

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

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TWO RIVERS PUBLIC CHARTER, : Docket Number: 2015 CAB 9512  
SCHOOL, INC., ET AL., :  
Plaintiffs, :  
:
  
vs. :  
:
  
ROBERT WEILER, JR. ET AL. :  
Defendants. : Friday, April 29, 2016  
----- x Washington, D.C.

The above-entitled action came on for a hearing  
before the Honorable JEANETTE JACKSON CLARK, Associate  
Judge, in Courtroom Number 221.

APPEARANCES:

On Behalf of the Plaintiff:

MICHAEL MURPHY, Esquire  
CARY JOSHI, Esquire  
Washington, D.C.

On Behalf of Defendant Ruby Nicado:

ALEXANDER VINCENT, Esquire  
STEPHEN CRAMPTON, Esquire  
Washington, D.C.

On Behalf of Defendant Larry Cirigano:

ROGER GANNAM, Esquire  
MATTHEW STARVER, Esquire  
Washington, D.C.

On Behalf of Defendant Jonathan Darnell:

JOHN GARZA, Esquire  
Washington, D.C.

16-02592

**Deposition Services, Inc.**

12321 Middlebrook Road, Suite 210  
Germantown, MD 20874

Tel: (301) 881-3344 Fax: (301) 881-3338

info@DepositionServices.com www.DepositionServices.com

**EXHIBIT A**

APPEARANCES CONTINUED:

On Behalf of Defendant Paul Weiler:

Pro se

P R O C E E D I N G S

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THE DEPUTY CLERK: Your Honor, calling the case of Two Rivers Public Charter School, Inc., et al. versus Robert Weiler, Weiler, Jr., et al., 2015 CA 9512. Parties please stand and state your names for the record.

MR. MURPHY: Your Honor, Michael Murphy, Bailey & Glasser, on behalf of the plaintiffs.

THE COURT: Good afternoon.

MS. JOSHI: Cary Joshi of Bailey & Glasser on behalf of the plaintiffs as well.

THE COURT: Good afternoon.

MR. MURPHY: Good afternoon.

MS. JOSHI: Good afternoon.

MR. VINCENT: Good morning, Your Honor. Alexander Vincent of Shulman Rogers on behalf of defendant Nicdao. With me is my co-counsel, Mr. Stephen Crampton.

THE COURT: Good afternoon.

MR. VINCENT: And our client, Ms. Nicdao, is in the front row here.

THE COURT: Okay. Good afternoon.

MR. CRAMPTON: Good afternoon.

MR. GANNAM: Your Honor, I'm Roger Gannam from Liberty Counsel for defendant, Cirigano, Larry Cirigano.

THE COURT: Okay.

MR. GARZA: Good morning, Your Honor. John

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1 Garza on behalf of the defendant, Jonathan Darnel, who is  
2 also in the courtroom.

3 THE COURT: Good afternoon.

4 MR. WEILER: Good morning, Your Honor. Robert  
5 Weiler on my own behalf.

6 THE COURT: Okay. Good afternoon.

7 MR. DARNEL: Jonathan Darnel.

8 THE COURT: Okay. Good afternoon. Thank you.

9 We're here today for a motions hearing. I believe I  
10 issued an order setting for the procedure that we were  
11 going to use and the time allotments. So can you tell me,  
12 are there any parties sharing any time?

13 MR. GANNAM: Yes, Your Honor. Defendant  
14 Cirigano will give five minutes of his 15 minute of  
15 principle argument to counsel for defendant Nicdao.

16 THE COURT: Thank you.

17 MR. GANNAM: And we, we intend, Your Honor, to  
18 split it up 10 minutes, 10 minutes and 10 minutes between  
19 Nicdao's two, two attorneys and myself.

20 THE COURT: Okay. Thank you.

21 MR. MURPHY: Your Honor, on behalf of  
22 plaintiffs, we're a little confused. It said both  
23 plaintiffs will have 15 minutes and didn't know if that  
24 was a cue in on 30 minutes?

25 THE COURT: It is 30 minutes.

1 MR. MURPHY: Okay. All right. Thank you.

2 THE COURT: At this point.

3 MR. MURPHY: We'll try to make --

4 THE COURT: And throughout the hearing.

5 MR. MURPHY: We'll try to make it last.

6 THE COURT: Okay. We're ready to start. It's  
7 noon.

8 MR. STARVER: Excuse, me, Your Honor.

9 THE COURT: Yes.

10 MR. VINCENT: We have a preliminary matter that  
11 certainly defendant Nicdao would like to raise for the  
12 Court.

13 THE COURT: Yes.

14 MR. VINCENT: And I think a number of the other  
15 defendants probably share that. This morning we  
16 understand that Mr. Murphy filed or gave his intent to  
17 introduce about 20 documentary and video exhibits into  
18 evidence. We have not seen those before. We think under  
19 Rule 6(d) of the Superior Court Rules that any evidence,  
20 especially affidavits in opposition to a motion, are  
21 required to be served with the opposition. And, you know,  
22 frankly, this is kind of trial by ambush and surprise. We  
23 have had almost --

24 THE COURT: Well, there's not supposed to be a  
25 trial today. It is a motions --

1 MR. VINCENT: Right.

2 THE COURT: -- hearing and the exhibits that are  
3 used should be ones that have already been shared with the  
4 parties. So if there are other exhibits, they can't be  
5 used.

6 MR. VINCENT: All right. Thank you, Your Honor.  
7 That's good to get that clarified. So I, I, I think then  
8 our understanding is that of the 20 exhibits that have not  
9 been previously shared or attached to the pleadings and  
10 the motions, those, those cannot be used today.

11 THE COURT: That's right.

12 MR. VINCENT: Thank you.

13 THE COURT: Thank you. You haven't had an  
14 opportunity to respond to them in any way. If they were  
15 attached to the complaint or incorporated in the  
16 complaint, you had an opportunity to respond to them when  
17 you filed your motions, okay? So what order are we going  
18 to go in please?

19 MR. STARVER: Your Honor, I suggest we address  
20 the standing motion first. I'm prepared to speak on that.

21 THE COURT: Well, I meant parties.

22 MR. VINCENT: Oh, parties? Well, I think the  
23 way we thought it might work is defendant Nicdao would,  
24 would go first and then Mr. Gannam will speak on, on  
25 behalf of defendant Cirigano. We have not coordinated

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1 with Mr. Garza about Mr. Weiler's argument, so certainly  
2 we'll need to fit that in. But I'm prepared to address  
3 the standing motion on behalf of defendant Nicdao at this,  
4 at this point, Your Honor.

5 THE COURT: Is that the order that you want to  
6 proceed, gentlemen?

7 MR. GARZA: Your Honor, I'm more than happy to  
8 go last amongst the defendants.

9 THE COURT: And you're representing?

10 MR. GARZA: Mr. Darnel.

11 THE COURT: Mr. Darnel? Okay.

12 MR. GANNAM: Your Honor, we thought because  
13 there are, there is so much overlap between several of the  
14 defendants' positions --

15 THE COURT: Right.

16 MR. GANNAM: -- we would try to make it more  
17 efficient for everyone involved by splitting some of the  
18 issues between defendant Nicdao and defendant Cirigano.  
19 So what we contemplated was Mr. Vincent would, would begin  
20 arguing with certain issues that we would then adopt for  
21 Mr. Cirigano. I would go next and argue some additional  
22 issues and then --

23 THE COURT: Okay.

24 MR. GANNAM: -- Mr. Crampton would, would  
25 conclude, you know, the, at least our presentation on

1 those overlapping issues and just try to present them once  
2 instead of each of us repeating each other.

3 THE COURT: Okay. That sounds good. Thank you.

4 MR. GANNAM: I have not had a chance to discuss  
5 this with Mr. Weiler, who is representing himself, so I, I  
6 don't know, you know, how he feels about all this or what  
7 his --

8 THE COURT: Okay. Mr. Weiler --

9 MR. GANNAM: -- what his plans are.

10 THE COURT: -- what's your position?

11 MR. WEILER: That's fine with me, Your Honor. I  
12 don't mind going last or second to last, either way,  
13 because I'll be incorporating the legal arguments --

14 THE COURT: Okay. I need to know --

15 MR. WEILER: -- for you by the attorneys.

16 THE COURT: -- who is going to be last? Are you  
17 going to be last, Mr. Weiler?

18 MR. WEILER: I can be last or Mr. Garza can be  
19 last, either way.

20 THE COURT: Or counsel for Darnel?

21 MR. GARZA: I'm happy to let Mr. Weiler go last.

22 THE COURT: Okay --

23 MR. WEILER: Thank you, Mr. Garza.

24 THE COURT: -- Mr. Weiler. Thank you. You can  
25 proceed now. Thank you. The standing, of course, is the

1 threshold issue.

2 MR. STARVER: Yes, indeed, Your Honor. Standing  
3 is a threshold issue that under the applicable law of the  
4 District of Columbia needs to be addressed and resolved  
5 prior to and independent of the merits of the parties'  
6 claims and that's the Grayson case.

7 Now just to kind of give you a quick overview of  
8 the legal principles we're dealing with, we've got sort of  
9 the Constitutional requirement standing and a prudential  
10 requirement. And as far as the Constitutional  
11 requirement, Two Rivers needs to show that it has a case  
12 or controversy. And so the basic underlying principle of  
13 standing is that there has to be actual or imminent  
14 threatened injury that is attributable to the defendant  
15 and capable of redress by the Court.

16 And when we say that it's attributable to the  
17 defendant, it's important to remember, Your Honor, that  
18 the plaintiffs have to make a showing, which they have not  
19 done in this case, that the injuries that they are  
20 supposedly complaining about are attributable to my  
21 client, Ms. Nicdao, to her activities. They can't lump  
22 all the defendants together as one and say that somehow in  
23 some combination or mix they caused the plaintiffs'  
24 injuries. They, each defendant has to be judged on the  
25 merits of what he or she actually did on the various days

1 in question.

2 Because as Your Honor will note from the  
3 complaint, Ms. Nicdao was only present on one of the, the  
4 incidents and the days mentioned in the complaint. That  
5 was the November 23rd incident. She was not present in  
6 the August, November 16th or December 7th incident.

7 So when we talk about standing, Your Honor, what  
8 do we mean by injury in fact? That's the, the, the first  
9 element. It has to be injury in fact of a legally  
10 protected interest which is concrete and particularized  
11 and factual or imminent it can't be conjectural or  
12 hypothetical. And, again, as I mentioned, it has to be  
13 fairly traceable to the challenged action of defendant  
14 Nicdao specifically.

15 Now there's also a prudential requirement of  
16 standing and we're going to get into that today in a bit  
17 more detail. But the Supreme Court has said that  
18 generally a party must assert his or her own legal rights,  
19 not the legal rights and interests of others.

20 Now we have proceeded in this case, Your Honor,  
21 under the assumption that Two Rivers has been claiming  
22 associational standing to represent really what are the  
23 interests of the parents and the students. They did not  
24 really make a, any kind of allegations to support direct  
25 standing, although in their opposition brief they had now

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1 argued supposedly we have misconstrued their position and  
2 that, in fact, they do have correct standing. So perhaps,  
3 although it's not entirely clear, they are claiming that  
4 they have both direct standing and associational standing.

5 But I think that the support in the complaint is almost  
6 non-existent for direct standing, but I will address that  
7 at the end of my remarks on standing. I think  
8 associational standing is really what they have asserted  
9 in this case.

10 So there is a test for that, Your Honor, and  
11 generally the test is that when you're dealing with an  
12 association, it's, first of all you have to have an  
13 association. These associational standing cases, Your  
14 Honor, typically involved a voluntary membership,  
15 association or a fraternal benefit society. It's an, it  
16 has to be an organization through which individual members  
17 voluntarily associate with one another to pursue common  
18 goals and interests.

19 Now the Two Rivers Public Charter School is not  
20 an association. It's not that kind of an organization.  
21 It provides a service, education, which students are  
22 required by law who live here to obtain. They don't  
23 necessarily have to obtain it from Two Rivers, but they  
24 have to obtain it from somewhere, public school or  
25 schooling up to age 18 is compulsory in the District of

1 Columbia like it is in every other state. So you can't  
2 say that the school is really a voluntary association. So  
3 if it's not an association, our position is that  
4 associational standing, they can never satisfy that  
5 because they're not an association to begin with.

6 Now, Your Honor, let's assume for the moment  
7 that Two Rivers could otherwise qualify as an association.  
8 Then you've got to get to this three-part test that the  
9 cases have talked about. First, you have to show that the  
10 members have standing to sue in their own right. Well,  
11 again, it's possible and, indeed, we think it's quite  
12 likely and there's no obstacle that the parents or the  
13 students themselves bringing suit in their own right for  
14 the injuries that have happened to them. But what you  
15 have to remember, Your Honor, is that the parents and the  
16 students are not members of the school. They pay the  
17 school for a service, but they're not members of the  
18 school.

19 So in that sense, there, you know, there, you  
20 can't look at it as having standing to sue in their own  
21 right as members because they're not members. The parents  
22 and the students are not members of the school. Again,  
23 the school is not an association.

24 As we mentioned in our briefs, the Two Rivers'  
25 tax return has declared that it has no members. And, in

1 fact, Two Rivers doesn't even have what the cases have  
2 called a de factor membership relationship with its  
3 students or their parents because these students and  
4 parents don't constitute a specialized segment of the  
5 community or discreet group of persons with a definable  
6 set of common interests. The parents and students have  
7 many differing interests. Perhaps the only common  
8 interest is the interest in pursuing an education, which  
9 they're required by law to obtain.

10           And, finally, on this element of members having  
11 abstained and sue in their own right, and this will come  
12 in when we talk about some of the other prudential  
13 considerations. Two Rivers has not made any showing that  
14 the parents and the students have any obstacle to suing in  
15 their own right. Now apart from standing and suing in  
16 their own right, the second element of the test,  
17 associational standing, Your Honor, the interest that the  
18 association seeks to protect have to be germane to its  
19 purpose. And when we look at that, Your Honor, you've got  
20 to look at the underlying claims that they're asserting in  
21 the complaint. The only real claim that is a cognizable  
22 cause of action under the District of Columbia law is  
23 intentional infliction of emotional distress.

24           Two Rivers is pursuing that claim not because it  
25 itself has been subject to emotional distress, but somehow

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1 certain parents and students whom they never identify or  
2 name have, have allegedly suffered that emotional  
3 distress. But that kind of a claim is not really germane  
4 to the school's interest. The school is not in the  
5 business of protecting the rights of the parents and the  
6 students for activities that happened outside of the  
7 school's property. So our contention is that the claims  
8 they're raising in this case are not germane to the  
9 school's purpose and so that, that is why the second  
10 element of the test cannot be met.

