

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

**K.C., a minor, by and through
her parent and next friend,
HANNING CHEN,**

**HANNING CHEN,
in his own right,**

**A.Y., a minor, by and through
her parent and next friend,
YUHONG LIN,**

**YUHONG LIN,
in her own right,**

**D.M., a minor, by and through
her parent and next friend,
YING McCASKILL,**

**YING McCASKILL,
in her own right,**

**S.S., a minor, by and through
his parent and next friend,
MAHUA MITRA,**

**MAHUA MITRA,
in her own right,**

**A.N., a minor, by and through
his parent and next friend,
HEMANG NAGAR,**

**HEMANG NAGAR,
in his own right,**

**S.K., a minor, by and through
his parent and next friend,
TILAK VENIGALLA,**

**TILAK VENIGALLA,
in his own right,**

**FILED
CIVIL INTAKE
2020 NOV -4 PM 3:36
JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA**

2020 - 17283

Civil Action No. _____

**H.P., a minor, by and through
his parent and next friend,
JAMES PAN,**

**JAMES PAN,
in his own right,**

**A.B., a minor, by and through
his parent and next friend,
MAYURI PRODHUTURI,**

**MAYURI PRODHUTURI,
in her own right,**

**V.V., a minor, by and through
her parent and next friend,
VIJAY RAGHAVAN,**

**VIJAY RAGHAVAN,
in his own right,**

**A.Y., a minor, by and through
his parent and next friend,
SAMPATH YARLAGADDA,**

**SAMPATH YARLAGADDA,
in his own right,**

**C.J., a minor, by and through
his parent and next friend,
JUSTIN JIA,**

**JUSTIN JIA,
in his own right,**

**A.K., a minor, by and through
her parent and next friend,
RAJA KAKAYADI,**

**RAJA KAKAYADI,
in his own right,**

**K.S., a minor, by and through
his parent and next friend,
SRIHARI SIRUVURI,**

**SRIHARI SIRUVURI,
in his own right,**

**A.J., a minor, by and through
her parent and next friend,
PUNNAM JONNALA,**

**PUNNAM JONNALA,
in his own right,**

**T.K., a minor, by and through
his parent and next friend,
DHEERAM KALEEM,**

**DHEERAM KALEEM,
in his own right,**

**V.J., a minor, by and through
her parent and next friend,
HARRY JACKSON,**

**HARRY JACKSON,
in his own right,**

**R.A., a minor, by and through
his parent and next friend,
SRINIVAS AKELLA, and**

**SRINIVAS AKELLA,
in his own right,**

Plaintiffs,

v.

THE FAIRFAX COUNTY SCHOOL BOARD,

Serve:
Ricardy Anderson, Chair
Gatehouse Administration Center
8115 Gatehouse Road
Falls Church, VA 22042

and

SCOTT S. BRABRAND,

**Superintendent
of the Fairfax County Public Schools,**

Serve at:
Gatehouse Administration Center
8115 Gatehouse Road
Falls Church, VA 22042

Defendants.

COMPLAINT¹

Plaintiffs, by counsel, bring this Complaint against the Fairfax County School Board (“FCSB”) and the Superintendent of Fairfax County Public Schools (the “Superintendent”) in order to vacate, nullify and reverse their actions to abolish the administration of certain well-recognized standardized tests as part of the admissions process for the Thomas Jefferson High School for Science and Technology (a/k/a Thomas Jefferson Governor’s School), and to obtain preliminary and permanent injunctions requiring FCSB and the Superintendent to reinstate such testing as part of the admissions process. In support whereof, the Plaintiffs say as follows:

The Thomas Jefferson Governor’s School

1. The Thomas Jefferson Governor’s School is a public high school, operated by FCSB and the Superintendent, and serving Fairfax County as well as several other school districts, including Arlington, Loudoun, and Prince William counties, as well as the cities of Fairfax and Falls Church (collectively, the “Thomas Jefferson School Districts”).

2. Founded in 1985, the Thomas Jefferson Governor’s School has long been recognized as one of the best high schools in the nation. According to the rankings published in

¹ Pursuant to Rule 3.2, this pleading is styled a “Complaint.” Insofar as it seeks relief pursuant to Virginia Code § 22.1-87, it is filed as, and is intended to constitute, a “petition” within the meaning of that statute.

2020 by the *U. S. News and World Report*, the Thomas Jefferson Governor's School ranks *number one* among public high schools in the United States.

3. The Thomas Jefferson Governor's School's educational excellence is due, in large part, to the high caliber of its student body. As explained by this Complaint, the Thomas Jefferson Governor's School has been devoted to the education of students qualifying as "gifted," a term having specific meaning in the law.

4. The term "Governor's School" is not merely an honorary designation. Academic Year Governor's Schools (a/k/a regional Governor's Schools), such as the Thomas Jefferson Governor's School, receive certain benefits from the Commonwealth of Virginia, including but not limited to special funding. At the same time, school districts that operate such Governor's Schools have certain obligations, including but not limited to operating them as schools for gifted students within the meaning of Virginia law.

