Court grant them the following relief:

1. Find and declare that, by making the No-Testing Decision, whereby it voted to abolish the administration of standardized tests (including Quant-Q, ACT Aspire Reading and ACT Aspire Science) as part of the admissions process for the Thomas Jefferson Governor's School, the Fairfax County School Board exceeded its authority, acted arbitrarily and/or capriciously, and/or abused its discretion.

2. Find and declare that, by adopting the Hybrid Quota System, the Fairfax County School Board exceeded its authority, acted arbitrarily and/or capriciously, and/or abused its discretion.

3. Find and declare that the No-Testing Decision and the decision to adopt the Hybrid Quota System are each legally invalid and a nullity, having no effect whatsoever.

4. Find and declare that the Superintendent acted unlawfully when he implemented the No-Testing Decision and/or otherwise acted to abolish the administration of nationally norm-referenced standardized tests as part of the admissions process for the Thomas Jefferson Governor's School and/or otherwise acted to implement the Hybrid Quota System..

5. Enter preliminary and permanent injunctions requiring all Defendants:

- (a) to reverse any and all actions to implement the No-Testing Decision;
- (b) to reverse any and all actions to implement the Hybrid Quota System;
- (c) to take such steps as are necessary to ensure that nationally norm-referenced standardized tests (within the meaning with applicable Virginia law, including 8 VAC 20-40-40(D)) are used as an admission criterion for the Thomas Jefferson Governor's School on the

same basis as such tests were used for the ninth grade class entering in the fall of 2020.

(d) to limit admissions to the Thomas Jefferson Governor's School for the class entering the ninth grade in the fall of 2021 to students who have been identified as "gifted" within the meaning of state law, or, in the alternative, that Defendants use at least 480 of the seats in said entering class for such gifted students (and no more than 70 seats for such other students as FCSB may select by other means).⁸

6. Grant Plaintiffs such additional and other relief as the nature of the case and equity may require.

January 7, 2020

Respectfully submitted,

K.C., A MINOR, BY AND THROUGH
HER PARENT AND NEXT FRIEND,
HANNING CHEN,

HANNING CHEN,
IN HIS OWN RIGHT,

A.Y., A MINOR, BY AND THROUGH
HER PARENT AND NEXT FRIEND,
YUHONG LIN,

YUHONG LIN,
IN HER OWN RIGHT,

D.M., A MINOR, BY AND THROUGH
HER PARENT AND NEXT FRIEND,
YING MCCASKILL,

YING MCCASKILL,
IN HER OWN RIGHT,

S.S., A MINOR, BY AND THROUGH
HIS PARENT AND NEXT FRIEND,
MAHUA MITRA,

⁸ The Thomas Jefferson Governor's School has typically admitted a ninth-grade class of 480 students; however, FCSB recently expanded the number of seats in an entering class to 550.

