THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

VIVIAN GERAGHTY,

Plaintiff,

v.

JACKSON LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, et al.,

Defendants.

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Case No. 5:22-cv-2237

Oral Argument Requested

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

INTRODUCTION

"From courts to schoolrooms," controversy surrounding the nature of human identity, the relationship between sex and gender, and "the use of gender-specific titles and pronouns has produced a passionate political and social debate." *Meriwether v. Hartop*, 992 F.3d 492, 508 (6th Cir. 2021). Plaintiff Vivian Geraghty, an English teacher in Jackson Local School District ("the District"), took a position on this issue. Compl. at ¶¶ 58–62. Within two hours of learning that Ms. Geraghty's religion required her not to participate in two young students' "social transition" by using names and pronouns that are inconsistent with the students' sex, Defendants handed her a laptop and forced her to write her resignation letter. *Id.* at ¶¶ 81–83.

Ms. Geraghty never incurred any complaints from students. *Id.* at ¶ 31. She never sought to express her own views on the subject in school. *Id.* at ¶ 44. But to act consistent with her conscience and to express her own views outside school, Ms. Geraghty has to refrain from participating in a child's social transition in any setting—whether in school or anywhere else. *Id.* at ¶¶ 44–45, 61. She cannot use her words to communicate that a child has transitioned from one sex or gender to another, because it is not true and endangers that child's wellbeing. *Id.* at ¶ 60. But Defendants ordered Ms. Geraghty to speak their own preferred message validating her students' social transition, then punished her for remaining silent. *Id.* at ¶¶ 80–83, 94–96.

The Constitution forbids the state from using the public schools as a tool "to coerce uniformity of sentiment in support of some end thought essential" by the government. *West Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 640 (1943). It protects "the right to differ as to things that touch the heart of the existing order," *id.* at 642, and demands that this protection should extend to public school teachers. "The vigilant protection of constitutional freedoms is nowhere more vital than in the

community of American schools," because a teacher's role is to promote "effective exercise of the rights which are safeguarded by the Bill of Rights" *Shelton v. Tucker*, 364 U.S. 479, 487 (1960) (cleaned up). When the government makes "unwarranted inhibition upon the free spirit of teachers [it] has an unmistakable tendency to chill that free play of the spirit which all teachers ought especially to cultivate and practice." *Id.* (cleaned up).

Defendants have decided that there is only one acceptable position in the ongoing public debate about sex, gender, and human identity, and decreed that Ms. Geraghty must use her words to repeat their message, or be ejected from the public school system. The Constitution forbids this, for "no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *Barnette*, 319 U.S. at 642. To prevent Defendants from dimming this "fixed star in our constitutional constellation" to a "a mere shadow of freedom," Ms. Geraghty brings this motion for a preliminary injunction. *Id.*

SUMMARY OF FACTS

Ms. Geraghty began her teaching career as an English Language Arts teacher in the District in August 2020. Compl. at ¶ 37. She has never been the subject of any student complaints and, until being forced to resign in August 2022, never faced any disciplinary action. *Id.* at ¶ 38.

Ms. Geraghty is a Christian. *Id.* at ¶ 39. Her faith teaches her that all people are created as either male or female—members of distinct, complementary sexes that reflect God's image and design. *Id.* at ¶ 42. Because all people are creatures made in God's image, Ms. Geraghty seeks to treat all people with dignity and respect. *Id.* at ¶ 47. This means that she cannot speak in ways that are unloving, dishonest, or harmful to anyone. *Id.* at ¶¶ 43–44.

Ms. Geraghty also understands that, as a matter of biology, there are only two sexes. *Id.* at ¶ 57. She knows that there are some people who express a gender identity inconsistent with their sex, and that this incongruity may generate distress that, if sufficiently severe, causes a condition called "gender dysphoria." *Id.* at ¶ 111.

