

HARRISONBURG DIVISON

NAACP, *et al.*,

Plaintiffs,

V.

COUNTY SCHOOL BOARD OF
SHENANDOAH COUNTY,

Defendant.

Case No. 5:24-cv-00040

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Defendant sued as County School Board of Shenandoah County (“Defendant”), by counsel, respectfully submits this memorandum in support of its Rule 12(b)(6) motion to dismiss.

INTRODUCTION

This lawsuit is brought by the Virginia NAACP and the parents of five of its minor members, who are students in Shenandoah County public schools, against the Shenandoah County School Board for its recent vote to reinstate the names of Stonewall Jackson High School and Ashby Lee Elementary School. Plaintiffs allege essentially that the names are offensive to them because of their association with leaders of the Confederacy, and that the names cause them emotional and psychological harm. They claim that having to wear sports uniforms, or otherwise identify, with the school names with which they disagree is government compelled speech in violation of the First Amendment. The Black students and members of the NAACP claim further that the School Board's decision to reinstate the school names violates their Fourteenth Amendment right to equal protection, the Civil Rights Act, and the Equal Educational Opportunities Act.

While the Board has no reason to doubt that Plaintiffs' beliefs regarding the school names are sincerely held, it differs considerably with those beliefs. Rather, the Board maintains that the decision to reinstate the school names was motivated by nothing more than public will and its respect for the democratic process. As Plaintiffs acknowledge, the School Board's June 2020 decision to retire the school names was met with significant backlash from the public. Petitions were signed, protests were organized, and lawsuits were filed. Multiple candidates for the School Board campaigned on this very issue, promising to reinstate the names and oppose "cancel culture" and "wokeness" at every opportunity. The voters of Shenandoah County elected these candidates, signaling a public will to reinstate the names and to bring a stop to the politically expedient erasure of American Southern history. The Board's decision in May 2024 represents nothing more than elected officials following the will of the electorate. Ultimately this is a political question. The Board has not violated any rights of the Plaintiffs.

The fatal flaw in the Complaint is that it fails to allege any facts that show any student, Black or White, has been coerced through threat of punishment to "become a courier for" any message with which they disagree, or that any student has been punished, sanctioned, or actually harmed for refusing to do so. The only alleged harm is emotional and psychological, or speculative and potential. The claims are simply not ripe for adjudication because no student has alleged that they suffered actual harm. Hurt feelings will not suffice.

Accordingly, the Complaint ought to be dismissed unless and until some actual harm is suffered by the Plaintiffs.

SUMMARY OF THE ALLEGATIONS

Plaintiffs make the following material allegations:

In June 2020, Defendant voted to retire the names “Stonewall Jackson High School” and “Ashby Lee Elementary School.” (Complaint, ECF 1, ¶ 6.) On January 14, 2021, Defendant reaffirmed its decision to retire the school names and renamed the schools “Mountain View High School” and “Honey Run Elementary School,” respectively. (Id. ¶ 7.) On May 10, 2024, Defendant voted to reinstate the original names. (Id. ¶ 8.)

Plaintiffs

Plaintiff Virginia State Conference NAACP (hereinafter, the “NAACP”) is the state branch of the NAACP in Virginia. (Id. ¶ 18.) The members of the NAACP include Black and White families whose students attend Stonewall Jackson HS¹ and Ashby Lee ES². (Id.) The NAACP brings this action on behalf of its members. (Id.)

Plaintiffs Kay Doe and Edward Doe³, the parents and guardians of D.D. and J.D., are residents of Shenandoah County. (Id. ¶ 19.) D.D. is a fourteen-year-old Black student who recently completed eighth grade at North Fork Middle School and who plans to attend Stonewall Jackson HS. (Id. ¶ 20.) D.D. is a member of the NAACP. (Id.) J.D. is a nine-year-old Black student who recently completed her fourth-grade year at Ashby Lee ES and will attend the school again in the fall of 2024. (Id. ¶ 21.) J.D. is a member of the NAACP. (Id.)

Plaintiff Kim Wallace Carter, mother and guardian of A.C., is a resident of Shenandoah County. (Id. ¶ 22.) A.C. is a seventeen-year-old Black student in the Shenandoah County public school system. (Id. ¶ 23.) A.C. attended the Massanutten Regional Governor’s School (hereinafter, the “Governor’s School”) his junior year and plans to attend the upcoming school year as a senior. (Id.) A.C. is a member of the NAACP. (Id.)

¹ “High School” will hereinafter be abbreviated to “HS.”

² “Elementary School” will hereinafter be abbreviated to “ES.”

³ Defendant objects to these parent Plaintiffs appearing pseudonymously.

Plaintiff Mary Johnson⁴, mother and guardian of A.J., is a Shenandoah County resident. (Id. ¶ 24.) A.J. is a sixteen-year-old White student at Stonewall Jackson HS who participates in school sports and extracurricular activities. (Id. ¶ 25.) A.J. has been accepted and plans to attend the Governor’s School during his junior and senior years. (Id.) A.J. is a member of the NAACP. (Id.)

