VIRGINIA:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

LOUDOUN COUNTY SCHOOL BOARD,

Plaintiff,

v.

COMMONWEALTH OF VIRGINIA,

SERVE: Theophani Stamos
Special Counsel to the Attorney General
Office of the Attorney General
10555 Main Street, Suite 350
Fairfax, VA 22030

and

JASON MIYARES,
ATTORNEY GENERAL FOR THE
COMMONWEALTH OF VIRGINIA,
in his official capacity,

SERVE: By Private Process

Defendants.

Civil Action No. CL22-2713

COMPLAINT

Plaintiff Loudoun County School Board, by counsel, for its Complaint against Defendants, state as follows:

INTRODUCTION

1. The Loudoun County School Board ("LCPS"), by counsel, respectfully requests that this Court issue a temporary injunction to prohibit any further actions by the Special Grand Jury convened by the Office of the Attorney General pursuant to Governor Glenn Youngkin's Executive Order Number 4 ("EO 4") on the grounds that EO 4 is *ultra vires* and violates the Constitution of Virginia and the Code of Virginia. Because EO 4 is unlawful, the Attorney General

had no authority to seek impaneling the Special Grand Jury, and its formation was unlawful as well. The Attorney General also does not have authority to conduct a roving investigation pursuant to EO 4 of "any individuals who have violated existing law or violated the rights of victims of crime," EO 4 at 2, through a special grand jury ("Special Grand Jury"). This proceeding is unlawful, and it should be immediately ended before further irreparable harm is done to the LCPS employees, students, and parents who have been targeted by the Attorney General's investigation.

2. EO 4 is no ordinary exercise of gubernatorial authority. Instead, it is an unprecedented attempt to vest broad prosecution power in the political offices of state government. Specifically, EO 4 targets a local school board that is vested with the constitutional power of authority over its schools. Moreover, the purported scope of EO 4 extends far beyond what is authorized to grand juries under the Code of Virginia. The General Assembly has carefully defined the role of the Attorney General in criminal prosecutions, the appropriate role of special grand juries, and the role that the Attorney General can play in grand juries. Nothing in the plain language or legislative history of any of these statutes grants the Governor the authority to invest the Attorney General with the power to convene a special grand jury—a right reserved exclusively to the local elected Commonwealth Attorney and her designees—nor does it permit the Special Grand Jury to investigate policy violations. Permitting this Special Grand Jury to continue in its present form, convened by the Attorney General, who is otherwise acting outside his lawful authority and demanding the production of records and testimony that are entirely untethered to any specter of criminal activity, will cause irreparable harm. Permitting this Special Grand Jury to continue in its present form places LCPS's 15,000 employees, 80,000 students, and their families under an investigation with no boundaries in time, scope, or subject matter, and facing

subpoenas demanding records and testimony regarding sensitive, personal information without any regard for whether that will lead to evidence of a crime.

3. LCPS stands ready to cooperate with any lawful inquiries. It is a public body with public responsibilities to the citizens of the Commonwealth; however, it must be given the right to meet those obligations pursuant to lawful process—not the raw exercise of power by political officers purporting to act under the guise of the Special Grand Jury's investigative authority. For the reasons outlined below, the Court should enjoin the Special Grand Jury proceedings, and it should further enjoin the Attorney General from conducting any criminal investigation into LCPS, as EO 4 did not validly grant the Attorney General such authority.

FACTS

4. Hours after taking office, Governor Glenn Youngkin issued Executive Order Number 4, entitled "Authorizing an Investigation of Loudoun County Public Schools by the Attorney General." *See* EO 4 at 1 (Jan. 14, 2022). EO 4 requests that "the Attorney General conduct a full investigation into Loudoun County Public Schools." *Id.* Claiming authority only under "§ 2.2-511 of the *Code of Virginia*," EO 4 further purports to authorize Attorney General Jason Miyares "to initiate and coordinate investigative and prosecutorial efforts and to take such actions as he may deem appropriate to protect the citizens of the Commonwealth and hold accountable any individuals who have ***violated existing law*** or ***violated the rights of victims of crime***." *Id.* at 2 (emphasis added). The remainder of EO 4 vaguely and scantly alleges, in a five-sentenced section, styled "Importance of the Issue," that LCPS "was made aware of a sexual assault that occurred in a Loudoun County high school" and further claims, without evidence, that the "Loudoun County School Board and school administrators withheld key details and knowingly lied to parents about the assaults." *Id.* at 1. Nowhere does EO 4 articulate a specific request to

investigate or prosecute any individual or entity for any particular criminal offense, nor does it identify any specific potential violation of criminal law. Indeed, EO 4's sole reference to any criminal activity whatsoever is EO 4's reference to two prior sexual assaults in the preface.[1] *Id.*

5. Instead of requesting a specific prosecution be undertaken by the Attorney General, EO 4 purportedly authorizes a broad investigation into LCPS, for any "violations of law,"—criminal or otherwise.

6. The Attorney General's public statements have prejudged the conclusion of the Special Grand Jury's investigation, wherein he has averred that "Loudoun County Public Schools covered up a sexual assault on school grounds for political gain, leading to an additional assault of a young girl."[2]

7. With EO 4's broad putative mandate, sometime before April 7, 2022, the Attorney General applied to this Court to impanel a special grand jury to carry out its inquiry. On April 7, 2022, the Attorney General, purporting to act as counsel for the Special Grand Jury, issued subpoenas for documents and testimony to multiple individuals associated with LCPS, including the Superintendent of LCPS, Dr. Scott Ziegler, and the Chairman of the Loudoun County School Board, Jeff Morse.

[redacted] Both Dr. Ziegler and Chairman Morse moved to quash these subpoenas, arguing that: [redacted]

[1] [redacted]

[2] *See 'No more cover-ups' | Virginia attorney general investigating Loudoun County Schools*, https://www.wusa9.com/article/news/local/virginia/virginia-ag-to-investigate-loudoun-schools-school-system-wont-public-release-independent-review/65-16864978-bc9f-44c3-9d7e-df1ab70cc984 (last accessed May 15, 2022).

[redacted] In the hearing on LCPS's Motion to Quash the subpoenas duces tecum issued to Jeff Morse and Scott Ziegler, counsel for the Office of the Attorney General made clear that [redacted]

Tr. at 45-46.

