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UNITED STATES DISTRICT
COURT DISTRICT OF
OREGON PORTLAND
DIVISION

ALLISON ROBERTS,

Plaintiff,

v.

PORTLAND PUBLIC SCHOOLS;
CHANDRA WILSON-COOPER;
and DEANNE FROEHLICH

Defendants.

Case No. 3:26-cv-01680-SB

**MEMORANDUM OF LAW
IN SUPPORT OF
ALLISON ROBERTS'S
MOTION FOR
PRELIMINARY
INJUNCTION**

Table of Contents

Table of Authorities.....	iii
Introduction.....	1
Background.....	2
Legal Standards	10
Argument.....	11
 This Court should grant a preliminary injunction stopping Defendants from silencing Allison Roberts and subjecting her children to gender-ideology-based policies without her consent.	
I. Allison shows a likelihood of success on the merits of her free speech claims because she has been punished for past speech and silenced from future speech.	13
A. The Constitution protects Allison’s speech.	13
B. Defendants retaliated against Allison for protected speech because they did not like what she was saying.....	15
C. Allison has stopped her previous speech opposing Defendants because of their actions against her, and because the scope of what is prohibited is unclear.	17
i. Defendants are engaged in viewpoint discrimination against Allison.	17
ii. Defendants are engaged in selective enforcement against Allison.	21
iii. Defendants’ Harassment Policy is overbroad and unconstitutionally vague.	23
II. Allison shows a likelihood of success on the merits of her free exercise and parental rights claims because Defendants continue to expose her children to gender curricula and policies without her consent.	25

III. Allison, and other affected parents, are suffering irreparable harm to their First and Fourteenth Amendment rights because constitutional harm is irreparable.....	28
IV. The equities tip in the public’s favor and granting the motion is in the public interest because constitutional rights outweigh the government’s interest in unconstitutional policies.....	31
Conclusion	33
Certificate of Compliance.....	35

Table of Authorities

Cases

<i>Ala. Ass’n of Realtors v. HHS</i> , 594 U.S. 758 (2021).....	32
<i>All for the Wild Rockies v. Cottrell</i> , 632 F.3d 1127 (9th Cir. 2011).....	10–11
<i>Ashcroft v. ACLU</i> , 542 U.S. 656 (2004).....	21
<i>Ashcroft v. Free Speech Coal.</i> , 535 U.S. 234 (2002).....	20
<i>Barahona-Gomez v. Reno</i> , 167 F.3d 1228 (9th Cir. 1999).....	32 n.2
<i>Broadrick v. Oklahoma</i> , 413 U.S. 601 (1973).....	23–24
<i>Butler v. Michigan</i> , 352 U.S. 380 (1957).....	20
<i>Capp v. City of San Diego</i> , 940 U.S. 1046 (9th Cir. 2019).....	15–16
<i>Carey v. Brown</i> , 447 U.S. 455 (1980).....	13
<i>Citizens for Free Speech, LLC v. Cnty. Of Alameda</i> , 62 F. Supp. 3d (N.D. Cal. 2014).....	32
<i>City of Huntington Beach v. Newsom</i> , No. 25-3826, 2026 U.S. App. LEXIS 17884 (9th Cir. June 18, 2026)	26
<i>Cornelius v. NAACP Legal Def. & Educ. Fund</i> , 473 U.S. 788 (1985).....	19
<i>De Jesus Melendres v. Arpaio</i> , 695 F.3d 990 (9th Cir. 2012).....	31
<i>Dickinson v. Trump</i> , 174 F.4th 634 (9th Cir. 2026)	15
<i>Doe v. Pittsylvania Cnty., Va.</i> , 842 F. Supp. 2d 927 (W.D. Va. 2012)	32–33 n.2

<i>Elrod v. Burns</i> , 427 U.S. 347 (1976).....	28
<i>Free Speech Coal., Inc. v. Paxton</i> , 606 U.S. 461 (2025).....	19
<i>Goldie’s Bookstore v. Superior Ct.</i> , 739 F.2d 466 (9th Cir. 1984).....	29
<i>Gonzalez v. Trevino</i> , 602 U.S. 653 (2024).....	22
<i>Grayned v. City of Rockford</i> , 408 U.S. 104 (1972).....	13
<i>Hartman v. Moore</i> , 547 U.S. 250 (2006).....	15–16
<i>Iancu v. Brunetti</i> , 588 U.S. 388 (2019).....	19
<i>Mahmoud v. Taylor</i> , 606 U.S. 522 (2025).....	26, 27
<i>McCullen v. Coakley</i> , 573 U.S. 464 (2014).....	19
<i>McDonald v. Smith</i> , 472 U.S. 479 (1985).....	13
<i>McIntyre v. Ohio Elections Comm’n</i> , 514 U.S. 334 (1995).....	14
<i>Mirabelli v. Bonta</i> , 607 U.S. 492 (2026).....	26, 28, 32
<i>Meyer v. Nebraska</i> , 262 U.S. 390 (1923).....	26
<i>Moody v. NetChoice, LLC</i> , 603 U.S. 707 (2024).....	24
<i>NAACP v. Claiborne Hardware Co.</i> , 458 U.S. 886 (1982).....	13, 20
<i>Nken v. Holder</i> , 556 U.S. 418 (2009).....	31