11 And, in fact, if you think about it, the lawsuit  
12 really is antithetical to the purposes of the Two Rivers  
13 Public Charter School because it seeks to sensor our  
14 client, Defendant Nicdao, and prevent the students and the  
15 parents from being educated about Planned Parenthood and  
16 the things that are going on in the neighborhood. In  
17 fact, if you think about it, Your Honor, the students and  
18 the parents actually have a First Amendment Constitutional  
19 right to receive information that people are giving them  
20 in the public square, on the public ways.

21 Two Rivers here has kind of unilaterally decided  
22 that none of the parents, none of the students should have  
23 access to any of that information and they claim to  
24 represent the interest of all the students and the  
25 parents, and they have decided on their own that none of

1 them should have this information. In fact, if you look  
2 at the declaration that was belatedly submitted this  
3 morning on behalf of, or by Jessica Wodash (phonetic sp.),  
4 who is the --

5 MR. MURPHY: Your Honor, I'm going to, I'm  
6 going to ask that this -- it's not in evidence and it  
7 shouldn't be read now. If he wants to deal with our  
8 exhibits, then he's opening the door, I think, so --

9 MR. STARVER: All right. Well, here's the  
10 thing. The affidavit --

11 THE COURT: Thank you. You're right.

12 MR. STARVER: The declaration actually parrots  
13 the complaint. This is mentioned in the complaint if you  
14 read the complaint. It says that the school's mission is a  
15 diverse, is to nurture a diverse group of students to  
16 become lifelong active participants in their own  
17 education, develop a sense of self and community and  
18 become responsible and compassionate members of society.  
19 That is actually alleged in the complaint. So that  
20 interest is not consistent with this interest in shutting  
21 down speech and preventing students from pursuing their  
22 own education by understanding and receiving information  
23 that is being offered to them in the public square.

24 Now the third element, it has to be something  
25 that, for Two Rivers to have this associational standing,

1 the school, the claim is asserted and there is really only  
2 one cognizable claim that's asserted, intentional  
3 infliction of emotional distress. That claim and the  
4 relief requested would not require the participation of  
5 individual members and individualized proof. And here  
6 this is where this third element really fails because they  
7 can't assume, even though they've asked us to assume, that  
8 all the parents and all the students were equally  
9 distressed, equally injured by all the defendants'  
10 activities. You had a whole collection, different people  
11 occurring on different days doing different things. Some  
12 of them were holding signs, some of them were holding  
13 images, some of them were passing out leaflets. Not all  
14 of them were there on the same day for every single  
15 incident.

16           So there's been no showing, made no, even  
17 allegation in the complaint that a particular group,  
18 identifiable parents and students, suffered emotional  
19 distress as a result of what my client, defendant Nicdao,  
20 or for that matter what any of the other defendants  
21 specifically did on the days where they were.

22           So really to establish this emotional distress,  
23 you're going to have to have specifically identifiable  
24 parents and students come forward and say how they were  
25 injured and who was responsible, who was the proximate

1 cause of that injury. I beg Your Honor's indulgence for  
2 just a moment.

3 All right. Finally, Your Honor, let me conclude  
4 by saying that associational standing doesn't exist for  
5 Two Rivers in this case for a number of other important  
6 reasons, but one of them is that there is no, there are no  
7 rights that, that school, that has tried to protect any  
8 rights of the students that are to, to have a relationship  
9 with the school that the school is trying to protect here.  
10 There has been no disruption of the schooling or education  
11 by what defendant Nicdao did on the public ways. And  
12 certainly she had no intention of disrupting the  
13 classroom, no intention of preventing children from  
14 entering the school and getting their education. And  
15 whatever harm there may have been to Two Rivers' financial  
16 interest was simply incidental consequence of defendant  
17 Nicdao engaging in Constitutional protected activity.

18 So for these and all the other reasons that  
19 we've articulated and discussed in our briefs, Your Honor,  
20 we think that standing is lacking and, therefore, there is  
21 no subject matter jurisdiction as to any of the defendants  
22 in this case. I'd be happy to answer any of your  
23 questions should Your Honor have them at this time.

24 THE COURT: Thank you.

25 MR. GANNAM: Your Honor, Roger Gannam, again,

1 Liberty counsel for defendant, Larry Cirigano. We adopt  
2 the standing argument of defendant Nicdao and we'll  
3 proceed to cover two items that relate to this matter.  
4 First of all, the applicability of the D.C. Anti-SLAPP Act  
5 to the claims in this case, and then what standards the  
6 plaintiffs are required to meet, what evidentiary standard  
7 or burden they have to meet in order to satisfy the  
8 requirements of the D.C. Anti-SLAPP Act.

9           First of all, Your Honor, the act applies in  
10 this case because its plain language says it does. As we  
11 cited in our briefs, it's a fundamental rule of statutory  
12 construction that the plain language of a statute  
13 controls. By the plain language of D.C.'s Anti-SLAPP  
14 Statute, it covers all claims that arise out of advocacy  
15 on an issue of public interest. And that language is  
16 important because it tells us what claims the act applies  
17 to, not what plaintiffs making those claims the act  
18 applies to. So, in other words, the viewpoint, the  
19 motives, the identity of the plaintiff bringing the claims  
20 is irrelevant under the plain language of the statute  
21 because it's worded so that it covers claims based on  
22 their subject matter. The subject matter has to be  
23 advocacy of issues of public interest.

24           Now in this case, the advocacy, I don't think  
25 it's in dispute that all of the defendants are alleged to

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1 have been engaged in advocacy regarding abortion, abortion  
2 in general and specifically the, the contemplated  
3 abortions to be performed by the new Planned Parenthood  
4 facility being constructed between the school buildings.

5           There is no question, Your Honor, that the issue  
6 of abortion is an issue of public interest or concern. If  
7 I could steal from defendant Nicdao's reply brief in  
8 support of her special motion to dismiss, a court from  
9 Wyoming said contending that the abortion issue is not one  
10 of great public interest and importance is as  
11 unsupportable as contending that the earth is flat or the  
12 sun rises in the west and sets in the east. Since 1973's  
13 Roe v. Wade decision, abortion has been a matter of public  
14 interest and concern even before that.

15           So when we put those together, Your Honor, it's  
16 clear that the D.C. Anti-SLAPP Act covers claims regarding  
17 advocacy, or arising out of advocacy on issues of public  
18 interest. All of the advocacies alleged in this case  
19 deals with the subject of abortion, which is a public  
20 interest and the claims obviously aroused, arise out of  
21 that advocacy. So the D.C. Anti-SLAPP Act applies by its  
22 plain language.

23           Again, it doesn't matter that the plaintiffs  
24 aren't regular players in the abortion debate or it  
25 doesn't matter whether plaintiffs have any connection or

1 viewpoint at all with respect to abortion because the act  
2 covers claims.

3           Now given that the act applies, the question is  
4 what standard must the plaintiff meet in order to overcome  
5 these special motions to dismiss filed by defendant  
6 Cirigano and other defendants in this case? Well, again,  
7 the plain language of the statute must control here. And  
8 what the statute says is that when the special motion to  
9 dismiss shows that the act applies, the plaintiff has to  
10 show they are likely to succeed on the merits of their  
11 claims. Now that standard, again, by its plain language  
12 is much higher than the standard that would be required to  
13 pass muster under a motion to dismiss or a summary  
14 judgment. There has to be more than simply a prima facie  
15 case or a showing that the plaintiffs might under some  
16 circumstances succeed.

17           Likely to succeed means that it's more likely  
18 than not. Or as a court, or Judge Motley of this court  
19 ruled in the Center for Advanced Defense Studies v. Colby  
20 Shipping International case, the most recent case to  
21 analyze this particular requirement from 2015, in that  
22 case Judge Motley analyzed some early decisions on the  
23 statute by this Court and concluded that any reference to  
24 what other states have done in their Anti-SLAPP statutes,  
25 specifically California, which apparently was a model for

1 the development of the D.C. Act, to the extent the D.C.  
2 Council picked different words from what California picked  
3 in its SLAPP Statute, we must presume that the D.C.  
4 Council knew what it was doing and did so intentionally.

5           And so rather than talk about a simple  
6 likelihood of success, the D.C. Council used the words  
7 likely to succeed on the merits. And based on a plain  
8 understanding of that term of art, Judge Motley concluded  
9 we should look to the substantial likelihood of success on  
10 the merit standard that is required for preliminary  
11 injunctions.

12           Judge Motley also concluded that it wouldn't  
13 make sense, even if the statute were ambiguous, it  
14 wouldn't make sense to jump over to the California prima  
15 facie standard because before the D.C. Anti-SLAPP Act was  
16 passed, we already had a requirement for a motion to  
17 dismiss under 12(b)(6). We already had requirements for  
18 summary judgment under Rule 56. It wouldn't make any  
19 sense for the D.C. Anti-SLAPP Act to, whose purpose is to  
20 protect people engaged in protected activity from having  
21 to even defend a lawsuit. It wouldn't make sense to  
22 simply pass a statute that adopts defensive tools that are  
23 already available to a defendant such as motion to dismiss  
24 or motion for summary judgment. It was necessary for the  
25 D.C. Anti-SLAPP Act to create a higher standard to protect

1 the particular right that's, that's at issue here.

2       So Judge Motley said even if the statute weren't  
3 clear, if you look at the legislative history, if you look  
4 at the, the, the statements made in testimony before the  
5 D.C. Council prior to the adoption of the statute, it's  
6 clear that the goal was to protect people from having to  
7 even stand trial, from even having to participate in a  
8 lawsuit when all they're doing is engaging in protected  
9 activity. And for that reason, the standard that a  
10 plaintiff must overcome in order to advance claims that  
11 the Act covers has to be a high standard.

12       They went so far in testimony before the D.C.  
13 Council, the ACLU made the, the point that it would be  
14 better in the name of protection of free speech for even  
15 some meritorious claims to be kicked out of court if they  
16 can't meet the high standard set out by the act because in  
17 balancing the interest of freedom of speech and the  
18 interest of, of some plaintiffs who may have a marginally  
19 meritorious claim, it would be better to stick to the high  
20 standard and require that standard be met before claims  
21 can proceed forward. This requirement of the plaintiffs to  
22 show that they are likely to succeed on the merits must be  
23 met by actual evidence adduced or presented to the court  
24 to overcome any declarations or any evidence raised by the  
25 defendants.

1           Now in this case, Your Honor, the plaintiffs in  
2 their own briefing on this issue admitted that more than a  
3 verified complaint is required for them to meet their  
4 standard, whatever that standard is. We also know based  
5 on the Court's ruling this morning about the, the  
6 affidavits and other evidence first filed this morning.  
7 The plaintiffs haven't adduced any evidence at all beyond  
8 their verified complaint to overcome the various special  
9 motions to dismiss under the Anti-SLAPP Statute. They  
10 haven't overcome defendant Cirigano's declaration  
11 regarding his conduct on the one day that he was alleged  
12 to be outside the school, they haven't adduced any  
13 evidence to overcome anyone's declarations in this case.  
14 And, therefore, whatever the standard is, Your Honor, here  
15 we are on the day of the hearing on these motions, the  
16 plaintiffs have adduced no evidence whatsoever to overcome  
17 the Anti-SLAPP motions filed in this case and for that  
18 reason alone the motions would be due to be granted and  
19 the claims dismissed.

20           Your Honor, I will reserve the remaining two  
21 minutes of my time for rebuttal or to answer any questions  
22 the Court has.

23           THE COURT: Thank you.

24           MR. CRAMPTON: Good afternoon, Your Honor, Steve  
25 Crampton, together with Mr. Vincent. We represent the

1 defendant, Ruby Nicdao. I want to step back just for a  
2 moment in the context of this argument and look at the big  
3 picture. The actions of all the defendants here  
4 constitute quintessential free speech on a matter of  
5 public concern and it's all taking place in a traditional  
6 public forum, on the public sidewalks and public ways of  
7 the District.

8           What plaintiffs are asking this Court to do is,  
9 in effect, to set entirely new precedent right here in our  
10 Nation's Capital, a nation born of freedom, by censoring  
11 this free speech on the public ways via entry of a  
12 content-based prior restraint on speech on the flimsy  
13 basis of hearsay allegations, of the alleged occurrence of  
14 the tort of intentional infliction of emotional distress.  
15 We urge this Court not to take that bait, but instead to  
16 honor our nation's rich history of free speech by  
17 dismissing this case in toto.

18           I want to now zero in, though, on what exactly  
19 are the elements of that one seminal tort, intentional  
20 infliction of emotional distress and whether plaintiffs  
21 have met the required showing of just the elements of, of  
22 that tort alone and submit to the Court that they have not  
23 as to any defendants, but in particular as to defendant  
24 Nicdao, who, as my co-counsel indicated, was only there on  
25 a single occasion. And I would note for the Court that we

1 are now here eight months after that initial occurrence, I  
2 think it was August 27, 2015, and to date, again,  
3 defendant Nicdao, it is undisputed, was out there only on  
4 one occasion, November 23, 2015, and yet we remain in this  
5 case, plaintiff seeking only an injunction as relief.  
6 They don't seek damages here. It's only injunctive  
7 relief.

8           And, of course, one of the fundamental  
9 requirements to obtain injunctive relief is a showing of  
10 the potential of imminent harm in the future. Well,  
11 plaintiffs surely cannot show that Ms. Nicdao will ever  
12 return to the premises, let alone imminently return. So,  
13 again, on that basis alone, they, they cannot succeed  
14 against defendant Nicdao.

15           But with respect to the tort of intentional  
16 infliction of emotional distress, the elements are well-  
17 settled here. They include a showing of extreme and  
18 outrageous conduct on the part of the defendants which  
19 intentionally or recklessly cause the plaintiffs to suffer  
20 severe emotional distress, not just hurt feelings, not  
21 just being offended, but severe emotional distress.

22           As my co-counsel has indicated, the plaintiffs  
23 in this case are the school itself and their trustees.  
24 They haven't even alleged not a shred of allegation in the  
25 complaint that they themselves have suffered any emotional

1 distress, instead, the allegation of any harm pertains  
2 only to the parents and students from whom, again, despite  
3 the passage of at least now five months since the filing  
4 of this action, we have not heard a peep. There is not  
5 one allegation, there is not one bit of admissible  
6 evidence from the parent or a student. In fact, we don't  
7 even have parents or students identified regarding any  
8 alleged harm that they have suffered. So, again, as a  
9 matter of law, we would suggest plaintiffs have failed to  
10 meet their burden even to establish the existence of the  
11 tort of intentional infliction of emotional distress and  
12 that under the standard of indulging all the allegations  
13 in the complaint as, as true for purposes of this motion,  
14 at least all the allegations that are well-pled and  
15 supported.