Plaintiff Heather Brown, mother and guardian of B.B., is a resident of Shenandoah County. (Id. ¶ 26.) B.B. is a seventeen-year-old Black student at the Governor’s School. (Id. ¶ 27.) B.B. is a member of the NAACP. (Id.)

Defendant

Defendant Shenandoah County School Board (hereinafter, “Defendant,” or the “School Board”) is the policy-making body for the Shenandoah County public school system and has final authority over the names of Stonewall Jackson HS and Ashby Lee ES. (Id. ¶ 28.) The School Board is comprised of six members elected by Shenandoah County residents. (Id.) Shenandoah County Public Schools receive federal financial assistance. (Id.)

Background Facts

Robert E. Lee, Thomas J. “Stonewall” Jackson, and Turner Ashby were prominent Confederate military leaders. (Id. ¶¶ 36-41.) The Confederacy fought in part to preserve slavery. (Id. ¶ 40.) Virginia has a history of resistance to desegregation. (Id. ¶¶ 49-58.) Shenandoah County Public Schools, including Stonewall Jackson HS and Ashby Lee ES, have history of resistance to desegregation. (Id. ¶¶ 59-67.)

On June 25, 2020, Defendant passed a resolution condemning racism and affirming its commitment to inclusivity for all races. (Id. ¶ 74.) Meanwhile on June 24, 2020, a Black alumnus

⁴ Defendant objects to this parent Plaintiff appearing pseudonymously.

of Shenandoah County Public Schools started an online petition to Defendant calling for a change in the names of Stonewall Jackson HS and Ashby Lee ES. (Id. ¶ 75.) On July 6, 2020, Virginia Governor Ralph Northam wrote a letter to the chairs of Virginia school boards requesting that they change school names and mascots that memorialize Confederate leaders or sympathizers. (Id. ¶ 76.)

On July 4, 2020, Defendant published its July 9, 2020 meeting agenda, included in which was the recommended action “that the names of Stonewall Jackson High School and Ashby Lee Elementary School be retired as well as the Rebel mascot at North Fork Middle School.” (Id. ¶¶ 77-78.) Petitions “for and against” potential school name changes were circulated prior to the meeting. (Id. ¶ 79.) At Defendant’s July 9, 2020 meeting, it passed, in a 5-1 vote, the action item which retired the names of Stonewall Jackson HS and Ashby Lee ES. (Id. ¶ 81.) At Defendant’s September 10, 2020 meeting, it approved, in a 5-1 vote, a motion regarding renaming these schools and for a new mascot at North Fork Middle School, whose mascot was the “Rebel.” (Id. ¶¶ 90, 94.) Defendant changed the school names to Mountain View HS and Honey Run ES, respectively, which names took effect on June 1, 2021. (Id. ¶¶ 92-93.)

Immediately following the July 9, 2020 vote, there was significant backlash against the school name changes among the public and members of the Shenandoah County Board of Supervisors. (Id. ¶¶ 94-104.) From August 2020 to November 2021, member of the Shenandoah County Board of Supervisors Brad Pollack “engaged in a series of official and legal actions . . . challenging the funding for the name changes and moving to remove Defendant School Board members.” (Id. ¶ 95.) On August 10, 2020, Pollack filed a petition in Shenandoah County Circuit Court against Defendant on behalf of “about 140 parents of students attending the schools” seeking that Defendant review its July 9 action item pursuant to Virginia Code § 22.1-87 and alleging,

inter alia, that the Board violated its own policy by not considering the view of the divisions' communities or soliciting input from the public. (Id. ¶¶ 96-97.) On April 12, 2021, Pollack filed another petition to overturn the reallocation of \$300,000 budgeted to pay for changing the names on school property. (Id. ¶ 99.)

In line with public sentiment, candidates for the School Board campaigned on their intention to reinstate the school names and on their opposition to “cancel culture,” “wokeness,” and “political correctness.” (Id. ¶¶ 100-104.) On November 3, 2021, two such candidates, Brandi Rutz and Dennis Barlow, were elected to replace two members of the School Board who voted to retire the school names. (Id. ¶ 105.) On the Defendant's June 9, 2022 meeting, Barlow brought, and Rutz seconded, a motion to reinstate the school names, but a 3-3 tie vote resulted in the motion not being approved. (Id. ¶ 106.)

In 2023, Gloria Carlineo, Michael Rickard, and Thomas Streett ran for Shenandoah County School Board indicating their desire to reinstate the school names. (Id. ¶¶ 108-110.) On November 7, 2023, all three were elected to replace three members of the School Board who had voted to retire the school names. (Id. ¶ 111.)

In March 2024, the Freedom Press and the Coalition for Better Schools conducted a survey seeking community views on the school names. (Id. ¶¶ 113-116.) These organizations claimed that 90 percent of the survey's respondents were in favor of the former school names and, on April 3, 2024, requested that Defendant consider reinstating the school names. (Id. ¶ 117.)