MAHUA MITRA,
IN HER OWN RIGHT,

A.N., A MINOR, BY AND THROUGH
HIS PARENT AND NEXT FRIEND,
HEMANG NAGAR,

HEMANG NAGAR,
IN HIS OWN RIGHT,

S.K., A MINOR, BY AND THROUGH
HIS PARENT AND NEXT FRIEND,
TILAK VENIGALLA,

TILAK VENIGALLA,
IN HIS OWN RIGHT,

H.P., A MINOR, BY AND THROUGH
HIS PARENT AND NEXT FRIEND,
JAMES PAN,

JAMES PAN,
IN HIS OWN RIGHT,

A.B., A MINOR, BY AND THROUGH
HIS PARENT AND NEXT FRIEND,
MAYURI PRODHUTURI,

MAYURI PRODHUTURI,
IN HER OWN RIGHT,

V.V., A MINOR, BY AND THROUGH
HER PARENT AND NEXT FRIEND,
VIJAY RAGHAVAN,

VIJAY RAGHAVAN,
IN HIS OWN RIGHT,

A.Y., A MINOR, BY AND THROUGH
HIS PARENT AND NEXT FRIEND,
SAMPATH YARLAGADDA,

SAMPATH YARLAGADDA,
IN HIS OWN RIGHT,

C.J., A MINOR, BY AND THROUGH
HIS PARENT AND NEXT FRIEND,
JUSTIN JIA,

JUSTIN JIA,
IN HIS OWN RIGHT,

A.K., A MINOR, BY AND THROUGH
HER PARENT AND NEXT FRIEND,
RAJA KAKAYADI,

RAJA KAKAYADI,
IN HIS OWN RIGHT,

K.S., A MINOR, BY AND THROUGH
HIS PARENT AND NEXT FRIEND,
SRIHARI SIRUVURI,

SRIHARI SIRUVURI,
IN HIS OWN RIGHT,

A.J., A MINOR, BY AND THROUGH
HER PARENT AND NEXT FRIEND,
PUNNAM JONNALA,

PUNNAM JONNALA,
IN HIS OWN RIGHT,

T.K., A MINOR, BY AND THROUGH
HIS PARENT AND NEXT FRIEND,
DHEERAM KALEEM,

DHEERAM KALEEM,
IN HIS OWN RIGHT,

V.J., A MINOR, BY AND THROUGH
HER PARENT AND NEXT FRIEND,
HARRY JACKSON,

HARRY JACKSON,
IN HIS OWN RIGHT,

R.A., A MINOR, BY AND THROUGH
HIS PARENT AND NEXT FRIEND,
SRINIVAS AKELLA, and

SRINIVAS AKELLA,
IN HIS OWN RIGHT

By: Wm. H. Hurd
Counsel

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Counsel for All Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

COALITION FOR TJ,

Plaintiff,

v.

FAIRFAX COUNTY SCHOOL BOARD,
and DR. SCOTT BRABAND, in his official
capacity as Superintendent of the Fairfax
County School Board,

Defendants.

Civil No. 1:21-cv-00296-CMH-JFA

DECLARATION OF CYNTHIA C. SMOOT

I, Cynthia C. Smoot, declare that the following facts are true and correct to the best of my knowledge, information and belief:

1. I am a Senior Paralegal employed by Hunton Andrews Kurth LLP, 2200 Pennsylvania Ave., NW, Washington, DC 20037, counsel for defendants, and I have personal knowledge of the facts in this declaration.

2. On April 15, 2021, I used my work computer to access the Internet home page of the “Coalition for TJ,” at <https://coalitionfortj.net/>. On the “About Us” subpage, <https://coalitionfortj.net/about-us>, the following statement appears:

Official Coalition For TJ

This group is for community members, including TJ families, students, alumni and staff, focused on lasting solutions to promoting diversity and excellence for Thomas Jefferson High School for Science and Technology.

3. On the “Contact Us” subpage, <https://coalitionfortj.net/contact-us>, this statement appears:

We are parents, students and community members advocating for diversity and excellence at Thomas Jefferson High School for Science and Technology.

4. The “Donate” subpage, <https://coalitionfortj.net/donate>, states that viewers may send a “tax-deductible donation through Coalition for Truth and Justice, a program of United Charitable, a 501(c)3. We have a generous donor who will match donations up to \$100,000,” as follows:

Official Coalition For TJ

Home **Donate** Media Contact Us More ▾

Please support Us

We hope you will see that we have a proven record of success, but we need your support to continue scoring victories.

The Coalition for TJ is making headline news in support of merit and excellence in education. On Wednesday, March 10, Pacific Legal Foundation filed a lawsuit in U.S. federal court in Alexandria, VA., to challenge the anti-Asian racism of Fairfax County Public Schools in its decision to remove the merit-based, race-blind admissions process to Thomas Jefferson High School for Science and Technology.

We stood at the door of the U.S. federal court and testified for all of the nation to hear. And it did.

Our small group is the David to the Goliath that is the misguided forces on our school board, using a \$3 billion budget and state and county resources to counter us.

We urge you to contribute to advance excellence in education. You can make your tax-deductible donation through [Coalition for Truth and Justice](#), a program of United Charitable, a 501(c)3. We have a generous donor who will match donations up to \$100,000. For those of you would like to wire larger donations, please email us at coalitionfortj@gmail.com.

