



From the moment Plaintiff commenced this action, Plaintiff's counsel have been misusing it to stoke the anti-CRT fires they ignited and are spreading, not to vindicate Plaintiff's First Amendment Rights. And now Plaintiff's counsel promises that it will get far worse in discovery. As such, it is necessary for this Court to exercise its discretion and issue an order that confines discovery to the relevant issue in this case and for which the parties require further discovery.

**A. BACKGROUND**

America First Legal Foundation's ("AFL") anti-CRT campaign enveloped the School District in July 2021, when AFL, "c/o Walter S. Zimolong, Esquire," submitted a Right to Know Request (RTKR) that can only be described as an anti-CRT tirade. *See Exhibit A* hereto; Joint Stipulation of Facts ("JSF" - ECF 16) at ¶ 14, and JSF Ex. 5 (ECF 16-5). The second paragraph of the July 13, 2021, AFL/Zimolong RTKR states:

Critical race theory as applied to education holds that in the United States the education system is inherently racist and exists to create and maintain social, economic, and political inequalities between whites and nonwhites, especially African Americans. The theory's proponents often seek to "problematize whiteness" or "deconstruct whiteness." Proponents of CRT in education have argued that a focus on finding the right answer to a math problem is racist, and that students must be taught to focus on race and power structures that allegedly benefit white people at the expense of all others.

JSF Ex. 5 at p. 7 (ECF 16-5).<sup>1</sup>

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<sup>1</sup> According to its website, "AFL is led by senior members of the Trump Administration who were **at the forefront of the America First movement**. Our team includes President Trump's former **Senior Advisor, Chief of Staff, Acting Attorney General, and Budget Director**. We have real-world experience carrying out critical legal, policy, and political battles at the highest levels of the U.S. government." *See* <https://www.aflegal.org/about#mission>.

The next day, AFL published a press release under the intentionally alarming and knowingly false headline:

**AFL DEMANDS MATERIALS FROM PENNSYLVANIA SCHOOL DISTRICT THAT REFUSES TO DISCLOSE TIES TO RADICAL “EDUCATION” CONSULTANTS PUSHING CRITICAL RACE THEORY IN THE CLASSROOM**

See **Exhibit B** hereto. The press release included a lengthy, disparaging, acerbic and defamatory statement from “AFL President Steven Miller”<sup>2</sup> about the School District:

*“AFL is committed to defeating the illegal equity agenda and the poisonous ideology driving it: Critical Race Theory. In that mission, AFL is standing up for parents who are trying to save their children from racist CRT indoctrination.*

*One such group of Pennsylvania parents is courageously fighting back. The Tredyffrin-Easttown School District has publicly admitted to applying the odious CRT framework on its captive students. These parents have demanded to see the lesson plans and teaching materials being used in the classroom, weaponized against their own children—but the school, in defiance of both state and federal law, has refused to comply. In effect, it’s a cover-up. AFL has therefore formally filed a request, pursuant to Pennsylvania’s open records law, to obtain the records. If the school rejects the request in further violation of law, then we will take them to court and pry loose these records for all parents and all citizens to see. AFL will use every lawful remedy at our disposal to protect our children from Critical Race Theory. And we will proudly support the patriotic moms and dads stepping up as parent warriors to protect America’s kids from this racist indoctrination.”*

Ex. B. While Mr. Miller implies that the July 13 RTKR was made on behalf of “parents,” the RTKR was actually submitted by only AFL though AFL’s (and now Plaintiff’s) attorney, Mr. Zimolong. See **Exhibit A** hereto; JSF (ECF 16) at ¶ 14.

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<sup>2</sup> Stephen Miller served in the West Wing as Senior Advisor to the President for the entirety of the Trump Administration. See <https://www.aflegal.org/about#team>.