One form of treatment for gender dysphoria is called "social transition," and involves addressing the child with a new name and pronouns consistent with the child's gender identity and inconsistent with the child's sex. *Id.* at ¶¶ 52, 109. The express purpose of doing this is to "validate" the new identity. *Id.* at ¶ 52. Thus, "social transition" itself is not a neutral approach. *Id.* Rather, it is an "active intervention" that can have "significant effects on the child or young person in terms of their psychological functioning." *Id.*

Because of the lack of scientific evidence supporting this method of intervention and because her faith instructs her to tell the truth, Ms. Geraghty is unwilling to participate personally in the "active intervention" of social transition for any child, whether in school or outside school. *Id.* at ¶ 56. To communicate that a male child is a female by using "she/her" pronouns, or vice versa, is lying. *Id.* at ¶ 58. This violates Ms. Geraghty's religious beliefs against harming others, because it creates a risk that other mental health issues may be overlooked and increases the risk of irreversible harm from medical or surgical intervention. *Id.* at ¶¶ 56, 118.

Participating in a social transition at school would also prevent Ms. Geraghty from expressing her own views about faith, human identity, sex, and gender outside of school. *Id.* at ¶ 61. Because she maintains that participating in a social transition is harmful and communicates a falsehood, doing so at school would convey one of two things: either Ms. Geraghty is dishonest about her own beliefs, or she is willing to harm children in order to keep her job. *Id.* Neither is true. *Id.*

At the beginning of this school year in August 2022, two students asked Ms. Geraghty to participate in their social transition. *Id.* at ¶ 66. Both asked her to address them with first names that differ from their legal names to signify a gender identity different from their sex. *Id.* One also asked Ms. Geraghty to use pronouns consistent with their new gender identity and inconsistent with their sex. *Id.* Soon after, school counselor Christopher Tracy included Ms. Geraghty on an email to several teachers instructing them to participate in the social transition of these two students. *Id.* at ¶ 67.

Ms. Geraghty sought the advice of her principal, Defendant Carter, hoping to find a way to move forward without violating her beliefs or harming her students. *Id.* at ¶ 68. She visited Defendant Carter on the morning of August 26, 2022 at about 9:30 a.m. *Id.* Less than two hours later, Defendants Carter and Myers forced Ms. Geraghty to resign. *Id.* at ¶¶ 80–83. What happened in that brief timeframe? She simply explained (1) that she could not participate in the students' social transition and (2) that her inability to do so was based in part on her religious beliefs. *Id.* at ¶¶ 71–80. Defendants forced her to resign even though Defendant Carter himself avoids using pronouns to address students that identify as transgender, and without discussing any potential accommodation for Ms. Geraghty or the students. *Id.* at ¶¶ 69, 84–88.

ARGUMENT

Ms. Geraghty is entitled to a preliminary injunction if she shows that (1) she is "likely to succeed on the merits," (2) she "is likely to suffer irreparable harm in the absence of preliminary relief," (3) "the balance of equities tips in [her] favor," and (4) "an injunction is in the public interest." *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (cleaned up). Because all four factors favor Ms. Geraghty, this Court should enter the requested injunction.

I. Ms. Geraghty is likely to show that Defendants unconstitutionally retaliated against her.

Ms. Geraghty's claims assert violations of her constitutional rights. In such cases, the likelihood of success is the most important factor. *See Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998) (in First Amendment cases, "the likelihood of success on the merits often will be the determinative factor"). Ms. Geraghty is likely to succeed in showing that Defendants unconstitutionally retaliated against her.

Retaliation claims have three elements. Ms. Geraghty must show that she (1) "engaged in a constitutionally protected activity," (2) Defendants took "adverse action" against her, and (3) Defendants were "motivated at least in part" by Ms. Geraghty's "exercise of [her] constitutional rights." *Jenkins v. Rock Hill Loc. Sch. Dist.*, 513 F.3d 580, 585–86 (6th Cir. 2008). Ms. Geraghty is likely to succeed in showing she engaged in two forms of constitutionally protected activity (refraining from speaking and exercising her religion) and that Defendants took adverse action against her because of this.