Thank you for your continued support! We are advocating for the children -- all children. .

Your donation is tax-deductible

Please click the button to donate and get a tax deduction for it.

Tax Deductible donation

I saw no mention of any dues paid by members nor whether members fund the operations of the Coalition for TJ.

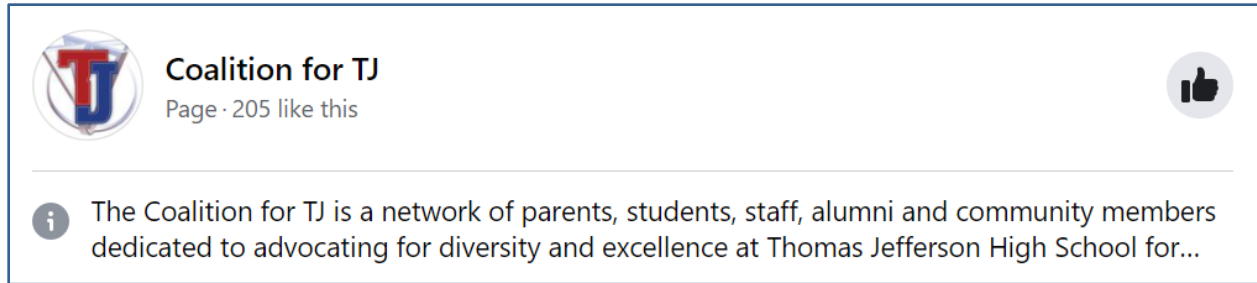
5. Selecting the blue “Tax Deductible donation” button takes the viewer to a webpage entitled “Coalition for Truth and Justice,” which states that “[t]he mission of Coalition for TJ is to conduct original research, journalism, and advocacy about significant public issues

relegated to education, contribute to sound public policy decisions and protect gifted and STEM education and the legal defense of the rights of students”:

The screenshot shows the 'Coalition for Truth and Justice' page on the United Charitable website. The header includes the United Charitable logo and navigation links: About, Donor Advised Fund, Fiscally Sponsored Program, Donate, and an ACCOUNT button. The main content area features the organization's name, 'Coalition for Truth and Justice', followed by 'Manager / Advisor: Asra Nomani' and 'Location: Great Falls, Virginia'. A 'Mission' section describes the organization's goal to conduct research, journalism, and advocacy on education-related public issues. Below this is a 'Donate' section with a text input field set to '\$ 50.00', a 'Custom Amount' label, and a checkbox for recurring donations set to 'month'. At the bottom is a 'Personal Info' section with input fields for 'First Name' and 'Last Name', each marked with a red asterisk and a circle icon.

https://www.unitedcharitable.org/fsp_daf/coalition-for-truth-and-justice/. This is a subpage of a website operated by United Charitable, <https://www.unitedcharitable.org/>. I saw no explanation of the arrangements by which United Charitable transfers money to the Coalition for Truth and Justice, nor how the Coalition for Truth and Justice transfers such donations to the Coalition for TJ.

6. On April 15, 2021, I also visited the Facebook page for “Coalition for TJ,” at <https://www.facebook.com/search/top?q=Coalition%20for%20TJ>. As of that date, the Coalition’s Facebook page had 205 “likes” and stated: “The Coalition for TJ is a network of parents, students, staff, alumni and community members dedicated to advocating for diversity and excellence at Thomas Jefferson High School”:



7. On April 15, 2021, I also visited the Twitter page for Coalition for TJ, at <https://twitter.com/coalitionforTJ>. As of that date, the page reflected 450 “followers” and described the Coalition for TJ as “Parents, students, alumni & community advocating for diversity and excellence at Thomas Jefferson High School for Science & Technology”:



8. In exploring the Coalition for TJ’s Internet homepage (and subpages), its Facebook page, and its Twitter feed, I was unable to determine the names of any of its officers or directors; whether or how those officers or directors were elected by members; whether or how members may serve in the leadership of the association; or what type of association it may be. I located no charter or bylaws. I did not see any indication of how one could become a “member” of the Coalition for TJ, elect officers or leaders, or vote on its positions. I could not determine its members. I saw no indication that the Coalition’s members voted on whether to bring the lawsuit in this case. I also saw no requirement that membership in the Coalition for TJ is limited to persons who oppose the Fairfax County School Board’s current admissions policy for TJ.