LEGAL STANDARD FOR GRANTING TEMPORARY INJUNCTIVE RELIEF

9. This Court is empowered to issue injunctions. Va. Code § 8.01-620. Because the Supreme Court of Virginia has not articulated a prescribed test for temporary injunctive relief, some Virginia courts have adopted the standard set forth by the United States Supreme Court in *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008). *Winter* focuses on four factors: (1) the likelihood of success on the merits; (2) the risk of irreparable injury; (3) the public interest; and (4) the balance of the equities. Among these factors, likelihood of success on the merits is

generally considered the most important. *See, e.g., Wings, LLC v. Capitol Leather, LLC*, 88 Va. Cir. 83 (Fairfax Cnty. 2014). In some cases, courts have treated the presence of substantial questions going to the merits of the dispute as sufficient to justify entry of a temporary injunction. *See, e.g., Blackwelder Furniture Co. v. Seilig Mfg. Co., Inc.*, 550 F.2d 189 (4th Cir. 1977).

10. As set forth below, LCPS fully satisfies each of the above factors, and the entry of a temporary injunction is appropriate.

LCPS Is Likely to Succeed on the Merits of Its Claims

11. LCPS is likely to succeed in its claims that EO 4 is unlawful, and thus, necessarily, so is the Attorney General's investigation of LCPS through the Special Grand Jury.

12. First, EO 4 is *ultra vires*, as the Governor cannot create jurisdiction for the Attorney General to conduct a broad investigation of LCPS.

13. Executive Order Number 4 assumes a power that does not exist. This is confirmed by the plain language of Va. Code § 2.2-511, its legislative history, the legislative history related to Virginia grand juries, and prior Governors' and Attorneys General's use of the provision.

14. EO 4 sweeps far beyond the Governor's authority under the plain language of Va. Code § 2.2-511.

15. As an initial matter, Va. Code § 2.2-511 is not designed to be a grant of authority to the Governor; it is, instead, a restraining statute strictly limiting the authority of the Attorney General to participate in "all other criminal cases . . . unless and until a notice of appeal has been filed" with the Court of Appeals or Supreme Court of Virginia. Va. Code § 2.2-511(A). Va. Code § 2.2-511(A) lists exceptions to this general prohibition against the Attorney General participating in criminal cases.

16. As relevant here, Va. Code § 2.2-511(A) provides that "[u]nless specifically requested by the Governor to do so, the Attorney General shall have no authority to institute or conduct criminal prosecutions in the circuit courts of the Commonwealth," except for certain specific classes of offenses further set forth in the provision. Indeed, the restraining language on the involvement of the Attorney General in criminal prosecutions is entirely consistent with the Virginia Constitutional mandate and Va. Code § 15.2-1627(B), which vest primary prosecutorial authority in locally elected Commonwealth Attorneys. "There shall be elected by the qualified voters of each county and city . . . an attorney for the Commonwealth . . . . The duties . . . of such officers shall be prescribed by general law or special act." Va. Const. Art. VII, § 4.

17. The Attorney General and the Commonwealth's Attorney "are separate constitutional officers" with "distinct, although at times complementary, responsibilities" vested in them by the General Assembly. *In re Brown*, 295 Va. 202, 225 (2018) (citing to Va. Code § 2.2-511 for "the limited role of the Attorney General in criminal prosecutions" and to Va. Code § 15.2-1627(B) for the Commonwealth's Attorney's "duty of prosecuting felony warrants, indictments, or informations"). While the Commonwealth's Attorney has the broad power to prosecute felonies and, in her discretion, misdemeanors, "[t]he Attorney General is forbidden 'to institute or conduct criminal prosecutions in the circuit courts of the Commonwealth,' 'unless specifically requested by the Governor to do so,' except in sixteen (16) enumerated cases, half of which require the concurrence of the Commonwealth Attorney." *Commonwealth v. Sangha*, 107 Va. Cir. 408, 411 n.9 (Fairfax Cnty. 2021) (quoting Va. Code § 2.2-511); *accord Burnett v. Brown*, 194 Va. 103, 105 (1952).

18. Thus, the Governor's authority to "specifically request" that the Attorney General "institute or conduct criminal prosecutions" in the circuit courts of Virginia must be read in

keeping with the legislative intent of the rest of Va. Code § 2.2-511, Va. Code § 15.2-1627(B), and the Virginia Constitution; it is a limited exception to a broad prohibition on the Attorney General's participation in criminal prosecutions in the Commonwealth. "[T]he Code of Virginia constitutes a single 'body of . . . laws,' and related statutes should be considered together and 'harmoni[zed]' if necessary as part of the interpretive process." *Thompson v. Commonwealth*, 73 Va. App. 721, 728 (2021) (quoting *Amonett v. Commonwealth*, 70 Va. App. 1, 10 (2019)).

19. The plain language similarly provides a very narrow authority to the Governor with regard to authorizing the Attorney General to prosecute crimes in the Commonwealth. "[W]e determine the legislative intent from the words used in the statute, applying the plain meaning of the words unless they are ambiguous or would lead to an absurd result." *Wright v. Commonwealth,* 278 Va. 754, 759 (2009). First, the prosecution must be "specifically requested" by the Governor. Va. Code § 2.2-511. Second, the specific request must be to "institute or conduct criminal prosecutions." *Id.* Under Virginia law, "prosecutions for offenses against the Commonwealth, unless otherwise provided, *shall be* by presentment, indictment or information." Va. Code § 19.2-221 (emphasis added). Thus, to institute a prosecution is to proceed by presentment, indictment, or information—or other lawful, formal process for prosecuting criminal offenses.

20. Nothing in Va. Code § 2.2-511 provides the Governor with the authority to request the Attorney General to conduct *an investigation* or permits the Attorney General to conduct an investigation by convening a special grand jury.[3] Va. Code § 2.2-511 is expressly limited to authorizing prosecutions by the Attorney General for which there is already sufficient evidence to "institute" and "conduct" a *prosecution.*

[3] Notably, EO 4 does not request the Attorney General to convene a special grand jury; that is an added step the Attorney General took upon himself to initiate as the mechanism for conducting an investigation.

> [L]aw enforcement and a Commonwealth's Attorney maintain separate and distinct authorities of power in Virginia. *Amonett v. Commonwealth*, 70 Va. App. 1, 7-8[] (2019) ("[W]hile police and prosecutors work together and ideally do so smoothly and cooperatively, they are separate, independent governmental entities with differing missions and responsibilities."). Both remain agents of the Commonwealth and wield fundamental executive powers in the "enforcement of all criminal laws throughout the county." Va. Code. Ann. § 15.2-528. Per statute, law enforcement does not maintain the same prosecutorial powers before a court and merely "is responsible for the prevention and detection of crime, the apprehension of criminals, the safeguard of life and property, the preservation of peace and the enforcement of state and local laws, regulations, and ordinances." Va. Code. Ann. § 15.2-1704. Only the Commonwealth's Attorney has the discretion to prosecute misdemeanors and remains obligated to prosecute felonies. Va. Code. Ann. § 15.2-1627.

