UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

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| WESTFIELD HIGH SCHOOL L.I.F.E. CLUB; STEPHEN GRABOWSKI, by and through his parents, Edmund and Mary Etta Grabowski; TIMOTHY SOUZA and DANIEL SOUZA by and through their parents, Ralph and Diane Souza; SHARON SITLER and PAUL SITLER, by and through their parents, William and Denise Sitler; and DUSTIN COOPER, by and through his parents, Brian Cooper and Amy Turner-Cooper,<br><br>Plaintiffs,<br><br>v.<br><br>WESTFIELD PUBLIC SCHOOLS; DR. THOMAS Y. McDOWELL, individually and in his official capacity as Superintendent of Westfield Public Schools; and THOMAS W. DALEY, individually and in his official capacity as Principal of Westfield High School,<br><br>Defendants. | C.A. No. 03-30008-FHF |

**MEMORANDUM AMICUS CURIAE OF THE AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

INTRODUCTION

The American Civil Liberties Union of Massachusetts ("ACLUM") submits this memorandum of law as amicus curiae in support of the plaintiffs' Motion for a Preliminary Injunction. The disciplinary actions taken against the plaintiffs for distributing religious messages attached to candy canes, and the Westfield High School

policy under which the punishments were imposed, violate both M.G.L. c. 71 § 82 and the First Amendment to the United States Constitution. The Court should allow the plaintiffs' Motion for a Preliminary Injunction.

## STATEMENT OF INTEREST OF AMICUS

The American Civil Liberties Union of Massachusetts ("ACLUM"), a non-profit membership organization, is the Commonwealth's affiliate of the American Civil Liberties Union. Its mission is to preserve and defend fundamental constitutional rights in the Commonwealth. As part of that mission, ACLUM often participates in cases involving the rights of freedom of speech, expression, and petition, either through direct representation, see, e.g., Pyle v. School Committee of South Hadley, 423 Mass. 283 (1996), previously reported at 55 F.3d 20 (1st Cir. 1995) and 816 F.Supp. 157 (D. Mass. 1994) (Ponsor, J.); AIDS Action Committee of Mass. v. Massachusetts Bay Transp. Auth., 42 F.3d 1 (1st Cir. 1995); Demarest v. Athol/Orange Community Television, Inc., 188 F.Supp.2d 82 (D.Mass. 2002) (Ponsor, J.), or as amicus curiae, see, e.g., Messing Rudavsky & Weliky v. Harvard, 436 Mass. 347 (2002); Rotkiewicz v. Sadowsky, 431 Mass. 748 (2000).

ACLUM represented the plaintiffs in Pyle, the first case to interpret M.G.L. c. 71 § 82, which is determinative of this litigation. See Pyle, 423 Mass. at 286 (holding that students in Massachusetts have statutory right to freedom of expression limited only by requirement that speech not be disruptive). This is the first federal court that has been asked to apply M.G.L. c. 71 § 82 since the Supreme Judicial Court defined the scope of the state's student freedom of expression statute in Pyle. This brief reflects ACLUM's

extensive experience with the statute at issue, and with the free speech rights of students in Western Massachusetts.

## ARGUMENT

### I. THIS CONTROVERSY IS RIPE FOR ADJUDICATION

The defendants' assertion that this controversy is not ripe for adjudication is singularly without merit. Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction ("Opposition"), at 6. First, it was only because of legal intervention that the defendants chose to stay the in-school suspensions at all. See Ex. A & B, letters from William C. Newman, Esq. to Thomas Y. McDowell, Jan. 2, 2003. Without an injunction, of course, the defendants could require plaintiffs to serve the punishments at any time. Second, the defendants ignore the fact that the plaintiffs' harm includes an ongoing deprivation of their freedom of speech. "The loss of First Amendment freedoms, for even minimum periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373 (1976). "[W]hen 'First Amendment interests were either threatened or in fact being impaired at the time relief was sought,' a preliminary injunction is proper." Demarest v. Athol/Orange Community Television, Inc., 188 F.Supp.2d 82, 89 (D.Mass. 2002) (Ponsor, J.), quoting Elrod, 427 U.S. at 373.

