

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

STEPHEN MANDILE,
Plaintiff,

v.

UXBRIDGE SCHOOL COMMITTEE; and
MICHAEL BALDASSARRE, in his
personal and official capacities,
Defendants.

Civil Action No. 4:23-cv-40142

**MEMORANDUM OF LAW IN SUPPORT
OF PLAINTIFFS MOTION FOR A
TEMPORARY RESTRAINING ORDER
AND FOR A PRELIMINARY
INJUNCTION**

[ORAL ARGUMENT REQUESTED]

1.0 INTRODUCTION

This case is about a Superintendent abusing his power to retaliate against Plaintiff, a parent. This parent is regularly involved in his children’s lives and the lives of the community, a Selectman who is vocal in his opposition to the bullying of LGBTQ youth. The parent criticized the Superintendent for unprofessional, toxic conduct, and he was slapped with a retaliatory no trespass order. He has been banished from the school and involvement in his children’s education. This retaliatory and punitive action took place without any due process at all.

2.0 FACTUAL BACKGROUND

2.1 Who is the Plaintiff?

For three years, since May 2021, Mandile, an Uxbridge Selectman, has stood outside Uxbridge public schools holding signs, demonstrating for kindness and against hate. Verified Complaint at ¶¶ 8-9, 88-92. Mandile is known locally as the Kindness Guy. *Id.* at ¶ 9. Every morning, between 7:05 a.m. and 7:40 a.m., Mandile stands across the street from Whitin Intermediate School, holding his signs. *Id.* at ¶ 91. Then, between 8:05 a.m. and 8:35 a.m., Mandile stands next to the Taft Early Learning Center, holding his signs. *Id.* at ¶ 92. Uxbridge police

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officers view Mandile as an asset for his actions.¹ *Id.* at ¶ 90. Others, including a bullying prevention expert and author of the guide *Direct from the Field: A guide to bullying prevention*, (which was sent to every school in Massachusetts when the new anti-bullying laws were put in place by the Governor’s Task Force on Hate Crime), agree that Mandile’s presence on campus and his volunteering at Uxbridge public schools benefit everyone. *Id.* at ¶ 86; ECF No. 1-10, filed herewith as **Exhibit 1**.

2.2 Defendants’ Retaliatory, Unconstitutional Conduct

On May 9, 2023, the Boston Globe published an article in which Mandile, criticized Baldassarre’s unprofessional conduct. *Id.* at ¶¶ 12-19. Several weeks later, on May 28, 2023, Baldassarre confronted Mandile at a volunteer event, accusing him of trying to ruin Baldassarre’s career. *Id.* at ¶¶ 21-31. Baldassarre was visibly intoxicated. *Id.* at ¶ 23. Baldassarre aggressively and threateningly yelled at Mandile: “It’s none of your business what’s going on with me and the school, why are you trying to ruin my career?” *Id.* at ¶ 24. Mandile responded that his conduct and his tone was inappropriate. *Id.* at ¶ 25. It was neither the time nor the place to discuss this matter during a fundraiser for a friend, but invited him to speak outside. *Id.* Outside, Baldassarre got more aggressive continued to raise his voice, saying, “You have no idea what’s going on,” and accused Mandile of criticizing him when interviewed by the Boston Globe. *Id.* at ¶ 26. Baldassarre got threateningly close to Mandile and stated, “You’re supposed to be the Kindness Guy, you’re supposed to help people.” *Id.* at ¶ 27. Mandile told him that he was not going to waste his time listening to Baldassarre when he should be volunteering with his family. *Id.* at ¶ 28. As Mandile headed inside, Baldassarre screamed at Mandile, “I have lost all fucking respect for you, Steve.”

¹ There have been zero accidents in the three school years that Mandile has been standing outside. *Id.* at ¶ 89.

Id. at ¶ 29. Mandile returned to the raffle table, where his wife and two daughters were distressed by the encounter, and asked if they should leave. *Id.* at ¶ 30. Mandile told them, “No, we don’t let people intimidate us into doing what we don’t want to do.” *Id.* at ¶ 31. Mandile went to the police and filed a report about Baldassarre’s toxic behavior and posted his voluntary statement to the police on Facebook. *Id.* at ¶¶ 32-33; ECF No. 1-1, filed herewith as **Exhibit 2**.

