IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

H.W., a minor, by and through her parent and next friend Phil Wells,

Plaintiff,

v.

BREWER SCHOOL DEPARTMENT, GREGG PALMER, in his personal and official capacities, BRENT SLOWIKOWSKI, in his personal and official capacities, MICHELLE MACDONALD, in her personal and official capacities,

Defendants.

Case No. 1:24-cv-00062-LEW

MOTION FOR A TEMPORARY RESTRAINING ORDER AND FOR A PRELIMINARY INJUNCTION OR, IN THE ALTERNATIVE, AN INJUNCTION PENDING APPEAL

Plaintiff H.W. moves for a temporary restraining order and a preliminary injunction. She needs this relief to restore the *status quo ante* before Defendants infringed on her rights by restricting her right to distribute a lawful petition about a matter of public concern. H.W. requires an injunction restraining the government from restricting or seeking to restrict her First Amendment rights through intimidation and threats of legal or administrative action.

H.W. requests the entry of an injunction as soon as this court finds feasible so she may continue to circulate the petition in question. She has been forced to stop her petitioning activity due to the threat of legal or administrative sanctions from Defendant. H.W.'s First Amendment rights will not be protected without injunctive relief. H.W. and the public interest will be irreparably harmed if this relief does not issue as soon as possible. In the alternative, H.W. seeks an injunction pending appeal under Fed. R. Civ. P. 62(d)/Fed. R. App. P. 8.

MEMORANDUM OF POINTS AND AUTHORITIES

1.0 INTRODUCTION

This is a case about the right of a citizen to circulate a petition seeking to obtain support for the modification of government policy. To censor criticism of existing policy and to thwart such petitioning activity, Defendants threatened legal action if H.W., and another student, C.G., did not withdraw their petition from circulation. Fearful of the government's threats, H.W. (and C.G.) succumbed to the threats and now seeks this Court's aid in upholding and defending the Constitution. The government's actions are unconstitutional and suppress legitimate petitioning activity. Every day this censorship remains unchecked H.W. and the public interest suffer. Plaintiff requests an immediate injunction.[1]

The public must be free to debate government policy, including in public school systems. Speech is on matters of public concern "when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it 'is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.'" *Snyder v. Phelps*, 562 U. S. 443, 453 (2011); *Kelley v. Bonney*, 606 A.2d 693, 710 (Conn. 1992) (discussions of public school teachers is a matter of public concern).

H.W.'s petition sought a change in policy by the Brewer School District. This is all clearly a matter of public concern. The government has no right to suppress it, and must be held accountable for doing so, and it must be restrained from further acts to suppress it.

[1] If this Court declines to enter the injunction, H.W. requests that the Court err on the side of the Constitution and at grant an injunction pending appeal per Fed. R. Civ. P. 62(d)/Fed. R. App. P. 8. Such is proper if the movant makes "a strong showing that they are likely to succeed on the merits, that they will be irreparably injured absent emergency relief, that the balance of the equities favors them, and that an injunction is in the public interest." *Together Emples v. Mass Gen. Brigham Inc.*, 19 F.4th 1, 7 (1st Cir. 2021). The test is nearly identical to the standard test for a preliminary injunction. *See Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008).

2.0 FACTS[2]

2.1 The Petition

Brewer School Department enacted a policy that permits students to use the bathroom corresponding to their gender identity, rather than their biological sex. Complaint at ¶ 10; *see also* **Exhibit 1**, Brewer School Department Policy JB.[3] *See also* **Exhibit 2**, Declaration of Cassidy S. Flavin (hereinafter "CSF Decl.") at ¶ 4. H.W. and C.G. are students at Brewer High School.[4] *See* Complaint at ¶11; ECF No. 1-1, Declaration of C.G. (hereinafter "C.G. Decl."), at ¶ 4; ECF No. 1-2, Declaration of H.W. (hereinafter "H.W. Decl.") at ¶ 4. H.W. and C.G. support civil rights and equal treatment for all persons, whatever their gender identity. Complaint at ¶ 12; C.G. Decl. at ¶ 5; H.W. Decl. at ¶ 5. Neither H.W. nor C.G. tolerate bullying of anyone due to identity or sexual orientation. *See* Complaint at ¶ 12; C.G. Decl. at ¶ 5; H.W. Decl. at ¶ 6.