### II. THE PLAINTIFFS MEET THE STANDARD FOR THE ISSUANCE OF A PRELIMINARY INJUNCTION

In this Circuit, a preliminary injunction may be granted if the movant shows "a likelihood of success on the merits, a risk of irreparable harm, a favorable balance of equities, and that the injunction would be in the public interest." Securities and Exchange Commission v. Fife, 311 F.3d 1, 8 (1st Cir. 2002). The plaintiffs meet all four of these

requirements. See Tauber v. Town of Longmeadow, 695 F.Supp. 1358, 1360 (D.Mass. 1988) (Freedman, J.) (plaintiffs who challenged ordinance banning the display of political signs on private property met requirements for preliminary injunction).

A. The Plaintiffs Are Likely to Succeed on the Merits of their Claims

The plaintiffs in this case were forbidden from distributing written religious messages attached to candy canes in their high school, and were subjected to a one-day in-school suspension for doing so. Verified Complaint (hereinafter "Complaint") at ¶¶ 91, 94. The imposition of this disciplinary action violates M.G.L. c. 71 § 82 and the First Amendment to the United States Constitution, because the punishment was imposed in the absence of any "disruption or disorder within the school." Pyle, 423 Mass. at 286. In deciding this motion, the Court need look no further than Pyle v. South Hadley School Committee, which defined the scope and controlling authority of M.G.L. c. 71 § 82 as applied to non-school-sponsored expression in the high schools of the Commonwealth. See Pyle v. School Committee of South Hadley, 423 Mass. 283 (1996), previously reported at 55 F.3d 20 (1st Cir. 1995); 816 F.Supp. 157 (D. Mass. 1994) (Ponsor, J.).

The Pyle case, which was tried in this Court, was a challenge to a dress code enacted at South Hadley High School. Pyle, 861 F.Supp. at 163-64. The code banned any message on clothing that was determined by school officials to be "obscene, profane, lewd, or vulgar," or which, according to administrators, "harasses, threatens, intimidates or demeans an individual or group of individuals because of sex, color, race, religion, handicap, national origin or sexual orientation." Id. The plaintiffs, two high school students, were subjected to school discipline for wearing T-shirts which school officials considered "vulgar" and "demeaning." Id. at 160-64.

In challenging the dress code and its application to their T-shirts, the plaintiffs in Pyle relied in part on M.G.L. c. 71 § 82, which defines the right of students in Massachusetts to freedom of expression:

> The right of students to freedom of expression in the public schools of the commonwealth shall not be abridged, provided that such right shall not cause any disruption or disorder within the school. Freedom of expression shall include without limitation, the rights and responsibilities of students, collectively and individually, (a) to express their views through speech and symbols, (b) to write, publish and disseminate their views, (c) to assemble peaceably on school property for the purpose of expressing their opinions.

M.G.L. c. 71 § 82. On appeal from a judgment partially upholding the dress code, the First Circuit certified a question regarding the statute's interpretation to the Supreme Judicial Court. Pyle v. South Hadley School Committee, 55 F.3d 20, 22 (1st Cir. 1995). The certified question asked whether "high school students in public schools have the freedom under M.G.L. c. 71 § 82 to engage in non-school-sponsored expression that may reasonably be considered vulgar, but causes no disruption or disorder." Id. at 22.

In response to the certified question, the Supreme Judicial Court held that the "clear and unambiguous language" of § 82 "protects the rights of the students limited only by the requirement that any expression be non-disruptive within the school." Pyle, 423 Mass. at 286. The SJC further held that there is no room in the statute for exceptions to the disruption test of § 82 based on the content of speech. "The language is mandatory. The students' rights include expression of views through speech and symbols, 'without limitation.' There is no room in the statute to construe an exception for arguably vulgar, lewd, or offensive language absent a showing of disruption within the school." Id.

Thus, under the SJC's decision in Pyle, the plaintiffs in this case cannot be punished for distributing messages in the high school unless their actions caused a "disruption or disorder" within the school. Pyle, 423 Mass. at 286. In their Verified Complaint, plaintiffs allege that they were told by defendants Daley and McDowell that their request to distribute the candy cane messages would be denied not because of any alleged potential for disruption, but "because the attachment was offensive and . . . other students had a right not to be exposed to an offensive piece of literature."[1] Complaint, ¶¶ 60, 63. The SJC rejected precisely this rationale for censorship of student speech in Pyle: "There is no room in the statute to construe an exception for arguably . . . offensive language absent a showing of disruption within the school." Pyle, 423 Mass. at 286.