In June 2023, an LGBTQ Pride display was put up on the Alice Bridges Bridge in Uxbridge, dubbed as the Love Bridge. Verified Complaint at ¶ 34-43. On June 4, 2023, Mandile discovered the Pride display had been vandalized. *Id.* at ¶ 36. Mandile, with help from the community, cleaned up the vandalism and hung up the Pride Flags and banner again. *Id.* at ¶¶ 37-43. Mandile, known to the community as “the Kindness Guy,” posted to social media to inform the community of the vandalism, and to share that he was on the bridge hanging up more Pride Flags and protecting the display from more vandalism. *Id.* Mandile’s protection garnered the attention of news outlets and the Uxbridge Police Department, who investigated and monitored the bridge. *Id.* at ¶ 41. However, Baldassarre falsely characterized this conduct as Mandile acting “hateful” during Pride Month.² *Id.* at ¶¶ 44-50.

On September 5, 2023, Mandile attended the Uxbridge School Committee meeting and spoke during public comment. *Id.* at ¶¶ 51-56. During his public comment, he criticized Baldassarre’s unprofessional conduct, poor leadership, and toxic behavior. *Id.* Thereafter, Mandile asked Baldassarre why he was writing lies about him on his blog. *Id.* at ¶¶ 61-65. Mandile did not raise his voice and he did not want to appear hostile or aggressive. *Id.* at ¶ 60-61. Baldassarre

² Mike Baldassarre, *Beware of Clandestine Hate – What’s Happening on Social Media When Parents Aren’t Looking?*, (Aug. 27, 2023), <https://www.mikebaldassarre.com/blog/beware-of-clandestine-hate-whats-happening-on-social-media-when-parents-arent-looking>

later claimed that security footage showed something different. Mandile requested the security camera footage of this incident, but Defendants refuse to provide it. *Id.* at ¶¶ 63-64.

The next day, on September 6, 2023, in retaliation for Mandile’s statements, Baldassare, ostensibly using his power as Superintendent, issued a no trespass order (“NTO”) that banned Mandile from the Uxbridge school grounds and attending school-related off-campus events, except for when he receives an express invitation “with specific time, specific place, and specific purpose that relates to the education of [his] children.” *Id.* at ¶¶ 69-73. Baldassarre pretextually asserted that the NTO was based on Mandile’s behavior in the parking lot after the September 5, 2023, Committee meeting and “one other” unspecified occasion. *Id.* at ¶ 71-72.

Mandile requested to appeal the NTO on September 13, 2023. *Id.* at ¶¶ 74-77. The School Committee, however, informed him that they have no appeal process. *Id.*

In apparent retaliation for Mandile’s attempt to appeal the NTO, on September 14, 2023, Baldassare sought a harassment prevention order against Mandile. *Id.* at ¶¶ 78-87. Baldassarre’s application for a harassment prevention order contained multiple misrepresentations. A hearing on the harassment prevention order was held on September 28, 2023. *Id.* at ¶¶ 84-86. At the hearing, the court reviewed the video of the interaction between Mandile and Baldassarre and denied the request for the abuse prevention order. *Id.* at ¶¶ 85-86. On the same day, September 28, 2023, that Baldassarre presented the court with the video, he denied Mandile’s public records request for the video, alleging security concerns. *See id.* at ¶¶ 63, 84-87.

On October 6, 2023, Baldassarre sent a letter to Mandile that modified the NTO (“Modified NTO”). *Id.* at ¶ 93. Under the Modified NTO, Mandile was ordered to no longer stand by the school, on the public sidewalk, holding his positivity signs near the schools. Baldassarre ordered him to “relocate to an area far from the school entrance to ensure no one is hurt.” *Id.* at ¶ 94. The

Modified NTO permits Mandile to access Uxbridge Public Schools property for events typically open to the public. However, during these events open to the public, Mandile must remain 100 feet away from Baldassarre, which would be a *de facto* ban from attending Uxbridge School Committee meetings. *Id.* at ¶ 95. Otherwise, Mandile can only access school property related to his children’s education through a prior invitation from the school. *Id.* at ¶ 96. Mandile also remains banned from attending school-related off-campus events. *Id.* at ¶ 97.