<i>N.Y. Times Co. v. Sullivan</i> , 376 U.S. 254 (1964).....	14, 20
<i>Parham v. J.R.</i> , 442 U.S. 584 (1979).....	26–27
<i>Pickering v. Bd. of Educ.</i> , 391 U.S. 563 (1968).....	13
<i>Pierce v. Soc’y of Sisters</i> , 268 U.S. 510 (1925).....	26
<i>Preminger v. Principi</i> , 422 F.3d 815 (9th Cir. 2005).....	31
<i>Reed v. Town of Gilbert</i> , 576 U.S. 155 (2015).....	18, 22
<i>Rosenberger v. Rector amd Visitors of Univ. of Va.</i> , 515 U.S. 819 (1995).....	19, 21, 22
<i>Sanders Cnty. Republican Cent. Comm. v. Bullock</i> , 698 F.3d 741 (9th Cir. 2012).....	29
<i>Sammartano v. First Jud. Dist. Ct. in & for Cnty. Of Carson City</i> , 303 F.3d 959 (9th Cir. 2002).....	28–29
<i>Schmitt v. Rebertus</i> , 148 F.4th 958 (8th Cir. 2025)	31–32
<i>Schneider v. State</i> , 308 U.S. 147 (1939).....	13
<i>Texas v. Johnson</i> , 491 U.S. 397 (1989).....	14, 17–18
<i>Thalheimer v. City of San Diego</i> , 645 F.3d 1109 (9th Cir. 2011).....	29, 31–32
<i>United States v. Grace</i> , 416 U.S. 171 (1983).....	13
<i>United States v. Hansen</i> , 599 U.S. 762 (2023).....	20
<i>United States v. Osinger</i> , 753 F.3d 939 (2014)	23, 24–25

<i>United States v. Playboy Ent'mt Grp.</i> , 529 U.S. 803 (2000).....	21
<i>United States v. Stevens</i> , 559 U.S. 460 (2010).....	23, 25
<i>United States v. Williams</i> , 553 U.S. 285 (2008).....	24
<i>Waln v. Dysart Sch. Dist.</i> , 54 F.4th 1152 (9th Cir. 2022)	21
<i>Winter v. NRDC, Inc.</i> , 555 U.S. 7 (2008).....	10–11
Constitutional Authority	
U.S. Const. amend. I	12–17, 19–20, 22, 24, 26–31, 33
U.S. Const. amend. XIV	12, 26, 28, 30, 32–33
Secondary Sources	
<i>Student Name and/or Gender Marker Change Explained</i> , Portland Pub. Sch. 1 (rev. July 2023), https://web.archive.org/web/20260814043002/https://resources.finalsite.net/images/v1757351036/ppsnet/yey7hb2rytid1xyuvvjo/NameChangeformAY23-24.pdf	5, 28

Introduction

In ruling on Plaintiff Allison Roberts’s motion for preliminary injunction, this Court is presented with three primary and related issues:

- Under the standard for assessing a motion for preliminary injunction, a movant must show a likelihood of success on the merits. Defendants investigated, issued trespass orders against, and attacked Allison in public communications because they did not like her “hate speech.” They also subjected Allison’s children to gender-based policies without her consent. Does Allison show a likelihood of success on the merits or raise serious questions going to the merits of her constitutional claims?
- Under the standard for assessing a motion for preliminary injunction, a movant must show that, absent relief, they will suffer an irreparable harm. Since Defendants threatened her with a permanent trespass from all District property, Allison has ceased her previous speech efforts. Allison has engaged in no more meetings with officials, written no more letters to the

community, and engaged in no more petitioning on the public sidewalk. Does Allison show she is suffering an irreparable harm?

- Under the standard for assessing a motion for preliminary injunction, movants must show the equities tip in their favor and granting the motion is in the public interest. Allison's and affected members of the public's constitutional rights are on the line. The District has no interest in the continuance of unconstitutional policies. Does Allison show the equities tip in her favor and that granting the motion is in the public interest?

Background

During the 2025–2026 school year, Allison Roberts's youngest children—C1 and C2—both attended Meriwether Lewis Elementary, which is located within Defendant Portland Public Schools (the District), and subject to its jurisdiction. Verified Compl. at ¶ 9. In the fall of 2025, without any consultation with the larger school community, Lewis Elementary changed the pride flag benches on campus from their

traditional configuration by adding the “Intersex-Inclusive Progress Pride Flag.” *Id.* at ¶ 17; **Ex. A.**

Allison is a Christian and opposes schools promoting what she considers controversial “trans” ideology that teaches children to question their sex and the way God made them. *Id.* at ¶ 14. Allison considers the Progress flag a political symbol that promotes values contradictory to her Christian faith. *Id.* at ¶ 19. As Allison was contemplating how to respond regarding the benches, C1 brought home an “identity flower” assignment. *Id.* at ¶ 20; **Ex. B.**

As part of this assignment, C1 was required to identify his “gender” for his teacher and classmates. *Id.* at ¶ 21. In later reviewing other materials related to the flower assignment, Allison discovered that C1’s “identity flower” assignment was part of a larger lesson plan encouraging children to question their sex and gender identity. Verified Compl. at ¶¶ 35, 40, 80; **Ex. D.** This includes lessons regarding the use “of puberty blockers for transgender youth.” *Id.* at ¶ 81.

