VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ALBEMARLE

C[redacted] and T[redacted] I[redacted];

R.I. and V.I., minors, by and through their parents, C[redacted] and T[redacted] I[redacted], as the minors' next friend;

M[redacted] and M[redacted] M[redacted];

P.M., a minor, by and through the minor's parents, M[redacted] and M[redacted] M[redacted], as the minor's next friend;

K[redacted] and M[redacted] G[redacted];

T.G. and N.G., minors, by and through their parents, K[redacted] and M[redacted] G[redacted], as the minors' next friend;

E[redacted] and T[redacted] D. T[redacted];

D.T. and **H.T.,** minors, by and through their parents, E[redacted] and D[redacted] T[redacted], as the minors' next friend;

M[redacted] R[redacted]; and

L.R., a minor, by and through the minor's parent, M[redacted] R[redacted], as the minor's next friend;

Plaintiffs,

v.

ALBEMARLE COUNTY SCHOOL BOARD,

Serve: Albemarle County School Board
401 McIntire Rd, Room 345
Charlottesville, VA 22902

Case No. CL21001737-00

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

MATTHEW S. HAAS, Superintendent, in his official capacity; and

Serve: Matthew S. Haas
401 McIntire Rd, Room 345
Charlottesville, VA 22902

BERNARD HAIRSTON, Assistant Superintendent for School Community Empowerment, in his official capacity;

Serve: Bernard Hairston
401 McIntire Rd, Room 345
Charlottesville, VA 22902

Defendants.

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INTRODUCTION

When our founders declared "all men are created equal," they established an ideal that successive generations of Americans have strived to uphold—that "[c]lassifications of citizens solely on the basis of race are by their very nature odious to a free people." *Shaw v. Reno*, 509 U.S. 630, 643 (1993) (cleaned up). Plaintiffs embrace this principle. It is why they oppose Defendants' racist "Anti-Racism Policy."

The Policy purports to expose and silence racism. Plaintiffs' Appendix ("App.") 1-2. Instead, it perpetuates that evil. Grounded in an ideology (sometimes called "critical race theory," "critical theory," or "critical pedagogy") that views everyone and everything through a racial lens, the Policy classifies students based on racial groups and identifies all people as either perpetually privileged oppressors or perpetually victimized members of the oppressed, denying agency to both. It imputes "racism" exclusively to one racial group (whites), assumes that racism infects all social institutions, and demands that white people become "anti-racists" working to dismantle those institutions.

Defendants actively impose this ideology in Albemarle County Public Schools. Following the Policy's directive to implement an "anti-racist" curriculum, they directed students and staff to read books on critical theory. They led trainings that told teachers to focus their classroom instruction on "privilege systems, whiteness, [and] race," to reject the "myth of meritocracy," and move from "color-blindness to racial consciousness" in their interactions with students. App. 198-200. And they taught students that racists are white, that the "dominant" culture is "white, middle class, Christian, and cisgender," and that anyone who does not become an "anti-racist" activist "(un)consciously uphold[s] ... white supremacy, white-dominant culture, and unequal institutions and society." App. 379, 399-402, 452, 455, 461.

These concepts are being conveyed as truth, not theory. And they violate the Virginia State Constitution in at least four ways. First, the Policy violates equal

protection rights by discriminating against students based on race and fostering racial division, stereotyping, and hostility. Second, it compels students to express and affirm messages about race that violate their beliefs while silencing dissenting viewpoints, violating free speech rights. Third, it forces students to contradict their religious beliefs in violation of the Virginia Constitution. And fourth, it interferes with parents' fundamental right to direct their children's upbringing and education.

These violations are happening now in Albemarle Schools. More violations are promised as the Policy is further implemented. Preliminary relief is warranted.

FACTS

I. Defendants adopted the Policy and instructed District staff to incorporate its principles in the classroom.

Defendants adopted their so-called "Anti-Racism Policy" in 2019 purportedly to "eliminat[e] all forms of racism" and address "equity gaps." App. 1. The Policy does neither. Instead, the Policy draws on critical theory language and ideology to amplify racial differences. It redefines racism as institutional, systemic, and harbored by only one people group (white). App. 1-2. It blames American institutions—like the U.S. Constitution, individual rights, capitalism, and even the family—for "produc[ing] inequitable outcomes for people of color and advantages for white people." App. 2. It identifies "anti-racism" as the only solution; but practicing "anti-racism" as implemented by the School District requires that one engage in racism.