On October 10, 2023, Mandile sent an email requesting clarification on the Modified NTO. *Id.* at ¶ 98; ECF No. 1-12, filed herewith as **Exhibit 3**. Baldassarre confirmed that Mandile is prohibited from accessing the Uxbridge School Public property for non-public events related to his children’s education without express invitation and that he is *also* now prohibited from volunteering in the Uxbridge school system. *Id.* at ¶ 99; **Exhibit 3**.

The modified NTO is an unconstitutional prior restraint. *Id.* at ¶ 100. Mandile is only permitted to enter Uxbridge Public School facilities or be present on school grounds if he receives a prior invitation. *Id.* at ¶ 101. When he gets an invitation, Mandile must remain 100 feet away from Baldassarre. *Id.* at ¶ 102. Mandile was not permitted to come to the school to attend his children’s parent-teacher conferences, as he did not receive an express invitation, and is entitled to damages for this deprivation of rights. *Id.* at ¶ 103. Baldassarre has appointed himself as an individual with complete unfettered control over Mandile’s ability to petition the government, to see his children, and to participate in community events. *Id.* at ¶ 104.

Mandile was prohibited from and will be prohibited from attending the following activities:

- picking up his children from school, something he used to do regularly and wishes to continue so doing;
- attending parent-teacher conferences and events for his children, including the September 21, 2023, “Meet the Teacher” event and any and all future parent-teacher conferences and events absent an express invitation;

- attending and volunteering at the Touch-A-Truck event on September 22, 2023;
- prohibited from attending and volunteering at the World Smile Day event on October 6, 2023;
- prohibited from attending and volunteering at all upcoming school events, including the field-day event, Whitin Warrior 404, on October 16, 2023;
- prohibited from attending and volunteering at the upcoming Halloween event, Trunk-or-Treat, on October 21, 2023;
- prohibited from attending and volunteering at the upcoming Whitin School Band field trip to University of Massachusetts on November 2, 2023;
- prohibited from attending and participating in any Uxbridge School Committee Meetings, including the meetings on September 20, 2023, September 26, 2023, October 10, 2023, and any future meetings; and
- prohibited from attending and participating at any other Uxbridge Public School meetings or activities, including the Playground Visioning Meeting on September 7, 2023, in which Baldassarre removed Mandile from the Zoom, and the Joint Workshop at Taft Early Learning Center (“ELC”) on September 20, 2023, and any future meetings where Baldassarre might be in attendance. *Id.* at ¶¶ 105-113.

3.0 LEGAL STANDARD

Rule 65 of the Federal Rules of Civil Procedure provides for temporary restraining orders and preliminary injunctions in federal courts upon notice to the adverse party. *See* Fed. R. Civ. P. 65(a) and (b). A temporary restraining order or preliminary injunction must (1) state the reasons why it issued; (2) state its specific terms; and (3) describe in reasonable detail the act or acts restrained or required. Fed. R. Civ. P. 65(d). Injunctive relief should be issued if: (1) the plaintiff is likely to succeed on the merits; (2) the plaintiff is likely to suffer irreparable harm if the injunction did not issue; (3) the balance of equities tips in plaintiff’s favor; and (4) the injunction is in the public interest. *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008).

“In the First Amendment context, the likelihood of success on the merits is the linchpin of the preliminary injunction analysis.” *Sindicato Puertorriqueño de Trabajadores v. Fortuño*, 699

F.3d 1, 10 (1st Cir. 2012) (*per curiam*). At this stage, the “court need not conclusively determine the merits of the movant’s claim; it is enough for the court simply to evaluate the likelihood . . . that the movant ultimately will prevail on the merits.” *Ryan v. U.S. Immigr. & Customs Enf’t*, 974 F.3d 9, 18 (1st Cir. 2020).

