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24 **UNITED STATES DISTRICT COURT**
25 **DISTRICT OF NEVADA**

26 G.M., a minor, by and through AUDREY
27 GUARDANAPO and SHAUN
28 GUARDANAPO,

Plaintiff,

v.

WASHOE COUNTY SCHOOL DISTRICT;
KENDYL DEPOALI MIDDLE SCHOOL; and
JOYE ANCINA, in her official capacity as
Principal, Kendyl Depoali Middle School,

Defendants.

Case No.: 3:18-cv-00172

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR TEMPORARY
RESTRAINING ORDER**

Hearing Date: TBD
Judge: Hon. Robert C. Jones

1 TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Plaintiff G.M., by and through Audrey Guardanapo and
3 Shaun Guardanapo as his next friends, will and hereby does move the Court for a temporary
4 restraining order.

5 Plaintiffs respectfully request a temporary restraining order enjoining Defendants from
6 enforcing the Washoe County School District dress code and the Kendyl Depoali Middle School
7 dress code in a manner inconsistent with the First Amendment to the United States Constitution.

8 This motion shall be based on this notice of motion and motion, the memorandum of points
9 and authorities in support, the declarations and evidence filed concurrently herewith, and upon any
10 further matters the Court deems appropriate

11
12 Dated: May 2, 2018

THE O'MARA LAW FIRM, P.C.

13
14 By /s David C. O'Mara
15 DAVID C. O'MARA
16 Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

I, Bryan Snyder, do hereby certify that I am an employee of The O'Mara Law Firm, P.C., and further certify that the foregoing document was electronically filed and served upon all parties via the Court's Electronic Filing system.

DATED: May 2, 2018

/s/ Bryan Snyder
BRYAN SNYDER

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25 DISTRICT OF NEVADA

26 G.M., a minor, by and through AUDREY
27 GUARDANAPO and SHAUN
28 GUARDANAPO,

Plaintiff,

v.

WASHOE COUNTY SCHOOL DISTRICT;
KENDYL DEPOALI MIDDLE SCHOOL; and
JOYE ANCINA, in her official capacity as
Principal, Kendyl Depoali Middle School,

Defendants.

Case No.: 3:18-cv-00172

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER**

Hearing Date: TBD
Judge: Hon. Robert C. Jones

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I. INTRODUCTION

This is a First Amendment challenge to Kendyl Depoali Middle School's suppression of a student's political speech based on school officials' disagreement with the student's message—or at least their interpretation of it. Plaintiff G.M. engaged in a respectful, silent, and peaceful expression of his political views by wearing a Firearms Policy Coalition ("FPC") t-shirt to school.¹ FPC is a non-profit public policy organization that supports constitutional rights, including the right to keep and bear arms and the First Amendment right to speak out in favor of Second Amendment rights. The shirt's imagery and text invoke the constitution and themes dating back to the American Revolution. Specifically, the shirt includes the words "Don't Tread On Me" and a coiled rattlesnake (familiar elements of the Gadsden flag), flanked by references to the United States of America ("USA") and the Second Amendment ("2A"). The shirt also includes the words "Firearms Policy Coalition." There are no depictions of firearms or weapons of any kind on the shirt. In short, G.M. was expressing his support for FPC and the defense of constitutional rights, including the Second Amendment.

G.M.'s teacher directed him to remove the shirt because, based on her subjective interpretation of the message being conveyed, she believed it violated the school's dress code. She told him he would be subject to further discipline if he wore it again. When G.M. told his teacher that it was "his right to express himself through how [he] dressed," the teacher told him that he could have his "Second Amendment rights when [he] turn[s] eighteen."

This was unconstitutional. As any social studies teacher should know, the First Amendment protects students' right to speak on political or social issues—including the right to express what school officials may consider unpopular or controversial opinions. G.M.'s shirt did not substantially disrupt or materially interfere with the work of the school or the rights of his fellow students. The shirt did not promote or advocate illegal activity; it contained no violent or offensive imagery; nothing on it was obscene, vulgar, or profane. Through his shirt, G.M. sought

¹ G.M. is a minor, who brings this action by and through Audrey Guardanapo and Shaun Guardanapo as his next friends. Because Audrey and Shaun have the same last name, the Complaint refers to them by their first names for clarity.

1 to convey his views on a national debate about a serious issue, and to voice support of
2 constitutional rights. It was pure political speech, which, “of course, is ‘at the core of what the
3 First Amendment is designed to protect.’” *Morse v. Frederick*, 551 U.S. 393, 403 (2007) (quoting
4 *Virginia v. Black*, 538 U.S. 343, 365 (2003)). And yet G.M. was prevented from wearing his shirt
5 based on school officials’ disagreement with the message they believed it conveyed.

6 For nearly half a century, it has been the “unmistakable holding” of the Supreme Court that
7 students do not “shed their constitutional rights to freedom of speech or expression at the
8 schoolhouse gate.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). In
9 *Tinker*, the Court made clear that school officials may not suppress student speech based on the
10 “mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular
11 viewpoint” or “an urgent wish to avoid the controversy which might result from the expression.”
12 *Id.* at 509, 510. Accordingly, “student expression may not be suppressed unless school officials
13 reasonably conclude” that the expression “will materially and substantially disrupt the work and
14 discipline of the school.” *Morse*, 551 U.S. at 403 (citing *Tinker*, 393 U.S. at 513).

15 The constitutional violation here is all-the-more apparent given that the school allows—
16 even encourages and endorses—expression of different viewpoints on at least one of the subjects
17 G.M.’s shirt addressed, namely the exercise of Second Amendment rights. Shortly after G.M. was
18 disciplined, students at the school participated in the National School Walkout, a formal, organized
19 protest calling for expansive new gun control measures. The school likewise authorized a second
20 walkout on April 20. Such viewpoint-based discrimination violates the First Amendment. *Tinker*,
21 393 U.S. at 511 (“[T]he prohibition of expression of one particular opinion . . . is not
22 constitutionally permissible.”). *See also Rosenberger v. Rector and Visitors of Univ. of Va.*, 515
23 U.S. 819, 828–29 (1995) (regulating speech based on “the specific motivating ideology or the
24 opinion or perspective of the speaker” is a “blatant” and “egregious form of content
25 discrimination”). Meanwhile, G.M. and like-minded students are barred from expressing pro-
26 Second Amendment opinions because the District’s dress code expressly prevents clothing that
27 “promotes weapons,” and G.M.’s experience shows the school applies this vague and overbroad
28 proscription in an unconstitutional manner.

1 Since filing this Complaint, Defendants have acknowledged that G.M. should not have
 2 been prevented from wearing the FPC shirt, which they claim “moots” this case. It does not. So
 3 long as the dress code bans clothing that “promotes weapons,” students will be deterred from
 4 exercising pro-Second Amendment views.

5 Because the dress code is vague and overbroad and Defendants have in any event enforced
 6 it in a manner that suppressed G.M.’s speech commenting on an important political or social issue,
 7 without any threat of a substantial disruption, they have violated G.M.’s First Amendment rights.

8 II. BACKGROUND

9 A. The Washoe County School District And Kendyl Depoali Middle School Dress Codes.

10 Plaintiff G.M. is an eighth grader at Kendyl Depoali Middle School in Reno, Nevada.
 11 Kendyl Depoali Middle School is subject to the policies adopted by the Washoe County School
 12 District. The District has established “a comprehensive dress code with limitations for students
 13 which addresses what clothing they may wear and how they may wear that clothing.” Declaration
 14 of Audrey Guardanapo ISO TRO, ¶ 4 & Ex. 1, Washoe Cty. Sch. Dist., *Parent-Student Handbook*
 15 22 (Rev. July 1, 2017). The District notes that these “requirements are not intended to silence
 16 expressive conduct, but instead, constitute an attempt to maintain a productive, safe, learning
 17 environment.” *Id.*

18 The District’s dress code provides the following general limitations on language and
 19 illustrations on clothing:

- 20 • No obscene, vulgar, profane, or derogatory language or illustrations on clothing;
- 21 • No sexual overtones, or anything that promotes weapons, alcohol, drugs, tobacco,
 22 gang membership, or violence; and
- 23 • Nothing that may be deemed a safety issue.

24 *Id.* at 24.

25 To implement the District’s dress code, Kendyl Depoali Middle School has adopted a site-
 26 specific dress code as part of its progressive discipline plan, which provides the same limitations
 27 on language and illustrations on clothing as the district’s dress code. The school’s dress code also
 28

1 establishes a “sequential and progressive discipline plan” for dress code violations. Audrey Decl.,
 2 ¶ 5 & Ex. 2, Washoe County School District Middle School Dress Code.

3 In addition to the district’s comprehensive dress code and school-specific dress codes,
 4 Washoe County School District has adopted an administrative procedure to establish guidelines for
 5 regulating student speech through clothing. Audrey Decl., ¶ 6 & Ex. 3, Washoe Cty. Sch. Dist.,
 6 *Admin. Proc. 5101, Guidelines for Regulating Student Speech Through Clothing* (Rev. 1.0, Oct. 6,
 7 2014). These guidelines explain that “[t]he District’s dress requirements are in no way an attempt
 8 to silence free expression but to create a productive, uninterrupted, and safe learning
 9 environment.” *Id.* at 1. To that end, the District provides six questions to guide school
 10 administrators’ regulation of speech on student apparel:

- 11 • Is the message verbally or visually lewd or obscene?
- 12 • Does the content contain defamatory remarks?
- 13 • Is an immediate danger created to students?
- 14 • Does the message encourage students towards illegal act?
- 15 • Is the speech a substantial disruption to the orderly operation of the school?
- 16 • Does the speech violate a specific school rule or policy?

17 *See id.* at 1–3.

18 **B. Defendants’ Dress Code Enforcement Infringes G.M.’s First Amendment Right To**
 19 **Express His Political Views.**

20 G.M. is currently an eighth-grade student at Kendyl Depoali Middle School. Declaration
 21 of G.M. ISO TRO, ¶ 2. He has been raised by Audrey and Shaun Guardanapo. *Id.*, ¶ 2; Audrey
 22 Decl., ¶ 2. G.M.’s mother, Audrey, is a police dispatcher. Audrey Decl., ¶ 2. Shaun is a veteran
 23 of the United States Marine Corps, and worked for over a decade as a law enforcement officer.
 24 Declaration of Shaun Guardanapo ISO TRO, ¶ 2. Through his upbringing, G.M. has come to
 25 appreciate the U.S. Constitution and value public service. G.M. Decl., ¶ 3. G.M. understands that
 26 the First Amendment protects his right to express his opinions on political and social issues, and he
 27 tries to express his views in a respectful manner. G.M. Decl., ¶ 3.

