

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION AT LONDON

ELIZABETH JONES,

Plaintiff,

v.

JENKINS INDEPENDENT SCHOOL
DISTRICT BOARD OF EDUCATION, *et*
al.,

Defendants.

Case No. 6:26-cv-00055-GFVT

Electronically filed

MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Fed. R. Civ. P. 65(a) and Joint Local Rule of Civil Practice (LR) 7.1, Plaintiff Elizabeth Jones, by counsel, moves for entry of a preliminary injunction barring the Jenkins Independent School District Board of Education (“JISD” or “the Board”), its employees, agents, and successors from enforcing bans on Plaintiff from being present on any property owned or leased by the JISD, and from being present at any and all activities sponsored for or by the JISD under *both*: (1) the December 15, 2025 “No Trespass Order” [attached Exh. 1]; and (2) the February 5, 2026 “Modified No Trespass Order.” [Attached Exh. 2.]

For the reasons that follow, a preliminary injunction is appropriate because Jones has a substantial likelihood of succeeding on the merits of her claims, absent a preliminary injunction she will be irreparably harmed by continued enforcement of the No Trespass Order and the Modified No Trespass Order, and the other equitable factors weigh in favor of issuing a preliminary injunction in this case.

STATEMENT OF FACTS

Plaintiff Elizabeth Jones is a single mother to two minor children, both of whom attend school in the JISD. [R. 32: Am. Compl., at ¶ 13.] She is an active parent who supports her children by regularly attending their school-related extracurricular activities, which include various athletic events that are open to the general public. [*Id.* at ¶¶ 14, 19.] She further frequently donates her time and financial resources to support their extracurricular activities, and she frequently attends events sponsored by or for the JISD. [*Id.* at ¶ 15.]

In the years leading up to December 15, 2025, Ms. Jones regularly and frequently attended JISD’s school-sponsored events involving her children, and at no time did she engage in disruptive or otherwise unlawful behavior at those events. [*Id.* at ¶ 14.] Rather, she took photographs and recorded videos of portions of her children’s events, and she also frequently posted those photographs and videos on her Facebook page when she returned home, sharing them with her online community. [*Id.* at ¶¶ 16, 17.] She also frequently supplemented these posts with written comments about who, and what they depicted, her feelings about her children, and other constitutionally protected observations. [*Id.* at ¶ 18.] These posts were not defamatory, threatening, obscene, or otherwise unlawful. [*Id.*]

No Trespass Order

On or before December 15, 2025, Defendant JISD, through its voting members, adopted a “No Trespass Order” permanently barring Ms. Jones from: (a) entering onto property owned or leased by JISD; and (b) attending any activity sponsored by or for the JISD. [Exh. 1.] Ms. Jones first learned of the No Trespass Order, and the fact that it was

under consideration, when she received a copy of the already-issued No Trespass Order via hand-delivery. [Exh. 1; R. 32: Am. Compl., at ¶ 25.]

According to the No Trespass Order, the Board adopted it “[d]ue to [Ms. Jones’s] *multiple posts on social media* of students participating in extracurricular activities *which appear to be harassment and which have caused disruptions of the educational process.*” [Exh. 1 (emphasis added).] However, it did not specify which of Ms. Jones’s posts prompted the decision or even the substance of any allegedly harassing communications contained in them. [*Id.*]¹ Nor did the No Trespass Order identify what disruptions to the educational process were purportedly caused by the social media posts. [*Id.*] But in order to ensure Ms. Jones’s compliance with its terms, the No Trespass Order threatened her with removal by law enforcement and criminal prosecution in the event she were “present on any property owned or leased by this school district or present at any activity sponsored by or for this school district.” [*Id.*]

Prior to receiving the No Trespass Order, Ms. Jones did not receive advance notice that she had allegedly violated any JISD policies regarding her social media posts, or that the Board would make a determination and potentially issue sanctions against her. [R. 32: Am. Compl., at ¶ 25; Exh. 4: Def. Johnson’s Responses to Written Disco. Reqs., at 17 (admitting that JISD did not provide Plaintiff with advance notice or opportunity to be heard prior to issuing the No Trespass Order).] Defendants neither afforded Plaintiff an opportunity to be heard on the alleged violation before issuing the No Trespass Order nor

¹ In written discovery responses received by Plaintiff on May 18, 2026, Defendant Johnson identified three social media posts that prompted the Board’s decisions. Of those, only two pre-dated (and thus could have formed the basis for) the Dec. 15, 2025, No Trespass Order. [Exh. 4.] Those posts, and other relevant portions of Defendant Johnson’s discovery responses, are further discussed in the Argument section below.

provided notice to her of any mechanism by which she could appeal or otherwise contest the permanent No Trespass Order. [R. 32: Am. Compl., at ¶ 25; Exh. 4, at 17.]²

Modified No Trespass Order

Plaintiff then filed this action on January 5, 2026, challenging JISD’s No Trespass Order on First and Fourteenth Amendment grounds. [R. 1.] She simultaneously moved for a temporary restraining order and a preliminary injunction. [R. 2.] Despite denying Plaintiff’s motion for a TRO, the Court noted that it would “order expedited briefing as to the preliminary injunction after the appearance of all defendants” and, “[a]t that time, . . . determine whether a hearing, and limited expedited discovery, is appropriate.” [R. 6, at PageID #108.]