4.0 LEGAL ARGUMENT

4.1 Plaintiff Has Standing

In First Amendment cases, there is standing when the plaintiff intends to engage in a Constitutionally protected activity, which has been proscribed by the government, and there is a credible threat of prosecution. *Mangual v. Rotger-Sabat*, 317 F.3d 45, 56-57 (1st Cir. 2003) (standing when a plaintiff “is chilled from exercising her right to free expression or forgoes expression in order to avoid enforcement consequences”).

The harm is readily apparent. Defendants issued a No Trespass Order that prohibits Mandile from entering the Uxbridge School grounds for matters related to his children’s education without express invitation. Verified Complaint at ¶¶ 93-112. Furthermore, Mandile cannot come within 100 feet of Baldassarre, which is a *de facto* ban on his attendance at Uxbridge School Committee meetings, and he cannot stand by the school entrance protesting for kindness. *Id.* at ¶¶ 94-95.

4.2 Plaintiff is Likely to Prevail on the Merits of His Claims

Defendants violated Mandile’s First and Fourteenth Amendment rights by issuing and enforcing a Modified NTO that threatened him with criminal prosecution if he engaged in conduct protected under the First Amendment. Mandile was deprived of attending events with his children and prohibited from protesting and participating in a public forum without any process, let alone the due process to which he is entitled under law.

4.2.1 Mandile Deserved Due Process – It Was Denied

Baldassare is complaining witness, prosecutor, judge, and executioner, all rolled into one. He concocted a pretext, decided Mandile should be punished, issued the NTO without notice or opportunity to be heard, and made his own location a floating boundary for the NTO. Due process requires reasonable notice of prohibited conduct. Baldassare cited to no violation of any School Committee rule and he arbitrarily determined that Mandile’s statements warranted an NTO, measured against no regulation. A regulation must define the offense with sufficient definiteness so that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). A great degree of specificity and clarity of such notice and restriction is required when First Amendment rights are at stake. *Gammoh v. City of La Habra*, 395 F.3d 1114, 1119 (9th Cir. 2005); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053, 1057 (9th Cir. 1986). A regulation is vague if it either fails to place people on notice of exactly which conduct is prohibited, or if the possibility for arbitrary enforcement is present. *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999). Here, there was not even a regulation allegedly violated.

The NTO (even as modified) is itself an unconstitutional regulation. Government regulations which rely on a viewer’s subjective interpretation of facts are void for vagueness. *Morales*, 527 U.S. at 56-64 (holding a provision criminalizing loitering, which is defined as “to remain in any one place with no apparent purpose,” void for vagueness because the provision was “inherently subjective because its application depends on whether some purpose is ‘apparent’ to the officer on the scene”); *Tucson Woman’s Clinic v. Eden*, 379 F.3d 531, 554-55 (9th Cir. 2004) (holding a statute requiring physicians to treat patients “with consideration, respect, and full recognition of the patient’s dignity and individuality” void for vagueness because it “subjected

physicians to sanctions based not on their own objective behavior, but on the subjective viewpoint of others”).

Morales provides a useful guidepost for when enforcement of a statute or regulation may be unconstitutionally vague:

If the police are able to decide arbitrarily which members of the public they will order to disperse, then the Chicago ordinance becomes indistinguishable from the law we held invalid in *Shuttlesworth v. Birmingham*, 382 U.S. 87, 90 (1965). Because an officer may issue an order only after prohibited conduct has already occurred, it cannot provide the kind of advance notice that will protect the putative loiterer from being ordered to disperse.

527 U.S. at 58-59.

The Modified NTO is vague and subject to arbitrary and discriminatory enforcement. Mandile had to write a follow-up email to get clarification on whether an invitation is still required to attend events related to his children’s education. Verified Complaint at ¶ 98. Furthermore, it is not clear what is meant by “events typically open to the public, *e.g.*, athletic events.” See ECF No. 1-11, filed herewith as **Exhibit 4**. This Modified NTO is subject to arbitrary and discriminatory enforcement. Baldassarre has the discretion to decide whether an event is “typically” open to the public and enforce the Modified NTO order to have Mandile arrested. Additionally, the Modified NTO demands that Mandile move his kindness protesting “to an area far from the school entrance.” *Id.* This vague language provides no guidance on where Mandile is permitted to stand.

