

1 KRISTA L. BAUGHMAN (SBN: 264600)

[kbaughman@dhillonlaw.com](mailto:kbaughman@dhillonlaw.com)

2 KARIN M. SWEIGART (SBN: 247462)

[KSweigart@dhillonlaw.com](mailto:KSweigart@dhillonlaw.com)

3 DHILLON LAW GROUP INC.

4 177 Post Street, Suite 700

San Francisco, California 94108

5 Telephone: (415) 433-1700

6 Facsimile: (415) 520-6593

7 Harmeet K. Dhillon

[harmmeet@libertycenter.org](mailto:harmmeet@libertycenter.org)

8 CENTER FOR AMERICAN LIBERTY

26 1311 S. Main Street, Suite 207

9 Mount Airy, MD 21771

10 Attorneys for Plaintiff J.A.

11  
12 **UNITED STATES DISTRICT COURT**  
13 **SOUTHERN DISTRICT OF CALIFORNIA**  
14 **SAN DIEGO DIVISION**

15 J.A., a minor, by and through his legal  
16 guardians, D.A., an individual, and J.A. an  
17 individual,

18 Plaintiff,

19 vs.

20 JEFF LUNA, in his personal and official  
21 capacity as Principal of Muirlands Middle  
22 School; DR. LAMONT JACKSON, in his  
23 official capacity as Superintendent of San  
24 Diego Unified School District; DOES 1-10,  
25 in their personal capacity,

26 Defendants.

Case Number: '24CV0112 LL AHG

**PLAINTIFF'S NOTICE OF MOTION AND  
MOTION FOR PRELIMINARY INJUNCTION;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

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**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that Plaintiff J.A., through counsel, will and hereby applies to this Court under Fed. R. Civ. P. 65 for a preliminary injunction order against Principal Jeff Luna and Dr. Lamont Jackson as follows:

1. Preliminarily enjoin Defendants and their officers, agents, servants, employees, attorneys, and other persons who are in active concert with any of them from any continuing punishment or sanction against J.A. on account of his constitutionally protected speech, including by removing J.A.’s sporting-event ban and expunging from J.A.’s school records all references to the incident at issue in this lawsuit.

This Application is made on the grounds that Plaintiff is likely to succeed on the merits of this case, he will suffer irreparable harm without injunctive relief, the balance of equities tips sharply in his favor, and the relief sought is in the public interest.

Good cause exists to issue the requested Order to preserve Plaintiff’s rights under the Constitution of the United States and to avoid irreparable harm to those rights. This Application is supported by the accompanying Memorandum of Points and Authorities, by Plaintiff’s Verified Complaint, and all exhibits attached thereto, and by such further argument and evidence that may be adduced at any hearing on this matter or by which the Court may take judicial notice.

Plaintiff requests that the Court waive any bond requirement because enjoining Defendants from further punishment of Plaintiff for his protected speech will not financially impact Defendants.

Respectfully submitted,

Date: January 16, 2024

**DHILLON LAW GROUP INC.**

*/s/ Karin Sweigart*

By: \_\_\_\_\_  
KRISTA L. BAUGHMAN  
KARIN M. SWEIGART  
**Attorneys for Plaintiff**



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 On personal time and at a non-school event, middle school student Plaintiff J.A., wore a common  
4 face paint design called Warrior eye black to express spirit and support at a high school football game.  
5 J.A.’s Warrior eye black caused no disruption at the game, or after the game at Muirlands Middle School  
6 (“Muirlands”). Nevertheless, Defendant Principal Jeff Luna (“Luna”), without following due process  
7 requirements mandated by both California law and the Constitution, punished J.A. for his protected  
8 speech, deeming J.A.’s Warrior eye black to be an incidence of “blackface”—the racist act of  
9 purposefully darkening one’s face with the intent to mimic or mock Black people.

10 Despite the utter and complete lack of evidence supporting Luna’s claims that J.A. wore  
11 blackface, Luna then took these outrageous allegations a step further, punishing J.A. by way of hate  
12 crime statutes which are reserved for threats of violence to another person with the purpose of  
13 intentionally invading legally protected interests. This determination that J.A. was guilty of having  
14 participated in acts akin to a hate crime was then rubber stamped by the San Diego Unified School  
15 District’s (“SDUSD”) office of placement and appeals, again without Principal Luna or the District  
16 providing *any* supporting evidence to back up their allegations. As a result, J.A. was suspended from  
17 school for two days, suspended from District sporting events for the rest of the school year, and now  
18 has a suspension for “hate violence” on his permanent student records.

