IN THE UNTED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

TYLER MAXWELL, Plaintiff, v. SCHOOL DISTRICT OF VOLUSIA COUNTY, et al., Defendants.	)	CIV. ACT. NO. 6:20-cv-01954

PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiff Tyler Maxwell is an 18-year-old high-school senior who plans to vote for the first time in the 2020 general election. To show his support for his preferred presidential candidate, he placed a red, white, and blue statute of an elephant, with "TRUMP" painted on its side, in the bed of his pickup truck. Soon after he drove the truck to school, however, his school's Principal revoked his parking decal—meaning he could no longer park in the student parking lot—and told him he could not have it back, and therefore could not park at the school, unless and until he removed the elephant.

The Principal's actions, which Defendant School Board of Volusia County ("School Board") has since ratified, violated Maxwell's First Amendment rights. This deprivation of Maxwell's rights is causing him ongoing irreparable harm.

Plaintiff therefore moves this Court for a temporary restraining order to enjoin Defendants—the School District of Volusia County ("School District"), the School Board and its members, the School District's Superintendent, and the Principal and Assistant Principal of Spruce Creek High School—from barring Plaintiff's truck (including the elephant) from the

student parking lot. A later injunction, after the election, would come too late for Plaintiff to communicate his political message, and monetary damages would not compensate him for his injury. Further, a temporary restraining order would not harm the school and would serve the public interest.

Plaintiff's undersigned counsel hereby certifies pursuant to Federal Rule of Civil Procedure 65(b)(1)(B) that Plaintiff's counsel will place this motion with a process server for immediate service upon Defendants and that Plaintiff will immediately email the complaint in this case and this motion to Defendants' general counsel to provide notice. Notice for a hearing should not be required, however, because, for the reasons stated below, Plaintiff requires immediate relief to avoid irreparable harm. Plaintiff has attached a proposed order as Local Rule 4.05 requires.

MEMORANDUM IN SUPPORT

I. Facts

Plaintiff Tyler Maxwell is an 18-year-old senior at Spruce Creek High School. Doc. 1, Plaintiff's Verified Complaint for Declaratory and Injunctive Relief ("Verified Compl.") ¶ 17. He plans to vote for the first time in the 2020 general election and supports the reelection of President Donald Trump. *Id.* ¶ 19.

To express his support, and encourage others to vote for Trump, Maxwell placed a statute of a red, white, and blue elephant bearing the name "TRUMP" in the bed of his pickup truck on Sunday, September 13, 2020. *Id.* ¶ 20. The truck and elephant appear in this photograph:

Id. ¶ 21.

On Monday, September 14, 2020, Maxwell drove his pickup truck (including the elephant) to school and parked in the school's student parking lot, as he was authorized to do because he had obtained a parking decal from the school upon payment of a $55.00 fee. *Id.* ¶¶ 18, 22.

Approximately 20 minutes into the school day, a school official asked Maxwell to leave class and took him to meet with an Assistant Principal, Defendant Alan P. Canetti. *Id.* ¶ 23. Canetti directed Maxwell to take the elephant home and told him he could only return to school without the elephant. *Id.* ¶ 24. Later that day, Maxwell's father came to the school and asked Canetti for a written explanation from the School Board of why Maxwell was not allowed to have the elephant on school grounds. *Id.* ¶ 25. Neither Canetti nor the School Board provided one. *Id.* Still later that day, the school's Principal, Defendant Todd J. Sparger, told Maxwell that he wished to contact Maxwell's father to resolve the issue of the elephant quickly. *Id.* ¶ 26. The rest of the school day passed without incident; no one else raised the issue of the elephant with

Maxwell, and, to Maxwell's knowledge, the elephant's presence caused no disruption of school activities. *Id.* ¶ 27.

After school that day, Sparger spoke to Maxwell's father and warned that he would seize Maxwell's parking permit if he returned to school with the elephant, which would have the consequence of denying him permission to park in the student parking lot. *Id.* ¶ 28. Maxwell's father again asked for a written explanation of why Maxwell was not allowed to have the elephant on school grounds, but Sparger did not provide one. *Id.*

On the following day, Maxwell again drove to school with the elephant in the bed of the truck. *Id.* ¶ 29. As Maxwell approached the school in his truck, he found Sparger waiting for him outside the school grounds. *Id.* ¶ 30. While Maxwell was still in the street, in the turning lane, before he could enter school grounds, Sparger approached him and demanded that he surrender his parking decal. *Id.* ¶ 31. Maxwell then relinquished his parking decal to Sparger. *Id.* ¶ 32.

Without a parking decal, Maxwell is forbidden from parking his truck in the school's student parking lot during the school day. *Id.* ¶ 33. On September 15, 2020, Maxwell's father sent an email to Sparger and several other school officials requesting that the school restore Maxwell's parking privileges. *Id.* ¶ 34. In an email to Maxwell's father dated September 15, 2020, Sparger stated: "As soon as Tyler's vehicle is in compliance with this policy (structure removed from back of truck), we would be happy to consider reinstating his driving privileges. Until then, his driving privileges are revoked." *Id.* ¶ 35.