Less than twenty-four hours before the defendants entered their appearances in this litigation (which would have triggered the expedited briefing on Ms. Jones’s preliminary injunction motion), Defendant Damian Johnson, through defense counsel, conveyed to Plaintiff’s former counsel a “Modified No Trespass Order” adopted by the JISD Board of Education. [Exh. 2.] This Modified No Trespass Order maintained the permanent ban on Plaintiff from entering onto property owned or leased by JISD and from attending any activity sponsored by or for the JISD, but it created certain exceptions. Specifically, the Modified No Trespass Order permitted Plaintiff to: (a) pick up/drop off her children (and items from her children) at school; (b) attend scheduled parent-teacher conferences; (c)

² While admitting that Plaintiff did not receive advance notice or an opportunity to be heard, Defendant Johnson denies that JISD failed to provide a mechanism for her to appeal the access bans. [Exh. 4, at 17.] However, Plaintiff did not receive notice of any such appeal mechanism in either the No Trespass Order or Modified No Trespass Order. [Exh. 1; Exh. 2.]

attend any other scheduled meetings with her children’s educators regarding their educational needs; and (d) attend open meetings of the JISD Board of Education. [*Id.*]

The Modified No Trespass Order also reaffirmed that its restrictions were imposed because the JISD’s Board of Education “remains concerned with [Ms. Jones’s] *previous social media posts which appear to be harassment of minor students and that disrupts the education process.*” [*Id.* (emphasis added).] As before, however, the Modified No Trespass Order did not identify which social media posts prompted JISD’s decision or the substance of any of Ms. Jones’s communications that it alleged were harassing. The Modified No Trespass Order also did not identify what disruptions of the educational process were caused by the social media posts. And, like the initial No Trespass Order, JISD’s Modified No Trespass Order neither limited its temporal applicability nor afforded Plaintiff notice of any administrative mechanism by which to challenge or otherwise appeal the decision. [*Id.*]

Procedural History

Following imposition of the Dec. 15, 2025, No Trespass Order, Ms. Jones, with the assistance of counsel, filed this 42 U.S.C. § 1983 action on Jan. 5, 2026, along with a motion for a temporary restraining order and preliminary injunction. [R.1; R. 2.] As noted above, the Court denied her TRO motion but ordered “expedited briefing as to the preliminary injunction after the appearance of all defendants.” [R. 6, at PageID #108.] On February 6, 2026—less than one day after the issuance of the Modified No Trespass Order—defendants filed their Answer and motion for partial dismissal of Ms. Jones’s claims. [R. 17; R. 19.] But despite filing an Answer, no expedited briefing took place on Plaintiff’s preliminary injunction motion.

Instead, on March 13, 2026, the Court *sua sponte* removed Plaintiff's former counsel after she was suspended from practicing in the Eastern District of Kentucky. [R. 20.] The Court granted Ms. Jones 30 days in which to locate and secure successor counsel [*id.*], which she did within the time allotted. [R.21; R. 22; R. 23.]

Soon after successor counsel entered their appearances, the parties: (1) entered a proposed Agreed Order, which the Court accepted, dismissing the claims against defendants Congleton and Crawford without prejudice. [R. 24; R. 25]; (2) negotiated a temporary, limited cessation of the Modified No Trespass Order [Exh. 3]; (3) entered a proposed Agreed Order, which the Court accepted, withdrawing pending motions and setting new timetables for their filing [R. 27; R. 28]; (4) conducted their Rule 26(f) conference [R. 29]; (5) commenced written discovery; and (6) filed an Amended Complaint. [R. 32: Am. Compl.] Plaintiff now submits this motion for preliminary injunction in accordance with the parties' agreed deadline for doing so. [R. 27; R. 28.]

LEGAL STANDARD

In evaluating requests to issue preliminary injunctive relief under Fed. R. Civ. P. 65(a), "district court[s] must consider: (1) the plaintiff's likelihood of success on the merits; (2) whether the plaintiff may suffer irreparable harm absent the injunction; (3) whether granting the injunction will cause substantial harm to others; and (4) the impact of an injunction upon the public interest." *Abney v. Amgen, Inc.*, 443 F.3d 540, 546 (6th Cir. 2006) (internal quotations omitted) (quoting *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson Co.*, 274 F.3d 377, 400 (6th Cir. 2001) *cert. denied*, 535 U.S. 1073 (2002)). These considerations "are factors to be balanced, not prerequisites that must be met." *Jones v. City of Monroe, MI*, 341 F.3d 474, 476 (6th Cir. 2003) (citing *In re Delorean*

Motor Co., 755 F.2d 1223, 1228 (6th Cir. 1985)). However, in the First Amendment context, such as here, “when a party seeks a preliminary injunction on the basis of a potential violation of the First Amendment, the likelihood of success on the merits often will be the determinative factor.” *Jones v. Caruso*, 569 F.3d 258, 265–66 (6th Cir. 2009) (cleaned up).