19 As shown below, J.A. has a reasonable probability of success on the merits, he will be  
20 irreparably harmed by denial of the relief, the equities tip in his favor, and granting preliminary relief is  
21 in the public interest. This Court should grant J.A.’s request for a preliminary injunction preventing the  
22 District from continuing to punish J.A. for his protected speech.

23 **RELEVANT FACTUAL BACKGROUND**

24 J.A. is a thirteen-year-old middle school student at Muirlands Middle School. Verified  
25 Complaint (“Compl.”) ¶15. He has long been a fan of a particular style of eye black often worn by  
26 professional athletes, fans, and even coaches, known as Warrior eye black. Compl. ¶¶9–14. Before the  
27 events at issue in this lawsuit, J.A. had worn Warrior eye black at other sporting events, playing  
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1 paintball, and even with friends at a birthday party. Compl. ¶15. No one had ever complained about his  
2 Warrior eye black, which he and his friends refer to as wearing “spikes.” *Id.*

3 On October 13, 2023, J.A. along with a group of friends which happened to predominately  
4 include racial minorities, attended a high school football game at La Jolla High School (“Game”).  
5 Compl. ¶16. The Game was not sponsored by or affiliated with Muirlands Middle School. Compl. ¶17.  
6 J.A. observed that about half the people in the crowd, approximately one hundred people, were wearing  
7 some kind of face paint, and many were passing around paint or eye black so that other fans could paint  
8 their faces. Compl. ¶18. Several other Muirlands students in attendance were also wearing face paint.  
9 *Id.*

10 During the last fifteen to thirty minutes of the game, one of J.A.’s friends, who happens to be  
11 Hispanic, painted J.A.’s face in the Warrior eye black style. Compl. ¶20. J.A.’s intent in putting on the  
12 Warrior eye black was to show spirit at the Game along with the other fans in attendance. Compl. ¶22.  
13 Not one person at the game expressed to J.A. that they were offended by his Warrior eye black, including  
14 J.A.’s Black friends, a Black security guard who complimented J.A.’s for his eye black, or other fans.  
15 Compl. ¶21. J.A. never used racial slurs or made racial comments at the game. Compl. ¶23. He never  
16 threatened violence at the game to anyone. Compl. ¶¶23–24. He was unaware of any disturbances at the  
17 game, and he was not a part of any disturbances. *Id.* J.A. wore the Warrior eye black for between fifteen  
18 and thirty minutes at the Game, and then went home. Compl. ¶¶19–22.

19 At school the next week, between Monday to Wednesday there was no conversation between  
20 students, teachers, or administrators about J.A.’s Warrior eye black the prior Friday. Compl. ¶25. J.A.  
21 was not a part of any disruptions at Muirlands during that time and does not believe that any disruptions  
22 occurred. *Id.* School was normal and uneventful. *Id.*

23 Yet, during the last ten minutes of the school day on Wednesday, Defendant Luna pulled J.A.  
24 out of class for a meeting. Compl. ¶26. Luna told J.A. that J.A. had been accused of wearing blackface  
25 at the Game, and that the high school had received reports that others were yelling racial slurs at the  
26 opposing team and/or their fans. Compl. ¶27. Blackface is the act of intentionally darkening one’s face  
27 to mimic and mock Black people. Compl. ¶22, n.16.

28

1 During this conversation, Luna offered no evidence whatsoever supporting his accusations, even  
2 after J.A. denied having worn blackface, denied making any racial comments at the game, and explained  
3 to Luna that he had been wearing a common eye black design. Compl. ¶¶28, 31. Luna never discussed  
4 any corrective measures with J.A.; J.A. had no idea suspension was even a possibility when he left the  
5 meeting. Compl. ¶30. To this day, J.A. has never been told what evidence Luna might have had (if any)  
6 supporting the allegations that J.A. was in blackface or committed a hate crime by threatening violence  
7 on a protected class. Thus J.A. was never provided with an opportunity to refute the evidence on which  
8 Luna, and later the SDUSD office of placement and appeals, based its decision. Compl. ¶31.