As part of the flower lesson, C1 was told: “You may identify as a girl or a boy,” and “maybe you feel like a girl or a boy today, but later that word doesn’t feel right,” and “you tell us and the rest of the world what

feels right to you.” *Id.* at ¶ 36; **Ex. C**, at 2. C1 was also instructed that it is possible to identify as neither gender. *Id.* at ¶ 37. C1 was told to answer the question, “what gender identity term feels right to you today,” and to consider “how you are expressing your gender today.” *Id.* at ¶ 38. C1 was then required to present his answers to the entire class. *Id.* at ¶ 39. Allison received no notice of this “identity flower” assignment, nor the ability to opt C1 out from it. *Id.* at ¶ 22.

It was not until February 2026—after Allison was selectively trespassed from the Lewis Elementary campus, had her character attacked in public, and made the subject of an official investigation (more on these below)—that the District purported to give Allison the opportunity to opt C1 out of the remaining 2025–2026 school year lessons concerning “trans” ideology which contradict her Christian beliefs. Verified Compl. at ¶ 72; **Ex. I**. But Allison has received no such notice or opportunity regarding C1 or C2 for the upcoming school year. *Id.* at ¶ 73.

The District’s refusal stems from its own policy, 4.30.061-AD, Title XI (the Nondisclosure Policy), which prohibits providing parents with prior notice and forbids teachers from permitting parents to opt their

children out of “LGBTQ2SIA+ affirming lessons.” *Id.* at ¶¶ 74–79.

Additionally, Allison later discovered that under the Nondisclosure Policy, the District also does not require parental consent for a student to “socially transition” at school, *id.* at ¶ 77. Instead, the Nondisclosure Policy instructs staff to “[a]sk students and staff what pronouns they use,” *id.* at ¶ 78, and instructs students to tell staff to use different pronouns with their “caregiver” if said parent “doesn’t support my identity.” *Student Name and/or Gender Marker Change Explained*, Portland Pub. Sch. 1 (rev. July 2023).¹

In January, after learning about the benches and identity flower lesson, Allison engaged in oral and written speech, including passing out a letter on a public sidewalk, to express her concerns about her children’s education. *Id.* at ¶¶ 25–47. This included a meeting she requested with the Lewis Elementary principal, Defendant Deanne Froehlich, in which three other school officials showed up without warning to confront Allison. When Allison asked what “gender” meant on the flower assignment, whether the class had been given other

¹<https://web.archive.org/web/20260814043002/https://resources.finalsite.net/images/v1757351036/ppsnet/yey7hb2rytid1xyuvvjo/NameChangeformAY23-24.pdf>

assignments regarding “gender,” and why this lesson had gone forward without parental notice, C1’s teacher shouted at Allison, “Why do you need to know?!” Verified Compl. at ¶ 30.

With Froehlich and other officials at Lewis Elementary refusing to address her concerns, and unable to voice her concerns to other parents through the PTA, Allison decided to write a letter to the Lewis Elementary community and pass it out on the sidewalk outside the school. *Id.* at ¶ 41; **Ex. E.** Titled “Open Letter to Lewis Parent Body,” in this letter Allison was critical of Froehlich and the situation regarding the introduction of trans ideology on campus. *Id.* at ¶¶ 42–47. No students were approached, no school property was involved, and no one was pressured to accept or read the material. *Id.* at ¶ 47.

One day after picking up her children from school, Allison was angrily confronted by John, the husband of Olivia, another parent whom Allison recognized from the PTA. *Id.* at ¶¶ 48–53. John repeatedly yelled, “White people are disgusting!” at the top of his lungs with children on the playground nearby. *Id.* at ¶¶ 54–55, 56. In frustration, Allison told John that he was the one being racist and

cussed at him before leaving the area. Verified Compl. at ¶ 56. The entire interaction lasted no longer than five minutes. *Id.* at ¶ 57.

But the next morning, Allison and her family woke up to the sound of the police knocking at their door. *Id.* at ¶ 58. In front of her neighbors, the police served Allison with a one-year trespass order from the Lewis Elementary campus. *Id.* at ¶ 59; **Ex. F**. The trespass order, which Froehlich signed under the seal of the District, claimed that Allison engaged in “harmful, unlawful and/or disruptive behavior,” under 7.40.010-AD(I)(A)1-2, and 1.80.021-P (the Harassment Policy), **Ex. G**, but did not provide any specific details of the incident. *Id.* at ¶ 63. To Allison’s knowledge, John was not similarly cited, despite his own involvement in the heated conversation. *Id.* at ¶ 62.

The order threatened that failure “to adhere to this trespass order may result in law enforcement involvement.” *Id.* at ¶ 61. Allison has only ever received generalized and false allegations concerning her alleged “unlawful” behavior from Defendant Director Chandra Wilson-Cooper. *Id.* at ¶¶ 65–67. No specific and concrete allegations have ever been provided. *Id.* Nevertheless, not only was Allison served with the one-year trespass order, but Froehlich sent an email out to the entire

Lewis community falsely accusing Allison of engaging in “harassment, intimidation, and threatening behavior” as part of a pattern of “animus and harassment targeting vulnerable members of our community.” *Id.* at ¶ 68; **Ex. H.**

Froehlich also stated that Allison’s “hate speech” had been the subject of an ongoing investigation by the Civil Rights and Racial Equity and Social Justice teams at the District. *Id.* at ¶ 69. Froehlich went on to state that if other parents felt “unsafe” as a result of Allison’s “hate speech,” or saw Allison on campus, they should let the staff know immediately. *Id.* at ¶ 71. As a result of the trespass order and the rejected appeal, Allison was not allowed to attend C1’s graduation to middle school, a major milestone in both of their lives. *Id.* at ¶ 87.