On May 9, 2024, Defendant held a public meeting in which it heard over three hours of public comments regarding the proposed reinstatement of the school names from a total of 78 individual members of the public. (Id. ¶ 122.) When the motion to reinstate the school names finally went to a vote, each member explained his or her reasoning and some cited the survey. (Id.

¶¶ 127-134.) Ultimately, in the early morning hours of May 10, 2024, Defendant’s members voted 5-1 in favor of reinstating the school names to Stonewall Jackson HS and Ashby Lee ES and required funding to implement the restoration to be provided by private donations exclusively. (Id. ¶ 136.)

SUMMARY OF THE CLAIMS

Claim I: First Amendment Violation

Plaintiffs NAACP, Kay and Edward Doe on behalf of D.D., and Mary Johnson on behalf of A.J., make the following allegations in support of Claim I:

By reinstating the school names and requiring students participating in school, and in extracurricular, activities to wear uniforms or other apparel while doing so, Defendant “is compelling Individual Plaintiffs and members of the NAACP to express a view with which they disagree.” (Compl. ¶ 196.)

By reinstating the school names and requiring students participating in school, and in extracurricular, activities to “identify as Stonewall Jackson ‘Generals,’” including by identifying the team name on scoreboards and signs and in announcements, Defendant “is compelling Individual Plaintiffs and members of the NAACP to express a view with which they disagree.” (Id. ¶ 197.)

“Upon information and belief,” students who refuse to wear the uniform or play on the team as a member of the Stonewall Jackson Generals “will be excluded” from full participation in “certain” extracurricular activities. (Id. ¶ 198.)

Individual Plaintiffs and members of the NAACP who choose to attend the school and participate in academics, sports, and other extracurricular activities “will participate despite being forced to display” a message they believe the school name represents. (Id. ¶ 200.)

Among the members of the NAACP are students who “will choose not to participate” in school activities at Stonewall Jackson HS because of their “disagreement with” the message they believe the school name represents. (Id. ¶ 201.)

D.D. “will be forced to participate” in academics, sports, and other extracurricular activities as a Stonewall Jackson General despite her “disagreement with” the values she believes the names represent. (Id. ¶ 202.)

A.J. similarly “will be forced to participate” in academics, sports, and other extracurricular activities as a Stonewall Jackson General despite his “disagreement with” the values he believes the names represent. (Id. ¶ 203.)

Claim II: Equal Protection Clause Violation

Plaintiffs NAACP, Heather Brown on behalf of B.B., Kim Wallace Carter on behalf of A.C., and Kay and Edward Doe on behalf of D.D. and J.D., make the following allegations in support of Claim II:

Defendant’s decision to reinstate the school names “was motivated by a discriminatory intent or purpose.” (Id. ¶ 214.)

A “motivating purpose” for Defendant’s decision to reinstate the school names “was to discriminate against Black students and their families.” (Id. ¶¶ 215, 219.)

The school names were originally selected for the purpose of honoring prominent leaders of the Confederacy and the values they endorsed (Id. ¶ 216) and for the purpose of discouraging Black students from integrating the schools (Id. ¶ 217).

Defendant’s action in 2020 to retire the school names was intended “to continue the work of creating an inclusive environment for all kids.” (Id. ¶ 218.)

Defendant's 2024 actions reinstating the school names were taken with full knowledge of the historical context and after hearing from both Black and White members of the community. (Id. ¶ 220.)

Evidence of discriminatory purpose "is found" in Defendant's members' reliance upon the survey conducted by the Freedom Press and Coalition for Better Schools to justify their vote to reinstate the school names. (Id. ¶ 221.)

Defendant's decision to reinstate the school names "has a discriminatory impact on" Black students who attend those schools. (Id. ¶ 222.)

The school names and mascot name "create a school environment that denies Black students . . . an equal opportunity to an education." (Id. ¶ 223.)

The school names and team and student-body names "disparage, humiliate, and harm Black students and their families" by giving a government "stamp of approval" to the former leaders of the Confederacy. (Id. ¶ 224.)

Reinstatement of the school names and team names "discriminatorily affect[s]" Black members of the NAACP and "creates a stigma against" and a "feeling of inferiority among" Black students who attend those schools. (Id. ¶ 225.)

The school names and team names "treat Individual Plaintiffs and Black members of the NAACP differently" because they "cause particularized psychological harm that affects their sense of self-worth" and have "short- and long-term impacts on their well-being" that are not experienced by similarly situated White students. (Id. ¶ 226.)

The names treat Black Plaintiffs and members of the NAACP differently because they "constructively prevent them from attending" the schools, thereby "burdening Black students and their families who are forced to move, to travel to a school located farther from home, to forgo

academic opportunities like participation in the [Governor’s School], or to homeschool their children rather than endure the humiliation and discriminatory impact of attending those schools.”

(Id. ¶ 227.)

The names also treat the Black students differently because they “constructively prevent them from participating” in events and activities which involve the school names and paraphernalia. (Id. ¶ 228.)

Black students “will not receive the same curricular and extracurricular experience . . . that their White peers experience” at those schools. (Id. ¶ 229.)