Policy resources used by Defendants explain that under their new "anti-racist" philosophy, people are branded "racist" based on their race. One resource defines an "anti-racist" as "someone who practices identifying, challenging, and changing the values, structures, and behaviors that perpetuate systemic racism." App. 13. The only systemic racism identified, however, is that which "disadvantage[s] historically marginalized" people, defined as people of color. *Id.* Another resource defines "racism" as "[a] system of advantage based on race. The subordination of people of color by

white people." App. 24 (emphasis added). It urges white people to become "anti-racist" allies and explains that an "anti-racist ally" must "do[] something daily to earn the title of 'ally,' while "[r]ecogniz[ing] that their 'white ally badge' expires at the end of the day and must be *renewed by a person of color*" each day. App. 29 (emphasis added). Other Policy resources say that "[b]eing antiracist is different for white people than it is for people of color," App. 551;,that the "main goal[] of antiracist education is making Whiteness visible," App. 670, and that to "level" the racial "playing field," "different groups will be treated differently" under the Policy. App. 579.

The School District makes "anti-racism" mandatory. Defendant and Assistant Superintendent Bernard Hairston made this clear during the Policy roll out:

> "If I identify forms of racism, and I do absolutely nothing about it, then I become a practitioner of racism ... 'You are either a racist or an anti-racist.' It is time for you to think about how you will own this required anti-racism training and the policy." App. 527.

Staff must decide: are they on the "anti-racism school bus...if you need help finding your seat and keeping your seat or if it's time for you to just get off the bus." App. 528.

Following this roll-out, Defendants mandated staff training on the Policy. This included video of Ibram X. Kendi discussing his book *How to be an AntiRacist*,[1] a professional development webinar with Glenn Singleton, and a monthly book study on Singleton's book *Courageous Conversations About Race.* App. 38-39, 99-331.

The book study urged teachers to adopt and teach ideologies based on critical theory regarding "racism," "anti-racism," "whiteness," and power, to achieve "racial consciousness" rather than colorblindness in the classroom. App. 102, 106, 108, 141; Glenn Singleton, *Courageous Conversations About Race: A Field Guide for Achieving Equity in Schools* 1-14 (2nd ed. 2014). Training slides told teachers to consider "racial

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[1] In the book, Kendi embraces racism as the answer to racism: "The only remedy to racist discrimination is antiracist discrimination. The only remedy to past discrimination is present discrimination. The only remedy to present discrimination is future discrimination." Ibram X. Kendi, *How to Be an Antiracist*, 19 (2019).

dominance," "white privilege," and a "White way of thinking, which is White Consciousness." App. 197, 200-03. Teachers were directed to view student communication (and culture) in racialized terms: "White culture" is "characterized by individualism," "white talk" is "verbal," "impersonal," "intellectual," and "task oriented," and "color commentary is "nonverbal," "personal," "emotional," and "process oriented." App. 169, 203. Staff were also told they must become "anti-racist" in the classroom in order to stamp out "White Racism." App. 230.

II. Defendants implemented the Policy in the classroom.

The Policy has been implemented in the classroom in three distinct ways. First, Defendants developed a specific "anti-racism" curriculum that was piloted at Henley Middle School in Spring 2021. App. 332-497. Second, Defendants mandated (and have begun making) changes to existing curriculum in every subject and at every grade level. App. 4. Third, Defendants modified District disciplinary procedures to prohibit acts defined by the Policy as "racist." App. 5. All three of these changes treat students unequally based on race and religious belief. They require students to affirm "anti-racist" ideals and threaten student dissent with punishment.

A. The Henley pilot program.

In Spring 2021, Defendants piloted the District's "anti-racist" program with sixth through eighth graders at Henley Middle School, one of the District's top-performing schools. Defendants chose Henley because the school is "one of the division's least diverse." App. 522 (Costa), 539. Plaintiffs V.I. and L.R. went through the entire 7th-grade pilot program, and P.M. went through part of the 8th-grade curriculum. Decl. of C[redacted] I[redacted] ("C.I.") ¶ 9; Decl. of M[redacted] R[redacted] ("M.R.") ¶¶ 3, 6; Decl. of M[redacted] M[redacted] ("M.M.") ¶ 15. V.I. and L.R. are now eighth-grade students at Henley and will receive the eighth-grade program when it is run this year. Decls. C.I. ¶ 28; M.R. ¶ 24.

The pilot program followed the same critical theory themes as the Policy

resource documents and staff trainings. Principal Costa explained that Defendants used *This Book is Anti-Racist,* which is based explicitly in critical theory, in creating the eighth-grade curriculum. App. 532. The pilot program started by redefining racism in a racist way: only white students can be racist, and only people of color can be oppressed. App.452 ("racism" is "the marginalization and/or oppression of people of color based on a socially constructed racial hierarchy that privileges white people"). It directed students to focus on "white" and "Christian" privilege, and "dominant culture," which it defined as "white, middle class, Christian, and cisgender." App. 379, 391-94, 399-402, 415. It then showed a video analogizing "dominant culture" to "one person [who] chose the game and the rules ... daily," so that person "won the game each time," App. 391, and "white privilege" to "having a head start due to hundreds of years of systematic and systemic racism." App. 426. The program told students that white students can "weaponize[]" their white privilege into a tool for "oppression," *Id.*, or they can disavow their privilege and become "anti-racists" fighting against "dominant culture" and "privilege." App. 458-64. All students were told they must choose between racism and anti-racism. *Id.*