16           But I want to also emphasize that the conduct  
17 that we're talking about here is not just conduct, again,  
18 that offends, that may disturb folks, we're talking  
19 conduct that is so outrageous in character, so extreme in  
20 degree, and I'm quoting directly now from the Ortberg case  
21 cited in our brief, as to go beyond all possible balance  
22 of decency and to be regarded as atrocious and utterly  
23 intolerable in a civilized society. What is that conduct  
24 here that we're looking at? We're looking at  
25 quintessential First Amendment expressive conduct. We're

1 looking at signs, we're looking at speech, we're looking  
2 at the handing out of leaflets, Your Honor. These are at  
3 the very core of the First Amendment to the Constitution  
4 and, therefore, cannot, I would suggest, constitute  
5 somehow outrageous and extreme conduct that would meet the  
6 requirements of the elements of intentional infliction  
7 here.

8           In fact, the only paragraph, I would submit,  
9 plaintiffs may want to point elsewhere in their complaint  
10 that addresses this element of intentional infliction is  
11 in Paragraph 79 in which they say, quote, "Defendants were  
12 shouting things," once again, by the way, I would pause  
13 just to note that they are, again, painting with a broad  
14 brush all defendants as opposed to just defendant Nicdao  
15 or naming which defendant shouted this -- clearly, Ms.  
16 Nicdao did not engage in most of this behavior, if any --  
17 shouting things like babies are being killed next door to  
18 the school and that there will be, quote, "Problems at the  
19 school if they don't do something about it." Well,  
20 clearly, that's not emotional distress damage, as well as,  
21 according to plaintiffs' targeting the students with  
22 posters.

23           Your Honor, we would submit, again, that as a  
24 matter of law, this is not enough to meet the minimal  
25 requirements of stating a cause of action for emotional

1 distress and intentional infliction at that. The intent,  
2 as my co-counsel indicated, was to educate, was to  
3 persuade, was to reach the parents and the students and  
4 the community with regard to what our clients believe in,  
5 in sincere, sincerely held religious belief no less,  
6 constitutes a grave threat to those very students.  
7 Tellingly, again, we have no evidence, not even  
8 identification of a student or a parent here.

9           What our client in particular was distributing  
10 constituted true and well-documented information regarding  
11 the activities of Planned Parenthood. Once again, Your  
12 Honor, I would submit that as a matter of law this cannot  
13 constitute the tort of intentional infliction.

14           A second related issue, though, is that the  
15 conduct must cause not just emotional distress, but severe  
16 emotional distress, Your Honor, such that it is so acute  
17 that it is likely to actually cause harmful physical  
18 consequences, physical consequences, again, citing to the  
19 Ortberg case. Where is the evidence, Your Honor? There  
20 is zero evidence, zero admissible evidence of any such  
21 harm, any such severe emotional distress by anyone,  
22 certainly not by anybody in the administration of the  
23 plaintiffs themselves. So, again, plaintiffs fail to  
24 state a claim for intentional infliction of emotional  
25 distress.

1           What they say in Paragraph 81 is, instead, that  
2 some defendants have caused some unidentified parents and  
3 students to, and I'm quoting, feel afraid, threatened,  
4 helpless, unsafe. Your Honor, that is not severe  
5 emotional distress so acute as to cause harmful physical  
6 consequences. Feeling a little subjective fear is simply  
7 not what the cause of action contemplates what the case  
8 law contemplates as stating a claim for emotional  
9 distress.

10           In particular, with respect to defendant Nicdao,  
11 there is zero allegation. Again, look at every word of  
12 that complaint. Ms. Nicdao is mentioned in only two  
13 paragraphs, Paragraphs 57 and 58. And in neither of those  
14 paragraphs is there any mention of any emotional distress  
15 caused to anyone, parent, student, administration, you  
16 name it, none. So, again, as a matter of law, at least as  
17 to defendant Nicdao, she should be dismissed here.

18           I want to mention just briefly here what I  
19 anticipate the plaintiffs will focus on here that somehow  
20 transforms this case into something other than a classic  
21 First Amendment case and that is the presence of children  
22 out there. Your Honor, there is no precedent in this  
23 jurisdiction, not one case establishing some sort of  
24 exception to the general First Amendment rule that free  
25 speech must be robust, wide open on the public ways.

1 That's what is a core value of our entire nation here,  
2 somehow that that rule changes though because there are  
3 children around.

4 In fact, I would cite the Court to the statement  
5 of the Ninth Circuit Federal Court of Appeals in a case  
6 cited in our brief, I believe, in 2008, the Center for  
7 Bioethics Reform against Los Angeles County Sheriff's  
8 Department. What this would constitute is, quote, "An  
9 unprecedented departure from bedrock First Amendment  
10 principles to allow the Government to restrict speech,"  
11 that's what they want to do, "Based on listener reaction  
12 simply because the listeners are children." I urge this  
13 Court not to take that bait again, not to try to set new,  
14 new precedent here. It would be a disaster for the First  
15 Amendment and a disaster for the District.

16 Finally, with regard to the relief sought here,  
17 again, plaintiffs seek only injunctive relief. That, as  
18 the Court knows, is an extraordinary remedy not routinely  
19 granted. Moreover, in a case like this where the targeted  
20 activity consists in free speech and expressive conduct,  
21 such an injunction would constitute what the U.S. Supreme  
22 Court has called a classic example of a prior restraint  
23 against speech.

24 For a prior restraint, the normally high burden  
25 imposed on plaintiffs to succeed in the first instance

1 comes an almost insurmountable burden, heavily presumed  
2 against the grant of an injunction of that nature. And,  
3 again, with respect to what we have here, speech that is  
4 neither, and I'm quoting again, Your Honor, this is from  
5 the Ninth Circuit, speech that is neither obscene as to  
6 use nor subject to some other legitimate prescription  
7 cannot be suppressed solely to protect the young from  
8 ideas or images the legislative body thinks unsuitable for  
9 them.

10 In that case, Your Honor, it was violent video  
11 games they were dealing with that kids were receiving in  
12 their very living room. How much less is the harm from  
13 passing by in a matter of seconds images of the victims of  
14 abortion, for example? And, again, I would underscore  
15 that our client, Ms. Nicdao, on the single occasion she  
16 was out there, she didn't even have a sign. All she was  
17 doing was passing out leaflets, Your Honor. As a matter  
18 of law, we would urge this Court the action as against Ms.  
19 Nicdao, Ms. Nicdao, must be dismissed, and as to the other  
20 defendants should be dismissed. Thank you.

21 THE COURT: Thank you.

22 MR. GARZA: Good afternoon, Your Honor. My name  
23 is John Garza. I represent Jonathan Darnel. Your Honor,  
24 I don't have a lot more to say. My, the co-defendants  
25 have stated the, the arguments quite well. I would just

th

1 like to point out briefly that Two Rivers School is not an  
2 association and they don't have any rights under the law  
3 to come in and bring this action on behalf of their  
4 students. It's, the case law has been set forth in all  
5 the briefs and is pretty obvious.

6 Now the Two Rivers, their primary concern is  
7 that what my client is doing out on the public street,  
8 exercising free speech, classic free speech, is somehow  
9 causing emotional distress and, but my first reaction to  
10 that is, is welcome to America, Your Honor. This is one  
11 country where that's what happens. My daughter lived in  
12 China for two years. This wouldn't happen there. If you  
13 were protesting the Government, you would be hauled away.

14 But in America there is free speech. People have  
15 emotional distress when people are out there protesting  
16 the war, when Nazis are marching through Skokie, when  
17 abolitionists were protesting slavery in the south, when,  
18 when people are protesting against Wall Street. There are  
19 going to be people who have emotional distress. Welcome  
20 to America. This is what free speech is all about.

21 The type of emotional distress that some people  
22 may or may not be having, because we don't know who they  
23 are, we just say that they're there, they won't tell us  
24 who, is the type of emotional distress that occurs all the  
25 time, all, every day. You can turn on the TV and you

1 might see a political candidate that gives you emotional  
2 distress. This is America. We, we have to deal with  
3 emotional distress when it comes to free speech, Your  
4 Honor.

5           So there is no child exception and Mr. Crampton  
6 pointed that out. The, the display of embryos is to some  
7 a cherished Constitutional right. So I don't know how it  
8 would be an emotional distress to see the product of a  
9 Constitutional right. But even if it is, Your Honor, when  
10 we exercise free speech, some people are not going to like  
11 it. That's why you're here to protect those from these  
12 kinds of lawsuits, Your Honor, and I ask you to move,  
13 grant the motions.

14           THE COURT: Thank you. Mr. Weiler?

15           MR. WEILER: Good morning, Your Honor. Robert  
16 Weiler on my own behalf. I've been involved in pro-life  
17 advocacy for a long time. First, I would like to say I  
18 would like to incorporate the legal arguments made by the  
19 other attorneys here as mine also as far as the  
20 application of SLAPP and the subject matter jurisdiction.

21           I know that protesting leads to a lot of  
22 emotion, a lot of hurt feelings. As a protester, I've  
23 been punched, kicked, assaulted by a police officer,  
24 robbed, but to this day, until this case, nobody has ever  
25 tried to use the civil courts to shut me up. That can't

1 happen here.

2           The SLAPP Law was intended to create a buffer  
3 against these kind of lawsuits to protect people who are  
4 exercising classic free speech. In the complaint, I'm  
5 accused only of holding a sign on a public sidewalk one  
6 day, that's all. And the plaintiffs have decided to use  
7 that as a way to silence a whole group of people because  
8 they're not just suing us, they're suing numerous John and  
9 Jane Does trying to stifle any protest at that location.  
10 And because of that, this case is simply an attack on the  
11 free speech of the defendants and for that reason I urge  
12 the Court to grant the motions and I'll reserve any time I  
13 have left for rebuttal if necessary.

14           THE COURT: Thank you.

15           MR. MURPHY: Your Honor, we have one  
16 housekeeping matter and I'd like to do this on the front  
17 end, but Ms. Joshi's pro hac motion is pending. It's a  
18 consent motion. There was a problem with the payment of  
19 it this week. So I would ask that she be admitted pro hac  
20 because she's going to argue the standing.

21           MR. VINCENT: No objection, Your Honor.

22           MR. STARVER: No objection, Your Honor.

23           MR. GANNAN: No objection, Your Honor.

24           THE COURT: I'll have to see if it's been filed.

25           MR. MURPHY: It was filed. It was, it was

1 kicked back by the, even though we, we had paid it to the  
2 clerk, I have the papers here.

3 THE COURT: Okay. Let me see the papers please.  
4 You made the payment and the affidavit is provided?

5 MR. MURPHY: That's my understanding, Your  
6 Honor.

7 THE COURT: Thank you. Where is the proof of  
8 the payment?

9 MR. MURPHY: It went through. It's, is that  
10 the stamped copy on the upper right?

11 THE COURT: There's a file --

12 MR. MURPHY: That was --

13 MS. JOSHI: It isn't, I never received that.

14 MR. MURPHY: You don't have the receipt? I can  
15 go down to the clerk's office after this and I assure you  
16 it's been paid.

17 THE COURT: I have the application as being  
18 received and --

19 MR. MURPHY: We, we re-filed it again yesterday.  
20 Court's indulgence, I, Ms. Joshi is more equipped at this  
21 time to argue the standing motion.

22 THE COURT: Okay. We do have a receipt here  
23 from the Committee --

24 MR. MURPHY: Is that right? Okay.

25 THE COURT: That's fine.

1 MR. MURPHY: All right. Thank you, Your Honor.

2 THE COURT: Motion is granted. Thank you.

3 MS. JOSHI: Thank you, Your Honor. Your Honor,  
4 defendants have challenged plaintiff's standing to bring  
5 this suit for injunctive relief on behalf of the students  
6 of the Two Rivers Public Charter School. However,  
7 plaintiffs possess the necessary personal stake in the  
8 outcome of this controversy to justify exercise of the  
9 Court's remedial powers on its behalf, which is the  
10 standard as articulated by the court in Grayson v. AT&T.

11 While the primary goal of this suit is to seek  
12 to protect the safety and well-being of the students of  
13 the school, plaintiffs also seek redress of the injury to  
14 the school that has resulted from the defendants' targeted  
15 protesting of the students and families. As Mr. Crampton  
16 did, I would also like to just take a step back and give  
17 you a sense of not just the big picture, but the real  
18 picture in this case.

19 The Two Rivers Elementary and Middle Schools sit  
20 between Florida Avenue and 4th Street in the Northeast  
21 quadrant of the city. It is not out on a bucolic  
22 suburban campus where there's a nice, long driveway that  
23 leads to a cul-de-sac where children run out of the cars  
24 and can go play on the playground until it's time to come  
25 inside. The only thing between the, the building and the

1 busy roads are the sidewalk. This is an urban school in  
2 one of the most industrial parts of the city.

3           And defendants have come to this sidewalk and  
4 what is absolutely the busiest time of the day and the  
5 most crucial to preparing students for a day of learning.  
6 They've come during the arrival of students at school in  
7 the morning. This is a time when parents are dropping off  
8 students in cars, walking them to school, bringing them on  
9 bikes, making sure they have their homework and their  
10 backpacks and their permission slips. It is a precarious  
11 moment when parents are handing off their students to the  
12 school and the school assumes legal responsibility for  
13 their safety.

14           Defendants have deliberately chosen this  
15 critical time and inserted into it fear, anxiety, chaos,  
16 and as a result dangerous to the students. They came to  
17 Two Rivers with large signs and posters showing bloody  
18 body parts purportedly of aborted fetuses and banners that  
19 declare that babies would be killed next door and told the  
20 students to tell their parents to do something about it.

21           The defendants blocked part of the sidewalk with  
22 their signs. They stood in the way of families trying to  
23 get into the school on time and they relentlessly handed  
24 out fliers to unwilling recipients. They followed and  
25 shouted things directly at students and said scary things

1 like, babies will be killed next door if your parents  
2 don't do something about it. They warned of a blood bath  
3 coming to the neighborhood and told students that they  
4 would see maimed and hurt women outside and that there  
5 would be fights in front of the school. Most of the  
6 intended audience for these messages and these signs were  
7 under the age of 12.