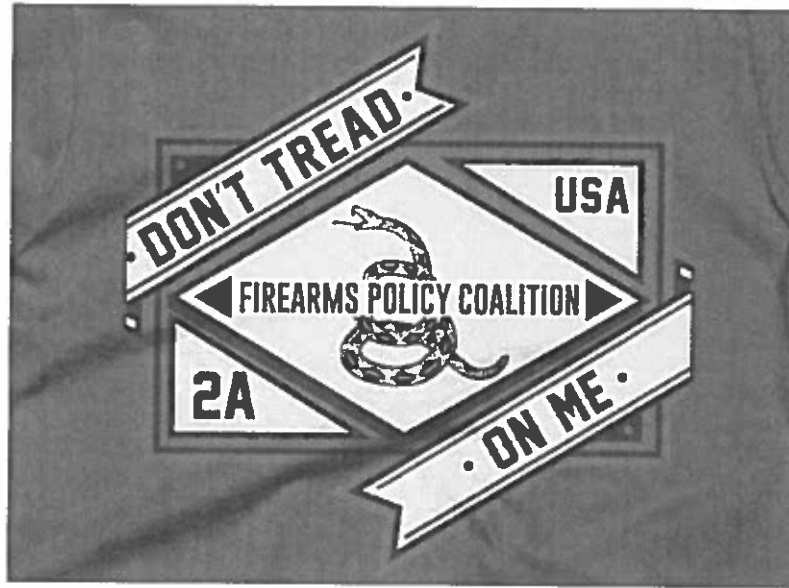
28 On November 20, 2017, G.M. was subject to discipline for wearing a t-shirt bearing the

1 logo from Sparks Black Rifle, a local firearms dealer. The front of the shirt features the
2 dealership's name, with the "r" in Sparks represented by a silhouette of a handgun, and the
3 silhouette of a sporting rifle. The back of the shirt has the letters "SBR," with the "R" represented
4 by a silhouette of a handgun. G.M. had worn the Sparks Black Rifle shirt to school multiple times
5 in the past. The shirt had never caused any disruption or disturbance, and G.M. had not been
6 subject to discipline. G.M. Decl., ¶¶ 4–6; Audrey Decl., ¶¶ 6–8 & Ex. 4; Shaun Decl., ¶¶ 4–6.

7 That day, G.M.'s teacher Brooke May told him that the shirt violated the school's dress
8 code because it contained a depiction of a weapon. G.M. Decl., ¶ 5; Audrey Decl., ¶ 8; Shaun
9 Decl., ¶ 4. Ms. May directed him to correct the dress code violation by covering the shirt. *Id.* He
10 complied by wearing a sweatshirt for the remainder of the day. *Id.*

11 On or about November 20, Audrey was contacted by Assistant Principal Heather Curtis,
12 who informed Audrey that G.M. had been disciplined for a dress code violation. Audrey Decl., ¶
13 8. Shaun then contacted the school and spoke with Curtis. Shaun Decl., ¶ 4–5. Curtis explained
14 that the dress code prohibited images of weapons, and that the school enforced the policy against
15 all clothing depicting actual guns. *Id.* Curtis also explained that the policy would not prohibit, for
16 example, wearing a National Rifle Association shirt that does not have an image of an actual
17 firearm. *Id.* G.M. has not worn the Sparks Black Rifle shirt to school since November 20, 2017.
18 G.M. Decl., ¶ 6; Audrey Decl., ¶ 8; Shaun Decl., ¶ 6.

19 On March 12, 2018, G.M. was subject to discipline for wearing a Firearms Policy Coalition
20 t-shirt. FPC is a non-profit public policy organization that supports constitutional rights, including
21 the right to keep and bear arms and the First Amendment right to speak out in favor of Second
22 Amendment rights. The shirt's imagery and text invoke the constitution and themes dating back to
23 the American Revolution. Specifically, the shirt included the words "Don't Tread On Me" and a
24 coiled rattlesnake (familiar elements of the Gadsden flag), flanked by references to the United
25 States of America ("USA") and the Second Amendment ("2A"). There are no depictions of
26 firearms or weapons of any kind of the shirt. G.M. Decl., ¶¶ 7, 9; Audrey Decl., ¶¶ 9–10 & Ex. 5.



Ms. May directed G.M. to remove the shirt, claiming that it violated the school's dress code. G.M. Decl., ¶¶ 7, 9; Audrey Decl., ¶¶ 9–10; Shaun Decl., ¶¶ 7–8. She told him he would be subject to further discipline, including a trip to the principal's office, if he wore it again. In response, G.M. told Ms. May that it was "his right to express himself through how [he] dressed," to which Ms. May responded that he could have his "Second Amendment rights when he turns eighteen." G.M. Decl., ¶ 9; Audrey Decl., ¶ 10; Shaun Decl., ¶ 8.

G.M. complied with Ms. May's direction by covering the FPC shirt with a sweatshirt, and G.M. has not worn the shirt to school since March 12, 2018. G.M. Decl., ¶ 9; Audrey Decl., ¶ 10; Shaun Decl., ¶ 8. He wants to wear it again, but has refrained from doing so because he is afraid that he will be subject to further discipline from the school, including detention or suspension, based on the administration's threat that he would be in violation of the school dress code. G.M. Decl., ¶ 10.

III. NOTICE TO DEFENDANTS

Pursuant to Fed. R. Civ. P. 65, Plaintiff has given Defendant notice of his intention to seek a temporary restraining order and the nature of the relief they request in this motion. Declaration of David O'Mara ISO TRO, ¶¶ 2–3. Plaintiff filed this case on Tuesday, April 24, 2018. That same day, Plaintiff's counsel provided a copy of the complaint to the general counsel's office of Defendant Washoe County School District, informed Defendants that Plaintiff intended to seek a

temporary restraining order, and asked to discuss a briefing schedule on this motion. *Id.*, ¶ 2 & Ex. 6. Plaintiff's counsel also requested that the general counsel accept service of the summons and complaint on behalf of Defendants. *Id.*

After receiving no response, Plaintiff's counsel followed up with the general counsel's office the following day, reiterating that Plaintiff intended to seek a temporary restraining order, offering to meet and confer on a briefing schedule, and requesting that general counsel accept service. *Id.*, ¶ 3 & Ex. 7. The District's counsel responded by letter on April 26, but did not agree to accept service or address a potential briefing schedule. *Id.*, ¶ 4 & Ex. 8. Instead, the District claimed that a motion for a restraining order would be "moot" since the District agreed that G.M. should have been allowed to wear the FPC shirt.

When Plaintiff offered to enter into a stipulated judgment by letter dated April 29, 2018, *id.*, ¶ 5 & Ex. 9, the District responded that it would only be willing to "discuss" the terms of a stipulated judgment—and again focused on why, in its view, the case was "moot" and fees should not be awarded. *Id.*, ¶ 5 & Ex. 10. Plaintiff's counsel will serve this motion and supporting documents on Defendants' counsel by e-mail and personal delivery. *Id.*, ¶ 6.

IV. ARGUMENT

"Temporary restraining orders are governed by the same standard applicable to preliminary injunctions." *Quiroga v. Chen*, 735 F. Supp. 2d 1226, 1228 (D. Nev. 2010); *see also Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir.2001) (a court's "analysis is substantially identical for [an] injunction and [a] TRO")). A plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting *Winter v. Natural Res. Defense Council, Inc.*, 555 U.S. 7, 20 (2008)). Alternatively, injunctive relief "is appropriate when a plaintiff demonstrates that serious questions going to the merits [are] raised and the balance of hardships tips sharply in the plaintiff's favor." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011).

"[I]n the First Amendment context, the moving party bears the initial burden of making a

colorable claim that its First Amendment rights have been infringed, or are threatened with infringement, at which point the burden shifts to the government to justify the restriction.” *Doe v. Harris*, 772 F.3d 563, 570 (9th Cir. 2014).

A. G.M. Is Likely To Establish That Defendants’ Infringed His First Amendment Rights.

Defendants’ enforcement of the district and school dress codes against G.M. violates his First Amendment rights. G.M. sought to engage in “a silent, passive expression” commenting on a political and social issue, which was “unaccompanied by any disorder or disturbance” by G.M. *Tinker*, 393 U.S. at 508. Such “pure speech . . . is entitled to comprehensive protection under the First Amendment,” even in the school environment. *Id.* at 505–06.

Preserving students’ freedom of speech and expression is an essential component of the broader public educational mission. “Public elementary and high school education is as much about learning how to be a good citizen as it is about multiplication tables and United States history.” *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954). “That [schools] are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.” *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943). To that end, “vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools. . . . The Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, (rather) than through any kind of authoritative selection.” *Tinker*, 393 U.S. at 512 (citations omitted).

Tinker leaves little doubt that this requires tolerance of “controversial” opinions or “unpopular” viewpoints. School officials may not suppress student speech based on the “mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint” or “an urgent wish to avoid the controversy which might result from the expression.” 393 U.S. at 509–10. “[S]uppressing the expression of unpopular or controversial opinions—even in the name of avoiding potential in-school disturbances—[is] a violation of the First Amendment unless the school could show that, absent such suppression, the school’s orderly operation would be

1 ‘materially and substantially’ compromised.” *Jacobs v. Clark Cty. Sch. Dist.*, 526 F.3d 419, 430
 2 (9th Cir. 2008) (quoting *Tinker*). Accordingly, “student expression may not be suppressed unless
 3 school officials reasonably conclude” that the expression “will materially and substantially disrupt
 4 the work and discipline of the school.” *Morse*, 551 U.S. at 403 (citing *Tinker*).

5 To that same end, Justice Stevens explained in his *Morse* dissent that preserving expression
 6 of students’ minority viewpoints is a critical aspect of the First Amendment:

7 Even in high school, a rule that permits only one point of view to be expressed is
 8 less likely to produce correct answers than the open discussion of countervailing
 9 views. In the national debate about a serious issue, it is the expression of the
 10 minority’s viewpoint that most demands the protection of the First Amendment.
 Whatever the better policy may be, a full and frank discussion of the costs and
 benefits of the attempt to prohibit the use of marijuana is far wiser than suppression
 of speech because it is unpopular.

11 551 U.S. at 448 (Stevens, J., dissenting).

