



September 26, 2023

Dr. Monifa McKnight  
Superintendent  
Montgomery County Public Schools  
850 Hungerford Drive  
Rockville, MD 20850

Montgomery County Public Schools Board of Education  
c/o: President Karla Silvestre  
Montgomery County Public Schools  
850 Hungerford Drive  
Rockville, MD 20850

**Re: First Amendment Violation by Montgomery County Public Schools**

Dear Superintendent McKnight and President Silvestre:

I am Ian Prior, an attorney at America First Legal. AFL is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans. We are writing to you on behalf of our client, who administers the X account, @EITC\_Official (“Inside the Classroom”). Inside the Classroom has 38,400 X followers and its mission is to shine a spotlight of accountability on public schools throughout the country that use taxpayer dollars to indoctrinate students on a variety of issues, including those related to “gender identity.”

Following a Tweet by Inside the Classroom mentioning Montgomery County Public Schools (“MCPS”),<sup>1</sup> MCPS blocked Inside the Classroom on or about February 14, 2023, thereby preventing it from following @MCPS, commenting on @MCPS posts, or otherwise engaging with the @MCPS account. This is a clear act of viewpoint discrimination on an account that MCPS held open to the public for comment and is therefore a violation of Inside the Classroom’s First Amendment Rights.

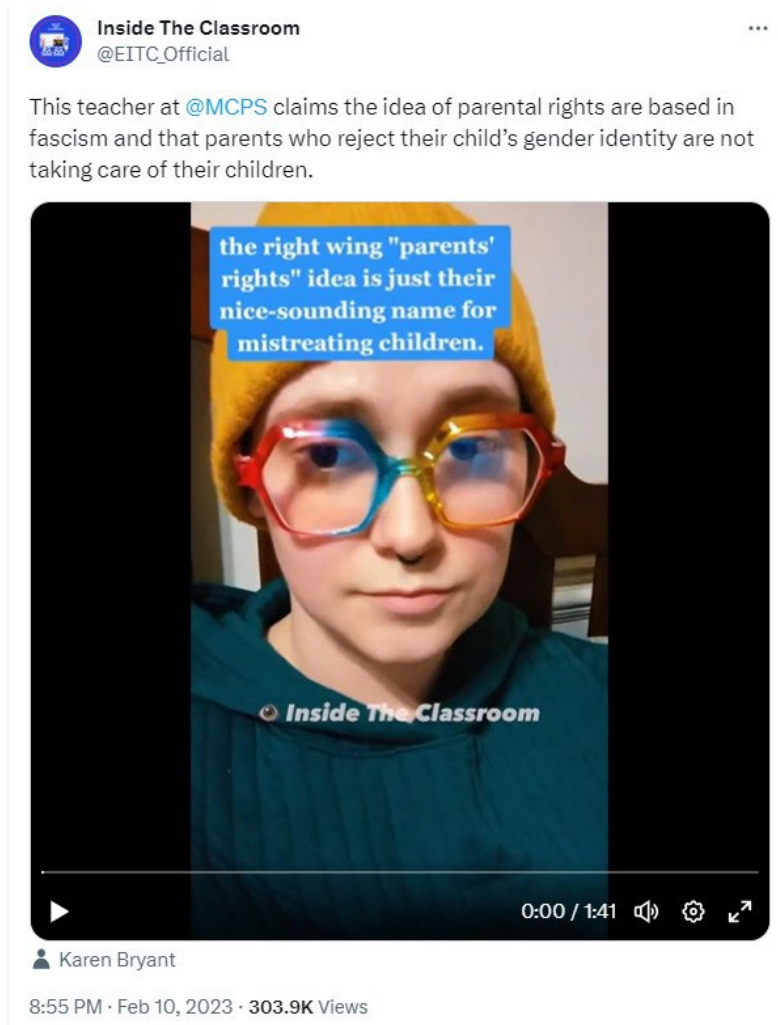
By way of background, on February 10, 2023, Inside the Classroom shared a TikTok video of an MCPS teacher along with the statement “[t]his teacher at @MCPS claims the idea of parental rights are [*sic*] based in fascism and that parents who reject their child’s gender identity are not taking care of their children.”<sup>2</sup>

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<sup>1</sup> Inside The Classroom (@EITC\_Official), X (Feb. 10, 2023, 8:55 PM), <https://bit.ly/3ETm5Ky>.

<sup>2</sup> *Id.*

The Tweet is pictured below.