Commonwealth v. Wilkerson, 108 Va. Cir. 430, 432-33 (Newport News City 2021).

21. In context, then, the phrase "specifically requested" in Va. Code § 2.2-511 is most naturally read to refer to identifying a specific case against specific persons, for which prosecution is appropriate in a circuit court, not to conduct an investigation. The Supreme Court of Virginia has long held that courts are not permitted "to add or to subtract the words used in the statute." *Posey v. Commonwealth*, 123 Va. 551, 553 (1918).

22. EO 4 fails to meet the requirements to be a valid exercise of the power of the Governor contemplated by Va. Code § 2.2-511.

23. First, EO 4 purports to authorize the Attorney General to "initiate and coordinate *investigative* and prosecutorial efforts," not to "institute or conduct criminal prosecutions." EO 4 at 2 (emphasis added); Va. Code § 2.2-511(A). EO 4 identifies no specific crime or specific persons to be prosecuted. Instead, it requests that the "Attorney General conduct a full investigation into Loudoun County Public Schools." *Id.* at 1. Thus, it is neither specific, nor a request to "institute or conduct" a criminal prosecution by the Attorney General.

24. Second, EO 4 aims this purported investigative authority at "any individuals who have violated existing law or violated the rights of victims of crime," whether constituting a

criminal offense or not. EO 4 at 2. By example, the Attorney General [redacted]—or violation of the rights of crime victims—cannot plausibly be considered a request to "institute or conduct" a criminal prosecution, much less a specific request to do so. Indeed, under the Virginia Crime Victim and Witness Rights Act, the responsibility for ensuring the rights of victims of crime are protected is expressly reserved to "a locality's crime victim and witness assistance program," and that concerns advice of rights, authorized services, and an "opportunity to be heard by law-enforcement agencies, attorneys for the Commonwealth, corrections agencies and the judiciary at all critical stages of the criminal justice process." Va. Code § 19.2-11.01. Nothing in that statute provides any role for LCPS relating to crime victims in the criminal justice process, and it is incomprehensible that the General Assembly intended for the Governor to use Va. Code § 2.2-511 to investigate a local school system for handling a responsibility the legislature expressly reserved to another public body.

25. Accordingly, EO 4 is facially *ultra vires*, as it does not constitute a specific request that a criminal prosecution be instituted or conducted by the Attorney General. "Deeply embedded in the Virginia legal tradition is 'a cautious and incremental approach to any expansions of the executive power,'" reflecting "our belief that the 'concerns motivating the original framers in 1776 still survive in Virginia,' including their skeptical view of 'the unfettered exercise of executive power.'" *Howell v. McAuliffe*, 292 Va. 320, 341-42 (2016) (citing *Gallagher v. Commonwealth*, 284 Va. 444, 451). Faithfulness to these principles of limited executive authority does not permit

a reading of Va. Code § 2.2-511 to imply a further broad investigative power that the Governor can bestow on the Attorney General.

26. Further, legislative history demonstrates the limited authority contemplated by Va. Code § 2.2-511.

27. Va. Code § 2.2-511 has existed in some form since before the 1950 Code of Virginia was established. Indeed, its predecessor appears to have been passed into law as Chapter 47 of the 1936 Acts of Assembly. That Act was to, among other things, "prescribe the authority and duties" of the Attorney General. *Id.* at 73 (Title of Chapter 47). Chapter 47 added Section 6 to what was then established as Sec. 374-a of the Virginia Code:

> Section 6. Criminal Cases.—Unless specifically requested by the Governor to do so, the Attorney General shall have no authority to institute or conduct criminal prosecutions in the circuit or corporation courts of the State except in cases involving violations of the Alcoholic Beverage Control Act and laws relating to Motor Vehicles and their operation and the handling of funds by a State bureau, institution, commission or department, in which the cases the Attorney General may leave the prosecution to the local attorney for the Commonwealth, or he may, in his discretion, institute proceedings by information, presentment or indictment, as the one or the other may be appropriate, and conduct the same. In all other criminal cases in the circuit and corporation courts, except where the law provides otherwise, the authority of the Attorney General to appear or to participate in the proceedings shall not attach unless and until a writ of error has been granted by the Supreme Court of Appeals. In all criminal cases before the Supreme Court of Appeals in which the Commonwealth is a party or is directly interested, the Attorney General shall appear and represent the Commonwealth.

Id.

28. The relevant language addressing an implied power of the Governor to establish authority for the Attorney General to participate in criminal cases remains largely unchanged today. The 1936 Act provides, "[u]nless specifically requested by the Governor so to do, the Attorney General shall have no authority to institute or conduct criminal prosecutions in the circuit or corporation courts of the State," except for certain classes of cases. *Id.* This included ABC

laws, motor vehicle laws, and the "handling of funds by a State bureau, institution, commission or department." *Id.* The operative language with regard to the Governor's implied authority, other than replacing the phrase "so to do" with "to do so" is the same, including the key phrases "specifically requested" and "institute or conduct criminal prosecutions." *Compare id.* with Va. Code § 2.2-511(A).

29. That the authority contemplated by Va. Code § 2.2-511's prior statute is limited to instituting and conducting criminal prosecutions—not investigating potential wrongdoing—is made plain by that prior statute's language. After describing the offenses in which the Attorney General may "institute or conduct" prosecutions, it further provides that, in those cases, "the Attorney General may leave the prosecution to the local attorney for the Commonwealth, or he may, in his discretion, *institute* proceedings by information, presentment or indictment, as the one or the other may be appropriate, and *conduct* the same." This language, using the exact same terms—"institute" and "conduct"—leaves no doubt that the Attorney General's authority, in criminal cases, is limited to the formal criminal process for bringing a specific, prescribed prosecution, not investigating possible wrongdoing.

30. Since 1936, the General Assembly has amended what is now Va. Code § 2.2-511—most materially, to add offenses for which the Attorney General has concurrent authority to prosecute; however, it has never amended either the "specifically requested" or "institute or conduct" language related to the Governor's implied authority under the law. Thus, the provisions must be read to have that same meaning: that the Attorney General's limited role in criminal cases in the circuit courts, under Va. Code § 2.2-511, is to "institute or conduct criminal prosecutions [that are concretely prescribed]," not broader authority to investigate crimes, much less impanel a special grand jury for that investigative purpose.