8           As defendants have said, to establish standing  
9 in this case, Two Rivers has to show an injury, in fact,  
10 to the school. As an initial matter, defendants claim  
11 that plaintiffs have not provided any evidence of this  
12 harm to the school. However, as stated in the defendants'  
13 own motion, the Court must accept as true all factual  
14 allegations in the complaint and they also consider facts  
15 outside of the complaint if undisputed by the plaintiffs.

16           If the Court does determine that there isn't  
17 enough evidence presented today that plaintiffs, in  
18 plaintiffs' complaint and their opposition to the motion  
19 to dismiss, the, the plaintiffs are ready to offer  
20 additional evidence in the form of video evidence and  
21 declarations from both experts and parents. But we  
22 contend that at this point there's enough evidence in the,  
23 in the allegations of the complaint, as well as the  
24 opposition to the motion to dismiss to establish standing.

25           First, injury to the school. The school has a

1 legal obligation to maintain the safety, to maintain the  
2 safety and ensure the well-being of its students so says  
3 D.C. v. Doe. And where a special dangerous situation  
4 exists, and the school has knowledge of its existence, as  
5 the school does here, greater supervision is required to  
6 ensure the safety of the students.

7           The school's duty unquestionably includes  
8 protecting students from the danger posed by defendants  
9 and their outrageous conduct in targeting students and  
10 families on their way into school in the morning.  
11 Defendants have put at risk both the children's physical  
12 and emotional well-being, and the school in their effort  
13 to fulfill their duty to protect students have also  
14 suffered harm.

15           First, the school had to institute a new policy  
16 where administrators and staff have to come in a half an  
17 hour early and then escort students into the building if  
18 the defendants are present. This necessarily means that  
19 they are not spending time as they normally would  
20 preparing for class or meeting with parents. The school  
21 has also had to spend its limited resources to hire a  
22 private security guard to make sure that one individual is  
23 constantly monitoring threats inside and outside of the  
24 school.

25           This suit for injunctive relief alone has cost

1 the administration and staff hours of time. But all of  
2 these resources must be spent to ensure the safety of  
3 students, especially given the special, dangerous  
4 situation that defendants' presence outside poses. But it  
5 necessarily takes resources away from the main mission of  
6 the school, which is actually educating children.

7 In addition to having to divert very limited  
8 resources from the educational mission of the school, the  
9 defendants' targeted protesting has also resulted in  
10 reputational harm to the school. As a public charter  
11 school, Two Rivers relies on reputation as both a safe  
12 place and a place for children to learn and achieve.  
13 Since the defendants began their targeted protesting,  
14 record numbers of parents have asked to be transferred  
15 from the 4th Street campus to the campus on 26th Street  
16 known as the Young campus.

17 A record number of families have put themselves  
18 back in the city-wide lottery in hopes that they might be  
19 able to transfer to a different school next year. Two  
20 Rivers has also seen a 5 percent drop in the application  
21 sin the city-wide lottery of students applying to come to  
22 Two Rivers and that may not seem like a big number, but  
23 considering that almost every year since the inception of  
24 the school that number of applications has increased, it's  
25 actually a dramatic change.

1 MR. VINCENT: Your Honor, I just want to object  
2 to this discussion of evidence. It is outside the  
3 complaint. Any evidence or suggestion that there has been  
4 a drop in enrollment or a drop in the number of students  
5 interested in coming to this school or any increase in the  
6 number of students who desire to leave the school was not  
7 present in the complaint and we saw it for the first time  
8 in the affidavits that the Court has already ruled are not  
9 admissible today.

10 MS. JOSHI: That information was in our  
11 opposition to the motion to dismiss, which we submit the  
12 Court can --

13 THE COURT: Yes, it was.

14 MS. JOSHI: -- consider.

15 THE COURT: Thank you.

16 MR. VINCENT: But, Your Honor, that, that  
17 information was --

18 THE COURT: The objection is overruled.

19 MR. VINCENT: -- not in the form of evidence, it  
20 was, it was unsworn allegations or unsworn statements in  
21 an opposition brief, not supposed by affidavits.

22 THE COURT: Well, the Court would consider that.  
23 Thank you.

24 MR. VINCENT: Thank you, Your Honor.

25 MS. JOSHI: These are the real harms suffered by

1 plaintiffs. They're not speculative or hypothetical.  
2 They're happening right now. And there's no question that  
3 these harms are the direct result of defendants'  
4 outrageous conduct outside of the school.

5           Some of the defendants argue that the  
6 individuals' actions alone do not rise to the level of  
7 outrageous and, therefore, did not cause any harm. That  
8 assertion is flatly contradicted in both the complaint, as  
9 well as the opposition to the motion to dismiss. Each  
10 defendant named in the complaint individually engaged in  
11 the outrageous behavior that is the basis of plaintiff's  
12 claim. Whether it was the display of a gruesome image,  
13 shouting directly at students or getting in their way on  
14 their way into school, each of the defendants engaged in  
15 this conduct. But when viewed together as a coordinated  
16 plan among the defendants, their conduct is even more  
17 egregious and the actions of any one of them can be  
18 imputed to the rest.

19           At the motion to dismiss stage, plaintiffs need  
20 only make plausible allegations that the defendants were  
21 engaged in a conspiracy. Circumstances tending to show a  
22 conspiracy include, and I quote, where joint tortfeasors  
23 are pursuing the same goal, although performing different  
24 functions on, and are in contact with one another, the  
25 easiest situation in which to draw this inference of

1 agreement is where the parties are on the scene together  
2 at the same time and perform acts that support one  
3 another. So said the court in Haversand v. Welch.

4           The evidence of conspiracy here is clear. The  
5 defendants were at the school together in the same 10 feet  
6 of sidewalk at the very same time with signs and  
7 coordinating their movements to ensure that they could be  
8 as disruptive as possible. And then they showed up the  
9 very next week on a Monday at the same time, at the same  
10 place, although this time in front of the middle school,  
11 with some of the same signs. So while the individual  
12 defendants each engaged in outrageous conduct, the  
13 existence of a conspiracy among them further cements  
14 plaintiff's contention that the defendant's actions were  
15 the cause of the harm that Two Rivers seeks to remedy.

16           And the final requirement for standing is that  
17 the harms can be redressed by the remedy that plaintiffs  
18 seek. And here plaintiffs seek only injunctive relief.  
19 The proposed injunction is very limited in scope and seeks  
20 only to target the greatest concern of the school, which  
21 is the safety of the students.

22           The terms of the injunction limit the  
23 protesters' activities during times of day that pose the  
24 greatest risk to students, which are when they're entering  
25 the school, when they're leaving the school and when

1 they're outside of the school engaged in other educational  
2 activities during the day. The grant of this injunction  
3 will relieve the conditions that are currently and  
4 continually harming the school and the students at Two  
5 Rivers.

6           And, Your Honor, beyond having standing in their  
7 own right to bring these claims, plaintiffs contend that  
8 they also have third-party standing to bring these claims.

9     A party can bring claims on behalf of others if they can  
10 demonstrate a close relationship to the absent party,  
11 which in this case are the students, as well as an  
12 impediment or obstacle to the party in interest bringing  
13 claims.

14           Here the close relationship is clear and is  
15 established by the law where the school is in charge of  
16 the students' safety. It's the very type of relationship  
17 that the Court in Al-Aulagi v. Obama cites as establishing  
18 third-party standing. The Court there held that third-  
19 party standing exists where the defendant intentionally  
20 disrupts or burdens a special relationship between the  
21 litigant and the third party.

22           The legal duty that the school owes to the  
23 students, especially where a special danger exists in the  
24 school setting, epitomizes the close relationship that  
25 justifies third-party standing. And plaintiffs have

1 certainly shown that that relationship has burdened, been  
2 burdened by defendants' outrageous conduct.

3           And as for the impediment facing parents in  
4 bringing this suit on behalf of their children, plaintiffs  
5 have provided more than sufficient evidence. An  
6 impediment to bringing a suit can exist where a party will  
7 suffer some sanction or if some practical obstacle  
8 prevents or deters the third party from asserting their  
9 own interest. This can include a threat to personal  
10 privacy.

11           The aspect, this aspect of third-party standing  
12 is critical in this case. The parents are afraid.  
13 They're afraid for their children being maimed in this  
14 case or even being mentioned by grade level or gender in  
15 any declaration. They're afraid of their own --

16           MR. VINCENT: Your Honor --

17           MS. JOSHI: -- names appearing in the record.

18           MR. VINCENT: Your Honor, I just want to make  
19 the same objection. We're now, again, getting into  
20 matters that are not supported by evidence or any sworn  
21 declaration that's before the Court. To the extent it's  
22 in the opposition brief alone, our objection would be that  
23 it's not proper to consider it as evidence at this point.

24           THE COURT: Is it in the complaint?

25           MR. VINCENT: It's not in the complaint, Your

1 Honor.

2 THE COURT: The objection is sustained.

3 MS. JOSHI: For these reasons, the school and  
4 the Board of Trustees has brought this case on behalf of  
5 the students and the parents to address the harms both to  
6 the school and to the students. And I will now turn it  
7 over to my colleague, Mr. Murphy, who will address the  
8 special motion to dismiss on the Anti-SLAPP Statute.

9 THE COURT: Thank you.

10 MR. MURPHY: Good afternoon, Your Honor.

11 THE COURT: Good afternoon.

12 MR. MURPHY: So the defendants are assuming here  
13 that we're already operating under a SLAPP regime, but  
14 Your Honor has not ruled on whether that motion applies  
15 and whether the burden has, indeed, shifted to the  
16 plaintiffs to show success on the merits. And they're,  
17 they're jumping sort of way ahead over many threshold  
18 issues that I want to sort of address now and that we've  
19 addressed through our motions, or through our opposition.

20 Is, one is who, I mean one is whether the SLAPP  
21 is going to apply. And as we've stated, we don't, we  
22 think that them seeking private action by these students  
23 to participate, as young as three to participate in this  
24 process, to thwart Planned Parenthood's move, is not a  
25 public concern. But setting that aside, the question is

1 what we have raised is who will it apply to, who will the  
2 SLAPP regime apply to? And we've, we can see that Ms.  
3 Nicdao's SLAPP motion was timely and we subsequently said  
4 that Mr. Cirigano, Cirigano --

5 MR. STARVER: Cirigano.

6 MR. MURPHY: -- Cirigano was also timely. But  
7 we stand on our argument that Mr. Wheeler's motion is not  
8 timely. It was filed as of the 47th day. He's contested  
9 service as December 22nd versus December 19th. The rule,  
10 the service rule says if the complaint summons and initial  
11 order left with a suitable person of age, which was his  
12 father at his residence, which it was as of December 19th,  
13 that's the effective date he was served.

14 Just as a circumstantial evidence of what we  
15 were arguing under or what he was perceiving was that he  
16 filed his answer 20 days after on January 8th. So he  
17 pegged, seemingly, his answer date to that initial date of  
18 December 19th. If that's the case, then his SLAPP motion  
19 is late and should be denied.

20 We've also raised the issue of Mr. Darnel's  
21 SLAPP motion which we said was an exact replica of Mr.  
22 Nicdao's motion, except where it said Nicdao before, now  
23 it said Darnel. So you had these sort of oddball  
24 sentences in Mr. Darnel's motion where he says Darnel  
25 never directed her comments toward elementary-age

1 students, but instead addressed, you know, then he makes  
2 claims of he was not even present on August 27th, November  
3 16th or December 2nd. Well, we have, actually have  
4 alleged that Mr. Darnel was present on November 2nd, or  
5 16th, I'm sorry. So you can't possibly meet your prima  
6 facie case when you're responding to allegations to  
7 another defendant. And I think it falls shorts of Rule 11  
8 and Rule 12 and, certainly, I don't think would be  
9 sufficient to trigger the SLAPP here.

10 Now we have the issue of Ms. Handy. So we have  
11 a fractured procedural posture where we have, assuming  
12 Your Honor rules, for purposes of this motion will assume  
13 that SLAPP applies to Cirigano and Nicdao. We don't think  
14 it applies to Wheeler. We don't think it applies to Mr.  
15 Darnel or to Ms. Handy.

16 So then you, you get into this weird world where  
17 you're successful on the merits on one hand and successful  
18 on the merits in a 12(b)(6) standard on the other. So  
19 those are threshold issues I think the Court has to  
20 address with its initial ruling of SLAPP. And I don't  
21 think, found no case where it says if SLAPP applies to one  
22 defendant, it applies to all, that statute specifically  
23 requires you to invoke it within 45 days.

24 Then there's the issue of what standard applies.

25 THE COURT: So you're saying then that only Mr.

1 Weiler's SLAPP motion was late?

2 MR. MURPHY: No, Mr., well, I think Mr. Darnel's  
3 was filed timely, but inadequate in substance to meet his  
4 prima facie --

5 THE COURT: I understand.

6 MR. MURPHY: -- case. And Ms., Ms. Handy's was  
7 not, not filed. She's not appeared. So then the issue,  
8 the other threshold issue is what, if the SLAPP regime  
9 does apply, what would be the plaintiff's standard to  
10 demonstrate success on the merits? And again here the  
11 cases have been all over the place and I think Your Honor  
12 has to provide some guidance if we are under a SLAPP  
13 regime, of whether the pain standard of minimal merit to  
14 avoid being stricken is a SLAPP, is, one, the defendants  
15 rely on the Cowby (phonetic sp.) decision with, from, from  
16 Judge Motley.

17 But of interest in the Cowby case, the Judge  
18 Motley case, procedurally how that, from the date the  
19 SLAPP was triggered to the date that his SLAPP decision  
20 was rendered was a period of 307 days, almost 10, or 10  
21 months, give or take. And in that case he's quoted in  
22 saying, I think this is a second or third page of the  
23 opinion, that the court held hearings on the nature of the  
24 case, the proper interpretation of the SLAPP statute and  
25 the necessity of an evidentiary hearing. And he held

1 those over roughly 120-day period. I think he held four  
2 or five preliminary hearings up until, then he held formal  
3 evidentiary hearings, four of them, between January 20th  
4 and March 2, 2015, over a, you know, yeah, I think he  
5 helped three days in a row and then a fourth day about a  
6 month later and then finally rendered just the SLAPP  
7 decision, granting the SLAPP decision after 307 days.

8           So I think, as defendants sit here, it's sort of  
9 putting the cart before the horse. If, if the burden is  
10 in this case going to reside on plaintiffs to at least  
11 some of these, I think we need to figure out what the  
12 process is. I think we engaged in that process a little  
13 bit this morning. We had a number of videos responding to  
14 the Judge's order yesterday about pre-marked exhibits, so  
15 we pre-marked these. The videos I, that we think, I don't  
16 think should be a surprise because they're videos of the  
17 defendants, the videos animating the allegations in the  
18 complaint. So if there's a proper time to demonstrate  
19 those, we would certainly love to show those to Your Honor  
20 at some point if it's not today. We're a little  
21 disappointed that it's not today.