12 Defendants’ suppression of G.M.’s speech offends these constitutional standards. G.M.’s
 13 shirt did not substantially disrupt or materially interfere with the work of the school or the rights of
 14 his fellow students. The shirt did not promote or advocate illegal activity; it contained no violent
 15 or offensive imagery; nothing on it was obscene, vulgar, or profane. Through his shirt, G.M.
 16 sought to comment on a national debate about a serious issue, and to voice support of
 17 constitutional rights.

18 No reasonable school official would conclude that the message conveyed on the FPC shirt
 19 “[would] materially and substantially disrupt the work and discipline of the school.” *Morse*, 551
 20 U.S. at 403 (citing *Tinker*). The shirt conveys a plainly political message. It identifies the Firearm
 21 Policy Coalition, a public policy organization that advocates for the protection of constitutional
 22 rights. The phrase “Don’t Tread On Me” and coiled rattlesnake of the Gadsden Flag date back to
 23 the Revolutionary War, where the flag was flown by the Continental Marines. More recently, the
 24 Gadsden Flag has come to be associated with libertarianism, as well as the Tea Party movement.
 25 In addition, the shirt references the United States of America and the Second Amendment to the
 26 United States Constitution.

27 Ms. May directed G.M. to remove his shirt based on her subjective interpretation of its
 28 message. Her admonition to G.M.—that he could have his “Second Amendment rights when [he]

turn[s] eighteen”—makes clear that she disagreed with the content of the shirt’s message, and censored it because it expressed support for Second Amendment rights. Even though Ms. May might believe this opinion is controversial or unpopular, G.M. has a constitutional right under the First Amendment to express it. Public school students “may not be confined to the expression of those sentiments that are officially approved,” and the First Amendment prohibits school officials from tilting the debate by censoring “feelings with which they do not wish to contend.” *Tinker*, 393 U.S. at 511.

Furthermore, the school’s enforcement of the dress code against G.M. demonstrates that it is unconstitutionally overbroad. Although Ms. May did not cite the provision of the dress code that the FPC shirt violated, she presumably was relying on the prohibition against “anything that promotes weapons.” Applying this prohibition to a shirt that conveys a lawful, nonviolent, and nonthreatening message—indeed, one that supports constitutional rights—violates the First Amendment. *Newsom ex rel. Newsom v. Albemarle Cty. Sch. Bd.*, 354 F.3d 249, 259–60 (4th Cir. 2003) (holding that middle school dress code prohibiting “messages relating to weapons” is unconstitutionally overbroad).² So long as this overbroad language remains in place, other students will be deterred from expressing their pro-Second Amendment views -- and G.M. himself will be deterred from expressing other pro-Second Amendment messages on other clothing.

The unconstitutionality of the school’s actions is strongly confirmed by the fact that it allows—even encourages and endorses—expression of viewpoints that take a contrary position to the view that G.M.’s shirt expressed. Shortly after G.M. was disciplined, students at the school participated in the National School Walkout, a formal, organized protest calling for new gun control measures. The school likewise authorized a second walkout on April 20. Such viewpoint-based discrimination violates the First Amendment. Public school authorities are not permitted to suppress speech on political and social issues because they disagree with the viewpoint expressed.

² The dress code provisions also violate Nevada law, which prohibits school officials from punishing students for “[w]earing clothing or accessories that depict a firearm or dangerous weapon or express an opinion regarding a constitutional right to keep and bear arms, unless it substantially disrupts the educational environment.” N.R.S. 392.4634(1)(b)

1 *Tinker*, 393 U.S. at 511 (“[T]he prohibition of expression of one particular opinion . . . is not
 2 constitutionally permissible.”); *id.* at 526 (Harlan, J., dissenting) (noting that a school cannot
 3 censor speech out of “a desire to prohibit the expression of an unpopular point of view, while
 4 permitting expression of the dominant opinion.”). *See also Rosenberger*, 515 U.S. at 828-29
 5 (regulating speech based on “the specific motivating ideology or the opinion or perspective of the
 6 speaker” is a “blatant” and “egregious form of content discrimination”). When a government
 7 actor’s “suppression of speech suggests an attempt to give one side of a debatable public question
 8 an advantage in expressing its views to the people, the First Amendment is plainly offended.”
 9 *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 785–86 (1978).

10 For these reasons set forth above, the District’s dress code, and Defendants’ enforcement of
 11 it, has violated G.M.’s First Amendment rights, and the threat of further discipline against him
 12 continues to impose a substantial burden on his freedom of speech and expression.

13 **B. G.M. Will Be Irreparably Harmed In The Absence Of A Temporary Restraining**
 14 **Order.**

15 G.M. is irreparably harmed by the suppression of his political speech. “Both [the Ninth
 16 Circuit] and the Supreme Court have repeatedly held that ‘[t]he loss of First Amendment
 17 freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.’” *Klein*
 18 *v. City of San Clemente*, 584 F.3d 1196, 1207–08 (9th Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S.
 19 347, 373 (1976)). “The harm is particularly irreparable where, as here, a plaintiff seeks to engage
 20 in political speech, as ‘timing is of the essence in politics’ and ‘[a] delay of even a day or two may
 21 be intolerable’” *Id.* at 1208 (citations omitted).

22 Furthermore, the Ninth Circuit has long recognized that constitutional violations in general,
 23 and First Amendment violations in particular, constitute irreparable harm. *See, e.g., Warsoldier v.*
 24 *Woodford*, 418 F.3d 989, 1001 (9th Cir. 2005) (a “colorable First Amendment claim” is
 25 “irreparable injury sufficient to merit the grant of relief”) (internal quotation marks omitted);
 26 *Stormans, Inc. v. Stelecky*, 586 F.3d 1109, 1138 (9th Cir. 2009) (“[C]onstitutional violations
 27 cannot be adequately remedied through damages and therefore generally constitute irreparable
 28 harm.”) (citation omitted); *Goldie’s Bookstore, Inc. v. Super. Ct.*, 739 F.2d 466, 472 (9th Cir.

1 1984) (“[P]urposeful unconstitutional suppression of speech constitutes irreparable harm for
2 preliminary injunction purposes.”).

3 **C. The Balance Of Equities Tips In G.M.’s Favor.**

4 “The fact that a case raises serious First Amendment questions compels a finding that there
5 exists ‘the potential for irreparable injury, or that at the very least the balance of hardships tips
6 sharply in [claimants’] favor.’” *Sammartano v. First Judicial Dist. Ct.*, 303 F.3d 959, 973 (9th Cir.
7 2002) (citation omitted). That is particularly the case here, where G.M. is faced with a choice
8 between modifying his political speech or facing discipline. Cf. *Sanders Cty. Republican Cent.*
9 *Comm. v. Bullock*, 698 F.3d 741, 748 (9th Cir. 2012) (“[T]he threat of criminal prosecution . . . can
10 inhibit the speaker from making [protected] statements, thereby ‘chilling’ a kind of speech that lies
11 at the First Amendment’s heart.”). Defendants, on the other hand, are not harmed by an
12 injunction: government actors “can derive no legally cognizable benefit from being permitted to
13 further enforce an unconstitutional limit on political speech.” *Bullock*, 698 F.3d at 749.

14 **D. A Temporary Restraining Order Is In The Public Interest.**

15 The Ninth Circuit has “consistently recognized the ‘significant public interest’ in upholding
16 free speech principles, as the ‘ongoing enforcement of the potentially unconstitutional regulations .
17 . . would infringe not only the free expression interests of plaintiffs, but also the interests of other
18 people’ subjected to the same restrictions.” *Klein*, 584 F.3d at 1208 (quoting *Sammartano*, 303
19 F.3d at 974). Conversely, enforcement of an unconstitutional policy is against the public interest.
20 E.g., *Kroll v. Incline Vill. Gen. Imp. Dist.*, 598 F. Supp. 2d 1118, 1126 (D. Nev. 2009) (a public
21 agency has “no legitimate interest in enforcing an unconstitutional ordinance, nor would
22 enforcement of such an ordinance be in the public interest.”); *Scott v. Roberts*, 612 F.3d 1279,
23 1297 (11th Cir. 2010) (“[T]he public, when the state is a party asserting harm, has no interest in
24 enforcing an unconstitutional law.”); *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013)
25 (“[E]nforcement of an unconstitutional law is always contrary to the public interest.”); *Am. Civil*
26 *Liberties Union v. Ashcroft*, 322 F.3d 240, 251 n.11 (3d Cir. 2003) (same).

27 **V. CONCLUSION**

28 For the reasons set forth above the Court should issue a temporary restraining order

1 enjoining Defendants from enforcing the Washoe County School District dress code and the
2 Kendyl Depoali Middle School dress code in a manner inconsistent with the First Amendment to
3 the United States Constitution, including an order providing that G.M. is allowed to wear his
4 Firearms Policy Coalition t-shirt to Kendyl Depoali Middle School.

5 Dated: May 2, 2018

THE O'MARA LAW FIRM, P.C.

7 By /s David C. O'Mara
8 DAVID C. O'MARA
9 Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, Bryan Snyder, do hereby certify that I am an employee of The O'Mara Law Firm, P.C., and further certify that the foregoing document was electronically filed and served upon all parties via the Court's Electronic Filing system.

DATED: May 2, 2018

/s/ Bryan Snyder
BRYAN SNYDER

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22 *Pro hac vice applications to be submitted

23 Attorneys for Plaintiff

24 UNITED STATES DISTRICT COURT
25 DISTRICT OF NEVADA

26 G.M., a minor, by and through AUDREY
27 GUARDANAPO and SHAUN
28 GUARDANAPO,

Plaintiff,

v.

WASHOE COUNTY SCHOOL DISTRICT;
KENDYL DEPOALI MIDDLE SCHOOL; and
JOYE ANCINA, in her official capacity as
Principal, Kendyl Depoali Middle School,

Defendants.

Case No.: 3:18-cv-00172

**DECLARATION OF AUDREY
GUARDANAPO IN SUPPORT OF
PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR TEMPORARY
RESTRAINING ORDER**

Hearing Date: TBD
Judge: Hon. Robert C. Jones

1 I, Audrey Guardanapo, declare:

2 1. I have personal knowledge of the matters set forth in this declaration, and would be
3 able to testify competently to these facts if called as a witness.

4 2. I am currently employed as a police dispatcher for the Nevada Department of
5 Wildlife. I am the mother of G.M., the Plaintiff in the above-captioned case. G.M. is currently an
6 eighth-grade student at Kendyl Depoali Middle School.