5. At issue is whether the Thomas Jefferson Governor's School will continue to educate gifted students, or whether it will be diverted to other uses, contrary to the requirements of the law.

The Plaintiffs

6. Plaintiffs are middle school students residing in one of the Thomas Jefferson School Districts and their parents (the "Students" and "Parents"). Students, all minors, sue by and through their respective Parents (as set forth below) as next friends. Parents also sue in their own right.

7. Each of the Students has been recognized by his or her school division as gifted. Each of the Students is now in the seventh or eighth grade. Each of the Students wishes to attend the Thomas Jefferson Governor's School for his/her high school education, and to obtain the very high quality of gifted education currently available there.

8. Each of the Students intends to apply – and will apply – for admission to the Thomas Jefferson Governor’s School, so as to be part on the class entering in the fall of their ninth-grade year. Under the admissions process, as it existed before the actions by FCSB and Superintendent that are the subject of this Complaint, each of the Students had a high likelihood of admission to the Thomas Jefferson Governor’s School.

9. Each of the Students is aggrieved by the actions of FCSB and the Superintendent because those actions will (i) make it substantially less likely that they will be admitted into the Thomas Jefferson Governor’s School, and (ii) likely – indeed, inevitably – lower the quality of education available there, even if they are admitted.

10. Each of the Parents supports their Student’s desire to attend the Thomas Jefferson Governor’s School, and each of the Parents is aggrieved because of the effects the actions of FCSB and the Superintendent will have on their Student.

11. The “primary role of the parents in the upbringing of their children is now established beyond debate,” *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972), and is broad enough to give the Parents standing to bring this Complaint in their own right. *See also* Va. Code § 22.1-87 (affording parents a right to bring action against school board).

12. Almost all of the Students attend public school in in Fairfax County, and all of them have worked hard to excel and to prepare themselves for admission to the Thomas Jefferson Governor’s School based on their individual merit.

13. K.C. is an eighth grader at Cooper Middle School in Fairfax County. She was identified as a gifted learner in second grade by Fairfax County Public Schools and admitted into its Advanced Academic Program. K.C.’s father, Mr. Hanning Chen, is a professor of chemistry at American University. Mr. Chen has lived in Fairfax County, Virginia, since 2012.

14. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that K.C. would be admitted.

15. A.Y. is an eighth grader at Rachel Carson Middle School in Herndon, Virginia. She was identified as a gifted learner in second grade by Fairfax County Public Schools and admitted into its Advanced Academic Program. In the sixth grade, A.Y. was recognized as being in the top 2 percent *around the world* in the Math Olympiad. A.Y.'s mother, Ms. Yuhong Lin, is vice president of technology services in an informational technology company. Ms. Lin has lived in Fairfax County since 1998.

16. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that A.Y. would be admitted.

17. D.M. is an eighth grader at Rachel Carson Middle School in Herndon, Virginia. D.M. was identified as a gifted learner in second grade by Fairfax County Public Schools and admitted into its Advanced Academic Program. D.M. has received straight As in seventh grade and up to the date of this Complaint in eighth grade. D.M. participated in Math Olympiad and American Mathematics Competitions (AMC) 8, earning high results. The mother of D.M., Ms. Ying McCaskill, was a high school English teacher and has lived in Fairfax County since 2003.

18. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that D.M. would be admitted.

19. S.S. is an eighth grader at Kilmer Middle School in Vienna, Virginia. S.S. was identified as a gifted learner in second grade by Fairfax County Public Schools and admitted into

its Advanced Academic Program. S.S.'s mother, Ms. Mahua Mitra, is a federal government employee and a science and technology professional. Ms. Mitra has lived in Fairfax County since 2001.

20. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that S.S. would be admitted.

21. A.N. is an eighth grader at Rachel Carson Middle School in Herndon, Virginia. A.N. was identified as a gifted learner in third grade by Fairfax County Public Schools and admitted into its Advanced Academic Program. A.N.'s father, Mr. Hemang Nagar, is a software professional. Mr. Nagar has lived in Fairfax County since 2004.

22. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that A.N. would be admitted.

23. S.V. is an eighth grader at Rachel Carson Middle School in Herndon, Virginia. S.V. was identified as a gifted learner in second grade by Fairfax County Public Schools and admitted into its Advanced Academic Program. S.V. has participated in several math and science competitions as early as the second grade, winning first or second places consistently. S.V.'s father, Mr. Tilak Venigalla, is an informational technology professional who has lived in Fairfax County since 2009.

24. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that S.V. would be admitted.

25. H.P. is an eighth grader at Nysmith School for the Gifted in Herndon, Virginia. H.P. was identified as a gifted learner in second grade by Fairfax County Public Schools and admitted into its Advanced Academic Program. H.P. has attended the Johns Hopkins Center for Talented Youth and the University of Virginia Summer Enrichment Program and been recognized as a History Bee national finalist. H.P.'s father, Mr. James Pan, has lived in Fairfax County since 1974.

26. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that H.P. would be admitted.