31. The evolution of the Virginia grand jury system also confirms the limited authority of the Attorney General under Va. Code § 2.2-511.

32. The current grand jury system in Virginia, in which the distinct roles and procedures of regular and special grand juries are delineated in the Code of Virginia, was largely established in 1975, with multi-jurisdiction grand juries established in 1983. *See* Va. Code §§ 19.2-191 through 19.2-215.11. The 1975 changes were the result of a thorough study of the grand jury system by the State Crime Commission and Code Commission. Prior to the 1975 reform of Virginia criminal procedure, grand juries operated almost wholly independent of the prosecutor. The report of that study explained that, "[u]nder the current Virginia [grand jury] system, the commonwealth's attorney is not allowed to be present during *any* of the grand jury proceedings unless sworn as a witness." Report of the Virginia State Crime Commission to the Governor and General Assembly of Virginia on the Grand Jury System in Virginia (1974) (the "1975 Grand Jury Report").

33. The 1975 Grand Jury Report cited the lack of direct involvement by prosecutors in investigative grand juries as a challenge to the grand jury system handling ever-more complex criminal cases. Thus, to better enable special grand juries to perform their investigative function, the 1975 Grand Jury Report recommended that "provisions be made so the commonwealth's attorney, upon request of the investigating grand jury and consent of the court, would be present during the session of the *investigative* grand jury, not only as a witness, but for the purposes of questioning witnesses." *Id.*

34. The 1975 Grand Jury Report recommended further significant changes to Virginia criminal procedure, later adopted by the General Assembly, that clearly delineated the role of the regular grand jury—to consider "pre-prepared indictments"—and the "investigative" (or special)

grand jury—to investigate "allegations of criminal activity of public concern, and malfeasance of governmental officials." *Id.* at 8. This recommended reform of the grand jury system in Virginia was enacted as Chapter 495 of the 1975 Acts of Assembly.

35. Indeed, until 2001, "the sole function of the special grand jury [wa]s to gather evidence and synthesize its findings into a report, which may be presented to the regular grand jury." *Vikho v. Commonwealth*, 10 Va. App. 498, 501 (1990). In 2001, the General Assembly further expanded the prosecutor's role in special grand juries. Chapter 4 of the 2001 Acts of Assembly enabled the Commonwealth's Attorney: (1) to seek to impanel a special grand jury; (2) if so convened, gave the Commonwealth's Attorney the right to question witnesses before the special grand jury; and (3) if so convened, gave the special grand jury the power to indict. *See* 2001 Acts of Assembly, Ch. 4.

36. The Attorney General is presently proceeding under claimed authority as "attorney for the Commonwealth" under the special grand jury laws as they exist today. However, this evolution makes clear that the General Assembly *did not* intend for the Attorney General to have the investigative authority of the special grand jury. That is because in 1936—when the relevant, original language of Va. Code § 2.2-511 was enacted—there was no ability of a Virginia prosecutor to use the grand jury for his or her own investigative purposes. And while the grand jury system has changed since that time, the language of Va. Code § 2.2-511 ("institute or conduct criminal prosecutions") has not.

37. Further the General Assembly *has* contemplated the role of the Attorney General in grand jury proceedings since 1936, yet has not changed the relevant language of Va. Code § 2.2-511. In addition to these 1975 changes, which allowed for a limited role of the Commonwealth's Attorney in special grand juries, in 1983, the General Assembly established the

procedures for multi-jurisdiction grand juries, which are distinct from regular or special grand juries. Applications to the Supreme Court of Virginia for multi-jurisdiction grand juries must be sought by "two or more attorneys for the Commonwealth," provided "the Attorney General has approved the application in writing." Va. Code § 19.2-215.2. The 1983 enactment further contained a specific provision, "Participation by Office of Attorney General; assistance of special counsel permitted in certain prosecutions." *See* Va. Code § 19.2-215.10. It provides that "[u]pon request by the [applying Commonwealth's Attorneys] or upon motion to the presiding judge by special counsel, the Office of Attorney General *may* participate as special counsel in the multi-jurisdiction grand jury proceedings and any prosecutions arising therefrom." *Id.* Thus, the General Assembly *specifically* limited the power of the Attorney General to participate in multi-jurisdiction grand juries.

38. This demonstrates that the General Assembly, while enlarging the power of local prosecutors in conducting criminal investigations through the special and multi-jurisdiction grand juries, contemplated the role of the Attorney General, and determined, likely *because* of the strict limitations on the role of the Attorney General in the Constitution and in Va. Code § 2.2-511, that in order to participate in any investigative capacity they had to confer *explicit* authority on the Attorney General, as in Va. Code § 19.2-215.10. Further, in 2001 when the General Assembly considered expanded the power of special grand juries and making clear the Commonwealth Attorney's role within the special grand jury, it expressly *declined* to confer the same explicit authority on the Attorney General that appeared in the multi-jurisdiction grand jury statutes. Moreover, the General Assembly never, since 1936, has changed the limited authority of the Attorney General Va. Code § 2.2-511 to expand beyond the power to "institute or conduct criminal prosecutions."

39. To have made such extensive changes to the Virginia grand jury system and the Commonwealth Attorney's role in it, while not making any material changes to the relevant, limited language of Va. Code § 2.2-511 or creating explicit authority to participate in special grand juries, shows the legislative intent that the Attorney General has no such investigative authority through the special and multi-jurisdiction grand juries, except as specifically provided in those laws. This Court must "'presume that the General Assembly chose with care the words it used when it enacted the statute [the Court is] construing.'" *Stoots v. Marion Life Saving Crew, Inc.*, 300 Va. 354, 365 (2021) (quoting *Bonanno v. Quinn*, 299 Va. 722, 730 (2021)). Importantly, "'when the General Assembly includes specific language in one section of a statute, but omits that language from another section of the statute, [this Court] must presume that the exclusion of the language was intentional.'" *Id.* (presuming the legislature intentionally omitted the inclusion of a "good faith" exception from one statute, as it had seen fit to include that exception in a similar statute) (quoting *Halifax Corp. v. First Union Nat. Bank*, 262 Va. 91, 100 (2001)).

