IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

McKEESPORT BLACK STUDENT UNION, an unincorporated association; GRACE FAWN WALKER, a minor, by and through her parents, VALIAN FAWN WALKER-MONTGOMERY and GEORGE CEPHUS MONTGOMERY; RaSONA WEBB, a minor, by and through her parent, AMBER WEBB; SIYA WEBB, a minor, by and through her parent, SHAMEENA WEBB; AYRIAUNA BURNS, a minor, by and through her parent, MYLISHA BURNS; TYNESHIA BOWLING, a minor, by and through her parent, TIMIKA BOWLING; DEJA and DENAJA NEWBY, minors, by and through their parent, TAMIKA LLOYD; TARYN VASQUEZ, a minor, by and through her parent, AMBER VASQUEZ; AMYA WEBB, a minor, by and through her parent, PATRICIA WEBB; JASONA BELYEU, a minor, by and through her parent, JASON BELYEU; and TAHJANAE LOVE-ELSTON, a minor, by and through her parent, TODD ELSTON,

Plaintiffs,

v.

McKEESPORT AREA SCHOOL DISTRICT; and MARK P. HOLTZMAN Jr., School District Superintendent,

Defendants.

2019-CV-_______________

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

Plaintiffs in this case are McKeesport Area High School students who have been trying to gain permission for their student-led, non-curriculum-related group to meet at their school for the

past three months. Despite the existence of a federal law, the Equal Access Act, and a school district policy that allows such student groups to meet, the plaintiffs' efforts have been stymied at every turn. The reason for the obstruction is the school district superintendent's objection to the name of the group, the McKeesport Black Student Union ("MBSU"), and its focus—the cultural, social, and academic needs of black and brown students attending McKeesport Area High School. He would prefer that the group be called the McKeesport Student Union and work on creating fun activities for the student body. But the superintendent's preferences are not controlling. The purpose of the Equal Access Act is to prevent the kind of discrimination against student groups that the school district has evinced here. When a school district allows at least one non-curriculum-related student group to meet, as the McKeesport Area School District ("MASD") has done, the Equal Access Act and First Amendment compel it to allow all non-curriculum-related student groups uniform access to school facilities. The District's refusal to allow the McKeesport Black Student Union the same access to school facilities that it allows other clubs violates plaintiffs' rights under the Equal Access Act and First Amendment. Accordingly, plaintiffs respectfully request that this Court issue a temporary restraining order and/or preliminary injunction ordering the defendants to grant the McKeesport Black Student Union the same access to McKeesport Area High School facilities and resources enjoyed by other non-curricular student clubs.

ARGUMENT

The Court should grant the requested preliminary injunctive relief because plaintiffs have established each of the following: A "reasonable likelihood" of success on the merits; (2) a likelihood of "irreparable harm" absent the relief sought; (3) the harm to plaintiffs by denying

preliminary injunctive relief outweighs the harm to the defendants by granting such relief; and (4) that granting preliminary injunctive relief would serve the public interest.[1]

I. Plaintiffs Have a Reasonable Likelihood of Success on the Merits of Their Statutory and Constitutional Claims Because MASD's Refusal to Allow the Black Student Union Access to School Facilities Violates Their Rights Under the Equal Access Act and First Amendment.

A. The Equal Access Act Requires the District to Allow Plaintiffs to Create a Non-Curriculum-Related Student Group.

1. The Statutory Right to a Non-Curricular Group Under the EAA

The Equal Access Act ("EAA")[2] provides as follows:

> It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings.[3]

It defines the term "limited open forum" as follows: "A public secondary school has a limited open forum whenever such school grants an offering to or opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional time."[4]

Thus, "if a public secondary school allows only one 'noncurriculum related student group' to meet, the Act's obligations are triggered and the school may not deny other clubs, on the basis of the content of their speech, equal access to meet on school premises during noninstructional

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[1] *Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly*, 309 F.3d 144, 157 (3d Cir. 2002).

[2] 20 U.S.C. § 4071 *et seq.*

[3] 20 U.S.C. § 4071(a).