Here, Ms. Jones satisfies all of the criteria for the issuance of a preliminary injunction: 1) she can establish a substantial likelihood of success on the merits of her claims; 2) an injunction is necessary to prevent irreparable harm; 3) the issuance of an injunction will not harm Defendants or others; and 4) the public interest strongly favors issuance of an injunction in this case because “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *G&V Lounge, Inc. v. Michigan Liquor Control Comm’n*, 23 F.3d 1071, 1079 (6th Cir. 1994) (citing *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368 (1979)); *Planned Parenthood Association v. City of Cincinnati*, 822 F.2d 1390, 1400 (6th Cir. 1987)).

ARGUMENT

I. PRELIMINARY INJUNCTIVE RELIEF IS WARRANTED TO BLOCK DEFENDANTS’ ENFORCEMENT OF THE INITIAL NO TRESPASS ORDER AND SUBSEQUENT MODIFIED NO TRESPASS ORDER.

A. The No Trespass Order Is Not Moot.

As a preliminary matter, the initial Dec. 15, 2025, No Trespass Order [Exh. 1] has not been rendered moot due to the Board’s post-litigation adoption of the Modified No Trespass Order. [Exh. 2.] “It is well settled that a defendant’s voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S.

167, 189 (2000) (internal quotations omitted) (quoting *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982)). Moreover, “a defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur.” *Friends of the Earth*, 528 U.S. at 189 (citing *United States v. Concentrated Phosphate Export Assn.*, 393 U.S. 199, 203 (1968)).

Here, the timing of the Board’s purported abandonment of the No Trespass Order in favor of the Modified No Trespass Order, combined with its subsequent litigation positions, prevents it from being able to satisfy that “stringent” standard. *Am. Canoe Ass’n, Inc. v. City of Louisa Water & Sewer Comm’n*, 389 F.3d 536, 543 (6th Cir. 2004) (“Indeed, determining whether a case has been mooted by the defendant’s voluntary conduct is stringent: A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.”) (cleaned up).

First, the Board only amended its No Trespass Order to the Modified No Trespass Order: (1) *after* Plaintiff filed suit challenging the No Trespass Order’s legality; (2) *after* the Court ordered expedited briefing on Plaintiff’s preliminary injunction motion once all Defendants had entered their appearances; and (3) *less than one day before* Defendants entered their appearances (and thus would have been subjected to the Court’s expedited briefing mandate). [R. 6: Memo. Op. & Order, at PageID #108 (ordering expedited PI briefing “after the appearance of all defendants” on Jan. 12, 2026); Exh. 2 (Modified No Trespass Order dated Feb. 5, 2026); R. 17 (Defendants’ Answer filed Feb. 6, 2026).] Such “voluntary” cessation of challenged conduct during litigation is “generally insufficient” to make “absolutely clear” that it “could not reasonably be expected to recur,” particularly in

light of the relatively minor differences between the No Trespass Order and Modified No Trespass Order. *Am. Canoe Ass’n, Inc.*, 389 F.3d at 543; *Speech First, Inc. v. Schlissel*, 939 F.3d 756, 769 (6th Cir. 2019) (“The timing of the University’s change [to its challenged policy] also raises suspicions that its cessation is not genuine. The University removed the definitions [of harassing and bullying] after the complaint was filed. If anything, this *increases* the University’s burden to prove that its change is genuine.”) (emphasis added).

Similarly, the Board’s litigation positions further reinforce that conclusion. For example, even after the parties negotiated the temporary, limited cessation of the Modified No Trespass Order [Exh. 3], the Board made clear that it “maintain[ed] its right to enforce all Board policies *which may result in additional restrictions including, but not limited to, implementation of a total ban*” against Ms. Jones. [*Id.* (emphasis added).] And it further stated that its agreement to temporarily allow her to attend some events did “not waive any of [JISD’s] arguments or defenses in the ongoing litigation.” [*Id.*] This, of course, is also consistent with Defendants’ formal litigation position, in which they allege in their Answer to Plaintiff’s initial Complaint that their actions toward Plaintiff “were justified.” [R. 17, at PageID #140.] *See, e.g., Speech First, Inc.*, 939 F.3d at 770 (“Although not dispositive, the Supreme Court has found whether the government ‘vigorously defends the constitutionality of its ... program’ important to the mootness inquiry.”) (quoting *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 719 (2007)).

The explicit retention of authority to unilaterally (and permanently) ban Ms. Jones from property owned or leased by JISD for social media posts that the Board deems “appear to be harassment,” combined with its explicit denial of any wrongdoing and reservation of all arguments and defenses in this action, show that the Board cannot overcome the

“formidable burden” of showing that the imposition of the No Trespass Order “could not reasonably be expected to recur.” *Friends of the Earth*, 528 U.S. at 189.

B. Plaintiff Is Likely To Succeed On The Merits Of Her First Amendment Claims.

The First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech . . .” U.S. CONST. Amend. I. This protection of speech applies not only to Congress, but also to the states by operation of the Fourteenth Amendment’s due process clause. *Gitlow v. New York*, 268 U.S. 652, 666 (1925). Moreover, it also extends to online speech occurring on social media sites. *In re Anonymous Online Speakers*, 661 F.3d 1168, 1173 (9th Cir. 2011) (“[O]nline speech stands on the same footing as other speech—there is ‘no basis for qualifying the level of First Amendment scrutiny that should be applied’ to online speech.”) (quoting *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 870 (1997)).