Examples of each of these instructions can be found in the pilot's PowerPoint slides. The slides list the above definitions for "racism," "dominant culture" and "anti-racism," App. 399-402, 452-54, 461, and then direct students through a series of classroom activities to discuss their "privilege" and their commitment to becoming "anti-racist." App. 401-02, 411-15, 459-64. In one such activity, students were asked to place identity characteristics in a "dominant culture" box. App. 401-02. The correct answer was to put "[w]hite, upper-middle class, cisgender male, educated, athletic, neurotypical, ablebodied" inside the box and leave "[b]lack, brown, indigenous people of color of the global majority, queer, transgendered, non-binary folx, cisgender women, youth, Muslim, Jewish, Buddhist, atheist, non-Christian folx, neurodiverse, folx with disabilities, folx living in poverty" outside the box. App. 402, 716.

Students were then instructed to put "both hands up," to listen to a series of scenarios, and to "put a finger down" for each scenario that applied to them. App. 413. Review questions following the activity asked students: "Were you aware of your privilege or lack of privilege?"; "Why is it challenging for white people to think about (and do something about) white privilege?"; and "What is the cost of white privilege for persons of color...for white people?" App. 414.

Students were also taken through a pyramid graphic to illustrate "how our personal bias and our inaction toward racism can uphold a racist system." App. 454. "Colorblindness," "Claiming Reverse Racism," "Denial of White Privilege," "Remaining Apolitical," believing that "We all belong to the human race," and taking certain positions on controversial political issues like school governance, immigration policy, and criminal justice reform were all deemed to "uphold a racist system" and support the pyramid's pinnacle of "Genocide" and "Mass Murder." *Id.*

Slides then walked students through "anti-racism" as the sole solution to racism and urged students to put "anti-racism" into action: "Many people say that is not enough to simply be NOT racist. We must be anti-racist," App. 455, and "[b]eing racist or anti-racist is not about who you are; it is about what you do." App. 461. Slides directed students to state how they will "change" how they "look," "think," "act," and "sound" to be anti-racist. App. 491. Another slide asked students to consider "What Will I Do Today," next to a drawing of a girl with a "Black Lives Matter" sign. App. 493. And each class created an anti-racist vision and mission statement. App. 494.

These activities and slides were not taught as one possible viewpoint. Decls. C.I. ¶¶ 32-33; M.M. ¶ 17; M.R. ¶ 9. They were taught as irrefutable truth about race that students must agree with and incorporate into their lives and school. *Id.*

B. The Policy is being incorporated into classroom instruction for every academic subject and at every grade level.

These concepts were not only taught in the pilot curriculum; they are now

being "woven through in all of their classes in Albemarle County." Decl. C.I. ¶ 34; App. 78-81, 91, 534. For example, in English Language Arts (ELA), Defendants drafted the resource "Equity Toolkit for ELA Educators" using the "common text" *Letting Go of Literary Whiteness: Antiracist Literature Instruction for White Students* by two prominent critical race theorists. App. 78-79, 501. The text's goal is to dismantle "dominant racial ideologies, like colorblindness . . . an insidious form of racism" by "interrupting racism through literature instruction with White students." App. 667-68, 670, 672. Specifically, ELA Educators were told to focus on whiteness, white privilege, and white-dominant culture when teaching literature to and even assigning grades to white students because it is "irrefutable fact that history and the present moment demonstrate that White people are not mature enough ... or do not care enough ... about Black people to stop racism." App. 663, 676.

The ELA toolkit also urged teachers to employ an "anti-racist pedagogy," which "is a paradigm located within Critical Theory." App. 502. Teachers must "understand the power and privilege inherent in whiteness ... examine how whiteness affects their classrooms, students, teaching strategies, and attitudes toward students of color," and to "expose Whiteness" by discussing "white privilege" in an "environment[] where silence about racism is recognized as a form of complicity." App. 502-04.

Likewise, in Social Studies, Defendants supplied *Stamped: Racism, Anti-Racism, and You* for every 11th-grade student. App. 81, 682. The book details a history of racism and uses a critical theory lens to contend that power and wealth drove whites to subjugate black individuals and build a culture that protects white privilege, power, wealth, and supremacy over black people. App. 685-87. At the end, the book prompts the reader to pick a side among: "a segregationist (a hater), an assimilationist (a coward), or an antiracist (someone who truly loves)." App. 710.

Policy materials promise more changes to English and Social Studies, as well as Math and Science, in the coming school year. App. 91, 520-21.

C. Defendants require students to affirm the Policy's "anti-racist" ideology and threaten to discipline students who voice dissent.