A. Ms. Geraghty exercised her constitutional right to refrain from speaking.

"[T]he right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all." *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). Citizens do not surrender their First Amendment rights when they take a government job. *See Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006) ("public employees do not surrender all their First Amendment rights by reason of their employment"). Instead, an employee's speech is protected if: (1) the employee speaks as a citizen, rather than "pursuant to" her official duties, (2) the employee addresses a "matter of public concern," and (3) the "balance[e]" of the employee's interest versus the employer's interest tips in favor of the employee. *Evans-Marshall v. Bd. of Educ.*, 624 F.3d 332,

338 (6th Cir. 2010) (cleaned up). Ms. Geraghty's inability to participate in students' social transition is constitutionally protected activity because (1) refraining from participating in social transition implicates her interests as a citizen, (2) speech associated with social transition implicates matters of urgent public concern, and (3) Defendants have no interest that could outweigh Ms. Geraghty's.

1. Ms. Geraghty has an interest as a citizen in refraining from speaking and participating in social transition.

Ms. Geraghty's conscience forbids her from using her speech to participate in any child's social transition. Compl. at ¶ 56. She objects to using new names and pronouns to communicate the idea that a specific person has transitioned from one sex or gender to another—both because this communicates a false message and because it is an "active intervention" with risks of real psychological harm. *Id.* at ¶¶ 52, 58. Ms. Geraghty wishes to avoid using her words to participate in a child's social transition on her own time and in her professional life. *Id.* at ¶¶ 44–45, 56, 60–61. Using her words to participate in social transition in any setting—at work, or on her own time—would violate her deeply held beliefs and would affect her ability to express her own views outside work. *Id.* at ¶¶ 60–61. For this reason, being forced to participate in social transition implicates her interests "as a citizen." *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968).

a) Refraining from participation in a social transition is not speech "pursuant to" any official duty.

The Supreme Court has held that, "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline." *Garcetti*, 547 U.S. at 421. The Sixth Circuit has described this as a "threshold inquiry," *Evans-Marshall*, 624 F.3d at 343, and explained that an employee's claim is barred if it stems from "speech [that] was 'pursuant to' the claimant's official duties." *Id.* (quoting *Garcetti*, 547 U.S. at 421).

Ms. Geraghty clears this "threshold inquiry" because none of her claims assert that she was punished for anything she said, at work or anywhere else. Ms. Geraghty did not "*make statements*" at school that led to her punishment, "pursuant to" her official duties, because making statements is what she wants to *avoid*. *Garcetti*, 547 U.S. at 421 (emphasis added). Defendants punished her for declining to say at work things that she would not say anywhere.[1] Compl. at ¶ 56.

The Sixth Circuit's reasoning in *Evans-Marshall* explains why an employee's compelled speech claim is not barred by *Garcetti*. There, a teacher asserted a right to select books for use in her classes that school officials disfavored. *Evans-Marshall*, 624 F.3d at 335–37. The court explained that, under *Garcetti*, the teacher had no affirmative right to spread her own preferred message while carrying out her official duties. *Id.* at 340–41. Such a rule does not burden a public employee's rights because each remains free to speak "on his own time and in his own name, not on the school's time or in its name." *Id.* at 340. As a result, a rule limiting the teacher's ability to spread her own message on the school's time does not burden her free speech rights, since her interests outside of work remain unaffected: "[a]n employee does not lose 'any liberties the employee might have enjoyed as a private citizen' by signing on to work for the government . . . ." *Id.* at 342 (quoting *Garcetti*, 547 U.S. at 422).