By reinstating the school names, Defendant “has violated, and continues to violate, the Equal Protection Clause of the Fourteenth Amendment.” (Id. ¶ 230.)

Claim III: Violation of Title VI of the Civil Rights Act of 1964

Plaintiffs NAACP, Heather Brown on behalf of B.B., Kim Wallace Carter on behalf of A.C., and Kay and Edward Doe on behalf of D.D. and J.D., make the following allegations in support of Claim III:

The programs and activities of Shenandoah County Public Schools, including education and extra-curricular activities, receive federal assistance. (Id. ¶ 234.)

Defendant’s decision to reinstate the school names “was motivated by a discriminatory intent and has a discriminatory effect on Black students who attend those schools.” (Id. ¶ 235.)

Defendant’s decision also “discriminates against Black students on the basis of race because it disparages, humiliates, and harms Black students and their families by using a government stamp of approval to honor leaders of the Confederacy.” (Id. ¶ 236.)

Defendant’s decision “discriminates against Black students on the basis of race because Black students . . . will not receive the same curricular and extracurricular experience . . . that their White peers experience” at those schools. (Id. ¶ 237.)

Finally, Defendant’s decision “has violated, and continues to violate, Title VI of the Civil Rights Act of 1964.” (Id. ¶ 238.)

Claim IV: Violation of the Equal Educational Opportunities Act

Plaintiffs NAACP, Heather Brown on behalf of B.B., Kim Wallace Carter on behalf of A.C., and Kay and Edward Doe on behalf of D.D. and J.D., make the following allegations in support of Claim IV:

Defendant has a history of deliberate segregation on the basis of race (Id. ¶ 241) and resistance to desegregation (Id. ¶¶ 242-243).

By choosing to reinstate the school names, Defendant “has failed to take affirmative steps toward removing the vestiges of the dual, segregated system.” (Id. ¶ 244.)

Thus, Individual Plaintiffs and Black members of the NAACP “are denied equal educational opportunities on account of their race” (Id. ¶ 245.)

Black students are denied equal educational opportunities because the reinstatement of the school names “creates a stigma against” and a “feeling of inferiority among” Black students who attend those schools. (Id. ¶ 246.)

Black students “are negatively impacted” and “experience psychological, emotional, and academic harm” by exposure to the school names. (Id.)

Black students “who choose not to attend” those schools “will have to” travel farther and “will bear” the financial burden of attending schools outside of their neighborhoods. (Id.)

By choosing to reinstate and maintain the school names, “Defendant has violated, and continues to violate, the Equal Educational Opportunities Act.” (Id. ¶ 247.)

ARGUMENTS AND AUTHORITIES

I. Standard of Review.

Rule 12(b)(6) of the Federal Rules of Civil Procedure permits dismissal when a plaintiff fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to dismiss, a complaint must contain sufficient “facts to state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). The complaint’s “[f]actual allegations must be enough to raise a right to relief above the speculative level.” Id. at 555.

A court should construe factual allegations in the nonmoving party’s favor and will treat them as true, but is “not so bound with respect to [the complaint’s] legal conclusions.” Dist. 28, United Mine Workers, Inc. v. Wellmore Coal Corp., 609 F.2d 1083, 1085 (4th Cir. 1979). Indeed, a court will accept neither “legal conclusions drawn from the facts” nor “unwarranted inferences, unreasonable conclusions, or arguments.” E. Shore Mkts., Inc. v. J.D. Assocs. Ltd. P’ship, 213 F.3d 175, 180 (4th Cir. 2000). Further, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

In order for a plaintiff’s claims to survive dismissal, she must allege facts sufficient to state all the elements of his claim. Bass v. E.I. DuPont de Nemours & Co., 324 F.3d 761, 765 (4th Cir. 2003) (citing Dickson v. Microsoft Corp., 309 F.3d 193, 213 (4th Cir. 2002); Iodice v. United States, 289 F.3d 270, 281 (4th Cir. 2002)). A plaintiff must provide the grounds of his entitlement to relief, which “requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” Twombly, 550 U.S. at 555.

II. Plaintiffs failed to state a First Amendment claim of compelled speech.

Plaintiffs claim that reinstating the school name of “Stonewall Jackson” and that having the mascot/student body name of “Generals,”⁵ and the use of school uniforms or other apparel displaying such names, is unconstitutional compelled speech. (Compl. ¶ 196.) Plaintiffs further claim that the use of such names during school and extracurricular activities, including on scoreboards and signs and in announcements, is unconstitutional compelled speech. (*Id.* ¶ 197.)

“The First Amendment not only protects against prohibitions of speech, but also against regulations that compel speech.” *Stuart v. Camnitz*, 774 F.3d 238, 245 (4th Cir. 2014). Consequently, the “freedom of speech prohibits the government from telling people what they must say.” *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 61, 126 S. Ct. 1297, 164 L. Ed. 2d 156 (2006). Compelled speech occurs when “an individual is obliged personally to express a message he disagrees with, imposed by the government” *Johanns v. Livestock Mktg. Ass’n*, 544 U.S. 550, 557, 125 S. Ct. 2055, 161 L. Ed. 2d 896 (2005).