9. On April 15, 2021, I conducted an entity search of the records of the Virginia State Corporation Commission, <https://cis.scc.virginia.gov/EntitySearch/Index>. I found no registration record for “Coalition for TJ” and none for “Coalition for Truth and Justice.” I did find a corporate registration for “United Charitable,” a Virginia nonstock corporation.

10. The Complaint in this case cites statements made by certain Fairfax County School Board members and by Superintendent Brabrand at public meetings of the School Board. The Complaint uses footnotes and hyperlinks to identify the video recording in which the statement was allegedly made. I personally accessed the cited video recordings, hosted by YouTube (and one by Facebook), and I have reviewed the specific clips of the recording cited in support of the statement. The table attached as Exhibit A shows statements that the Complaint attributes to a speaker and a transcription of what the speaker actually said (omitting verbal tics and “ums”). The contents of the table are accurate. A true and accurate copy of each referenced video clip is contained on the thumb drive attached as Exhibit B.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: April 16, 2021

A handwritten signature in blue ink that reads "Cynthia C. Smoot". The signature is written in a cursive, flowing style.

Cynthia C. Smoot

Exhibit A: Table Comparing Statements in Complaint to Sources Quoted

Speaker	Complaint ¶ /URL Cited	Transcription from Video/ Video Clip # in Ex. B
Dr. Scott Brabrand (Superintendent)	<p>41. In an August 2020 town hall meeting hosted by the Fairfax County, Virginia, chapter of the NAACP, Brabrand complained that TJ students spent “thousands upon thousands” of dollars on test prep for the TJ admissions test, laying the groundwork for negative stereotyping of TJ’s majority Asian-American student body.³¹</p> <p>³¹ Fairfax County NAACP, <i>Town Hall on Systemic Racism</i>, Facebook (Aug. 5, 2020), https://www.facebook.com/watch/live/?v=650397622538856&ref=watch_permalink at 1:28:31.</p>	<p>I want to save it for September but I’d just say two things. One is growing the pipeline, which is advanced academic access early on. But then the other is our TJ admissions right now leans heavily on a test, and to be the highest score on a test. So if you have test prep access, you have a big leg up. And some families have the money and resources to spend thousands and thousands of dollars each year to get their kid TJ-test ready. And I think we’ve got to look hard at that and say is that the most equitable way to run our admissions process.</p> <p>Video Clip 1 (Brabrand, 8-5-20) (extracted from 1:28:02–1:28:46)</p>
	<p>42. On September 15, 2020, Superintendent Brabrand presented the first admissions change proposal to School Board at a work session.³³ Brabrand stated the “need to recognize” that “TJ should reflect the diversity of Fairfax County Public Schools, the community, and of Northern Virginia,” lamenting that “the talent at Thomas Jefferson currently does not reflect the talent that exists in FCPS.”³⁴ These assertions regarding “diversity” and “talent” refer to the majority Asian-American composition of TJ’s student body.</p> <p>³³ <i>FCPS School Board Work Session – 9-15-20 – TJ Admissions Review</i>, YouTube (Sept. 15, 2020), https://www.youtube.com/watch?v=n3FS9TY0leg&list=PLSz76NCRDYQF3hPS2qS2SGEcoO4__Yd7Z&index=51&ab_channel=FairfaxCountyPublicSchools</p> <p>³⁴ <i>Id.</i> at 4:31–5:04.</p>	<p>And we need to recognize today that TJ should reflect the diversity of Fairfax County Public Schools, the community, and of Northern Virginia as other school divisions also have students that attend Thomas Jefferson. And the reality today if we are honestly leading with equity at the center is that the talent at Thomas Jefferson currently does not reflect the talent that exists in FCPS. We recognize a comprehensive approach is needed to enhance diversity and inclusion at Thomas Jefferson.</p> <p>Video Clip 2 (Brabrand, 9-15-20) (extracted from 4:31–5:14)</p>

