

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

CITIZENS FOR A RESPONSIBLE CURRICULUM, ) Case No.  
and PARENTS AND FRIENDS OF EX-GAYS AND )  
GAYS, )  
)  
Plaintiffs, )  
)  
against )  
)  
MONTGOMERY COUNTY PUBLIC SCHOOLS, )  
MONTGOMERY COUNTY PUBLIC SCHOOLS )  
BOARD OF EDUCATION, and JERRY WEAST, )  
in his official capacity as Superintendent, )  
)  
Defendants. )  
\_\_\_\_\_ )

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR  
TEMPORARY RESTRAINING ORDER**

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amaassn.org/special/std/treatmnt/guide/  
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