9 J.A.'s parents met with Luna the next day. Compl. ¶36. From the beginning of the meeting, it  
10 was clear to J.A.'s parents that Luna had already made up his mind to suspend J.A. and ban him from  
11 all District sporting events for the rest of the school year, regardless of the evidence. *Id.* Luna had no  
12 interest in hearing any evidence that might prevent him from reaching his predetermined outcome. *Id.*  
13 J.A.'s parents showed Luna the picture of J.A. at the game, see Compl. ¶21, and asked Luna if that was  
14 a picture of blackface. Compl. ¶37. Luna said it was. *Id.* J.A.'s parents showed Luna several pictures of  
15 professional athletes wearing Warrior eye black, and Luna said it was blackface when J.A. wore it  
16 because he was not playing in the game. *Id.* J.A.'s parents repeatedly asked what evidence Luna had  
17 supporting his allegations which Luna deflected or flatly refused to answer. Compl. ¶¶ 38–40.

18 Luna heard the complaints against J.A. third hand, never having spoken directly to the  
19 complainants to gather evidence. Compl. ¶34. Luna never interviewed any of the students J.A. was with  
20 that night to try to glean J.A.'s intent. Compl. ¶40. Luna never provided evidence that J.A. put on  
21 Warrior eye black with an intent to mimic or mock Black people. Compl. ¶38. Luna never provided  
22 evidence that J.A. had threatened violence to anyone. Compl. ¶¶23–24. Luna never provided evidence  
23 that J.A.'s warrior eye black the prior Friday evening had caused a disruption at Muirlands. Compl. ¶42.  
24 And Luna never talked to J.A.'s parents about other corrective measures short of suspension. Compl.  
25 ¶41.

26 J.A.'s parents were not provided with the suspension report until the following Monday. Compl.  
27 ¶47. On the suspension report, it stated J.A. had been suspended for a “hate incident,” which is reserved  
28 for when a pupil has “caused, attempted to cause, or participated in an act of, hate violence.” California

1 Education Code § 48900.3. Compl. ¶51. “Hate violence” is a reference to California penal Hate Crime  
2 statutes that require actual or threatened violence with the intent to invade the constitutionally protected  
3 rights of another because of the victim’s protected characteristic. Compl. ¶52. J.A. appealed the  
4 suspension, only to have the SDUSD office of placement and appeals affirm the appeal without  
5 explaining the facts or evidence supporting the decision. Compl. ¶57.

6 J.A. suffers from ongoing harm because of these events. He has been banned from attending any  
7 District sporting events for the rest of the school year. Compl. ¶¶58–61. He is shortly going to be  
8 applying to high schools, and the fact that his school records include a suspension for having committed  
9 an act of hate violence might negatively impact his chances of getting into the school of his choice.  
10 Compl. ¶60. Further, J.A. bears the stigma of having been found guilty of having violated the rights of  
11 racial minorities by intentionally participating in an act of “hate violence,” when the truth is he simply  
12 joined with a group of other fans in supporting the local football team. *Id.*

### 13 LEGAL STANDARD

14 “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the  
15 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance  
16 of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Res. Def.*  
17 *Council, Inc.*, 555 U.S. 7, 20 (2008). For the reasons discussed below, Plaintiff’s application meets these  
18 standards.

### 19 ARGUMENT

#### 20 I. PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS

##### 21 A. Luna and the Doe Defendants violated J.A.’s First Amendment rights by punishing 22 him for his off-campus speech which did not target a member of the school 23 community or cause a substantial disruption at the school.

24 Applicable to the States through the Fourteenth Amendment, the First Amendment prohibits the  
25 government from “abridging the freedom of speech.” U.S. CONST. amend. I; *Grosjean v. Am. Press*  
26 *Co.*, 297 U.S. 233, 243 (1936). The Free Speech Clause protects “the right to speak freely and the right  
27 to refrain from speaking at all.” *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). Expressive conduct that  
28 includes communicative elements is protected by the First Amendment. *Tinker v. Des Moines Indep.*

1 *Cnty. School Dist.*, 393 U.S. 503, 505 (1969). Examples of expressive conduct protected by the First  
2 Amendment include tattooing, *Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1060 (9th Cir.  
3 2010), dance, *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, (1981), and painting, *White v. City of*  
4 *Sparks*, 500 F.3d 953, 956 (9th Cir. 2007).