Speaker	Complaint ¶ /URL Cited	Transcription from Video/ Video Clip # in Ex. B
Dr. Scott Brabrand (Super-intendent)	<p>46. At the school board work session on October 6, 2020, when the Board voted to eliminate the TJ admissions test, the discussion between the Board and Brabrand make it clear that racial balancing was the goal. Brabrand noted that the proposed changes to the admissions process, which eliminated the race-neutral admissions test, “eliminat[es] the testing component that squeezed out talent and squeezed out diversity in our system.”⁴⁶</p> <p>⁴⁶ Fairfax County Public Schools, <i>FCPS School Board Work Session TJ Admission 10-6-20</i>, YouTube (Oct. 6, 2020), https://www.youtube.com/watch?v=FgTgmNYUw88&ab_channel=FairfaxCountyPublicSchools at 6:57, 10:12.</p>	<p>But if we go to the next slide, you can see that over the last several years, really over a decade, we’re seeing continued flat applicants for our African American and Hispanic students, and were seeing even declining applicants among our white students. Offers continue to go in disparate directions, and the gaps continue to grow over time, from the applicant pool to the offer pool.</p> <p>Video Clip 3 (Brabrand, 10-6-20) (extracted from 6:35 to 7:15)</p> <p>The goal of the merit lottery is to bring the diversity of TJ closer to FCPS diversity, and the goal of the merit lottery is to encourage underrepresented students who maybe believed before that they never had a shot at TJ that maybe now they could and should apply, and they’ll have an equal opportunity, along with other students of merit, to become a part of the TJ family. This process that we shared keeps rigor in the application while eliminating the testing component that squeezed out talent and squeezed out diversity in our system. There are other ways beyond a test to be sure that we can support making sure that students can be successful at TJ. The benefit of this lottery too is that students and parents would no longer have to spend their time or money on test preparation.</p> <p>Video Clip 4 (Brabrand, 10-6-20) (extracted from 9:42 to 10:39)</p>












Speaker	Complaint ¶ /URL Cited	Transcription from Video/ Video Clip # in Ex. B
Dr. Scott Brabrand (Super-intendent)	<p>47. This language directly attacks the Asian-American families whose children hope to apply to TJ, demeaning students' hard work and families' sacrifices as "pay to play."⁵⁰</p> <p>⁵⁰ <i>Id.</i> at 36:43 [sic]. [citing url in n.46]</p>	<p>Merit is in the pool, and merit and talent is removed from the pool through the testing process. I just want to make one comment on the testing process. I know and received feedback through my own town halls that I talked about "pay-to-play" and many perceived that those were comments against parents and students who did support, as part of getting in TJ, taking those tests. I did not mean in any way to make comments that were disparaging against them at all. I do not support an industry that prays on the hopes and dreams of students and parents and requires thousands of dollars to be shelled out for students to be successful. But the students and their parents are simply playing by the rules—the rules that we set up here in Fairfax County. Now, it's time to change the rules and create a process where the true diversity of talent and merit is fully appreciated here in Fairfax County Public Schools for admittance into our class at Thomas Jefferson.</p> <p>Video Clip 4.1 (Brabrand, 10-6-20) (extracted from 38:02– 39:18)</p>