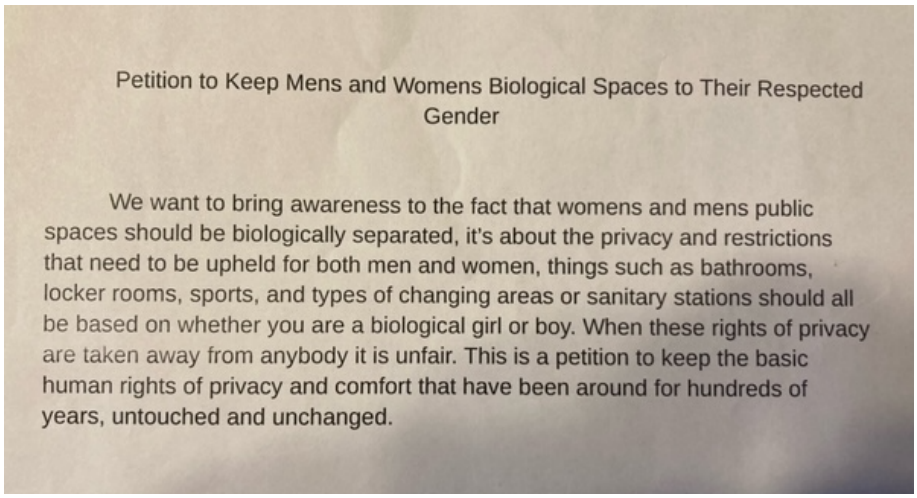
Yet, H.W. and C.G. have safety and privacy concerns as to private spaces as *some* have taken advantage of such bathroom policies to commit sexual assault. Complaint at ¶ 13; C.G. Decl. at ¶ 6; H.W. Decl. at ¶ 7. H.W. knew of a 2021 case in Loudon County, Virginia, in which a biological male posed as a female to sexually assault a girl. *See Doe v. Loudon County School Board,* Case No. 1:23-cv-01358 (E.D. Va. filed Oct. 4, 2023); Complaint at ¶ 14; H.W. Decl. at ¶ 8.

H.W. and C.G. were made aware that H.D., who is believed to be biologically male, had started using the girls' bathroom at Brewer High School. *See* Complaint at ¶ 15; H.W. Decl. at ¶ 9. H.D. has a reported history of sexual assault at Brewer High School. Complaint at ¶ 16; H.W.

[2] The facts are supported by the Verified Complaint ("Complaint") and its exhibits.
[3] Available at https://drive.google.com/drive/folders/0B-SIOrotqjxlMTQ5MTdjNTgtMTczMi00MjZiLWI1YzYtNzkyMDllZDM5ZjU4?resourcekey=0-7Q2NPYHsMQiFhYdWBk31fQ
[4] Due to their ages, all students are referred to solely by their initials.

Decl. at ¶¶ 10-11. In light of their concerns, H.W. and C.G. drafted a petition to try to convince Brewer School Department and Defendant Principal Brent Slowikowski to change school policy to address their concerns. *See* Complaint at ¶ 17; H.W. Decl. at ¶ 12; C.G. Decl. at ¶ 8.

The petition was hardly offensive to any reasonable person. It read as follows:



Petition to Keep Mens and Womens Biological Spaces to Their Respected Gender

We want to bring awareness to the fact that womens and mens public spaces should be biologically separated, it's about the privacy and restrictions that need to be upheld for both men and women, things such as bathrooms, locker rooms, sports, and types of changing areas or sanitary stations should all be based on whether you are a biological girl or boy. When these rights of privacy are taken away from anybody it is unfair. This is a petition to keep the basic human rights of privacy and comfort that have been around for hundreds of years, untouched and unchanged.