5 Students do not shed their freedom of speech or expression at the schoolhouse gate. *Tinker v.*  
6 *Des Moines Indep. Cmty. School Dist.*, 393 U.S. 503, 506 (1969). The Supreme Court has outlined four  
7 categories of student speech that schools may regulate: (1) indecent, offensively lewd, or vulgar speech  
8 uttered during a school assembly on school grounds, *see Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S.  
9 675, 683–85 (1986); (2) speech during school or at a school-sponsored event that promote illegal drug  
10 use, *see Morse v. Frederick*, 551 U.S. 393, 408 (2007); (3) “speech in school-sponsored expressive  
11 activities” if the schools’ “actions are reasonably related to legitimate pedagogical concerns,” *see*  
12 *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273, (1988); and (4) on-campus and some off-campus  
13 speech that “materially disrupts classwork or involves substantial disorder or invasions of the rights of  
14 others,” *see Tinker*, 393 U.S. at 513; *Mahanoy Area Sch. Dist. v. B.L. ex rel. Levy*, 594 U.S. —, 141  
15 S. Ct. 2038, 2045 (2021). The Supreme Court’s recent decision in *Mahanoy* extensively discussed the  
16 limits on public schools’ abilities to regulate off campus speech. *Id.*

17 In *Mahanoy*, after not making the varsity cheerleading team, a student made a vulgar snapchat  
18 post criticizing the school and the team. *Mahanoy*, 141 S. Ct. at 2042–2043. The student made the post  
19 outside school hours and off school grounds. *Id.* at 2043. After discovering the post, the school  
20 suspended the student from junior varsity cheerleading. *Id.* The Supreme Court held that the suspension  
21 violated the student’s free-speech rights. *Id.* at 2048. The Court noted that schools do not have the same  
22 authority to regulate off-campus speech as they do on-campus speech. *Id.* at 2045. And in *Mahanoy* the  
23 student’s posts appeared “outside of school hours from a location outside of the school,” “did not  
24 identify the school...or target any member of the school community,” and the student transmitted the  
25 speech to a private group of friends. *Id.* at 2047. The Court reasoned that the school did not stand *in*  
26 *loco parentis* in those circumstances, and the school failed to show “‘substantial disruption’ of a school  
27 activity or threatened harm to the rights of others that could justify the school’s action,” with the Court  
28 noting that “substantial disruption” is a “demanding” standard that requires “something more than a

1 mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular  
2 viewpoint.” *Id.* at 2047–48 (quoting *Tinker*, 393 U.S. at 509). Other courts determining what constitutes  
3 a substantial disruption have held that receiving complaints, *Cl.G on behalf of C.G. v. Siegfried*, 38  
4 F.4th 1270, 1278 (10th Cir. 2022), news coverage, *id.*, and student anger and offense, *Heward v. Board*  
5 *of Education of Anne Arundel County*, No. 1:23-CV-00195-ELH, 2023 WL 6381498, at \*41 (D. Md.  
6 Sept. 29, 2023), are not enough.

7       Following *Mahanoy*, the Ninth Circuit clarified that its three-factor “sufficient nexus” test  
8 outlined in *McNeil v. Sherwood Sch. District 88J*, 918 F.3d 700, 707 (9th Cir. 2019), remains applicable  
9 to determine “whether off campus speech bears a sufficient nexus to the school to allow regulation by  
10 the school district.” *Chen through Chen v. Albany Unified Sch. District*, 56 F.4th 708, 720 (9th Cir.  
11 2022). “This test is flexible and fact-specific, but the relevant considerations will include (1) the degree  
12 and likelihood of harm to the school caused or augured by the speech, (2) whether it was reasonably  
13 foreseeable that the speech would reach and impact the school, and (3) the relation between the content  
14 and context of the speech and the school.” *Id.*

