IN THE UNITED STATES DISTRICT COURT
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.	No. 1:21-cv-00296-CMH-JFA

PLAINTIFF'S REPLY BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Plaintiff Coalition for TJ incorporates its arguments as presented in Plaintiff's Memorandum in Support of Motion for Preliminary Injunction, ECF 16, and Plaintiff's Opposition to Motion to Dismiss, ECF 25, with the following additions in response to new arguments raised in Defendants' Brief in Opposition to Plaintiff's Motion for Preliminary Injunction, ECF 24.

FACTUAL BACKGROUND

The Coalition incorporates the facts set forth in its Memorandum in Support of Motion for Preliminary Injunction, ECF 16 at 2–7, and Opposition to Motion to Dismiss, ECF 25. In response to specific factual disagreements raised by Defendants' Opposition to the Motion for Preliminary Injunction (ECF 24 at 2–7), the Coalition replies as follows:

It is irrelevant that the challenged TJ admission policy facially prohibits racial balancing. Defendants assert that their revised admission policy must be non-discriminatory because "the policy itself specifically prohibits racial balancing and racial targets." Opp. at 2. But just because the challenged admission policy *says* (perhaps at the insistence of the Board's legal counsel) that it does not seek to racially balance TJ does not make it true. In fact, an entire line of case law exists to uncover discriminatory purposes behind just such facially race-neutral policies. *See, e.g.*, *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977). The Court need not—and should not—accept at face value the Board's self-serving statements declaring the challenged changes race-neutral. Nor, contrary to Defendants' insistence, must the Coalition demonstrate bad faith or improper behavior on Defendants' part to prevail on an *Arlington Heights* claim. Opp. at 3–4. Similarly, a racially discriminatory purpose need not amount to racism or racial animus. *North Carolina State Conf. of NAACP v. McCrory*, 831 F.3d 204, 233 (4th Cir. 2016) (targeting voters based on race, even to accomplish partisan and not racial ends, constitutes racial

discrimination). The Coalition also need not show that "the challenged action rested solely on racially discriminatory purposes." *Arlington Heights*, 429 U.S. at 265. Instead, the Coalition need only show that Defendants implemented the changes to TJ's admissions process "at least in part 'because of,' not merely 'in spite of,' [their] adverse effects upon" Asian-Americans. *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979).

It does not matter whether the 1.5% limitation acts as a ceiling or a floor. In response to the Coalition's motion, the Shughart Declaration clarifies that any remaining seats after all middle schools have been allocated seats under the "top 1.5%" plan will go into a pool of unallocated seats available to qualifying applicants regardless of middle school. ECF 24-2. Defendants cannot give a precise estimate of how many such seats there will be—if each middle school fills its 1.5% allocation (the most likely scenario), then only 100 seats would remain, and those seats would be "allocated among private-school and home-schooled students, *as well as* other eligible students who ranked below the top 1.5% of applicants from their middle school." Shughart Decl. ¶ 10(d) (emphasis added). Defendants do not explain how they would make that allocation, but the inclusion of private and home-schooled students in the selection pool means that the number of seats available to students outside the top 1.5% of their middle school class could be very small indeed.[1] And even if some seats remain, the challenged "holistic" admissions policy will explicitly prefer students "attending underrepresented middle schools," so students at the heavily Asian-American middle schools with a history of sending students to TJ will lack the opportunity to compete equally even for these seats.

[1] For example, in last year's Class of 2024, 185 private-school and home-school students applied for admission to TJ, or 7.3% of total applications. Fifty-one of those private-school and home-school students were accepted into TJ, or 10.5% of all students offered admission in the Class of 2024. Press Release, FCPS, *TJHSST Offers Admission to 486 Students* (June 1, 2020), https://www.fcps.edu/news/tjhsst-offers-admission-486-students.

Either way, by virtue of their disproportionate attendance at particular middle schools, the challenged policy makes it significantly harder for Asian-American students to compete for admission to TJ. Even if Defendants are correct that the 1.5% system acts primarily as a floor, it still strictly limits the number of seats available to each middle school during the first round of selections for TJ—during which approximately 80% of TJ's available seats are filled. ECF 24-2 ¶ 11 (stating that remaining eligible applicants will only be considered for admission "after their middle school's allocated seats have been filled"). In other words, applicants who miss the 1.5% cutoff at their school must wait until all other middle schools have fulfilled their quotas—which they are likely to do, given the challenged admissions policy's emphasis on encouraging admission from "historically underrepresented public middle schools"[2] and waivers offered for students who do not meet the requirement for enrollment in honors courses. ECF 24-2, Ex. B at 4; FCPS, *TJHSST Eligibility Requirements*, https://tinyurl.com/abcf2xvb. Such applicants, including those from the four middle schools with both high concentrations of Asian-American students and histories of sending a large number of students to TJ, are left to compete for the remaining seats alongside home-schooled and private-school applicants. ECF 24-2, Ex. B at 5–6. Whether a ceiling or a floor, the Asian-American children of Coalition parent-members will not be competing on an equal footing with other TJ applicants due to their race.

A state court judge found the challenged admissions policy "suffers the same arbitrary and capricious flaw as any other quota system." The state court lawsuit Defendants refer to *K.C. v. Fairfax Cty. Sch. Bd.*, No. 2020-17283 (Fairfax Feb. 2, 2021), which was brought by parents of gifted middle school children in Fairfax County who alleged that the elimination of

[2] For the TJ Class of 2025 admissions, a middle school would 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." ECF 24-4, Ex. B at 4.

the TJ admissions test violated state law requiring Governor's Schools like TJ to admit and educate gifted students, as defined by statute. Unlike the present case, the state lawsuit was a case of first impression turning on questions of state law and did not allege that the challenged admissions policy discriminated against Asian-American applicants in violation of their Equal Protection rights. *See K.C. v. Fairfax Cty. Sch. Bd.*, No. 2020-17283, Order on Demurrer at 3 (Jan. 21, 2021). Those issues were thus not before the court. Although the state court ultimately denied the parents' motion for a preliminary injunction after an evidentiary hearing, it had harsh words for Defendant School Board, Defendant Brabrand, and the challenged admissions policy:

> To suddenly cancel a November test in October suggests a rush to judgment and not a deliberate process. Even accepting the rationale that standardized tests unfairly eliminated qualified candidates who had a "bad testing day," why eliminate the tests altogether? Why not just give the test results less weight than what had been previously granted absolute finality? Why not allow students to take the test without making test scores either a precondition for the application process or a decision factor for admission? The standardized test scores became a barrier to admission because the admissions committee made them a barrier. In approaching a holistic consideration of qualitative and quantitative components in the selection process, why not keep the data offered by standardized testing as a relevant factor?
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> The recent proposal of offering a spot at TJ to the top 1.5% of students at every middle school suffers the same arbitrary and capricious flaw as any other quota system. That system creates more questions than answers. For example, what happens to the students who attend schools that attract a large population of gifted students? How will the quota define who falls within the top 1.5% of a school designed solely for gifted students? What if a middle school has an overabundance of students in the top 1.5% of their class who are uninterested in STEM? Why use a quota system when educational policies that foster diversity are permitted and encouraged, allowing academic institutions to consider the role of locality and personal experience as relevant factors in admissions decisions? Many reasons exist why quotas are controversial and disfavored.