The RTKR and the press release were further touted in the **FIGHTING THE “EQUITY” AGENDA** portion AFL’s July 22, 2021, RECAP: AMERICA FIRST LEGAL IN REVIEW alongside other purported “crucial legal victories against the Biden Administration’s unlawful conduct,” including:

**AFL FILES FORMAL RESPONSE TO NASA’S QUEST TO  
INCORPORATE ILLEGAL RACE EQUITY SCHEMES  
INTO SPACE PROGRAM**

and

**AMERICA FIRST LEGAL BLASTS BIDEN ADMIN FOR  
SEEKING TO INDOCTRINATE CHILDREN WITH  
POISONOUS CRITICAL RACE THEORY**

See **Exhibit C** hereto.

On the same day Plaintiff commenced this litigation, AFL issued another press release out of its “**WASHINGTON, DC**” office. See **Exhibit D** hereto. While Plaintiff’s Amended Complaint identifies the discrete issue before this Court: “Plaintiff seeks a preliminary injunction against Defendants prohibiting them from interfering with his constitutional right to speak and record his voice while conducting a public records inspection. He also seeks nominal damages,” [Am. Compl. at p. 3], the gravamen of the press release announcing this lawsuit is – once again – a tantrum about how the School District is using CRT “to indoctrinate America’s children with woke, Marxist ideology” and “destroy the sacred relationship between parents and children.” Ex. D. The press release continued: “Whether it is Critical Race Theory, gender ideology, or other Marxist agendas, schools have no constitutional right to silence parents. America’s parents are taking a stand, and America First Legal (AFL) is standing with them.” Ex. D.

Most recently, AFL was very quick to take full credit for Defendant Pacific Education Group's ("PEG") decision in this case to allow for the reproduction of the PEG Materials by issuing another inflammatory press release disingenuously announcing:

**AFL RELEASES DOCUMENTS CONCLUSIVELY  
PROVING CRITICAL RACE THEORY  
INDOCTRINATION IS BEING USED IN PUBLIC  
SCHOOLS**

See **Exhibit E** hereto. The lead of the press release falsely stated:

**WASHINGTON**—Today, America First Legal released 166 pages of documents proving that *school district bureaucrats and a cadre of taxpayer-funded “consultants” are using Critical Race Theory to “transform” public education and indoctrinate American children.*

Ex. E. The press release contains all of the standard ultra-MAGA/America First scare tactics/talking points:

*Leftist teacher unions, education bureaucrats,* and media officials have promised the American people that “CRT is not being taught in any single K-12 school in America.” But *America First Legal has uncovered the truth and exposed their lies.* Parents across the Nation should read the documents, and *demand that their local school districts tell the truth about the role CRT and other woke ideology plays in teacher training, curriculum development, and, ultimately, student indoctrination.*

Ex. E. Once against, AFL's Miller also added his defamatory two-cents: “Our innocent children are being *viciously indoctrinated with CRT* by *marxist* [sic] *radicals.* *This lawless, extremist, poisonous bigotry must be defeated.*” Ex. E.

Unfortunately, Plaintiff's counsel has publicly promised that their improper use of this litigation will continue into, and get far worse during, the discovery phase. On July 26, 2022, Plaintiff's (and AFL's) attorney Zimolong appeared on the *Delaware Valley Journal* podcast to

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discuss his intentions for “thorough discovery” in this case. A copy of the publisher’s webpage for the podcast is **Exhibit F** hereto.<sup>3</sup> Despite the narrow issue before this Court, i.e., whether the District Defendants violated Plaintiff’s First Amendment Rights on February 7, 2022, by not allowing Plaintiff to record himself reading the contents of the PEG Materials, Plaintiff’s attorney publicly announced that he intends to use discovery in this case to feed his and AFL’s anti-CRT agenda. Mr. Zimolong’s express intentions for “thorough discovery” in this case have nothing to do with whether Defendants violated Plaintiff’s First Amendment Rights on February 7, 2022, which is the only issue before this Court. Specifically, Mr. Zimolong said, inter alia, the following during the podcast:

**Mr. Zimolong:** We are still in the discovery phase. We have served the school district with each interrogatories and request for production of documents. We’ll see I mean there may be some additional documents that are uncovered that should shed further light on what the school district’s relationship was and perhaps you know other things that the group was doing. You know *one of the things we’re very interested in in this case is that the school district disclosed to us that this Pacific Educational Group which is a radical critical race theory group was engaged to investigate and perform confidential investigations on members of the Tredyffrin/Easttown school district staff. NOW I NEED THAT.*

\* \* \*

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<sup>3</sup> The podcast can be heard at: <https://delawarevalleyjournal.com/podcast-attorney-wally-zimolong-says-public-schools-are-pushing-radicalism-and-silencing-parents/District>. Defendants did not become aware of the July 26 podcast until after the July 28 conference with the Court.