15       Whether reviewed through the reasoning of *Mahanoy* or the reasoning of *Chen*, Defendants’  
16 violation of J.A.’s First Amendment rights is clear. J.A.’s Warrior eye black was expressive conduct  
17 intended to communicate spirit at the high school football game. Like *Mahanoy*, J.A.’s speech occurred  
18 outside of school hours and away from the Muirlands Middle School campus. J.A.’s speech did not  
19 identify Muirlands Middle School or target any member of the school community. And J.A.’s speech  
20 was not broadcast in a way that it could be intended to reach the Muirlands Middle School campus—  
21 J.A. washed off his Warrior eye black before he came to school on Monday. Muirlands Middle School  
22 was not standing *in loco parentis* at the high school football game as school personnel were not  
23 chaperoning the event and J.A. attended the game under the supervision of another adult. Nor was there  
24 any disruption at Muirlands let alone a “substantial disruption” of school activity, and J.A. made no  
25 threats to harm the rights of others.

26       Turning to *Chen*, J.A.’s speech did not harm Muirlands Middle School. As stated, there was no  
27 disruption or even mention of J.A.’s Warrior eye black Monday to Wednesday after the football game.  
28 It was not reasonably foreseeable that the speech would reach or impact the school as J.A. was only



1 wearing the Warrior eye black for between fifteen and thirty minutes at an off-campus event, and the  
2 eye black was washed off before school on Monday morning. And there was no relation between the  
3 content and context of J.A. wearing Warrior eye black and the school. J.A. wore Warrior eye black to  
4 show spirit at the football game along with many other fans. The content of the speech (expressive  
5 conduct showing support at the football game), and the context of the speech (a football game for a  
6 school which J.A. did not attend) had no relation to Muirlands Middle School.

7 J.A. exercised his First Amendment right of free expression when he donned Warrior eye black  
8 to cheer at a high school football game. Luna and the Doe defendants violated those rights when they  
9 punished J.A. for his off-campus speech which did not cause a substantial disruption at the school and  
10 did not threaten to harm the rights of anyone.

11 **B. Luna violated J.A.’s Fourteenth Amendment due process rights by not telling J.A. the**  
12 **evidence against him or giving J.A. an opportunity to respond to that evidence.**

13 The Fourteenth Amendment forbids the State from depriving “any person of life, liberty, or  
14 property, without due process of law.” A student’s right to a public education is a property interest  
15 protected by the Due Process Clause. *Goss v. Lopez*, 419 U.S. 565, 576 (1975). “Expressive activity”  
16 also constitutes a constitutionally protected “liberty interest” for purposes of procedural due process.  
17 *Vasquez v. Rackauckas*, 734 F.3d 1025, 1045 (9th Cir. 2013).

18 The Constitution only requires informal procedures when schools suspend students for ten days  
19 or fewer. “[T]he student [must] be given oral or written notice of the charges against him and, if he  
20 denies them, an explanation of the evidence the authorities have and an opportunity to present his side  
21 of the story.” *Goss v. Lopez*, 419 U.S. 565, 581 (1975). It is required “only that, in being given an  
22 opportunity to explain his version of the facts at this discussion, the student first be told what he is  
23 accused of doing and what the basis of the accusation is.” *Id.* at 582.

24 Despite J.A.’s numerous requests that the school disclose the evidentiary basis for its accusation  
25 that J.A. “caused, attempted to cause, or participated in an act of hate violence” when he wore Warrior  
26 eye black to cheer at the Game, J.A. and his parents remain in the dark to this day. Luna never explained  
27 the basis for his decision, even in response J.A.’s numerous pleas for information. Similarly, despite  
28 being given a detailed list of the factual inconsistencies with Luna’s decision, the SDUSD office of

1 placement and appeals also denied J.A.’s appeal without ever providing an evidentiary basis for the  
 2 conclusion that J.A. engaged in acts amounting to a hate crime. J.A. was never informed of what (if  
 3 any) evidence the authorities had, and therefore never had the opportunity to present conflicting  
 4 evidence. Thus, Luna and the SDUSD office of placement and appeals violated J.A.’s procedural due  
 5 process rights.