Thus, the “crucial question is whether, in speaking, the government is *compelling* others to espouse or to suppress certain ideas and beliefs. In order to compel the exercise or suppression of speech, the governmental measure must punish, or *threaten to punish*, protected speech by governmental action that is ‘regulatory, proscriptive, or compulsory in nature.’” *Phelan v. Laramie Cty. Cmty. Coll. Bd. of Trs.*, 235 F.3d 1243, 1247 (10th Cir. 2000) (quoting *Laird v. Tatum*, 408 U.S. 1, 11 (1972)) (emphasis added) (internal citations omitted). For instance, a school “ma[king] it abundantly clear that [students] would not be able to continue in the program [or activity] if

⁵ It is important to note here that Plaintiffs do not allege that the mascot/student body name of “Generals” was ever retired or changed, and in fact, it was not. Only the name “Stonewall Jackson” was retired and then reinstated. Thus, any claims arising out of alleged harm to the Plaintiffs caused by the mascot/student body name “Generals” would be barred by the applicable statute of limitations. While allegations are made regarding the retirement of the North Fork Middle School mascot/student body name “Rebels,” Plaintiffs do not allege that this name was ever reinstated or that any of the Plaintiffs are affected by it.

[they] refused to say the words” the school requested constitutes compulsion. Axson-Flynn v. Johnson, 356 F.3d 1277, 1290 (10th Cir. 2004). “A discouragement that is minimal and wholly subjective does not, however, impermissibly deter the exercise of free speech rights.” Phelan, 235 F.3d at 1247-48 (quoting United States v. Ramsey, 431 U.S. 606, 623-24 (1977)).

First, the mere use of school names and mascots associated with the Confederacy is not compelled speech. See Banks v. Muncie Cmty. Sch., 433 F.2d 292, 297-298 (7th Cir. 1970) (holding that an Indiana public high school’s flag resembling the Confederate flag, the name “Rebels” for athletic teams, the name “Southern Aires” for the glee club, and the name “Southern Belle” for the homecoming queen, did not violate the First Amendment rights of the students). There must be some coercion or punishment for not “becoming a courier for such message.” Wooley v. Maynard, 430 U.S. 705, 717 (1977). The Supreme Court has consistently required some punitive consequence in order for a compelled speech claim to have merit.

In Wooley, the Maynards’ opposition to displaying the motto “Live Free or Die” on their New Hampshire license plate resulted in fines and jail time. In West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943), students were subject to expulsion from school for not saluting the American flag and reciting the Pledge of Allegiance, and parents were liable for prosecution and potential jail time if their children did not comply.

While the Plaintiffs make the unsupported claim that the School Board “requir[es] students participating in school activities and in extracurricular activities” to “wear uniforms or use other apparel” bearing school and mascot names and to “identify as Stonewall Jackson ‘Generals,’” the Complaint does not allege that any student has refused to wear a school uniform or to identify as a Stonewall Jackson “General” and has been punished, nor that a student’s request not to do so has been denied.

D.D. “believes” that if she refused to wear the team uniforms, the school “would not permit her to participate in sports” or she “would be subjected to ostracization.” (Compl. ¶ 148.) However, there is no allegation that she has refused or that she has been threatened with punishment if she were to refuse. Her belief is purely speculative and her alleged harm is purely potential. “*If* D.D. does not participate in sports . . . , she *will miss out on* the opportunities that being a student-athlete offers her.” (Id. ¶ 150.) *If* she does not participate in sports in high school, it “could greatly impact” her ability to play at the collegiate level. (Id. ¶ 150.) *If* she is not able to fully participate in school sports, activities, and advanced academic opportunities, such as the Governor’s School, it “*will harm* D.D.” and “*will also impact* her future opportunities, including her college applications.” (Id. ¶ 151.)

A.J. similarly “believes” that if he refused to wear the uniforms, the school “will not allow him” to continue to participate in the programs and he “will be subjected” to verbal bullying. (Id. ¶ 170.) There is no allegation that he refused to wear team uniforms either, nor that he was threatened with punishment. His belief is also speculative and his harm is also potential. “*If* A.J. does not want to identify as part of the Stonewall Jackson ‘Generals,’ his only option is to resume homeschooling.” “*If* homeschooled,” A.J. would not be able to play sports or do other activities in the Shenandoah County Public School system, and he would not be able to attend the Governor’s School. (Id. ¶ 172.) “*If* A.J. does not participate in sports . . . , he will miss out on the opportunities that being a student-athlete offers him.” (Id. ¶ 173.) *If* A.J. is not able to fully participate in school sports, activities, and advanced academic opportunities, such as the Governor’s School, it “will harm” A.J. and “impact his future opportunities, including his college applications.” (Id. ¶ 174.)

The unnamed NAACP members allegations—that in order to attend the schools in question, they “*will be* subjected to” the names and “*will be* forced to endorse” what they believe the names represent (Id. ¶ 183)—are similarly speculative and potential.