Defendants did not teach their curriculum as one possible worldview or a theory. Decls. C.I. ¶¶ 32-33; M.M. ¶ 17; M.R. ¶ 9. Rather, their curriculum presented objective descriptions of the world and how students must respond to "privilege" and the "dominant culture" by becoming "anti-racists" fighting against racism and institutions that benefit privileged groups. *Id.*; App. 459-64. According to the curriculum, they are "racists" if they promote "colorblindness," deny "white privilege," or challenge the odious racial stereotypes Defendants infused into the curriculum. App. 454. They are also "racist" if they do not agree with certain political positions on immigration, school governance and funding, or criminal justice initiatives. *Id.* Even remaining "apolitical" or declining to become an "anti-racist" (as Defendants define the term) is a form of "racism." App. 454-64. The Policy prohibits "racism" and subjects students to ambiguous levels of discipline for engaging in it. App. 4-5.

The Policy explains that "[w]hen school administrators determine a student has committed a racist act," those administrators will provide the student an "opportunity" to attend a "restorative justice" session, "mediation," "role play," or undergo discipline under "other explicit policies or training resources," which would include Defendants' Student Conduct Policy. *Id.* The Conduct Policy establishes a sliding disciplinary scale for infractions that includes "mediation," detention, in school suspension with "restorative practices," and even expulsion. App. 742-44. This means any student accused of racism, which includes having a different view on school governance and funding, could face expulsion under the Policy. Accusations of racism can be made anonymously through the District's reporting tool, making it difficult for a student to offer a defense. App. 5, 86, 650.

III. The Policy and its curriculum harm Plaintiffs.

Plaintiffs are current District students and parents and former District parents who withdrew their children from the District because of the Policy. Decls.

M.M. ¶¶ 2-3, 21; C.I. ¶¶ 2-3; M.R. ¶¶ 2-3; Decl. of M[redacted] G[redacted] ("M.G.") ¶ 2; Decl. of T[redacted] D. T[redacted] ("T.T.") ¶¶ 2-4. Plaintiff parents have taught their children, based on Christian beliefs, that God created all people equal with inherent dignity. Decl. T.T. ¶¶ 15-18; M.M. ¶¶ 7-13; C.I. ¶¶ 20-26; M.G. ¶¶ 10, 15-21; M.R. ¶¶ 27-31. Plaintiffs stand firmly against racism. *Id.* They believe that all students should have equal opportunities to pursue their goals and succeed based on hard work and determination, rather than race or religion. *Id.*

The Policy has harmed Plaintiffs and threatens continuing harm. As explained more fully in each of the Plaintiffs' declarations, Plaintiff students have faced both racial and religious hostility under the Policy and Plaintiff parents object to the Policy's impact on their children. Decls. C.I. ¶¶ 10-17, 27; M.M. ¶¶ 14-18, 22-24; M.R. ¶¶ 20-25, 33; M.G. ¶¶ 24-26; T.T. ¶¶ 20-21; App. 688, 690-91, 701, 705. For example, Plaintiff V.I. found the race-based teaching confusing and disturbing because it told her that white students oppress her because she is Latina, and that her Christian faith and parents' business make her part of the "dominant" culture. Decl. C.I. ¶¶ 10-14. For Plaintiff L.R., who is white, Native American, and black, the Policy hyper-focuses his peers on his race in a way that makes him feel different from his white peers and negatively view his black heritage. Decl. M.R. ¶¶ 20-23. When his mother raised these concerns with school staff, she was told the school's solution was a "safe space" for students of color separate from white students—in other words, segregate them. Decl. M.R. ¶¶ 13-17. Both Plaintiffs P.M. and V.I. have experienced religious hostility in their classes since Policy-based instruction began. Decls. C.I. ¶¶ 15-17; M.M. ¶¶ 22-24. P.M. was confronted by peers after he expressed his religious views on gender, and V.I. was shown a video in class that denigrated her Catholic faith. *Id.* The District's racially and religiously hostile instruction led Plaintiffs T[redacted] and M[redacted] to pull children from District schools. Decl. T.T. ¶¶ 4-7; M.M. ¶ 21. And Plaintiffs G[redacted] are prepared to remove their children from District schools if this

hostile instruction continues at the grade-school level. Decl. M.G. ¶ 9.

These harms will only increase. Defendants' Policy remains in full effect, and Defendants have stated their plans to further implement Policy-based curriculum across the district, academic subjects, and grade levels. App. 78-81, 91, 534. Since the curriculum will pervade multiple classes and influence teaching methods throughout the District, Plaintiffs understand there will be no practical opportunity to opt-out of Policy-driven lessons. App. 4, 78-81, 498-521, 534; Decl. C.I. ¶ 34. Injunctive relief or alternative schooling are Plaintiffs' only options.