40. Countenancing EO 4 and the Attorney General's convening of a special grand jury ignores this persuasive legislative history and intent, and creates, through implication, a dramatic expansion of executive authority in the political offices of the Governor and Attorney General not contemplated by the General Assembly. This Court must "apply the interpretation that will carry out the legislative intent behind the statute[s]." *Conyers v. Martial Arts World of Richmond, Inc.*, 273 Va. 96, 104 (2007) (citations omitted). "'Courts cannot add language to the statute the General Assembly has not seen fit to include. Nor are they permitted to accomplish the same result by judicial interpretation.'" *McGinnis v. Commonwealth*, 296 Va. 489, 501 (2018) (quoting *Washington v. Commonwealth*, 272 Va. 449, 459 (2006)). Thus, this Court should decline the invitation of the Attorney General to add words to several different statutes in an effort to

manufacture an expansion of the Attorney General's authority to initiate investigations under Va. Code § 2.2-511 and to convene a special grand jury, in clear contradiction of legislative intent.

41. Moreover, Va. Code § 2.2-511 has never been understood to permit the Governor to confer broad investigative power to the Attorney General.

42. The limited authority of the Governor and Attorney General under Va. Code § 2.2-511 is further confirmed by prior practice. A search of available reports to the General Assembly, including the annual Report of the Secretary of the Commonwealth, which includes executive orders of the Governor, has revealed *no instance* in which any Governor has previously used purported authority under Va. Code § 2.2-511 to authorize investigations by the Attorney General. Indeed, the only instance in which the provision was invoked in an executive order appears to be recent--under Governor McAuliffe's Executive Order Number 50 (2015) ("EO 50"). *See* Exhibit 8, Report of the Secretary of the Commonwealth 2016-2017 (excerpt including EO 50 (McAuliffe 2015)).

43. That order, in turn, is limited by comparison to EO 4. Pursuant to Va. Code § 2.2-511, EO 50 authorized the Attorney General to "coordinate [the] prosecutorial efforts" of a law enforcement task force pursuing criminal activity under "existing gun laws," and to "bring such cases as he may deem most appropriate" for such offenses. *Id.* at 2. Nowhere does it suggest that the Attorney General could pursue his own investigation into firearms offenses, nor impanel a special grand jury for that investigative purpose. It is limited to bringing actual prosecutions, as contemplated by the plain language of Va. Code § 2.2-511, for a specific type of offense.

44. Thus, EO 4 is a departure—and deviation—from any prior order by the Governor. And as the Supreme Court of Virginia has explained, "'just as established practice may shed light on the extent of power conveyed,' it is equally true that 'the want of assertion of power by those

who presumably would be alert to exercise it, is equally significant in determining whether such power was actually conferred."' *Howell*, 292 Va. at 340 (relying on history of prior Governor's use of only individual restoration-of-rights orders supported finding Governor lacked authority to issue blanket order restoring civil rights to ex-felons) (quoting *BankAmerica Corp. v. U.S.*, 462 U.S. 122, 131 (1983)). Prior to EO 4, we are aware of no Virginia Governor ever directing the Attorney General to target a particular entity, let alone an entire component of local government, with an investigation under the auspices of Va. Code § 2.2-511. EO 4 is an extreme outlier, which further confirms that it is unlawful.

45. For these reasons, EO 4 is *ultra vires*, and it cannot authorize the broad investigation the Attorney General has undertaken against LCPS. Because EO 4 is unlawful, the Attorney General had no authority to seek impaneling the Special Grand Jury. The Special Grand Jury should therefore be suspended from any further work, as it has been improperly constituted. The Attorney General cannot participate in the proceedings of the Special Grand Jury, as he has no authority to conduct investigations under Va. Code § 2.2-511(A), and EO 4 cannot provide such authority.

46. Additionally, to the extent EO 4 has any lawful effect, it cannot enlarge the jurisdiction of any special grand jury.

47. Even if the Court were to disagree regarding the lawfulness of EO 4 or the Attorney General's powers under Va. Code § 2.2-511, it should be uncontroversial that EO 4 cannot empower the Special Grand Jury to, in turn, "conduct a full investigation into Loudoun County Public Schools." EO 4 at 1. The Special Grand Jury's role is defined by the General Assembly, not the Governor. The Code of Virginia permits grand juries to consider "bills of indictment" to determine probable cause for a true bill, and "to investigate and report on any condition that

involves or tends to promote *criminal* activity, either in the community or by any governmental authority, agency or official thereof." Va. Code § 19.2-191 (emphasis added).

48. With regard to special grand juries, Virginia law permits a special grand jury to be impaneled under three conditions, one of which is "upon request of the attorney for the Commonwealth to investigate and report on any condition that involves or tends to promote criminal" activity. Va. Code § 19.2-206 (emphasis added). This investigative role, while broad when within its intended lane, is expressly limited to criminal activity. *Britt v. Commonwealth*, 202 Va. 906, 907 (1961) (stating the grand jury's duty "is to examine into accusations made against persons charged with a crime and determine whether it is proper that they be brought to trial").

49. This charge is further reinforced by the Virginia Handbook for Grand Jurors. This guidance document, which must be provided to all grand jurors, including special grand jurors, provides the following advisement under the heading, "Scope of Investigation":

> The responsibility of a Special Grand Jury ordinarily will be to investigate a *narrow special condition* believed to exist in the community. On the one hand, its duty is to make a full and complete investigation and report on that condition; on the other hand, *it is not convened to go on a fishing expedition with respect to other possible illegal conditions which may exist.* If during the course of its authorized investigation, some other illegal condition comes to light which the Special Grand Jurors feel needs investigation, the Special Grand Jury should call attention to it in its report.

See Virginia Handbook for Grand Jurors, at § III, ¶25 (emphases added).

50. Here, EO 4 itself is a fishing expedition. It identifies no specific crimes that could have been committed and permits the Special Grand Jury unlimited authority to investigate any condition, illegal or otherwise, which could come to light. And rather than merely call attention to an illegal condition, the Special Grand Jury here has purportedly been given unlimited authority to investigate any illegal condition, whether occurring before or after the issuance of EO4, so long as it somehow relates to LCPS.

51. EO 4 purports to authorize a "full investigation" of LCPS, and requests that the Attorney General take any appropriate actions "to protect the citizens of the Commonwealth and hold accountable any individuals who have violated existing law or violated the rights of victims of crime." EO 4 at 1 and 2. The Attorney General has, in turn, apparently sought to impanel the Special Grand Jury to fulfill this charge; however, the Special Grand Jury has *no jurisdiction* to conduct a wide-ranging investigation untethered to a condition that "involves or tends to promote criminal activity." Va. Code § 19.2-206.