Desperate for help, Allison wrote a second letter to the Lewis Elementary community and passed it out with help from a family friend on the sidewalk outside the school. *Id.* at ¶ 88; **Ex. K.** Again, no students were approached, no school property was involved, and no one was required to accept or read the material. *Id.* at ¶ 89. In the second letter, Allison directly challenged Froehlich and the District on what

she considered “falsehoods, reputational distortions, institutional punishments, and public insinuations.” *Id.* at ¶ 90.

In the letter, Allison challenged the Defendants to produce evidence supporting the allegations of “harassment.” Verified Compl. at ¶ 91. Shortly thereafter, Froehlich sent another email out to the Lewis community attacking Allison. *Id.* at ¶ 92; **Ex. L.** In this email, Froehlich specifically targeted Allison’s speech in her second letter as “antithetical to everything we stand for as a community.” *Id.* at ¶ 93. According to Froehlich, because “Lewis is an inclusive school that respects the diversity of all who call it home,” when “harm” or “fear” occurs there must be a response to “disrupt the harm.” *Id.* at ¶ 94.

Three days later, Allison received an email from the District. *Id.* at ¶ 95. The District’s email threatened that if Allison did not cease the so-called “harassment” of distributing a letter *off school property*, it might permanently extend the previous trespass order to apply to all District property. *Id.*; **Ex. M.** Again, relying on the District’s Harassment Policy, **Ex. G**, this threat relied on the District’s definition of “harassment” and encompassed both Allison’s written and verbal speech, including from the sidewalk. *Id.* at ¶ 97.

Due to the District's most recent threat, and her fear of suffering a permanent trespass, Allison has ceased distributing her letter and ended her previous speech activities regarding Lewis, the District's decision to introduce "trans" ideology on campus, Froehlich, and the people and events that led to her one-year trespass. *Id.* at ¶ 98.

Unclear about what conduct falls within the definition of "harassment," Allison's only communication with the District since its most recent threat was to again seek clarification regarding the scope of the Harassment Policy and the conduct it specifically prohibits. *Id.* at ¶ 99. This request for additional information has gone unanswered, *id.* at ¶ 100, and Allison has kept her silence.

Legal Standards

A plaintiff seeking a preliminary injunction must show: (1) a likelihood of success on the merits; (2) irreparable harm; (3) the balance of equities tips in her favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). In the Ninth Circuit, "serious questions going to the merits and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the *Winter* test are also

met.” *All for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011).

Argument

Plaintiff Allison Roberts’s motion for a preliminary injunction meets all necessary requirements, and the Court should grant it.

Defendants issued trespass orders, attacked Allison publicly, and launched an official investigation in retaliation for Allison’s unpopular speech opposing the introduction of trans ideology at Lewis Elementary. But all of Allison’s verbal and written expression, including speech from a public sidewalk, was constitutionally protected. Nonetheless, Defendants’ pressure tactics have forced Allison into silence.

Further, the District Harassment Policy which the Defendants invoked to silence Allison is unconstitutionally vague, overbroad, and viewpoint discriminatory. The Harassment Policy captures all manner of protected speech, fails to provide a person of ordinary intelligence fair notice of what is prohibited, and is selectively enforced based on disfavored viewpoints. This chilling effect on Allison’s speech constitutes an irreparable harm.

Additionally, under the Nondisclosure Policy, Allison is denied constitutionally required notice and ability to opt her children out from “LGBTQ2SIA+ affirming lessons” that conflict with her Christian beliefs, thereby violating the Free Exercise Clause. Verified Compl. at ¶ 75. The Nondisclosure Policy also withholds information should her children attempt to “socially transition” genders at school, violating both free speech and free exercise rights under the First Amendment, as well as parental rights under the Fourteenth Amendment. *Id.* at ¶ 77, 157–74. These burdens are also an irreparable harm.

Finally granting Allison’s requested preliminary relief serves the public interest. It is always in the public interest to protect constitutional rights, and this is even more true given her facial claims to the Harassment and Nondisclosure Policies, which burden the rights of countless families within the District. Defendants, by contrast, have no comparable interest in continuing their enforcement of unconstitutional policies and actions.

I. Allison shows a likelihood of success on the merits of her free speech claims because she has been punished for past speech and silenced from future speech.

A. The Constitution protects Allison’s speech.

Under the First Amendment, the protection of speech includes the oral and written word, including letters and pamphlets, *Schneider v. State*, 308 U.S. 147, 165 (1939), and peaceful picketing and leafletting, *United States v. Grace*, 461 U.S. 171, 177 (1983). Further, speech on public issues “has always rested on the highest rung of the hierarchy of First Amendment values.” *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982) (quoting *Carey v. Brown*, 447 U.S. 455, 467 (1980)). The right to petition the government includes the act of communicating directly with government officials through written correspondence, such as letters. *McDonald v. Smith*, 472 U.S. 479, 482 (1985).