Complaint at ¶ 17; H.W. Decl. at ¶ 12; C.G. Decl. at ¶ 8. H.W. and C.G. distributed this petition to other students, and many students signed the petition. *See* Complaint at ¶ 18; H.W. Decl. at ¶ 13; C.G. Decl. at ¶ 9.

Support for the petition was widespread. Complaint at ¶ 19. In fact, it spanned across genders, gender identities, and multiple belief systems. *Id.* The diversity of the body of students supporting it was so broad and representative that even H.D. *themself* asked to sign the petition. *See id.*; H.W. Decl. at ¶ 14.

No reasonable person could believe H.D. was troubled by, offended by, angered by, or hurt by the petition, as H.D. *asked to sign the petition*. *See* Complaint at ¶ 19; H.W. Decl. at ¶ 14. It may seem surprising that H.D. would want to sign the petition, as it might have affected *them,* but the language of the petition was non-discriminatory, lacked any bias, cruelty, or prejudice. Complaint at ¶ 21. In fact, H.D. expressed delight at the petition. *See* Complaint at ¶ 22; H.W.

Decl. at ¶ 16.

In contrast to H.W. and C.G.'s beliefs in equality, Defendants seek to promote transgender *supremacy* in public schools, not equality. Complaint at ¶ 23. *Transgender supremacy* is a viewpoint that rather than trans and nonbinary persons being treated *equally*, that non-trans and binary persons must change their ways, adjust their lives, their beliefs, their needs, and set their concerns aside to accommodate, at all costs, transgender and nonbinary persons and those who seek to politically or socially gain from promotion of this viewpoint. Complaint at ¶ 24. Dissent is not tolerated by trans-supremacists. *Id*. When confronted with dissent, trans-supremacists engage in abusive efforts to psychologically or physically harm those who dissent from this philosophy. *Id.*

One form of this abuse is the "taking oneself hostage" technique – where an adherent to trans-supremacy will claim that they are suicidal or prepared to engage in self-harm if there is any disagreement with their viewpoint. Complaint at ¶ 25. Another form of this abuse is to claim that anyone who dissents from the trans-supremacist viewpoint is "transphobic" or "hateful" and thus use such accusations to ostracize the dissenter or to encourage violence or other forms of abuse against those who dissent. Complaint at ¶ 26. For example, trans-supremacists sent rape threats to a student who signed the petition to put them in fear of their well-being or safety. H.W., while supporting equality, is against trans-supremacy. *See* Complaint at ¶ 27; H.W. Decl. at ¶ 17; H.W. Decl. at Exhibit A.

The Brewer School Department, the Maine School Management Association, and the Maine Education Association (including the Brewer Education Association) adhere to a trans-supremacist viewpoint, pressuring those in their spheres of influence to suppress dissent. Complaint at ¶ 28. Brewer High School Principal, Defendant Brent Slowikowski and Assistant

Principal, Fred Lower, favor this viewpoint, to the exclusion of others, and in response to the petition, they approached H.W. and C.G. and pulled them into a meeting. Complaint at ¶ 30.

At that meeting, they told the minors that their petition was "hate speech." *See* Complaint at ¶ 30; H.W. Decl. at ¶ 19. In that meeting, these governmental officials and authority figures told H.W. and C.G. that the petition was like "supporting racial segregation." *See* Complaint at ¶ 31; H.W. Decl. at ¶ 20. The Defendants' conduct threatened H.W. and C.G., who were led to believe that they would be prosecuted, criminally, for a "hate crime" or sued by the school, and disciplined by the school if they continued to circulate the petition. *See* Complaint at ¶ 32; H.W. Decl. at ¶ 21; C.G. Decl. at ¶ 10.