22           We also submitted a number of expert  
23 declarations this morning as well that we'll be relying  
24 on. So to the extent that Your Honor is going to find  
25 that SLAPP applies, I think you need to find who it

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1 applies to and sort of what the process is for what we  
2 would then have to establish.

3           And that is, you know, success on the merits,  
4 sort of just touching on it here, you have as far as the  
5 intentional infliction of emotional distress, whether it  
6 was outrageous, I think the videos will demonstrate that  
7 there is even some self-awareness by the protestors that  
8 screaming at 3-year-old kids is probably over the line.  
9 You also have, in our opposition, we cite the National  
10 Catholic Register article by Monsignor Charles Pope who  
11 said targeting kids is, is the wrong thing to do and I've  
12 asked my, my parishioners not to do it.

13           Conspiracy, Ms. Joshi touched on that and what  
14 we have to allege. We've certainly alleged a plausible  
15 conspiracy. And if you see the videos, you, you see  
16 coordination among, real time coordination among where to  
17 go, how to position your sign, what's going on. And then  
18 as far as First Amendment, this isn't really, not all  
19 that, all that spectacular. The case they cite, the  
20 Center for Bioethical Reform case cites, specifically says  
21 the Government may, however, impose reasonable time, place  
22 and manner regulations on speech and public for -- so this  
23 is pretty garden variety First Amendment stuff here.

24           This is on, we've cited the St. John and the  
25 Church in the Wilderness case, which is a case that

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1 defendants' counsel was, was on, a case in Colorado where  
2 a similar injunction was entered, actually a more  
3 stringent injunction than what we're asking for. We  
4 don't, we don't ask them to completely take away their  
5 signs. We don't say don't use your pictures. We say  
6 shrink them, make it safe and keep a reasonable distance.  
7 You can still get your audience and be safe for the kids.  
8 That's all we're asking for, so this complete gagging  
9 argument is, is just sort of a false, false premise to  
10 start from.

11           And then it's, the last point I would say, that  
12 what we're asking for is clearly content neutral. And you  
13 need to know, look no further than Justice Roberts' recent  
14 statement in Snyder v. Phelps, and the issue is whether we  
15 would be here if the, if the message was different. And  
16 if, yes, if there were people blocking the streets in  
17 front of the school and no matter what their message was,  
18 there's a Burger King across the street. Somebody was  
19 protesting their processes for the way they get their meat  
20 or whatever. They were standing out there with their  
21 signs. We would be right here. If somebody was standing  
22 there with a pro Planned Parenthood and doing the same  
23 things and chasing after children and yelling at them, we  
24 would be right back here.

25           So to characterize this sort of nakedly as a

1 content-based restriction is, is just not, not going to  
2 fly here. So that's all we have, Your Honor. Thank you.

3 THE COURT: Thank you.

4 MR. STARVER: Your Honor, if I may, I wanted to  
5 take a few minutes to address some of Ms. Joshi's  
6 arguments on standing. I'll try to be as brief as I can.

7 I think overall, I think what was striking about  
8 Ms. Joshi's argument in her presentation was I think that  
9 plaintiffs had essentially abandoned any contention what  
10 they have, associational standing. The focus of her  
11 remarks were on original standing, a direct standing if  
12 you will, which is kind of interesting because that's not  
13 really how they pled the complaint.

14 You know, Ms. Joshi talked about reputational  
15 harm, request to transfer to other schools, dropping  
16 enrollment and as, as Mr. Gannam noted in some of his  
17 objections, there are no allegations in the complaint  
18 whatsoever to support those facts, no allegations, and  
19 certainly no evidence attached to the opposition to the  
20 motion.

21 Now we heard much talk about conspiracy, Your  
22 Honor. The only allegation of conspiracy that you'll find  
23 in the complaint is in Paragraph 86, which reads:

24 "Commencing on or before August 27,  
25 2015, and for the purpose of creating

1 a nuisance, defendants individually  
2 and collectively, knowingly entered  
3 into a conspiracy to create a private  
4 nuisance as outlined herein."

5 That is outlined herein. It's kind of  
6 interesting language, Your Honor, because what it  
7 basically means is take everything we've alleged in the  
8 complaint about what each defendant did on their own and,  
9 by the way, there was a conspiracy. They all conspired to  
10 do it.

11 Your Honor, under the pleading standards in the  
12 District of Columbia, that's not sufficient. That is not  
13 a plausible allegation of conspiracy. There is no other  
14 allegation of conspiracy. That is entirely missing from  
15 the complaint.

16 Now another point about defendant Nicdao that I  
17 think bears emphasis here, she was positioned and is  
18 alleged in the complaint to have been positioned outside  
19 the middle school. She wasn't anywhere near 3-year-olds.  
20 People who go to middle school are generally 12 to 15  
21 years old. Those are the people that were in the vicinity  
22 of where she was on November 23, 2015.

23 Now Ms. Joshi also talked to you about the  
24 injury that the school has suffered. She talked about  
25 injury in fact. And, again, as we see, there are a lot of

1 these facts about these injuries that are mentioned in the  
2 opposition brief, but are not alleged in the complaint.

3 Now what --

4 THE COURT: Isn't it true that in Paragraph 72,  
5 76, many of the arguments made by plaintiffs' counsel were  
6 not only in the opposition, but also in the complaint,  
7 fear of protestors threatening and scaring students with  
8 shouting and graphic posters could result in parents  
9 withdrawing their students from school and even Paragraph  
10 77. So it's not true that this is the first time in the  
11 opposition that the alleged injuries to the school have  
12 been articulated by the plaintiff and weren't included in  
13 the complaint, because they were.

14 MR. STARVER: Well, Your Honor, I think there's  
15 a distinction that we, we should be mindful of. Note  
16 Paragraph 76 talks about the fear of protestors could  
17 result in parent, could result in parents withdrawing  
18 their students. Now we see in the opposition that they're  
19 saying that it actually has resulted in withdrawals and a  
20 drop in enrollment. Of course, there hasn't been any  
21 allegation that this, that's plausible on its face that  
22 shows that any purported drop in enrollment or request to  
23 transfer out of the school was caused specifically by what  
24 defendant Ruby Nicdao did on the public ways. There could  
25 have been other reasons. They, they need to allege facts

1 that plausibly foreclose those other causal connections.

2 But it's a very different thing to in the  
3 complaint say it could result in this and then in the  
4 opposition to say, oh, now that it has resulted.

5 THE COURT: Well, look at Paragraph 72, because  
6 there's some very concrete allegations with respect to  
7 alleged injuries to the school and the children.

8 MR. STARVER: Well, let's see, Your Honor, okay.  
9 If we look at Paragraph 72, I can read what it says there.  
10 Let's assume for the moment that, you know, that is a  
11 sufficient allegation. You know, there hasn't been any  
12 evidence of that in the opposition to the motion. So  
13 you've got, you've got to reach that threshold of  
14 likelihood of success on the merits. But even if you get  
15 beyond that, where is the legal authority that supports  
16 the notion that these are injuries of legally protected  
17 interests. Where is there a legal right not to have the  
18 school day, the ability to plan for it somewhat  
19 compromised? Extraordinary efforts to shield students,  
20 well, what efforts are those? But, you know, these, these  
21 are not legally protected interests. These are the  
22 results of perhaps the, the inconvenience or the objection  
23 or the, perhaps the effect of the speech itself, but there  
24 is, there's no legal authority that says that there., you  
25 know, there's some legally protected interest in, in being

1 able to avoid these, these inconveniences at the expense  
2 of the First Amendment. There just isn't any authority  
3 for that.

4           And, again, as I mentioned, there has to be a  
5 causal connection here. These have to be fairly traceable  
6 to defendant Nicdao. They can't just lump you into all  
7 the other defendants when there's no real plausible  
8 allegation of a conspiracy. You have to judge each  
9 defendant based on the merits of what he or she has  
10 alleged to have done.

11           Now the thing about the fear, again, there,  
12 there, there may be some things in here in Paragraph 72  
13 and 73, students feeling upset, what have you, but there's  
14 nothing in the complaint that says parents are afraid to  
15 come forward to litigate the rights of the students. That  
16 is not in the complaint and that's what, what is one of  
17 the key tests and standing, that there has to be some  
18 impediment, some real impediment to the ability of the  
19 parents to litigate or the students to litigate their  
20 rights, their interests and what happened to them.

21           So I think for all these additional reasons, we  
22 would say that standing is lacking and the plaintiffs have  
23 failed to make a requisite showing.

24           THE COURT: Thank you.

25           MR. GANNAM: Your Honor, I'd like to begin

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1 rebuttal for defendant, Larry Cirigano, by once again  
2 referring to the plain language of the Anti-SLAPP Act.  
3 This is specifically in 16-5502 of the D.C. Code. This  
4 has to do with what kind of hearing and the process are  
5 involved. It says in Part B that if a party filing a  
6 special motion to dismiss under this section makes a prima  
7 facie showing that the claim at issue arises from an act  
8 in furtherance of the right of advocacy on issues of  
9 public interest, which I will submit has been  
10 accomplished, then the motion shall be granted unless the  
11 responding party demonstrates that the claim is likely to  
12 succeed on the merits in which case the motion shall be  
13 denied.

14           This is the hearing on the motion, Your Honor,  
15 and if we made the prima facie case, the motion is due to  
16 be granted unless the responding party demonstrates that  
17 they are likely to succeed on the merits. And as we've  
18 already presented to the Court, that has to be  
19 accomplished with evidence. But that's not all the  
20 statute says. In Part D, this gets even more specific  
21 about how this process should occur.

22           It says that the court shall hold an expedited  
23 hearing on the special motion to dismiss, that's an  
24 expedited hearing, and issue a ruling as soon as  
25 practicable after the hearing. In other words, Your

1 Honor, the statute contemplates a hearing on the motion.  
2 This is the hearing on the motion and, therefore, the, the  
3 plaintiffs must be prepared to present their evidence in a  
4 proper way in order to overcome the motion.

5           The statute simply doesn't contemplate  
6 regardless of how Judge Motley procedurally may have  
7 handled his case. Those matters are not before us. The  
8 only thing from that order there before us are the legal  
9 conclusions that were reached in that motion. We can't  
10 presume to know why Judge Motley handled the process in  
11 one particular way or another. But the statute by its  
12 plain language contemplates one hearing on the motion and  
13 we submit that this is that hearing and it's the  
14 plaintiff's burden to be ready with their evidence for the  
15 hearing.

16           Now, Your Honor, I want to move into the, the  
17 issue of, of conspiracy, particularly as it relates to the  
18 Anti-SLAPP procedure versus a regular 12(b)(6) motion to  
19 dismiss procedure. Under the Anti-SLAPP Statute, it  
20 contemplates the plaintiffs must show that they are likely  
21 to succeed on the merits and that encompasses every aspect  
22 of their claim. And because their, their claim requires a  
23 conspiracy in order to reach each defendant, that means  
24 they have to show they're likely to succeed on the merits  
25 of that aspect of their claim as well under the SLAPP Act.

1           That means that they can't simply show that  
2 there was an agreement to do something. As the plaintiffs  
3 cited in their own briefing on this matter, the  
4 quintessential element of an actionable conspiracy is an  
5 agreement to do something wrong. An agreement to do  
6 something is not enough. And so it may be plausible, as  
7 the plaintiffs argue, that certain defendants may be  
8 agreed to be at the Two Rivers facility on the same day,  
9 maybe even at the same time, but that offers no evidence  
10 whatsoever of an agreement to do something wrongful. And  
11 in this case the declarations that have been filed,  
12 particularly defendant Larry Cirigano's declaration, shows  
13 that he made no agreement with anyone as to what he did  
14 when he got there. He made no agreement with anyone to do  
15 something wrongful. And when you base, look at his  
16 declaration, coupled with the only allegation in the  
17 complaint about any activity by defendant Cirigano, it was  
18 one allegation that he stood near the middle school  
19 entrance with a sign. Well, that's not wrongful on its  
20 face.

21           And then there's no evidence adduced by the  
22 plaintiffs that he agreed to do something wrongful or that  
23 he agreed to help another defendant do something wrongful,  
24 in other words, that conspiracy allegation utterly fails  
25 as to defendant Cirigano and the plaintiffs' burden is to

1 prove an actionable conspiracy with respect to each  
2 defendant. Proving that one defendant had an intent to do  
3 something wrongful does not in and of itself prove that  
4 another defendant agreed to do something wrongful, even if  
5 they happen to be there at the same time and at the same  
6 place.

7           Finally, Your Honor, I want to point out this  
8 critical issue here and that is this idea that the school  
9 has alleged in jury that is legally recognizable by having  
10 to adjust its school day, adjust its personnel, even hire  
11 additional people or, or just the hours that the people  
12 have to get to work. If the conduct occurring outside the  
13 school is protected conduct under the First Amendment,  
14 then any response or adjustment that the school has to  
15 make in response to that protected conduct is not a matter  
16 of injury. It's simply a matter of location.

17           We, we've heard that this school is situated in  
18 a unique place where the school has to rely on the public  
19 ways and public sidewalks to gain entry and exit. That's  
20 simply a function of where the school is located. So if  
21 the conduct is going on outside that school is protected  
22 conduct, the school cannot be heard to complain that they  
23 have to adjust their day or adjust their personnel in  
24 response to that Protected conduct is protected conduct  
25 and it's, can't be called an injury when the school simply

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1 has to deal with protected conduct that's going on outside  
2 the school.

3 For all of these reasons, Your Honor, and all  
4 those presented by, by other counsel, we submit that the  
5 motion, the Anti-SLAPP motion of defendant Cirigano should  
6 be granted the plaintiffs' claim dismissed with prejudice  
7 as to defendant Larry Cirigano. And, further, that the  
8 motion to dismiss under 12(b)(6) specifically on  
9 jurisdiction on the ground of standing likewise should be  
10 granted as a matter of law because the school cannot  
11 assert intentional infliction of emotional distress of  
12 claims on behalf of its students or the students' parents,  
13 and as it's, stated any legally recognizable claim for  
14 intentional infliction of emotional distress on its own  
15 behalf. Thank you, Your Honor.