Criticizing the manner of operating a school system, and the officials who operate it, concerns issues of general public interest. *Pickering v. Bd. of Educ.*, 391 U.S. 563, 571 (1968). These concerns may be expressed on “public sidewalks adjacent to school grounds,” which “may not be declared off limits for expressive activity by members of the public.” *Grayned v. City of Rockford*, 408 U.S. 104, 118 (1972). In fact,

the historical practice of distributing leaflets and pamphlets, referred to historically as “pamphleteering,” even implicates the freedom of the press. *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 359–60 (1995).

Expression does not lose its protection because it offends, unsettles, or annoys the listener. The Supreme Court has said so without qualification: “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.” *Texas v. Johnson*, 491 U.S. 397, 414 (1989). Debate “on public issues should be uninhibited, robust, and wide-open” and “may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

Here, Allison was engaged in protected speech. Her activities included expressing herself regarding matters of public concern orally to school officials, writing letters expressing her dissatisfaction and criticism of school officials and policies, and making those written statements available to members of the public from a public sidewalk. Verified Compl. at ¶¶ 25, 41, 46, 88. The Constitution does not measure

the protection of speech by the comfort of Defendants. Whether Allison’s expression was considered disfavored, unpopular, or offensive to the Defendants does not remove it from the ambit of the strictest constitutional scrutiny.

The Court has enforced this principle in far harder cases than this one. *Snyder v. Phelps* protected funeral protests most Americans would call heartless, holding that government cannot punish speech on public matters “simply because it is upsetting or arouses contempt.” 562 U.S. 443, 458 (2011). If the First Amendment protects that kind of speech, it protects a citizen who criticizes a school district.

B. Defendants retaliated against Allison for protected speech because they did not like what she was saying.

A plaintiff will prevail in a First Amendment retaliation suit if she can “show that (1) he or she was engaged in a constitutionally protected activity; (2) the defendant's actions would chill a person of ordinary firmness from continuing to engage in the protected activity; and (3) the protected activity was a substantial or motivating factor in the defendant's conduct.” *Dickinson v. Trump*, 174 F.4th 634, 637 (9th Cir. 2026). The protected activity is a substantial or motivating factor if “the adverse action against the plaintiff would not have been taken absent

the retaliatory motive.” *Capp v. City of San Diego*, 940 F.3d 1046, 1053 (9th Cir. 2019) (quoting *Hartman v. Moore*, 547 U.S. 250, 260 (2006)).

First, Allison’s speech, petitioning, and press efforts expressing opposition to Lewis Elementary and District policies concerning the introduction of “trans” ideology to children were protected First Amendment activities. This included oral and written expression, and leafletting activities on a public sidewalk. Verified Compl. at ¶ 46.

Second, Defendants’ actions in issuing Allison a one-year trespass order from her children’s school, selectively enforcing the Harassment Policy, launching attacks on her character in public communications to the community, making her the subject of an official District investigation, and threatening her with a permanent trespass order from all District property, would chill a person of ordinary firmness from continuing to speak.

Lastly, Allison’s disfavored speech and petition activities were a substantial or motivating factor in Defendants’ retaliatory conduct. Defendants disfavored Allison’s speech and petitioning activities regarding the introduction of “trans” ideology to children at Lewis Elementary. This disfavor was operationalized when Defendants took

the opportunity to selectively enforce the District's Harassment Policy policies by issuing Allison a one-year trespass order but failed to take any action against John, another equally involved parent. That other parent was not trespassed or investigated, and Froehlich did not disparage his character to the community.

Froehlich's own stated motivation for sending her first community-wide email was to make members of the community feel safe from "hate speech." Froehlich not only specifically targeted Allison's speech in her second public email to the community as "antithetical to everything we stand for as a community," but the District issued Allison a permanent trespass threat for all District property. Again, Allison's First Amendment activities directly motivated Defendants' actions.

C. Allison has stopped her previous speech opposing Defendants because of their actions against her, and because the scope of what is prohibited is unclear.

- i. Defendants are engaged in viewpoint discrimination against Allison.

It is a bedrock principle underlying the First Amendment, "that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Johnson*, 491 U.S. at 414. Such viewpoint discrimination is established where a regulation

of speech cannot be “justified without reference to the content of the regulated speech,” or when the government adopted or enforced the regulation “because of disagreement with the message [the speech] conveys.” *Reed v. Town of Gilbert*, 576 U.S. 155, 164 (2015).

Here, Defendants’ current threat to permanently trespass Allison from all District property is viewpoint discrimination. *See Verified Compl.* at ¶¶ 136–38. Defendants cannot justify their current trespass threat—or the likelihood that Allison again be publicly vilified or subjected to a District investigation—without relying on the content of her views and speech. In fact, Defendants’ current trespass threat makes specific mention of both Allison’s second letter and her act of “distributing” it. *Id.* at ¶ 149. But for the content of Allison’s speech in her second letter, which Defendants’ second trespass threat specifically references, *see id.* at ¶ 138, Allison would—like any other member of the District community—be allowed to write, speak, and share her views with others as she wished. But because Defendants disfavor Allison’s views as “hate speech” or as otherwise objectionable, they have sought to silence her.

