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Dr. Adamek and Dr. Clouse,

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. I am Nick Barry, an attorney at America First Legal, and I am writing you today on behalf of Ashley Weaver.

Ms. Weaver is a resident within the West Perry School District (“WPSD”) with school aged children. She has submitted Right to Know Requests under Pennsylvania law to obtain curriculum materials for schools within the West Perry School District. She has not been permitted copies of the curriculum. Instead, it appears that the WPSD has granted her an opportunity to inspect the documents she requested. However, during these inspections Dr. Snyder and Dr. Clouse, and the WPSD have denied Ms. Weaver the opportunity to make her own copies of the materials, take pictures of the materials, or take video of the materials. Your refusal to allow Ms. Weaver to make photos, recordings, or copies of the materials you were required to make available to her is a violation of her First Amendment rights under the United States Constitution.

The First Amendment anchors “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). Accordingly, public discourse on public issues is afforded “the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.” *Synder v. Phelps*, 562 U.S. 443, 452 (2011); *Garrison v. Louisiana*, 379 U.S. 64, 77 (1964) (recognizing the “paramount public interest in a free flow of information to the people concerning public officials, their servants.”)

To enable effective debate on public issues, “the First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from

limiting the stock of information from which members of the public may draw.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575–76 (1980) (quoting *First Nat. Bank of Bos. v. Bellotti*, 435 U.S. 765, 783 (1978)). “The First Amendment protects the public's right of access to information about their officials' public activities.” *Fields v. City of Philadelphia*, 862 F.3d 353, 359 (3d Cir. 2017). Thus, there is a First Amendment right, “to inspect and copy public records and documents, including judicial records and documents.” *Nixon v. Warner Commc'nns, Inc.*, 435 U.S. 589, 597 (1978) (footnotes omitted).

The Third Circuit recognizes that the right to gather information includes the right to record what an individual has a right to see and a right to hear. In *Fields*, the Third Circuit articulated the important role audio and video recording play in facilitating the uninhibited robust and wide-open exchange of information:

To record what there is the right for the eye to see or the ear to hear corroborates or lays aside subjective impressions for objective facts. Hence to record is to see and hear more accurately. Recordings also facilitate discussion because of the ease in which they can be widely distributed via different forms of media.

Fields, 862 F.3d at 359.

In *U.S. v. Criden* news organizations were authorized to make copies of exhibits admitted into evidence in a criminal trial, including video and audio tapes. 648 F.2d 814 (3d. Cir. 1981). In *Robinson v. Fetterman*, 378 F.Supp.2d 534, 541 (E.D. Pa. 2005), the First Amendment protected video recording police activity because “videotaping is a legitimate means of gathering information for public dissemination and can often provide cogent evidence, as it did in this case.” Finally, in *Philadelphia Bail Fund v. Arraignment Court Magistrate Judges*, 440 F.Supp.3d 415 (E.D. Pa. 2020), the First Amendment allowed audio recording bail proceedings in Philadelphia Municipal Court even though the Pennsylvania Rules of Criminal Procedure and the Pennsylvania Rules of Judicial Administration prohibited such audio recordings.

The common thread of these cases is that the First Amendment protects the public's right to witness the conduct of government officials *and* the right to record in a manner that will facilitate wide dissemination and discussion among the public. The principle that there is a right to record what “there is the right for the eye to see or for the ear to hear.” WPSD's refusal to allow Ms. Weaver to take photos, recordings, or make copies of the documents she had a right to inspect violated her First Amendment rights.

It is no defense to point to the copyright laws as overriding a person's First Amendment right to obtain information from the government and to make their own recording.

First, the enforcement of a copyright is through the holder of the copyright against a person who has violated the Copyright Act by making unauthorized duplication. Unless the WPSD holds a copyright in the curriculum (or the items subject to a Right to Know Request) it is not its right to enforce.¹ Second, Ms. Weaver is entitled to inspect the documents. *Ali v. Philadelphia City Plan. Comm'n*, 125 A.3d 92 (Pa. Commw. Ct. 2015) (holding that the Copyright Act limits state agencies from having to duplicate the work but the agency must still allow inspection of the work). If Ms. Weaver chooses to make copies, take photos, or make recordings during her inspection, she has a First Amendment right to do so, and the Copyright Act's Fair Use provisions protects such activities. But even if this were a violation of the Copyright Act, it is the copyright holder who is required to enforce such a claim. The Copyright Act does not allow WPSD to restrict Ms. Weaver from exercising her First Amendment right to make her own copies, photographs, or recordings of the documents she is authorized to inspect.

If WPSD continues to limit Ms. Weaver's ability to inspect documents and exercise her First Amendment rights, then we will sue in federal court to protect her. If you have any questions, please feel free to reach out to me.

Sincerely,

/s/ Nicholas R. Barry
Senior Litigation Counsel
America First Legal Foundation

¹There is no argument that the WPSD is responsible for Ms. Weaver's actions. Such an argument was tried decades ago against a new technology (at the time) called a VCR. *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417 (1984). The Court held that VCR manufacturers could not be held responsible for end-users making copies of live broadcasts. *Id.* at 456. Likewise, any copies Ms. Weaver would make are capable of substantial non-infringing uses.