Order on Motion for Preliminary Injunction at 16–17 (Fairfax Feb. 2, 2021).

ARGUMENT

I. The Coalition Has Standing

In response to Defendants' associational standing argument, the Coalition incorporates its Brief in Opposition to Defendants' Motion to Dismiss, ECF 25. As fully explained in that brief, the Coalition is a traditional membership organization and fulfills each prong of the test set out in *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977). *See also Md. Highway Contractors Ass'n, Inc. v. Maryland*, 933 F.2d 1246, 1251 (4th Cir. 1991).

Contrary to Defendants' assertions, the Declarations submitted by Coalition members are also admissible to support standing.[3] Defendants misunderstand the purpose of these declarations. Coalition parent-members Akella and McCaskill, between them the parents of Asian-American sixth, seventh, and eighth grade students who will be affected by the challenged TJ admissions policy, submitted declarations in support of the Coalition's standing, not to establish a prima facie case of discrimination. Ms. McCaskill and Mr. Akella are both Coalition members, Compl. ¶¶ 13–14, and their declarations establish the first *Hunt* requirement by "mak[ing] specific allegations establishing that at least one identified member had suffered or would suffer harm." *Southern Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 184 (4th Cir. 2013) (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009) (emphasis deleted)). These declarations state what the parents know to be true: that they are Asian-American residents of Fairfax County, that they have at least one child enrolled in or zoned for a middle school likely

[3] Customarily, courts may rely on declarations even to support a standing argument on the pleadings, so it is illogical to contend that declarations cannot support standing for a preliminary injunction. *See Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991) ("In determining whether jurisdiction exists, the district court is to regard the pleadings' allegations as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment.").

to be most severely impacted by the challenged admissions policy, that their child has specific academic interests and achievements, that their child has applied or intends to apply for admission to TJ, and that the parent believes that the challenged TJ admissions policy will discriminate against Asian-American applicants like their child. McCaskill Decl. ¶¶ 2–11; Akella Decl. ¶¶ 2–8.

In any event, a preliminary injunction may issue "on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). While the movant bears the burden of proof, the burden may be satisfied with affidavits[4] and other evidence that may not otherwise be admissible under the Federal Rules of Evidence. *See, e.g.*, *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709, 725–26 (4th Cir. 2016) (joining seven other circuits in allowing district courts to "look to, and indeed in appropriate circumstances rely on, hearsay or other inadmissible evidence when deciding whether a preliminary injunction is warranted"), *vacated on other grounds by Gloucester Cty. Sch. Bd. v. G.G. ex rel. Grimm*, 137 S. Ct. 1239 (2017) (mem). There is no doubt that the Court may consider parent-member declarations in support of the Coalition's standing to seek a preliminary injunction.

II. The Coalition Is Likely to Succeed on the Merits

State actions are "subject to strict scrutiny under the Equal Protection Clause not just when they contain express racial classifications, but also when, though race neutral on their face, they are motivated by a racial purpose or object." *Miller v. Johnson*, 515 U.S. 900, 913 (1995). As noted above, a decisionmaker need not be racist to act with improper intent. *See McCrory*, 831 F.3d at 233. Rather, the question here is whether Defendants changed TJ's admissions process "at least in

[4] *See Soutter v. Equifax Information Services LLC*, 299 F.R.D. 126, 128 n.4 (E.D. Va. Apr. 8, 2014) (noting that the terms "affidavit" and "declaration" are "used interchangeably in common parlance and in case law as well").

part 'because of,' not merely 'in spite of,' [the] adverse effects upon" Asian-American students. *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. at 279.

Arlington Heights exists to help courts ferret out discriminatory intent in facially race-neutral actions. The *Arlington Heights* framework identifies four types of particularly relevant evidence: (1) disparate impact of the policy on a particular racial group; (2) the historical background of the challenged decision, particularly if it reveals a series of official actions taken for invidious purposes; (3) irregularities in the passage of legislation; and (4) legislative and administrative history. 429 U.S. at 266–67. Though Defendants' opposing brief mentions *Arlington Heights* only once, ECF 24 at 15, the Coalition has provided sufficient evidence of racially discriminatory intent, particularly with regard to disparate impact of the challenged admissions policy on Asian-Americans, sufficient to trigger strict scrutiny.

A. The Coalition's Disparate Impact Projections Indicate Discriminatory Intent

When Defendant Brabrand presented the first proposal for a new TJ admission process in September 2020, the presentation included projections of how the admission changes would disproportionally impact Asian-American students. Compl. ¶ 31. For example, had the proposed admissions process been applied to the admissions process for the Class of 2024, Brabrand's projection was that Asian-American student enrollment at TJ for that class would have dropped from 73% to 54%. *Id.* Other projections showed a similar decrease. For the Class of 2015, Asian-American student enrollment would have shrunk 15%, while for the Class of 2019 the decrease would have been 18%. *Id*. n.22. In none of the projections would any other single racial group have experienced a drop in enrollment. *Id*.

When Defendant Brabrand stopped making such projections about the effect of future iterations of his proposal, likely due to intense backlash from parents of Asian-American students,

a team of Coalition members led by parent-member Himanshu Verma stepped in to do a similar analysis of the revised proposal. Verma Decl. ¶ 10. The Coalition has not designated Verma as an expert witness; rather, as he explains in his declaration, he is the parent of a sixth-grader who will be negatively impacted by the challenged TJ admission policy and has also worked in data analytics for twenty years. *Id*. ¶¶ 3, 7, 9. Using publicly-available information, Verma analyzed the thirteen criteria identified by FCPS for admission to TJ under the challenged admissions policy to arrive at an estimated decrease of 42 percentage points in the number of Asian-American students who would be offered admission to TJ in the Class of 2025. *Id*. ¶¶ 11–19. Of course, exact predictions are impossible; FCPS has not publicly released its scoring rubric for TJ applicants and admissions decisions have yet to be announced. But Defendants do not provide a contrary estimate of the impact of the challenged admissions policy on Asian-American applicants, and in fact have avoided doing that analysis (or at least making it public) since the first proposal was presented to the school board on September 15. *See* Shughart Dec. ¶ 10(e) ("Our staff did not conduct any analysis to predict how the top-1.5% plan would affect the racial makeup of students admitted to TJ under the new admissions process.").