16 THE COURT: Thank you.

17 MR. CRAMPTON: Your Honor, briefly, I would like  
18 to also weigh in and address the claims on behalf of Ms.  
19 Nicdao with regard to intentional infliction in  
20 particular. But in that very context, I would note just  
21 as a preliminary matter, concurring with counsel for Mr.  
22 Cirigano, that the conspiracy allegation here is  
23 preposterous. To say, well, all the defendants happen to  
24 be in the same location on the public ways, engaged in  
25 similar conduct, namely First Amendment protected speech,

1 automatically somehow rises to the level of a conspiracy.  
2 If there were any agreement, and I'm not sure there's any  
3 evidence that there was, an agreement to engage in  
4 Constitutionally-protected conduct cannot be transmuted  
5 into a conspiracy because plaintiffs attribute some sort  
6 of secret ill will and fail to adduce a shred of evidence  
7 to support it.

8           Secondly, Mr. Murphy, on behalf of the  
9 plaintiffs, alluded to so-called evidence in his response,  
10 citing to the statement of Monsignor Pope. Well, that  
11 looks, again, like the classic case of hearsay to which we  
12 would strenuously object and move the Court to disregard.  
13 Because he includes it in the response brief doesn't  
14 somehow make it admissible.

15           Third, and importantly here, I think the  
16 plaintiffs want to go, this is the lone case supporting  
17 their extraordinary theory of liability here. The St.  
18 John's Church in the Wilderness case. Your Honor, that  
19 was a case by a Colorado court of appeals from 2012 which  
20 has never been cited by any reported decision for the  
21 proposition which plaintiffs want to persuade the court to  
22 follow here. Moreover, reference to a time, place and  
23 manner restriction, we would note, is basically misplaced.  
24 We're before the Court. They're seeking injunctive  
25 relief. Time, place and manner regulations are for the

1 legislature, not the court.

2           Moreover, the notion that their requested relief  
3 is somehow reasonable here because, for instance, they  
4 want defendants to remain a, quote, reasonable distance,  
5 from the children, A, is unconstitutionally vague; B, what  
6 they really seek here, if you look at the full panoply of  
7 requested relief in their litany of items to be included  
8 in the injunction is to render the defendants absolutely  
9 unable to reach their intended audience. They are  
10 prohibited under defendants' requested relief from raising  
11 their voices and, similarly, they're prohibited from being  
12 in a, within reasonable distance where they can engage in  
13 conversation or express themselves in a normal tone of  
14 voice. So, again, what they're really seeking here is an  
15 absolute censorship and silencing of the message that Ms.  
16 Nicdao in particular wants to promulgate.

17           Finally, with regard to the notion of content-  
18 based versus content neutral, plaintiffs urge the Court  
19 that really the request they seek here is a content  
20 neutral set of conditions. In fact, as the U.S. Supreme  
21 Court ruled just last year in Reed v. The Town of Gilbert,  
22 it's found at 135 S. Ct. 2000, 2218, a 2015 case, quote,  
23 "Speech regulation targeted at specific subject matter is  
24 content based regulation." What do they target here?  
25 They seek in Paragraph 3 of their prayer for relief to ban

1 focused picketing, quote, with the purpose of directly  
2 engaging the students. That term is repeated in Paragraph  
3 4. In Paragraph 7, they seek to prohibit posters, quote,  
4 depicting gruesome images. That's a content-based review,  
5 Your Honor. They're not asking you, as he stood up here  
6 and said, to ban all posters, only the particular posters  
7 that plaintiffs have deemed inappropriate.

8           Again, in Paragraph 8 of their prayer for  
9 relief, they want to ban posters utilizing such terms as  
10 kill or murder and so forth. You cannot ban such posters  
11 without engaging in a content based analysis. So, Your  
12 Honor, it is a classic content based restriction that they  
13 seek.

14           For all of the reasons in our briefs, and as  
15 argued here, we urge this Court, A, to dismiss this case  
16 on basis of lack of, of subject matter jurisdiction; and,  
17 B, as well to dismiss certainly as to defendant Nicdao on  
18 the basis of failure to show intentional infliction of  
19 emotional distress. Thank you, Your Honor.

20           THE COURT: Thank you.

21           MR. GARZA: Good afternoon, Your Honor. John  
22 Garza on behalf of Mr. Darnel. Your Honor, the plaintiff  
23 is here trying to make their case viable by trotting out  
24 the already born children at Two Rivers School. They seem  
25 to think that by trotting these already born children that

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1 this should cause you to, to rule in a way that would go  
2 against all of the precedent that's been cited in the  
3 briefs. And, Your Honor, that just doesn't, that can't  
4 fly because, Your Honor, it would be too easy for anyone  
5 who wants to shut down free speech to just trot out some  
6 children. I mean if Two Rivers can do that, anybody else  
7 can do that.

8           So they're trying to create a new exceptional to  
9 the, all of the long, hundreds of years of free speech law  
10 in this country that, you know, if I bring a child along  
11 that someone is offended by what's being said, that now  
12 there's an exception to the free speech statutes and free  
13 speech laws that are in this country. So that just is a,  
14 it's a, it's an ingenious argument and it makes you think  
15 that, he makes me wonder why Planned Parenthood might not  
16 want to move in at all, next to all schools from now on in  
17 the future.

18           Now the school has decided not to stay neutral  
19 on the abortion issue, Your Honor. They've gotten  
20 involved here in this Court and then they complain that  
21 parents are leaving the school. Well, you know, we don't  
22 know today, but it's certainly a good thing that we could  
23 surmise that a lot of the parents that are leaving are  
24 pro-life and that's why they're leaving.

25           MR. MURPHY: Objection. There's no basis for

1 that statement.

2 MR. GARZA: We don't know why they're leaving.  
3 They just said people are leaving. So I think you can  
4 make a summation, just like anybody else, and maybe the  
5 reason they're leaving is they don't like the non-  
6 neutrality of this school getting involved in this  
7 political issue. Thank you, Your Honor.

8 THE COURT: Thank you.

9 MR. WEILER: Thank you, Your Honor. Robert  
10 Weiler on my own behalf. First, I'd like to address the  
11 timeliness issue brought by Mr. Murphy. The complaint was  
12 mailed to my house and was received on December 19th by my  
13 father. I was not in the state of Maryland. I was  
14 actually somewhere between Minnesota and Oklahoma. At the  
15 time I was running my own small shipping business and I  
16 just dropped off a motorcycle in Minnesota, on my way down  
17 to Oklahoma to drop off a vanity.

18 Saying that the clock starts before I've even  
19 received the papers doesn't comport with basic fairness.

20 THE COURT: But that's not what the law states,  
21 sir.

22 MR. WEILER: But the civil rules --

23 THE COURT: Once you are served --

24 MR. WEILER: -- do state that all motions should  
25 be construed in the way to do substantial justice. It

1 doesn't do substantial justice to have the clock start  
2 before I even had an opportunity to --

3 THE COURT: That's not what the --

4 MR. WEILER: -- see the paperwork.

5 THE COURT: -- law is in the District of  
6 Columbia, sir.

7 MR. WEILER: Okay. I know the Court does have  
8 the discretion to accept the motion, to comport with basic  
9 fairness and to render substantial justice to allow me a  
10 chance to argue my case as I did file it within 45 days of  
11 actually receiving the paper. In no way does my filing an  
12 answer within 20 days of the, of the, of the arrival of  
13 the papers denote that I acknowledge that it was served at  
14 that time. I was simply filing an answer. It doesn't say  
15 I have to wait until the last day.

16 Secondly, I'd like to address Ms. Joshi's  
17 allegation that all the defendants engaged in the  
18 outrageous conduct complained of, but the complaint  
19 doesn't support that. The complaint alleges that I held a  
20 sign on a public sidewalk. It doesn't allege that I  
21 yelled at anybody, not, not kids, not adults, not anybody.  
22 It does not allege that I followed anybody, much less  
23 kids. It doesn't allege that I held a gruesome image.

24 There's a lot of allegations that have been made  
25 against other defendants that they wish to impute on all

1 the defendants and defendants that I have never met, that  
2 somehow I've been involved with a conspiracy with, on or  
3 before August. For that reason, Your Honor, the motion  
4 should be granted. I also adopt the arguments of the  
5 other attorneys here. Thank you.

6 THE COURT: Thank you. Okay. The Court is  
7 ready to make its ruling.

8 See, we have Two Rivers Public Charter School,  
9 which opened in 2006. It's an elementary and a middle  
10 school for students in pre-K through 8th grade, three  
11 years old to about 14 years old, and it provides services  
12 and that service is to provide education to students who  
13 are able to enroll in their charter school.

14 Now the school is located certainly very close  
15 to the Planned Parenthood building that is now being  
16 constructed or renovated. And the plaintiffs are seeking  
17 injunctive relief and want the defendants pattern and  
18 protest, I quote, defendants' pattern and protest to be  
19 moved to a reasonable and safe distance from the location  
20 of the Two Rivers buildings. That's on page 23 and 26 of  
21 the complaint.

22 They've also alleged Count 1, intentional  
23 infliction of emotional distress; Count 2, private  
24 nuisance, conspiracy to create a private nuisance. There  
25 were five named defendants, a defendant Weiler, defendant

1 Darnel, defendant Handy, defendant McDowell, defendant  
2 Cirigano and then there are John Does and Jane Does.

3           Also on the face of the complaint we have  
4 several pictures of protesters. Some of those individuals  
5 are named and others are John Doe and Jane Does. So going  
6 back to the location of the two buildings, one building is  
7 at 1227 4th Street, N.E., and the, that's the elementary  
8 school; and the middle school is at 1234 4th Street, N.E.  
9 The address for the Planned Parenthood of Metropolitan  
10 D.C. is at 1225 4th Street, N.E., but it's not expected to  
11 open until May of 2016.

12           As I stated earlier, the threshold issue is  
13 standing and I quote, "Standing is a threshold  
14 jurisdictional question which the Court must address prior  
15 to an independent of a merits of a party's claims."  
16 Grayson at 229 and that's Grayson, 15 A.3d 219 at 229,  
17 D.C. Court of Appeals 2011 case.

18           Now the Supreme Court has informed in Smith v.  
19 Jefferson City Board of School Commissioners, quoting,  
20 sorry, I strike that. Actually that's the 6th Circuit.  
21 It's at 641 F.3d 197, page 206, 2011 opinion. And I  
22 quote:

23                           "To meet the minimum Constitutional  
24 standards for individual standing  
25 under Article 3, a plaintiff must

1 show, one, it has suffered an injury,  
2 in fact, that is, A, concrete and  
3 particularized and, B, actual or  
4 imminent, not conjectural or  
5 hypothetical; two, the injury is  
6 fairly traceable to the challenged  
7 action of the defendant; three, it is  
8 likely as opposed to merely  
9 speculative that the injury will be  
10 redressed by a favorable decision."

11 UMC Development, LLC at 42 through 43. That's  
12 at 120 A.3d 37, a 2015 D.C. Court of Appeals case.

13 Now in Tilden v., Tilden Park v. D.C. at 806  
14 A.2d, 1201, pages 1206 through 7, D.C. Court of Appeals  
15 2002 court. Tilden stated that although D.C. courts are  
16 not Article 3 constitutional, they're not Article 3  
17 courts, the constitutional requirement of a case of  
18 controversy is applied to every case. D.C. looks to  
19 Federal jurisprudence and the sine qua non of  
20 constitutional standing is an actual or imminently  
21 threatened injury attributable to the defendant and  
22 capable of redress by the court. A concrete, demonstrable  
23 injury to the organization's activities is enough for a  
24 standing. That's at page 1207.

25 In Grayson v. AT&T, that I cited to earlier at

1 page 224, the actual or threatened injury required by the  
2 Article 3 may exist solely by virtue of statutes creating  
3 legal rights, the evasion of which creates standing.  
4 Here, the enabling statute for public charter schools in  
5 Sections 38-1802.04(b) (8) provides that a public charter  
6 school has the power to sue and be sued in the public  
7 charter school's name. The statute goes on to state in  
8 D.C. Code 38-1802.04(c) (4) (A) that, quote, "A public  
9 charter school shall maintain the health and safety of  
10 all students attending such school."

11 In D.C. v. Doe, which is also cited to by  
12 plaintiff, 524 A.2d 30 at page 32, there you had a case  
13 where a student was raped, the court stated that, and I  
14 quote, While the District of Columbia is not an insurer of  
15 the complete safety of school children, nor is it strictly  
16 liable for any injuries which may occur to them, it has an  
17 obligation to exercise reasonable and ordinary care for  
18 the protection of pupils to whom it provides an education.  
19 See also Ballard v. Polly, 387 F. Supp., United States  
20 District Court of the District of Columbia (1975) case.  
21 The school has a duty to protect students and breached it  
22 when the playground fence was not repaired.

23 The Court is ruling the following. The Court  
24 has subject matter jurisdiction over this case because Two  
25 Rivers Public Charter School has standing, but Two Rivers'

1 Board of Trustees does not and the motion to dismiss the  
2 Board is granted, but the motion is denied on the grounds  
3 of standing as to the school because at this stage of the  
4 litigation, the Court is required to accept the  
5 allegations in the complaint and construe them in a light  
6 most favorable to plaintiff, the non-moving party, and the  
7 Court finds that plaintiffs have shown in the complaint  
8 that it suffered injuries and is likely to suffer injuries  
9 in the future based on the specific allegations against  
10 each of the defendants.

11 Those allegations included on, and I won't  
12 address Ms. Handy who is not here, but I will address it  
13 because I don't know if you'll locate her later or not,  
14 but on August 22, 2015, defendant Handy held signs and  
15 shouted at two students trying to enter school and the  
16 sign said, and I quote, "Ten week abortion sign, it showed  
17 body parts," on page 15 on the complaint. On 8/27/15, on  
18 the sidewalk in front of the middle school, defendant  
19 Handy had a large poster, a 2-feet by 4-feet depicting  
20 dismembered fetuses and pictures and yells, and she  
21 yelled, "Tell your parents you don't want to go to school  
22 next to a baby killing center." And those yellings were  
23 directed to 3-year-olds.

24 Then on November 16, 2015, at approximately 7:30  
25 a.m., defendants Darnel, Weiler, Handy and John Doe were

1 on the sidewalk outside of the school, in front of the  
2 elementary school next to the drop-off lane on page 14 and  
3 the sign and banner was 8-feet by 3-feet and it read,  
4 "They kill babies. Tell your parents to stop them."  
5 Drop-off lane was in front of the school on 4th Street  
6 entrance. They shouted at the children, followed them  
7 from sidewalk onto Two Rivers' property, interfered with  
8 students and parents and guardians entering the school.  
9 Defendant Darnel handed brochures and said:

10 "Tell your parents they're going to  
11 kill kids next door. The school will  
12 have a lot of problems if you ignore  
13 the problem. It's a murder facility  
14 next door. Ask your parents why they  
15 kill kids next door and how they can  
16 stop it. Back next week until you  
17 rise up against them, against this."

