No. 21-213

In The
Supreme Court of the United States

NATHANIEL BORRELL DYER,

Petitioner,

v.

ATLANTA INDEPENDENT SCHOOL DISTRICT,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

BRANDON MOULARD
Counsel of Record
NELSON MULLINS RILEY & SCARBOROUGH LLP
201 17th Street NW, Suite 1700
Atlanta, GA 30363
Phone: 404-322-6000
Email: brandon.moulard@nelsonmullins.com
Counsel for Respondent
Atlanta Independent School District

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTIONS PRESENTED

Whether the Eleventh Circuit Court of Appeals erred in affirming summary judgment on Petitioner Nathaniel Dyer's fact-specific free speech and procedural due process claims, which arose after Respondent barred Petitioner from attending public school board meetings after Petitioner repeatedly used racial slurs and epithets at multiple meetings.

PARTIES TO THE PROCEEDING

The Petitioner is Mr. Nathaniel Borrell Dyer, *pro se*. The Respondent is the Atlanta Independent School District ("AISS").

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The opinion of a per curiam panel of the Court of Appeals for the Eleventh Circuit (Martin, Branch, Lagoa) affirming the district court is published on Westlaw at *Dyer v. Atlanta Independent School System*, 852 F. App'x 397 (11th Cir. March 22, 2021). Respondent will cite to it as "Petitioner's App. A" followed by the page number within the Appendix.

The district court's order on Respondent's Motion for Summary Judgment is published on Westlaw at *Dyer v. Atlanta Independent School System*, 426 F. Supp. 3d 1350 (N.D. Ga. Dec. 5, 2019). Respondent will cite to it as "Petitioner's App. B" followed by the page number within the Appendix.

The district court's order on Respondent's Motion to Dismiss is not published. Respondent will cite to it as "Petitioner's App. C."[1]

Some documents filed with the district court and Eleventh Circuit are not contained in Petitioner's Appendix. Respondent will refer to those documents by their Electronic Case Filing (ECF) number available on PACER.

[1] Petitioner filed an Appendix to his Petition for a Writ for Certiorari on August 5, 2021. Petitioner indicated in the Table of Contents and Citation of Opinions sections of his Petition that Appendix C contains the district court's motion to dismiss order. That order is found on page 28 of the Appendix, but is labeled as a second "Appendix B." Respondent refers to the motion to dismiss order as Appendix C.

INTRODUCTION

Mr. Dyer has failed to set forth legitimate grounds to warrant a writ of certiorari to the Eleventh Circuit Court of Appeals. He has simply rehashed the contentions that both the United States District Court for the Northern District of Georgia and the Eleventh Circuit found unpersuasive. Mr. Dyer has not shown that the Eleventh Circuit's decision conflicted with any prior decision of this Court or any other United States court of appeals. Likewise, Mr. Dyer has not established that the lower courts deviated from the accepted and usual course of judicial proceedings justifying this Court's exercise of its supervisory power. Instead, the purported errors asserted in the Petition amount to baseless claims that the Eleventh Circuit misapplied well-established, properly stated rules of law. Beyond that, this case concerns a fact-bound dispute whose resolution is of little broader importance to anyone other than the immediate parties. Under this Court's rules, cases like this rarely justify a writ of certiorari. Consistent with this rule, this Court should deny the writ sought by Mr. Dyer.

STATEMENT[2]

I. FACTUAL BACKGROUND.

This case concerns Petitioner's allegations that Respondent Atlanta Independent School System ("AISS") violated his right to free speech under the First Amendment and his right to procedural due process under the Fourteenth Amendment when it suspended him from speaking during public meetings of the Atlanta Board of Education ("Board"). AISS issued three suspensions from 2016 to 2018 as a result of his repeated use of racially inflammatory speech—including racial slurs like the "n-word," "sambo," and "coons"—toward AISS officials in front of other meeting attendees.