But the disparate impact of the plan on Asian-American students is plain to see even without a sophisticated statistical analysis. The 1.5% plan is designed to limit—and would have the effect of limiting—enrollment from middle schools that have historically sent many more students to TJ. These schools are disproportionately Asian-American. *See* Compl. ¶¶ 15–18 and accompanying footnotes. By limiting initial eligibility to the top 1.5% of these schools and then subjecting any remaining students to a "holistic" process that disadvantages them because of their middle school, the challenged plan will limit enrollment of students from these middle schools at

TJ. Like the initial "regional pathways" plan, that limitation inevitably will result in a significant disparate impact on Asian-American applicants.[5]

B. Irregularities in Adoption of Policy Changes Indicate Discriminatory Intent

Defendants also misunderstand the Coalition's allegations regarding the third prong of the *Arlington Heights* framework—irregularities in the passage of legislation. 429 U.S. at 267; Compl. ¶¶ 33–36; ECF 16 at 16–17. The Coalition does not contend that Defendant School Board violated its own policy or Virginia law in voting to eliminate the TJ admissions test at a work session instead of a regular business meeting and in refusing to take public comment prior to the vote. ECF 24 at 15–16. No such showing is required. *McCrory*, 831 F.3d at 228 ("a legislature need not break its own rules to engage in unusual procedures"). But the Coalition *does* contend that such irregular behavior is worthy of attention from this Court, particularly given that it marks a stark departure from Defendants' previous handling of the TJ admissions policy debate. *Arlington Heights*, 429 U.S. at 267 ("Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role.").

Earlier in the process, Defendant Brabrand hosted multiple town hall meetings where he invited public questions on the TJ admissions process, and the TJ admissions policy was routinely on the agenda at School Board meetings throughout the fall of 2020. Coalition members participated via the public comment period at both town hall and Board meetings. *See* Nomani Decl. ¶ 42; Miller Decl. ¶ 45. And yet, when it came to voting to eliminate a highly controversial

[5] To the extent Defendants rely on the First Circuit's suggestion in *Boston Parent Coalition for Academic Excellence v. School Committee of City of Boston*, No. 21-1303, 2021 WL 1656225 (1st Cir. Apr. 28, 2021), that a geographic quota like its zip-code policy is immune from *Arlington Heights* scrutiny, that reliance is faulty. ECF 24 at 12-13. Even a facially race-neutral admissions policy, like those relying on geographic quotas, may be discriminatory under *Arlington Heights* and thus subject to strict scrutiny. *Miller*, 515 U.S. at 913.

test that had been the subject of enormous public engagement, the Board did so at a work session where it was not advertised in advance and with no opportunity for the public to weigh in. Compl. ¶¶ 33–34; *see also K.C.*, No. 2020-17283 at 17 (Fairfax Feb. 2, 2021) ("To suddenly cancel a November test in October suggests a rush to judgment and not a deliberate process."). Despite the gravity of the decision, and its immediate impact on the hundreds of eighth graders preparing to take the TJ admissions test the next month, the Board did not ratify its work session vote at the regular business meeting two days later and rejected a measure that would have required Defendant Brabrand to solicit "public engagement" and "community input and dialogue" before presenting another admission proposal in December. Compl. ¶ 35 & n.26.

The vote to adopt the 1.5% plan, taken during a regular business meeting on December 17, 2020, was similarly irregular. Board Member Megan McLaughlin even complained that,

> I'm really upset that we're doing this so quickly that at 4:30 this afternoon there was nothing posted. No motions, no amendments, no follow-ons. Not for me, not for the public to be able to review and read. This is not how we do the board work. This is not public transparency.[6]

In *McCrory*, the Fourth Circuit specifically called out just such a rushed process with lack of public input as factors supporting an inference of an improper motive. 831 F.3d at 228. Regardless of whether these procedural irregularities are within the bounds of board policy and state law, they weigh in favor of a finding of discriminatory intent in this case.

C. Contemporary Statements by Decisionmakers Indicate Discriminatory Intent

Most significantly, the series of statements by Defendant Brabrand, TJ's principal Ann Bonitatibus, and School Board members provide evidence of the discriminatory purpose behind the challenged admissions policy. Principal Bonitatibus set off Asian-American parents' radar with

[6] FCPS School Board Meeting, 12-17-2020, https://tinyurl.com/33wsv6tp at 2:17:02.

a June 2020 email to the TJ community lamenting that TJ's student population "does not reflect the racial composition in FCPS" and went on to crunch the numbers on exactly how many students of each race TJ should have in order to be racially balanced. Compl. ¶ 40. The Coalition's parent-members heard the same theme from Defendant Brabrand, whose first presentation on proposed TJ admissions changes emphasized the "need to recognize" that "TJ should reflect the diversity of Fairfax County Public Schools, the community, and of Northern Virginia" and lamented that "the talent at Thomas Jefferson currently does not reflect the talent that exists in FCPS." *Id*. ¶ 42. As the only "overrepresented" racial group at TJ, Asian-American parents were reasonably concerned that FCPS intended to racially balance TJ—a concern strengthened by the projected negative impact on only Asian-American students contained in that first presentation. *Id*. ¶ 31. At that same meeting, FCPS Chief Operating Officer Marty Smith echoed Defendant Brabrand's complaint about the lack of racial balance at TJ, while Principal Bonitatibus said she was "fully supportive of FCPS efforts to advance the representative demographics of our school." *Id*. ¶¶ 43, 44.

Throughout the rest of the fall, school officials and School Board members alike repeatedly commented on TJ's "toxic" culture, *id*. ¶ 45, the need for a "student body that more closely aligns with the representation in FCPS," *id*. ¶ 46, and how TJ's student body "should be proportional to the population numbers" of Fairfax County. *Id*. Concerned that the discussion around TJ admissions was veering into overt racism, Board Member Keys-Gamarra warned "we must be very careful and we must be cognizant of how demeaning these types of 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." *Id*. ¶ 47.

Although Defendants dispute the meaning of these comments, ECF 24 at 5, considering the statements in the context of a rushed plan to entirely overhaul the TJ admissions process to the

detriment of Asian-American applicants, and at this stage of the case, the Court should view them as evidence of discriminatory intent. Even absent racial animus, the tenor of the discussions at the relevant Board meetings and work sessions was geared toward the racial balancing of TJ at the expense of Asian-Americans. Certainly, Coalition members monitoring the TJ admissions policy discussion as it unfolded during the summer and fall of 2020 viewed the statements from Principal Bonitatibus, Mr. Smith, Defendant Brabrand, and School Board members as manifesting intent to racially balance TJ and discriminate against Asian-American students and families. Nomani Decl. ¶ 5; Miller Decl. ¶ 5. The Court should reject Defendants' attempt to recharacterize these statements. *See* ECF 25 at 17-23.