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*What I suspect is this group was engaged in a STALINIST MAOIST type of agenda to investigate opponents to critical race theory.* Those teachers that had the guts to say this isn't what it appears to be, we shouldn't be teaching it or students God forbid now if that's the case you know *I think this is a tremendous scandal and that any member of the school board that was engaged in this STASI-LIKE APPROACH TO INVESTIGATE TEACHERS faculty staff or students in that school district* immediately needs to resign if they're still the school board at a minimum.

**Linda Stein:** This is truly shocking wow.

**Mr. Zimolong:** Yes we'll see we'll see what happens there and *there will be depositions taken in that case and you know we intend to engage in thorough discovery and really get to the bottom of all this.*

Ex. F starting at approximately 16:00.<sup>4</sup> Mr. Zimolong's statements are false and defamatory, and demonstrate that Plaintiff and his counsel have no regard for the proper scope of discovery

Plaintiff's counsel's knowingly false statements immediately caused damage to the School District. On July 29, 2022, the School District received the following email from a District resident who heard – and **understood the defamatory meaning** of, – Mr. Zimolong's statements:

**From:** Michael McTiernan <michael@mctiernan.com>

**Date:** July 29, 2022 at 9:28:14 PM EDT

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<sup>4</sup> Earlier in the podcast Mr. Zimolong used violent imagery to admit that there is no need for any discovery regarding the copyright issue in this case: “As soon as the issue of copyright was put before the court, the copyright holder, *in this case the critical race firm that produced the documents, Pacific Education Group, completely caved. It reminded me of the quote from Mike Tyson: ‘everyone’s got a plan until they get punched in the face.’*” Ex. F at approximately 13:50.

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**To:** schoolboard@tesd.org

**Cc:** gusickr@tesd.net

**Subject:** this can't be true

**Reply-To:** Michael McTiernan <michael@mctiernan.com>

I hope this is not true. A friend of mine sent it to me and I in turn have sent it to you all with the obvious questions

1. is it true
2. if it is true, who would have authorized this effort
3. was the school bd aware of this.
4. Is it still going on
5. Do the teachers have any say in this ?

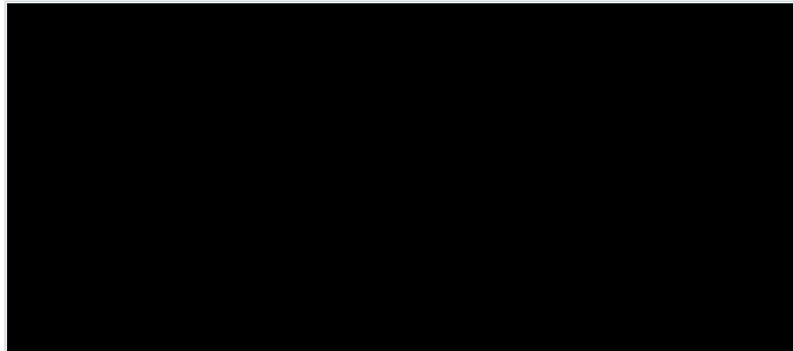
I hope to see your answers or we can go over it at the first school Bd meet

thanks

NEW SCHOOL DISTRICT SCANDAL - Listen to the attorney working on the First Amendment lawsuit against TESD reveal in a podcast that the School District has ADMITTED to using taxpayer dollars to retain Pacific Education Group/Courageous Conversations (their Racial Equity Consultant from San Francisco) **to investigate District Staff and Teachers who were not sufficiently enthusiastic about Critical Race Theory (CRT)!!**

From the Delaware Valley Journal - go to minute 16:40 of the podcast for the start of that disclosure -

[PODCAST: Attorney Wally Zimolong Says Public Schools Are Pushing Radicalism and Silencing Parents – DV Journal](#)



**PODCAST: Attorney  
Wally Zimolong Says  
Public Schools Are**

**Pushing Radical...**

On this edition of the  
Delaware Valley Journal  
podcast, veteran  
attorney Wally  
Zimolong talks to News  
Editor Lin...