The Board has promulgated policies to govern decorum at the public meetings. Members of the public who attend Board meetings must "faithfully and impartially conduct themselves in ways that demonstrate mutual respect, fair play, and orderly decorum," and must be respectful and courteous "even when expressing disagreement, concern, or criticism." (ECF No. 34-3 at 3.) Board Policy BC-R(1) prohibits "[a]pplause, cheering, jeering, or speech that defames individuals or stymies or blocks meeting progress." (ECF No. 33-1 at 114-155, 247-254; ECF No. 34-3 at 3.) That conduct "will not be tolerated and may be cause for removal

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[2] Petitioner did not provide citations to the record for any of the factual allegations in his Petition. In fact, he has introduced several statements of fact that are not contained in the record at all.

from the meeting or for the board to suspend or adjourn the meeting." (ECF No. 34-3 at 3.) All individuals who speak at public comment must abide by those policies. (ECF No. 33-1 at 115; ECF No. 34-3 at 2.)

AISS does restrict some speech at public comment. For instance, speakers may not use profanity, utter defamatory statements about an AISS official, or make threats. (ECF No. 33-1 at 115-116; ECF No. 34-3 at 4.) And AISS and the Board consider the use of racial slurs, such as the "n-word," to be inappropriate, disruptive speech and prohibit the use of such slurs during public comment. (ECF No. 33-1 at 117; ECF No. 34-3 at 5.)

Before 2016, Mr. Dyer spoke at many Board meetings, often making disparaging remarks about AISS's policy decisions and the performance of various AISS officials and Board members. (ECF No. 34-3 at 2.) AISS did not stop Mr. Dyer from making those comments. (*Id*.)

In January 2016, while addressing the Board during public comment, Mr. Dyer used the "n-word," the word "coons," and the word "buffoons" about Board members and then-AISS Superintendent Meria Carstarphen. (ECF No. 33-1 at 122-123, 137-140; ECF No. 34-3 at 5.) Mr. Dyer acknowledged the "n-word" and "coons" are racial slurs. (ECF No. 33-1 at 123.) As soon as those slurs came out of his mouth, the Board shut off his microphone and police officers escorted him from the meeting. (ECF No. 34-3 at 5.)

The Board responded to Mr. Dyer's disruptive conduct at the January Board meeting by suspending him from speaking at Board meetings until July 2016. (ECF No. 33-1 at 121-122, 255.) The suspension letter notified Mr. Dyer that uttering racial slurs at the January 2016 meeting was "disrespectful" and "offensive to the board, the superintendent and the staff." (*Id*. at 141, 255.) The letter warned him that if he used similar language at a future meeting, the Board might permanently suspend him. (*Id*. at 142, 255.)

A few months after the first suspension ended, Mr. Dyer spoke during public comment of another Board meeting. (ECF No. 33-1 at 143.) This time, he referred to AISS students with the racially derogatory term "sambo." (*Id*. at 143, 146.) Upon hearing Mr. Dyer use another racial epithet during public comment, the then-Board Chair Courtney English directed him to leave the podium. (ECF No. 34-3 at 6.) Mr. Dyer refused and began to shout at the Board. (*Id*.) Police officers then escorted him from the meeting. (*Id*.) After they removed him, Mr. Dyer continued to shout outside the meeting room. (*Id*.)

As a result of his conduct, the Board sent him another letter informing him of his suspension from Board meetings and prohibition from entering AISS property until December 31, 2017. (ECF No. 33-1 at 142-143, 257-260.) The letter explained that AISS suspended Mr. Dyer because of his "inappropriate and disruptive behavior" at the Board meeting. (*Id*. at 257-260.) The letter specifically cited his use of the term "sambo" at the meeting as the basis for his suspension. (*Id*.)

English advised Mr. Dyer that "further demonstration of such conduct may result in additional consequences." (*Id*. at 259.)