And “[p]ublic schools, like all government institutions, may not ignore the strictures of the First Amendment. So, as a general matter, the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *B. A. v. Tri Cnty. Area Schs.*, 156 F.4th 782, 789 (6th Cir. 2025) (cleaned up). Thus, school officials may not regulate adults’ speech to the same extent as they can that of students. *Compare McElhaney v. Williams*, 81 F.4th 550, 557 (6th Cir. 2023) (noting that schools “cannot regulate the content of parents’ speech about their child to a school employee who interacts with the child” outside of the “historic and traditional categories” of speech regulation) (cleaned up) *with Tri Cnty. Area Schs.*, 156 F.4th at 789 (noting that a public school’s “special characteristics give it additional” license to regulate student speech”) (cleaned up). *See also Place v. Warren Loc. Sch. Dist. Bd. of Educ.*, No. 2:21-CV-985, 2024 WL 964253, at *3 (S.D. Ohio Mar. 6, 2024) (“If student speech materially disrupts

classwork or involves substantial disorder or invasion of the rights of others, the school may restrict that speech. Parents, however, have a different relationship to school activities than do students. Thus, the disruption standard does not apply to *parent* speech about school officials. Instead, such parental speech is evaluated under the traditional First Amendment standards”) (cleaned up), *dismissed*, No. 24-3279, 2024 WL 4481314 (6th Cir. July 30, 2024).

In this case, then, the Court’s threshold determination—whether the challenged Orders actually regulate expressive activity that enjoys First Amendment protection—is met. Specifically, by their own terms, *both* the No Trespass Order and the Modified No Trespass Order impose their access restrictions upon Ms. Jones *because* she made “*multiple posts* on social media of students participating in extracurricular activities *which appear to be harassment* and *which have caused disruptions to the educational process*” in the school district. [Exh. 1 (emphasis added); *see also* Exh. 2 (“The Board of Education . . . remains concerned with *your previous social media posts which appear to be harassment of minor students and that disrupts the educational process.*”) (emphasis added).]³

Not until Superintendent Johnson served his written discovery responses in this action did Plaintiff receive confirmation about which social media posts actually prompted the Orders. [Exh. 4, at 4-5.] According to Superintendent Johnson, two of Plaintiff’s posts pre-dated (and thus prompted) the issuance of the Dec. 15, 2025 No Trespass Order [*id.*], and a third post occurred *after* the No Trespass Order but *before* issuance of the Modified

³ Neither Order identified: (1) how many social media posts were at issue; (2) when the posts were purportedly made; (3) the content of any of the posts; (4) the basis for determining that the posts “appear to be harassment,” or (5) what instances of “disruptions to the educational process” supposedly occurred.

No Trespass Order. [*Id.* (identifying Jan. 25, 2026 post).] But in those discovery responses, Superintendent Johnson further confirmed that these social media posts “did not threaten physical harm” to any person, but “were seen as harassing, misrepresenting, or belittling children associated with the school district” and thus prompted the Orders. [Exh. 4, at 5-6.]

It is therefore undisputed that both Orders were issued *because* of Plaintiff’s nonthreatening online *speech* that “appears to be harassing” as opposed to harassing *conduct*.⁴ Thus, both Orders purport to regulate expressive activity that enjoys First Amendment protection because “anti-harassment laws, insofar as they regulate *speech* based on content, are subject to First Amendment scrutiny.” *Wollschlaeger v. Governor, Fla.*, 848 F.3d 1293, 1307 (11th Cir. 2017) (emphasis added) (citing *DeJohn v. Temple Univ.*, 537 F.3d 301, 316 (3d Cir. 2008); *Saxe v. State Coilege Area School Dist.*, 240 F.3d 200, 207 (3rd Cir. 2001); *DeAngelis v. El Paso Mun. Police Officers Ass’n*, 51 F.3d 591, 596–97 (5th Cir. 1995)).

1. The Orders are facially invalid content-based restrictions on speech that lack narrow tailoring.

The Orders regulate expressive activity that enjoys First Amendment protection, and they do so on the basis of content because both target speech based on its “communicative content.” *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015); *see*

⁴ To the extent the Board points to JISD’s Civility or Visitors to the School policies as providing the basis for these Orders, that assertion is misplaced. Those policies proscribe certain conduct on school property, but does not prohibit online, nonthreatening speech that “appears to be harassing.” [Exh. 4, at 5-6.] Thus, the No Trespass Order and Modified No Trespass Order reflect new policies barring expressive conduct. *See, e.g., Pembaur v. City of Cincinnati*, 475 U.S. 469, 480 (1986) (“it is plain that municipal liability may be imposed for a single decision by municipal policymakers”).

also id. at 164 (“Our precedents have also recognized a separate and additional category of laws that, though facially content neutral, will be considered content-based regulations of speech: laws that cannot be justified without reference to the content of the regulated speech . . . Those laws, like those that are content based on their face, must also satisfy strict scrutiny.”) (cleaned up).