[4] 20 U.S.C. § 4071(b)

time."[5] The mandate of the EAA is an expansive one. As the Supreme Court has recognized, "Congress[] inten[ded] to provide a low threshold for triggering the Act's requirements."[6]

The EAA broadly defines the term "meeting": "The term 'meeting' includes those activities of student groups which are permitted under a school's limited open forum and are not directly related to the school curriculum."[7] In other words, the EAA is concerned not only with the terms on which a school permits non-curricular groups to meet; it is also concerned with the terms on which a school recognizes non-curricular groups and permits them to engage in activities, use school resources, and otherwise enjoy school privileges.[8]

Complementing the expansive definition of the term "meeting" is the expansive prohibition on differential treatment. Under the EAA, a school may neither "deny equal access to," nor "[deny] a fair opportunity to," nor otherwise "discriminate against" a non-curricular group.[9] Thus, under the EAA, where a school recognizes one non-curricular group or permits it to engage in

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[5] *Bd. of Educ. v. Mergens*, 496 U.S. 226, 236 (1990); *see also id.* at 259 (Kennedy, J., concurring) ("[O]ne of the consequences of the statute, as we now interpret it, is that clubs of a most controversial nature might have access to the student life of high schools that in the past have given official recognition only to clubs of a more conventional kind.") (citation omitted).

[6] *Id.* at 240; *see also id.* at 239 ("A broad reading of the Act would be consistent with the views of those who sought to end discrimination by allowing students to meet and discuss religion before and after classes.").

[7] 20 U.S.C. § 4072(3).

[8] *Mergens*, 496 U.S. at 247 ("Although the school apparently permits respondents to meet informally after school, respondents seek equal access in the form of official recognition by the school. Official recognition allows student clubs to be part of the student activities program and carries with it access to the school newspaper, bulletin boards, the public address system, and the annual Club Fair . . . . [W]e hold that [the school's] denial of [the students'] request to form a Christian club denies them 'equal access' under the Act.") (citations omitted); *see Straights & Gays v. Osseo Area Schools*, 540 F.3d 911, (8th Cir. 2008) (school violated Equal Access Act when it limited student group's access to communication avenues and meeting times and places provided to other non-curriculum-related groups).

[9] 20 U.S.C. § 4071(a).

activities, use school resources, or otherwise enjoy school privileges, it must do likewise for all other non-curricular groups. For example, where a school permits one non-curricular group to use its public address system, bulletin boards, or website to publicize a meeting, it must permit all other non-curricular groups to do likewise.

By its terms, the EAA is not concerned only with non-curricular groups that are denominated as "clubs." Nor is it concerned only with non-curricular groups that are initiated by students. Nor is it concerned only with non-curricular groups that seek primarily to engage in speech. Rather, it is concerned with all non-curricular groups, regardless of how they are denominated, how they are initiated, or what they seek primarily to do.[10]

In *Mergens*, after a careful assessment of the statutory text and the legislative history of the EAA, the Supreme Court concluded that the term "noncurriculum related student groups" "is best interpreted broadly" to include all student groups that do not satisfy one or more of following four criteria: (1) "the subject matter of the group is actually taught, or will soon be taught, in a regularly offered course;" (2) "the subject matter of the group concerns the body of courses as a whole;" (3) "participation in the group is required for a particular course;" or (4) "participation in the group

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[10] *Colin ex rel. Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1145-46 (C.D. Cal. 2000) ("Once a school recognizes any [non-curricular] group, it has created a limited open forum.") (emphasis added); *see also Mergens*, 496 U.S. at 241-43 (rejecting a narrow conception of the student groups with which the EAA is concerned that extended only to advocacy groups); *Pope v. E. Brunswick Bd. of Educ.*, 12 F.3d 1244, 1250-51 (3d Cir. 1993) ("A limitation to student-initiated groups defeats the broader purpose of the statute. A school with many faculty-initiated student groups can largely preempt demand for student-initiated groups. The result could be an open forum for mainstream interests and views, all sponsored by the faculty, with minority views excluded because of faculty hostility or indifference . . . . We therefore conclude that student initiation of clubs and other groups is not a requirement for triggering the EAA.") (quotation and footnote omitted); *Van Schoick v. Saddleback Valley Unified Sch. Dist.*, 104 Cal. Rptr. 2d 562, 569 (Cal. Ct. App. 2001) ("[The school] argue[s] even if [it] is deemed to be a limited open forum, the FCA is not entitled to protection under the FEAA because the group was not student initiated . . . . We disagree.").

results in academic credit."[11] Schools bear the burden of proving that recognized student groups are curricular.[12] Moreover, in this regard, courts owe schools no particular deference.[13]

The case law confirms that the mandate of the EAA is an expansive one[14] and that it applies equally to the non-curricular group at issue in this case—the MBSU. In sum, where a school permits even one non-curricular group to meet on school premises during non-instructional time, it must permit all other non-curricular groups to do so, too, and to do so on equal terms.