After his second suspension, Mr. Dyer used racial slurs at a public meeting a third time. On February 5, 2018, he distributed a double-sided flyer that depicted various images, including one of Arthur Blank (co-founder of The Home Depot, owner of the Atlanta Falcons of the National Football League, and owner of Atlanta United of Major League Soccer) holding marionette strings attached to Dr. Carstarphen. (Petitioner's App. D-48-49; ECF No. 33-1 at 151-152, 271-274.) On one side of the flyer, the word "UNNIGGED" appeared at the bottom, right-hand corner. (Petitioner's App. D-49.) Mr. Dyer explained at his deposition that the word "unnigged" means "never been a nigger." (ECF No. 33-1 at 153-154, 271-274.) The other side of the flyer featured a photoshopped image of Dr. Carstarphen wearing football pads and a football jersey with the word "FALCOONS" emblazoned on the front, a play on the Atlanta Falcons' jerseys. (Petitioner's App. D-48-49; ECF No. 33-1 at 155-158, 271-274.)

After distributing the flyer to audience members, Mr. Dyer began to speak at the podium during public comment. (ECF No. 33-1 at 151; ECF No. 34-3 at 6.) Soon after he began, the Board's general counsel directed his microphone to be shut off because Mr. Dyer's flyer contained racial slurs. (ECF No. 34-3 at 7.) Police then escorted him out of the meeting. (*Id*.)

Board Chair Jason Esteves sent Mr. Dyer a third letter, which suspended him from attending Board meetings, communicating with AISS employees, and entering AISS property until February 6, 2019. (ECF No. 33-1 at 150, 261-270.) The letter explained that AISS had suspended him for a third time because of his "inappropriate and disruptive behavior" at the meeting on February 5, 2018. (ECF No. 33-1 at 261-270.) The letter highlighted Mr. Dyer's distribution of the flyer, which contained "racist and hate-filled epithets." (*Id*.)

II. LEGAL PROCEEDINGS.

Mr. Dyer sued AISS in the Superior Court of Fulton County, Georgia. (ECF No. 1.) He challenged the Board's decision to remove and suspend him from AISS meetings. (*Id*. at 14-15.) He asserted a violation of his First Amendment rights, a violation of his procedural due process rights, and three claims under state law. (*Id*.) AISS removed the case to the United States District Court for the Northern District of Georgia. (*Id*. at 1-5, 76-80.)

After removing the case, AISS moved to dismiss Mr. Dyer's claims. (ECF No. 2.) The district court entered an order on AISS's motion to dismiss, granting it, in part, and denying it, in part. (Petitioner's App. C-46.) The district court dismissed Mr. Dyer's state-law claims based on state sovereign immunity. (Petitioner's App. C-45-46.) The court denied AISS's motion to

dismiss Mr. Dyer's First Amendment and procedural due process claims. (Petitioner's App. C-41,45.)

Following discovery, AISS moved for Summary Judgment on Mr. Dyer's remaining First Amendment and procedural due process claims. (ECF No. 34.) The district court granted AISS's Motion for Summary Judgment. (Petitioner's App. B-27.) The district court found that AISS's restrictions on Mr. Dyer's speech were content-neutral, were narrowly tailored to achieve a significant government interest, and allowed him ample alternative channels of communication. (Petitioner's App. B-18-23.) The district court also found that because Mr. Dyer had a meaningful chance to contest his suspensions though the Georgia Open Meetings Act ("GOMA"), AISS did not violate his right to procedural due process under the Fourteenth Amendment by not giving him a pre-suspension hearing. (Petitioner's App. B-23-27.) As a result, the court entered judgment for AISS. (ECF No. 54.)

Mr. Dyer appealed the district court's decision to the Eleventh Circuit. (ECF No. 48.) The Eleventh Circuit affirmed the district court's decision. (Petitioner's App. A-1.) It found that AISS's Board policies governing behavior at community meetings and AISS's restrictions on Mr. Dyer's speech were content-neutral policies to prevent disruptive behavior. (Petitioner's App. A-8-9.) The Eleventh Circuit did not analyze whether the suspensions were narrowly-tailored or whether Mr. Dyer's speech constituted satire because Mr. Dyer failed to brief those issues adequately and did

not raise them before the district court. (Petitioner's App. A-7.)