Perhaps most importantly, no procedures are in place to contest a no trespass order. There was no notice nor meaningful opportunity to be heard. In *Haidak v. Univ. of Mass.-Amherst*, the court held that a university violated a student’s due process rights by suspending him without a hearing when there were no exigent circumstances. 933 F.3d 56, 71, 72 (1st Cir. 2019). There were no exigent circumstances here requiring summary punishment. Mandile was deprived of significant liberty interests as a parent and as a citizen. Assuming *arguendo* the restrictions were

valid, Defendants provided no hearing and have no appeals process. Notably, the same circumstances could not support a HPO when Baldassare sought such in court, and it should not have supported an NTO. “It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit.” MASS. CONST. Para 1, Art. 28. As future Justice Lauriat found, this requirement applies in administrative proceedings. *Pierce v. Mulhern*, No. 2001-2825-C, 2003 Mass. Super. LEXIS 488, at *22-23 (Jan. 27, 2003) (Lauriat, J., collecting cases). Baldassare, wearing both the hats of complaining witness and judge, had a clear conflict of interest, which is a basis for disqualification. *Pierce* at *24 citing *Schweiker v. McClure*, 456 U.S. 188, 195 (1982). He had a personal stake in the outcome of any process and could not be impartial. Thus, the issuance of the NTO (and as modified) violates Mandile’s 14th Amendment right to due process and warrants injunctive relief.

4.2.2 Plaintiff’s First Amendment Rights Were Violated

Defendants violated Plaintiff’s constitutional rights by issuing a retaliatory Modified NTO and threatening to enforce it against Plaintiff for his speech protected under the First Amendment of the U.S. Constitution. Verified Complaint at ¶¶ 93-97; **Exhibit 4**. Because the NTO infringes on Mandile’s First Amendment rights, Defendants must justify their actions. *Comcast of Maine/New Hampshire, Inc. v. Mills*, 435 F. Supp. 228, 233 (D. Me. 2019) (citing *Reilly v. City of Harrisburg*, 858 F.3d 173, 180 (3d Cir. 2017)); *see also Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969) (“In order for the State . . . to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”). They cannot.

Mandile’s attendance at a school committee meeting and criticisms of Baldassarre were First Amendment-protected. *See City of Madison, Joint Sch. Dist. No. 8 v. Wis. Emp. Rels. Comm’n*, 429 U.S. 167, 174–75 (1976) (holding that the First Amendment protects the rights of speakers at school board meetings that were opened for direct citizen involvement and permitted public participation). Furthermore, Mandile’s right to demonstrate for kindness and against hate outside the school on the sidewalk is First Amendment protected. And his participation in future events, including further kindness demonstrations, town meetings, school board meetings, or simply assemblies with his children are similarly First Amendment protected, and depriving him of his right to participate is an unlawful prior restraint.

4.2.3 Mandile was Retaliated Against Based on His Speech

Mandile criticized Baldassare in the *Boston Globe*. He complained about Baldassare at a school committee meeting and afterward. In retaliation for these First Amendment-protected statements, Baldassare abused his position and issued the NTOs. “The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws abridging the freedom of speech.” *Mass. Coal. For the Homeless v. City of Fall River*, 486 Mass. 437, 440 (2020) (quoting *Reed v. Gilbert*, 576 U.S. 155, 163 (2015)) (quotation marks omitted).

Defendants do not contend Mandile’s speech falls within one of the few “historic and traditional categories of expression long familiar to the bar” for which content-based restrictions on speech are clearly permitted. *United States v. Alvarez*, 567 U.S. 709, 717-18 (2012) (cleaned up). Content-based regulations are subject to strict scrutiny, which requires the government to demonstrate “a compelling interest and . . . narrow[] tailor[ing] to achieve that interest.” *Reed*, 576 U.S. at 155 (quoting *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011)). Narrow tailoring in the strict scrutiny context requires the restriction to be “the least

restrictive means among available, effective alternatives.” *Ashcroft v. Am. Civil Liberties Union*, 542 U.S. 656, 666 (2004). Defendants’ actions fail strict scrutiny.