18 Now defendant John Doe on page 16 of the  
19 complaint shouted, "Tell your parents they're going to  
20 kill kids next door. The school will have a lot of  
21 problems if you," I'm sorry, that was Darnel. John Doe,

22 "Kids, kids, they're going to kill  
23 babies next door. Parents don't  
24 protect your kids from the truth. How  
25 can you tell this be built next to

1                   your school? They're going to kill  
2                   kids and your principals are deceiving  
3                   you. The principal has no conscience,  
4                   she doesn't."

5                   Next on 11/23, I note, I did state that that was  
6 a defendant John Doe. He had on a red shirt when he was  
7 shouting at the students and parents the statements I just  
8 made and these are all allegations in the complaint.

9                   And then on November 23, 2015, defendant Darnel,  
10 Handy, McDowell and Cirigano were present and defendant  
11 Cirigano held a sign near the entrance to the school, a 4  
12 by 5, not for sale, and that's on page 17. Aborted fetus  
13 and various body parts were depicted. And there is, those  
14 photographs are on page 17 in the complaint, with  
15 defendant Cirigano standing in the picture.

16                   Defendant Darnel held the sign, "They kill  
17 babies. Tell your parents to stop them," and shouted at  
18 students. That's on page 18. He stated,

19                   "They are going to murder kids right  
20 next door if your parents don't so  
21 something about it. It is worse to  
22 have them here trying to sell sex to  
23 your kids every day."

24                   That, again, is on page 18 of the complaint.

25                   Now defendant Nicdao followed students into the

1 alley who were directed to a different entrance and  
2 approached cars as they were dropped off and yelled at  
3 them as she handed out pamphlets and shouted to two middle  
4 school students, "Tell the parents to stop this blood bath  
5 that's coming across the street. The little babies need  
6 your voice." But her counsel never mentioned that conduct  
7 on the part of her doing, arguments. That's on page 19 of  
8 the complaint.

9 On page 20 of the complaint, defendant Darnel  
10 and John Doe and Jane Doe handed out leaflets. Defendant  
11 Darnel followed a parent and 5-year-old student to NoMa  
12 Gallaudet U Street Metro on or around 4:30. He jogged  
13 after a group of middle school students who, according to  
14 the complaint, had tried to ignore him and he forced  
15 copies of a flyer into their hands.

16 Furthermore, the school has business and  
17 property for which they claim protection and are  
18 threatened by defendants' conduct alleged in the  
19 complaint. Oregon v. Society of Sisters, 268 U.S. 1510 at  
20 page 535 (1925) case, requiring all children to attend  
21 public schools is illegal. Prevention of impending injury  
22 by unlawful action is a well-recognized function of courts  
23 of equity. Here emails were threatening to continue the  
24 demonstration and disruptions and also the court cited to  
25 one of the protestors saying that they would be coming

1 back.

2 Now moving on to the Anti-SLAPP Statute, special  
3 motion to dismiss, I'm going to assume that, and by our  
4 calculation, Mr. Weiler was one day late, but we'll assume  
5 he was timely in his filing of his motion. But, and I  
6 quote:

7 "To establish the grounds for either  
8 of the two procedural protections of  
9 the Anti-SLAPP Statute avoids  
10 dismissal of a suit or quashing of a  
11 subpoena. The moving party must show  
12 that his speech is of the sort that  
13 the statute is designed to protect,  
14 specifically the moving party must  
15 make a prima facie showing that the  
16 underlying claim arises from an act  
17 and furtherance of the right of  
18 advocacy on issues of public  
19 interest." D.C. Code Section 16-  
20 5502(b). See also D.C. Code Section  
21 5503(b).

22 Upon a showing, the motion will be granted  
23 unless the opposing party demonstrates a likelihood of  
24 success on the merits of his or her underlying claim.  
25 John Doe v. Susan Burke at 91 A.3d 1031 at 1036, the D.C.

1 Court of Appeals, 2014 case. Clearly, the abortion rights  
2 issue is an issue of great importance and defendants are  
3 advocating their position. However, the underlying claim  
4 of the plaintiff is not the advocacy of abortion rights.  
5 Furthermore, the school is not taking any side on a  
6 political or public policy debate. Rather, the school is  
7 seeking injunctive relief or reasonable restrictions on  
8 the tactics utilized by defendants during their protest  
9 near and on school property. And, certainly, the protest  
10 is a matter of not only public interest, but it's a  
11 Constitutional right in terms of speech, but that doesn't  
12 mean that all speech would be permitted in all forums.

13           Now they argue that the lawsuit's objective is  
14 not used as a weapon, this is the plaintiffs, it's not  
15 used as a weapon to chill or silence defendant's speech.  
16 There is no record of evidence that the school has taken  
17 any position on abortion rights issues. Although  
18 defendants made a prima facie showing that the plaintiffs'  
19 claim arises from their anti-abortion protests, which is  
20 an issue of public interest, plaintiff has demonstrated at  
21 this time a likelihood of success on the merits of its  
22 claim that the defendants' protests should be reasonably  
23 restricted given its statutory duty and responsibility to  
24 protect the children who attend this school, as well as  
25 protect school property.

1           The school has a compelling interest in having  
2 undisputed school, I'm sorry, uninterrupted school  
3 sessions conducive to an atmosphere for learning. The  
4 school does not desire to have normal school activities  
5 disrupted or students harassed as alleged in the complaint  
6 when defendants allegedly were shouting at the children,  
7 displaying disturbing fetus and body parts right near the  
8 entrances of one's school door and, lastly, telling the  
9 children to recruit their parents to protect the building  
10 of a Planned Parenthood facility.

11           The Court's ruling is, therefore, the case is  
12 not dismissed on the grounds that it violates the Anti-  
13 SLAPP Act. The statute is not applicable because the  
14 plaintiffs have demonstrated a likelihood of success on  
15 the merits whether you want to look at it in terms of that  
16 burden of proof in a preliminary injunction or permanent  
17 injunction.

18           Rule 12(b) motion with respect to the  
19 intentional infliction of emotional distress claim. To  
20 establish a prima facie case of intentional infliction of  
21 emotional distress, plaintiff just show, one, extreme and  
22 outrageous conduct on the part of the defendant, with  
23 either intentionally or recklessly caused her severe  
24 emotion distress. Larijani v. Georgetown University, 791  
25 A.2d 41 at page 44, D.C. Court of Appeals 2002 case.

1           Plaintiff argues a third-party claim for  
2 intentional affliction of emotional distress. However,  
3 the Supreme Court outlined three criteria which must be  
4 satisfied before a litigant can bring an action on behalf  
5 of a third party: One, the litigant must have suffered an  
6 injury, in fact, thus giving him or her a sufficiently  
7 concrete interest in the outcome of the issue in dispute;  
8 two, the litigant must have a close relationship to the  
9 third party; and, three, the litigant must demonstrate  
10 some hindrance to the third party's ability to protect his  
11 or her interest.

12           Now, thus, third party standing focuses not on  
13 the nature of the claim asserted, but rather on who is  
14 asserting the claim and why the holder of the asserted  
15 right is not before the court. Now here the plaintiff has  
16 satisfied third party standing on behalf of his students  
17 and parents of this school who plaintiff argues could not  
18 financially afford to litigate the case that they were  
19 fearful and that was not in the, on the face of the  
20 complaint, but they made that in their argument.

21           Therefore, a complaint should not be dismissed  
22 unless it appears beyond doubt that the plaintiff can  
23 prove no set of facts in support of its claim which would  
24 enable him to relief. In addition, the Court must  
25 construe the complaint again in the light most favorable

1 to the plaintiff and must accept as true all reasonable  
2 factual inferences drawn from well-pled factual  
3 allegations. Also, with respect to this count, the  
4 discovery period would be the opportunity to explore  
5 further any additional facts to support the claim.

6 Private nuisance. And I quote:

7 "A private nuisance is a substantial  
8 and unreasonable interference with  
9 private use and enjoyment of one's  
10 land, for example, by interfering with  
11 the physical condition of the land,  
12 disturbing the comfort of its  
13 occupants -- let me go back to the  
14 intentional infliction of emotional  
15 distress so that it's clear. The  
16 Court denies the motion to dismiss  
17 that count, which is Count 1."

18 Now moving on to Count 2, again, private  
19 nuisance. I quote:

20 "A private nuisance is a substantial  
21 and unreasonable interference with  
22 private use and enjoyment of one's  
23 land. For example, by interfering  
24 with the physical condition of the  
25 land, disturbing the comfort of its'

1                   occupants or threatening future injury  
2                   or disturbance."

3                   And I'm citing from Tucci v. District of  
4 Columbia, 956 A.2d 684 at 696, a 2008 case. Here the  
5 underlying tortious conduct would be the allegation and  
6 claim for intentional affliction of emotional distress.  
7 Assuming arguendo there is no underlying tort, a private  
8 nuisance claim may stand alone and not require separate  
9 tort. Indeed, private nuisance claims have been  
10 recognized in the context of abortion protest cases. St.  
11 John's Church in the Wilderness v. Scott, 194 P.3d 475,  
12 Colorado Court of Appeals 2008 case.

13                   It was affirming the court's grant of injunctive  
14 relief prohibiting defendants from entering the church  
15 property and obstructing access to the church and the  
16 trial court was affirmed on its finding that defendants  
17 created a private nuisance and that they conspired to  
18 create a private nuisance at the church. Defendant Powell  
19 interfered with worship at the church and his conduct was  
20 intentional, offensive and annoying, and they caused  
21 people attending the service to be visibly upset and  
22 Powell's voice was loud. Scott's voice was unusually and  
23 substantially interfered with services. Likewise, in  
24 taking the allegations and the complaint in this case, as  
25 true, defendants' conduct was similar to the defendants in

1 the St. John's Church case.

2           And the claim that is, that it was a substantial  
3 and unreasonable interference with private use of the  
4 school's land and the school, there are allegations that  
5 the, some of the defendants did come upon the actual  
6 school property. It also interfered with the children's  
7 and parent's enjoyment of the school and that the  
8 defendants' conduct was offense and annoying according to  
9 the allegations in the complaint. Accordingly, the motion  
10 to dismiss Count 2, private nuisance, is denied.

11           So our next step is to put the case on a track  
12 so that you can conduct discovery and we would have a  
13 trial on the merits for the injunctive relief that the  
14 plaintiff is seeking, and the Court agrees that the  
15 plaintiff didn't ask that all conduct be stopped, but, and  
16 I understand defendants disagree with any restriction at  
17 all on the speech, but the complaint did focus  
18 specifically on what it considered, the plaintiff  
19 considered to be restrictions on speech and not in  
20 violation of the Constitutional rights of the defendants.

21           And they set forth those restrictions in terms  
22 of what should be placed in an injunction on page 27 and  
23 28. So which track would you like to be placed on? The  
24 track pages are to the left on each of the tables for  
25 counsel.

1 MR. VINCENT: Your Honor --

2 THE COURT: Track 1 or track 2.

3 MR. VINCENT: -- it's defendant Nicdao's  
4 position that track 2 is appropriate for this case.

5 THE COURT: Track 2? Okay. Any objection from  
6 plaintiff?

7 MR. MURPHY: No objection, Your Honor.

8 THE COURT: Okay. Track 2. So we can at this  
9 time, if you want, but this is really going to, this was  
10 supposed to be the initial scheduling conference anyway,  
11 and I do need to ask Mr. Weiler to look at the two  
12 booklets we have there for, and one is in English and one  
13 is in Spanish, and it will give you some general  
14 information about the civil division. The Court  
15 encourages individuals like yourself who are self-  
16 represented to try to obtain counsel because the civil  
17 rules and civil law are very complicated.

18 MR. WEILER: Yes, Your Honor.

19 THE COURT: There are a number of agencies  
20 listed. You might qualify. So you should try to seek  
21 help, okay?

22 MR. WEILER: Thank you, Your Honor.

23 THE COURT: And we can set a pretrial date and  
24 trial date today if you wish. Plaintiff, what's your  
25 position?

1 MR. MURPHY: Given the number of parties, Your  
2 Honor, I think we can confer quickly and probably submit  
3 something jointly just based on the --

4 THE COURT: Well, if you don't know what the  
5 Court's availability is, so --

6 MR. MURPHY: Okay.

7 THE COURT: I'll look at the --

8 MR. VINCENT: Your Honor --

9 THE COURT: -- track 2 schedule. Yes.

10 MR. VINCENT: Defendant Cirigano and I believe  
11 defendant Darnel both said that track 3 would be  
12 preferable here and I believe that defendant Nicdao does  
13 not object to that.

14 THE COURT: Okay. What about plaintiffs? Track  
15 3?

16 MR. MURPHY: Given the need to resolve this  
17 issue, I think, quickly, we would prefer to stay on track  
18 2.

19 THE COURT: Okay. We'll keep it on track 2. I  
20 don't know that there's a lot of discovery, but if you  
21 feel that there's a need to extend discovery, then you can  
22 always file a motion. And so we're looking at a pretrial  
23 period of next year in 2017. Is that correct?

24 MR. MURPHY: Yes, Your Honor.

25 THE COURT: Pretrial date, rather. And I think

1 everyone should check their calendars now please. See if  
2 we could have pretrial --

3 MR. MURPHY: Your Honor, our preference would be  
4 to schedule something as soon after the pretrial period as  
5 possible.

6 THE COURT: Okay. Well, we'll, let's set the  
7 pretrial date first and that's going to be in March of  
8 2017.

9 MR. MURPHY: Track 2 looks like January through  
10 February?

11 THE COURT: I'm doing that just in case we have  
12 to extend discovery because I don't want to have to change  
13 pretrial or the trial date.

14 MR. MURPHY: Yeah, I know.

15 THE COURT: So let's look at pretrial on March  
16 13th, I'm sorry, let's go to March 16th at 9:30. Is that  
17 a good date for everyone?

18 MR. GARZA: It works for my client, for me, Your  
19 Honor.

20 MR. STARVER: Yes for Cirigano, Your Honor.

21 THE COURT: And trial would then be -- how long  
22 do you think trial would take?

23 MR. VINCENT: If all these parents are going to  
24 be brought in here, Your Honor, I think it's going to be  
25 at least a week or two.