7 3. Kendyl Depoali Middle School is part of the Washoe County School District. The
8 school and district have adopted policies and procedures to provide guidance to parents and
9 students, and to govern student life, conduct, and behavior. They make these policies, procedures,
10 and other school-related resources available to students and parents through their website,
11 www.washoeschools.net/depoali and www.washoeschools.net. The policies, procedures, and
12 resources attached to this declaration are publicly available on the school and district website.

13 4. Many of the district's resources, including the district's dress code, are collected in
14 the Washoe County School District Parent-Student Handbook. A true and correct copy of the
15 relevant portions of the Parent-Student Handbook is attached to this declaration as Exhibit 1.

16 5. To supplement to the District's dress code, Kendyl Depoali Middle School has
17 adopted a site-specific dress code and discipline plan for the school. A true and correct copy of the
18 school's dress code is attached to this declaration as Exhibit 2.

19 6. In addition to the school and district dress code, Washoe County School District has
20 adopted an administrative procedure to establish guidelines for regulating student speech through
21 clothing. Washoe Cty. Sch. Dist., *Admin. Proc. 5101, Guidelines for Regulating Student Speech*
22 *Through Clothing* (Rev. 1.0, Oct. 6, 2014). A true and correct copy of the administrative
23 procedure is attached to my declaration as Exhibit 3.

24 6. In November 2017, G.M. was subject to discipline for wearing a t-shirt bearing the
25 logo from Sparks Black Rifle. The front of the shirt features the dealership's name, with the "r" in
26 Sparks represented by a silhouette of a handgun, and the silhouette of a sporting rifle. The back of
27 the shirt has the letters "SBR," with the "R" represented by a silhouette of a handgun. A true and
28 correct copy of a picture of the shirt is attached to my declaration as Exhibit 4.

1 7. G.M. regularly wears the Sparks Black Rifle shirt outside of school, and wore it
2 shirt to school multiple times in 2016 and 2017. Before November 20, 2017, I had never been
3 notified by school officials that the shirt violated the school's dress code, and G.M. had never been
4 disciplined by school officials for wearing the shirt.

5 8. On November 20, 2017, I was contacted by Kendyl Depoali Middle School
6 Assistant Principal Heather Curtis, who informed me that G.M. had been disciplined for a dress
7 code violation for wearing the Sparks Black Rifle shirt. Based on my communications with
8 Assistant Principal Curtis and G.M., I learned that one of G.M.'s teachers, Brooke May, told G.M.
9 that the shirt violated the school's dress code because it contained a depiction of a weapon. Ms.
10 May directed G.M. to correct the dress code violation, and G.M. complied by wearing sweatshirt
11 for the remainder of the day. To the best of my knowledge, G.M. has not worn the Sparks Black
12 Rifle shirt to school since he was disciplined for a dress code violation.

13 9. On March 12, 2018, G.M. was subject to discipline for wearing a Firearms Policy
14 Coalition t-shirt. The shirt included the words "Don't Tread On Me" and a coiled rattlesnake,
15 flanked by references to the United States of America ("USA") and the Second Amendment
16 ("2A"). There are no depictions of firearms or weapons of any kind of the shirt. A true and
17 correct copy of a picture of the shirt is attached to my declaration as Exhibit 5.

18 10. When G.M. returned from school, he told me that Ms. May told him that the
19 Firearms Policy Coalition shirt violated the dress code. According to G.M., Ms. May told him he
20 would be subject to further discipline, including a trip to the principal's office, if he wore the
21 Firearms Policy Coalition shirt again. G.M. told me that he explained to Ms. May that it was his
22 "right to express [himself] through how [he] dressed," to which Ms. May responded that he could
23 have his "Second Amendment rights when [he] turn[s] eighteen." Ms. May directed G.M. to
24 correct the dress code violation, and G.M. complied with by covering the Firearms Policy
25 Coalition shirt with a sweatshirt. To the best of my knowledge, G.M. has not worn the Firearms
26 Policy Coalition shirt to school since he was disciplined for a dress code violation.

27 I declare under penalty of perjury under the laws of the State of Nevada and of the United
28 States of America that the foregoing is true and correct. Executed April 30, 2018 in Nevada.


AUDREY GUARDANAPO

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Washoe County School District

Every Child, By Name And Face, To Graduation

Administrative Manual 5904

Parent- Student Handbook

www.washoeschools.net
775.348.0200
425 East Ninth Street
Reno, NV 89512

EX. 1

school days from the date the form was received in the District office until a resolution is proposed.

To obtain a public complaint form, a full version of the complaint resolution procedures, or to address any questions, please contact your school administrator, the WCSD Central Administration Building, or the District's website at <http://washoeschools.net/domain/209>.

Conduct / Behavior

The District believes that every student has the right to learn in a respectful, safe and inviting learning environment and that every teacher has the right to teach in an environment that is free from distractions and disruptions that impede learning. A positive school climate that holds high expectations for student behavior and growth will result in the academic, social, and emotional growth of all of students.

Consequences

Consequences for prohibited behaviors shall follow the District's and individual school's sequential and progressive discipline plan and behavioral matrix. Questions related to specific consequences should be directed to the school principal.

Dress Code

The primary responsibility for dress and grooming rests with our students and their parents/legal guardians. However, the District does reserve the right to establish a comprehensive dress code with limitations for students which addresses what clothing they may wear and how they may wear that clothing. School authorities have the professional responsibility and legal sanction to enforce student dress requirements, and within this authority, the right to request that students change their attire to conform to the District's Dress Code. The following requirements are not intended to silence expressive conduct, but instead, constitute an attempt to maintain a productive, safe, learning environment.

As specified in Washoe County School District procedures, "the dress or grooming of all students must not present potential health or safety problems or cause distractions." Specific prohibitions or limitations include, but are not limited to, the following:

Condition and Wear of Clothing

- Nothing that distracts or poses a safety hazard, to include holes, rips, or tears that reveal the body; and tight-fitting or revealing clothing.

Safety

- No clothing that can pose a potential health or safety problem;

- No gloves inside the building; no single glove at any time;
- No jewelry or chains that can cause injury, to include hanging chains and metal spiked or metal studded accessories.

Tops/Skirts/Dresses

- Tops must cover the upper and middle torso at all times;
- Skirts must cover the lower torso with no skin showing between top and skirt;
- Skirts and dresses must be at least mid-thigh in length; no mini-skirts;
- No exposed undergarments;
- No halter, tank or tube tops; no transparent, half, or muscle shirts;
- No exposed shoulders;
- No low cut necklines, exposed cleavage, or spaghetti straps;
- No pajamas, lounge wear, or bath robes; and
- Inappropriate tops may not be covered with sheer shirts, sweatshirts, or jackets.

Pants/Shorts

- Must cover lower torso with no skin showing between top and pants/shorts;
- No exposed undergarments;
- No sagging pants or shorts;
- No single rolled up pant leg;
- No exposed buttocks;
- Belt buckle monograms must be appropriate;
- No hanging or extended belt lengths;
- No unfastened overalls;
- No cut-offs;
- Shorts must be hemmed and at least mid-thigh in length; and
- No mini-shorts.

Head Coverings

- No head coverings or sunglasses worn in the building during school hours;
- Exceptions are made for religious or medical reasons; and

- No bandanas (all colors), do-rags (all colors), hairnets, surgical/shower caps, or hair picks at any time on campus or at any school-sponsored event.

Footwear

- Proper footwear at all times; and
- No house slippers.

Language / Illustrations on Clothing

- No obscene, vulgar, profane, or derogatory language or illustrations on clothing;
- No sexual overtones, or anything that promotes weapons, alcohol, drugs, tobacco, gang membership, or violence; and
- Nothing that may be deemed a safety issue.

Gang Attire

All items that have been identified as gang-related by local law enforcement agencies and WCSD school police are prohibited. The District shall consult with law enforcement agencies and other agencies to determine changes in gang appearance, dress and activities and shall inform principals or their designees about these changes as needed. Prohibited items may include but are not limited to:

- dangling belts;
- chains;
- unfastened overalls;
- sagging pants/shorts;
- single rolled up pant leg;
- hairnets, bandanas, or do-rags (all colors);
- blue or red shoelaces on footwear at any time; other colors may be deemed inappropriate as necessary to protect student safety on campus;
- altered insignias or graffiti;
- jewelry or belt buckles symbolizing any gangs; and
- Graffiti in or on personal belongings symbolizing any identified.

School Uniforms / Standard Student Attire

The Board of Trustees, through Board Policy 5105, Student Uniforms – Adoption of a Site-Based Policy, has authorized schools within the District to establish a site-based policy that requires students to wear school uniforms. Schools that choose to adopt a site-based student uniform policy shall follow a collaborative, inclusive process that gives parents/guardians, students, and faculty and staff a voice. The implementation of school uniforms at a specific school site must adhere to the parameters set forth in the policy and associated administrative regulation.

WASHOE COUNTY SCHOOL DISTRICT MIDDLE SCHOOL DRESS CODE

The United States Supreme Court rendered a decision in 2000 that school administrators can establish policies prohibiting conduct which materially and substantially interferes with the educational process. This includes, but is not limited to, inappropriate clothing or attire. The Court noted that it is a highly appropriate function of public school education to prohibit offensive language or clothing in public discourse. The First Amendment does not prevent schools from establishing guidelines to prevent the undermining of their basic educational mission.

The primary responsibility for dress and grooming rests solely with our students and their parents and/or legal guardians. However, the school district does reserve the right to establish a comprehensive dress code with limitations for students which addresses what clothing they may wear and how they may wear that clothing. School authorities have the professional responsibility and legal sanction to enforce student dress requirements, and within this authority, the right to request that students change their attire to conform to the Washoe County School District Middle School Dress Code. The following requirements are not intended to silence expressive conduct, but instead, constitute an attempt to maintain a productive, safe, learning environment.