D. The Challenged Admissions Policy Cannot Survive Strict Scrutiny

As more fully explained in its Motion for Preliminary Injunction, ECF 16 at 18–22, because the challenged admissions changes were motivated by a racial purpose, Defendants must prove those changes are narrowly tailored to further a compelling government interest. *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995); *Eisenberg ex rel. Eisenberg v. Montgomery Cty. Public Schools*, 197 F.3d 123, 129 (4th Cir. 1999). They cannot overcome this high bar and do not even attempt to do so in their Opposition. The Coalition is therefore likely to succeed on the merits of its Equal Protection claim.

III. Harm to Asian-American Students Is Irreparable and Imminent

The parties agree that an unconstitutional admissions policy is an irreparable harm. ECF 16 at 23; ECF 24 at 17. But Defendants incorrectly posit that irreparable harm to the Coalition's members does not qualify as irreparable harm to the Coalition. ECF 24 at 17. Defendants' reliance on the Second Circuit's decision in *Christa McAuliffe Intermediate School PTO, Inc. v. de Blasio*, 788 F. App'x 85, 85 (2d Cir. 2019), betrays their error. Defendants effectively seek to import the

Second Circuit's idiosyncratic rule that membership organizations lack standing to assert their members' rights in a Section 1983 action. *See Christa McAuliffe Intermediate School PTO, Inc. v. de Blasio*, 364 F. Supp. 3d 253, 271 n.17 (S.D.N.Y. 2019) ("This limitation on associational standing appears to be unique to the Second Circuit."); *Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*, 868 F.3d 104, 123 (2d Cir. 2017) (Jacobs, J., dissenting) (collecting cases). But the Second Circuit's rule is inconsistent with Supreme Court precedent, as that Court has twice permitted associations to pursue injunctive relief on behalf of their members in Equal Protection cases. *See Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 718 (2007) (The plaintiff-association's members "have children in the district's elementary, middle, and high schools, and the complaint sought declaratory and injunctive relief on behalf of Parents Involved members whose elementary and middle school children may be 'denied admission to the high schools of their choice when they apply for those schools in the future.'" (citations omitted)); *Ne. Fla. Chapter of the Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 668 (1993) (It was sufficient that "petitioner alleged that its members regularly bid on construction contracts in Jacksonville, and that they would have bid on contracts set aside pursuant to the city's ordinance were they so able."). The Fourth Circuit has not followed the Second Circuit's outlier approach. *Md. Highways Contractors Ass'n*, 933 F.2d at 1251–53. Because the Coalition may sue on behalf of its members, harm to the Coalition's members is sufficient to establish harm to the Coalition.

And Coalition members will likely suffer irreparable harm. Children of Coalition members, including McCaskill's child D.M., attend middle schools with a high concentration of Asian-American students and are likely to suffer irreparable harm due to the challenged admissions policy. Compl. ¶ 15; McCaskill Decl. ¶¶ 4–7. As noted above, the challenged admissions policy

disadvantages students like D.M. by requiring them to compete on an unequal playing field because of their race. *See Parents Involved*, 551 U.S. at 719. Absent a preliminary injunction, TJ admissions offers will be extended before this lawsuit is resolved and the right of Coalition parent-members' children like D.M. to participate in a lawful admissions process will be permanently foreclosed. The denial of the opportunity to equally compete for admission to the nation's best public high school is not an injury that can be compensated with money damages.[7]

The Coalition has also sufficiently shown that the irreparable harm to its parent-members' children is imminent. Absent an injunction, admission to TJ for the Asian-American eighth grade children of Coalition members, including the seventeen listed in the Complaint, will be based on the allegedly unconstitutional admissions policy—an unquestionably imminent process. And current seventh graders will begin applying for admission to TJ this fall, in approximately six months—very likely while this litigation is still ongoing. In *Parents Involved*, the Supreme Court considered the denial of opportunity for elementary and middle school children to attend the high school of their choice to be imminent. *Id.* at 718. The timeline here likewise easily qualifies the Coalition's harm as imminent.

IV. A Preliminary Injunction Serves the Public Interest

It unquestionably serves the public interest to ensure that TJ's admissions policy complies with the constitutional requirements of the Equal Protection Clause. *Legend Night Club v. Miller*,

[7] Nor is there merit to Defendants' assertion that the Coalition is required to prove that D.M., or any child of a parent-member, is unlikely to be accepted into TJ under the challenged admissions policy. *See* ECF 24 at 18. As the Supreme Court has explained, "one form of injury under the Equal Protection Clause is being forced to compete in a race-based system that may prejudice the plaintiff." *Parents Involved*, 551 U.S. at 719. As here, the plaintiff's injury is "not the ultimate inability to obtain the benefit," but "the denial of equal treatment resulting from the imposition of the barrier." *Ne. Fla.*, 508 U.S. at 666. Whether D.M. or any other child will ultimately be accepted to TJ or not is not the point; the injury caused by having to seek admission under an unconstitutional policy is concrete, actual, and—absent an injunction—imminent.

637 F.3d 291, 303 (4th Cir. 2011) ("[U]pholding constitutional rights is in the public interest."). The Coalition asks this Court for a preliminary injunction to protect the constitutional right of Asian-American students to compete for admission to TJ on an equal footing, regardless of their race or ethnicity. In opposition, Defendants' argument boils down to this: it will be too difficult to dismantle the discriminatory TJ admission process that Defendants enacted, so they should not be required to do so. But with Asian-American students' Equal Protection rights on the line, it is in the public interest to require Defendants to clean up their own mess.

A. Any "Chaos" in the Application Process Was Initiated by Defendants and Should Not Be Held Against the Coalition

Defendants threw the academic plans of every TJ applicant into chaos on October 6, 2020, when the Board voted to eliminate the TJ admissions test a mere month before that test was scheduled to take place. Hundreds and perhaps thousands of eighth graders, many of whom had studied for months or years for that test, then spent over two months in limbo while Defendants decided what would replace it. For Asian-American students, who spent months listening to their principal, superintendent, and School Board deride their hard work as toxic and divisive, learning that they would now have to compete for admission to TJ under a new admissions system designed to make it harder for them to get into TJ only added to the chaos and anxiety.