As for Mr. Dyer's procedural due process claim, the Eleventh Circuit found that, even if it construes Mr. Dyer's appeal liberally, there is no recognized liberty interest in attending public school board meetings. (Petitioner's App. A-10-11.) Although the district court held differently, the Eleventh Circuit determined it did not need to reach that issue because Mr. Dyer's procedural due process claim fails for a separate issue—he had an adequate post-deprivation remedy under state law. (Petitioner's App. A-10-11.)

REASONS FOR DENYING THE WRIT

This Court should deny the Petition for a Writ of Certiorari. Applying well-hewn principles of constitutional law, the Eleventh Circuit correctly held that AISS was entitled to summary judgment after finding that Mr. Dyer failed to raise a genuine issue of material fact on his First Amendment and Fourteenth Amendment claims. Mr. Dyer does not present a good reason for this Court to issue a writ of certiorari to review that decision. This is a fact-specific case without broader implications for other litigants. Mr. Dyer has not shown that the Eleventh Circuit's decision diverged from any ruling by this Court or any other federal appellate court. And Mr. Dyer has failed to identify an error by the Eleventh Circuit so egregious that it warrants use of this Court's supervisory authority. In the

end, his request for certiorari hinges on baseless assertions that the Eleventh Circuit misapplied properly stated rules of law to the particular facts of this case. For those reasons, this case does not warrant this Court's consideration.

I. The Petition Should Be Denied Because the Eleventh Circuit's Ruling Was Properly Decided and Is Consistent with Prior Decisions by this Court and the Courts of Appeal.

This Court's rules provide that issuance of a writ of certiorari is not a matter of right, but of judicial discretion, which "will be granted *only for compelling reasons*." U.S. Sup. Ct. R. 10 (emphasis added). Mr. Dyer contends that the Eleventh Circuit's decision conflicts with prior decisions by this Court. He is wrong. Mr. Dyer has failed to identify a prior decision inconsistent with the Eleventh Circuit's ruling. Nor has he presented another compelling reason to review the Eleventh Circuit's order. The Petition for Writ of Certiorari, therefore, should be denied.

A. Applicable legal standard for Mr. Dyer's First Amendment claim.

The First Amendment guarantees individuals the right to free speech, including speech that is spoken, written, or made through expressive conduct. *Virginia v. Black*, 538 U.S. 343, 358 (2003). But the freedom of expression has limits. *Jones v. Heyman*, 888 F.2d 1328,

1331 (11th Cir. 1989). "[T]he First Amendment does not guarantee persons the right to communicate their views at all times and places or in any manner that may be desired." *Heffron v. Int'l Soc'y for Krishna Consciousness*, 452 U.S. 640, 647 (1981). For instance, "[t]he government need not permit all forms of speech on property that it owns and controls." *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678 (1992).

Because Mr. Dyer's claim arose from private speech on government property, the analysis established in *Cornelius v. NAACP Legal Defense & Education Fund, Inc.*, 473 U.S. 788 (1985), governs the First Amendment analysis. That analysis considers three questions. First, was Mr. Dyer engaged in speech protected by the First Amendment? *Id.* at 797. Second, if that speech was protected, "we must identify the nature of the forum, because the extent to which the Government may limit access depends on whether the forum is public or nonpublic." *Id.* Third, when AISS suspended Mr. Dyer from its public meetings, did that suspension satisfy "the requisite standard" applied to the forum identified in step two? *Id.*

The parties agree on the first two elements. Mr. Dyer's speech was protected. *See Texas v. Johnson*, 491 U.S. 397, 414 (1989) ("If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."). And, under Eleventh Circuit precedent, the school board meetings at which Mr. Dyer spoke are

limited public forums. *See Cambridge Christian Sch. Inc. v. Fla. High Sch. Athletic Ass'n, Inc.*, 942 F.3d 1215, 1237 (11th Cir. 2019) ("[W]e have identified the public-comment portions of school board meetings, among other things, as limited public forums.").