The defendants have not produced any evidence, by affidavit or otherwise, to demonstrate that the school was disrupted by the plaintiffs' distribution of candy canes. Although defendants allege that plaintiff Stephen Grabowski passed out candy canes "during Spanish class" in order to direct "the student's attention from Spanish to his particular religious cause," it is clear from the affidavit of Khalil Rivera, the teacher of the class, that the distribution took place before any Spanish instruction had begun, and with Mr. Rivera's express permission. Compare Opposition, p. 13, with Rivera Affidavit, Ex. D to Opposition. Nowhere in his affidavit does Mr. Rivera state that either his

[1] The city of Westfield has been involved in litigation regarding religious speech before. In Fine v. Sullivan, C.A. No. 98-30206 (D. Mass.) (Ponsor, J.), Westfield enacted a policy prohibiting "videos of either a political or religious nature" to be run on the Westfield Public Access Cable channel. Plaintiff was denied permission to run a video entitled "Mystery of the Messiah Jesus." As a result of the lawsuit, the video was aired on the city's cable access channel, and a settlement agreement was approved by the court, which included a declaratory judgment that the policy against broadcasting religious and political speech "constitutes a facial violation of the First Amendment to the United States Constitution. . . ." Fine, Agreement for Judgment, Docket No. 23, July 19, 1999.

Spanish class, or the Drawing Class in which plaintiff Sharon Sitler allegedly distributed candy canes, were in any way disrupted.[2] Id.

Strangely, the defendants also claim that the plaintiffs' Bible Club is part of the school's curriculum, and that the school can therefore control the content of the club's publications pursuant to the Supreme Court's decision in Hazelwood v. Kuhlmeier, 484 U.S. 260, 273 (1988) (holding that school administrators may regulate content of student newspaper bearing imprimatur of the school where actions "are reasonably related to legitimate pedagogical concerns.") Apart from being erroneous (see pp. 10-11, infra), the allegation that the club is "school sponsored" is simply irrelevant under M.G.L. c. 71 § 82. As the First Circuit noted in Pyle, "neither the statute nor the amendment rendering it mandatory mentions anything about 'school-sponsored' or 'school-tolerated' speech." Pyle, 55 F.3d at 21. Rather, "On its face, the statute guarantees students' freedom of expression 'shall not be abridged' except insofar as it 'causes any disruption or disorder within the school.'" Id. at 22; see also Pyle, 423 Mass. at 286. Indeed, § 82 was made mandatory on all school districts in order to keep the Hazelwood principle out of Massachusetts law. Pyle, 861 F.Supp. at 167 and n. 7 (stating that intent of bill was "to remove the distinction, made in Hazelwood, between school-sponsored and school-tolerated speech").

Similarly, defendants' argument that the Westfield High School Parent-Student Handbook has made the school a "limited public forum" is irrelevant under § 82, which itself provides the sole standard under which student speech may be regulated in

[2] The defendants also attempt to justify their prohibition on the distribution of the candy cane messages on the basis of a radio interview, in which plaintiff Stephen Grabowski allegedly admits to distributing candy canes in class. Opposition, Ex. C, p. 3. Apart from failing to demonstrate a disruption of the class, the

Massachusetts. M.G.L. c. 71 § 82. A school handbook, of course, cannot overrule state law.

The plaintiffs have also demonstrated a likelihood of success on their claim that the disciplinary actions violate the First Amendment. Tinker v. Des Moines School District, 393 U.S. 503, 509 (1969). It is well-settled that students in public schools do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Id. at 506. In fact, "[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." Shelton v. Tucker, 364 U.S. 479, 487 (1960).

Under the Supreme Court's decision in Tinker, a school may not prohibit student expression in the absence of a material and substantial disruption to the operation of the school. Tinker, 393 U.S. at 509. In Tinker, students at a public high school and middle school were punished for wearing black armbands to school to protest the Vietnam War. Id. at 504. In holding that the students' punishment violated the First Amendment, the Court held that to justify punishing student speech, a school must show more than "a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." Id. at 509.

> [I]n our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says that we must take this risk, and our history says that it is this sort of hazardous freedom – this kind of openness -- that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society.

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radio interview could hardly have served as a basis for the punishment of the students, because it was not aired until nearly one month after the suspensions were imposed. Complaint, ¶ 91.