2. *Defendants are violating plaintiffs' statutory right to a non-curricular group under the EAA.*

The MBSU is a non-curricular student group that has sought to meet on school premises during non-instructional time on terms equal to those on which other non- curricular groups meet. MASD's own policy states that, "[t]he district shall provide secondary students the opportunity for noncurriculum related student groups to meet on the school premises during noninstructional time

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[11] *Mergens*, 496 U.S. at 239-40.

[12] *Pope*, 12 F.3d at 1252 ("The burden of showing that a group is directly related to the curriculum rests on the school district.") (citation omitted); *see also Mergens*, 496 U.S. at 240 ("[U]nless a school could show that groups such as a chess club, a stamp collecting club, or a community service club fell within our description of groups that directly relate to the curriculum, such groups would be 'noncurriculum related student groups' for purposes of the Act.").

[13] *Mergens*, 496 U.S. at 240 ("[S]uch determinations would be subject to factual findings well within the competence of trial courts to make."); *see also id.* at 245 ("Complete deference to the school district would render the Act meaningless because school boards could circumvent the Act's requirements simply by asserting that all student groups are curriculum related.") (quotation omitted).

[14] *Mergens*, 496 U.S. 226 (Christian club); *Straights & Gays*, 540 F.3d 911 (gay-straight alliance); *Donovan v. Punxsutawney Area Sch. Bd.*, 336 F.3d 211 (3d Cir. 2003) (Bible club); *Prince v. Jacoby*, 303 F.3d 1074 (9th Cir. 2002) (Bible club); *Ceniceros v. Bd. of Trustees*, 106 F.3d 878 (9th Cir. 1997) (religious club); *Hsu v. Roslyn Union Free Sch. Dist.*, 85 F.3d 839 (2d Cir. 1996) (Bible club); *Pope*, 12 F.3d 1244 (3d Cir. 1993) (Bible club); *Boyd County High Sch. Gay-Straight Alliance v. Bd. of Educ.*, 258 F. Supp. 2d 667 (E.D. Ky. 2003) (gay-straight alliance); *Colin*, 83 F. Supp. 2d 1135 (C.D. Cal. 2000) (gay-straight alliance); *Student Coalition for Peace v. Lower Merion Sch, Dist.*, 633 F. Supp. 1040 (E.D. Pa. 1986) (advocacy group); *Hoppock v. Twin Falls Sch. Dist. No. 411*, 772 F. Supp. 1160 (D. Idaho 1991) (Christian club).

for the purpose of conducting a meeting within the limited open forum on the basis of religious, political, philosophical, or other content of the speech at such meetings." Verified Complaint ¶ 31. MASD allows a number of non-curriculum-related student groups to meet at McKeesport Area High School during non-instructional time, including during homeroom, activity period, and after school. Verified Complaint ¶ 32. MASD's website identifies many different kinds of student groups. *See* McKeesport Area High School Activities, located at https://www.mckasd.net/domain/159. These groups include the Chess Club, which was singled out by the U.S. Supreme Court in *Mergens* as an example of a non-curriculum-related club,[15] SADD,[16] the Interact Club, which focuses on community service,[17] and Senior Class, which promotes school spirit and activities for the McKeesport Senior Class,[18] among others. Verified Complaint ¶ 32.

Although district policy requires MASD to provide high school students with the opportunity to form non-curriculum-related groups, defendants have engaged in "a pattern of delay and discrimination"[19] intended to prevent the MBSU from conducting meetings at the high school. School officials have required the students who wish to form the MBSU to jump through multiple hoops to get their group approved, including instructing them to obtain school board approval, only to leave the item off the school board's agenda. Verified Complaint ¶¶ 45-53.

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[15] *Mergens*, 496 U.S. at 245.

[16] *Donovan*, 336 F.3d at 221 (anti-drug and -alcohol club is not curriculum-related for purposes of EAA).