There is no compelling interest in restricting a citizen, let alone a Selectman, from attending school committee meetings, public events, and picking up his children, all because he criticized the Superintendent. Defendants articulate no interest, let alone a compelling one, in retaliating against Plaintiff for the speech at issue—there was no “danger” and there is no government interest in restricting civic or parental engagement. Defendants identify no rule that Mandile has allegedly violated. Mandile has not done anything that would arise to “serious evil” that justifies the restrictions imposed by Defendants. *See United States v. Treasury Employees*, 513 U.S. 454, 475 (1995). Defendants have no reasonable justification their actions. At worst, as articulated in Baldassare’s HPO complaint, Mandile allegedly screamed at him; such a single instance, even if it happened (which it did not), cannot justify the NTO (originally or as modified).

Baldassare’s own pretext—that Mandile was screaming—fails constitutional scrutiny. Content-neutral time, place, and manner restrictions are subject to intermediate scrutiny, meaning they must be “narrowly tailored to serve and significant government interest, and ... leave open ample alternative channels for communication of the information.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). Defendants’ justification for the Modified NTO is the interaction between Mandile and Baldassarre in the parking lot on the night of September 5, 2023. ECF Nos. 1-7 and 1-11, filed herewith as **Exhibit 5** and **Exhibit 4**. It is incumbent on the Defendants to present that video to this Court to justify their conduct. *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 816 (2000) (“When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions.”). That video is expected to show that Baldassare’s actions are a pretext. But, even if Baldassarre were telling the truth, the NTO is not

narrowly tailored and does not serve a significant government interest. Jumping straight to an NTO, when a warning might suffice, especially where Mandile posed no threat.

During the HPO hearing, Mandile presented three letters in support of his character, including a bullying prevention expert and author of the guide *Direct from the Field: A guide to bullying prevention*, which was sent to every school in Massachusetts when the new anti-bullying laws were put in place by the Governor’s Task Force on Hate Crimes. All agree that Mandile’s presence on campus and his volunteering at Uxbridge public schools is a net benefit for everyone. ECF No. 1-10, filed herewith as **Exhibit 1**. Issuing such a broad NTO to a person of Mandile’s character does not meet any government interest, let alone a significant one.

Moreover, even if we credit Baldassarre’s allegation that Mandile was screaming, that is a form of protected speech. Verified Complaint at ¶ 79; ECF No. 1-9, filed herewith as **Exhibit 6**. “Singing . . . whistling, shouting, [and] yelling” are forms of speech protected by the First Amendment. *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 772 (1994). Listening to citizens seeking redress of grievances is part of a public official’s job. Since there are no rules restricting speaking with public officials or protesting on school grounds, any “regulation” that the government seeks to uphold would be *ad hoc*, and thus unconstitutional.

The NTO effectively bars Mandile from public meetings. Prohibiting someone from testifying at a public meeting because they have disrupted or otherwise interrupted that particular meeting is a “[r]easonable time, place and manner restriction[] on speech in limited public fora.” *See Devine v. Village of Port Jefferson*, 849 F. Supp. 185, 190 (E.D.N.Y. 1994). But, Mandile did not disrupt or interrupt. The Modified NTO requires that Mandile remain 100 feet away from Baldassarre. ECF No. 1-11, filed herewith as **Exhibit 4**. This is a *de facto* ban on attending and participating in school committee meetings for no valid reason. Furthermore, the Modified NTO

prevents Mandile from attending events concerning his children’s education without an express invitation from the school. Prohibiting Mandile’s attendance at school committee meetings and at events involving his children’s education, despite no alleged school policy violation, is unconstitutional.