27. A.B. is an eighth grader at Rocky Run Middle School in Chantilly, Virginia. A.B. was identified as a gifted learner in second grade by Fairfax County Public Schools and admitted into its Advanced Academic Program. The mother of A.B., Ms. Mayuri Produturi, is an information technology professional, working in higher education and has lived in northern Virginia since 2001.

28. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that A.B. would be admitted.

29. V.V. is an eighth grader at Rocky Run Middle School in Chantilly, Virginia. V.V. was identified as a gifted learner in third grade by Fairfax County Public Schools and admitted into its Advanced Academic Program. The father of V.V., Mr. Vijay Raghavan, is a small business owner and information technology professional who has lived in Fairfax County since 1997.

30. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that V.V. would be admitted.

31. A.Y. is an eighth grader at Rocky Run Middle School in Chantilly, Virginia. A.Y. was admitted to the Fairfax County Advanced Academic Program in third grade. A.Y. has been a grade winner in his school spelling bee for five years and two times as a school winner. A.Y. also participates in extracurricular activities related to science, technology, engineering and mathematics and has won many prizes in the activities. The father of A.Y., Mr. Sampath Yarlagadda, is an information technology professional. Mr. Yarlagadda has lived in Fairfax County since 2003.

32. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that A.Y. would be admitted.

33. C.J. is an eighth grader at Longfellow Middle School in Falls Church, Virginia. C.J. enjoys math and participates in Math Counts and American Mathematics Competition 10. The father of C.J., Mr. Justin Jia, is a structural engineer and has lived in Fairfax County since 2018.

34. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that C.J. would be admitted.

35. A.K. is an eighth grader at Nysmith School for the Gifted in Herndon, Virginia. She is a straight-A student with a passion for math and science, competing at the state level in her

school's Science Bowl team. The father of A.K., Mr. Raja Kakayadi, is a software developer and has lived in Fairfax County since 2005.

36. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that A.K. would be admitted.

37. K.S. is an eighth grader at Rachel Carson Middle School in Herndon, Virginia. He was admitted into the Advanced Academic Program in third grade. The father of K.S., Mr. Srihari Siruvori, is an information technology professional who has lived in Fairfax County since 1998.

38. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that K.S. would be admitted.

39. A.J. is an eighth grader at Rocky Run Middle School in Chantilly, Virginia. A.J. is currently taking Algebra 2 math and enjoys math and science. In her elementary and middle school, A.J. participated in various extracurricular math activities like Math Kangaroo, Math Counts and American Mathematics Competition 8. She also participated in Girls Code competition and placed in the finals. The father of A.J., Mr. Punnam Jonnala, is an information technology specialist and has lived in Fairfax County since 2017.

40. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that A.J. would be admitted.

41. T.K. is an eighth grader at Rachel Carson Middle School in Herndon, Virginia. T.K. has been involved in numerous activities related to math and science including, First Lego League, American Mathematics Competitions, Mathcounts, Math Kangaroo, and Science

Olympiad. During the current pandemic, T.K. has been doing programming in Java and Python, he has built robots using Lego EV3, is doing Ecybermission, and is learning Autodesk Inventor, a CAD software. T.K. was identified as a gifted learner by Fairfax County Public Schools and admitted into its Advanced Academic Program. The father of T.K., Mr. Dheeram Kaleem, currently works for the federal government as an information technology consultant and currently lives in Fairfax County, Virginia.

42. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that T.K. would be admitted.

43. V.J. is a seventh grader at Rachel Carson Middle School in Herndon, Virginia. V.J. was identified as a gifted learner by Fairfax County Public Schools and admitted into its Advanced Academic Program. V.J. attends the Summer Institute for the Gifted. The father of V.J., Mr. Harry Jackson, is an information technology consultant who has lived in Fairfax County since 2012.

44. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that V.J. would be admitted.

45. R.A. is a seventh grader at Rachel Carson Middle School in Herndon, Virginia. R.A. was identified as a gifted learner in third grade by Fairfax County Public Schools and admitted into its Advanced Academic Program. In fifth grade, John Hopkins University awarded R.A. its Grand Honors Award. The father of R.A., Mr. Srinivas Akella, is an enterprise owner. Mr. Akella has lived in Fairfax County since 2009, primarily because of the education

opportunities that Fairfax County Public Schools provides to his children through the Advanced Academic Program and at Thomas Jefferson Governor's School.

46. If admissions to the Thomas Jefferson Governor's School are based on the applicant's status as a gifted student, as measured by the tests required by applicable state regulations, there is a high probability that R.A. would be admitted.

The Defendants

47. The Defendants are the Fairfax County School Board ("FCSB") and Scott S. Brabrand, Superintendent of the Fairfax County Public Schools (the "Superintendent").

48. FCSB is charged with establishing the policies for the operation of the Fairfax County Public Schools (including the Thomas Jefferson Governor's School), within the parameters established by federal and state law.

49. The Superintendent is charged with the operations of the Fairfax County Public Schools (including the Thomas Jefferson Governor's School), including implementation of the policies of FCSB, within the parameters established by federal and state law.