Id. at 508-509. Accordingly, the Court held that students cannot be disciplined for exercising their right to free speech unless school authorities have reason to believe it will "substantially interfere with the work of the school or impinge upon the rights of other students." Id. at 509. Subsequent opinions of the Court have not altered this basic holding, and M.G.L. c. 71 § 82 codifies Tinker as the law in Massachusetts. Pyle, 423 Mass. at 286.

Following the Tinker standard, the District Court held in Pyle that a school "cannot prohibit [speech] that merely advocates a particular point of view and arouses the hostility of a person with an opposite opinion." Pyle, 861 F.Supp. at 171 (Ponsor, J.). In a portion of the opinion that was not appealed, the Court invalidated a provision of the South Hadley High School dress code prohibiting speech which, in the judgment of school administrators, "harasses, threatens, intimidates or demeans" individuals or groups. Id. at 170-71. Under Tinker, the Court held, a school "cannot pick and choose; it may not prohibit antipathetic slogans but allow positive ones." Id. at 172-73. Indeed, the Court in Pyle noted that the dress code provision ran a substantial "risk of repression" of core religious viewpoints:

> Trial testimony revealed, for example, that Jeffrey Pyle wore, without incident, a T-shirt displaying two men in naval uniform kissing. A T-shirt carrying a depiction objecting to homosexuality, on the other hand, would be flatly forbidden by the code because it 'demeaned' a person based on his or her sexual orientation.

Pyle, 861 F.Supp. at 172. See also Saxe v. State College Area Sch. Dist., 240 F.3d 200, 215 (3d Cir. 2001) (invalidating high school speech code, and holding that "the mere fact that someone might take offense at the content of speech is not sufficient justification for prohibiting it."); cf. Dulude v. Amherst School Committee, C.A. 96-30077 (D.Mass.,

May 15, 1996) (Freedman, J.) (order denying motion for temporary restraining order to enjoin photographic exhibit at school which offended students' religious beliefs); Stone v. Tudryn, C.A. 91-30129 (D.Mass., May 23, 1991) (Freedman, J.) (order allowing motion for preliminary injunction on behalf of student wishing to attend prom with boyfriend on First Amendment grounds, rejecting school's blanket assertion of authority to control who attends school events).

In this case, plaintiffs have alleged that the defendants prohibited them from distributing their messages because of a belief that their content might be "offensive" to some students. Complaint, ¶¶ 60, 63. This is precisely the kind of picking and choosing based on the sensibilities of other students that that Tinker and Pyle forbid. Tinker, 393 U.S. at 509 (holding that school censorship must be justified by "something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint"); Pyle, 861 F.Supp. at 171 (a school cannot prohibit expression that merely "arouses the hostility of a person with an opposite opinion").

In their opposition, defendants attempt to avoid Tinker by claiming that the students' club is "school-sponsored" within the meaning of Hazelwood, 484 U.S. at 271. In Hazelwood, the Court held that school-sponsored expressive activities such as official newspapers or theater productions "that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school" could be regulated for content as part of the school's curriculum. Id. Such activities "may fairly be characterized as part of the school curriculum, whether or not they occur in a traditional classroom setting, so long as they are supervised by faculty members and designed to impart particular knowledge or skills to student participants and audiences." Id.

No reasonable person could perceive the Bible Club to bear the imprimatur of Westfield High School within the meaning of Hazelwood. First, as a matter of law, were the school to operate a Christian club as part of its curriculum, it would encounter the very Establishment Clause problems that the school claims to seek to avoid. See Board of Educ. of Westside Community Schools v. Mergens, 496 U.S. 226, 252 (1990) (noting that "a school may not itself lead or direct a religious club.") Second, as a matter of fact, the defendants do not even allege that the Club is in any way associated with the school's curriculum, or that the club was designed by the school "to impart particular knowledge or skills to student participants and audiences." Hazelwood, 484 U.S. at 271. The defendants have produced no evidence to dispute the plaintiffs' claim that the club is "non-curriculum related, student initiated [and] student led," Complaint, ¶ 8, and the affidavit of defendant Thomas W. Daley describing the Bible Club says nothing about any curricular or instructional purpose behind the group. Opposition, Ex. B. This case therefore has nothing to do with the school's curriculum, but rather concerns whether the school may "silence a student's personal expression that happens to occur on school premises," a question governed by the Tinker standard, not by Hazelwood. 484 U.S. at 270-71.