Speaker	Complaint ¶ /URL Cited	Transcription from Video/ Video Clip # in Ex. B
Karen Keys-Gamarra (Member)	<p>45. When asked to report on her experience at the state working group over the summer, Board member Karen Keys-Gamarra stated “there was pretty much a unanimous view about the culture of these schools being not as healthy as I know all of us on this board would like to hear from our students.”⁴³</p> <p>⁴³ <i>Id.</i> at 44:50. [citing url in n.33]</p>	<p>Just to give folks an overview of what did transpire, we met for four or five times, a number of legislators were brought forward, and a lot of students, which was extremely valuable to hear, their direct report of what their experiences have been. These were both students who are currently attending our Governor’s schools, as well as students from the past. There had also been one student who had done a survey of a different Governor’s school, Maggie Walker, down in the Richmond area. And what I was struck by was that there was pretty much a unanimous view about the culture of these schools being not as healthy as I know all of us on this Board would like to hear from our students. This is not to discount, you know, all the positive things going on, and that sort of thing, but I think the thing that struck me the most was that there were enough incidents that people were reporting that would fall in the category of what we discussed in the last work session, about how there could be racial incidents, and how they had not been handled properly. And so what it underscored for me was some of the work that we talked about this morning.</p> <p>Video Clip 5 (Keys-Gamarra, 9-15-20) (extracted from 44:29–46:02)</p>
	<p>47. . . . Board Member Keys-Gamarra recognized this discriminatory language towards Asian-American families:</p> <p>And I want to say, just as we are concerned about certain communities feeling that we are maligning them by talking about tests, we must be very careful and we must be cognizant of how demeaning these types of</p>	<p>I also want to address this issue of what diversity means. I’ve heard a number of comments from letters, even some [garbled], and it all seems to equate diversity, some of it, with “Oh my God, are we’re going to lower our standards.” And I want to say that, just as we are concerned about certain communities feeling that we are maligning them by talking about tests, we must be very careful and cognizant about how demeaning these types</p>

Speaker	Complaint ¶ /URL Cited	Transcription from Video/ Video Clip # in Ex. B
	<p>comments are and that many people consider these comments to be rooted in racism. I'm not saying it's intentional, but we need to be mindful."⁵¹</p> <p>⁵¹ <i>Id.</i> at 2:58:12. [citing url in n.46]</p>	<p>of comments are and that many people consider these comments to be rooted in racism. I'm not saying that it's intentional, but we need to be mindful.</p> <p>Video Clip 6 (Keys-Gamarra, 10-6-20) (extracted from 2:57:52 to 2:58:38)</p>
<p>Melanie Meren (Member)</p>	<p>45. . . . Board member Melanie Meren went a step further and described majority-Asian-American TJ's culture as "toxic"⁴⁴ for Black students.</p> <p>⁴⁴ <i>Id.</i> at 1:24:00. [citing url in n.33]</p>	<p>We've heard from a student, whom I've spoken with many times now, who tried to bleach her skin, because she didn't feel welcome as a black student in the school. It's toxic for those students who feel left out.</p> <p>Video Clip 7 (Meren, 9-15-20) (Extracted from 1:24:48 to 1:25:01)</p>
<p>Karl Frisch (Member)</p>	<p>45. . . . Member Karl Frisch decried "the culture that we allow in the system."⁴⁵</p> <p>⁴⁵ <i>Id.</i> at 2:09:52. [citing url in n.33]</p>	<p>Let me just say this is not a pipeline issue, and it's not a testing issue, it's both, and it's way more than that. It's a problem with the message that we send our kids, the students, our underrepresented students, and the culture that we allow in this system. I've received, I can't even count the number of emails I've received, from parents telling me that the real reason we have an underrepresentation is because Black and Brown families don't care, or they are culturally disinclined from pursuing STEM. That's the sort of bigotry pointed at members of our own community is why we are here in the year 2020 asking for data about access to AAP and STEM and other opportunities, and for generations why they haven't had access to these opportunities, and why they've been denied the same dreams that everybody else has.</p> <p>Video Clip 8 (Frisch, 9-15-20) (Extracted from 2:09:52 to 2:10:50)</p>