As content-based restrictions of speech, both Orders are therefore “presumptively unconstitutional and may be justified *only* if the government proves that they are narrowly tailored to serve compelling state interests.” *Reed*, 576 U.S. at 163 (citing *R.A.V. v. St. Paul*, 505 U.S. 377, 395 (1992); *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 115 (1991)). Under this standard, courts assess whether the “challenged restriction is the least restrictive means among available, effective alternatives.” *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 666 (2004) (upholding grant of preliminary injunction against enforcement of Child Online Protection Act). Here, neither Order satisfies that standard.

a) No Trespass Order

As noted above, Defendants imposed the Dec. 15, 2025, No Trespass Order based on a determination that Plaintiff’s online social media posts “appear to be harassment and which have caused disruptions of the educational process.” [Exh. 1; Exh. 4-5.] But such a standard, on its face, evinces a lack of narrow tailoring.⁵ First, the No Trespass Order does not confine itself to harassing speech that causes *substantial and material* disruptions to the educational process; rather it reaches speech that causes *any* disruption to the

⁵ In this brief, Plaintiff assumes, without conceding, that the Orders serve a compelling governmental interest.

educational process. [Exh.1.] In this regard, then, the No Trespass Order regulates individuals' disruptive speech *more expansively* than is even allowed under the student expression standard under which school officials enjoy *greater* authority to regulate speech. *See Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969) (“[W]here there is no finding and no showing that engaging in the forbidden conduct would ‘materially and substantially interfere with the requirements of appropriate discipline in the operation of the school,’ the prohibition cannot be sustained.”). *A fortiori*, narrow tailoring cannot be present where the No Trespass Order permits *greater* regulation of adults' online, off-campus speech than would be permitted of students under the First Amendment. *See, e.g., Am.-Arab Anti-Discrimination Comm. v. City of Dearborn*, 418 F.3d 600, 608 (6th Cir. 2005) (holding that permit scheme facially invalid because, *inter alia*, it “too broadly and improperly” applied to small groups and thus failed narrow tailoring); *Reno*, 521 U.S., at 874 (“[The CDA’s Internet indecency provisions’] burden on adult speech is unacceptable if less restrictive alternatives would be at least as effective in achieving the legitimate purpose that the statute was enacted to serve”).

Similarly, assuming *arguendo* that the No Trespass Order’s “appear to be harassment” standard applies *only* to “harassing” speech, that term is left undefined. Therefore, the scope of the standard necessarily includes a wide variety of individuals’ protected expression, including online and off-campus expression, that is unrelated to any compelling governmental interest. Specifically,

There is of course no question that non-expressive, physically harassing *conduct* is entirely outside the ambit of the free speech clause. *But there is also no question that the free speech clause protects a wide variety of speech that listeners may consider deeply offensive, including statements that impugn another’s race or national origin or that denigrate religious beliefs. When laws against harassment attempt to regulate oral or written*

expression on such topics, however detestable the views expressed may be, we cannot turn a blind eye to the First Amendment implications. Where pure expression is involved, anti-discrimination law steers into the territory of the First Amendment.

Saxe v. State Coll. Area Sch. Dist., 240 F.3d 200, 206 (3d Cir. 2001) (emphasis added). See also *Lexington H-L Servs., Inc. v. Lexington-Fayette Urb. Cnty. Gov't*, 879 F.3d 224, 231 (6th Cir. 2018) (“[T]he First Amendment does not promise insulation from mere annoyance or offense.”).

Because the No Trespass Order’s anti-harassment standard includes within its sweep a substantial amount of protected expression, and because it seeks to regulate all such speech that causes *any* disruption to the educational process (even if the disruption does not rise to the level of a substantial and material disruption), the No Trespass Order lacks narrow tailoring and is thus facially invalid. See, e.g., *Brown v. Ent. Merchants Ass’n*, 564 U.S. 786, 804 (2011) (finding statute overinclusive and thus lacked narrow tailoring under the First Amendment).

b) Modified No Trespass Order

As with the No Trespass Order, the Modified No Trespass Order likewise fails narrow tailoring for the same reasons. While the ramifications for violating the Modified No Trespass Order are only marginally less onerous than the No Trespass Order, it nonetheless imposes significant access restrictions upon individuals, like Plaintiff, for engaging in protected speech that is beyond JISD’s authority to regulate. Specifically, the Modified No Trespass Order bans speech deemed to “appear to be harassment of minor students” and that “disrupts the educational process.” [Exh. 2.] It, too, therefore regulates a substantial amount of protected expression as “harassment” without defining that term, and it does not confine its reach to only those communications that causes a substantial and

material disruption to the educational process. As such, it proscribes far more speech than is necessary to serve any compelling educational interest and is thus a facially invalid content-based speech restriction. *See McElhaney*, 81 F.4th at 557 (“The bedrock principle underlying the [First] Amendment’s free speech guarantee is that states cannot prohibit speech merely because it offends the sensibilities of others.”) (cleaned up).