The plaintiffs are also likely to succeed on the merits of their claim that the "Distribution Policy" under which they were prohibited from distributing their literature is facially invalid under M.G.L. c. 71 § 82 and the First Amendment, because the policy enacts a prior restraint on the distribution of student publications, even where there is no substantial likelihood of a disruption. Complaint, Ex. B, p. 27, "Posting of Information and Distribution of Materials." The policy forbids the distribution or circulation of any

"printed materials" on school grounds without "proper authority." Id. The policy requires students who wish to distribute literature to first make "[a]rrangements" with "an administrator or his designee" for approval, but enacts no standards to guide the administrator's discretion. Id.

Under § 82, "[t]he right of students to freedom of expression," including their freedom to "write, publish and disseminate their views," cannot be "abridged, provided that such right shall not cause any disruption or disorder within the school." M.G.L. c. 71 § 82; see Pyle, 423 Mass. at 286. "The plain meaning" of § 82 "limits students' rights of free expression *only* where such expression creates a disruption or disorder within the school." Id. at 287 (emphasis supplied). A prior restraint on publication, such as that enacted here, has long been recognized as "the most serious and the least tolerable infringement" on the right to freedom of speech. Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 559 (1975); Near v. Minnesota, 283 U.S. 697, 713 (1931). The policy therefore "abridge[s]" students' right to freedom of expression without any likelihood of a "disruption or disorder within the school," and violates § 82.

Further, as argued by the plaintiffs, the pre-distribution review policy violates the First Amendment on its face. In Riseman v. School Committee of Quincy, 439 F.2d 148, 149-50 (1st Cir. 1971), the First Circuit invalidated a similar school policy that prohibited the distribution of written materials without approval of the school committee. On appeal from a partial denial of the plaintiff's motion for a preliminary injunction, the First Circuit held that "as sought to be applied to First Amendment activities, [the policy] is vague, overbroad, and does not reflect any effort to minimize the adverse effect of prior restraint," and was therefore unconstitutional. Id. at 149-50 (internal citations omitted).

So here, the school's ban on the distribution of written materials without "proper authority" is dramatically overbroad, applying to even innocuous handouts like those of the plaintiffs, and includes no effort to minimize the adverse effects of its prior restraint on student speech. See also Burch v. Barker, 861 F.2d 1149, 1154 (9th Cir. 1988) ("a policy which subjects all non-school-sponsored communications to pre-distribution review for content censorship violates the first amendment").

Moreover, the statute includes no standards whatsoever for the "administrator" to follow in determining whether to grant "proper authority" to distribute printed materials, and sets no time limitations within which an administrator must grant or deny such approval. Complaint, Ex. B., p. 72. It is well settled that an ordinance which makes the exercise of constitutional rights "contingent upon the uncontrolled will of an official – as by requiring a permit or license which may be granted or withheld in the discretion of such official – is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms." FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 226 (1990). Additionally, a prior restraint such as the Distribution Policy that "fails to place limits on the time within which the decisionmaker must issue the license is impermissible." Id. at 226. The Court should hold that the plaintiffs have a likelihood of success on their facial an as-applied challenges to the Distribution Policy.

B. Plaintiffs Will Suffer an Irreparable Harm if a Preliminary Injunction is not Granted

"The loss of First Amendment freedoms, for even minimum periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373 (1976); Demarest v. Athol/Orange Community Television, Inc., 188 F.Supp.2d 82, 89 (D. Mass. 2002) (Ponsor, J.); Tauber, 695 F.Supp. at 1360. The plaintiffs' First Amendment rights

have been and continue to be violated by the enforcement of the Distribution Policy, the prohibition on the distribution of their literature, and by the imposition of punishment for distributing the candy cane messages. "[W]hen 'First Amendment interests were either threatened or in fact being impaired at the time relief was sought,' a preliminary injunction is proper." Demarest, 188 F.Supp.2d at 89, quoting Elrod, 427 U.S. at 373. (finding that plaintiffs who challenged ban on political signs on private property met standard for preliminary injunction). The defendants, in arguing that plaintiffs would not suffer irreparable harm, ignore the fact that without an injunction, the students can be suspended at any time. See Opposition, pp. 14-15. They also ignore Elrod, which holds that the loss of First Amendment freedoms constitutes irreparable harm *per se*. Elrod, 427 U.S. at 373. The Court should find that the plaintiffs are suffering irreparable harm from the school's deprivations of their First Amendment and statutory rights to free speech.