6 **C. Luna and the SDUSD office of placement and appeals violated J.A.’s Fourteenth**  
 7 **Amendment equal protection rights by intentionally treating J.A. differently from**  
 8 **similarly situated football fans and irrationally singling him out for punishment.**

9 “The purpose of the equal protection clause of the Fourteenth Amendment is to secure every  
 10 person within the State’s jurisdiction against intentional and arbitrary discrimination, whether  
 11 occasioned by express terms of a statute or by its improper execution through duly constituted agents.”  
 12 *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 445 (1923). The Equal Protection Clause gives  
 13 rise to a cause of action on behalf of a “class of one” “where the plaintiff alleges that [he] has been  
 14 intentionally treated differently from others similarly situated and that there is no rational basis for the  
 15 difference in treatment.” *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). Where an equal  
 16 protection challenge is based on “selective enforcement of valid laws,” a plaintiff can show that  
 17 defendants’ rational basis for selectively enforcing the law is a pretext for “an impermissible motive.”  
 18 *Squaw Valley Dev. Co. v. Goldberg*, 375 F.3d 936, 944 (9th Cir. 2004). To determine whether a plaintiff  
 19 is “similarly situated” to others in the class-of-one context, the Ninth Circuit has held that “a class-of-  
 20 one plaintiff must be similarly situated to the proposed comparator in all material respects.”  
 21 *SmileDirectClub, LLC v. Tippins*, 31 F.4th 1110, 1123 (9th Cir. 2022).

22 Here, Luna intentionally treated J.A. differently than other similarly situated football fans,  
 23 without a rational basis. *Gerhart v. Lake Cnty.*, 367 F.3d 1013, 1022 (9th Cir. 2011). About half the  
 24 crowd at the football game was wearing some kind of face paint, and this included other Muirlands  
 25 students. Compl. ¶18, ¶100. Fans were passing around face paint and eye black so that they could paint  
 26 one another’s faces. *Id.* J.A.’s friend painted J.A.’s face. Compl. ¶20. Like the other fans at the game,  
 27 J.A.’s intent in allowing Warrior eye black to be applied to his face was to show spirit and cheer for the  
 28 team. Compl. ¶22. J.A. did not make racial comments or use racial slurs to the other team or to other  
 fans at the game. Compl. ¶23. J.A. did not cause and was not involved in any disturbances at the game.

1 *Id.* J.A. and the other fans at the game wearing face paint or eye black are similarly situated in all  
2 material respects.

3 Luna and the Doe defendants had no rational basis for treating J.A. differently than the other  
4 Muirlands students at the game wearing face paint and eye black. Further, Luna had an impermissible  
5 motive in punishing J.A. for his innocent activity: to make himself look like he was taking a tough  
6 stance on racism to advance his own reputation and career prospects. Compl. ¶45. He accused and  
7 punished an innocent child for “causing, attempting to cause, or participating in an act of hate  
8 violence”—defined as intending by threats of violence to invade interests protected by constitutional or  
9 statutory rights—with zero evidence to support the allegation. The record amply reflects that there was  
10 no rational basis for Luna’s claims.

## 11 **II. PLAINTIFF WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF** 12 **PRELIMINARY RELIEF**

13 “Irreparable harm is relatively easy to establish in a First Amendment case,” as a party need only  
14 “demonstrate[] the existence of a colorable First Amendment claim.” *CTIA - The Wireless Ass’n v. City*  
15 *of Berkeley*, 928 F.3d 832, 851 (9th Cir. 2019) (cleaned up). This is because “[t]he loss of First  
16 Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury’  
17 for purposes of the issuance of a preliminary injunction.” *Coll. Republicans at San Francisco State*  
18 *University v. Reed*, 523 F. Supp. 2d 1005, 1011 (N.D. Cal. 2007) (citing *Sammartano v. First Jud. Dist.*  
19 *Ct.*, 303 F.3d 959, 973-74 (9th Cir. 2002), in turn citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).  
20 Thus, if a plaintiff presents a colorable First Amendment claim, irreparable harm is presumed, and no  
21 further proof is needed for plaintiff to meet his burden on this element. *Warsoldier v. Woodford*, 418  
22 F.3d 989, 1001–02 (9th Cir. 2005)