Legal Background of Standardized Testing For Admission to the Thomas Jefferson Governor's School

50. The Thomas Jefferson High School for Science and Technology (a/k/a the Thomas Jefferson Governor's School) is classified as an Academic Year Governor's School within the meaning of Virginia law, and it must be operated as such.

51. This classification is shown, for example, by FCSB Regulation 3355.13, which says that its purpose is "[t]o establish TJHSST [Thomas Jefferson High School for Science and Technology] as a Fairfax County public school and as one of the *academic year regional governor's schools for science and technology*." Emphasis added. The same regulation also

acknowledges that "TJHSST is annually designated by the Virginia Department of Education as an *academic-year regional governor's school for science and technology*." Emphasis added.

52. The Virginia Department of Education ("VDOE") has established certain requirements for the operation of Academic Year Governor's School within the Commonwealth, including the Thomas Jefferson Governor's School. Those requirements include the following:

The Academic-Year Governor's School Programs shall provide educational options not available in home schools for *students identified as gifted or eligible to be so designated*. These programs will provide students with the following opportunities:

Administrative Procedures Guide for the Establishment of Academic Year Governor's Schools, at 1 (emphasis added).

Academic-Year Governor's Schools:

The *Department of Education sponsors regional Governor's Schools*, which serve gifted high school students during the academic year. These schools create special educational opportunities for *gifted students* in science, mathematics, technology, social sciences, the humanities, and the arts. Students at each of these schools concentrate on their specific areas of interest while obtaining well-balanced instruction in other areas of study, either through the Governor's School or at their base school.

Id., at 9 (emphasis added).

53. In other words, in order to operate as an Academic Year Governor's School, the Thomas Jefferson Governor's School must operate as a high school for *gifted* students.

54. FCSB is subject to other regulations promulgated by the VDOE, including regulations defining what it means for any given student in the public schools of the Commonwealth of Virginia to be classified as "gifted."

55. Among the regulations implicated by this Complaint are those specific regulations found in Chapter 40 of the VDOE regulations, which is entitled “Regulation Governing Educational Services for Gifted Students” (“Chapter 40”).

56. Chapter 40 includes, *inter alia*, 8 VAC 20-40-10, 8 VAC 20-40-20, 8 VAC 20-40-40, and 8 VAC 20-40-70.

57. **8 VAC 20-40-10** states: “This chapter *shall apply to all local school divisions* in the Commonwealth, regarding their *gifted education services* for students from kindergarten through twelfth grade.” Emphasis added. Thus, 8 VAC 20-40-10 makes compliance with Chapter 40 mandatory for all school divisions.

58. **8 VAC 20-40-20** provides definitions and says, in pertinent part:

“Gifted students” means those students in public elementary, middle, and secondary schools beginning with kindergarten through twelfth grade who demonstrate high levels of accomplishment or who show the potential for higher levels of accomplishment when compared to others of the same age, experience, or environment. Their aptitudes and potential for accomplishment are so outstanding that they require special programs to meet their educational needs. *These students will be identified by professionally qualified persons through the use of multiple criteria as having potential or demonstrated aptitudes in one or more of the following areas:*

1. General intellectual aptitude. Such students demonstrate or have the potential to demonstrate superior reasoning; persistent intellectual curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression across a broad range of intellectual disciplines beyond their age-level peers.

2. *Specific academic aptitude.* Such students demonstrate or have the potential to demonstrate superior reasoning; persistent intellectual curiosity; advanced use of language; exceptional problem solving; rapid acquisition and mastery of facts, concepts, and principles; and creative and imaginative expression beyond their age-level peers in selected academic areas that include English, history and social science, *mathematics, or science.*

* * * * *

Emphasis added.²

59. 8 VAC 20-40-40 requires school divisions to identify their gifted students and provide special educational services to them. The regulation says, in pertinent part:

A. Each school division shall establish uniform procedures for screening, referring, identifying, and serving students in kindergarten through twelfth grade who are *gifted in general intellectual or specific academic aptitude*.

...

* * * * *

D. 3. The identification process used by each school division must ensure that no single criterion is used to determine a student's eligibility. The identification process shall include at least three measures from the following categories:

- a. Assessment of appropriate student products, performance, or portfolio;
- b. Record of observation of in-classroom behavior;
- c. Appropriate rating scales, checklists, or questionnaires;
- d. Individual interview;
- e. *Individually administered or group-administered, nationally norm-referenced aptitude or achievement tests*;
- f. Record of previous accomplishments (such as awards, honors, grades, etc.); or
- g. Additional valid and reliable measures or procedures.

4. If a program is designed to address general intellectual aptitude, an individually administered or group-administered, *nationally norm-referenced aptitude test shall be included as one of the three measures used* in the school division's identification procedure.

² This regulation also identifies two other categories of aptitude not implicated here, "Career and technical aptitude" and "Visual or performing arts aptitude."

5. If a program is designed to address *specific academic aptitude*, an individually administered or group-administered, *nationally norm-referenced aptitude or achievement test shall be included as one of the three measures used* in the school division's identification procedures.