See **Exhibit G** hereto. On August 2, 2022, the same resident submitted a RTKR for the following:

The list of all names of all the TE teachers that were investigated by PEG/Courageous Conversations and or TESD **who were not sufficiently enthusiastic about Critical Race Theory (CRT)!**

Listen to the attorney working on the First Amendment lawsuit against TESD reveal in a podcast that the School District has ADMITTED to using taxpayer dollars to retain Pacific Education Group/Courageous Conversations (their Racial Equity Consultant from San Francisco) **to investigate District Staff and Teachers who were not sufficiently enthusiastic about Critical Race Theory (CRT)!!**

From the Delaware Valley Journal - go to minute 16:40 of the podcast for the start of that disclosure - <https://delawarevalleyjournal.com/podcast-attorney-wally-zimolong-says-public-schools-are-pushing-radicalism-and-silencing-parents/>

Name of the TE Administrator that submitted the request to PEG/Courageous Conversations to investigate for the above noted school deficiency.

See **Exhibit H** hereto.

Clearly Mr. Zimolong's anti-CRT rant on the podcast had the intended result. Mr. Zimolong used false and defamatory statements, and the promise of more to come through discovery in this case, to fan the anti-CRT flames raging in the hearts and minds of AFL's

audience in an effort to gain money and power for AFL and Zimolong; not to vindicate Mr. Auslander's rights. Indeed, Mr. Zimolong asked the parents he is deliberately trying to enrage to go to his website, and to call him. Ex. F.

Importantly, Plaintiff's counsel's press releases and stated plans for "thorough discovery" in this case bear no resemblance to the claims in this case. In Plaintiff's Amended Complaint (ECF 21), Plaintiff specifically identified what this case is about: "Plaintiff seeks a preliminary injunction against Defendants prohibiting them from interfering with his constitutional right to speak and record his voice while conducting a public records inspection. He also seeks nominal damages." Am. Compl. at p. 3. According to Plaintiff:

16. On February 7, 2022, Mr. Auslander went to the Tredyffrin/Easttown School Board Administrative Offices located at 940 West Valley Road, Suite 1700, Wayne, PA 19087, to inspect the records. Defendant, Mr. McDonnell was present at the inspection.

17. During Mr. Auslander's review of the records he made verbal recordings on his smart phone of what his eyes were seeing.

18. Defendant, Mr. McDonnell, threatened Mr. Auslander with criminal and civil liability if he continued to record the sound of his own voice describing what his eyes were seeing. Defendant, Mr. McDonnell threatened to hold plaintiff liable under the Wiretapping and Electronic Surveillance Control Act for recording his own voice. He also threatened to hold plaintiff liable under "copyright laws."

19. Defendant, Mr. McDonnell also called the school district's attorney and threatened to call PEG's attorney.

20. After Mr. Auslander refused to stop recording his voice, Defendant Mr. McDonnell terminated the meeting and ordered plaintiff to vacate the premises.

21. Defendant, Mr. McDonnell made these threats after consulting with counsel.

22. At all times, Defendant Mr. McDonnell was acting as an actual or apparent agent or official representative of Defendant Tredyffrin/Easttown School District.

23. Defendant, Mr. McDonnell, was or should have been aware that by threatening, coercing, and ending Mr. Auslander's inspection of public documents because Mr. Auslander was exercising his first amendment right to speak, Defendant, Mr. McDonnell was violating Mr. Auslander's clearly established rights.