Speaker	Complaint ¶ /URL Cited	Transcription from Video/ Video Clip # in Ex. B
Abrar Omeish (Member)	<p>46. . . . Board Member Abrar Omeish stated that a key point was to “make sure there’s representation” that “should be proportional to the population numbers” of Fairfax County.⁴⁸</p> <p>⁴⁸ <i>Id.</i> at 1:02:50. [citing url in n.46]</p>	<p>A school-by-school approach would allow us to have more diversity, more proper outreach, and it’s not really just having diversity, to Mr. Smith’s point about the region selection, but doing it right, and if you think about what is it that is going to effectively reach every child and make sure there is representation, that’s a key point, and I would add that it should be proportional to the population numbers, not just by middle schools.</p> <p>Video Clip 9 (Omeish, 10-6-20) (1:02:31 to 1:02:57)</p>
Dr. Ricardy Anderson (FCSB Chair)	<p>47. The School Board and FCPS officials repeatedly discussed the TJ admissions test—the test by which Asian-American students earned their places at TJ—as biased, resulting in presence at TJ of “students who have been [in] Test Prep since second grade.”⁴⁹</p> <p>⁴⁹ <i>Id.</i> at 3:40:00. [citing url in n.46]</p>	<p>In addition, if we’re really saying that TJ is for the gifted, we really will not be accepting students who have been test-prepped since second grade. We will really hone in for what that means, and it will be a much smaller pool of students. So along those lines, I’d like us to take a look at – set aside those reserved seats to be a lot more in alignment with the gifted population as determined nationally.</p> <p>Video Clip 10 (Anderson, 10-6-20) (3:39:53 to 3:40:20)</p>

Name

-  Video Clip 1 (Brabrand, 8-5-20) (extracted from 1_28_02-1_28_46)
-  Video Clip 2 (Brabrand, 9-15-20) (extracted from 4_31-5_14)
-  Video Clip 3 (Brabrand, 10-6-20) (extracted from 6_35 to 7_15)
-  Video Clip 4 (Brabrand, 10-6-20) (extracted from 9_42 to 10_39)
-  Video Clip 4.1 (Brabrand, 10-6-20)(extracted from 38_02-39_18)
-  Video Clip 5 (Keys-Gamarra, 9-15-20) (extracted from 44_29 to 46_02)
-  Video Clip 6 (Keys-Gamarra, 10-6-20) (extracted from 2_57_52 to 2_58_38)
-  Video Clip 7 (Meren, 9-15-20) (extracted from 1_24_48 to 1_25_01)
-  Video Clip 8 (Frisch, 9-15-20) (extracted from 2_09_52 to 2_10_50)
-  Video Clip 9 (Omeish, 10-6-20) (extracted from 1_06_20 to 1_02_57)
-  Video Clip 10 (Anderson, 10-6-20)(3_39_53-3_40_20)

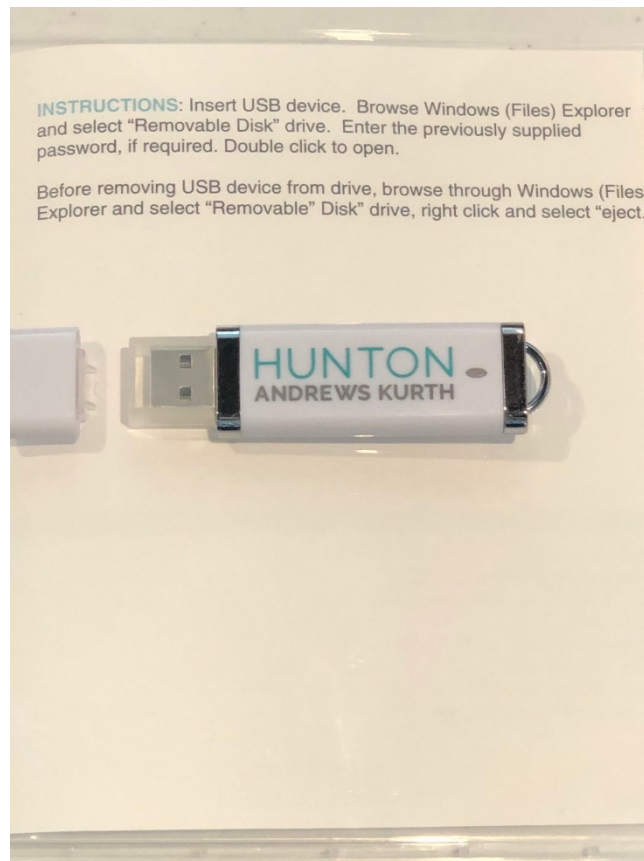


Exhibit B