Viewpoint discrimination is recognized as an “egregious” subtype of content-based discrimination, which is “presumptively unconstitutional” and subject to strict scrutiny. *Iancu v. Brunetti*, 588 U.S. 388, 394 (2019) (quoting *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829–830 (1995)). Additionally, because “a principal purpose of the traditional public fora is the free exchange of ideas, speakers can be excluded from a public forum only when the exclusion is necessary to serve a compelling state interest and the exclusion is narrowly drawn to achieve that interest.” *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 800 (1985).

To satisfy strict scrutiny, a regulation must have a compelling government purpose and be “the least restrictive means of achieving a compelling state interest.” *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 471 (2025) (quoting *McCullen v. Coakley*, 573 U.S. 464, 478 (2014)). Here, strict scrutiny is a burden Defendants cannot shoulder.

A desire to shield officials or policies from criticism is not compelling. In fact, it is the precise interest the First Amendment exists to defeat, and dressing it in the language of a trespass order changes nothing about its true object. Even if the Defendants’ claimed interest in the

Harassment Policy is to prevent hurt feelings or discomfort within the community, that objective cannot justify a viewpoint-discriminatory restriction on speech. Debate “on public issues should be uninhibited, robust, and wide-open” and “may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *Sullivan*, 376 U.S. at 254. Further, the topics Allison wished to discuss, namely the policies at a public school and performance of school officials, are speech on public issues, which rests “on the highest rung of the hierarchy of First Amendment values.” *Claiborne Hardware Co.*, 458 U.S. at 913.

Further, the Harassment Policy is not the least restrictive means of accomplishing any legitimate government purpose. A statute is overinclusive when its potential applications to constitutionally protected speech are “disproportionate to the statute’s lawful sweep.” *United States v. Hansen*, 599 U.S. 762, 770 (2023). The government may not “burn the house to roast the pig,” *Butler v. Michigan*, 352 U.S. 380, 383 (1957), or “suppress lawful speech as the means to suppress unlawful speech.” *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 255 (2002). Indeed, “[t]he Constitution requires the reverse.” *Id.* The

Harassment Policy sweeps so broadly that all manner of otherwise protected expression is captured.

Narrower alternatives are readily available, and the Defendants cannot show they would fail to prevent the conduct the law seeks to deter. *United States v. Playboy Entm't Grp.*, 529 U.S. 803, 813 (2000) (“If a less restrictive alternative would serve the [g]overnment’s purpose, the legislature must use that alternative.”). Here, Defendants have the burden “to prove that the [less restrictive] alternative will be ineffective to achieve its goals,” *id.* at 816, and “the risk of nonpersuasion ... must rest with the [g]overnment, not with the citizen.” *Id.* at 818; *see also Ashcroft v. ACLU*, 542 U.S. 656, 665 (2004). They cannot do so.

- ii. Defendants are engaged in selective enforcement against Allison.

The government is prohibited “from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.” *Rosenberger*, 515 U.S. at 829 (1995); *see also Waln v. Dysart Sch. Dist.*, 54 F.4th 1152, 1163 (9th Cir. 2022). Thus, even a viewpoint neutral policy becomes a First Amendment

violation when it is enforced in a discriminatory matter. *Gonzalez v. Trevino*, 602 U.S. 653, 657–658 (2024).

Here, in her first email to the Lewis Elementary community disparaging Allison, Froehlich stated that Allison’s speech constituted “harassment, intimidation, and threatening behavior” as part of a pattern of “animus and harassment targeting vulnerable members of our community.” Verified Compl. at ¶ 143. Even more to the point was Froehlich labeling Allison’s protected speech “hate speech.” The enforcement of the policy on Allison thus hinges on “the specific motivating ideology or the opinion or perspective of the speaker.” *Rosenberger*, 515 U.S. at 829, and cannot be justified without reference to the content of the regulated speech. *Reed*, 576 U.S. at 164.

This selective enforcement is further demonstrated by the fact that the other parent in the alleged harassment incident who repeatedly yelled “white people are disgusting” in the presence of children, John, suffered no consequences under the Harassment Policy. *See* Verified Compl. at ¶ 146. No trespass order was issued, no public disparagement took place, and no investigation was launched.

The fact that John faced no consequences for screaming “white people are disgusting” at Allison repeatedly on school property, while Allison was banned for criticizing school policies on *a public sidewalk* demonstrates that the Harassment Policy has resulted in “seriously discriminatory enforcement.” *United States v. Osinger*, 753 F.3d 939, 943–44 (2014). Accordingly, the District’s Harassment Policy, even if facially neutral, is enforced in a discriminatory manner based on the disfavored viewpoint of the speaker, and fails strict scrutiny for the same reasons detailed above.

iii. Defendants’ Harassment Policy is overbroad and unconstitutionally vague.

A government speech restriction is invalidated as overbroad if “a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.” *United States v. Stevens*, 559 U.S. 460, 473 (2010). The overbreadth doctrine also departs from ordinary standing rules, allowing a litigant to invoke the rights of others “because of a judicial prediction or assumption that the statute’s very existence may cause others not before the court to refrain

from constitutionally protected speech or expression.” *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973).