---

[1] The fact that her refusal to speak occurred at work does not turn Ms. Geraghty's decision to remain silent into official duty. *See Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2424–25 (2022) (cleaned up) (finding a coach's on-field prayer was not part of his "official duties . . . . Nor is it dispositive that" expression takes place "within the office environment"). Defendants' Policy controls Ms. Geraghty's speech in all her interactions with students both inside and outside the classroom, including during times when "[o]thers working for the District [a]re free to engage briefly in personal speech and activity." *Id.* at 2425. *See also* Compl. at ¶ 93. Ms. Geraghty's silence is not "pursuant to" any official duty. *Kennedy*, 142 S. Ct. at 2424.

Compelled speech, on the other hand, works the opposite way: the employee is seeking to *avoid* saying at work what she would *never* say "on [her] own time." *Id.* at 340. The Supreme Court has recognized that a rule compelling speech in one setting undermines the speaker's ability to communicate the speaker's own message in other settings, because "requir[ing] speakers to affirm in one breath that which they deny in the next" makes the freedom to choose one's message "empty." *Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n of Cal.*, 475 U.S. 1, 16 (1986).

If Ms. Geraghty participates in a social transition at school, she will be unable to communicate her message the same way outside school. Compl. at ¶ 61. Ms. Geraghty believes participating in social transition communicates a false message and is harmful to the child. *Id.* at ¶¶ 58–60. If she tries to communicate her preferred message about social transition outside school while personally participating in social transition at school, she communicates either (1) she is lying about her own views or (2) she is willing to harm children in order to keep a job. *Id.* at ¶ 61. Thus, a rule forcing Ms. Geraghty to participate in social transition at work or anywhere else undermines Ms. Geraghty's ability to speak her own message and remain consistent with her conscience outside work. This forces her to "lose [the] 'liberties [she] might have enjoyed as a private citizen' by signing on to work for the government," which the First Amendment does not allow. *Evans-Marshall*, 624 F.3d at 342 (quoting *Garcetti*, 547 U.S. at 422). Since Ms. Geraghty's interest is in speaking as a citizen and not making "statements pursuant to [her] official duties," *Garcetti*, 547 U.S. at 421, she clears the "threshold inquiry," *Evans-Marshall*, 624 F.3d at 340, and her claims properly invoke the interests she has as a citizen on her "own time." *Id.* at 343.

b) *Garcetti* does not give employers *carte blanche* authority to compel speech under the guise of "official duties."

Ms. Geraghty did not speak pursuant to her official duties because she was forced to resign after not speaking at all. In any event, the First Amendment does not empower the government to "treat[ ] everything teachers . . . say in the workplace as government speech subject to government control." *Kennedy*, 142 S. Ct. at 2425. *Garcetti* clarifies the employee's rights in the context of plainly "lawful" official duties, but it does not *expand* what the government has the authority to require in the first place. *See Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2473 (2018). The "cardinal constitutional command," that "'no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or *force citizens to confess by word or act their faith therein*'" remains undisturbed, and applies with full force to public employees. *Id.* at 2463 (quoting *Barnette*, 319 U.S. at 642).

Consequently, there are some commands the state may not issue, even to employees. The government cannot force teachers to lead students in the pledge of allegiance. *See Russo v. Cent. Sch. Dist. No. 1*, 469 F.2d 623, 633–34 (2d Cir. 1972). It cannot fire teachers for nondisruptive, in-class, expressive religious observance. *See Kennedy*, 142 S. Ct. at 2425 (school cannot "fire a Muslim teacher for wearing a headscarf in the classroom"). It cannot force teachers to disclose their associations, *Shelton*, 364 U.S. at 489–90, or exclude them from public employment because of their past associations. *Weiman v. Updegraff*, 344 U.S. 183, 190–191 (1952).

Here, Defendants are not asking Ms. Geraghty to present curricular material on a topic,[2] or to carry out a "lawful" official duty. *Janus*, 138 S. Ct. at 2473. Rather,

[2] The *Evans-Marshall* court asked, "Could a teacher respond to a principal's insistence that she discuss certain materials by claiming that it improperly *compels* speech?" 624 F.3d at 341. The court assumes the answer is "no," but this does not

they ordered her to take one view on a matter of public concern and *apply* it *as true* to specific students through active participation in their social transition. This move—making one view of sex, gender, and human identity the only acceptable view in public school—is an attempt at "[c]ompulsory unification of opinion" that "the Bill of Rights denies those in power," even in public school. *Barnette*, 319 U.S. at 641.