While Plaintiffs allege “[u]pon information and belief” that “students who are unwilling to wear a uniform or apparel” bearing the school and mascot names or refuse to play on the team “will be excluded from full participation in certain extracurricular activities[,]” there are simply no factual allegations to support such a bare and speculative conclusion.

While “[a] plaintiff is generally permitted to plead facts based ‘upon information and belief’ if the plaintiff is in a position of uncertainty because the necessary evidence is controlled by the defendant[,] . . . this permission is not limitless—allegations based ‘upon information and belief’ must be supported by secondhand information that provides the plaintiff a good-faith reason for believing it to be true.” Drzymala v. BAE Sys. Controls, Inc., Civil Action No. 7:21-cv-00522, 2022 U.S. Dist. LEXIS 157253, at *6-7 (W.D. Va. Aug. 31, 2022) (citations and quotations omitted). “If allegations made ‘upon information and belief’ are not grounded in specific facts, they veer away from supporting plausible inferences.” Id. (quotations omitted).

Again, Plaintiffs allege no facts in the Complaint to suggest that students have experienced, or are subject to, any sort of sanction or punishment for objecting to the school names or school mascot. Plaintiffs do not even allege that any students have made their objections known to school staff. They allege merely that Plaintiffs “believe” that if they were to refuse to wear the uniforms or otherwise identify with the school names that they “would be” or “will be” prevented from participating in extracurricular activities or “ostracized.” A belief, even a sincerely-held one, that some future, potential negative action will be taken cannot be the basis for actual harm suffered.

While students who live in the school attendance zone may be required to attend Ashby Lee or Stonewall Jackson if they wish to attend the local public school, merely attending a school named for persons with whose views one disagrees, or having mascots that purportedly symbolize views with which one disagrees,⁶ does not infringe upon a student's First Amendment rights. See Coleman v. Miller, 117 F.3d 527, 531 (11th Cir. 1997) (holding that "[t]he mere fact that appellant may on some occasions be required to enter public buildings that fly the Georgia flag[, which at the time incorporated the Confederate flag,] does not infringe upon his First Amendment rights because entering public buildings does not manifest any particular attitude or belief and does not associate appellant with the flag's message.").

In a recent analogous case, the NAACP sued the Hanover County School Board for its use of Confederate names and imagery at Lee-Davis High School and Stonewall Jackson Middle School, which allegedly violated the members' First Amendment rights by compelling them to express a view with which they disagree. Hanover Cty. Unit of the NAACP v. Hanover Cty., 461 F. Supp. 3d 280, 287 (E.D. Va. 2020). The court, in dismissing the claim, held

To state a claim for relief, the Complaint must do more than allege that students "are dissuaded from participating in academic and extracurricular activities" (Id. ¶ 88.) Given that the Complaint does not allege a single instance in which a student refused to wear uniforms or other apparel with the names at issue, let alone was punished or threatened for that refusal, the Complaint's allegations that "Defendants compel students participating in extracurricular activities to wear uniforms or other apparel bearing the names [at issue]," (id. ¶ 103), and that "Defendants compel students participating in extracurricular activities to identify as 'Confederates' and 'Rebels,'" (id. ¶ 104), are conclusory and not sufficient to state a claim for relief.

⁶ Again, the mascot/study body name "Generals" was never alleged to have been retired, changed, or reinstated. Its existence would have had to have been challenged decades ago within the statute of limitations period from when it was instituted. Thus, only the school name changes can be the bases for Plaintiffs' claims.

Id. at 293.

Similarly, Plaintiffs must do more than allege that students “believe” that if they refused to wear the school uniforms, the school would not permit them to participate in extracurricular activities, or that students are “dissuaded from participating in academic and extracurricular activities” (Id. ¶ 190). Considering the Complaint “does not allege a single instance in which a student refused to wear uniforms or other apparel with the names at issue, let alone was punished or threatened for that refusal, the Complaint’s allegations of compelled speech are purely conclusory and not sufficient to state a claim for relief.” Hanover Cty. at 293. Accordingly, Plaintiffs’ First Amendment compelled speech claim ought to be dismissed.

III. Plaintiffs failed to state a Fourteenth Amendment Equal Protection Clause claim.

Plaintiffs allege that the “School Board’s decision to restore the original Confederate names to Shenandoah County schools was motivated by a discriminatory intent or purpose” (Compl. ¶ 214) and “has a discriminatory impact on Black students who attend those schools (Id. ¶ 222). Plaintiffs further allege that “[a]s a result of the discriminatory impact of the schools’ decisions, Black students, including [Plaintiffs], will not receive the same curricular and extracurricular experience at Ashby Lee ES and Stonewall Jackson HS that their White peers experience.” (Id. ¶ 229.)

The Equal Protection Clause provides that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. “In order to survive a motion to dismiss an equal protection claim, a plaintiff must plead sufficient facts to demonstrate plausibly that he was treated differently from others who were similarly situated and that the unequal treatment was the result of discriminatory animus.” Equity in Athletics, Inc. v. Dep’t of Educ., 639 F.3d 91, 108 (4th Cir. 2011).