Any reasonable school official or lawyer would know that H.W. and C.G. could not *reasonably* be prosecuted nor sued for this activity. *See, e.g., Norris v. Cape Elizabeth Sch. Dist*., 969 F.3d 12, 24 (1st Cir. 2020) (citing *Pinard v. Clatskanie Sch. Dist. 6J*, 467 F.3d 755, 768 (9th Cir. 2006) for the proposition that petitioning activity by students is protected activity). But, children should not be expected to know clearly-settled law. Complaint at ¶ 33; *R.A.V. v. St. Paul*, 505 U.S. 377, 382-83 (1992) ("The First Amendment generally prevents government from proscribing speech or even expressive conduct because of disapproval of the ideas expressed.") (citations omitted); *Tinker v. Des Moines Ind. Sch. Dist*, 393 U.S. 503 (1969). At the same time, the Principal and Vice-Principal knew or should have known that their actions would have caused such fear and apprehension in H.W. and C.G., and that clearly-established law would permit the students to circulate an innocuous petition, even if that petition challenged the government's preferred viewpoint. Complaint at ¶ 33.

Any person of ordinary firmness would have been intimidated into ceasing their constitutionally protected activities at that point, and H.W. and C.G. were intimidated by the

government's threats of legal action and school discipline. *See* Complaint at ¶ 34; H.W. Decl. at ¶ 22. H.W. and C.G. immediately ceased promoting the petition, and immediately went silent on any viewpoint that could be seen as challenging the trans-supremacist viewpoint. *See* Complaint at ¶ 35; H.W. Decl. at ¶ 23. H.W. and C.G. desired to continue their petition activity, but feared doing so. *See* Complaint at ¶ 36; H.W. Decl. at ¶ 24; C.G. Decl. at ¶ 11.

Thereafter, H.W. and H.W.'s father met with Superintendent Gregg Palmer and Brewer High School Principal Brent Slowikowski. Complaint at ¶ 37; H.W. Decl. at ¶ 25; ECF No. 1-3, Declaration of Phil Wells (hereinafter "P.W. Decl.") at ¶ 4. H.W.'s father is not an attorney. *See* Complaint at ¶ 38; P.W. Decl. at ¶ 5. At the second meeting, Superintendent Palmer and Principal Slowikowski reiterated the Brewer School Department would not permit nor tolerate the petition being circulated. Complaint at ¶ 39; H.W. Decl. at ¶ 26; P.W. Decl. at ¶ 6. Superintendent Palmer and Principal Slowikowski implied that there would be adverse action taken against H.W., and H.W.'s father believed that those implied threats were aimed at him as well. *See* Complaint at ¶ 40; H.W. Decl. at ¶ 27; P.W. Decl. at ¶ 7. Given implied threats made by the Defendants, H.W. and H.W.'s father left the meeting in fear of criminal prosecution, civil prosecution, or school discipline, or a combination of all three if H.W. and / or C.G. continued to circulate their petition. *See* Complaint at ¶ 41; H.W. Decl. at ¶ 28; P.W. Decl. at ¶ 8. Defendants stated that the petition constituted "hate speech" and could be a "hate crime." *See* Complaint at ¶ 42; H.W. Decl. at ¶ 29; P.W. Decl. at ¶ 9. H.W. and C.G. desire to continue circulating their petition, but lacked any knowledge of how to do so without prosecution or other punishment. *See* Complaint at ¶ 43; H.W. Decl. at ¶ 30. Should the Court preliminarily and permanently enjoin Defendants' putative action and threats thereof, Plaintiff will resume circulating the petition.

3.0 LEGAL STANDARD

FRCP 65 provides for temporary restraining orders and preliminary injunctions. *See* Fed. R. Civ. P. 65(a) and (b). 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).

4.0 LEGAL ARGUMENT

4.1 Plaintiff Has Standing

When a plaintiff "is chilled from exercising [her] right to free expression or forgoes expression in order to avoid enforcement consequences [she] … demonstrates constitutional standing." *Mangual v. Rotger-Sabat*, 317 F.3d 45, 57 (1st Cir. 2003) (collecting cases). Here, H.W. has standing because she has withdrawn her petition to avoid legal and/or administrative action by Defendants, and she wishes to continue circulating the petition.