2. Ms. Geraghty addresses a matter of public concern by declining to participate in social transition.

In avoiding participation in a child's social transition, Ms. Geraghty wishes to avoid using names and pronouns to communicate that a child has transitioned to another gender or sex. Compl. at ¶¶ 56–61. "Pronouns can and do convey a powerful message implicating a sensitive topic of public concern." *Meriwether*, 992 F.3d at 508. Indeed, "[n]ever before have titles and pronouns been scrutinized as closely as they are today for their power to validate—or invalidate—someone's perceived sex or gender identity." *Id.* at 509. It is precisely for this reason—a desire to "validate" particular identities and a particular view about the nature of human identity—that Defendants sought to force Ms. Geraghty to participate in social transition. Compl. at ¶¶ 93–100. It was precisely this reason that Ms. Geraghty "took a side in that debate" and by her "continued refusal to" participate in social transition, she "waded into a matter of public concern." *Meriwether*, 992 F.3d at 509.

---

doom a compelled speech claim like Ms. Geraghty's under *Garcetti*. Rather, an employee who objected on compelled speech grounds to presenting curricular materials would fail under *Pickering*, since the school's interest in requiring teachers to teach would outweigh the teacher's unwillingness to "discuss certain materials." *Id.* But, it would not and could not empower schools to make teachers say anything they want simply because they claim it is part of teaching a class.

3. Ms. Geraghty's interest in refraining from speaking outweighs any governmental interest in compelling her to speak Defendants' message about gender identity.

Because Ms. Geraghty's claims raise her interest as a citizen in not being forced to speak on a matter of public concern, her interest is protected from adverse action by the government unless her interest is "outweighed" by the school's interest in "'promoting the efficiency of the public services it performs.'" *Evans-Marshall*, 624 F.3d at 339 (quoting *Pickering*, 391 U.S. at 568). Ms. Geraghty's inability to participate in social transition is an especially weighty interest, because "sensitive political topics" like "sexual orientation and gender identity" are "undoubtedly matters of profound value and concern to the public" that "occup[y] the highest rung of the hierarchy of First Amendment values and merit[] special protection." *Janus*, 138 S. Ct. at 2476 (cleaned up). Since Ms. Geraghty's interest "substantially involve[s]" this type of public concern, "a stronger showing" by the government is necessary to compel her speech. *Connick v. Myers*, 461 U.S. 138, 152 (1983).

The government has no legitimate interest, let alone the "stronger" one required to outweigh Ms. Geraghty's. *Id.* Defendants ordered Ms. Geraghty to resign as soon as they learned about the religious basis for her inability to participate in social transition. Compl. at ¶¶ 81–83. They did not consider any potential alternative practice, even though Ms. Geraghty would have been willing to transfer to another class or to address students by last name. *Id.* at ¶¶ 84–88. The school cannot claim that using a student's last name is harmful, since the school uses last names itself and requires students to enter their last names in online systems on a regular basis. *Id.* at ¶ 106. The school does not change transgender-identifying students' credentials to match their preferred name. *Id.* at ¶ 107. Nor can the school claim that avoiding pronouns (as Ms. Geraghty wished) is harmful, since this is Defendant Carter's practice. *Id.* at ¶¶ 69, 91. As a result, either transferring Ms. Geraghty or allowing her to use last names would have been a

"win-win," *Meriwether*, 992 F.3d at 511, but the school rushed to expel Ms. Geraghty instead, without considering any available alternatives. There was also never any disruption resulting from Ms. Geraghty's unwillingness to speak. Indeed, Ms. Geraghty proactively sought Defendant Carter in the hope of resolving the issue. Compl. at ¶ 68. Since "there is no suggestion that [Ms. Geraghty's] speech inhibited h[er] duties in the classroom, hampered the operation of the school, or denied [her students] any educational benefits," the *Pickering* balance favors Ms. Geraghty. *Meriwether*, 992 F.3d at 511.