E. ... Identified gifted students *shall be offered placement* in an instructional setting that provides:

1. *Appropriately differentiated curriculum and instruction provided by professional instructional personnel trained to work with gifted students;* and

2. Monitored and assessed student outcomes that are reported to the parents and legal guardians

Emphasis added.

60. **8 VAC 20-40-70** states: “Funds designated by the Virginia General Assembly for the education of gifted students shall be used by school divisions in accordance with the provisions of the appropriation act.”

61. For many years, the school boards in the Thomas Jefferson School Districts (including FCSB) have relied on the Thomas Jefferson Governor’s School as a key means of discharging their obligations under state law with respect to identifying and educating gifted high school students, especially those with specific academic aptitude in the areas of mathematics or science.

62. For previous years (including the ninth-grade class that entered in the fall of 2020) and consistent with Virginia regulations for identifying “gifted” students, the admissions process to the Thomas Jefferson Governor’s School has included administering certain standardized tests, including Quant-Q, ACT Aspire Reading and ACT Aspire Science, which are well-recognized among educational experts.

63. The Quant Q test consists of 28 multiple-choice math problems progressing from easier to harder with 50 minutes to complete; the ACT Aspire Reading test consists of 32 questions

with 65 minutes to complete; and the ACT Aspire Science test consists of 40 questions with 60 minutes to complete.

64. The Quant-Q, ACT Aspire Reading and ACT Aspire Science standardized tests meet the requirements of 8 VAC 20-40-40(D) for identifying “gifted” students demonstrating specific academic aptitude in science and math in that those standardized tests are “nationally norm-referenced aptitude or achievement test[s].”

65. For current eighth-grade students seeking admission to the Thomas Jefferson Governor’s School for the ninth-grade class entering in the fall of 2021 – and before the actions that are the subject of this Complaint – the admissions tests (Quant-Q, ACT Aspire Reading and ACT Aspire Science) were going to be administered in the fall of 2020.

66. The Students who filed this Complaint were planning to take those admissions test when administered this fall. Just as students planning to try out for a sports team may spend weeks or months in training and preparation for the team try-out, many of the Students spent weeks or months in preparation for those admissions tests.

The October 6 Meeting and Its Aftermath

67. On October 6, 2020, FCSB held a “work session” – not a regular school board meeting.

68. A work session is different from a regular school board meeting in several ways. In a work session, there are typically no votes, and no opportunity for the public to comment on matters before the school board.

69. For the October 6, 2020 work session, the published agenda did not advise the public that potential changes in the admissions policy would be brought to a vote. On the contrary, the published agenda made it appear that potential changes would only be a matter of information

and discussion: “Today’s presentation will provide an update to the September 15, 2020, work session on the effort of continuous improvement of the Admissions Process for TJHSST. The presentation will *provide information* regarding the current admissions process and proposed changes for future admissions processes.” FCSB Agenda (Oct. 6, 2020) (emphasis added).³

70. During the October 6, 2020 work session, there was no opportunity for the public to comment on matters before the school board.

71. During the October 6, 2020 work session, however, FCSB voted to abolish the administration of standardized tests as part of the admissions process for the Thomas Jefferson Governor’s School (the “No-Testing Decision”). The No-Testing Decision eliminated the administration of Quant-Q, ACT Aspire Reading and ACT Aspire Science, and did not provide for the administration of any other nationally norm-referenced standardized tests.

72. On October 7, 2020, the Superintendent announced that he was going to implement the No-Testing Decision made by FCSB the previous night and/or otherwise acted to abolish the administration of standardized tests (including Quant-Q, ACT Aspire Reading and ACT Aspire Science) as part of the admissions process for the Thomas Jefferson Governor’s School. The Superintendent announced the cancelation of any and all admission tests for the Thomas Jefferson Governor’s School for the ninth-grade class that will enter in the fall of 2021 (or thereafter), and he has acted – and continues to act – to implement that cancelation.

73. The purpose and effect of the No-Testing Decision – and its implementation by the Superintendent – are to alter fundamentally the character of the Thomas Jefferson Governor’s School by eliminating its role and purpose as a high school for gifted students.

³ Available at <https://go.boarddocs.com/vsba/fairfax/Board.nsf/goto?open&id=BSVH99475F46>.

74. On information and belief, the purpose of the No-Testing Decision is to substitute in its place a system where a great many students not previously eligible for the Thomas Jefferson Governor's School will be deemed eligible (without demonstrating that they meet the criteria for gifted) and then selected for admission by a system involving some combination of quotas and a lottery (the "Quota/Lottery System").

75. On October 8, 2020, at a regular school board meeting, FCSB took votes on various matters related to the Thomas Jefferson High School. Consistent with its arbitrary and capricious action in adopting the No-Testing Decision on October 6 *without public comment*, these votes included *defeating* a measure that would have *called for public comment* on admissions to the Thomas Jefferson Governor's School.⁴

76. The records of the October 8, 2020 regular school board meeting do not contain any vote to repeat, ratify, or affirm the No-Testing Decision that was made on October 6, 2020. In the alternative, to the extent that any action taken by FCSB at that October 8 meeting (or thereafter) may be construed as having such purpose or effect, then the Complaint shall be construed as challenging that action as arbitrary and/or capricious, and/or an abuse of discretion and the term "No-Testing Decision" shall be construed as encompassing such action.