In the video embedded in the post by Inside the Classroom, the MCPS teacher stated as follows:

“Alright, we have to talk about this right-wing idea of parents’ rights. It’s literally just fascism. As far as I can tell, parents’ rights means allowing parents to control their kids even in ways that are harmful to their kids. Obviously as an educator I believe strongly in the importance of parents and families and other primary caregivers instilling morals and discipline and principles in their kids. I see educators’ role as partnering with parents and other caregivers to form a collaborative support network for every child. However, some parents and caregivers unfortunately do not support their kids the way they should. That’s part of why the public school system works with social services to make sure kids are taken care of. It’s why schools work to connect parents with

resources to help them learn how to support their children if and when they need the help. The fact of the matter is parents and caregivers who reject their children’s gender identities are not taking care of their children. Kids whose families refuse to affirm their child’s true gender identity are at greatly increased risk of suicide attempts, self-harm, substance abuse, homelessness, low academic performance, and other serious mental health issues. Conservatives that claim that their real concern is ‘parents’ rights’ are just trying to use a family friendly excuse for wanting trans people to not exist.”

Inside the Classroom’s post has been viewed over 300,000 times, retweeted over 700 times, liked by over 1,000 X users, and has received over 600 replies; of which the overwhelming majority were expressing opposition to the statements made by the MCPS teacher.

On February 14, 2023, Inside the Classroom discovered that it had been blocked by the MCPS X account; an account with over 122,000 followers.<sup>3</sup>



MCPS’s decision to block Inside the Classroom runs afoul of its “Best Practices for Employees” webpage, which states: “[i]n alignment with recent court decisions, MCPS employees posting to social media in a professional capacity should not block users or delete comments on their own initiative.”<sup>4</sup>

<sup>3</sup> MCPC (@MCPC), X (last visited September 19, 2023), <https://bit.ly/3rsnww0>.

<sup>4</sup> *Best Practices for Employees*, MONTGOMERY COUNTY PUBLIC SCHOOLS, <https://bit.ly/3PjmnPL> (last visited September 19, 2023).

More importantly, MCPS's state action in blocking Inside the Classroom is also a violation of Inside the Classroom's First Amendment rights, as articulated by the Fourth Circuit Court of Appeals in *Davison v. Randall*, 912 F.3d 666 (4th Cir. 2019).

In that case, the Chairwoman of the Loudoun County Board of Supervisors engaged in unconstitutional viewpoint discrimination when she banned an individual from commenting on her Facebook page for comments that alleged conflicts of interest among the Loudoun County School Board and its family members. The court held that the interactive component of the Chairwoman's Facebook page which allowed for user comments constituted a public forum and that banning the plaintiff amounted to "black-letter viewpoint discrimination." *Id.* at 687.

In this case, MCPS is even more culpable in its constitutional violation. Unlike the defendant in *Davison v. Randall*, where the account at issue was that of an elected official, the account at issue is the official account for the entire taxpayer-funded school system. MCPS has over 122K followers on X and users are able to repost, reply, and like MCPS's posts. MCPS's X account consists of information related to school activities such as upcoming events, announcements, surveys, and school schedules. In fact, according to the MCPS website, social media "can help Montgomery County Public Schools (MCPS) further our mission and core values by engaging students, their parents/guardians, and the community."<sup>5</sup>

Consequently, by intentionally opening its X account for public engagement, MCPS's X account is a public forum. *Davison*, 912 F.3d at 687.

Given that the MCPS X account is undoubtedly a public forum, it is thus impermissible for MCPS to discriminate on the basis of viewpoint against those who engage in the interactive nature of that public forum. *Id.* Here, MCPS blocked Inside the Classroom because it tagged MCPS and tweeted a video and its commentary of an MCPS teacher who compared parental rights to "fascism" and stated that parents who don't affirm their child's claimed gender "are not taking care of their children." Inside the Classroom's tweet generated significant engagement, almost all of which was critical of the teacher and MCPS. Shortly thereafter, MCPS blocked Inside the Classroom. It is abundantly clear that MCPS was motivated to take this action by suppressing the "particular views taken by" Inside the Classroom; namely, disapproval of a teacher attacking parents for not supporting "gender identity." *Id.* (quoting *Child Evangelism Fellowship of S.C. v. Anderson Sch. Dist. Five*, 470 F.3d 1062, 1067 n.2 (4th Cir. 2006)).

America First Legal therefore demands, on behalf of Inside the Classroom, that MCPS cease and desist blocking Inside the Classroom on X and that any and all official MCPS or MCPS staff social media accounts cease and desist blocking users in violation of the First Amendment.

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<sup>5</sup> *Best Practices for Employees*, *supra* note 4.

Sincerely,

/s/ Ian D. Prior

Senior Advisor

America First Legal Foundation

cc: Montgomery County School Board Member Brenda Wolff  
Montgomery County School Board Grace Rivera-Oven  
Montgomery County School Board Shebra Evans  
Montgomery County School Board Lynne Harris  
Montgomery County School Board Julie Yang  
Montgomery County School Board Rebecca Smondrowski