[17] *Pope*, 12 F.3d at 1252 (community service group is not curriculum-related for purposes of EAA).

[18] *See Straights & Gays*, 540 F.3d at 915 (finding that spirit council—group that planned student activities—was non-curridulum-related student group for purposes of EAA).

[19] *Colin*, 83 F. Supp. 2d at 1149,

Instead of allowing the students who wish to form the MBSU to meet, the superintendent attempted to establish an alternate group—populated with students he selected—that overwhelmingly voted to omit the word "black" from their name, instead choosing to call themselves the "McKeesport Student Union." Verified Complaint ¶¶ 57-63. While the superintendent is free to create a non-curriculum-related student group, he cannot use that group to cancel out the group that plaintiffs wish to form. The alleged focus of the McKeesport Student Union is "creating fun activities for the student body." Verified Complaint ¶ 65. That differs greatly from the MBSU's focus, which is to:

> "allow[] students of all races to rejoice in Black culture, lifestyle, history, and activities. MBSU focuses on the cultural, social, and academic needs of black & brown students attending McKeesport Area High School. It seeks to build cultural and community bridges in the McKeesport area. The MBSU is committed to the development of cross-cultural ties at McKeesport High School as well as in the community. Verified Complaint ¶ 40.

Under the EAA decisions regarding the content of the group's discussions belong to the students, not school officials.[20] The same is true of the group's name: "A group's speech and association rights are implicated in the name that it chooses for itself."[21] School officials are "not allowed to require the student group to change its name merely because [they] find[] that it would be less 'divisive.'"[22] To the extent that the superintendent's objections to the MBSU have anything to do with name of the group, that is not a valid reason for refusing to allow the group to meet on the same basis as other non-curriculum-related student groups. The word "black" in "McKeesport Black Student Union" goes to the central purpose of the group, and denying

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[20] *See Colin*, 83 F. Supp. 2d at 1147 (Equal Access Act forbids content-based restrictions on non-curriculum-related student groups).

[21] *Id.*

[22] *Id.*

students the same privileges as other groups based on the name constitutes impermissible content discrimination under the EAA. McKeesport school officials can no more excise “black” from the group’s name than they could direct a student group to remove “Bible,” “Christian,” “Gay” or “Lesbian” from their name.

Once the District grants access to clubs and organizations not directly related to the school’s curriculum, as the MASD has done, it must grant access and recognition to all other non-curriculum-related groups that students wish to form. The District’s refusal to allow the MBSU the same access to school facilities that it allows other non-curriculum-related student groups violates the EAA. Thus, Plaintiffs have a reasonable likelihood of succeeding on the merits of their claim under the EAA.

B. Plaintiffs Have a Reasonable Likelihood of Success Under the United States Constitution Because the MASD’s Refusal to Grant Access to the MBSU Violates Plaintiffs’ Free-Expression Rights.

1. The constitutional right to expressive association under the United States Constitution

The First Amendment provides that a governmental actor may not “abridg[e] the freedom of speech.”[23] This constitutional guarantee of free expression includes the constitutional guarantee of expressive association.[24]

It is a fundamental principle of constitutional law that viewpoint discrimination is anathema to free expression. Because “[t]here is an equality of status in the field of ideas,” it is presumed that governmental action “must afford all points of view an equal opportunity to be heard.”[25] Accordingly, “[t]he government must abstain from regulating speech when the specific

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[23] U.S. Const. amend. I.

[24] *Healy v. James*, 408 U.S. 169, 181 (1972).

[25] *Police Dep’t v. Mosley*, 408 U.S. 92, 96 (1972) (quotation and footnote omitted).

motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction."[26] This constitutional proscription on viewpoint discrimination is no less obligatory where a governmental actor seeks to deny access to a limited public forum—*i.e.*, a forum "reserv[ed] . . . for certain groups or for the discussion of certain topics,"[27]—to an expressive association based on its viewpoint.[28]

This fundamental principle of constitutional law is equally applicable in the school setting. As the U.S. Supreme Court famously held, "[i]t can hardly be argued that . . . students . . . shed their constitutional rights to freedom or speech or expression at the schoolhouse gate."[29] Indeed, the case law confirms that, where schools establish limited public forums by permitting even one non-curricular group to meet, students are protected from viewpoint discrimination in the exercise of their constitutional right to expressive association to form other non-curricular groups.[30]

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[26] *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (citation omitted).