The overbreadth analysis proceeds in two steps. A court first construes the regulation, because “it is impossible to determine whether a statute reaches too far without first knowing what the statute covers.” *United States v. Williams*, 553 U.S. 285, 293 (2008). Then, the state identifies which of the statute’s applications offend the First Amendment and “measure[s] them against the rest” of the statute’s applications. *Moody v. NetChoice, LLC*, 603 U.S. 707, 725 (2024).

Here, the District’s Harassment Policy defining “harassment” and “all forms of harassment” is overbroad. The Harassment Policy appears, through Defendants’ enforcement actions, to encompass protected oral and written expression including leafletting from public sidewalks concerning matters of public concern that have no bearing on campus safety, except perhaps protecting vulnerable children from the introduction of potentially confusing or harmful “trans” ideology. Verified Compl. at ¶¶ 152–55.

Relatedly, a regulation “is unconstitutionally vague if it fails to provide a person of ordinary intelligence fair notice of what is

prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.” *Osinger*, 753 F.3d at 943–44. Where, as it is here, the Harassment Policy’s “presumptively impermissible applications ... far outnumber any permissible ones,” it is presumed to be facially invalid. *See Stevens*, 559 U.S. at 481.

The Harassment Policy is also void-for-vagueness. The circular definition of “harassment” as “harassment” is effectively no definition at all, and provides no notice of what speech or conduct is prohibited. Verified Compl. at ¶ 154. To this day, Allison remains unaware of what specific speech or other activities the District deems “harassment,” and out of fear of permanent trespass, has ceased all speech and petitioning efforts and activities related to the situation. *Id.* at ¶ 155. This burden also applies to other parents subject to the Harassment Policy silencing themselves for fear of the District’s reprisal.

II. Allison shows a likelihood of success on the merits of her free exercise and parental rights claims because Defendants continue to expose her children to gender curricula and policies without her consent.

The Supreme Court has held that a public school district violates parents’ free exercise rights when it refuses to provide parents notice and an ability to opt their children out from lessons and assignments

related to LGBTQIA+ issues. *Mahmoud v. Taylor*, 606 U.S. 522, 569 (2025). The Supreme Court specifically listed teachers asking students, “**What pronouns fit you best?**” as an example of an LGBTQIA+-related curriculum component that would require notification and opt-out opportunities. *Id.* at 534 (bold in original).

Additionally, both the Supreme Court, *Mirabelli v. Bonta*, 607 U.S. 492 (2026), and Ninth Circuit, *City of Huntington Beach v. Newsom*, No. 25-3826, 2026 U.S. App. LEXIS 17884 (9th Cir. June 18, 2026), recognize that secret gender transition policies in which school officials keep children’s potential gender dysphoria a secret from their parents also violates the First Amendment’s free exercise guarantee. In the Ninth Circuit, a parent suffers such an injury just for being subject to the policy, even if their child has not attempted to socially transition. *Huntington Beach*, 2026 U.S. App. LEXIS 17884 at *9.

Finally, under long-established Fourteenth Amendment precedents, parents—not the State—have primary authority with respect to “the upbringing and education of children.” *Mirabelli*, 607 U.S. at 497 (quoting *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–535, (1925)); see also *Meyer v. Nebraska*, 262 U.S. 390, 399–400 (1923)). “Simply because

the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state.” *Parham v. J.R.*, 442 U.S. 584, 603 (1979).

Here, the District’s Nondisclosure Policy burdens Allison’s First Amendment right to the free exercise of her Christian faith, and all other parents subjected to the Nondisclosure Policy. Allison believes that God created man and woman as two distinct sexes, and that contemporary “trans” and gender theories undermine this belief. Verified Compl. at ¶ 166. Yet, the District’s Nondisclosure Policy refuses notification and ability to opt out from such lessons, as the First Amendment and Supreme Court require. *Id.* at ¶ 167. The Nondisclosure Policy even requires children to be asked about their pronouns without parental consent, which the Supreme Court has specifically held is prohibited. *Mahmoud*, 606 U.S. at 534. Instead of Allison and other parents having notice and the ability to opt out from such lessons, C1 and C2 were exposed to the material without her knowledge. Verified Compl. at ¶ 172.

Additionally, the District’s Nondisclosure Policy allows children the chance to “socially transition” genders and keep this information a secret from their parents, even requiring staff members to participate in parents’ active deception. *See Student Name and/or Gender Marker Change Explained*, Portland Pub. Sch. 1. This is also at odds with First and Fourteenth Amendment requirements at both the Supreme Court and Ninth Circuit. *Mirabelli*, 607 U.S. at 497; *Huntington Beach v. Newsom*, No. 25-3826, 2026 U.S. App. LEXIS 17884 at *9.

III. Allison, and other affected parents, are suffering irreparable harm to their First and Fourteenth Amendment rights because constitutional harm is irreparable.

The Supreme Court resolved the applicable point decades ago: “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Under Ninth Circuit precedent, “a party seeking preliminary injunctive relief in a First Amendment context can establish irreparable injury sufficient to merit the grant of relief by demonstrating the existence of a colorable First Amendment claim.”

Sammartano v. First Jud. Dist. Ct. in & for Cnty. of Carson City, 303 F.3d 959, 973–74 (9th Cir. 2002).