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

H.W. bring two claims against Defendants: a) First Amendment retaliation: 42 U.S.C. § 1983; and b) 5 M.R.S. § 4682 for violation of the First Amendment and of Art. I., §§ 4 & 15 of the Maine Constitution. 42 U.S.C. § 1983 provides a remedy for infringement of constitutional rights. *Alfano v. Lynch*, 847 F.3d 71, 74 n.1 (1st Cir. 2017). For relief under 5 M.R.S. § 4682, Plaintiffs must allege facts to establish that Defendants intentionally interfered with their constitutional rights. *See* 5 M.R.S. § 4682; *Andrews v. Dep't of Envt. Prot.*, 1998 ME 198, ¶ 23, 716 A.2d 212. There is no legitimate dispute that Defendants were acting under color of state law or threatened H.W. — thus, the only issue that may require discussion is whether they interfered with/transgressed her constitutional rights. They did.

Plaintiff is likely to prevail in her constitutional claims. "The right to petition is one of the most precious of the liberties safeguarded by the Bill of Rights and is made applicable to the states by the Fourteenth Amendment." *Nader v. Me. Democratic Party*, 2012 ME 57, P21 (internal citation and quotation marks omitted). School bathroom policy is an issue under consideration by both the Superintendent and Principal, who are executive officials of the Brewer School Department, and the Brewer School Committee, its legislative arm, and the petition was in connection with such issue, it is reasonably likely to encourage them to consider or review the issue, and it is reasonably likely to enlist public participation in an effort to effect such consideration. *Mangual v. Rotger-Sabat*, 317 F.3d 45, 56-57 (1st Cir. 2003); Complaint at ¶ 45.

Prohibiting H.W.'s petition, based solely on the contents thereof, is unconstitutional viewpoint and content-based discrimination. Defendants do not purport to have a policy against student petitioning activity. To the contrary, Brewer School Department Policy JI, Student Rights and Responsibilities, § D, enshrines the "right…to voice grievances", which is directly parallel to the First Amendment right to petition "for the redress of grievances". *See* **Exhibit 3**.[5] *See also* CSF Decl. at ¶ 5. Thus, it is evident that it is the content and viewpoint of the grievance, not the act of petitioning, that is threatened by Defendants. Even if there were a policy against petitioning, petitioning is "a form of 'pure speech.'" *Pinard, supra* at 764. Such speech is protected, even for students. *Norris*, *supra* at 24. In fact, although the First Circuit has observed that "[n]o Supreme Court case has held that *Tinker's* protections are limited to only core political speech," H.W.'s petition was core political speech. *Norris*, *supra* at 23.

[5] Available at https://docs.google.com/document/d/1iSLDbP9XXY2j69E3HLtq8YcIWARhKSsx8CEObHHO9Q8/edit

Defendants' actions are viewpoint discrimination. "[D]isfavoring ideas that offend discriminates based on viewpoint, in violation of the First Amendment." *Iancu v. Brunetti*, 139 S. Ct. 2294, 2301 (2019) (internal quotation marks omitted). "A viewpoint need not be political; any form of support or opposition to an idea could be considered a viewpoint." *Marshall v. Amuso*, 571 F. Supp. 3d 412, 421 (E.D. Pa. 2021) (quoting *Matal v. Tam*, 137 S. Ct. 1744, 1766 (2017) (Kennedy, J., concurring in part) ("The First Amendment's viewpoint neutrality principle protects more than the right to identify with a particular side. It protects the right to create and present arguments for particular positions in particular ways, as the speaker chooses.")). Defendants prohibited H.W. and C.G. from criticizing existing policy in an ongoing debate on matters of public concern and seeking a change in Policy JB. Whether the prohibition derives from Policy JB or any other of Defendants' policies, or whether it is an *ad hoc* prohibition, invented on the spot by Defendants, prohibiting H.W.'s petition is unconstitutional content/viewpoint discrimination.

Content-based and viewpoint-based restrictions are subject to strict scrutiny. *See McCullen v. Coakley*, 573 U.S. 464, 478 (2014). "Such 'requires the government to demonstrate that the restriction advances a 'compelling interest' and is 'narrowly tailored to achieve that interest,'" *Signs for Jesus v. Town of Pembroke*, 977 F.3d 93, 101 (1st Cir. 2020) (*quoting Reed v. Town of Gilbert*, 576 U.S. 155, 171 (2015)). Such restrictions must also be "necessary." *R.A.V.,* 505 U.S. at 395. The censorship of the petition serves no compelling interest and is not narrowly tailored.