[27] *Id.* at 829

[28] *Id.* at 829-30; *see also Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106-07 (2001); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 392-93 (1993). Where a speaker fulfills the requirements for access to a limited public forum, the governmental actor bears the "heavy" burden of proving that denial of access is not viewpoint discriminatory. *Healy*, 408 U.S. at 184. To satisfy its burden, the governmental actor may not point to the fact that some may find the speaker's viewpoint disagreeable: "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (citations omitted); *see also Pittsburgh League of Young Voters Educ. Fund v. Port Auth.*, 653 F.3d 290, 296 (3d Cir. 2011) ("Viewpoint discrimination is anathema to free expression and is impermissible in both public and nonpublic fora. So if the government allows speech on a certain subject, it must accept all viewpoints on the subject, even those that it disfavors or that are unpopular.") (internal citations omitted).

[29] *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

[30] *Donovan*, 336 F.3d at 211 (3d Cir. 2003) (Bible club); *Prince*, 303 F.3d 1074 (9th Cir. 2002) (Bible club); *see also Healy*, 408 U.S. 169 (advocacy group).

2. *Defendants are violating plaintiffs' constitutional right to expressive association under the United States Constitution.*

Defendants have permitted non-curricular groups to meet. *See* § I.A.2. *supra*. In doing so, they have opened a limited public forum to which they may not deny access to any other non-curricular group based on its viewpoint.[31]

Defendants' actions have been specifically motivated by their continuing desire to suppress the MBSU's viewpoint. Superintendent Holtzman has made comments to the news media stating that he disagrees that there is a need for a Black Student Union at McKeesport Area High School and disputing the students' opinions that there is a problem with the way black students are treated at the high school. Verified Complaint ¶¶ 52, 66. His efforts to prevent the group from accessing school facilities are motivated by his desire to suppress the viewpoints that the students formed the group to express. "Such strategic behavior and viewpoint discrimination in a limited open forum is an anathema to the EAA and the First Amendment."[32]

But even if defendants' actions were not specifically motivated by a desire to suppress the MBSU's viewpoint, it would be enough that defendants have granted even one non-curricular group's viewpoint the opportunity to be expressed in their limited public forum but denied MBSU's viewpoint the same opportunity.[33]

Thus, Plaintiffs are substantially likely to succeed on the merits of their claims under the First Amendment.

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[31] *Colin*, 83 F. Supp. 2d at 1149 (school officials "can not censor the students' speech to avoid discussions on campus that cause them discomfort or represent an unpopular viewpoint").

[32] *Bible Club v. Placentia-Yorba Linda Sch. Dist.*, 573 F. Supp. 2d 1291, 1300 (C.D. Cal. 2008).

[33] *See Donovan*, 336 F.3d at 226 (refusal to allow student religious club to meet on same terms as other noncurriculum-related student groups to meet constituted viewpoint discrimination).

II. MASD's Refusal to Allow the Black Student Union Access to School Facilities Causes Irreparable Injury to Plaintiffs' First Amendment Rights.

The infringement of plaintiffs' First Amendment right to form a student group to express their viewpoint regarding racial disparities at McKeesport Area High School irreparably injures their right to free expression.[34] Courts have also held that the deprivation of the statutory rights guaranteed by the EAA is an irreparable injury: "The EAA protects free speech rights . . . . [T]he Act protects 'expressive liberties,' and we therefore take guidance from the Supreme Court's oft-quoted statement that the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."[35]

In this case, plaintiffs are not suffering merely threatened injury; they are suffering actual irreparable injury. As many courts addressing EAA claims have recognized, the "high-school setting creates harms aside from the damage to the [student group's] First Amendment rights."[36] In the absence of preliminary relief, students may graduate before the litigation is concluded, thereby robbing them of the opportunity to lead or be involved in a club in high school.[37] "Monetary compensation or declaratory relief awarded months or years from now is unlikely to

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[34] *Council of Alt. Political Parties v. Hooks*, 121 F.3d 876, 883 (3d Cir. 1997) (where plaintiffs are likely to prevail on merits on violation of constitutional rights (here voting and association) "it clearly follows that denying them preliminary injunctive relief will cause them to be irreparably injured"); *Beattie v. Line Mountain Sch. Dist.*, 992 F. Supp. 2d 384, 396 (M.D. Pa. 2014) ("Deprivation of a constitutional right alone constitutes irreparable harm as a matter of law, and no further showing of irreparable harm is necessary"); *Musser's Inc. v. U.S.*, No. 10-4355, 2011 WL 4467784, at *8 (E.D. Pa. Sept. 26, 2011) (noting that "[d]eprivation of a constitutional right has been recognized [by the Third Circuit] as irreparable harm").