As specified in Washoe County School District administrative regulations (5132), "The dress or grooming of all students must not present potential health or safety problems or cause distractions." Specific prohibitions or limitations include, but are not limited to, the following:

Condition and Wear of Clothing

Nothing that distracts or poses a safety hazard
No holes, rips, or tears that reveal the body
No tight-fitting or revealing clothing

Safety

No clothing that can pose a potential health or safety problem
No gloves inside the building; no single glove at any time
No jewelry or chains that can cause injury
No hanging chains
No metal spiked or metal studded accessories

Tops/Skirts/Dresses

Tops must cover the upper and middle torso at all times
Skirts must cover the lower torso with no skin showing between top and skirt
Skirts and dresses must be at least mid-thigh in length, no mini-skirts
No exposed undergarments
No halter, tank or tube tops, no transparent, half, or muscle shirts
No exposed shoulders
No low cut necklines, exposed cleavage, or spaghetti straps
No pajamas, lounge wear, or bath robes
Inappropriate tops may not be covered with sheer shirts, sweatshirts or jackets

Pants/Shorts

Must cover lower torso with no skin showing between top and pants/shorts
No exposed undergarments
No sagging pants or shorts
No single rolled up pant leg
No exposed buttocks
Belt buckle monograms must be appropriate
No hanging or extended belt lengths
No unfastened overalls
No cut-offs
Shorts must be hemmed and at least mid-thigh in length
No mini-shorts, no spandex shorts

Head Coverings

No head coverings or sunglasses worn in the building during school hours
Exceptions are made for religious or medical reasons
No bandanas (all colors), do-rags (all colors), hairnets, surgical/shower caps, or hair picks at any time on campus or at any school-sponsored event

Footwear

Proper footwear at all times
No house slippers

Language / Illustrations on Clothing

No obscene, vulgar, profane, or derogatory language or illustrations on clothing
No sexual overtones, or anything that promotes weapons, alcohol, drugs, tobacco, gang membership, or violence
Nothing that may be deemed a safety issue

Gang Attire

All items that have been identified as gang-related by local law enforcement agencies and WCSD school police are prohibited. These may include but are not limited to:
No dangling belts
No chains
No unfastened overalls
No sagging pants/shorts
No single rolled up pant leg
No hairnets, bandanas, or do-rags (all colors)
No blue or red shoelaces on footwear at any time, other colors may be deemed inappropriate as necessary to protect student safety on campus
No altered insignias or graffiti
No jewelry or belt buckles symbolizing any gangs
No graffiti in or on personal belongings symbolizing any identified gang

Consequences

At the beginning of the 2005-2006 school year if a student violates the dress code s/he will be given a warning by school staff. School staff will notify school administrators with the student's name. School administrators will notify parent/legal guardian of the warning. The student must correct the clothing violation at that time, prior to returning to his/her class schedule. Refusal to change clothes will constitute insubordination. After the first five school days of the 2005-2006 school year, the warning system will be terminated and the following sequential and progressive discipline plan will be followed:

First Offense

- 1 Parent notified
- 2 Student must change clothing violation
- 3 Student assigned detention
- 4 Student warned of consequences for second violation
- 5 Consequence/conference entered in student discipline documentation

Second Offense

- 1 Parent notified
- 2 Student must change clothing violation
- 3 In-school suspension, Saturday school, work crew, or multiple detentions assigned, depending on the consequence available at school site
- 4 Student warned of consequence for third offense
- 5 Consequence/conference entered in student discipline documentation

Third Offense

- 1 Parent notified
- 2 Student must change clothing violation
- 3 Out-of-school suspension assigned
- 4 Warned that any further violations will result in multiple days of suspension
- 5 Consequence/conference entered in student discipline documentation

NOTE: Students will NOT be allowed to carry backpacks during the school day at Kendyl Depoali Middle School. Students will unload their backpacks in the morning and leave their backpack in their locker until they are ready to leave at the end of the school day. This policy is in place to ensure student safety and to allow students to move about the building without causing unnecessary accidents.

Reviewed by Executive Cabinet 4/05



ADMINISTRATIVE PROCEDURE 5101 Guidelines for Regulating Student Speech Through Clothing

Responsible: Office of the General Counsel

PURPOSE

This administrative procedure shall establish guidelines for regulating student speech through clothing in the Washoe County School District.

PROCEDURE

1. The District recognizes all cultures and ethnic groups as being important to our society and is committed to creating and fostering an educational environment that respects the cultural diversity of the various communities within the District. Every student is entitled to develop a sense of personal and cultural identity that is significant and individual, but also respectful towards the identities of others.
2. The District's dress requirements are in no way an attempt to silence free expression but to create a productive, uninterrupted, and safe learning environment.
3. The District does not seek to restrict or ban a student's wearing of religious clothing, with the exception of unprotected speech. Parents having religious-based concerns regarding the dress code or a site-based uniform policy are encouraged to discuss them with the principal.
 - a. Unprotected speech may include, but is not necessarily limited to, the following: obscenity, fighting words, defamation (includes libel, slander), child pornography, perjury, blackmail, incitement to imminent lawless action, true threats, solicitations to commit crimes, and speech which is vulgar or profane. Unprotected speech includes any article or apparel which displays obscene words, pictures, or designs; speech which is sexually suggestive, or has a pro-alcohol, tobacco and/or controlled or illegal substances message; clothing or items that symbolize gang-related behavior; speech which is derogatory in nature, does not comply with the District's policies and regulations, interferes with the educational process and/or poses a threat to the safety of students or other individuals.
4. The following are guidelines to be used by site administrators in regulating student speech through clothing:
 - a. Is the message verbally or visually lewd or obscene?
 - i. The United States Supreme Court has defined obscene speech by stating, "(1) the proscribed material must depict or describe sexual conduct in a patently offensive way, (2) the conduct must be

Administrative Procedure 5101
Guidelines for Regulating Student Speech Through Clothing
Page 2

specifically described in the law, and (3) the work must, taken as a whole, lack serious value and must appeal to a prurient interest in sex.

ii. Obscenity is defined by Nevada Revised Statutes (NRS 201.235(4)) as "any item, material or performance which:

1. An average person applying contemporary community standards would find, taken as a whole, appeals to prurient interest;
2. Taken as a whole lacks serious literary, artistic, political or scientific value; and
3. Does one of the following:
 - a. Depicts or describes in a patently offensive way ultimate sexual acts, normal or perverted, actual or simulated.
 - b. Depicts or describes in a patently offensive way masturbation, excretory functions, sadism or masochism.
 - c. Lewdly exhibits the genitals."

b. Does the content contain defamatory remarks?

- i. Black's Law defines Defamation as, "A false written or oral statement that damages another's reputation."

c. Is an immediate danger created to students?

- i. The "clear and present danger" test for restricting freedom of expression or association is met when expression is directed to "inciting or producing imminent lawless action and is likely to incite or produce such action." (Brandenburg v. Ohio, 395 U.S. 444, 447, 89 S.Ct. 1827, 1829, 23 L.Ed.2d 430 (1969).)

d. Does the message encourage students towards illegal act?

- i. Messages which promote underage drinking, illegal drug use, violence, etc., are prohibited.

e. Is the speech a substantial disruption to the orderly operation of the school?

- i. Conduct by the student, in class or out of it, which for any reason whether it stems from time, place, or type of behavior materially disrupts classwork or involves substantial disorder or invasion of the

rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech. (*Tinker v. Des Moines School District*, 393 U.S. 503, 513, 89 S.Ct. 733, 740, 21 L.Ed.2d 731 (1969))

- f. Does the speech violate a specific school rule or policy?
 - i. This could include any Board Policy, Administrative Regulation, or school rule as reflected in the Parent/Student Handbook.
- 5. Any appeal of the principal's decision to prohibit a particular item of clothing or accessory shall follow the District's public complaint process.

DESIRED OUTCOMES

- 1. This Administrative Procedure is designed to recognize that every student is entitled to develop a sense of personal and cultural identity that is significant and individual, but also respectful towards the identities of others.
- 2. This Administrative Procedure established guidelines designed to create a productive, uninterrupted, and safe learning environment

IMPLEMENTATION GUIDELINES & ASSOCIATED DOCUMENTS

- 1. This administrative procedure reflects the goals of the District's Strategic Plan.
- 2. This Administrative Regulation aligns with the following WCSD governing documents:
 - a. Board Policy 5105, Student Uniforms – Adoption of a Site-Based Policy, and its associated administrative regulation.
 - b. Administrative Procedure OSP-P002, Student Dress
 - c. Board Policy 5039, Student Discipline
 - d. Board Policy 1312, Public Complaint Procedure
- 3. This administrative procedure complies with Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC).
- 4. This administrative procedure complies with federal laws and regulations.

REVIEW AND REPORTING

- 1. This procedure and any accompanying documents will be reviewed bi-annually, in the year opposite the regular session of the Nevada State Legislature.

Administrative Procedure 5101
Guidelines for Regulating Student Speech Through Clothing
Page 4

REVISION HISTORY

Date	Revision	Modification
10/06/2014	1.0	Adopted

Sparks Black Rifle



EX. 4



EX. 4



1 THE O'MARA LAW FIRM, P.C.
2 DAVID C. O'MARA (Nevada Bar No. 8599)
3 311 East Liberty Street
4 Reno, NV 89501
5 Telephone: (775) 323-1321
6 Facsimile: (775) 323-4082
7 david@omaralaw.net

8 BENBROOK LAW GROUP, PC
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12 Sacramento, CA 95814
13 Telephone: (916) 447-4900
14 brad@benbrooklawgroup.com
15 steve@benbrooklawgroup.com

16 EUGENE VOLOKH*
17 UCLA School of Law
18 405 Hilgard Ave.
19 Los Angeles, CA 90095
20 Telephone: (310) 206-3926
21 eugene.volokh@gmail.com

22 *Pro hac vice applications to be submitted

23 Attorneys for Plaintiff

24 UNITED STATES DISTRICT COURT
25 DISTRICT OF NEVADA

26 G.M., a minor, by and through AUDREY
27 GUARDANAPO and SHAUN
28 GUARDANAPO,

Plaintiff,

v.

WASHOE COUNTY SCHOOL DISTRICT;
KENDYL DEPOALI MIDDLE SCHOOL; and
JOYE ANCINA, in her official capacity as
Principal, Kendyl Depoali Middle School,

Defendants.

Case No.: 3:18-cv-00172

**DECLARATION OF DAVID O'MARA IN
SUPPORT OF PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR
TEMPORARY RESTRAINING ORDER**

Hearing Date: TBD
Judge: Hon. Robert C. Jones

1 I, David O'Mara, declare:

2 1. I am an attorney duly licensed to practice law in the State of Nevada. I am an
3 attorney at The O'Mara Law Firm, P.C., counsel of record for Plaintiff in this matter. I have
4 personal knowledge of the matters set forth in this declaration, and would be able to testify
5 competently to these facts if called as a witness.