24. Defendants knowingly violated Mr. Auslander's clearly established Constitutional rights.

Am. Compl. at ¶¶ 16-24. All of these allegations are about what happened during the inspection of the PEG Materials on the afternoon of February 7, 2022.

In his Amended Complaint, Plaintiff specifically pleaded that District Defendants did not allow for the reproduction of the PEG Materials based on the PEG's copyright on those materials. Am. Compl. at ¶¶ 10-11, 14-15, 18. Indeed, Plaintiff even pleads the precise reason why District Defendants did not permit the reproduction of the PEG Materials: "On January 26, 2022, Defendants denied Plaintiff's request for copies of the PEG training materials asserting the materials were protected by copyright." Am. Compl. at ¶ 14. Plaintiff did not plead any facts that would even allow for an inference that there was any other reason for prohibiting the reproduction of the PEG Materials. Indeed, as soon as PEG acquiesced and authorized the School District to produce a copy of the PEG Materials, the School District immediately produced the materials to Plaintiff.

According to Plaintiff's pleading, his First Amendment Rights were violated on February 7, 2022, when District Defendants did not allow Plaintiff to "make verbal recordings on his smart phone of what his eyes were seeing." Am. Compl. at ¶ 17. That is the only issue before

this Court. And as set forth below, the parties have stipulated to all relevant facts, with the only potential exception being exactly what transpired during Plaintiff's February 7, 2022, inspection.

In an effort to streamline this case, the parties agreed to and filed a Joint Stipulation of Facts (ECF 16) (the "JSF") with more than 25 exhibits. Because of the JSF, the need for additional discovery is very limited. For example, the parties stipulated to, inter alia:

- The relevant contract between the School District and PEG. JSF at ¶ 8, JSF Ex. 1.
- The PEG Materials. JSF at ¶ 12.
- The various RTKR's, and the responses and appeals for the RTKR's. JSF at ¶¶ 14-29, JSF Exs. 5-19.
- What happened during Plaintiff's 30 minute inspection of the PEG Materials on February 7, 2022. JSF at ¶¶ 31-44.

All available information demonstrates that Plaintiff's attorneys are not pursuing discovery in good faith to support the claim that Defendants violated Plaintiff's First Amendment Rights. Rather, Plaintiff's counsel have told us that they intend to use the discovery process to advance their CRT "indoctrination" conspiracy theories to further inflame their political audience. This Court should use its powers to stop them.

## **B. ARGUMENT**

"Although the scope of discovery under the Federal Rules is unquestionably broad, this right is not unlimited and may be circumscribed." *Bayer AG v. Betachem, Inc.*, 173 F.3d 188, 191 (3d Cir. 1999) (citing *Micro Motion, Inc. v. Kane Steel Co.*, 894 F.2d 1318, 1322 (Fed.Cir.1990)); *Hickman v. Taylor*, 329 U.S. 495, 507, 67 S.Ct. 385, 391, 91 L.Ed. 451 (1947)). "[D]iscovery has ultimate and necessary limits." *Saitta v. Hammerstone*, 2003 WL 21961426, at \*2 (E.D. Pa. June 30, 2003). "Although liberally construed, 'discovery, like all matters of procedure, has ultimate and necessary boundaries.'" *Hill v. GMAC Mortg. Corp.*, 2002 WL

32341950, at \*3 (E.D. Pa. Oct. 17, 2002) (*quoting Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)).