Moreover, the Modified NTO orders Mandile to move his kindness demonstration “to an area far from the school entrance[.]” Demonstrating is protected by the First Amendment. *See Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 152 (1969) (describing privilege of citizens to assemble, parade, and discuss public questions in streets and parks). Mandile stands on the sidewalk by the entrance of Taft-Early Elementary School and in a private residence by Whitin Intermediate School. Verified Complaint at ¶¶ 91-92. He has stood there demonstrating for kindness and against hate since May 2021. *Id.* at ¶ 88. The sidewalk is a traditional public forum. *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 817 (1985). Defendants claim that Mandile standing by the schools is causing safety concerns “as it distracts drivers.” ECF No. 1-11, filed herewith as **Exhibit 4**. This is mere pretext. There have been zero accidents in the three years he has been standing outside. Verified Complaint at ¶ 89. Police officers have told him he is seen as an asset for standing in front of the schools. *Id.* at ¶ 90. Thus, the NTO is overbroad.

On May 9, 2023, the Boston Globe published an article where Mandile criticized Baldassarre’s unprofessional conduct. Verified Complaint at ¶¶ 12-20. A few weeks later, when Baldassare drunkenly accosted him, Mandile went to the police and filed a report. *Id.* at ¶¶ 32-33. On September 5, 2023, Mandile attended the Uxbridge School Committee meeting and criticized Baldassarre’s unprofessional conduct, poor leadership, and toxic behavior during public comment. *Id.* at ¶¶ 51-56.

Baldassare has engaged in a pattern of retaliatory behavior. The day after being criticized at the school committed meeting, Baldassare issued the NTO *Id.* at ¶¶ 69-73. The day after Mandile sought to appeal it, Baldassare filed a retaliatory application for an HPO. *Id.* at ¶¶ 74-87. After losing, Baldassarre modified the NTO, which added a new caveat, prohibiting Mandile from protesting for kindness and against hate outside Uxbridge Public Schools. *Id.* at ¶¶ 93-94. This petty, retaliatory conduct is unbecoming for anyone, much less a superintendent. Baldassarre has a personal grudge because Mandile criticizes his job performance and toxic behavior. This content and viewpoint discriminatory conduct is unconstitutional and the NTO must be enjoined.

4.2.4 The Government's Actions Constitute a Prior Restraint

Defendants have instituted a *de facto* ban that indefinitely bars him from attending Uxbridge School Committee meetings and school-related events with his children. Verified Complaint at ¶ 95. Furthermore, they have prohibited him from demonstrating for kindness and against hate outside the schools. Our Constitution rarely, if ever, tolerates a prior restraint. “Prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.” *Neb. Press Ass’n v. Stuart*, 427 U.S. 530, 559 (1976). “The Supreme Court has roundly rejected prior restraint.” *Kinney v. Barnes*, 443 S.W.3d 87, 91 n.7 (Tex. 2014) (citing Sobchak, W., *The Big Lebowski*, 1998). Prior restraints “bear a heavy presumption against [their] constitutional validity.” *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963); *In re Providence Journal Co.*, 820 F.2d 1342, 1348 (1st Cir. 1986) (same).

The Modified NTO is a prior restraint. Verified Complaint at ¶¶ 93-99. Mandile has never threatened anyone or shown a scintilla of violent behavior, nor engaged in any conduct that would warrant a prior restraint. *Id.* at ¶ 94. Defendants’ justification for the Modified NTO is pretextual. Defendants do not like Mandile criticizing Baldassarre. Thus, the prior restraint must be enjoined.

4.3 There is Irreparable Injury and the Injury Will Continue if Not Enjoined

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). When a plaintiff seeks injunctive relief for “an alleged violation of First Amendment rights, a plaintiff’s irreparable harm is inseparably linked to the likelihood of success on the merits of plaintiff’s First Amendment claim.” *WV Assn’n of Club Owners and Fraternal Svcs., Inc. v. Musgrave*, 553 F.3d 292, 298 (4th Cir. 2009). Thus, if the plaintiff demonstrates a likelihood of success on the merits of its First Amendment claim, they necessarily also establish irreparable harm. *Fortuño*, 699 F.3d at 15.