The parties' dispute centers on the third element. The government may restrict access to a limited public forum by imposing content-neutral conditions for the time, place, and manner of access, all of which must be narrowly tailored to serve a significant government interest. *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 45 (1983). Government regulation is "content-neutral" when it "places no restrictions on . . . either a particular viewpoint or any subject matter that may be discussed." *Hill v. Colorado*, 530 U.S. 703, 723 (2000).

Resolving whether AISS's regulation of Mr. Dyer's speech was content-neutral and narrowly tailored requires a fact-specific inquiry. And Mr. Dyer has not pointed to an inter-circuit split on those issues in factually similar cases.

B. Applicable legal standard for Mr. Dyer's procedural due process claim.

The Fourteenth Amendment prohibits any state from "depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The most basic tenets of procedural due process are notice and an opportunity to be heard. *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950). To

state a claim for such a violation, a plaintiff must show three elements: (1) a deprivation of a constitutionally protected liberty or property interest; (2) state action; and (3) constitutionally inadequate process. *Arrington v. Helms*, 438 F.3d 1336, 1347 (11th Cir. 2006) (quoting *Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir. 2003)).

Mr. Dyer's due process claims center on the third element—the sufficiency of the process he received before and after AISS suspended him from meetings. This Court has recognized that a pre-deprivation process may be "impracticable" in some cases since a public body cannot always know when a deprivation will occur. *Hudson v. Palmer*, 468 U.S. 517, 534 (1984). If a pre-deprivation hearing is impracticable, courts must determine whether the plaintiff had an "adequate post-deprivation remedy" for the alleged violation. *Id.* at 534; *see also Goss v. Lopez*, 419 U.S. 565, 582 (1975) (holding that post-deprivation remedies may be constitutionally adequate when notice and hearing cannot be provided, including when there is a continuing danger to persons or property or an ongoing threat of disruption).

The Eleventh Circuit found that it was impracticable for AISS to provide Mr. Dyer with a pre-deprivation due process hearing before removing him from school board meetings because of his disruptive conduct. (Petitioner's App. A-10.) Even though Mr. Dyer disputes that decision, he has identified no circuit split on this legal issue. Rather, his request for certiorari

over that portion of the Eleventh Circuit's ruling amounts to a wish for run-of-the-mill error correction.

C. Mr. Dyer has identified no errors that justify a writ of certiorari.

Petitioner raises three errors in his Petition. First, he challenges the Eleventh Circuit's findings that AISS did not engage in viewpoint discrimination when it removed and suspended him from school board meetings because of his repeated use of racial slurs. Second, he claims the Eleventh Circuit incorrectly found that he did not properly brief narrow tailoring on appeal. Third, he disputes the Eleventh Circuit's findings that AISS did not need to provide pre-deprivation process and that the Georgia Open Meetings Act, O.C.G.A. § 50-14-1, offered him an adequate post-deprivation remedy. None of these supposed errors has merit.

1. This case presents no novel or unsettled legal question or opportunity for law clarification.

Mr. Dyer does not contend that any of the lower courts misstated, misconstrued, or neglected any of the pertinent principles of law identified above. This case does not revolve around novel legal issues. There is no confusion among the courts about the standards to be applied in First Amendment or procedural due process cases. And both the district court and the Eleventh Circuit invoked the correct standards in their decisions. (Petitioner's App. A-5-11; Petitioner's App. B-15-27.)

Thus, this case does not present an opportunity to clarify the law.

Mr. Dyer also points to no split between the circuits relating to the relevant legal principles. He instead argues that the Eleventh Circuit's decision deviates from two *district court* decisions from different states: *MacQuigg v. Albuquerque Pub. Sch. Bd. of Educ.*, No. CV 12-1137 MCA/KBM, 2015 WL 13659218 (D.N.M. Apr. 6, 2015), and *Cyr v. Addison Rutland Supervisory Union*, 60 F. Supp. 3d 536, 546 (D. Vt. 2014). Both cases, however, are distinguishable. And even a minor disagreement between a court of appeals and other jurisdictions' district courts would not justify a writ of certiorari.