6 2. Plaintiff filed this case on Tuesday, April 24, 2018. That same day, I called the
7 general counsel's office of Defendant Washoe County School District. I informed the general
8 counsel's office of the case and discussed our intent to file a Temporary Restraining Order. I
9 followed up my phone call with an e-mail to providing a copy of the complaint and requesting to
10 discuss a briefing schedule on this motion. I also requested that the general counsel accept service
11 of the summons and complaint on behalf of Defendants. A true and correct copy of the e-mail to
12 the general counsel's office is attached as Exhibit "6"

13 3. The next morning, I followed up with a phone call to the general counsel's office.
14 At that time I was informed that General Counsel Sara Almo had been assigned to handle this case.
15 I then sent Ms. Almo an e-mail reiterating that Plaintiff intended to seek a temporary restraining
16 order, offering to meet and confer on a briefing schedule, and requesting that general counsel
17 accept service. A true and correct copy of the e-mail to Ms. Almo is attached as Exhibit "7"

18 4. Ms. Almo responded by letter on April 26, but did not agree to accept service or
19 address a potential briefing schedule. A true and correct copy of the letter is attached as Exhibit
20 "8."

21 5. On the morning of May 1, I sent Ms. Almo a letter informing her that Plaintiff
22 intended to file a motion for a temporary restraining order at the close of business on May 2. A
23 true and correct copy of the letter is attached as Exhibit "9." Later that day, Ms. Almo sent a letter
24 in response, a true and correct copy of which is attached as Exhibit "10."

25 6. My firm will serve all papers supporting the motion for a temporary restraining
26 order on Defendants by e-mail service to Ms. Almo on May 2, 2018, and by hand delivery on May
27 3, 2018.

1 I declare under penalty of perjury under the laws of the State of Nevada and of the United
2 States of America that the foregoing is true and correct. Executed May 2, 2018 in Nevada.

3 
4 DAVID O'MARA, ESQ.
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CERTIFICATE OF SERVICE

I, Bryan Snyder, do hereby certify that I am an employee of The O'Mara Law Firm, P.C., and further certify that the foregoing document was electronically filed and served upon all parties via the Court's Electronic Filing system.

DATED: May 2, 2018

/s/ Bryan Snyder
BRYAN SNYDER

OFFICE OF THE GENERAL COUNSEL

Neil A. Rombardo, Esq.
Christopher B. Reich, Esq.
Sarah K. Almo, Esq.
P.O. Box 30425
Reno, NV 89520

Attorneys for Washoe County School District, Kendyl DePoali Middle School and Joyce Ancina in her official capacity as Principal, Kendyl DePoali Middle School

EXHIBIT INDEX

Exhibit No.	Description	Pages
6	Email enclosing File Stamped Complaint	1
7	Email re: Acceptance of Service	1
8	Letter from Defendants dated 4.26.18	3
9	Email and attached letter from Plaintiff's in Response to 4.26.18 letter	3
10	Letter from Defendants dated May 1, 2018	3

EXHIBIT 6

EXHIBIT 6

David O'Mara, Esq.

From: David O'Mara, Esq.
Sent: Tuesday, April 24, 2018 10:43 AM
To: 'Bread@washoeschools.net'
Subject: G.M (Gaurdanapo) v. Washoe County School District 3:18-cv-00172
Attachments: 001 Complaint.pdf; 001-1 Civil Cover sheet.pdf; 001-3 Summons.pdf; 001-4 Summons.pdf; 001-2 Summons.pdf

Breanna,

Thank you for taking my phone call. I am attaching the complaint and other documents filed today in Federal Court regarding the above-referenced matter.

As I stated, I would like to speak with counsel regarding the TRO/Injunction motions that we will be filing and to see if we can reach an expedited briefing schedule without having to request shortening time from the Court.

Additionally, while we did not discuss, I would also like to discuss whether counsel will accept service or if we should move forward with having the parties served.

Please forward to counsel and have he/she give me a call to discuss. We would like to try and get an agreement on the briefing schedule today, if possible.

Thanks

David

David C. O'Mara, Esq.
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EXHIBIT 7

EXHIBIT 7

David O'Mara, Esq.

From: David O'Mara, Esq.
Sent: Wednesday, April 25, 2018 2:31 PM
To: 'salmo@washoeschools.net'
Cc: Steve Duvernay; Bradley Benbrook
Subject: G.M (Guardanapo) v. Washoe County School District, et. al.

Ms. Almo,

I recently (Tuesday, April 24, 2018) forwarded a copy to your office legal assistant Breanna Read and asked her to have counsel call me. Additionally, I discussed, and later included in my email to Ms. Read that I would like to discuss a briefing schedule for the TRO/Injunction motion that is forthcoming. Moreover, I requested that your office would accept service for the defendants.

I followed up my email with a telephone call this morning, and was told you were assigned the case, however, I still have not received a call as of this email. Obviously, you are busy and will return my call when you can, however, I was hoping to get some responses before the close of business.

Thus, could you please let me know if your office will accept serve by 4:00 p.m. today. Otherwise, we will have to send it out to the process server so we can serve early tomorrow morning. Additionally, we would like to set a briefing schedule so we only have one hearing, and don't have to ask the Court for a TRO and then come back a couple days alter for an injunction hearing. Thus, would you be agreeable to file your response on May 8, 2018 if we file the Motion on Monday, April 30, 2018. We can then file our response that Friday and try and seek a hearing date during the week of May 14-May 18.

Thank you for your cooperation on this matter. Please give me a call to discuss. If you cannot reach me at the office, can you please contact me on my cell phone 775.762.9368.

Thank you.

David

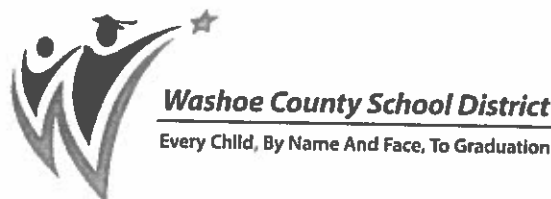
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EXHIBIT 8

EXHIBIT 8

Office of the General Counsel



Neil A. Rombardo, Esq., Chief General Counsel
Christopher B. Reich, Esq., Deputy Chief General Counsel
Sara K. Almo, Esq., General Counsel
P.O. Box 30425, Reno, NV 89520-3425
Phone (775) 348-0300 / Fax (775) 333-6010
legal@washoeschools.net

April 26, 2018

Sent via United States First Class Mail and email to david@omaralaw.net

David O'Mara Esq.
The O'Mara Law Firm, PC
311 East Liberty Street
Reno, Nevada 89501

Re: Guardanapo v. WCSD, et al.
Case No. 3:18-cv-00172

Dear Mr. O'Mara:

I am in receipt of the email you sent to Washoe County School District (WCSD) Office of the General Counsel on April 24, 2018, attaching a copy of a federal complaint you filed on the same date. The complaint alleges that on March 12, 2018, an 8th grade student attending Kendyl Depoali Middle School (Depoali) was denied his rights under the First Amendment because his teacher required him to cover up a Firearms Policy Coalition (FPC) t-shirt he was wearing on that date. Your complaint names the WCSD, Depoali,¹ and Depoali Principal Joye Ancina as defendants, and seeks declaratory and injunctive relief for the ultimate result of ensuring the student be permitted to wear his FPC t-shirt at school.

It is important to note that your complaint is the first instance WCSD, Depoali administration, or Principal Ancina have heard of this issue. As alleged in your complaint, a teacher made the alleged request for the student to cover the FPC t-shirt, without involving the Depoali administration to confirm whether such request was consistent with WCSD policies, regulations and procedures. However, the student received no discipline for wearing the FPC t-shirt, and his student record contains no dress code violations for the 2017-2018 school year. Nor did your clients contact the school or any WCSD staff member expressing concerns over the teacher's request that the student cover up his FPC t-shirt. Had this teacher or your clients involved the Depoali administration, the administration would have referred to WCSD Administrative Procedure 5101, which provides administrators clear guidelines when regulating student speech through clothing. As you have recognized in your complaint, the guidelines encourage, rather than limit, student expression. The guidelines further acknowledge that every student is entitled to develop a sense of personal cultural identity. While the guidelines outline what constitutes

¹ Depoali is a middle school owned and operated by WCSD. It is not an independent entity that can be sued. Thus, its inclusion as a named defendant is improper.

Mr. O'Mara

Re: Guardanapo v. WCSD, et al.

Case No. 3:18-cv-00172

April 26, 2018

Page 2

unprotected speech pursuant to the law, noticeably absent from the administrative guidelines is authority to regulate student speech that endorses the Second Amendment. Accordingly, all WCSD policies, regulations, and procedures regarding student expression comply with the First Amendment and the jurisprudence analyzing student speech parameters. Indeed, contrary to the allegations in your complaint, Depoali administration, led by Principal Ancina, encourages student expression regardless of viewpoint. In fact, during the National Student Walkout movement, which, contrary to your allegations was not sponsored by Depoali or WCSD, Principal Ancina permitted all students to express their views on gun control through their clothing, including those who supported the Second Amendment and wore clothing expressing those beliefs.

Accordingly, your federal lawsuit raises an issue that could have been quickly and informally remediated by either Depoali or WCSD administration had it been brought to their attention. Yet, at no time since the alleged incident on March 12, 2018 did your clients contact the school to address this situation and/or express any concern that the student was unable to wear his FPC t-shirt at school. Moreover, at no time prior to filing this lawsuit did you or any attorneys you are seeking to admit in Nevada ever notify this Office of a potential Constitutional violation at one of our schools in an attempt to quickly address and resolve this issue.² Instead, you and your clients chose to remain silent on the issue, file a lawsuit approximately a month and a half after the alleged incident, presumably provide a copy of the lawsuit to the media before any of the defendants were served, and then send our Office multiple emails demanding that we agree to an expedited briefing schedule for an apparent preliminary injunctive hearing before the defendants have even had an opportunity to provide any response. Your decision to forego any resolution attempts to quickly address the matter for the student and instead file and publicize a lawsuit inappropriately naming the school and its principal has also had an adverse impact on Principal Ancina, who has received a slew of hate mail and angry phone calls regarding an incident over which she had no involvement.