Defendants deprived Mandile of his First Amendment rights by banning him from Uxbridge School property for events not open to the public unless he is expressly invited, from off-campus school-related events, from Uxbridge School Committee meetings, and from protesting for kindness outside the public schools.

4.4 The Balance of Equities Tips in Plaintiff’s Favor

When the government restricts First Amendment rights, the balance of hardships weighs in a plaintiff’s favor. *See Firecross Ministries v. Municipality of Ponce*, 204 F. supp. 2d 244, 251 (D.P.R. 2002) (holding that “insofar as hardship goes, the balance weighs heavily against Defendants, since they have effectively silenced Plaintiffs’ constitutionally protected speech”).

The balance of equities tips in Mandile’s favor. Failing to grant the injunction will continue to deprive him of his constitutional rights pursuant to the First and Fourteenth Amendments. Defendants will suffer no harm if Mandile is granted the requested injunctive relief. Rather, an injunction will merely restore the rights guaranteed by the U.S. Constitution. A temporary restraining order, to be converted into a preliminary injunction must issue.

4.5 Injunctive Relief is in the Public Interest

The public interest “favors protecting First Amendment rights.” *Kelly v. City of Parkersburg*, 978 F. Supp. 2d 624, (S.D. W.V. 2013); *see also Carey v. FEC*, 791 F. Supp. 2d 121, 135-36 (D. D.C. 2011); *Mullin v. Sussex Cnty., Del.*, 861 F. Supp. 2d 411, 428 (D. Del. 2012). The public interest is served by issuing an injunction where “failure to issue the injunction would harm the public’s interest in protecting First Amendment rights in order to allow the free flow of ideas.” *Magriz v. union do Tronquistas de Puerto Rico, Local 901*, 765 F. Supp. 2d 143, 157 (D.P.R. 2011) (citation omitted). Moreover, the unconstitutional actions here will harm nonparties to the case because it will also limit or infringe upon their rights. *See Wolfe Fin. Inc. v. Rodgers*, 2018 U.S. Dist. LEXIS 64335, at *49 (M.D. N.C. April 17, 2018) (citing *McCarthy v. Fuller*, 810 F.3d 456, 461 (7th Cir. 2015)). Mandile’s unwavering support for LGBTQ youth, for example, would be diminished, and the youth would suffer, if Mandile cannot continue to demonstrate against bullying. Thus, the public interest weighs in favor of enjoining the NTO.

4.6 At Most, a Minimal Bond Should Be Required

Rule 65 provides that a court cannot enter injunctive relief unless the moving party “gives security in the amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). In other words, a bond should only be required if the enjoined party will suffer any harm from the issuance of the injunction. *See Scotts Co. v. United Indus. Corp.*, 315 F.3d 264, 285 (4th Cir. 2002).

Defendants will suffer no damages if the Court issues the requested injunction, which will simply allow Mandile to attend Uxbridge School Committee meetings, volunteer at the school, and otherwise engage in activities that involve his children’s education by entering the Uxbridge School buildings and grounds, activities that are necessary to his ability to exercise his

constitutional rights. All that the injunction will do is repair the *status quo* and allow Mandile to exercise his constitutional rights. For this reason, Mandile requests that the injunction issue with no bond required. If a bond is required, Mandile requests that it be a token of \$1.

5.0 CONCLUSION

Baldassare has a personal gripe with Mandile and is abusing his office in retaliation for what Mandile has said about him. The Fourteenth and First Amendments cannot tolerate this. Mandile cannot be left “at the mercy of political actors and the shifting winds of popular opinion, and without the chance for a fair hearing before a neutral judge. The rule of law begins to bleed into the rule of men.” *Kisor v. Wilkie*, 139 S. Ct. 2400, 2438 (2019) (Roberts, C.J., concurring).

The Court should enjoin Defendants from enforcing the No Trespass Order dated September 6, 2023, as modified by the letter dated, October 6, 2023. Mandile must be permitted to attend Uxbridge School Committee meetings, volunteer at the school, and otherwise engage in activities that involve his children’s education without the requirement of an express invitation.

Dated: October 17, 2023.

Respectfully Submitted,

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