LEGAL STANDARD

A temporary injunction is warranted here because all four factors favor Plaintiffs: (1) Plaintiffs are likely to succeed on the merits; (2) Plaintiffs will suffer irreparable harm absent temporary relief; and (3) the balance of equities and (4) the public interest favor the injunction. *CG Riverview, LLC v. 139 Riverview, LLC*, 98 Va. Cir. 59 (2018) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).

ARGUMENT

I. Plaintiffs are likely to prevail on the merits of their claims.

Plaintiffs are likely to prevail on the merits of their claims that Defendants are discriminating based on race, compelling their speech, showing hostility to their religion, and violating fundamental parental rights.

A. Defendants' curriculum discriminates based on race.

The Virginia Constitution provides that "the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged." Va. Const. art. I, § 11. Governments must treat individuals as individuals, not members of racial blocs. Strict scrutiny applies.

1. Virginians overwhelmingly rejected racial division by ratifying a colorblind constitution.

In 1970, Virginians adopted their new constitution, for the first time expressly prohibiting discrimination on the basis of race. A.E. Dick Howard, *Constitutional*

Revision: Virginia and the Nation, 9 U. RICH. L. REV. 1, 6, 19-20 (1974). Since then, Virginia courts have read the new anti-discrimination clause as "congruent with the federal equal protection clause," and applied "the standards and nomenclature developed under" that clause. *Wilkins v. West*, 571 S.E.2d 100, 111 (Va. 2002).

Those federal standards establish that racial classifications violate our Nation's deeply held values because they "demean[] the dignity and worth of a person," judge people based on skin color not "merit and essential qualities," *Rice v. Cayetano*, 528 U.S. 495, 517 (2000), and are "odious to a free people whose institutions are founded upon the doctrine of equality." *Shaw*, 509 U.S. at 643 (citation omitted).

These principles apply with full force to public education. *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 746 (2007) (plurality). In the seminal *Brown v. Board of Education* decision, the Supreme Court held racial segregation unconstitutional "regardless of whether school facilities and other tangible factors were equal" because racial classifications "themselves denoted inferiority." *Id.* (cleaned up). Thus, the lawyers who successfully litigated *Brown*, including Thurgood Marshall, used as their "rallying cry" their "dedicated belief" that our "Constitution is color blind." *Id.* at 772 (Thomas, J., concurring) (cleaned up). The *Brown* plaintiffs (and the Court) "could not have been clearer": our Constitution "prevents states from according differential treatment to American children on the basis of their color or race." *Id.* at 747 (plurality).

Therefore, the Virginia Equal Protection Clause requires courts to review "*all* racial classifications" under strict scrutiny. *Johnson v. California*, 543 U.S. 499, 505 (2005) (citation omitted). Defendants shoulder this heavy burden here because racial classifications are "presumptively invalid" and are upheld "only upon an extraordinary justification." *Shaw*, 509 U.S. at 643–44 (citation omitted).

2. Defendants' Policy-driven curriculum unconstitutionally divides students based on their race.

Instead of abiding by the state constitution's clear rejection of race-conscious schooling, the Policy replaces our nation's fundamental "doctrine of equality" with a system that classifies students by race and treats them differently based on their race. *Shaw*, 509 U.S. at 643 (citation omitted). The Policy views everyone through a racial lens. It blames all white students for racism and views all students of color as perpetually "subordinate." It advances Defendants' version of "anti-racism" as the only path to redress past racial discrimination.

But this anti-racism requires differential treatment and a different response from each racial group. Students of color must recognize that they have "internalized racism" because of the white privilege around them. App. 374, 461, 551. While white students must view their skin color as granting them inherent privilege and work to disavow and dismantle that privilege and the institutions that harbor it. *Id.* So the Policy trades the inherent "dignity and worth" of every student for an inaccurate racial stereotype. *Rice*, 528 U.S. at 517. One that only breeds racial discord.

Defendants double down on this discord by crushing dissent. The Policy-based curriculum tells white students that it is racist to deny their white privilege; racist to fail to dismantle social institutions; and racist to embrace "colorblindness." But this rejects the core constitutional promise of Virginia's colorblind anti-discrimination guarantee. And it rejects the core promise of *Brown*. Our "Constitution is not that malleable." *Parents Involved*, 551 U.S. at 780 (Thomas, J., concurring). It does not protect Defendants' "faddish social theories." *Id.* As the Virginia Constitution resoundingly affirms, there is "no superior, dominant, ruling class of citizens. . . . Our Constitution is color-blind, and neither knows nor tolerates classes among citizens." *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting).

B. The Policy unconstitutionally compels speech.

The Virginia Constitution provides that "the freedoms of speech and of the

press are among the great bulwarks of liberty and can never be restrained except by despotic governments; that any citizen may freely speak, write, and publish his sentiments on all subjects." Va. Const. Art. I, § 12. This protection is "coextensive with the free speech provisions of the federal First Amendment." *Elliott v. Commonwealth*, 593 S.E.2d 263, 269 (Va. 2004). And "[w]hen the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). Defendants violate these basic freedoms.