“It is well established that the scope and conduct of discovery are within the sound discretion of the trial court.” *Marroquin-Manriquez v. I.N.S.*, 699 F.2d 129, 134 (3d Cir. 1983). “A trial court has broad discretion to fashion discovery-related orders.” *Hayes v. Am. Int’l Grp.*, 2013 WL 5332110, at \*1 (E.D. Pa. Sept. 23, 2013). To that end, Rule 26 of the Federal Rules of Civil Procedure expressly allows this Court to use its discretion to deny discovery requests if the material requested is not relevant to any party’s claims or defenses, or if the material requested is “unreasonably cumulative or duplicative . . .” *Id.*; FED.R.CIV.P. 26(b)(C). “The determination of relevance is within the district court’s discretion.” *Avago Techs. U.S., Inc v. IPtronics Inc.*, 309 F.R.D. 294, 296 (E.D. Pa. 2015). “While Federal Rule 26 still defines the scope of discovery broadly, **‘courts should not grant discovery requests based on pure speculation that amount to nothing more than a ‘fishing expedition’ into actions ... not related to the alleged claims or defenses.’**” *Quadrant Epp USA, Inc. v. Menasha Corp.*, 2007 WL 320286, at \*1 (E.D. Pa. Jan. 29, 2007) (*quoting Collens v. City of New York*, 222 F.R.D. 249, 253 (S.D.N.Y.2004)). *See also Zuk v. E. Penna. Psychiatric Inst. of the Med. Coll. of Pennsylvania*, 103 F.3d 294, 299 (3d Cir. 1996) (“The Note cited above observes that discovery is not intended as a fishing expedition permitting the speculative pleading of a case first and then pursuing discovery to support it; the plaintiff must have some basis in fact for the action.”).

“Motions for a protective order are governed by Rule 26(c) of the Federal Rules of Civil Procedure.” *Furey v. Wolfe*, 2011 WL 597038, at \*5 (E.D. Pa. Feb. 18, 2011). The Third Circuit has held that one of several non-exhaustive factors that this Court may consider in determining whether to issue a protective order is “whether the information is being sought for a legitimate

purpose or for an improper purpose.” *Id.* (quoting *Glenmade Trust Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir.1995)).

Here, the only individuals who have relevant information and from whom the parties may need some further discovery are the individuals who were present for Plaintiff’s inspection of the PEG Materials on the afternoon of February 7, 2022: Plaintiff, Arthur McDonnell (the School District’s Business Manager, Board Secretary and Open Records Officer) and Mary Minicozzi (a secretary in the School District’s Administrative Offices). JSF at ¶ 34. The depositions of those individuals are scheduled for August 17 (Ms. Minicozzi), August 18 (Mr. McDonnell) and August 25 (Plaintiff). And all of the documents relevant to that inspection have been or will be produced. These documents include: the PEG Materials, any photographs or recordings Plaintiff made on his phone during the February 7 inspection, and the notes Ms. Minicozzi made of the inspection (TESD000015).

Plaintiff’s clearly disingenuous request for the depositions of Drs. Towle and Torres should be rejected by this Court. Plaintiff does not even try to demonstrate how, based on the pleadings and the JSF (and the exhibits filed with the JSF), Drs. Towle and Torres could have relevant testimony concerning whether Defendants violated Plaintiff’s First Amendment Rights on the afternoon of February 7, 2022. While District Defendants identified Drs. Towle and Torres as potentially having information “related to the District’s agreement with PEG,” the agreement between the School District and PEG is not in dispute. *See* JSF at ¶ 8. And the School District’s basis for not allowing reproductions of the PEG materials on February 7, 2022, i.e., PEG’s copyright and the agreement between the School District and PEG, is not in dispute. *See*

JSF at ¶¶ 27-28, 30, JSF Exs. 18-19 Am. Compl. at ¶¶ 10-11, 14-15.<sup>5</sup> In short, any relevant testimony by Drs. Towle and Torres would be “unreasonably cumulative or duplicative” of the JSF, and collateral to the ultimate issue of whether Defendants violated Plaintiff’s First Amendment Rights on the afternoon of February 7, 2022. FED.R.CIV.P. 26(b)(C). Accordingly, this Court should deny Plaintiff’s instant Motion to Compel Depositions.<sup>6</sup>

In addition, Plaintiff’s counsel have made incessant public statements that this case is part of an anti-CRT, ultra-MAGA campaign. And Plaintiff’s attorney has specifically and publicly stated that he intends to use depositions in this case to “get to the bottom” of counsel’s false and intentionally inflammatory “suspicion” that Defendants were “engaged in a **STALINIST**