52. The subpoenas targeted at the records of LCPS issued by the Attorney General on behalf of the Special Grand Jury demand production of communications discussing, among other items, the LCPS transgender policy (including its passage), communications discussing Title IX, communications regarding an interaction involving an elementary school student and his teacher, Facebook posts, and educational accommodations for students with exceptional needs. These demands do not relate to any alleged criminal activity. Instead, they necessarily require the production of extraneous, personally sensitive information of students, parents, and teachers, as well as wide-ranging policies of LCPS—all in order for the Attorney General to develop a report on the [redacted] within LCPS.

53. The subpoenas being issued by the wrongfully-impaneled Special Grand Jury, resulting from the unlawful EO 4, are an abuse of process on multiple grounds.

54. First, it is an abuse of the grand jury process to use a grand jury subpoena for testimony or records for solely civil investigative purposes. *U.S. v. Procter & Gamble Co.*, 356 U.S. 677, 683 (1958). *See also* 1989 Va. Op. Att'y Gen. 221 (1989) ("I am unaware of any statute that expressly authorizes a grand jury to investigate the non-criminal conduct of a public officer or to embark on investigations of noncriminal matters.").

55. Moreover, once the government determines it is not proceeding criminally, it must terminate a grand jury investigation. *U.S. v. Pennsalt Chemical Co.*, 260 F. Supp. 171 (E.D. Pa. 1966). Indeed, the Supreme Court has held that it is proper to prevent abuse of the subpoena where there is "the indiscriminate summoning of witnesses with no definite objective in view and in a spirit of meddlesome inquiry." *Hale v. Henkel*, 201 U.S. 43, 63 (1906).

56. Finally, as a fundamental matter, "[a] subpoena duces tecum may not be used as a "'fishing expedition' in the hope of uncovering information." *Farish v. Commonwealth*, 2 Va. App. 627, 630 (1986) (citing *Bowman Dairy Co. v. U.S.*, 341 U.S. 214, 221, 71 S. Ct. 675, 95 L.Ed. 879 (1951).

57. Accordingly, this Court, even if it finds EO 4 lawful, must restrain the Special Grand Jury—and the Attorney General conducting its investigation—from pursuing non-criminal matters.

58. The broad expanse of EO 4 also conflicts with LCPS's constitutionally protected powers and prerogatives.

59. LCPS is also likely to succeed on the merits because EO 4 violates Article VIII, Section 7 of the Constitution of Virginia by divesting LCPS of its constitutionally guaranteed power of supervision over the public schools. The Office of the Attorney General has made clear that [redacted] This inquiry infringes upon, and otherwise usurps, the constitutional authority of the School Board, operating as LCPS, to supervise the schools within its school division.

60. The Constitution of Virginia makes clear that local school boards (and not the Governor, nor the Attorney General) have primary responsibility in this field. Under Article VIII,

Section 7 of the Constitution, local school boards are vested with the exclusive power over "the supervision of schools in each school division." This makes local school boards the principal constitutional actors when it comes to adopting and enforcing policy decisions within its schools. In contrast, the Governor neither is afforded nor enjoys virtually any direct power over the supervision of public schools; he is only expressly vested with more peripheral tasks, such as appointing the State Superintendent and Board of Education members. Art. VIII, §§ 4, 6. And while the General Assembly, State Board of Education, and State Superintendent are assigned material functions—*e.g.*, creating school divisions and standards of quality, Art. VIII, §§ 1–6—it is local school boards rather than statewide actors who are constitutionally charged with supervising local public schools.

61. Consistent with this constitutional plan, "[t]he power to operate, maintain and supervise public schools in Virginia is, and has always been, within the exclusive jurisdiction of the local school boards . . . ." *Bradley v. Sch. Bd. of City of Richmond*, 462 F.2d 1058, 1067 (4th Cir. 1972).

62. In that respect, local school boards are recognized as the "final policymaking authority" over public schools. *Hanover Cty. Unit of NAACP v. Hanover Cty.*, No. 3:19 Civ. 599, 2019 WL 5580227, at *3 (E.D. Va. Oct. 29, 2019). Moreover, "[n]o statutory enactment can permissibly take away from a local school board its fundamental power to supervise its school system." *Fairfax Cty. Sch. Bd. v. S.C. by Cole*, 297 Va. 363, 375 (2019) (citation omitted).

63. As the Supreme Court of Virginia recognized, "decisions regarding the safety and welfare of students are manifestly a part of the supervisory authority granted the school boards under Article VIII." *Commonwealth v. Doe*, 278 Va. 223, 230 (2009). Thus, while the state reserves some power to "directly or indirectly impose requirements on school boards that affect

the operation of public schools," that power is limited by the Constitution of Virginia. *Id.* Ultimately, LCPS retains "broad authority to prescribe and enforce standards of conduct in schools." *Wood By & Through Wood v. Henry Cty. Pub. Sch.*, 255 Va. 85, 91 (1998); see also *Riddick v. Sch. Bd. of City of Portsmouth*, 238 F.3d 518, 523 (4th Cir. 2000) (emphasizing that "[t]he Constitution of Virginia vests control of the public school system in the local school boards").

64. That principle controls here. Through EO 4, the Governor has attempted to arrogate to the Attorney General the power to oversee decisions for public schools regarding any subject matter that the Attorney General deems fit to supervise, and the Attorney General has attempted to exercise that "oversight" through the powers of the Special Grand Jury. That simply is not permitted under the Constitution of Virginia. As courts have consistently interpreted and applied the express language of the Virginia Constitution, and if Article VIII, Section 7 means anything, it is that local school boards, and only local school boards, are entrusted to decide the enforcement of their policies regarding student conduct and school safety. Further, the Supreme Court of Virginia has made clear, that, contrary to the Attorney General's assertions, "the function of applying local policies, rules, and regulations, adopted for the management of a teaching staff, is a function essential and indispensable to exercise of the power of supervision vested by s[ection] 7 of Article VIII." *Sch. Bd. of City of Richmond v. Parham*, 218 Va. 950, 958 (1978).