The freedom of speech includes "both the right to speak freely and the right to refrain from speaking at all." *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). It "necessarily compris[es] the decision of both what to say and what *not* to say." *Riley v. Nat'l Fed. of the Blind of N.C., Inc.*, 487 U.S. 781, 797 (1988). These rules exist to protect individual autonomy and "individual freedom of mind." *Wooley*, 430 U.S. at 714 (cleaned-up). And "[d]iscrimination against speech because of its message is presumed to be unconstitutional." *Rosenberger*, 515 U.S. at 828.

A compelled-speech claim has three elements: (1) speech, (2) the government compels, (3) and the speaker objects to. *See Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 572-73 (1995) (applying elements). And in the school context, indoctrination is prohibited. *See W.V. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (mandating the Pledge of Allegiance unconstitutionally compels student speech). Although schools have some latitude in dealing with speech for legitimate pedagogical interests, students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). And indoctrination in a politicized racist ideology is not a legitimate pedagogical interest. *Barnette*, 319 U.S. at 642 ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics ... religion, or other matters of

opinion or force citizens to confess by word or act their faith therein.").

Schools unconstitutionally compel speech when they force students to affirm a system of racist (and politicized) beliefs under threat of punishment for noncompliance. *Id.* at 629, 633; *see also C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 189 (3d Cir. 2005) (compulsion if punished for not answering survey questions). And Defendants cannot manipulate the school environment "to suppress unpopular ideas" as they do here. *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 641 (1994).

Like in *Barnette*, the issue here is "a compulsion of students to declare a belief." *Barnette*, 319 U.S. at 631. These highly controversial and overtly racist concepts were not put forth as ideas for debate or one possible worldview. Rather, Defendants present Policy-based curriculum as an objective description of the world in contrast to what Plaintiffs are taught at home. Decls. C.I. ¶¶ 32-33; M.M. ¶¶ 16-18; M.R. ¶¶ 9-10. Students are pushed to agree and affirm by becoming "anti-racism" activists. And anyone who disagrees with the Policy is "racist"—the very thing the Policy seeks to eliminate and punish under conduct code. App. 4, 460-64, 483-86, 675-76.

Defendants added to this compulsion by instructing students that race-neutral concepts, including Plaintiffs' opinions, uphold white supremacy. Decls. T.T. ¶¶ 15-18; M.M. ¶¶ 7-13; C.I. ¶¶ 20-26; M.G. ¶¶ 10, 15-21; M.R. ¶¶ 27-31; App. 454. As do certain political views, "denial of white privilege," or supporting the "dominant" Christian culture. *Id.* Students were told to produce a classroom mission and vision statement, to vow to be more "anti-racist" and to state how they will "look," "think," "sound," and "act" accordingly. App. 455, 458-64, 483-95. So, under the Policy, Students cannot simply sit quietly and be sorted and judged based on the color of their skin. The curriculum "requires affirmation of a belief and an attitude of mind," *Barnette*, 319 U.S. at 633, one that is overtly race-based, political, and anti-Christian and violates their free speech rights.

C. Defendants are violating Plaintiffs' religious freedom.

Along with the directive that "the right to be free from any governmental discrimination upon the basis of religious conviction . . . shall not be abridged," Va. Const. art. I, § 11, the Virginia Constitution also provides that "all men are equally entitled to the free exercise of religion, according to the dictates of conscience." Va. Const. art. I § 16. Under this broader language, Virginia constitutional protections "are at least as strong, if not stronger, than their federal counterparts." *Vann v. Guildfield Missionary Baptist Church*, 452 F. Supp. 2d 651, 653 (W.D. Va. 2006). And Virginia protects free exercise by statute, requiring that any substantial burden on religion must survive strict scrutiny. Va. Code § 57-2.02.

The federal Constitution also prohibits hostility toward religion. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993). "The Free Exercise Clause bars even subtle departures from neutrality on matters of religion." *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719, 1731 (2018) (cleaned up). Even a "slight suspicion" of hostility toward religion is impermissible. *Id.* More than a "slight suspicion" is present here.

Defendants' racist curriculum taught students that the "dominant" culture is Christian and that it "subordinates" and "oppresses" other religions. App. 14, 399-402, 415, 452, 461, 689-91. Not only were students divided by religious identities, but they were compelled to act against their Christian faith by "mak[ing] frequent, consistent, equitable choices daily" to work against the "dominant" group, which includes Christians. App. 460-61. That is "clear and impermissible hostility" toward Plaintiffs' religion. *Masterpiece*, 138 S. Ct. at 1729.