B. The Disruption Caused by the Challenged Policy Is Significant and Must Be Considered

Defendants contend that "preserving the settled expectations and reliance interests" of students and families under the challenged admission process disfavors injunctive relief. ECF 24 at 21. However, that argument fails to take into account the prior settled expectations and reliance interests of the students and families that were upended with no warning on October 6 when Defendant School Board eliminated the TJ admissions test, and again on December 17 when it enacted a new admissions policy with a 1.5% plan so unexpected that one Board Member

complained she hadn't seen it until a few hours before the meeting started.[8] Those expectations and reliance interests should weigh at least as heavily in evaluating the public interest prong as the interests advanced by Defendants.

And those already-disrupted interests are substantial. As discussed above, *supra* at 15, applicants to the TJ Class of 2025 have already spent months (or years) of studying, planning, and preparing to apply to TJ and take the admission test under the previous admissions policy. They then spent two months unsure what policy would now apply to them after the TJ admissions test was eliminated in October, while Asian-American students in particular heard their hard work disparaged by Defendants and other officials. The eighth-grade children of Asian-American Coalition parent-members now face evaluation under a discriminatory admissions policy, as do the seventh grade children and beyond until this challenged policy is ended. Given these factors, the public interest supports a return to the status quo, before the challenged admission policy changes.

On this point, the Coalition's case varies from the *Boston Parent Coalition* case in two significant ways: one, the Boston plaintiff did not challenge the cancellation of the admissions exam and thus the district court did not consider the impacts of its cancellation when weighing students' settled expectations and reliance interests; and two, the changes in Boston are a one-year deviation in response to the COVID-19 pandemic, not a permanent change affecting every class of applicants from this year onwards. *Boston Parent Coalition for Academic Excellence Corp.*, 2021 WL 1656225, at *1. Defendants cannot hide behind the chaos they initiated last October, claiming that it is not in the public interest to clean up their own mess. Asian-American applicants

[8] FCPS School Board Meeting, 12-17-2020, https://tinyurl.com/33wsv6tp at 2:17:02.

with pending TJ applications, as well as those applying this fall and next year, deserve better from their school officials.

C. Protecting Students' Constitutional Rights Is a Public Interest Supporting Issuance of a Preliminary Injunction

Presumably, up until the evening of October 6, 2020, school district officials were preparing to administer the TJ admissions test. Per the Shugart Declaration, these preparations would have included budgeting for the purchase of the standardized tests, purchasing the various standardized tests from their vendors, reserving testing sites, assigning staff, and collecting application fees (which, as in previous years, were waived for any student with financial need). Shughart Decl. ¶ 8; Compl. ¶ 26. Although these extensive preparations apparently could be easily cancelled at a month's notice, Shugart Decl. ¶ 10(b), the Coalition does not pretend that renewing these preparations now would be a simple task. However, that not-insignificant inconvenience to Defendants must be weighed against the clear violation of the Coalition parent-members' children's Equal Protection rights. Whether a child is accepted into TJ will have a significant effect on their next four years, and likely their opportunities for higher education and beyond. The chance to compete for admission to TJ on a level playing field, regardless of race, must be the paramount concern.

D. Enjoining the 1.5% Policy This Year and Returning to the Status Quo for Future Years Are Viable Alternatives

The Coalition's Motion made clear that a preliminary injunction requiring an immediate return to the status quo is not the only possible remedy. ECF 16 at 26; *see Westmoreland Coal Co. v. Int'l Union, United Mine Workers of Am.*, 910 F.2d 130, 135 (4th Cir. 1990) (issuance of preliminary injunction is in the "sound discretion" of the district court). Though such an injunction is the only way to provide full and immediate relief, including to the Asian-American eighth grade students with pending TJ applications, the Coalition recognizes that reimplementing a full

admissions examination for the TJ Class of 2025 would be extremely difficult at this juncture. However, the Coalition's alternate suggestion of eliminating the 1.5% restriction from the admissions procedure for the TJ Class of 2025 would not carry the same difficulty, and it would at least lessen the impact on Asian-American applicants caused by their concentration in certain middle schools with a history of sending high numbers of students to TJ.

Defendants also ignore the fact that more than one class of applicants will likely be adversely affected by the challenged admissions policy before this litigation is resolved. Even if this Court concludes that the equities do not favor a complete return to the status quo with respect to the Class of 2025, that should not dissuade the Court from requiring a complete return to the status quo for future years. ECF 16 at 26–27. Such a decision would allow Defendants months to prepare, and current seventh graders, like parent-member Akella's son R.A., would benefit from the preliminary injunction when they apply for TJ admission this fall. Such a course would also not work any undue hardship on Defendants, who would have months to return to the previous admissions policy under such an injunction.

V. The Coalition's Preliminary Injunction Motion Is Not Barred by Laches

Defendants appear to fault the Coalition for not filing this lawsuit last November, when several individual parents, some of whom also are parent-members of the Coalition for TJ, filed the entirely different lawsuit in state court alleging that the Fairfax County School Board violated state law by revising the TJ admissions policy in a way that does not guarantee its continued operation as a school for gifted students, as defined by statute. *K.C.*, No. 2020-17283 at 17 (Fairfax Feb. 2, 2021). Defendants find it "conspicuous[]" and "puzzling" that the state lawsuit does not raise a claim of intentional racial discrimination. ECF 24 at 23 & n.3. But there is nothing puzzling about it. The state lawsuit clearly and plainly challenges the violation of a state statute requiring

Virginia Governor's Schools, like TJ, to educate gifted students. ECF 22-3 ¶¶ 1–6. Indeed, any equal protection claims might have been dismissed as unripe when the state lawsuit was filed in November, as FCPS did not announce the new admissions policy until December 17.

Once the challenged TJ admission policy was announced, including the unanticipated 1.5% limitation, the Coalition took a reasonable amount of time to evaluate the new policy and its predicted impact on Asian-American students, deliberate over next steps, secure and consult with counsel, and engage in the detailed process required when bringing a lawsuit in federal court. Aware that seeking a preliminary injunction likely to impact thousands of individuals should not be entered into lightly, the Coalition acted carefully and deliberatively in seeking preliminary injunctive relief. Whether laches bars the issuance of an injunction pertaining to the pending TJ admissions decisions depends on the particular circumstances of a case, *White v. Daniel*, 909 F.2d 99, 102 (4th Cir. 1990), and Defendants should not be allowed to miscast the Coalition's deliberative action in bringing this lawsuit as inexcusable delay. It is not. Moreover, the challenged admissions policy will apply not just to the Class of 2025, but to future classes who apply before this case is resolved on the merits. Defendants cannot reasonably assert that the Coalition sat on the rights of these parent-members with sixth and seventh graders, as these students will not apply to TJ for several months (or more than a year for younger students). So Defendants' laches argument does not help them avoid an injunction for future years.