77. Defendants are fully aware that the regulations issued by VDOE for the identification of gifted students require a "nationally normed aptitude test." For example, a recent FCSB work session included a slide presentation addressing "VDOE Regulations Governing

⁴ The defeated motion read: "I move to direct the Superintendent to develop and implement a public engagement plan regarding TJ admissions prior to bringing the updated TJ plan to the Board in December. This plan should allow for more thorough community input and dialogue on TJ admissions. This public engagement can include public hearings, interviews, panel and focus group discussions and other forms of collaborative discourse. At minimum input should be solicited on how to best determine merit, design an admissions process aimed at ensuring the demographics at TJ are more representative of our regional student demographics, and how to communicate the TJ opportunity to our communities."

Services for Gifted Student,” which stated, *inter alia*, that “screening” for gifted students “must include a nationally-normed aptitude test.” AAP External Review, School Board Work Session, October 27, 2020, at 5 (emphasis in original).

78. Even so, and despite the applicable regulations, one or more members of the FCSB have failed or refused to recognize that the Thomas Jefferson Governor’s School is required to be a high school for gifted students. For example, during the October 6 work session, Karen Keys-Gamarra, said: “We’ve also talked about the purpose of TJ. The purposes of TJ is not, as far as I understand, is *not for gifted students* but is for students with an aptitude for STEM, and science.” Emphasis added.

79. All of the Students filing this Complaint have a high probability of being admitted into the Thomas Jefferson Governor’s School, *if* admissions are based on the applicant’s status as a gifted student, as measured by the types of tests required by applicable state regulations.

80. If the No-Testing Decision is not overturned and admission to the Thomas Jefferson Governor’s School is based on the Quota/Lottery System – or on any other system deviating from state regulations – then each Student filing this Complaint will probably *not* be admitted. The odds of not being picked under any such system will weigh heavily against them.

81. In addition, each Student has a legal right to participate in an admissions process that is conducted according to law, and each Parent has a legal right for his or her Student to participate in an admissions process that is conducted according to law. By the actions of FCSB and the Superintendent, as described in this Complaint, these rights have been violated.

COUNT I
The Fairfax County School Board

82. Plaintiffs re-allege, as if set out in full, all allegations of the foregoing paragraphs.

83. Under the No-Testing Decision, the Thomas Jefferson Governor's School will no longer be a high school devoted to the education of *gifted* students. This violates the requirements of applicable Virginia law, including but not limited to the above-cited provisions of Chapter 40.

The violation arises in different ways, including but not necessarily limited to the following:

(a) Under state law, the Thomas Jefferson Governor's School is required to be operated as a high school for gifted students, especially given (i) VDOE's designation and sponsorship of the Thomas Jefferson Governor's School as a high school for gifted students, and (ii) the appropriation of funds for that purpose by the General Assembly and the acceptance of those funds by FCSB. The No-Testing Decision violates these requirements.

(b) Under the requirements of 8 VAC 20-40-40(D), in order for students to be deemed "gifted" in a "specific academic aptitude" such as "science and math" (the purpose of Thomas Jefferson Governor's School), "an individually administered or group-administered, nationally norm-referenced aptitude test *shall be included* as one of the three measures used in the school division's identification procedure" for such gifted students. Emphasis added. The No-Testing Decision violates these requirements.

(c) If Thomas Jefferson Governor's School is no longer a high school for gifted students, then FCSB will not adequately provide gifted students the educational services required by state law.

84. By making the No-Testing Decision, FCSB violated Virginia law and has exceeded its authority, acted arbitrarily and/or capriciously, and/or abused its discretion.

85. Decisions by a local school board that conflict with state law are obviously null and void. See Virginia Code § 22.1-78 (“A school board may adopt bylaws and regulations, *not inconsistent with state statutes and regulations of the Board of Education*, for its own government, for the management of its official business and for the supervision of schools....”) (emphasis added); *King v. Arlington Cty.*, 195 Va. 1084, 1090 (1954) (“It is, of course, fundamental that local ordinances must conform to and not be in conflict with the public policy of the State as embodied in its statutes.”).

86. Under Virginia Code § 22.2-87, and following the procedures set forth therein, this Court should review the No-Testing Decision, declare that action by FCSB to be unlawful.

COUNT II
The Fairfax County School Board

87. Plaintiffs re-allege, as if set out in full, all allegations of the foregoing paragraphs.

88. By making the No-Testing Decision in a work session (without prior notice to the public that a vote would be taken and without an opportunity for the public to be heard), FCSB exceeded its authority, acted arbitrarily and/or capriciously, and/or abused its discretion.

89. Under Virginia Code § 22.2-87, and following the procedures set forth therein, this Court should review the No-Testing Decision and declare that action by FCSB to be unlawful.

