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April 30, 2020

Delivered Via ECF

Patricia S. Connor, Clerk
United States Court of Appeals for the Fourth Circuit
Lewis F. Powell, Jr. United States Courthouse Annex
1100 East Main Street, Suite 501
Richmond, VA 23219

Re: G.G., by his next friend and mother, Deirdre Grimm v. Gloucester County School Board, No. 19-1952

Dear Ms. Connor:

The Gloucester County School Board respectfully responds to the April 27, 2020, letter from counsel for Appellee pursuant to FRAP 28(j), which cites Justice Alito's dissent in *N.Y. State Rifle & Pistol Ass'n v. City of New York*, No. 18-280 (U.S. Apr. 27, 2020).

The "supplemental authority" cited in counsel's letter is a dissenting opinion. It represents the views of only three Justices. Six Justices disagreed. A dissenting opinion has no precedential value, except to the extent that it reveals arguments that the Court's majority has rejected.

Counsel for Appellee relies on Justice Alito's statement that *Flanigan's Enterprises, Inc. of Georgia v. City of Sandy Springs, Georgia*, 868 F.3d 1248, 1263 (11th Cir. 2017), *cert. denied*, 138 S. Ct. 1326 (2018), which is cited in the School Board's briefs, "is difficult to reconcile with [the Supreme Court's] endorsement of nominal damages as an appropriate constitutional remedy." Justice Alito referred to *Carey v. Piphus*, 435 U. S. 247 (1978), and *Memphis Community School Dist. v. Stachura*, 477 U. S. 299 (1986). As the Court explained in *Flanigan's Enterprises*, however, mootness was not an issue in either of those cases. 868 F.3d at 1265-66.

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Justice Alito's primary objection to the Court's decision appears to have been that the City and State of New York's legislative actions, after the Court granted certiorari, effectively "manipulated" the Court's docket. Dissenting opinion at 1. Similar issues were presented in *Flanigan's Enterprises*, and that court correctly noted that the burden of proving mootness is heavier under such circumstances. 868 F.3d at 1255-56. *Cf.* Justice Alito's dissenting opinion in *N.Y. State Rifle* at 12 ("We have been particularly wary of attempts by parties to manufacture mootness in order to evade review."). There are no such issues here. This case is moot because plaintiff completed his course of education in the Gloucester County schools, not because it was "manipulated" or "manufacture[d]."

Very truly yours,

/s/

David P. Corrigan

DPC

cc: Joshua A. Block, Esq. (via ECF)
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