Further, Defendants' reliance on *Perry*, *Curtin*, and *Boston Parent Coalition* with regard to the prejudice element of laches is unavailing. *Perry* and *Curtin* are both election cases, not school admission cases, as is *Benisek*, the case Defendants and the *Boston Parent Coalition* court cites in support of election decisions applying "elsewhere." *See Perry v. Judd*, 471 F. App'x 219, 244 (4th Cir. 2012); *Curtin v. Va. State Bd. of Elections*, 463 F. Supp. 3d 653, 659 (E.D. Va. 2020);

Benisek v. Lamone, 138 S. Ct. 1942, 1944 (2018) (citing *Lucas v. Townsend*, 486 U.S. 1301 (1988) (bond referendum election); *Fishman v. Schaffer*, 429 U.S. 1325 (1976) (presidential election)). Without applicable precedent to support it, Defendants are left with the argument that they will be prejudiced because a preliminary injunction will require a large amount of work to remedy an unjust situation Defendants created in the first place. Inconvenience and expense, even if significant, should not outweigh the importance of protecting Equal Protection rights in the face of a discriminatory TJ admissions policy.

CONCLUSION

This Court should grant the Coalition a preliminary injunction while litigation is pending.

DATED: May 12, 2021.

Respectfully submitted,

s/ Alison E. Somin

ALISON E. SOMIN, Va. Bar No. 79027
Pacific Legal Foundation
3100 Clarendon Blvd., Suite 610
Arlington, Virginia 22201
Telephone: (202) 557-0202
Facsimile: (916) 419-7747
ASomin@pacificlegal.org

GLENN E. ROPER*, Colo. Bar No. 38723
Pacific Legal Foundation
1745 Shea Center Dr., Suite 400
Highlands Ranch, Colorado 80129
Telephone: (916) 503-9045
Facsimile: (916) 419-7747
GERoper@pacificlegal.org

ERIN E. WILCOX*,
N.C. Bar No. 40078
CHRISTOPHER M. KIESER*,
Cal. Bar No. 298486
Pacific Legal Foundation
930 G Street
Sacramento, California 95814
Telephone: (916) 419-7111
Facsimile: (916) 419-7747
EWilcox@pacificlegal.org
CKieser@pacificlegal.org

**Pro Hac Vice*

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. Counsel for Defendants are registered with the Court's CM/ECF system and will receive a notification of such filing via the Court's electronic filing system.

s/ Alison E. Somin
ALISON E. SOMIN, Va. Bar No. 79027
Pacific Legal Foundation
3100 Clarendon Blvd., Suite 610
Arlington, Virginia 22201
Telephone: (202) 557-0202
Facsimile: (916) 419-7747
ASomin@pacificlegal.org
Counsel for Plaintiff

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

COALITION FOR TJ, Plaintiffs, v. FAIRFAX COUNTY SCHOOL BOARD; and DR. SCOTT BRABRAND, in his official capacity as Superintendent of the Fairfax County School Board, Defendants.	No. 1:21-cv-00296-CMH-JFA

DECLARATION OF GLENN S. MILLER

I, Glenn S. Miller, declare as follows:

1. The facts set forth in this declaration are based on my knowledge and, if called as a witness, I can competently testify to their truth under oath. As to those matters that reflect a matter of opinion, they reflect my personal opinion and judgment upon the matter.

2. I am a resident of Fairfax County, Virginia.

3. I am the parent of a student at Thomas Jefferson High School for Science and Technology (TJ) in Alexandria, Virginia.

4. I am a partner at a law firm in Washington, D.C.

5. In August 2020, I co-founded the Coalition for TJ with Asra Nomani in response to statements from the Fairfax County School Board and Virginia Secretary of Education Atif Qarni indicating that changes would be made to the TJ admissions process in an effort to racially

balance the demographic make-up of the school that I believed would discriminate against Asian-American applicants and which ran contrary to my civil libertarian beliefs.

6. The Coalition for TJ is a membership organization.

7. The Coalition supports increasing diversity through merit-based admissions to TJ.

8. The Coalition has three tiers of membership: a leadership team, a core team, and general members.

9. The leadership team is comprised of 10 members at the current time and meets weekly to discuss strategy and Coalition business.

10. I am a member of the leadership team.

11. The leadership team was chosen through self-nominations, and nominees were then chosen by consensus, based upon demonstrated interest in the cause and commitment to perform agreed-upon tasks and meet on a regular basis.

12. The core team is comprised of 27 members who participate through a Telegram Chat Group and who participate in weekly meetings by invitation of the leadership team. The core team will volunteer ideas, share articles they find in the press, and will often be available to do media interviews and occasional volunteer work.

13. The general membership tier currently has 298 members, many of which will offer advice and encouragement and make financial contributions, but are generally unavailable to volunteer their time.

14. The Coalition also has approximately 5,000 supporters, who are not traditional members but who sign petitions, attend virtual or in-person rallies, or otherwise contribute to the Coalition's mission.

15. The Coalition has 8 committees, which are led by parent leaders.

16. The committees are: Fundraising, Accounting/Finances, Membership, Media and Communications, Advocacy, Legal, Operational Management, and Data.

17. To become a member, interested individuals must fill out a membership application form on the "Contact Us" tab of the Coalition for TJ website at www.coalitionfortj.net.

18. The website form asks for the individual's name, email address, and where they heard about the Coalition for TJ. It also asks the individual to share his or her personal story about "why the issue of advocating for diversity and excellence is important to you" and what programs he or she is interested in working with.

19. Application forms are then vetted by the Coalition to ensure the applicant shares the same interest in fighting the discriminatory TJ admissions policy changes.

20. Coalition members communicate through Telegram, which is a mobile social networking application that enables group messaging and communications.

21. The Coalition maintains a Telegram group open to all members, where members, committees, the core team, and the leadership team communicate with each other.

22. The Coalition maintains a separate Telegram group for only core team members. Strategically sensitive material appears only on this chat group. Correspondence among the leadership is usually in the form of emails that include Asra Nomani.

23. Coalition members can, and frequently do, raise concerns and ideas with leadership via the various Telegram groups.

24. A few Coalition members have resigned their membership when they felt their views no longer aligned with the mission of the Coalition. Once these members resigned, they were removed from the Telegram chat groups.

25. The Coalition does not have bylaws.

26. Coalition members do not pay dues, and the Coalition is not a fundraising organization. Coalition members are strongly encouraged to donate, however.

27. On or about November 30, 2020, the Coalition became a Fiscally Sponsored Program (FSP) of United Charitable, a nonprofit organization that assists other nonprofit organizations with administration and compliance requirements.