1 THE COURT: So we should allot two weeks, okay?  
2 So let's have trial April 17th through the 28th.

3 MR. MURPHY: Your Honor, I'd like to clarify  
4 that to the extent that we've establish success on the  
5 merits, will Your Honor be entering the preliminary  
6 injunction or permanent injunction during this intervening  
7 period?

8 THE COURT: No, you didn't establish that you  
9 had a sufficient showing.

10 MR. VINCENT: Thank you, Your Honor. They  
11 haven't formally moved for a preliminary injunction  
12 either.

13 MR. MURPHY: We will be, Your Honor, because I,  
14 we need some resolution to this, to this issue during the  
15 school year.

16 THE COURT: Well, in the complaint there was a  
17 request for a preliminary injunction and permanent  
18 injunction. So they have --

19 MR. VINCENT: Your Honor, we, we would --

20 THE COURT: -- made that request.

21 MR. VINCENT: -- object to that. There has to  
22 be a motion for such relief and after so much time has  
23 passed, the real question of whether harm could ever be  
24 shown to be irreparable if an injunction is not issued  
25 immediately is questionable.

1 THE COURT: Yes, that is absolutely true and so  
2 right now the Court was looking at resolving the  
3 injunctive issue on the case in the merits at the trial.

4 MR. MURPHY: Okay. Your Honor --

5 THE COURT: And then if there are some issues --

6 MR. MURPHY: There have been continuing protests  
7 at the, at the site. There's been unfounded statements  
8 such as Three Rivers supports abortion, which are  
9 potentially defamatory.

10 THE COURT: Well, that's another issue. That's  
11 not --

12 MR. MURPHY: That is another issue and we're  
13 actually --

14 THE COURT: -- and it's not a part of the --

15 MR. MURPHY: -- considering amending our  
16 complaint and if we do, maybe we would move at that time  
17 for a preliminary injunction to have that issue heard to  
18 air out some of the stuff that's, the intervening events  
19 and the need to sort of get some resolution around --

20 THE COURT: Well, I haven't heard you state  
21 anything that was an imminent danger warranting. If you  
22 had said there were individuals attacking the students or  
23 something like that, but if they are making false  
24 statements, that is a damages issue that can be resolved  
25 at trial if you amend it, the complaint.

1 MR. MURPHY: Okay.

2 THE COURT: But not anything warranting an  
3 equitable remedy. Okay. Anything further?

4 MR. VINCENT: Your Honor, just a, a point of  
5 housekeeping. The trial dates the Court proposed of April  
6 17th to the 28th, that would begin on the Monday following  
7 Easter Sunday, which would require travel on Easter Sunday  
8 for at least some of the counsel involved. I would just  
9 request Your Honor, perhaps a one day shift to start the  
10 trial on the 18th and conclude it --

11 THE COURT: Okay.

12 MR. VINCENT: -- one day later --

13 THE COURT: That's fine.

14 MR. VINCENT: -- if necessary?

15 THE COURT: We'll say the 18th, okay?

16 MR. VINCENT: Thank you, Your Honor.

17 THE COURT: Tuesday the 18th. Just so the  
18 record is clear, put it on the docket that the parties,  
19 the defendants requested trial start on Tuesday, December  
20 18th.

21 MR. MURPHY: No objection here.

22 THE COURT: Thank you. And that it's not an  
23 error, instead, because usually we start civil trials on  
24 Mondays. Anything further?

25 Well, it might be helpful if the parties somehow

1 could try to work on developing some consensus on what  
2 type of protests each party could live with. If you need  
3 assistance and need mediation, early mediation, our multi-  
4 door dispute resolution division is available to you.  
5 Thereby, you do spare the children, parents from having to  
6 come to court to litigate this issue. So I'd like you to  
7 think about that.

8 MR. MURPHY: Yes, Your Honor.

9 MS. JOSHI: Thank you, Your Honor.

10 THE COURT: And what would be fair, reasonable  
11 and in the interest of everyone, okay? Parties are  
12 excused. Have a good day. Thank you.

13 MR. MURPHY: Thank you, Your Honor.

14 MR. VINCENT; Thank you, Your Honor.

15 THE COURT: I just as a one matter, there was a  
16 pending motion and I've denied that as moot.

17 MR. VINCENT: As to pending discovery?

18 THE COURT: Yes.

19 MR. VINCENT: Okay. Thank you, Your Honor.

20 THE COURT: Thank you.

21 (Thereupon, the hearing was concluded.)

22

23

24

25

√ Digitally signed by Tracy Hahn

ELECTRONIC CERTIFICATE

I, Tracy Hahn, transcriber, do hereby certify that I have transcribed the proceedings had and the testimony adduced in the case of TWO RIVERS PUBLIC CHARTER SCHOOL V. ROBERT WEILER, JR. Case No. 2015 CAB 9512 in said Court, on the 29th day of April 2016.

I further certify that the foregoing 90 pages constitute the official transcript of said proceedings as transcribed from audio recording to the best of my ability.

In witness whereof, I have hereto subscribed my name, this 19th day of May 2016.

A handwritten signature in cursive script that reads "Tracy Hahn".

Transcriber

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

**TWO RIVERS PUBLIC CHARTER  
SCHOOL, *et al.*,**

Plaintiffs,

v.

**ROBERT WEILER, JR., *et al.*,**

Defendants.

**Civil Action No. 2015 CA 009512 B**

**Civil II, Calendar No. 7  
Judge Jeanette J. Clark**

**Next Court Event:  
Initial Conference  
March 11, 2017, 9:30 AM**

**SECOND DECLARATION OF LARRY CIRIGNANO**

1. I am a named Defendant in this case, and have personal knowledge of the matters set forth in this Declaration, and if called on to do so I would testify competently as to them.

2. I have been a pro-life, anti-abortion activist for over thirty years. I have never been arrested as a result of my speech activities and, prior to this lawsuit, I have never been sued as a result of my speech activities.

3. Prior to May 2, 2016, I had met Ethel Borel-Donohue on a few occasions, at various pro-life events, but we have never had any formal affiliation. Approximately one week before May 2, 2016, I saw Ethel Borel-Donohue demonstrating in the Georgetown area. At that time, Mrs. Borel-Donohue asked me to let her know whenever I planned to demonstrate at the site of the future Planned Parenthood facility next to the Two Rivers Public Charter School, because she wanted to demonstrate there as well.

4. As Mrs. Borel-Donohue requested, I let her know that I next planned to demonstrate at the Two Rivers Planned Parenthood site on May 2, 2016. I did not communicate to Mrs. Borel-Donohue any details about my planned method of demonstration or the content of my planned

**EXHIBIT B**

message, and Mrs. Borel-Donohue did not communicate the method or message of her planned demonstration to me, including what sign she may hold or whether she would hold a sign at all.

5. Mrs. Borel-Donohue held a sign on May 2, 2016, showing a dead, dismembered baby known as “Malachi” under the heading “ABORTION.” I did not provide the sign to Mrs. Borel-Donohue, nor did I ask her to hold it or otherwise have any knowledge of her intention to hold it prior to seeing her with the sign on May 2, 2016. I own a similar sign, as do hundreds of pro-life demonstrators throughout the country. Malachi’s picture is one of the most widely recognized images used by pro-life demonstrators throughout the country, and signs made from the picture are available from several pro-life persons and organizations.

6. On May 2, 2016, counter-demonstrators often obscured or covered Mrs. Borel-Donohue’s sign by standing directly in front of it, causing Mrs. Borel-Donohue to move away from them.

7. Prior to concluding my expressive activities at the Two Rivers Planned Parenthood site on May 2, 2016, Mrs. Borel-Donohue asked me to let her know when next I planned to demonstrate at the site. As she requested, I let her know that I would be returning on May 5, 2016.

8. Prior to May 5, 2016, however, I received an e-mail from Mrs. Borel-Donohue informing me that she would not be going to the Two Rivers Planned Parenthood site on May 5, 2016. I did not ask her to explain or reconsider her decision, or otherwise try to persuade her to change her mind. Her decision not to go to the site did not break any agreement or otherwise violate any duty owed to me by Mrs. Borel-Donohue.

9. On June 6, 2016, I demonstrated at the Two Rivers Planned Parenthood site, at the suggestion of Mrs. Borel-Donohue, who also demonstrated at the site on that date.

10. I did not, either on or before May 2 and June 6, 2016, or at any other time, instruct, direct, manage, or otherwise coordinate any activities of Mrs. Borel-Donohue at the Two Rivers Planned Parenthood site, and I did not have any authority or expectation to do so.

11. The purpose of my demonstrations at the Two Rivers Planned Parenthood site on May 2, May 5, and June 6, 2016, and at all other times, was to exercise my right of advocacy on issues of public interest: the construction of the new Planned Parenthood facility at 1225 4th Street NE, and Planned Parenthood's practice of killing innocent children in the womb.

12. The goals of my expressive activities at the Two Rivers Planned Parenthood site on May 2, May 5, and June 6, 2016, and at all other times, were to advocate against Planned Parenthood and the killing of innocent children by the practice of abortion, to inform the community surrounding the new facility of the record and practices of Planned Parenthood, and to encourage the community to likewise advocate against Planned Parenthood.

13. My expressive activities at the Two Rivers Planned Parenthood site on May 2, May 5, and June 6, 2016, comprised primarily standing in place on the public sidewalk at the corner of Florida Avenue and 4th Street (across the street from the Two Rivers Charter School), holding a small sign containing the message "STOP ABORTION NOW." I also occasionally spoke, conversationally, to other persons in my vicinity.

14. I did not enter into any agreement, or otherwise coordinate with any other person, regarding either the method or the message of my, or any other person's, expressive activities at the Two Rivers Planned Parenthood site on May 2, May 5, or June 6, 2016, or any other date.

15. During my expressive activities at the Two Rivers Planned Parenthood site on May 2, May 5, and June 6, 2016, and at all other times, my intended audience was all persons in the community, and I never chased, followed, or shouted at children or any other person; I never

trespassed on private property; and I did not violate any laws; and I have no intention of doing any of the foregoing in the future.

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

EXECUTED this 8th day of June, 2016.

/s/ Larry Cirignano  
Larry Cirignano

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
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**TWO RIVERS PUBLIC CHARTER  
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**Civil Action No. 2015 CA 009512 B**

**Civil II, Calendar No. 7  
Judge Jeanette J. Clark**

**Next Court Event:  
Initial Conference  
March 11, 2017, 9:30 AM**

**DECLARATION OF ETHEL BOREL-DONOHUE**

1. I have personal knowledge of the matters set forth in this Declaration, and if called on to do so I would testify competently as to them.

2. I have been a pro-life, anti-abortion activist for over seventeen years.

3. Prior to May 2, 2016, I had met Larry Cirignano on a few occasions, at various pro-life events, but we have never had any formal affiliation. Approximately one week before May 2, 2016, I saw Mr. Cirignano demonstrating in the Georgetown area. At that time, I asked Mr. Cirignano to let me know whenever he planned to demonstrate at the site of the future Planned Parenthood facility next to the Two Rivers Public Charter School, because I wanted to demonstrate there as well.

4. As I requested, Mr. Cirignano told me that he next planned to demonstrate at the Two Rivers Planned Parenthood site on May 2, 2016. He did not communicate to me any details about his planned method of demonstration or the content of his planned message, and I did not communicate the method or message of my planned demonstration to Mr. Cirignano, including what sign I may hold or whether I would hold a sign at all.

**EXHIBIT C**

5. I held a sign on May 2, 2016, showing a dead, dismembered baby known as “Malachi” under the heading “ABORTION.” Mr. Cirignano did not provide the sign to me, nor did he ask me to hold it. I received my sign as a gift from a pro-life ally in New Mexico over ten years ago. Malachi’s picture is one of the most widely recognized pro-life images, used by hundreds of pro-life demonstrators throughout the country, and signs made from the picture are available from several pro-life persons and organizations.

6. On May 2, 2016, counter-demonstrators often obscured or covered my sign by standing directly in front of it. In response, I periodically walked with my sign on the public sidewalk running along 4th Street NE, from Florida Avenue to the Planned Parenthood facility site and back again, passing the Two Rivers Charter School along the way. At times I stood silently and prayed, and at others I spoke, conversationally, to construction workers at the Planned Parenthood site and other persons in my vicinity.

7. Prior to concluding my expressive activities at the Two Rivers Planned Parenthood site on May 2, 2016, I asked Mr. Cirignano to let me know when next he planned to demonstrate at the site. He told me that he would be returning on May 5, 2016.

8. Prior to May 5, 2016, however, for personal reasons, I e-mailed Mr. Cirignano to let him know that I would not be going to the Two Rivers Planned Parenthood site on that date. He did not ask me to explain or reconsider my decision, or otherwise try to persuade me to change my mind. My decision not to go to the site did not break any agreement or otherwise violate any duty owed by me to Mr. Cirignano.

9. On June 6, 2016, I demonstrated at the Two Rivers Planned Parenthood site of my own volition. Days before, I suggested to Mr. Cirignano that he also demonstrate at the site on June 6, 2016, and he did.

10. Mr. Cirignano did not instruct, direct, manage, or otherwise coordinate any of my activities at the Two Rivers Planned Parenthood site, and he did not have any authority to do so, on May 2 or June 6, 2016, or at any other time. On each occasion I demonstrated of my own volition, and was under no agreement or obligation to do so.

11. The purpose of my demonstrations at the Two Rivers Planned Parenthood site on May 2 and June 6, 2016, and at all other times, was to exercise my right of advocacy on issues of public interest: the construction of the new Planned Parenthood facility at 1225 4th Street NE, and Planned Parenthood's practice of killing innocent children in the womb.

12. The goals of my expressive activities at the Two Rivers Planned Parenthood site on May 2 and June 6, 2016, and at all other times, was to advocate against Planned Parenthood and the killing of innocent children by the practice of abortion, to inform the community surrounding the new facility of the record and practices of Planned Parenthood, and to encourage the community to likewise advocate against Planned Parenthood.

13. I did not enter into any agreement, or otherwise coordinate with any other person, regarding either the method or the message of my, or any other person's, expressive activities at the Two Rivers Planned Parenthood site on May 2 or June 6, 2016, or any other date.

14. During my expressive activities at the Two Rivers Planned Parenthood site on May 2 and June 6, 2016, and at all other times, my intended audience was the general public in the community, and I never chased, followed, or shouted at children or any other person; I never trespassed on private property; and I did not violate any laws; and I have no intention of doing any of the foregoing in the future.

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

EXECUTED this 8th day of June, 2016.

/s/ Ethel Borel-Donohue  
Ethel Borel-Donohue