Defendants do not claim the speech is categorically unprotected. It is not vulgar, lewd, profane, or plainly offensive speech that might be restricted in schools, even if it would not be obscene outside of school. *Compare Bethel School Dist. v. Fraser*, 478 U.S. 675, 683 & 685 (1986). Instead, they assert that the petition constitutes "hate speech." The term "hate speech" is not defined in any known Brewer School Department policy and only seems to appear in a single

policy, Policy JICA, where it states that student "Clothing may not use or depict hate speech targeting groups based on race, ethnicity, gender, sexual orientation, gender identity, religious affiliation, or any other protected groups." **Exhibit 4**.[6] *See also* CSF Decl. at ¶ 6. No Maine statute uses or defines the term "Hate Speech." Nor is there any such thing as a "hate crime" under Maine law.[7] Thus, there is no blanket prohibition on "hate speech."

Moreover, the petition does not qualify as hate speech. The Petition reads:

> Petition to Keep Mens and Womens Biological Spaces to Their Respected Gender
>
> We want to bring awareness to the fact that womens and mens public spaces should be biologically separated, it's about the privacy and restrictions that need to be upheld for both men and women, things such as bathrooms, locker rooms, sports, and types of changing areas or sanitary stations should all be based on whether you are a biological girl or boy. When these rights of privacy are taken away from anybody it is unfair. This is a petition to keep the basic human rights of privacy and comfort that have been around for hundreds of years, untouched and unchanged.

Complaint at ¶ 17; C.G. Decl. at ¶ 8; H.W. Decl. at ¶ 12. No person or group is targeted based on a protected category. It does not denigrate anyone's sex, gender, or gender identity. It is no more hateful than the very notion of sex-segregated spaces established by Brewer School Department; it only speaks to how those sex-segregated spaces are to be defined—by biology or by personal identification. "[U]ndifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression." *Tinker*, 393 U.S. at 508. The petition is a far tamer statement than the sticky note in a high school bathroom that read "THERE'S A RAPIST IN OUR SCHOOL AND YOU KNOW WHO IT IS" that was confirmed to be protected speech in *Norris*,

[6] Available at https://docs.google.com/document/d/1LPTXDypc7_UTlDLB52sdwsyhNzeT1WumNiDnLrji8h0/edit

[7] The closest analog is that a criminal sentence may consider whether a victim was selected "because of the race, color, religion, sex, ancestry, national origin, physical or mental disability, sexual orientation, gender identity or homelessness of the victim or of the owner or occupant of that property". 17-A M.R.S. § 1501(8)(B).

notwithstanding the school's characterization of it as "bullying."[8] While MacDonald and the administration may dislike the petition, "speech that is merely offensive to the listener is not enough" to overcome the First Amendment. *Norris, supra* at 29.

Students, staff, and the Brewer electorate have the right to know what is occurring in the schools (these are not mutually exclusive—some of the seniors are undoubtedly registered voters). As much as some find discussions of gender policy uncomfortable, uncomfortable discussions must be had. Robust debate is why the First Amendment, and the Maine corollaries, exist. Single-sex bathrooms exist and they exist for a reason. Some states require that bathrooms be exclusively single-sex. *See e.g,* Okla. Stat. tit. 70, § 1-125. As the author of the Oklahoma bill put it, "It's about safety, it's about protection" and that "[t]he goal of this bill is to protect our children." *See* **Exhibit 5**, "Oklahoma governor signs transgender bathroom bill", INDEPENDENT (May 26, 2022).[9] *See also* CSF Decl. at ¶ 7. Some courts hold that Title IX, 28 U.S.C. § 1681(a), requires schools to allow transgender students to use the bathroom of the gender with which they identify. *See, e.g., Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020) *cert den'd* No. 20-1163 (Jun. 28, 2021). Should schools do more to protect transgender students from bullying? Are students at risk from transgender students in walled-off spaces, and should there be a different concern when it is a biological male entering a female-designated space? Some girls want to protect themselves and invoked the petition process. A teacher and administrators threatened H.W. and