Because Ms. Geraghty's claims invoke her interest as a citizen in speaking (and refraining from speaking) on matters of public concern and Defendants have no interest that can outweigh hers, Ms. Geraghty will likely succeed in showing that she exercised a constitutional right in declining to participate in social transition.

B. Ms. Geraghty exercised her constitutional right to practice her religion.

Ms. Geraghty is also likely to show that Defendants retaliated against her for exercising her rights under the Free Exercise Clause. Acts by government officials "that burden religious exercise are presumptively unconstitutional unless they are both neutral and generally applicable." *Meriwether*, 992 F.3d at 512. Defendants' Policy is neither, and Defendants have no interest that overcomes this presumptive unconstitutionality.

1. Defendants' Policy is neither neutral toward religion nor generally applicable.

The Policy is neither neutral nor generally applicable because Defendants maintain "a system of individualized exemptions, [which is] the antithesis of a neutral and generally applicable policy." *Ward v. Polite*, 667 F.3d 727, 740 (6th Cir. 2012). Defendants' Policy treats religious unwillingness to participate in social transition worse than unwillingness for secular reasons. Defendants (1) excuse Defendant Carter's own practice of avoiding the use of new pronouns that are a part

of a student's social transition, and (2) use students' last names (not preferred names) in their own systems. But when they learned she was unwilling to participate in social transition because of her religious beliefs, they told Ms. Geraghty she "would be required to put her beliefs aside." Compl. at ¶ 73. When she declined, they constructively discharged her. *Id.* at ¶¶ 80–88. "[C]ourts have an obligation to meticulously scrutinize irregularities to determine whether a law is being used to suppress religious beliefs." *Meriwether*, 992 F.3d at 514. *See also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993) ("The Free Exercise Clause protects against governmental hostility which is masked, as well as overt."). Defendants' irregular and overzealous enforcement of their Policy against Ms. Geraghty betrays its lack of neutrality and general applicability.

2. Defendants' Policy fails strict scrutiny.

"A law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny." *Lukumi*, 508 U.S. at 546. Defendants bear the burden of showing that their Policy furthers a compelling state interest and that its Policy is narrowly tailored to achieve that interest. *Id.*

Defendants have no interest in forcing Ms. Geraghty to participate in social transition. *See supra* Part I.A.3. The Policy's failure is all the more apparent in the free exercise context, because strict scrutiny requires the government to state, "not whether [it] has a compelling interest in enforcing its . . . policies generally, but whether it has such an interest in denying an exception to" Ms. Geraghty. *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1881 (2021). Defendants have no interest in denying Ms. Geraghty either (1) a transfer to another class or (2) the option to avoid pronouns and address students by last name since Defendants use students' last names themselves and allow Defendant Carter to avoid using pronouns to refer to students who are undergoing social transition. Compl. at ¶¶ 69, 91, 106. And since

any interests Defendants have could be secured by the "win-win" of allowing Ms. Geraghty to avoid pronouns and use a student's last name, *Meriwether*, 992 F.3d at 511, their Policy is also not narrowly-tailored to achieve any legitimate interest.

C. Defendants took adverse action against Ms. Geraghty.

"Adverse action" includes "discharge" from employment. *Thaddeus-X v. Blatter*, 175 F.3d 378, 396 (6th Cir. 1999). Within two hours of learning about Ms. Geraghty's religious reasons for not participating in her students' social transition, they handed her a laptop and ordered her to write her letter of resignation. Compl. at ¶¶ 82–83. "When an employer acts in a manner so as to have communicated to a reasonable employee that she will be terminated, and the plaintiff employee resigns, the employer's conduct may amount to constructive discharge." *Laster v. City of Kalamazoo*, 746 F.3d 714, 728 (6th Cir. 2014) (cleaned up). Ms. Geraghty is likely to succeed in showing that Defendants took adverse action against her by constructively discharging her.