Defendants' hostility toward religion continues to manifest itself in the classroom. The *Bibi* video shown to Plaintiff V.I. in class is an example of this. Decl C.I. ¶¶ 15-17. The video shows Catholic imagery to teach students to reject Christianity and its teachings as a positive way to work against the dominant culture.

Id; App. 522 (*Bibi* video). This more than "slight suspicion" of hostility was also present in how District administrators dealt with Plaintiff P.M. after he respectfully voiced his Catholic beliefs in class, only to be verbally attacked by other students and then investigated and criticized by his school administrators. Decl. M.M. ¶¶ 22-25. No student should face such religious hostility from state actors.

D. Defendants' curriculum violates Plaintiffs' fundamental right to direct their children's education.

Virginia common, statutory, and constitutional law establish parents' fundamental right to control their children's education and to prevent the government from indoctrinating children in radical ideologies.

The common law recognizes both the right and duty of parents to educate their children. *Trs. of Schs. v. People ex rel. Van Allen*, 87 Ill. 303, 308 (1877); *Bd. of Educ. v. Purse*, 28 S.E. 896, 898 (Ga. 1897); *Sch. Bd. Dist. No. 18, Garvin Cnty. v. Thompson*, 103 P. 578, 578-79 (Okla. 1909). In fact, this right is so ingrained in human nature that "[l]aw-givers in all free countries, and, with few exceptions, in despotic governments, have deemed it wise to leave the education and nurture of the children of the State to the direction of the parent or guardian. This is, and has ever been, the spirit of our free institutions." *Rulison v. Post*, 79 Ill. 567, 573 (1875). Parents, not governments, have an innate interest in the flourishing of their children. *State ex rel. Sheibley v. Sch. Dist. No. 1 Dixon Cnty.*, 48 N.W. 393, 395 (Neb. 1891). So, a parent's right "to determine what studies his child shall pursue is paramount to that of the trustees or teacher." *State ex rel. Kelley v. Ferguson*, 144 N.W. 1039, 1042 (Neb. 1914).

Under Virginia Code, "[a] parent has a fundamental right to make decisions concerning the upbringing, education, and care of the parent's child." Va. Code § 1-240.1. The law codifies the holding in *L.F. v. Breit*, 736 S.E.2d 711 (Va. 2013), which recognized the constitutional due process rights of parents over the care of their children. 2013 Va. Laws Ch. 668 (H.B. 1642).

Not only are parental rights protected by statute and at common law, but they are also guaranteed under the Due Process Clause of the Virginia Constitution., Va. Const. art. I, § 11, the protections of which are virtually identical to those of the United States Constitution. *L.F.*, 736 S.E.2d at 721 n.7. And a parent's federal due process rights over the education and upbringing of his child is "perhaps the oldest of the fundamental liberty interests recognized by this Court," *Troxel v. Granville*, 530 U.S. 57, 65, 66 (2000) (collecting cases), and is "established beyond debate as an enduring American tradition." *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

Caselaw on parents' constitutional rights establish that state actors cannot impermissibly interfere with this fundamental right. In *Meyer v. Nebraska*, the Court struck down a statute that prohibited foreign language studies in primary schools because the Due Process Clause "without doubt" includes the right of parents to "establish a home and bring up children" and "to control the education of their own." *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923). State education laws that attempt to "foster a homogeneous people," wrote the Court, are "wholly" incompatible with the "relation between individual and state" on "which our institutions rest." *Id.* at 402. Then, in *Pierce v. Society of Sisters*, the Court struck down a law mandating public school attendance for children, reasserting that the "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." *Pierce v. Soc'y of Sisters of Holy Names of Jesus & Mary*, 268 U.S. 510, 534–35 (1925). For, "[t]he child is not the mere creature of the state." *Id.* at 535.

At the very least, Defendants violate this fundamental right when they coerce children to affirm racist ideology against their parents' will. *See supra* I.B. Defendants further violate this right by separating students based on race or religion and teaching them that "dominant" white, Christians oppress "subordinate" groups. App. 399-402, 415, 461. This is unconstitutional. *Yoder*, 406 U.S. at 233.

E. Defendants' curriculum fails strict scrutiny

Because each of the Policy's constitutional violations trigger strict scrutiny review, Defendants must show that what they are teaching students is narrowly tailored to further a compelling state interest. *See Johnson*, 543 U.S. at 505 (racial discrimination); *Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n of Cal.*, 475 U.S. 1, 19 (1986) (plurality) (speech); *Lukumi*, 508 U.S. at 546 (religion); *L.F.*, 736 S.E.2d at 721 (parental rights); *Yoder*, 406 U.S. at 233 (religion and parental rights). They cannot.