COUNT III
The Superintendent

90. Plaintiffs re-allege, as if set out in full, all allegations of the foregoing paragraphs.

91. The Superintendent acted unlawfully when he implemented the No-Testing Decision and/or otherwise acted to abolish the administration of nationally norm-referenced standardized tests as part of the admissions process for the Thomas Jefferson Governor’s School.

92. As evidenced by FCSB Regulation 3355.13, *supra*, the Thomas Jefferson Governor's School is an "academic year regional governor's school[] for science and technology" and must be operated as such. Compliance with this regulation – and the provisions of state law that apply to governor's schools – requires FCSB and the Superintendent to operate the Thomas Jefferson Governor's School as a high school for gifted students, which in turn requires the administration of nationally norm-referenced standardized tests. By abolishing the use of such tests as part of the admissions process, the Superintendent has exceeded his authority, acted arbitrarily and/or capriciously, and/or abused its discretion, and/or otherwise acted unlawfully.

93. This Court should enter a permanent injunction requiring the Superintendent to reverse any and all actions taken by him to implement the No-Testing Decision and to take such steps as are necessary to ensure that standardized tests (within the meaning of applicable Virginia law, including 8 VAC 20-40-40) are used as an admission criterion for the Thomas Jefferson Governor's School on the same basis as such tests were used for the ninth grade class entering in the fall of 2020.

COUNT IV
All Defendants – Preliminary Injunction

94. Plaintiffs re-allege, as if set out in full, all allegations of the foregoing paragraphs.

95. As this Court has explained: "Although the Supreme Court of Virginia has not definitively set out a standard for awarding injunctive relief, this Court follows the four-part test delineated by the Supreme Court of the United States." *Martinson v. Evans*, No. CL-2017-12308, 2018 Va. Cir. LEXIS 18, at *14 (Fairfax Cir. Ct. Feb. 15, 2018). That standard is found in *Winter v. National Resources Defense Council, Inc.*, 555 U.S. 7 (2008), which established a four-part test for determining whether to grant a preliminary injunction. *Id.*

96. Under *Winter*, the test contains these elements: “(1) the likelihood of success on the merits; (2) the likelihood of irreparable harm to the plaintiff if relief is denied; (3) the balance of equities tips in the plaintiff’s favor; and (4) the injunction is in the public interest.” *Martinson, supra* (citing *Winter*, 555 U.S. at 20).

97. Plaintiffs meet all four parts of the *Winter* test for a preliminary injunction.

98. First, Plaintiffs are likely to succeed on the merits of their claim, as shown by the law and facts set forth in this Complaint (and as shall be further shown by additional proceedings in this case).

99. Second, there is a high likelihood of irreparable harm to the Plaintiffs if a preliminary injunction is denied. Without such an injunction, by the time this litigation is finally resolved, FCSB will have already implemented its new Quota/Lottery System, and it will likely be too late in the admissions cycle to return to the previous selection process for the ninth-grade class entering the Thomas Jefferson Governor’s School on the fall of 2021. Wrongfully denied the opportunity for admission based on the correct legal criteria, the Students will be forced to attend high school elsewhere, forever losing the opportunity to attend the Thomas Jefferson Governor’s School and obtain the incomparable benefits available from the best public high school in the nation. The losses they will incur are incalculable and, in any event, those losses cannot be remedied by a money judgment, given the immunity from such judgments for the state law claims raised here. *Kellam v. Sch. Bd. of the City of Norfolk*, 202 Va. 252, 254 (1960).

100. Third, the balance of equities tips in the Plaintiffs’ favor, especially since (i) there is no harm to FCSB or the Superintendent in requiring them to maintain the same admissions standards that has been followed for years and that have contributed to the Thomas Jefferson Governor’s School’s ranking as the best public high school in the nation, and (ii) if FCSB and the

Superintendent ultimately prevail, they will then be able to implement their Quota/Lottery System for future classes.

101. Fourth, the public interest favors a preliminary injunction, which would preserve the *status quo*. *E.g., Md. Undercoating Co. v. Payne*, 603 F.2d 477, 481 (4th Cir. 1979) (describing the “public interest” as “preserving the status quo ante litem until the merits of a serious controversy can be fully considered by a trial court.”). For purposes of a preliminary injunction, the “status quo” is not things as they stand on the day this Complaint is filed, but things as they stood before the challenged actions of FCSB and the Superintendent. *E.g., League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 236 (4th Cir. 2014) (defining the status quo for purposes of a preliminary injunction to be “the last uncontested status between the parties which preceded the controversy”) (citations omitted); *Aggarao v. MOL Ship Mgmt. Co., Ltd.*, 675 F.3d 355, 378 (4th Cir. 2012) (“To be sure, it is sometimes necessary to require a party who has recently disturbed the status quo to reverse its actions... [but]... [s]uch an injunction restores, rather than disturbs, the status quo ante.”) (internal quotation marks and citation omitted).