Because Allison raises substantial constitutional claims, no further showing of irreparable injury is necessary. *See Goldie’s Bookstore v. Superior Ct.*, 739 F.2d 466, 472 (9th Cir. 1984) (it is the “purposeful unconstitutional suppression of speech [that] constitutes irreparable harm for preliminary injunction purposes.”). When seeking a preliminary injunction in the First Amendment context, “the moving party bears the initial burden of making a colorable claim that its First Amendment rights have been infringed, or are threatened with infringement, at which point the burden shifts to the government to justify the restriction.” *Sanders Cnty Republican Cent. Comm. v. Bullock*, 698 F.3d 741, 744 (9th Cir. 2012) (quoting *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1116 (9th Cir. 2011)).

Here, no additional evidence of damage is needed, because a freedom surrendered today cannot be reclaimed tomorrow on equal terms. Allison's conduct shows that harm unfolding in real time. Confronted with the threatened permanent trespass order, Defendants’ other retaliatory actions, and the lack of clarity over what the Harassment

Policy prohibits, she has fallen silent, choosing self-censorship over the risk of further enforcement. Verified Compl. at ¶¶ 101–109.

That retreat is the very chill the First Amendment was intended to prevent, and it is complete the moment a citizen mutes herself to escape punishment. The injury is not hypothetical or deferred. It is present, and it compounds with each day she, and other parents, are forced into silence. That is why courts treat First Amendment injuries as irreparable in kind, and why an injunction is the only remedy that can make Allison and other parents the Harassment Policy silences whole.

Finally, as Allison’s children continue to attend schools within the District, she—like other affected parents—continues to be injured by the Nondisclosure Policy that both prohibits her from receiving notice and opt-out opportunity from curricula that violate her religious beliefs, and prohibits her from receiving mental health information about her children’s attempts to “socially transition” at school. Verified Compl. at ¶ 108. As long as these policies remain in effect, Allison and other parents’ rights to the free exercise of their faith and Fourteenth Amendment right to direct the upbringing of her children are burdened. *Id.* at ¶ 109.

IV. The equities tip in the public’s favor and granting the motion is in the public interest because constitutional rights outweigh the government’s interest in unconstitutional policies.

The balance of equities and the public interest factors merge when the government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009). These factors favor granting injunctive relief here.

It is always in the public interest to protect constitutional rights, especially First Amendment rights. *Thalheimer*, 645 F.3d at 1129; *see also Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.”). Equities favor the issuance of narrow, limited preliminary injunctions to end unconstitutional conduct. *De Jesus Ortega Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). This is even more true here where, in terms of the facial claims, other members of the public stand to benefit from the requested relief.

Courts considering requests for preliminary injunctions have consistently recognized the significant public interest in upholding First Amendment rights. *Schmitt v. Rebertus*, 148 F.4th 958, 970 (8th Cir. 2025) (“the balance of the equities generally favors the constitutionally-

protected freedom of expression.”); *Thalheimer*, 645 F.3d at 1129, and Fourteenth Amendment parental rights. *Mirabelli*, 607 U.S. at 497. Set against that interest, Defendants can muster only a preference for a reduction in speech they do not like.

This preference is not simply outweighed. It is illegitimate, and an interest the Constitution forbids cannot register on the scale at all. *Ala. Ass’n of Realtors v. HHS*, 594 U.S. 758, 766 (2021) (officials may not “act unlawfully even in pursuit of desirable ends.”). Mere “inconvenience” to the government does not compare to the hardship imposed by “the potential loss of a constitutionally protected right” like speech or parental rights to free exercise and the ability to direct the education and upbringing of their children. *Citizens for Free Speech, LLC v. Cnty. of Alameda*, 62 F. Supp. 3d 1129, 1143 (N.D. Cal. 2014); *see also Melendres*, 695 F.3d at 1002. An injunction burdens Defendants with nothing they are lawfully entitled to keep, asking only that they obey a command the Constitution already imposes. On these equities, the contest is no contest.²

² This Court has discretion to waive the security requirements of Fed. R. Civ. P. 65(c) or require only a nominal bond. *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999). Where a preliminary injunction requires only compliance with the Constitution, no bond is required. *Doe v. Pittsylvania County, Va.*, 842 F. Supp. 2d

Conclusion

Allison's speech sits at the heart of the guarantees of the First and Fourteenth Amendments, and Defendants cannot dislodge her from that protected ground by a threatened trespass order. Speech “is often provocative and challenging,” and it remains protected absent a showing that it is “likely to produce a clear and present danger.” *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949). The Defendants can identify no incitement, no threat, and no genuine disruption. They can only rely on their own displeasure, which has never been a lawful ground for exclusion from the marketplace of ideas.

Plaintiff Allison Roberts’s motion for a preliminary injunction meets all necessary requirements, and the Court should grant it.

Dated: August 24, 2026

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927, 937 (W.D. Va. 2012) (fixing the bond at zero dollars where injunction merely required compliance with the Constitution).

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This brief complies with the applicable word-count limitation under LR 7-2(b) because it contains 6232 words including headings, footnotes, and quotations, but excluding the caption, table of contents, table of cases and authorities, signature block, exhibits, and any certificates of counsel.

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