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<sup>5</sup> It is important to note that the parties have also stipulated that the School District responded to AFL’s (c/o Mr. Zimolong) RTKR for the PEG Materials in the summer-fall of 2021, the same way it responded to Plaintiff’s RTKR in January 2022, i.e., the School District offered AFL/Zimolong the opportunity to inspect, but not reproduce, the materials. JSF at ¶¶ 14-18, JSF Exs. 5-9. AFL/Zimolong appealed the School District’s refusal to allow for the reproduction of the PEG Materials to the Pennsylvania Office of Open Records (OOR). JSF at ¶ 16, JSF Ex. 7. The OOR issued a Final Determination that held that “**the District has met its burden of proving that the responsive PEG provided materials are protected by copyright and that the Copyright Act limits disclosure of the requested materials and reproduction is not permitted.** See *Haring v. Pennridge Sch. Dist.*, OOR Dkt. AP 2021-0979, 2021 PA O.O.R.D. LEXIS 1302 (concluding that presentations, powerpoints and programs provided to the district diversity, equity and inclusion committee were protected by the federal Copyright Act).” JSF Ex. 9 at p. 9 (emphasis added).

<sup>6</sup> Candidly, District Defendants’ counsel is not taking Plaintiff’s request for \$5,000 in sanctions seriously. District Defendants’ counsel did not fail to produce anyone for a deposition “after being served with proper notice . . .” FED.R.CIV.P. 37(d)(1). District Defendants’ counsel properly, politely, and promptly asked Plaintiff’s counsel to discuss the need for the depositions of Drs. Towle and Torres after Plaintiff’s counsel’s assistant asked for their depositions via email. See ECF 37-4. Plaintiff’s counsel refused to discuss the issue. See ECF 37-4 (“We do not show a ‘need’ for a deposition under the Federal Rules of Civil Procedure.”). After receiving Plaintiff’s counsel’s July 28, 2022, letter and District Defendants’ counsel’s response to the letter, this Court ordered Plaintiff to file a “motion to compel the depositions of Wendy Towle and Oscar Torres and a supporting brief” that “set[s] forth the reasons for deposing Towle and Torres as well as the likely subjects of inquiry.” See ECF 35. If this Court is going to entertain Plaintiff’s request for sanctions, District Defendants and their counsel respectfully request an opportunity for briefing and an evidentiary hearing.

**MAOIST** type of agenda to investigate opponents to critical race theory,” and “belief” that “this is a tremendous scandal and that any member of the school board that was engaged in this **STASI-LIKE APPROACH TO INVESTIGATE TEACHERS** faculty staff or students in that school district.” See Ex. F. As such, this Court should exercise its discretion and issue an order that specifically confines discovery, written discovery and depositions, to only documents and information that are relevant to whether or not Plaintiff should be permitted to make reproductions of the PEG materials during Plaintiff’s February 7, 2022, inspection of the PEG materials, and what transpired at the inspection on the afternoon of February 7, 2022.

**C. CONCLUSION**

Plaintiff and his attorneys have a year-long track record of using the School District, and now this litigation, to advance the anti-CRT cause that is part of the ultra-MAGA movement. The evidence shows that the object of this litigation for Plaintiff and his counsel is to obtain and then mischaracterize information and documents to inflame the anti-CRT crowd (so that AFL and Attorney Zimolong can gain money and power), not to vindicate Plaintiff's First Amendment Rights. Accordingly, District Defendants implore this Court to exercise its considerable discretion and enter an order that:

- (i) denies Plaintiff's Motion to Compel Depositions (EFC 37);
- (ii) bars the depositions of Wendy Towle, Ed.D. and Oscar Torres, Jr., Ed.D.;
- (iii) confines discovery in this case to documents and information that are relevant to:
  - (a) whether or not Plaintiff should be permitted to make reproductions of the PEG materials during Plaintiff's February 7, 2022, inspection of the PEG materials, and
  - (b) what transpired at the inspection on the afternoon of February 7, 2022; and
- (iv) grants District Defendants such additional relief as this Court deems appropriate.

Respectfully submitted,

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