65. A Special Grand Jury report with a final result of a report on [redacted] in LCPS would also improperly violate the oversight authority of LCPS. While the limitations of a grand jury report have not been addressed in Virginia courts, federal grand juries are "without authority to issue a report that advises, condemns or commends, or makes recommendations

concerning the policies and operation of public boards, public officers, or public authorities. *Hammond v. Brown*, 323 F. Supp. 326, 345 (N.D. Ohio), *aff'd*, 450 F.2d 480 (6th Cir. 1971).[4]

66. Even in the absence of any binding criminal indictments, a Special Grand Jury Report on [redacted] in LCPS violates the Code of Virginia, which makes clear that the purpose of a grand jury is "to investigate and report on any condition that involves or tends to promote criminal activity." Va. Code § 19.2-191(2). In some states, grand juries are expressly authorized to issue reports making policy recommendations. *See, e.g.*, N.Y. Crim. Proc. Law § 190.85 (McKinney);[5] Cal. Penal Code § 925 (West);[6] Virginia contains no such express authorization. Moreover, to allow the Special Grand Jury to issue a report on LCPS generally would violate the principle established in *Application of United Elec, Radio & Mach Workers of Am.*, 111 F. Supp. 858, 865 (S.D.N.Y. 1953):

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[4] Federal courts have generally held that federal grand juries lack authority to issue 'reports' on public affairs. (*See, e.g., Application of United Elec., Radio v. M. Workers* (S.D.N.Y.1953) 111 F.Supp. 858; *U.S. v. Cox* (5th Cir. 1965) 342 F.2d 167, 186 fn. 2 (Wisdom, J., concurring).) The New York Court of Appeals reached a similar conclusion in the absence of explicit statutory authority for grand jury reports (*see e.g., Wood v. Hughes* (1961) 9 N.Y.2d 144, 212 N.Y.S.2d 33, 173 N.E.2d 21); thereafter, New York enacted specific legislation authorizing such reports. (*See In re Second Report of Nov., 1968 Grand Jury*, 26 N.Y.2d 200, 309 N.Y.S.2d 297, 257 N.E.2d 859 (1970). The Code of Virginia contains no such specific authority.

[5] "The grand jury may submit to the court by which it was impaneled, a report:
(a) Concerning misconduct, non-feasance or neglect in public office by a public servant as the basis for a recommendation of removal or disciplinary action; or
(b) Stating that after investigation of a public servant it finds no misconduct, non-feasance or neglect in office by him provided that such public servant has requested the submission of such report; or
(c) Proposing recommendations for legislative, executive or administrative action in the public interest based upon stated findings."

[6] "The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in the county created pursuant to state law for which the officers of the county are serving in their ex officio capacity as officers of the districts."

> The right and duty of citizens acting in their individual capacities to criticize, to urge action and make recommendations to the other branches of the government is unquestioned and not at issue. But here, the full weight and authority of the Grand Jury as an official agency of the Court through disclosure of testimony compelled by the Court's processes, has advised the executive . . . .and Congress what action they should take on matters of substantive policy. It is at this point that the doctrine of separation of powers comes into play and requires the judiciary or its arm to maintain the purity of its function and to avoid the assumption of an advisory role.

67. The Attorney General has already expressly stated [redacted] Therefore, to permit the Special Grand Jury to make investigations into purported policy violations or recommendations regarding policy violations absent express statutory authority impermissibly infringes on the constitutional authority bestowed upon local school boards and violates the separation of powers doctrine as well.

68. Virginia courts have consistently struck down attempts of state government to divest school boards of their power and responsibility to supervise local schools. In fact, for painful historical reasons, courts have been especially sensitive to arrangements that would divest school boards of their supervisory power at the expense of the governor or his appointees. *See Harrison v. Day,* 200 Va. 439, 452 (1959) (holding it is unconstitutional for the governor to have the power to control integrated schools); *see also Sch. Bd. of City of Norfolk v. Opportunity Educ. Inst.*, 88 Va. Cir. 317 (Norfolk City 2014) (invalidating statute that provided for the possibility of local school board power being transferred to an agency whose director was appointed by the governor).

69. While the General Assembly has some authority to regulate schools, neither the Governor nor the Attorney General may intrude upon a school board's core responsibility of supervision and execution of its policy decisions. Because the Attorney General seeks to cross that line in using the powers of the Special Grand Jury to operate as a functional Super School

Board that has the authority to investigate policy violations, *or anything else* the Attorney General wishes to investigate so long as it implicates LCPS, EO 4 squarely violates the Constitution of Virginia and the Attorney General, and the Special Grand Jury must be enjoined from their actions.

70. That conclusion vindicates the core purposes of Article VIII, Section 7. As Fourth Circuit Judge Harvie Wilkinson has noted, "[l]ocal control over the operation of public schools is one of our nation's most deeply rooted traditions—and for good reason." *Bacon v. City of Richmond, Virginia*, 475 F.3d 633, 641 (4th Cir. 2007).

71. The remaining factors also support temporary injunctive relief.

72. In deciding whether to grant a temporary injunction, likelihood of success on the merits is often considered to be the most important consideration. *See, e.g., Victoria Transcultural Clinical Ctr., VTCC, LLC v. Kimsey*, 477 F. Supp. 3d 457, 466 (E.D. Va. 2020). Here, for the foregoing reasons, that consideration strongly supports the entry of a temporary injunction against the Special Grand Jury and Attorney General. The same is true of the remaining factors that courts assess in deciding whether to grant such relief.

73. Under these facts, temporary injunctive relief is warranted to prevent irreparable harm.

74. The major purpose of a temporary injunction is to avoid irreparable harm where a party has a strong legal claim and it would be inequitable for them to suffer while that claim is litigated. That purpose is squarely implicated here: if EO 4 is not enjoined, the Loudoun County School Board, operating as LCPS —and the students, faculty, and staff it is charged to protect— will continue to suffer direct and immediate harm. At minimum, such continued harm is "likely in the absence of an injunction." *Winter*, 555 U.S. at 22. The Special Grand Jury is already *currently causing direct and immediate harm* to LCPS students, faculty and staff. There are three

distinct (but related) forms of irreparable injury that each independently supports a temporary injunction.

75. First, and most significant, allowing the Special Grand Jury to proceed in such an unlimited manner would subject any and all education records of 80,000 plus students, along with the education records of hundreds of thousands of LCPS alumni, to be subject to the review of the Special Grand Jury. The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g ("FERPA"), through its implementing regulations, requires LCPS to notify each and every parent or eligible student whose student's personally identifiable information is included in any subpoena response so that they may seek protective action. *See* 34 CFR 99.31(a)(9)(ii) ("The educational agency or institution may disclose [personally identifiable] information [of students] . . . only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action." Thus, while FERPA, as well as Va. Code § 22.1-287, permit such records be provided in response to a *valid*[7] subpoenas duces tecum, LCPS is obligated to provide sufficient notification to permit a parent or eligible student to seek protective action. *See U.S. v. Miami Univ.*, 294 F.3d 797, 818 (6th Cir. 2002) (holding the U.S. Department of Education properly sought an injunction to prevent disclosure of records covered under FERPA, as "DOE will suffer irreparable harm if the Universities are not enjoined from releasing the subject student disciplinary records").