2. The Orders are overbroad.

Both Orders are also facially invalid for the independent and adequate reason that they are unconstitutionally overbroad. As the Sixth Circuit has noted, the U.S. Supreme Court in *Moody v. Netchoice, LLC*, 603 U.S. 707 (2024), “explained the proper two-step approach for overbreadth challenges. At step one, a court must evaluate a law’s ‘scope’ by considering the ‘activities’ it covers and the ‘actors’ it regulates... At step two, a court must identify which of a law’s many applications would violate the First Amendment and which would not... It then must ‘compare the two sets’ of applications.” *Doe v. Burlew*, 165 F.4th 525, 532–33 (6th Cir. 2026) (cleaned up) (quoting *Moody*, 603 U.S. at 724-25); *see also Fieger v. Michigan Supreme Ct.*, 553 F.3d 955, 960–61 (6th Cir. 2009) (noting that to succeed on an overbreadth challenge, a plaintiff “must demonstrate that ‘the statute’s overreach is *substantial*, not only as an absolute matter, but judged in relation to the statute’s plainly legitimate sweep....”’) (quoting *Bd. of Trs. v. Fox*, 492 U.S. 469, 484–85 (1989) (cleaned up)).

As noted in Section I(B)(1) above, both Orders proscribe a substantial amount of constitutionally protected speech by: (a) barring non-students’ speech, including online and off-campus speech, that “appears to be harassment” without defining harassment; and (b) including within their sweep all such “harassing” speech that purportedly causes a

disruption to the educational process without regard to whether the disruption is substantial and material. [Exh. 1; Exh. 2.] As to the former, the Sixth Circuit considered a First Amendment overbreadth challenge to a university’s anti-harassment policy that defined racial and ethnic harassment as:

[A]ny intentional, unintentional, physical, verbal, or nonverbal behavior that subjects an individual to an intimidating, hostile or offensive educational, employment or living environment by ... (c) demeaning or slurring individuals through ... written literature because of their racial or ethnic affiliation; or (d) using symbols, [epithets] or slogans that infer negative connotations about the individual’s racial or ethnic affiliation.

Dambrot v. Cent. Michigan Univ., 55 F.3d 1177, 1182 (6th Cir. 1995).

In *Dambrot*, the Court of Appeals described this definition of harassment as “sweeping and seemingly drafted to include as much and as many types of conduct as possible.” *Id.* From that observation, it concluded that the anti-discrimination policy “sweeps within its ambit both constitutionally protected activity ... and unprotected conduct, making it subject to an overbreadth challenge.” *Id.* at 1183 (cleaned up). Here, by contrast, there is *no* definition of harassment to constrain school officials’ enforcement authority, so it is left entirely up to their discretion to determine what speech “appears to be harassment.” [Exh. 1; Exh. 2.]

And as to the second step, the Orders’ breadth—measured by their regulation of non-students’ speech (including off-campus and online speech) deemed harassment without defining that term—encompasses far more protected expression than it does unprotected expression; thus, its unconstitutional applications far outweigh any legitimate regulation of unprotected speech. The No Trespass Order and Modified No Trespass Order, therefore, regulate a *substantial* amount of protected expression when judged in relation to

their legitimate sweep, and thus are impermissibly overbroad. *See, e.g., United States v. Sturgill*, 563 F.2d 307, 310 (6th Cir. 1977) (striking down on overbreadth grounds Kentucky criminal offense of harassment which was defined as “[a] person is guilty of harassment when with intent to harass, annoy or alarm another person he: . . . (b) in a public place, makes an offensively coarse utterance, gesture or display, or addresses abusive language to any person present . . .”).

3. Both Orders are impermissibly vague.

The No Trespass Order and the Modified No Trespass Order also share another fatal deficiency—they both are unconstitutionally vague because they purport to regulate speech by means of an undefined “appears to be harassment” standard that not only fails to give fair notice to individuals of what speech is proscribed, but also invites arbitrary enforcement of protected expression by school officials. *See, e.g., Brown v. City of Albion, Michigan*, 136 F.4th 331, 344 (6th Cir. 2025) (“Due process requires a court to hold an ordinance or statute void for vagueness if its prohibitive terms are not clearly defined such that a person of ordinary intelligence can readily identify the applicable standard for inclusion and exclusion. . . Moreover, where a law implicates speech and, thus, may chill it, vague laws may offend the First Amendment.”).

For example, both Orders suffer from vagueness deficiencies similar to those present in *Dambrot, supra*. Specifically, in finding the challenged policy invalid, the Court of Appeals noted that:

[T]here is nothing to ensure the University will not violate First Amendment rights even if that is not their intention. It is clear from the text of the policy that language or writing, intentional or unintentional, regardless of political value, can be prohibited upon the initiative of the university. The broad scope of the policy’s language presents a ‘realistic danger’ the University could compromise the protection afforded by the First Amendment.

Dambrot, 55 F.3d at 1183.

So, too, here. The Orders, on their face, purport to regulate speech that “appears to be harassment.” [Exh. 1; Exh. 2.] Indeed, even Defendant Johnson’s written discovery responses further confirm that even though Plaintiff’s social media posts (that prompted the No Trespass Orders) were non-threatening, they “were seen as harassing, misrepresenting, or belittling children associated with the school district.” [Exh. 4, at 5-6.] But even accepting that clarification, it does not limit itself to recognized categories of unprotected speech and therefore gives school officials virtually unfettered discretion to decide whether (or not) speech violates the standard. *See City of Chicago v. Morales*, 527 U.S. 41, 56–57 (1999) (stating that vague statutes authorize and may even encourage arbitrary and discriminatory enforcement).