28. United Charitable's policies do not permit FSPs to engage directly in litigation.

29. To comply with United Charitable's policies, the Coalition separated itself from United Charitable, creating the Coalition for Truth and Justice to participate as a FSP of United Charitable.

30. The Coalition for Truth and Justice is a parallel organization to the Coalition for TJ, but has a broader scope encompassing more than just TJ. Specifically, the mission of the Coalition for Truth and Justice 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."

31. Those wishing to financially contribute are encouraged by the Coalition's website to make a tax-deductible donation to the Coalition for Truth and Justice, which it describes as a 501(c)(3) and program of United Charitable.

32. The Coalition was formed in opposition to a specific problem: the discriminatory changes to the admissions process at TJ.

33. I am not aware of any Coalition member who supports the discriminatory changes to the admissions process at TJ.

34. I do not believe anyone would join the Coalition for TJ unless they opposed the admissions changes.

35. A different group—the TJ Alumni Action Group—exists to support the changes to the TJ admissions process.

36. The TJ Alumni Action Group has opposed the Coalition's work at every turn.

37. On August 14, 2020, the President and CEO of the TJ Alumni Action Group purchased the URLs CoalitionforTJ.org, CoalitionforTJ.com, Coalition4TJ.com, and Coalition4TJ.org and redirected users to the TJ Alumni Action Group's own website, which included a donate button that misled some intended Coalition for TJ donors into contributing funds to the TJ Alumni Action Group instead of the Coalition for TJ.

38. The Coalition for TJ obtained Internet records confirming that the President and CEO of the TJ Alumni Action Group herself purchased the domain name referenced above.

39. The TJ Alumni Action Group has received public support from Board Members, and the Fairfax County School Board and its administrators have participated in their official capacity in TJ Alumni Action Group sponsored events.

40. Two Fairfax County School Board members attended a protest rally sponsored by the TJ Alumni Action Group.

41. Supporters of the TJ Alumni Action Group have participated in Coalition for TJ events, filed and taken screen shots of participants, and posted those photos and transcripts of their statements on social media.

42. Supporters of the TJ Alumni Action Group have made racially derogatory statements about Asian Americans (calling them "resource hoarders" and "toxic") and have doxxed a Coalition for TJ member by posting their home address on Twitter.

43. Members of the TJ Alumni Action Group have published op-eds and other media pieces supporting the TJ admissions changes.

44. I do not believe it is likely that an individual who supports the TJ admissions policy changes would mistakenly join the Coalition for TJ instead of the TJ Alumni Action Group. In fact, on information and belief, an overwhelming number of the members of the Coalition for TJ are Asian American, many of them immigrants, whereas the TJ Alumni Action Group (other than certain core leaders) is heavily Caucasian. In fact, local media has described the Coalition for TJ and the TJ Alumni Action Group as being on "warring" sides of the TJ admissions dispute.

45. Coalition members, including myself, express their views through attending virtual and in-person rallies, providing public comments at school board meetings, work sessions, and town hall meetings, writing op-eds, and engaging on social media.

46. The Coalition was formed in the midst of the COVID-19 pandemic and was obligated to hold many of its activities and member engagement virtually for reasons of safety and compliance with local regulations.

47. Virtual Coalition events included: 1) educational events on critical race theory (attended by approximately 150 people), 2) political debates for the Governor and Lieutenant Governor's races in Virginia (attended live by approximately 100 people and screened by many more); and 3) organizational events for leaders of parent organizations in other jurisdictions facing similar discrimination against Asian-Americans, including parents in Boston, New York, Loudoun County, VA, and California.

48. In-person Coalition events included: multiple socially distanced protests at TJ, at the Fairfax County Board of Education, and at the Fairfax County Courthouse and attended by hundreds of people.

49. The Coalition chose to bring this lawsuit because its members believed that the changes to the TJ admissions process violated the Equal Protection rights of Asian-American students.

50. The decision to file the lawsuit was made by the unanimous consent of the Coalition for TJ leadership and core teams at one of the weekly calls following a meeting with the Pacific Legal Foundation.

* * *

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 12th day of May, 2021, at McLean, Virginia.

Glenn S. Miller

IN THE UNITED STATES DISTRICT COURT
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.	No. 1:21-cv-00296-CMH-JFA

DECLARATION OF ASRA Q. NOMANI

I, Asra Q. Nomani, declare as follows:

1. The facts set forth in this declaration are based on my knowledge and, if called as a witness, I can competently testify to their truth under oath. As to those matters that reflect a matter of opinion, they reflect my personal opinion and judgment upon the matter.

2. I am an Asian-American resident of Fairfax County, Virginia.

3. I am the parent of a student at Thomas Jefferson High School for Science and Technology (TJ) in Alexandria, Virginia.

4. I am an investigative journalist, former Wall Street Journal reporter, and current Vice-President for Strategy and Investigations at Parents Defending Education.

5. In August 2020, I co-founded the Coalition for TJ with Glenn Miller in response to threats from the Fairfax County School Board and Virginia Secretary of Education Atif Qarni

that changes would be made to the TJ admissions process that I believed would discriminate against Asian-American applicants.

6. The Coalition for TJ is a membership organization.

7. The Coalition supports increasing diversity through merit-based admissions to TJ.

8. The Coalition has three tiers of membership: a leadership team, a core team, and general members.

9. The leadership team is comprised of 10 members and meets weekly to discuss strategy and Coalition business.

10. I am a member of the leadership team.

11. The leadership team was chosen through self-nominations, and nominees were then chosen by consensus.

12. The core team is comprised of 27 members who join the weekly leadership meeting and contribute to the operational activities of the organization.

13. The general membership tier currently has 298 members.

14. The Coalition also has approximately 5,000 supporters, who are not traditional members but who sign petitions, attend virtual or in-person rallies, or otherwise contribute to the Coalition's mission.

15. The Coalition has eight committees, which are led by parent leaders.

16. The committees are: Fundraising, Accounting/Finances, Membership, Media and Communications, Advocacy, Legal, Operational Management, and Data.

17. To become a member, interested individuals must fill out a membership application form on the "Contact Us" tab of the Coalition for TJ website at www.coalitionfortj.net.

18. The website form asks for the individual's name, email address, and where they heard about the Coalition for TJ. It also asks the individual to share his or her personal story about "why the issue of advocating for diversity and excellence is important to you" and what programs he or she is interested in working with.

19. Application forms are then vetted by the Coalition to ensure the applicant shares the same interest in fighting the discriminatory TJ admissions policy changes.

20. Coalition members communicate through Telegram, which is a mobile social networking application that enables group messaging and communications.