[35] *Hsu*, 85 F.3d at 872 (quotation omitted); *see also Boyd*, 258 F. Supp. 2d at 692; *Colin*, 83 F. Supp. 2d at 1149.

[36] *Bible Club*, 573 F. Supp. 2d at 1300.

[37] *Id.* (issuing preliminary injunction directing school district to grant Bible Club access to school facilities); *ALIVE V. Farmington Pub. Sch.*, 2007 U.S. District LEXIS 65326, *15-17 (E.D. Mass. 2007) (same); *Colin*, 83 F. Supp. 2d at 1151 (issuing preliminary injunction requiring school board to recognize gay-straight alliance club).

repair the damage of missed opportunities for [the plaintiffs] to fully participate in the high school experience."[38] Here, plaintiffs have been injured not only by MASD's excessive delay in allowing the MBSU to meet, but also by "the inability to effectively address the hardships they encounter at school every day."[39] Plaintiffs' purpose in forming the MBSU is to create a safe place where they can discuss the racial bias and disparities that they see and experience in their school and community. Every day that MASD refuses to allow the MBSU to meet deprives plaintiffs of the opportunity to engage in those important conversations.

III. Balancing of the Factors Under The Preliminary Injunction Standard Mandates that the Court Grant Plaintiffs Relief.

The deprivation of the constitutional right to free expression is an especially acute injury. *See* § II, *supra*. The constitutional dimension to the ongoing injury in this case alone weighs heavily in favor of plaintiffs.

Even more dispositively, the requested preliminary injunctive relief would cause defendants no harm at all. The requested preliminary injunctive relief would not compel defendants to do anything beyond passive accommodation. It would compel defendants only to permit the MBSU to meet on equal terms with the other non-curriculum-related student groups that currently have access to school facilities. If anything, the requested preliminary injunctive relief would further defendants' interests. Because the MBSU is intended, among other things, to empower its members to seek to eradicate racial discrimination and harassment at McKeesport Area High School, the requested preliminary injunctive relief could reduce defendants' exposure to additional liability for deliberate indifference to such discrimination and harassment. Moreover, given the significant educational value of extracurricular activities, the requested preliminary

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[38] *Bible Club*, 573 F. Supp. 2d at 1300.

[39] *Colin*, 83 F. Supp. 2d at 1150.

injunctive relief would allow defendants to provide a more optimal educational environment for their students.[40] In sum, the actual injury to Plaintiffs vastly outweighs any harm that the requested preliminary injunctive relief might cause to Defendants.

And lest there still be any question that a preliminary injunction is proper, the public interest strongly favors granting Plaintiffs' motion. "In the absence of legitimate, countervailing concerns, the public interest clearly favors the protection of constitutional rights."[41] Plaintiffs want to form the MBSU to combat racial discrimination in their high school. The group will be open to all students who want to work toward a school environment free of racial bias. The group will thus serve the public's interest in ending discrimination on the basis of race.[42]

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[40] *See Bible Club*, 573 F. Supp. 2d at 1302 (noting that non-curricular clubs augment schools' educational missions by "offer[ing] students a new perspective through which to interpret the curriculum as well as a reason to be involved in school past the last class bell rings").

[41] *Hooks*, 121 F.3d at 884 (3d Cir. 1997); *see also Tenafly Eruv Ass'n, Inc.*, 309 F.3d at 178 (quoting same).

[42] *See, e.g.*, *Colin*, 83 F. Supp. 2d at 1151 ("Since the Gay-Straight Alliance seeks to end discrimination on the basis of sexual orientation, a preliminary injunction requiring the Board to recognize the club would be consistent with state public policy and in the public interest.").

CONCLUSION

For the reasons set forth above, plaintiffs respectfully request that the Court grant the requested temporary restraining order and/or preliminary injunctive relief.

Respectfully submitted,

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