[8] While the First Circuit has found that schools may have an interest in restricting speech to preclude bullying, "there must be a reasonable basis for the administration to have determined both that the student speech targeted a specific student and that it invaded that student's rights." *Norris, supra* at 29. Here, no student was targeted—it was a generalized petition devoted to a policy issue. And, to the extent it implicated H.D., their rights were not invaded—H.D. even sought to sign the petition. Thus, as in *Norris*, there is no "bullying" justification for the restriction.

[9] Available at https://www.independent.co.uk/news/world/americas/us-politics/kevin-stitt-ap-danny-williams-oklahoma-city-democrats-b2088276.html

C.G. for the exercise of their freedom of petition. Defendants cannot simply stifle one side of this debate and reports of these occurrences with threats of legal action. They have no legitimate interest in doing so.

4.3 Plaintiff Has Been Irreparably Harmed; the Harm Must be 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). "[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 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. *Sindicato Puertorriqueño de Trabajadores v. Fortuño*, 699 F.3d 1, 15 (1st Cir. 2012).

4.4 The Balance of Equities Tips in Plaintiff's Favor

When the government restricts speech, 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) ("insofar as hardship goes, the balance weighs heavily against Defendants, since they have effectively silenced Plaintiffs' constitutionally protected speech.") Failing to grant the requested injunction will continue to deprive McBreairty of his constitutional rights. Defendants will suffer no harm. An injunction will restore the rights guaranteed by the U.S. and Maine Constitutions.

4.5 Injunctive Relief is in the Public Interest

"Protecting rights to free speech is *ipso facto* in the interest of the general public." *McBreairty v. RSU22* at *31-32. Other members of the public are chilled from speaking their minds as well. They see H.W. and C.G. threatened for merely questioning school policy. Which citizen of ordinary firmness would risk speaking reporting on controversial issues if this is tolerable? Even the government is harmed if it cannot hear how its policies are received. How

can a government operate effectively if it never hears feedback? The government will create the illusion that it is operating with a unanimous mandate, and perhaps even fool itself into continuing negative policies, because nobody would dare to criticize them. Enjoining that self-inflicted harm is in the public interest.

4.6 At Most, a Minimal Bond Should Be Required

A bond should only be required if the enjoined party will suffer 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 harm. An injunction will repair the *status quo* and allow the First Amendment to flourish. H.W. requests that the injunction issue with no bond required.

5.0 CONCLUSION

This Court recognized that "[e]xpression of . . . school-related concerns at the podium during the public comment period of School Board meetings constitutes speech that is protected under the First Amendment." *McBreairty v. RSU22,* 616 F. Supp. 3d 78, 89 (D. Me. Jul. 20, 2022). There is no less protection for such speech in a petition.

H.W. wishes to engage in her civic-minded petitioning process. The Court should enter a preliminary injunction against the Defendants from taking action against her on account of circulating the petition as these actions are unconstitutional.

Should the Court decline to enter such injunction, H.W. requests alternative relief in the form of an injunction pending appeal.

REQUEST FOR ORAL ARGUMENT

Plaintiff believes that oral argument may assist the Court. This matter involved significant Constitutional issues that oral argument will help to address.

Dated: February 28, 2024.

Respectfully Submitted,

/s/ Robert J. Morris
Robert J. Morris, II (ME Bar No. 010402)
HOUSER, LLP
400 TradeCenter, Suite 5900
Woburn, MA 01801
Tel: (339) 203-6498
Email: rmorris@houser-law.com

Marc J. Randazza (*pro hac vice forthcoming*)
Lead Counsel
RANDAZZA LEGAL GROUP, PLLC
30 Western Avenue
Gloucester, MA 01930
Tel: (888) 887-1776
Email: ecf@randazza.com

Attorneys for Plaintiff,
H.W.