Had you or your clients done any of the foregoing resolution measures prior to filing a federal lawsuit, the issue would have been promptly resolved at either the school or administrative level and the student would have been immediately permitted to wear the t-shirt. Indeed, it took

² Sahyers v. Prugh, Holliday & Karatinos, P.L., 560 F.3d 1241, 1244 (11th Cir. 2009) (denying an award of attorney fees for a successful plaintiff in a Fair Labor Standards Act case because "Plaintiff made absolutely no effort—no phone call; no email; no letter—to inform them of Plaintiff's impending claim much less to resolve this dispute before filing suit. Plaintiff's lawyer slavishly followed his client's instructions and—without a word to Defendants in advance—just sued his fellow lawyers. As the district court saw it, this conscious disregard for lawyer-to-lawyer collegiality and civility caused (among other things) the judiciary to waste significant time and resources on unnecessary litigation and stood in stark contrast to the behavior expected of an officer of the court."); Graham v. DaimlerChrysler Corp., 34 Cal. 4th 553, 561, 101 P.3d 140, 147 (2004), as modified (Jan. 12, 2005) (In analyzing a state attorney fees statute that served a similar fundamental objective as that of Section 1988, namely to encourage lawsuits enforcing important public policies, the California Supreme Court stated that in order to recover attorney fees, a plaintiff "must . . . engage[] in a reasonable attempt to settle its dispute with defendant prior to the litigation."); Riverside v. Rivera, 477 U.S. 561, 580 (1986) (plurality opinion) (fee awards under §1988 were never intended to "produce windfalls to attorneys.") (quoting S.Rep. No. 94-1011, p. 6 (1976) U.S.Code Cong. & Admin.News 1976 pp. 5908, 5913); Farrar v. Hobby, 506 U.S. 103, 119 (1992) (concurring opinion) (holding that §1988 is not a relief Act for lawyers).

Mr. O'Mara

Re: Guardanapo v. WCSD, et al.

Case No. 3:18-cv-00172

April 26, 2018

Page 3

our Office only two days to respond and resolve this situation once we were notified. Unfortunately, you chose not to pursue such an easy remedy and only prolonged the very outcome to which you seek—i.e. for the student to wear his FPC t-shirt at school.

However, now that this issue has been brought to the attention of WCSD, you may consider this matter moot. Effective immediately, the student may wear the FPC t-shirt at school. Further, although WCSD student speech policies, regulations and procedures clearly permit students to endorse their beliefs through their clothing, which could include promotion of the Second Amendment, to the extent the “promotes weapons” language contained in a handbook or site-based dress code can be interpreted to regulate clothing which endorses the Second Amendment, such language will be removed from the handbook and site-based dress code.

As the remedies you seek in your complaint are now moot, the issue of service on the defendants and your request for an expedited briefing schedule are unnecessary as the complaint should be withdrawn.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Almo', with a stylized flourish extending to the right.

Sara K. Almo, Esq.
General Counsel

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EXHIBIT 9

EXHIBIT 9

David O'Mara, Esq.

From: David O'Mara, Esq.
Sent: Tuesday, May 01, 2018 7:49 AM
To: 'salmo@washoeschools.net'
Cc: 'Stephen Duvernay'
Subject: FW: Gun Case
Attachments: DOC015.pdf

Ms. Almo,

Attached is my client's response to your correspondence dated April 26, 2018. I have added my co-counsel, Mr. Stephen Duvernay to the email chain because I will be in Las Vegas all day today and will have limited email and cell access.

If you would like to discuss this matter, please let us know.

Thank you for your cooperation on this matter.

DAVID C. O'Mara, ESQ.
The O'Mara Law Firm, P.C.
311 East Liberty Street
Reno, Nevada 89501
Telephone: (775) 323-1321
Fax: (775) 323-4082
bsnyder@omaraalaw.net

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311 E. Liberty Street
Reno, Nevada 89501
(Tel) 775-323-1321
(Fax) 775-323-4082
david@omaralaw.net

May 1, 2018

VIA FACSIMILE 333.6010
VIA EMAIL SALMO@WASHOESCHOOLS.NET
(ORIGINAL WILL FOLLOW)

Washoe County School District
Attn: Ms. Sara Almo, Esq.
General Counsel
P.O. Box 30425
Reno, Nevada 89520

Re: *Guardanapo v. WCSD, et. al, Case No. 3:18-cv-00172*

Dear Ms. Almo,

I am in receipt of your letter dated, April 26, 2018, regarding your client's position in the above-referenced matter.

First, at this time, there is no reason for my clients to withdraw their complaint. Contrary to your client's position, the School District and Kendyl Depaoli Middle School cannot simply moot their unconstitutional actions by saying G.M. can wear his FPC shirt to school and assuring that the district and school dress codes will be revised.

As you know, this case is not just about G.M., and it is not only about the FPC shirt. In fact, G.M.'s First Amendment rights have already and continue to be violated and the dress code unconstitutionality impacts other students at Kendyl Depoali and schools throughout the district who may wish to express themselves consistent with their First Amendment rights.

With that being said, and if the District and School wishes to resolve this case, my clients propose the following resolution:

The District and School must stipulate to a judgment that

- (1) acknowledges the past infringement of G.M.'s First Amendment rights, and
- (2) confirms that they will revise the district and school dress codes within 60 days to remove the vague and overbroad prohibition on clothing that "promotes weapons."

As the District is well aware, the change to the dress code required in subsection (2) above, would not only address the constitutional violation in this case, but would also bring the

DAVID C. O'MARA


May 1, 2018
Page 2

dress code into compliance with N.R.S. 392.4634(1)(b). NRS 392.4634(1)(b) was passed by the Nevada Legislature many years ago to prohibit school officials from punishing students for “[w]earing clothing or accessories that depict a firearm or dangerous weapon or express an opinion regarding a constitutional right to keep and bear arms, unless it substantially disrupts the educational environment.”

If the District and School won’t agree to a stipulated judgment, my clients intend on filing a motion for a temporary restraining order at close of business, Wednesday, May 2, 2018.

Thank you for your continued cooperation on this matter. I look forward to your response.

Very truly yours,



David C. O'Mara, Esq.

Cc: client
Counsel

EXHIBIT 10

EXHIBIT 10

Office of the General Counsel



Washoe County School District

Every Child, By Name And Face, To Graduation

Neil A. Rombardo, Esq., Chief General Counsel
Christopher B. Reich, Esq., Deputy Chief General Counsel
Sara K. Almo, Esq., General Counsel
P.O. Box 30425, Reno, NV 89520-3425
Phone (775) 348-0300 / Fax (775) 333-6010
legal@washoeschools.net

May 1, 2018

Sent via United States First Class Mail and email to david@omaralaw.net

David O'Mara Esq.
The O'Mara Law Firm, PC
311 East Liberty Street
Reno, Nevada 89501

Re: Guardanapo v. WCSD, et al.
Case No. 3:18-cv-00172

Dear Mr. O'Mara:

I am in receipt of your correspondence from this morning outlining potential resolution options. Specifically, you have proposed the following: 1) The Washoe County School District (District or WCSD) and Depoali Middle School must stipulate to a judgment that acknowledges the past infringement of G.M.'s First Amendment Rights; and 2) the WCSD must confirm that all WCSD dress codes will be revised within 60 days to remove any reference to "promotes weapons."

As I stated in my April 26, 2018 correspondence, had any WCSD administrator been apprised of the facts or issues presented in your Complaint, the matter would have been immediately resolved. Instead, the first instance WCSD heard of this issue was when you filed your Complaint and then demanded an expedited briefing schedule for a temporary restraining order to permit the student to wear the FPC shirt. However, as I outlined in my April 26, 2018 letter, once the District was notified of the issue, it immediately worked to rectify the situation and informed you that the student could wear his FPC shirt and that any reference to "promotes weapons" would be removed from the Parent/Student handbook and the school dress code. Thus, not only does the District agree to the second resolution proposal in your letter, but WCSD was the party to initiate it and it is already in effect.¹

Accordingly, it is unclear why you would still seek a temporary restraining order when you were informed last week that there is no longer a live case and controversy in this matter. Again,

¹ On April 26, 2018, all principals were notified of this issue and were directed to remove any "promotes weapons" language from their dress codes. WCSD administration is currently assisting all schools to ensure the language is removed. Further, on April 26, 2018, Depoali Middle School Principal Ancina informed all of her staff that they were required to follow WCSD policies and procedures regarding any potential dress code violations and that no student could be disciplined or otherwise censored for clothing which promoted weapons or the Second Amendment.

Mr. O'Mara

Re: Guardanapo v. WCSD, et al.
Case No. 3:18-cv-00172

May 1, 2018

Page 2

within two days' notice, WCSD implemented the remedies you sought and there is no opportunity for the conduct to be resumed.² As there is no longer a live case or controversy in this matter, any further action to seek an order for a remedy already provided to your client would be in bad faith and an improper effort to unnecessarily increase the costs of litigation. *See* FRCP 11 (requiring an attorney signing a motion to affirm that such motion is warranted by existing law and it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation).

Regarding the first proposed resolution, I note that you have correctly excluded Principal Ancina from your request for a judgment acknowledging a past constitutional infringement. As I outlined in my April 26, 2018 correspondence, she had no involvement in this matter and your Complaint fails to allege any improper conduct by Principal Ancina. Thus, she should be voluntarily dismissed from this case as it has caused her unnecessary hardship.

Regarding the request for WCSD and Depoali Middle School to agree to a stipulated judgment, as noted to you in my April 26, 2018 letter, Depoali Middle School is not an entity that can be sued or have judgement taken against it, so it was improperly named in the first place. Thus, Depoali Middle School should be included with Principal Ancina in the voluntary/stipulated dismissal.

Regarding a stipulated judgment between Plaintiff and WCSD, we are unclear why you are making this request rather than withdrawing the Complaint given the mootness of your claim and immediate resolution by WCSD of the issues for the student. If it is to pursue attorney fees after entering such judgment, such a tactic has been viewed as improper by courts reviewing such claims, as I outlined in my April 26, 2018 correspondence.³ However, we are willing to further discuss and clarify this issue with you to come to a mutual resolution to ensure dismissal of the Complaint.

Finally, yesterday CBS News contacted WCSD stating that they were running a story on this case and insinuating that you or your colleagues would be interviewed for the piece. It is unclear how CBS News became aware of this matter and why Plaintiffs' counsel would agree to such an interview after already being informed that the issue was moot. Indeed, in my April 26,

² "Article III of the Constitution requires that there be a live case or controversy at the time that a federal court decides the case." Blair v. Shanahan, 38 F.3d 1514, 1518 (9th Cir. 1994) (quoting Burke v. Barnes, 479 U.S. 361, 363 (1987)). A claim is moot when issues presented are no longer live, the parties lack a legally cognizable interest in the outcome, or when there is no present controversy as to which effective relief can be granted. Outdoor Media Group, Inc. v. City of Beaumont, 506 F.3d 895, 900 (9th Cir.2007). A claim can be moot when a defendant voluntarily ceases alleged improper conduct. Id.