1. Defendants have no compelling interest in dividing students by race or compelling affirmation of a racist ideology.

Defendants have no compelling interest in implementing a curriculum that categorizes students by race; that teaches (and practices) that students of color are subordinate while white students are racist and dominant; that tells impressionable students that their race determines their inherent value; or that forces students to accept such ideas under threat of punishment. Such instruction contradicts Virginia law and does nothing to "eliminate all forms of racism" or address "equity gaps"—the Policy's stated goals. App. 1. The "notions of racial inferiority" that Defendants teach "lead to a politics of racial hostility" and "reinforce the belief" that "individuals should be judged by the color of their skin." *Parents Involved*, 551 U.S. at 746 (plurality). Reducing students' identity and value to their skin color and pitting racial groups against each other only increases racial hostility and reduces individual agency. Neither advance Defendants' stated goals.

Nor does the curriculum dismantle "dominant culture" broadly. Defendants fail to explain how their students have caused "institutional" or "systemic" racism or how instructing students in a racist ideology will solve these societal issues. To the extent, if at all, these types of racism are present in Albemarle schools, it is the racism of others, not students. "[A] governmental agency's interest in remedying 'societal' discrimination, that is, discrimination not traceable to its own actions, cannot be deemed sufficiently compelling to pass constitutional muster." *Id.* at 731–32.

2. Defendants' racial division and compulsion of speech and belief are not narrowly tailored to any government interest.

On narrow tailoring, Defendants "receive[] no deference." *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 311 (2013). Rather, they must demonstrate that "the means chosen to accomplish the government's asserted purpose [are] specifically and narrowly framed to accomplish that purpose." *Id.* (cleaned up). Defendants cannot meet this burden for three primary reasons.

First, just as two wrongs don't make a right, Defendants cannot use racism to combat racism. Yet they do just that with a curriculum that divides students along racial lines and advances racial stereotypes as the cure for past racism. But "[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race." *Parents Involved*, 551 U.S. at 748 (plurality). Defendants' curriculum only "assures that race will always be relevant in American life, and that the ultimate goal of eliminating entirely from governmental decisionmaking such irrelevant factors as a human being's race will never be achieved." *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 495 (1989) (plurality) (cleaned up). It fails the narrow-tailoring test.

Second, Defendants have no evidence that student racism, if any, is responsible for worse educational outcomes for minority students. To show their curriculum's narrow tailoring, Defendants must demonstrate that the white students are racists responsible for achievement gaps and that the only remedy for any student racism is a curriculum overhaul that redefines and remedies "racism" while reordering students' social, political, and even religious values. But no evidence indicates that Plaintiffs, or any other District students, have, through racism, caused worse academic outcomes for students of color at other schools in the district. And Defendants also have shown no connection between supposed racism in their schools and the drastic step of instructing all students in a new racist ideology.

Third, Defendants have no evidence that teaching students racially divisive concepts will allow students of color to achieve better educational outcomes. The

Policy does not propose additional resources for tutoring, engage families in how to support their children's education, or offer other forms of academic assistance for students who are struggling. Instead, Defendants focus entirely on racism as the only cause and "anti-racism" as the only solution for academic achievement gaps. App. 1-5. Reports following the pilot program do not indicate that it reduced "equity gaps" in the school. And Defendants offer no link connecting middle schoolers armed with "anti-racist" curriculum and higher achievement among students of color. Rather, the evidence shows Defendants' curriculum stigmatized, divided, and confused students. Decls. C.I. ¶¶ 10-17, 27; M.M. ¶¶ 14-18, 22-24; M.R. ¶¶ 20-25, 33; M.G. ¶¶ 24-26; T.T. ¶¶ 20-21. Far from motivating students to close "equity gaps," Defendants exacerbated such gaps by telling students of color like Plaintiffs V.I. and L.R. that they are disadvantaged from white students. It will continue to do so if not enjoined.

II. Plaintiffs satisfy the remaining preliminary injunction factors.

The Policy remains in effect and mandates that Defendants implement substantially similar curriculum in "all grades." App. 78-81, 91. Thus, Plaintiffs have suffered and will continue to suffer constitutional harm without an injunction. "It has long been established that the loss of constitutional freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Leaders of a Beautiful Struggle v. Balt. Police Dep't*, 2 F.4th 330, 346 (4th Cir. 2021) (en banc). Thus, a "likely constitutional violation," as here, "satisfie[s]" the "irreparable harm factor." *Id.*

The other factors likewise favor Plaintiffs. Under balance of the equities, "a state is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found unconstitutional." *Id.* (cleaned up). Indeed, "the system is improved by such an injunction." *Id.* (cleaned up). And "it is well-established that the public interest favors protecting constitutional rights." *Id.*

Conclusion

Plaintiffs ask this Court to grant their motion.

Respectfully submitted this 25th day of February, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2022, I served the foregoing by e-mailing a true and correct copy of the same to:

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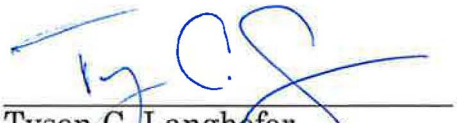

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