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

Here, the school names and mascots, and uniforms and apparel bearing as much, are the same for all students, regardless of race. Therefore, the relevant analysis—known as the disparate impact analysis—is whether the school names and mascots disproportionately affect Black students. In order to show disparate impact, it is not enough to show that Black students are impacted by the schools’ and mascot’s names; to state a claim for relief, Plaintiffs must plead sufficient facts to plausibly show that its Black members were impacted disproportionately, or in a wholly different manner, than students of other races *and* that such disparate impact was intentional. See Hanover Cty. at 297.

Rather than plead sufficient facts, Plaintiffs rely solely on speculative and conclusory statements. For example, Defendant’s reinstatement of the school name makes B.B. “feel unwelcome” at Stonewall Jackson HS. (Compl. ¶ 177.) B.B. “will see” the name Stonewall Jackson “Generals” every day when she attends the Governor’s School⁷ and “*will be* confronted with” the names, which “*will* undoubtedly cause” her to “feel inferior to” her White peers and “damage her self-esteem.” (Id. ¶ 178.)

⁷ Defendant finds this allegation incredible considering the Governor’s School is not located at Stonewall Jackson HS.

Similarly, A.C. “*will* confront” the name Stonewall Jackson Generals every day when he attends the Governor’s School (Id. ¶ 163) and when he participates in sports competitions held at Stonewall Jackson HS, which “*will undoubtedly* cause A.C. to feel inferior to his White peers and damage his self-esteem.” (Id. ¶ 164.) “*If* A.C. does not participate in sports . . . , he *will miss out* on the opportunities that being a student-athlete offers.” (Id. ¶ 165.)

D.D. “feels unwanted” and “feels uncomfortable” attending Stonewall Jackson HS (Id. ¶ 145), and that if the school name is maintained, D.D. “*will be* confronted daily with signs, apparel, and school materials bearing the name of Stonewall Jackson” which “*will undoubtedly cause* D.D. to feel inferior to her White peers and damage her self-esteem. (Id. ¶ 146.)

J.D. “believes” that by making the decision to reinstate the school names, Defendant is signaling a desire to return to slavery in America. (Id.) Therefore, J.D. “fears the *prospect of* attending” Ashby Lee ES. (Id.) J.D. “*will be* confronted with” signs, apparel and materials with the names Ashby Lee on them. (Id. ¶ 156.)

The NAACP alleges in conclusory fashion that by reinstating the school names, Defendant “is subjecting Black students” to a “different” and “inferior” educational experience than that experienced by White students. (Id. ¶ 186.)

These allegations are vague, speculative, and conclusory and do not plausibly support the theory that Black students are disproportionately impacted by the reinstatement of the school names, much less that there was a discriminatory intent or animus behind the reinstatement.

In fact, Plaintiffs alleged that immediately following the June 2020 vote to retire the school and mascot names, and for years thereafter, there was significant public backlash against the decision, including petitions and lawsuits filed against Defendant. Candidates for the School Board ran on a campaign of reinstating the names, and they were elected by the public. Rather than allege

a discriminatory intent or animus behind Defendant's decision to reinstate the names, Plaintiffs have alleged that the democratic process, in which members of the public vote into office their elected representatives in order to carry out their will, was successful. The Defendant merely voted in accordance with the will of its constituency.

Accordingly, this claim ought to be dismissed.

IV. Plaintiffs failed to state a claim under Title VI of the Civil Rights Act of 1964.

Plaintiffs allege that Shenandoah County Public Schools receive federal financial assistance (Compl. ¶ 28) and that the "School Board's decision to restore the original Confederate names to Shenandoah County schools was motivated by a discriminatory intent and has a discriminatory effect on Black students who attend those schools." (Id. ¶ 235.) Therefore, Defendant violated the Civil Rights Act.

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

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

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

Plaintiffs' alleged support for the "discriminatory intent" motivating the School Board's decision to reinstate the names is purely speculative and conclusory in nature. They point to ¶¶ 124-136 of their Complaint, which detail the statements made by various community members and School Board members at the May 9, 2024 meeting. None of the statements by Board members, however, show discriminatory intent or animus; rather, they show an acknowledgement of majority public opinion as measured by the survey conducted by Freedom Press and the Coalition for Better Schools, as well as an acknowledgement of the feelings of Black students. They show a desire to "honor Stonewall Jackson . . . who he was, what he stood for, his character, his loyalty, his leadership, how Godly a man he was" and a desire to "stop finding racism and prejudice [in] everything." What they do not show is discriminatory intent.

Thus, and for the same reasons discussed above with respect to the Equal Protection clause claim, Plaintiffs have failed to state a claim of disparate impact, much less intentional discrimination by the School Board. Accordingly, Plaintiffs claim pursuant to Title VI of the Civil Rights Act of 1964 ought to be dismissed as well.

V. Plaintiffs failed to state a claim under the Equal Educational Opportunities Act.

Plaintiffs allege in conclusory fashion that by reinstating the school names, the School Board "has violated, and continues to violate, the Equal Educational Opportunities Act."