C. A Balancing of the Equities Favors the Issuance of a Preliminary Injunction.

The defendants will not be harmed by the issuance of a preliminary injunction. The defendants' inability to enforce an illegal and unconstitutional policy, or to punish the plaintiffs for exercising their right to freedom of speech, are not "harms" that the Court should recognize. By contrast, the plaintiffs' harms – the deprivation of their First Amendment and statutory rights to freedom of speech – are immediate and irreparable.

The defendants argue (halfheartedly) that they would somehow be exposed to liability under the Establishment Clause if they were enjoined from violating the

plaintiffs' rights to freedom of speech.[3] This is incorrect. In order for a regulation to survive an Establishment Clause challenge, it simply must (1) "have a secular or legislative purpose," (2) "its principal or primary effect must be one that neither advances nor inhibits religion," and (3) it "must not foster an excessive government entanglement with religion." Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971). "A policy of permitting students to speak to the full extent of their constitutional rights would have a secular purpose, because it would be done either out of respect for the student's rights, or for fear of lawsuits like this one." Rivera v. Taylor, 721 F.Supp. 1189, 1195 (D.Colo., 1989). The "principal or primary effect" of such a policy is not to advance or inhibit religion – it would be merely to allow students to engage in non-school sponsored speech with their fellow students on a wide variety of matters, as Tinker allows. Tinker, 393 U.S. at 512-13 ("When [a student] is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects. . . ."). Finally, permitting lawful religious speech that is not "conducted in concert with school authority" (such as a student-initiated prayer at graduation) would present "fewer entanglement risks than would be created by a policy of monitoring student speech, determining what was religious, and suppressing that speech." Rivera, 721 F.Supp. at 1195-96. Allowing the plaintiffs to express their religious views is therefore not an Establishment Clause violation, and the balance of harms favors the plaintiffs.

[3] It is worth noting that the defendants do not raise the Establishment Clause in their Opposition as an affirmative defense to the plaintiffs' First Amendment claims.

D. A Preliminary Injunction Would Be in the Public Interest

Finally, the Court should find that a preliminary injunction would be in the public interest. Courts considering requests for preliminary injunctions have consistently recognized the significant public interest in upholding First Amendment principles. See, e.g., Homans v. Albuquerque, 264 F.3d 1240, 1244 (10th Cir. 2001) ("We believe that the public interest is better served by following binding Supreme Court precedent and protecting the core First Amendment right of political expression"); Iowa Right to Life Committee v. Williams, 187 F.3d 963, 970 (8th Cir. 1999) (finding that district court did not abuse its discretion in granting a preliminary injunction because "the potential harm to independent expression and certainty in public discussion of issues is great and the public interest favors protecting core First Amendment freedoms"); G&V Lounge, Inc. v. Mich. Liquor Control Com'n, 23 F.3d 1071, 1079 (6th Cir. 1994) (noting "it is always in the public interest to prevent the violation of a party's constitutional rights."); see also Sammartano v. First Judicial Dist. Court, 303 F.3d 959, 974-75 (9th Cir. 2002) and cases cited (holding that "ongoing enforcement of the potentially unconstitutional regulations" was not in the public interest); Demarest, 188 F.Supp.2d at 89 (holding that public interest served by injunction because "the free flow of ideas and opinions on matters of public interest and concern" is of "fundamental importance"); Tauber v. Town of Longmeadow, 695 F.Supp. 1358, 1360 (D.Mass. 1988) (Freedman, J.) (holding preliminary injunction standard met in First Amendment case). The public interest is clearly served by removing an unconstitutional restraint on the speech of the plaintiffs and all other students at Westfield High School. A preliminary injunction would also serve other students' First Amendment in being exposed to a broad marketplace of ideas

in the school. The right to receive information and ideas "is nowhere more vital than in our schools and universities." Kleindienst v. Mandel, 408 U.S. 753, 763 (1972).

## CONCLUSION

For the foregoing reasons, the American Civil Liberties Union of Massachusetts respectfully requests that the Court allow the plaintiffs' Motion for a Preliminary Injunction.

Respectfully Submitted,

AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS

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