4. Both Orders constitute unlawful retaliation against Plaintiff for having engaged in protected online expression.

Ms. Jones is also likely to succeed on the merits of her First Amendment retaliation claims. To establish that claim, she must satisfy three elements: that she engaged in protected conduct; that Defendants took an adverse action against her; and that the adverse action “was taken (at least in part) because of the protected conduct.” *Hardrick v. Huss*, 155 F.4th 518, 525 (6th Cir. 2025) (cleaned up).

Here, it is undisputed that Plaintiff’s social media posts were the reason *why* the Board imposed the adverse actions (the No Trespass Order and Modified No Trespass Order) against her. [Exh. 1; Exh.2; Exh. 4, at 4-5.] So, the only question is whether those posts were “protected” expression. But even crediting Defendant Johnson’s descriptions of

those posts in his discovery responses, those descriptions reveal that those posts do, in fact, consist of fully protected expression.

Specifically, the two posts that pre-date the Dec. 15th No Trespass Order are posts from: (1) Nov. 26, 2025 post [Exh. 4, at 4-5; Exh. 5, at 1], and (2) Dec. 13, 2025 post. [Exh. 4, at 4-5; Exh. 5, at 2.] As to the former, Defendant Johnson describes the purportedly improper post as: “[Plaintiff] shared photographs from a middle school basketball game and criticized the physical appearance of minor student depicted in the photographs. The comments to the Facebook post referenced said student’s medical condition and ability to participate in athletics, which Ms. Jones further criticized.” [Exh. 4, at 5.] But the supposed criticism of the student’s appearance consists of: “Not sure why a middle schooler with a full blown mustache is looking like he is going to pummel our kids in this one picture . . .” And the “further criticism” Plaintiff offered in response to a poster (who, himself, publicly disclosed the student’s former and current medical conditions) consisted of: “well praise the Lord ... yall act like because he had it [the former diagnosis] as a child nobody can even mention his existence! Well ooooookkkkkk participation trophy goes to yall!!! Looks like he really has some issues for such a contact sport if he’s so fragile should he be playing????? Wooooow get a grip dude!!!” [Exh. 5, at 1.]

And with respect to the Dec. 13th post, Defendant Johnson describes the improper nature of that post as that Plaintiff “included commentary criticizing an identifiable minor student’s display of effort and passion during the game.” [Exh. 4, at 5; Exh. 5, at 2.] A review of that post reveals that her comments were: “His mommy said, ‘Just go get the ball Son,’ and he said, ‘Say less Ma.’ Look at this boy out there acting like this tip-off is for a college scholarship, a puppy, and the last slice of pizza. This child was born dramatic, and

I support it fully. Moms...whose kid acts like every game is the NBA Finals?” [Exh. 5, at 2.]

Nothing about either of those posts, or Plaintiff’s comments or jokes associated with them, places them outside the protection of the First Amendment *even if* school officials (or others) find them in poor taste or otherwise offensive. *See, e.g., Bailey v. Iles*, 87 F.4th 275, 283 (5th Cir. 2023) (“The First Amendment’s protections apply to jokes, parodies, satire, and the like, whether clever or in poor taste.”) (citing *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 54 (1988)).

The same is true with respect to the third post identified by Defendant Johnson. [Exh. 4, at 5.] That post—dated January 25, 2026—occurred *after* the issuance of the No Trespass Order but *before* issuance of the Modified No Trespass Order.⁶ Defendant Johnson summarized it as: “Ms. Jones posted AI-edited photographs of identifiable minor students, which depicted certain students as having deformities or additional limbs.” [*Id.*] That post, however, clearly identified Ms. Jones’s experimentation with computer editing. And the claimed “deformities” referenced by Defendant Johnson consist of an obvious AI-hallucinated third arm on a jumping basketball player and another player with six fingers. But Ms. Jones included the following statement along with the photographs: “Just a taste of what’s to come for Jenkins, Letcher, Dorton, Whitesburg and Hindman ... Yall, are a joy to watch, every year...I hope everybody likes the pics! *I have been working on my 3D editing skills!!!!*” [Exh. 5, at 3 (emphasis added).] Under these circumstances, there can be

⁶ Notably, even though Defendant Johnson identified it as one of the posts animating the issuance of the Modified No Trespass Order [Exh. 4, at 4-5], he elsewhere stated that the Board modified the initial No Trespass Order because of “Ms. Jones’s compliance thus far” with it. [*Id.* at 6-7.]

no reasonable dispute that the photo and accompanying commentary, posted for non-commercial purposes, are fully protected by the First Amendment. *See, e.g., Sandmann v. WP Co. LLC*, 401 F. Supp. 3d 781, 789 (E.D. Ky. 2019) (“to satisfy the first element of a defamation claim [under Ky. law], the language in question must ‘be both false *and* defamatory. A statement that is false, but not defamatory is not actionable”) (quoting *Dermody v. Presbyterian Church U.S.A.*, 530 S.W.3d 467, 472-73 (Ky. Ct. App. 2017)).