23 As shown above, Plaintiff has a colorable First Amendment claim. *See* Section I. The  
24 Defendants’ continued punishment of J.A. for his protected speech—both keeping the suspension for  
25 an act of “hate violence” in J.A.’s permanent student records and preventing him from attending District  
26 sporting events—is an ongoing First Amendment injury. As an eighth grader, J.A. has a small window  
27 of time to apply for high school. Compl. ¶60. It is J.A.’s parents’ understanding that high schools require  
28 copies of student records prior to enrollment. *Id.* If the suspension is not removed from his school

1 records, it could impact his acceptance into the school of his choice. *Id.* Further, J.A. wants to continue  
2 to go to games and cheer with his friends, many of whom will be attending different high schools next  
3 year. Compl. ¶61. He cannot get this time back with his friends. *Id.*

### 4 **III. THE BALANCE OF HARDSHIPS AND PUBLIC INTEREST FAVORS PLAINTIFF**

5 When government actors are involved, the final two factors—the balance of hardships and the  
6 public interest—are considered together. *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018). “Courts  
7 ... have consistently recognized the significant public interest in upholding First Amendment  
8 principles.” *Sammartano*, 303 F.3d at 974; *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d  
9 817, 838 (9th Cir. 2020) (cleaned up) (“It is always in the public interest to prevent the violation of a  
10 party's constitutional rights.”). Allowing the suspension to remain on J.A.’s student records could  
11 prevent him from getting into the high school of his choice. This is an extreme hardship on a child, and  
12 one that could have a long-term effect on his future. Compl. ¶60. It is in the public interest to protect  
13 the rights and future of minor children like J.A. It is also no hardship on Defendants to expunge their  
14 unconstitutional suspension from J.A.’s records and allow him to attend sporting events. And there is a  
15 strong public interest in not allowing school employees who have oversight of children to continue to  
16 scapegoat an innocent child as a racist.

### 17 **IV. THE COURT SHOULD DISPENSE WITH ANY BOND REQUIREMENT**

18 Rule 65(c) of the Federal Rules of Civil Procedure provides that a preliminary injunction may  
19 be issued “only if the movant gives security in an amount that the court considers proper to pay the costs  
20 and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ.  
21 P. 65(c). However, the Court has discretion as to whether any security is required and, if so, its amount.  
22 *See, e.g., Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003).

23 Plaintiff requests that the Court waive any bond requirement because enjoining Defendants who  
24 punish an innocent child in violation of the Constitution will not financially affect Defendants. A bond  
25 would, however, be burdensome on Plaintiff. Ample case law supports Plaintiff’s position on analogous  
26 facts. *See, e.g., Bible Club v. Placentia-Yorba Linda School Dist.*, 573 F. Supp. 2d 1291, n. 6 (C.D. Cal.  
27 2008) (waiving requirement of student group to post a bond where case involved “the probable violation  
28 of [the club’s] First Amendment rights” and minimal damages to the District of issuing injunction);

1 *citing Dr. John's, Inc. v. Sioux City*, 305 F. Supp. 2d 1022, 1043-44 (N.D. Iowa 2004) (“requiring a  
2 bond to issue before enjoining potentially unconstitutional conduct by a governmental entity simply  
3 seems inappropriate, because the rights potentially impinged by the governmental entity’s actions are  
4 of such gravity that protection of those rights should not be contingent upon an ability to pay.”) The  
5 Court should waive Plaintiff’s bond requirement here.

6 **CONCLUSION**

7 For the above reasons, Plaintiff requests that the Court grant Plaintiff’s motion for a preliminary  
8 injunction as follows:

- 9 1. Preliminarily and permanently enjoin Defendants and their officers, agents, servants, employees,  
10 attorneys, and other persons who are in active concert with any of them from any continuing  
11 punishment or sanction against J.A. on account of his constitutionally protected speech,  
12 including removing J.A.’s sporting-event ban and expunging from J.A.’s school records all  
13 references to the incident in question.

14 Such relief is necessary to prevent Defendants from further violating Plaintiff’s constitutional  
15 rights, pending trial on the merits of Plaintiff’s claims.

16  
17 Respectfully submitted,

18 Date: January 16, 2024

**DHILLON LAW GROUP INC.**

*/s/ Karin Sweigart*

19  
20 By: \_\_\_\_\_

KRISTA L. BAUGHMAN

KARIN M. SWEIGART

**Attorneys for Plaintiff**