D. Defendants' adverse action was motivated at least in part by Ms. Geraghty's exercise of constitutional rights.

Ms. Geraghty is likely to succeed in showing that Defendants' adverse action was "motivated at least in part as a response to the exercise of [her] constitutional rights." *Jenkins*, 513 F.3d at 586. Ms. Geraghty has never incurred any other student complaints or disciplinary actions. Compl. at ¶ 38. Defendant Myers explicitly tied the adverse action to Ms. Geraghty's religious beliefs, telling her that her unwillingness to participate in her students' social transition would "not work in a district like Jackson." *Id.* at ¶ 75. Ms. Geraghty is likely to succeed in showing Defendants were motivated at least in part by her speech and religious exercise.

II. All other preliminary injunction factors favor Ms. Geraghty.

Because Ms. Geraghty shows that the government is likely violating her constitutional rights, she is likely to succeed on the remaining factors. *See*

Connection Distrib. Co., 154 F.3d at 288. Ms. Geraghty is suffering irreparable injury, because, "if it is found that a constitutional right is being threatened or impaired, a finding of irreparable injury is *mandated*." *Am. C.L. Union v. McCreary Cnty.*, 354 F.3d 438, 445 (6th Cir. 2003) (emphasis added). Ms. Geraghty's retaliatory discharge inflicts an ongoing constitutional injury. *See Carten v. Kent State Univ.*, 282 F.3d 391, 396 (6th Cir. 2002) (noting that "claims for reinstatement are prospective in nature").

The balance of equities favors Ms. Geraghty because enjoining Defendants from continuing to violate Ms. Geraghty's rights will not injure them at all. The government is only injured if its *constitutional* acts are enjoined. *See Connection Distrib. Co.*, 154 F.3d at 288 (while "the government presumably would be substantially harmed if enforcement of a *constitutional* law . . . were enjoined," a likelihood of success on a constitutional claim tips the balance toward the plaintiff).

Finally, "the determination of where the public interest lies also is dependent on a determination of the likelihood of success on the merits of the First Amendment challenge because it is always in the public interest to prevent the violation of a party's constitutional rights" *Id.* (cleaned up). The constitutional interest at stake in this case—the "right to differ as to things that touch the heart of the existing order"—is the difference between real, vital liberty and the "mere shadow of freedom." *Barnette*, 319 U.S. at 642. Enjoining Defendants' unconstitutional acts is essential for preserving this vital freedom for Ms. Geraghty and the public at large.

CONCLUSION

This Court should enjoin Defendants' ongoing violation of Ms. Geraghty's constitutional rights.

This 12th day of December, 2022.

s/ Matthew J. Burkhart

Matthew J. Burkhart
Gallagher Kavinsky & Burkhart LPA
8740 Orion Place, Suite 200
Columbus, Ohio 43240-4063
Telephone: (614) 885-9022
Facsimile: (614) 885-9024
mjb@gkb-law.com
Ohio State Bar Number 0068299

Tyson C. Langhofer
P. Logan Spena
Alliance Defending Freedom
44180 Riverside Parkway
Lansdowne, Virginia 20176
Telephone: (571) 707-4655
Facsimile: (571) 707-4790
tlangofer@ADFlegal.org
lspena@ADFlegal.org
Motions for pro hac vice admission filed concurrently

David A. Cortman
Alliance Defending Freedom
1000 Hurricane Shoals Road NE, Suite D-1100
Lawrenceville, Georgia 30043
Telephone: (770) 339-0774
Facsimile: (770) 339-6744
dcortman@ADFlegal.org
Motion for pro hac vice admission filed concurrently

Counsel for Plaintiff Vivian Geraghty