21. The Coalition maintains a Telegram group open to all members, where members, committees, the core team, and the leadership team communicate with each other.

22. The Coalition maintains a Telegram group for core team members.

23. The Coalition maintains Telegram groups only for committee members.

24. Coalition members can, and frequently do, raise concerns and ideas with leadership via the Telegram group.

25. A few Coalition members have resigned their membership when they felt their views no longer aligned with the mission of the Coalition.

26. The Coalition does not have bylaws.

27. Coalition members do not pay dues, and the Coalition is not a fundraising organization.

28. On or about November 30, 2020, the Coalition became a Fiscally Sponsored Program (FSP) of United Charitable, a nonprofit organization that assists other nonprofit organizations with administration and compliance requirements.

29. United Charitable's policies do not permit FSPs to engage in litigation.

30. To comply with United Charitable's policies, the Coalition separated itself from United Charitable, creating the Coalition for Truth and Justice to participate as a FSP of United Charitable.

31. The Coalition for Truth and Justice is a parallel organization to the Coalition for TJ, but has a broader scope encompassing more than just TJ. Specifically, the mission of the Coalition for Truth and Justice 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."

32. Those wishing to financially contribute are encouraged by the Coalition's website to make a tax-deductible donation to the Coalition for Truth and Justice, which it describes as a program of 501(c)(3) United Charitable.

33. The Coalition was formed in opposition to a specific problem: the discriminatory changes to the admissions process at TJ.

34. I am not aware of any Coalition member who supports the discriminatory changes to the admissions process at TJ.

35. I do not believe anyone would join the Coalition for TJ unless they opposed the admissions changes.

36. A different group—the TJ Alumni Action Group—exists to support the changes to the TJ admissions process.

37. The TJ Alumni Action Group has opposed the Coalition's work at every turn.

38. On August 14, 2020, the president of the TJ Alumni Action Group, Makya Renee Little, and Mareta Corporation, a graphic design company owned by Ms. Little, purchased the URLs www.coalitionfortj.org, www.coalitionfortj.com, www.coalition4tj.org, and coalition4tj.com and had the websites hyperlinked to her organization website, www.tjaag.org, which featured a donate button that misled some donors into contributing funds to the TJ Alumni Action Group instead of the Coalition for TJ.

39. The TJ Alumni Action Group has received public support from Board Chair Ricardy Anderson and Board Member Karen Keys-Gamara.

40. Members of the TJ Alumni Action Group have published op-eds and other media pieces supporting the TJ admissions changes.

41. I do not believe it is likely that an individual who supports the TJ admissions policy changes would mistakenly join the Coalition for TJ instead of the TJ Alumni Action Group.

42. Coalition members, including myself, express their views through attending virtual and in-person rallies, providing public comments at school board meetings, work sessions, and town hall meetings, writing op-eds, and engaging on social media.

43. The Coalition was formed in the midst of the COVID-19 pandemic and was obligated to hold many of its activities and member engagement virtually for reasons of safety and compliance with local regulations.

44. Virtual Coalition events included: an Oct. 4, 2020, rally to save TJ with about 200 people attending; a Nov. 30, 2020, webinar, "The Importance of Thomas Jefferson High School for Science and Technology as a Catalyst for Growth in Northern Virginia," organized with the Thomas Jefferson Institute for Public Policy with 235 participants; and regular online educational seminars with local parents and community members.

45. In-person Coalition events included: a Sept. 20, 2020, protest against the planned changes to TJ's admissions policy, with about 200 students, parents, and community members outside the school in Alexandria, Va.; a Sept. 24, 2020, protest and "TJ Citizens Town Hall" at FCPS headquarters in Falls Church, Va., with about 100 students, parents, and community members; and an Oct. 18, 2020, "Memorial Service" and "Vigil" for TJ outside the school in Alexandria, Va., with about 100 students, parents, and community members attention to express their love for TJ.

46. The Coalition chose to bring this lawsuit because its members believed that the changes to the TJ admissions process violated the Equal Protection rights of Asian-American students.

47. The decision to file the lawsuit was made by the leadership team and core team through unanimous consent.

* * *

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 12th day of May, 2021, at Great Falls, Virginia.

Asra Nomani

Asra Q. Nomani

Kiren Mathews

From: cmecf@vaed.uscourts.gov
Sent: Wednesday, May 12, 2021 3:06 PM
To: Courtmail@vaed.uscourts.gov
Subject: Activity in Case 1:21-cv-00296-CMH-JFAVAED Coalition for TJ v. Fairfax County School Board et al Reply to Response to Motion

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U.S. District Court

Eastern District of Virginia -

Notice of Electronic Filing

The following transaction was entered by Somin, Alison on 5/12/2021 at 6:05 PM EDT and filed on 5/12/2021
Case Name: Coalition for TJ v. Fairfax County School Board et al
Case Number: 1:21-cv-00296-CMH-JFA
Filer: Coalition for TJ
Document Number: 26

Docket Text:
REPLY to Response to Motion re [15] MOTION for Preliminary Injunction , Response filed by Coalition for TJ. (Attachments: # (1) Declaration of Glenn S. Miller, # (2) Declaration of Asra Q. Nomani)(Somin, Alison)

1:21-cv-00296-CMH-JFA Notice has been electronically mailed to:

Alison Elisabeth Somin asomin@pacificlegal.org, CKieser@pacificlegal.org, EWilcox@pacificlegal.org, GERoper@pacificlegal.org, incominglit@pacificlegal.org, tdyer@pacificlegal.org

Sona Rewari srewari@huntonak.com, cbaroody@huntonak.com

Stuart Alan Raphael sraphael@huntonak.com, cbaroody@huntonak.com

1:21-cv-00296-CMH-JFA Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

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Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1091796605 [Date=5/12/2021] [FileNumber=10004627-0] [3145c075acd6649dd251ba16d784bce7562bfc7ef229b9be1d40aaaa9eeb385cab f7fe751fae55f5cb043225cc40b88a7d99ca14e6be29d3ad1f1347d3866f9f]]
Document description: Declaration of Glenn S. Miller
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1091796605 [Date=5/12/2021] [FileNumber=10004627-1] [113a186fa9190899bd5b002392d31b05068b4b97f11c44bb57472b37641e555d15 4d09c079223d20b05d8cc9e10b093ab5f88db855e599b2f2f2a24ee76ca6ca]]
Document description: Declaration of Asra Q. Nomani
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1091796605 [Date=5/12/2021] [FileNumber=10004627-2] [1dec394c1854ecfb0eb5b19466a722529ff1fded1861814ea04cae05421ab1e516 6a29beb01eaa2542fa6c225b374c66de11d0344d8f4fa3ced8cccc54a1e659]]