C. Plaintiff Will Suffer Irreparable Harm Absent Injunctive Relief

Both the No Trespass Order and the Modified No Trespass Order represent an ongoing and irreparable harm to Plaintiff’s fundamental First Amendment freedoms by not only withholding access to property and events (at times when they are generally open to the public) for having engaged in constitutionally protected expression, but also by chilling her future expression lest she be subjected to even more access restrictions (up to and including the No Trespass Order’s blanket and unqualified ban). The United States Supreme Court and the Sixth Circuit Court of Appeals recognize that the violation of First Amendment freedoms constitutes an irreparable injury sufficient to justify the grant of a preliminary injunction. *Connection Distributing v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998) (noting “that ‘loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparably injury”) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *Overstreet v. Lexington-Fayette Urban County Government*, 305 F.3d 566, 578 (6th Cir. 2002). Simply put, the violation of an individual’s constitutional rights alone is sufficient to establish irreparable harm.

Moreover, the harm in this case is not merely speculative. As noted above, without the preliminary injunction the Plaintiff will, once again, be unable to attend: her children’s

extra-curricular events on property owned or leased by JISD (as well as activities sponsored for or by JISD) during times that are otherwise open to the general public under the threat of criminal prosecution for criminal trespassing. [Exh. 1; Exh. 2; *see also* Exh. 3 (agreeing to Temporary, Limited Cessation of Modified No Trespass Order but stating that it applies “[f]or the remainder of this school year and summer only”).] Plaintiff need not subject herself to criminal prosecution to establish irreparable harm under these circumstances. *See, e.g., Abbott v. Pastides*, 900 F.3d 160, 176 (4th Cir. 2018) (noting two ways in “litigants may establish the requisite ongoing injury when seeking to enjoin government policies alleged to violate the First Amendment[—f]irst, they may show that they intend to engage in conduct at least arguably protected by the First Amendment but also proscribed by the policy they wish to challenge, and that there is a “credible threat” that the policy will be enforced against them when they do so [and s]econd, they may refrain from exposing themselves to sanctions under the policy, instead making a sufficient showing of self-censorship – establishing, that is, a chilling effect on their free expression that is objectively reasonable.”) (cleaned up).

D. The Balance Of Hardships And Public Interest Favor Granting An Injunction.

The last two factors to consider in weighing whether to grant a preliminary injunction are: balance of hardships and whether the public interest is served. But these two factors “merge when the government is the defendant.” *Commonwealth v. Biden*, 57 F.4th 545, 556 (6th Cir. 2023) (citing *Wilson v. Williams*, 961 F.3d 829, 844 (6th Cir. 2020)). And where, as here, the plaintiff establishes “a substantial likelihood of success on the merits and imminent irreparable injuries,” the government defendant “faces a high hurdle in showing that these factors warrant withholding relief.” *Id.*

The balance of hardships here strongly favors Plaintiff here because, absent an injunction that blocks enforcement of the No Trespass Order and Modified No Trespass Order, enforcement of the Modified No Trespass Order will resume at the commencement of the 2026-2027 school year when the Temporary, Limited Cessation of Modified No Trespass Order expires. [Exh. 3.] Conversely, the Board will not suffer any harm from abiding by its constitutional duty to refrain from infringing on individuals' First Amendment freedoms.

Moreover, the issuance of an injunction in this case is in the public interest because “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *G & V Lounge v. Michigan Liquor Control Com’n*, 23 F.3d 1071, 1079 (6th Cir. 1994); *Dayton Area Visually Impaired Persons, Inc. v. Fisher*, 70 F.3d 1474, 1490 (6th Cir. 1995) (public “as a whole” has interest in protecting constitutional liberties).

II. NO BOND SHOULD BE REQUIRED FOR THE INJUNCTION.

Finally, Fed. R. Civ. P. 65(c) provides that a “court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” But as has been noted in this district, “[w]hile Rule 65 appears to require a security bond, the Court has discretion over whether to require the posting of security.” *Tennessee v. Cardona*, 737 F. Supp. 3d 510, 571 (E.D. Ky. 2024) (citing *Moltan Co. v. Eagle-Picher Indus., Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995)).

And where, as here, a plaintiff establishes a substantial likelihood of success on the merits and the public interest favors granting the requested injunctive relief, courts often

decline to require a security under Rule 65(c). *See, e.g., id.* at 571 (“the Court concludes that no security is necessary in this matter due, in large part, to the strength of the plaintiffs’ case and the strong public interest favoring the plaintiffs’ positions.”); *Parton v. Parton*, 2022 WL 2292984, at *9 (E.D. Ky. June 24, 2022) (in declining to require bond under Rule 65(c), noting that the “strength of the movant’s case and the public interest involved can weigh against requiring a bond.”); *Dinter v. Miremami*, 627 F. Supp. 3d 726, 734 (E.D. Ky. 2022) (declining to require bond where TRO factors favor granting it and where plaintiff proceeding *in forma pauperis*); *Joseph v. Joseph*, 2015 WL 13861416, at *3 (E.D. Mich. Sept. 21, 2015). As in those instances, no bond should be required here.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant this Motion for a Preliminary Injunction.

Respectfully submitted,

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CERTIFICATE

This is to certify that a copy of the foregoing notice was filed electronically on May 26, 2026 *via* the Court's CM-ECF system, which will send electronic notice to the following:

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