³ Further, to the extent you are also seeking fees for work performed by non-Nevada licensed attorneys before they have been approved to practice law in Nevada, the courts have denied any such fees. *See e.g. Z.A. v. San Bruno Park Sch. Dist.*, 165 F.3d 1273 (9th Cir. 1999) (precluding attorney fee award for legal services in state proceeding of attorney not admitted to state bar); In re Discipline of Lerner, 124 Nev. 1232, 1236, 197 P.3d 1067, 1070 (2008) (outlining Nevada's prohibition of the unauthorized practice of law).

Mr. O'Mara

Re: Guardanapo v. WCSD, et al.

Case No. 3:18-cv-00172

May 1, 2018

Page 3

2018 letter, you were informed that WCSD policies, regulations and procedures all encourage, rather than limit, student expression and that this incident appears to be an isolated misjudgment by a staff member who failed to follow WCSD procedures. Further, the WCSD immediately resolved this issue by permitting the student to wear his FPC shirt and revising an outdated school handbook and dress code, which could be interpreted in a manner inconsistent with WCSD policies, regulations and procedures. As I reiterated several times in my April 26, 2018 letter, had WCSD been informed of this issue, the matter could have been resolved without any need for formal litigation. Thus, participating in further publicity of this now moot issue that WCSD never received prior to litigation is contrary to good faith settlement conduct and ethical duties of fairness to opposing counsel. However, if you wish to issue a joint press release on this matter when we work out the formal resolution, we welcome the option.

In sum, WCSD is willing to resolve this Complaint and there is no need for further litigation of a mooted matter. When you are available to discuss finalizing these resolution efforts, please contact me. Please note that I will be out of the office May 7, 2018 through May 11, 2018, so ideally we can connect on resolution this week.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sara K. Almo', with a stylized flourish at the end.

Sara K. Almo, Esq.
General Counsel

1 THE O'MARA LAW FIRM, P.C.
2 DAVID C. O'MARA (Nevada Bar No. 8599)
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steve@benbrooklawgroup.com

10 EUGENE VOLOKH*
11 UCLA School of Law
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Los Angeles, CA 90095
Telephone: (310) 206-3926
eugene.volokh@gmail.com

13 *Pro hac vice applications to be submitted

14 Attorneys for Plaintiff

15
16 UNITED STATES DISTRICT COURT
17 DISTRICT OF NEVADA

18 G.M., a minor, by and through AUDREY
19 GUARDANAPO and SHAUN
20 GUARDANAPO,

21 Plaintiff,

22 v.

23 WASHOE COUNTY SCHOOL DISTRICT;
24 KENDYL DEPOALI MIDDLE SCHOOL; and
JOYE ANCINA, in her official capacity as
Principal, Kendyl Depoali Middle School,

25 Defendants.
26
27
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Case No.: 3:18-cv-00172

**DECLARATION OF G.M. IN SUPPORT
OF PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR TEMPORARY
RESTRAINING ORDER**

Hearing Date: TBD
Judge: Hon. Robert C. Jones

1 I, G.M., declare:

2 1. I know and understand the facts that are written below, and would honestly and
3 truthfully testify about them if I was asked about them in court by a judge.

4 2. I am currently an eighth-grade student at Kendyl Depoali Middle School. My
5 mom's name is Audrey Guardanapo. As long as I can remember, I've been raised by my mom and
6 Shaun Guardanapo.

7 3. My mom and Shaun have both worked in law enforcement. Before I was born,
8 Shaun was in the Marines, and he's worked as a policeman for most of my life. My mom works as
9 a police dispatcher. My mom and Shaun have raised me to appreciate the U.S. Constitution and
10 value public service. I understand that the First Amendment protects my right to express my
11 opinions on political and social issues, and I try to express my views in a respectful manner.

12 4. Last November, I was disciplined by my teacher for wearing a t-shirt from Sparks
13 Black Rifle to school. I wore the shirt to school multiple times this school year and when I was in
14 seventh grade. Before last November, nobody from the school told me that the shirt violated the
15 school's dress code, and I had never been disciplined by school officials for wearing the shirt. The
16 shirt had never caused any disruption or disturbance in class or at school.

17 5. One of my teachers, Ms. May, told me that the shirt violated the school's dress
18 code because it had a picture of a gun on it. Ms. May told me I had to cover the shirt up, so I wore
19 a sweatshirt over the shirt for the rest of the day.

20 6. I haven't worn the Sparks Black Rifle to shirt to school since Ms. May told me it
21 violated the dress code.

22 7. Last month I was disciplined for wearing a Firearms Policy Coalition t-shirt to
23 school. The shirt says "Firearms Policy Coalition," and includes the words "Don't Tread On Me"
24 with a coiled rattlesnake. It also says "USA," which means "United States of America," and "2A"
25 which refers to the Second Amendment to the United States Constitution. I am a member of the
26 Firearms Policy Coalition. I believe the Second Amendment, which means that Americans have
27 the right to own firearms, is important. I wore the shirt to support Firearms Policy Coalition and
28 express my views about the Constitution.

1 9. Ms. May told me that the Firearms Policy Coalition shirt violated the dress code.
2 She told him me that I would be subject to further discipline, including a trip to the principal's
3 office, if I wore the Firearms Policy Coalition shirt again. When Ms. May told me I couldn't wear
4 the shirt, I told her that "it is my right to express myself through how I dress." In response, Ms.
5 May told me "You can have your Second Amendment rights when you turn eighteen." Ms. May
6 told me I had to cover up my shirt, so I wore a sweatshirt over the Firearms Policy Coalition shirt
7 for the rest of the day.

8 10. I haven't worn the Firearms Policy Coalition shirt to school since Ms. May told me
9 it violated the dress code. It's one of my favorite shirts, and I think it's important to express my
10 political opinions by wearing it. I want to wear it to school again, but I haven't because I don't
11 want to get another dress code violation.

12 I understand that this written statement is going to be used in court, and that it's important
13 for me to tell the truth. Everything in this statement is accurate and based on my memory of the
14 events.

15 Signed April 29, 2018 in Nevada.

16 G. M.
17 G.M.
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CERTIFICATE OF SERVICE

I, Bryan Snyder, do hereby certify that I am an employee of The O'Mara Law Firm, P.C., and further certify that the foregoing document was electronically filed and served upon all parties via the Court's Electronic Filing system.

DATED: May 2, 2018

/s/ Bryan Snyder
BRYAN SNYDER

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22 *Pro hac vice applications to be submitted

23 Attorneys for Plaintiff

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

18 G.M., a minor, by and through AUDREY
19 GUARDANAPO and SHAUN
20 GUARDANAPO,

21 Plaintiff,

22 v.

23 WASHOE COUNTY SCHOOL DISTRICT;
24 KENDYL DEPOALI MIDDLE SCHOOL; and
25 JOYE ANCINA, in her official capacity as
26 Principal, Kendyl Depoali Middle School,

27 Defendants.
28

Case No.: 3:18-cv-00172

**DECLARATION OF SHAUN
GUARDANAPO IN SUPPORT OF
PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR TEMPORARY
RESTRAINING ORDER**

Hearing Date: TBD
Judge: Hon. Robert C. Jones

1 I, Shaun Guardanapo, declare:

2 1. I have personal knowledge of the matters set forth in this declaration, and would be
3 able to testify competently to these facts if called as a witness.

4 2. I am a veteran of the United States Marine Corps, and worked for over a decade as
5 a law enforcement officer. I have helped Audrey Guardanapo raise G.M. since he was 5 years old.

6 3. In November 2017, G.M. was subject to discipline for wearing a t-shirt bearing the
7 logo from Sparks Black Rifle. G.M. wore the Sparks Black Rifle shirt to school multiple times in
8 2016 and 2017. Before November 20, 2017, I had never been notified by school officials that the
9 shirt violated the school's dress code, and, to the best of my knowledge, G.M. had never been
10 disciplined by school officials for wearing the shirt.

11 4. On November 20, 2017, I learned from Audrey that she had been contacted by
12 Kendyl Depoali Middle School Assistant Principal Heather Curtis. Assistant Principal Curtis
13 informed Audrey that G.M. had been disciplined for a dress code violation for wearing a Sparks
14 Black Rifle shirt.

15 5. On or shortly after November 20, 2017, I contacted the school and spoke with
16 Assistant Principal Curtis. Curtis explained that G.M. was disciplined because the dress code
17 prohibited images of weapons, and that the school enforced the policy against all clothing
18 depicting actual guns. During the course of this conversation I asked whether the dress code
19 would prohibit a student from wearing a National Rifle Association shirt. She told me that an
20 NRA shirt would not violate the dress code as long as it did not have an image of an actual
21 firearm.

22 6. To the best of my knowledge, G.M. has not worn the Sparks Black Rifle shirt to
23 school since he was disciplined for a dress code violation.

24 7. On March 12, 2018, G.M. was subject to discipline for wearing a Firearms Policy
25 Coalition t-shirt. The shirt included the words "Don't Tread On Me" and a coiled rattlesnake,
26 flanked by references to the United States of America ("USA") and the Second Amendment
27 ("2A"). There are no depictions of firearms or weapons of any kind of the shirt.

28 8'. On or shortly after March 12, 2018, G.M. told me that one of his teachers, Brooke

1 May, told him that the Firearms Policy Coalition shirt violated the dress code. According to G.M.,
2 Ms. May told him he would be subject to further discipline, including a trip to the principal's
3 office, if he wore the Firearms Policy Coalition shirt again. G.M. told me that he explained to Ms.
4 May that it was "[his] right to express [himself] through how [he] dressed," to which Ms. May
5 responded that he could have his "Second Amendment rights when [he] turn[s] eighteen." Ms.
6 May directed G.M. to correct the dress code violation, and G.M. complied with by covering the
7 FPC shirt with a sweatshirt. To the best of my knowledge, G.M. has not worn the shirt to school
8 since he was disciplined for a dress code violation.

9 I declare under penalty of perjury under the laws of the State of Nevada and of the United
10 States of America that the foregoing is true and correct. Executed May 1, 2018 in Nevada.

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13 SHAUN GUARDANAPO
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CERTIFICATE OF SERVICE

I, Bryan Snyder, do hereby certify that I am an employee of The O'Mara Law Firm, P.C., and further certify that the foregoing document was electronically filed and served upon all parties via the Court's Electronic Filing system.

DATED: May 2, 2018

/s/ Bryan Snyder
BRYAN SNYDER

OFFICE OF THE GENERAL COUNSEL

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