"As a substantive matter, the EEOA provides protections similar to those provided by the Equal Protection Clause." United States v. City of Yonkers, 96 F.3d 600, 620 (2d Cir. 1996). The underlying "purpose of the EEOA is equality of educational opportunity." Jackson v. Waller Indep. Sch. Dist., No. H-07-3086, 2009 U.S. Dist. LEXIS 88062, 2009 WL 3078489, at *14 (S.D. Tex. Sept. 24, 2009). Section 1703(b) provides that states cannot deny equal educational opportunity by "the failure of an educational agency which has formerly practiced such deliberate segregation

to take affirmative steps . . . to remove the vestiges of a dual school system.” 20 U.S.C. § 1703(b). Consequently, “there must first be a finding that there are vestiges of the former dual school system and that the educational agency failed to take affirmative steps . . . to remove those vestiges.” Jackson v. Waller Indep. Sch. Dist., No. H-07-3086, 2009 U.S. Dist. LEXIS 88062, 2009 WL 3078489, at *13 (S.D. Tex. Sept. 24, 2009).

Although Ashby Lee ES’s and Stonewall Jackson HS’s names may well be offensive to the Plaintiffs, the Complaint fails to allege facts sufficient to state an EEOA claim for relief that is plausible on its face. See Rockville Cars, LLC v. City of Rockville, 891 F.3d 141, 145 (4th Cir. 2018). While the Complaint alleges that the School Board formerly practiced segregation and resisted desegregation attempts (Compl. ¶¶ 60-67), it relies on speculative and/or conclusory statements with respect to the impact of the school and mascot names on Black students and does not identify or explain what equal educational opportunities are being denied or how they are being denied.

For instance, “*If* B.B. refuses to attend Stonewall Jackson HS,” she would not be permitted to attend the Governor’s School or participate in Envirothon, and she “*would be* deprived” of an educational opportunity. (Id. ¶ 179.) *If* B.B. is not able to fully participate in extracurricular activities and advanced academic opportunities, such as the Governor’s School and Envirothon, it “will harm” her and “impact her future opportunities, including her college applications.” (Id. ¶ 180.)

Similarly, “*If* A.C. does not participate in sports . . . , he will miss out on the opportunities that being a student-athlete offers.” (Id. ¶ 165.) *If* A.C. is not able to fully participate in school sports and advanced academic opportunities, such as the Governor’s School, it “will harm A.C.

during his time in high school and will negatively impact his future opportunities, including his college applications.” (Id. ¶ 166.)

“If D.D. does not participate in sports . . . , she will miss out on the opportunities that being a student-athlete offers her.” (Id. ¶ 150.) If she does not participate in sports in high school, it “could greatly impact” her ability to play at the collegiate level. (Id. ¶ 150.) If she is not able to fully participate in school sports, activities, and advanced academic opportunities, such as the Governor’s School, it “will harm D.D.” during her time at Stonewall Jackson HS and “will also impact her future opportunities, including her college applications.” (Id. ¶ 151.)

Even the allegations of the claim are conclusory: “By choosing to reinstate the Confederate school names ‘Stonewall Jackson’ and ‘Ashby Lee,’ Defendant has failed to take affirmative steps towards removing the vestiges of the dual, segregated system.” (Id. ¶ 244.) “Individual Plaintiffs and Black members of the NAACP are denied equal educational opportunities on account of their race because of Defendant’s decision to reinstate these vestiges of the dual, segregated system.” (Id. ¶ 245.)

Black students are denied equal educational opportunities because the deliberate retention of the school names *creates a stigma* against and *feeling of inferiority* among Black students who attend Ashby Lee ES and Stonewall Jackson HS. Black students are *negatively impacted* by the exposure to Confederate names, symbolism, and imagery and *experience psychological, emotional, and academic harm*. Black students *who choose not to attend* Ashby Lee ES and Stonewall Jackson HS will have to travel farther and will bear the financial and psychological burden of attending schools outside of their neighborhoods or county, including home schools.

(Id. ¶ 246) (emphasis added).

“These statements, including that the names create a ‘stigma’ and ‘feeling of inferiority,’ are conclusory statements on which the Court cannot rely.” Hanover Cty. at 300-02 (citing Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009)). Furthermore, speculative allegations, like “Black

students *who choose not to attend*” the schools “will have to” do this or bear that, are not the sort of allegations on which the Court can rely to show actual harm. Even if the school and mascot names constitute vestiges, the claim ought to be dismissed for failure to state a claim because the Complaint neither alleges sufficiently plausible facts regarding the names’ impact on Black students nor adequately explains how or what equal educational opportunities Black students are being denied.

Accordingly, the Plaintiffs’ EEOA claim fails for the same reasons its Equal Protection Clause claim fails.

CONCLUSION

For the foregoing reasons, the County School Board of Shenandoah County respectfully requests that the Court grant its Motion to Dismiss and dismiss the Complaint with prejudice.

Respectfully submitted,

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