2. Mr. Dyer improperly seeks error correction.

Under this Court's rules, "erroneous factual findings or the misapplication of a properly stated rule of law" will "rarely" justify issuance of a writ of certiorari. U.S. Sup. Ct. R. 10. And "[e]rror correction is 'outside the mainstream of the Court's functions.'" *Barnes v. Ahlman*, 140 S. Ct. 2620, 2622, 207 L. Ed. 2d 1150 (2020) (Sotomayor, J., dissenting) (quoting S. Shapiro, K. Geller, T. Bishop, E. Hartnett & D. Himmelfarb, Supreme Court Practice § 5.12(c)(3), p. 5–45 (11th ed. 2019).

This case presents no unique considerations that would merit an exception to this Court's customary practice of denying writs in cases like this. Indeed, this

case involves the routine question of whether the relevant evidence, viewed in the light most favorable to Mr. Dyer, is enough to support a judgment for him. Mr. Dyer wants the Court to correct the lower courts' alleged factual errors and misapplication of pertinent First Amendment and procedural due process standards. Mr. Dyer's Petition amounts to a rehashing of objections to factual and legal determinations made below. But Mr. Dyer's bare disagreement with the lower courts' fact-specific determinations that AISS did not engage in viewpoint discrimination or deprive Mr. Dyer of an available, pre-deprivation process is not enough for certiorari. The Court should not depart from its "mainstream . . . functions" to assume the role of a third-generation fact-finder, a clear example of "error correction." Thus, Mr. Dyer's request should be denied.

3. *Hustler v. Falwell* does not govern this case.

Mr. Dyer's contention that this case warrants certiorari because the Eleventh Circuit's ruling "contradicts" *Hustler v. Falwell*, 485 U.S. 46 (1988), also lacks merit. That decision considered the novel question of whether the First Amendment precluded recovery under a state-law emotional distress action based on an ad parody that "could not reasonably have been interpreted as stating actual facts about the public figure involved." *Id.* at 50. This case in no way resembles *Hustler*.

Hustler is factually and legally distinct. Unlike the appellee in *Hustler*, AISS has taken no legal action against Mr. Dyer for his disruptive speech. And so, this case presents no occasion to examine the interplay between the First Amendment and state emotional distress laws, the central inquiry in *Hustler*. Nor did *Hustler* concern speech uttered in a limited public forum, like a school board meeting. As a result, *Hustler* examined none of the issues pertinent to this matter, such as content-neutrality or narrow tailoring. And *Hustler* provides no guidance on whether regulating hate-filled speech like Mr. Dyer's is a sufficiently weighty government interest. *Hustler*, in sum, is inapt in virtually every respect.

4. The record shows that AISS did not engage in viewpoint discrimination.

That aside, Mr. Dyer has pointed to no evidence in the record suggesting that AISS regulated his speech because of its content. His sole argument that the Eleventh Circuit incorrectly analyzed his First Amendment claim rests on the belief that the "reoccurring theme in the 11th Circuit's order is the word 'offensive.'" (Pet. at 23.) Mr. Dyer cites several cases purportedly showing that offensive speech is still protected by the First Amendment. (*Id.* at 24.) From there, he concludes that AISS engaged in viewpoint discrimination by barring him from meetings because it found his speech—which consisted of racial slurs and epithets—to be offensive. (*Id.* at 23-25.) He cites no record evidence supporting his characterization of AISS's motivation.

His argument overlooks what the Eleventh Circuit said and disregards the uncontested evidence. This Court has recognized the importance of the government's interest in conducting orderly, efficient meetings of public bodies. *See City of Madison, Joint Sch. Dist. v. Wisconsin Emp. Relations Comm'n*, 429 U.S. 167, 180 (1976). Consistent with that principle, the Eleventh Circuit found that AISS regulated Mr. Dyer's speech because his hate-filled speech disrupted the meeting. (Petitioner's App. A-8-9.) Mr. Dyer's conduct thus violated AISS's content-neutral policies requiring decorum and prohibiting disruption at public meetings. (*Id*.)