> [M]illions of people in our society have been or will become students at an educational agency or institution, and those people are the object of FERPA's privacy guarantees. Accordingly, systematic violations of the FERPA provision result in appreciable consequences to the public and no doubt are a matter of public

[7] For the reasons set forth above, LCPS maintains its position that these subpoenas were not validly issued by the Attorney General purporting to act on behalf of the Special Grand Jury.

> interest. . . . In light of the noble and broad objectives of the FERPA and the irreparable harm to the public interest, injunctive relief was appropriate in this case.

Id.

76. Given the short timeframe provided by the subpoenas duces tecum issued by the Attorney General acting under the auspices of the Special Grand Jury, and the expense of litigation to families who are wholly unrelated to any allegations of criminal wrongdoing, the records of LCPS students lack the protection intended by Congress and the Virginia General Assembly, and will be released and reviewed by the Attorney General without a legitimate basis. Such disclosure undermines the very purpose of FERPA protection, causing irreparable harm to both the families at issue and to the public at large.

77. Second, aside from the immense administrative burdens the Special Grand Jury is already placing on LCPS staff in providing such notifications and the immense administrative burdens that will likely be placed on the Loudoun County Circuit Court in having to address motions sought by any parent who wishes to file such protective actions, the unlimited scope of the Special Grand Jury is even more burdensome to the families of LCPS students. Those families will be forced to take legal action at personal expense in order to determine whether any of their child's education records or information—which they provided to LCPS with the understanding that it would be confidential—could be exempt from disclosure as part of a highly politicized investigation, and one that the Attorney General emphasized in the April 28, 2022 hearing before this Court, [redacted]. If this Motion is not granted, any record in the custody of LCPS could be demanded for examination by the Attorney General, the same public official who

based a large part of his campaign on maligning the actions of LCPS in the lead up to the November 2021 election.[8]

78. Third, if the Special Grand Jury is permitted to continue its broad investigation, it will interfere with the operation and administration of LCPS's public schools. LCPS employees are currently encumbered with the knowledge that the Attorney General could issue a witness subpoena and require them to answer for how they manage personnel, address student disciplinary matters, or make any decision as part of their responsibilities as public servants. School employees have dealt with enormous burdens related to the unprecedented issues brought about by the COVID-19 pandemic and the politicization of public schools over the past two years, particularly in Loudoun County. The threat of the Attorney General potentially entangling LCPS employees in its undefined investigation and potentially questioning any decision they have made or will make in their capacities as employees of LCPS poses an additional and unwarranted challenge.

79. For each of these reasons, entering a temporary injunction against EO 4 is warranted.

80. The balance of equities and public interest also favor entry of a temporary injunction. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) (explaining that these factors "merge," and are appropriately considered together, in cases involving challenges to government action).

81. First, EO 4 and the Attorney General's actions under it are an unprecedented, dangerous expansion of executive authority in Virginia. The Governor is not empowered to target citizens with criminal investigation by the Attorney General, and the Attorney General is not, in turn, empowered to target citizens with the investigative powers of the special grand jury. To the

[8] In fact, several families have already been forced to hire counsel to file motions to quash in order to defend the privacy rights of their students in response to subpoenas duces tecum issued by the Attorney General.

extent there ever exists any legitimate need to inquire into criminal activity involving LCPS, there are ample, lawful avenues for pursuing such investigations using the tools available to law enforcement and the locally elected Commonwealth Attorney, without having to resort to extraordinary and extraconstitutional exercises of executive power.

82. Second, the constitutional rights of the Loudoun County School Board are under attack in this Special Grand Jury proceeding, and "the protection of constitutional rights is always in the public interest." *Young v. Northam*, 107 Va. Cir. 281 (Culpeper Cnty. 2021).

83. Third, the loss of privacy to LCPS families makes clear that the balance of the equities and public interest support temporary injunctive relief to protect those families against an unconstitutional intrusion into the educational records of their children. These families, and LCPS, lack an adequate remedy at law to prevent the harm presented by the demands for student records. *See Miami Univ.*, 294 F.3d at 819-20 (finding the harm suffered by students from continued release of student records was not compensable, money damages were insufficient relief, and pursuing a cease and desist order for each proposed release of records was impractical and required additional enforcement).

84. Finally, the cost and burden to LCPS in requiring it to be subject to a Special Grand Jury investigation that is unlimited in both scope and time make clear that the balance of the equities and public interest support temporary injunctive relief.

COUNT 1: TEMPORARY AND PERMANENT INJUNCTION

85. The previous allegations are incorporated.

86. For the reasons stated above, Plaintiff lacks an adequate remedy at law.

87. For the reasons stated above, Plaintiff has a likelihood of success on the merits of their claim.

88. For the reasons stated above, the balance of equities and public interest favor the issuance of an injunction.

WHEREFORE, Plaintiff demands judgment in its favor temporarily and permanently enjoining Defendants from further utilizing or appearing before the special grand jury in any manner or using the special grand jury to investigate policy matters and other non-criminal issues or using the special grand jury to elicit information from witnesses that is protected by the attorney-client privilege and the work product doctrine or, in the alternative, limiting Defendants' use of the special grand jury to the subject identified in EO4, and for general relief.

COUNT 2: DECLARATORY JUDGMENT

89. The previous allegations are incorporated.

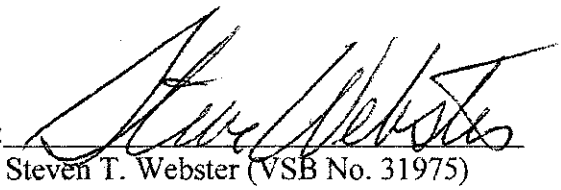
90. There is an actual controversy involving the antagonistic assertion and denial of right among Plaintiff and Defendants regarding Defendant's authority to impanel a special grand jury, the use of the special grand jury to investigate policy matters and other non-criminal issues, the use of the special grand jury to elicit information from witnesses that is protected by the attorney-client privilege and the work product doctrine, and other matters relating to those proceedings.

91. Declaratory relief will serve to guide the future relations of the parties.

WHEREFORE, Plaintiff demands judgment in its favor and against Defendants declaring that Defendants have no authority to impanel a special grand jury or to use the special grand jury to investigate policy matters and other non-criminal issues or to use the special grand jury to elicit information from witnesses that is protected by the attorney-client privilege and the work product doctrine or limiting Defendants' use of the special grand jury to the subject identified in EO4, and for further relief pursuant to Virginia Code section 8.01-186.

LOUDOUN COUNTY
SCHOOL BOARD
By Counsel

WEBSTER BOOK LLP

By: 

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