102. In addition, a preliminary injunction would benefit the many gifted students (not just those filing this complaint) whose avenue of access to the Thomas Jefferson Governor’s School will be preserved. Moreover, in the unlikely event it is ultimately determined that FCSB may take the action at issue, a preliminary injunction would promote the public interest by providing time for public debate and discussion of an issue that FCSB’s action in a work session – rather than a regular board meeting – unfairly foreclosed.

103. This Court should enter a preliminary injunction requiring all Defendants to reverse any and all actions to implement the No-Testing Decision and to take such steps as are necessary to ensure that standardized tests (within the meaning with applicable Virginia law,

including 8 VAC 20-40-40(D)) are used as an admission criterion for the Thomas Jefferson Governor's School on the same basis as such tests were used for the ninth grade class entering in the fall of 2020.

WHEREFORE Plaintiffs request that the Court grant them the following relief:

1. Find and declare that, by making the No-Testing Decision, whereby it voted to abolish the administration of standardized tests (including Quant-Q, ACT Aspire Reading and ACT Aspire Science) as part of the admissions process for the Thomas Jefferson Governor's School, the Fairfax County School Board exceeded its authority, acted arbitrarily and/or capriciously, and/or abused its discretion.

2. Find and declare that the No-Testing Decision is legally invalid and a nullity, having no effect whatsoever.

3. Find and declare that the Superintendent acted unlawfully when he implemented the No-Testing Decision and/or otherwise acted to abolish the administration of nationally norm-referenced standardized tests as part of the admissions process for the Thomas Jefferson Governor's School.

4. Enter preliminary and permanent injunctions requiring all Defendants to reverse any and all actions to implement the No-Testing Decision and to take such steps as are necessary to ensure that nationally norm-referenced standardized tests (within the meaning with applicable Virginia law, including 8 VAC 20-40-40(D)) are used as an admission criterion for the Thomas Jefferson Governor's School on the same basis as such tests were used for the ninth grade class entering in the fall of 2020.

5. Grant Plaintiffs such additional and other relief as the nature of the case and equity may require.

November 4, 2020

Respectfully submitted,

K.C., A MINOR, BY AND THROUGH
HER PARENT AND NEXT FRIEND,
HANNING CHEN,

HANNING CHEN,
IN HIS OWN RIGHT,

A.Y., A MINOR, BY AND THROUGH
HER PARENT AND NEXT FRIEND,
YUHONG LIN,

YUHONG LIN,
IN HER OWN RIGHT,

D.M., A MINOR, BY AND THROUGH
HER PARENT AND NEXT FRIEND,
YING MCCASKILL,

YING MCCASKILL,
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S.S., A MINOR, BY AND THROUGH
HIS PARENT AND NEXT FRIEND,
MAHUA MITRA,

MAHUA MITRA,
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HEMANG NAGAR,
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HIS PARENT AND NEXT FRIEND,
TILAK VENIGALLA,

TILAK VENIGALLA,
IN HIS OWN RIGHT,

H.P., A MINOR, BY AND THROUGH
HIS PARENT AND NEXT FRIEND,
JAMES PAN,

JAMES PAN,
IN HIS OWN RIGHT,

A.B., A MINOR, BY AND THROUGH
HIS PARENT AND NEXT FRIEND,
MAYURI PRODHUTURI,

MAYURI PRODHUTURI,
IN HER OWN RIGHT,

V.V., A MINOR, BY AND THROUGH
HER PARENT AND NEXT FRIEND,
VIJAY RAGHAVAN,

VIJAY RAGHAVAN,
IN HIS OWN RIGHT,

A.Y., A MINOR, BY AND THROUGH
HIS PARENT AND NEXT FRIEND,
SAMPATH YARLAGADDA,

SAMPATH YARLAGADDA,
IN HIS OWN RIGHT,

C.J., A MINOR, BY AND THROUGH
HIS PARENT AND NEXT FRIEND,
JUSTIN JIA,

JUSTIN JIA,
IN HIS OWN RIGHT,

A.K., A MINOR, BY AND THROUGH
HER PARENT AND NEXT FRIEND,
RAJA KAKAYADI,

RAJA KAKAYADI,
IN HIS OWN RIGHT,

K.S., A MINOR, BY AND THROUGH
HIS PARENT AND NEXT FRIEND,
SRIHARI SIRUVURI,

SRIHARI SIRUVURI,
IN HIS OWN RIGHT,

A.J., A MINOR, BY AND THROUGH
HER PARENT AND NEXT FRIEND,
PUNNAM JONNALA,

PUNNAM JONNALA,
IN HIS OWN RIGHT,

T.K., A MINOR, BY AND THROUGH
HIS PARENT AND NEXT FRIEND,
DHEERAM KALEEM,

DHEERAM KALEEM,
IN HIS OWN RIGHT,

V.J., A MINOR, BY AND THROUGH
HER PARENT AND NEXT FRIEND,
HARRY JACKSON,

HARRY JACKSON,
IN HIS OWN RIGHT,

R.A., A MINOR, BY AND THROUGH
HIS PARENT AND NEXT FRIEND,
SRINIVAS AKELLA, and

SRINIVAS AKELLA,
IN HIS OWN RIGHT

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