Ample evidence in the record supported this finding. AISS Policy BC, which governs conduct at public meetings, requires speakers conduct themselves in ways that reflect "mutual respect, fair play, and orderly decorum," and to show respect and courtesy "even when expressing disagreement, concern, or criticism." (ECF No. 34-3 at 3.) Under Policy BC-R(1), the Board will not tolerate "[a]pplause, cheering, jeering, or speech that defames individuals or stymies or blocks meeting progress." (ECF No. 33-1 at 114-115, 247-254; ECF No. 34-3 at 3.) Those policies apply to all individuals who speak at community meetings. (ECF No. 34-3 at 2.) Mr. Dyer repeatedly violated those policies by using racial slurs and epithets at multiple public meetings between 2016 and 2018. At one meeting, when told to leave the podium, Mr. Dyer refused and shouted at the Board of Education members. (*Id.* at 6.) AISS removed him from meetings and suspended him from

speaking at future meetings—not because it disagreed with Ms. Dyer's message (whatever that message was), but because his use of racially insensitive language violated decorum and disrupted the meeting. (*Id.* at 7.)

Mr. Dyer cites no evidence to support his insistence that AISS suspended him because he criticized AISS officials. And by Mr. Dyer's own admission, at other meetings, AISS permitted him to speak critically of AISS without restriction. (ECF 36 ¶¶ 12, 48; ECF 34-3 at 4.) And other attendees have routinely criticized AISS and the Board without incident. (ECF 36 ¶ 10.)

5. A pre-deprivation hearing was impracticable, and a post-deprivation remedy was available under state law.

Mr. Dyer's designation of error relating to his procedural due process claim suffers from a similar problem. The government has no constitutional obligation to provide a pre-deprivation hearing when doing so is impracticable. *Hudson v. Palmer*, 468 U.S. 517, 533 (1984). Pre-deprivation process is impracticable when random and unauthorized conduct precipitates the deprivation. *Id.* Under those circumstances, the government need only provide adequate post-deprivation process. *Id.* at 534.

Based on those principles, the Eleventh Circuit held that "pre-deprivation remedies were not practicable as AISS could not have predicted when and how Dyer would act at the community meetings and

because Dyer posed an ongoing threat of disruption." (Petitioner's App. A-10.) And the court concluded that the Georgia Open Meetings Act, O.C.G.A. § 50-14-1, gave Mr. Dyer an adequate post-deprivation remedy. (Petitioner's App. A-10-11.)

Mr. Dyer points to no error in any of these findings. He does not dispute the Eleventh Circuit's premise that a pre-deprivation remedy was impracticable considering the random nature of Mr. Dyer's conduct. He has pointed to no evidence in the record suggesting that AISS knew when he would use racially inflammatory language at public meetings or otherwise could have given him a pre-deprivation hearing before removing him from school board meetings. And Mr. Dyer does not identify one reason why the post-deprivation remedies offered under O.C.G.A. § 50-14-1 were not enough to protect his interests.

CONCLUSION

The bottom line is that Mr. Dyer's case for certiorari rests on his own self-serving belief that the Eleventh Circuit's ruling was faulty. Rule 10 describes the "compelling reasons" that warrant review on a writ of certiorari. U.S. Sup. Ct. R. 10. None of those "compelling reasons" is present here. There is no split of authority among the courts of appeals on the same important matter. *Id.* 10(a). Nor did the Eleventh Circuit "so far depart [] from the accepted and usual course of judicial proceedings, or sanction [] such a

departure by a lower court, as to call for an exercise of this Court's supervisory power." *Id.* No lower court decided an important question of federal law that conflicts with relevant decisions of this Court or that should otherwise be settled by this Court. *Id.* 10(b, c). Nor has Mr. Dyer pointed to a departure from the accepted and usual course of judicial proceedings that would justify exercise of this Court's supervisor powers. *Id.* 10. For this reason, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

BRANDON MOULARD
NELSON MULLINS RILEY & SCARBOROUGH LLP
201 17th Street NW, Suite 1700
Atlanta, GA 30363
Phone: 404-322-6000
Email: brandon.moulard@nelsonmullins.com
Counsel for Respondent
Atlanta Independent School District