Maxwell is unwilling to remove the elephant because he wishes to display it, not only when parked at the school, but also while driving to and from school, and elsewhere. *Id.* ¶ 36. He is unwilling to surrender his First Amendment right to freedom of expression in exchange for permission to drive to school. *Id.*

On September 23, 2020, an attorney retained by Maxwell wrote a letter to Sparger, the Superintendent of Schools (Defendant Carmen Balgobin), and other School District officials, objecting to the revocation of Maxwell's parking decal. *Id.* ¶ 37 & Exh. A. In a letter to Maxwell's attorney dated September 25, 2020, the School Board's general counsel stated that the School Board takes the position that parking the truck with the elephant in the student parking lot violates the School's "Policy 805." *Id.* ¶ 38 & Exhs. B, C. But Policy 805 regulates political activities of school employees and the use of school property for political activities (such as meetings and literature distribution) by non-employees. *Id.* ¶ 39 & Exh. C. It does not address political expression by students, or on vehicles parked by students while they attend school. *Id.*

Spruce Creek High School does have rules, published online,[1] that state the grounds for which a student's parking decal may be revoked. *Id.* ¶ 41. Those grounds include:

> 1. Failure to maintain a 2.0 GPA
> 2. More than 2 referrals within a 9-week period or any major infraction on campus or while involved in any school/ county event.
> 3. Unexcused absences or excessive tardies.
> 4. Permitting another student to use your assigned decal or giving false information on parking decal application.
> 5. Leaving campus without authorization.
> 6. Taking an unauthorized student of campus.
> 7. Use or distribution of an unauthorized decal or duplicated decal
> 8. Reckless driving, or speeding in the parking lot or within the perimeter of the school (speed limit is 5 MPH)
> 9. Failure to serve detentions or in school suspensions
> 10. Excessive parking violations
> 11. Loud and/or profane music.
> 12. Failure to abide by school and/or district policies and procedures.

Id. Maxwell did not engage in any of the activities on the school's list of grounds for revoking a student's parking decal. *Id.* ¶ 42.

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[1] https://docs.google.com/forms/d/e/1FAIpQLSfHOH56HXQawIB7e_B6ZJGhcpBOSMYzWbjSTsqxxJplDrB-Zg/viewform.

Maxwell's elephant did not cause any disruption to any school activities (except for the disruption to Maxwell's own education caused by school officials ordering him to remove the elephant). *Id.* ¶ 43. Defendants have offered no reason for believing that Maxwell's elephant would substantially disrupt or materially interfere with school activities. *Id.* ¶ 44. And Spruce Creek High School has no recent history of violence, property damage, or other substantial disruption arising out of or related to political expression. *Id.* ¶ 45. Moreover, Defendants allow students to engage in other forms of political expression at school, on their vehicles and on their persons, including bumper stickers supporting the Joe Biden for President campaign and apparel supporting the Black Lives Matter movement. *Id.* ¶ 46. To Plaintiff's knowledge, that permitted political expression has not caused any disruption of school activities. *Id.* ¶ 47.

In this lawsuit, Plaintiff alleges that the Defendants' revocation of his parking decal based on his political expression violates his First and Fourteenth Amendment right to freedom of speech. *Id.* ¶¶ 48-58. Plaintiff seeks, among other things, injunctive relief to allow him to park his truck, including its political expression, at the school. *Id.* at 10.

II. The Court should issue a temporary restraining order to prevent irreparable harm to Plaintiff's First Amendment rights.

Defendants' refusal to allow Plaintiff to park his truck at his school unless and until he removes its political message violates Plaintiff's First Amendment rights, which is causing him irreparable injury. *See KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1271–72 (11th Cir. 2006) ("Regarding irreparable injury, it is well established that '[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" (citation omitted)). Given the urgent nature of the Plaintiff's message—supporting a candidate in the November 3 election—a temporary restraining order is necessary to prevent further irreparable harm.

A party seeking a temporary restraining order must show: (1) a substantial likelihood of success on the merits; (2) irreparable injury if the relief is not granted; (3) that the issuance of an injunction would not substantially harm the other litigants; and (4) that the injunction is not adverse to the public interest. *Long v. Sec'y, Dep't of Corrs.*, 924 F.3d 1171, 1176 (11th Cir. 2019). All of these factors are satisfied here.

A. Plaintiff is likely to succeed on the merits of his First Amendment claim.

Plaintiff is likely to succeed on the merits of his First Amendment claim because Defendants have no justification for censoring his political message.

The Supreme Court has long recognized that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). Under the First Amendment, a school may not censor a student's political expression or punish a student for political expression unless there are "facts which might reasonably [lead] school authorities to forecast" that the expression would cause "substantial disruption of or material interference with school activities." *Id.*

Moreover, the school bears the burden of showing the existence of such a threat of disruption. *Gillman ex rel. Gillman v. Sch. Bd. for Holmes Cnty.*, 567 F. Supp. 2d 1359, 1369 (N.D. Fla. 2008). A school may not censor or punish student political expression based on "the mere theoretical possibility of discord" or "simply because it gives rise to some slight, easily overlooked disruption," such as "hostile remarks" or "discussion outside of the classrooms." *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1271-72 (11th Cir. 2004). To justify censorship of student expression, a school "must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." *Tinker*, 393 U.S. at 509. "[T]here must be a real or

substantial threat of actual disorder, as opposed to the mere possibility of one." *Holloman*, 370 F.3d at 1273.

"While certain types of expression unquestionably cause enough of a threat of disruption to warrant suppression even before negative consequences occur, 'undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression,' even in schools." *Id.* (quoting *Tinker*, 393 U.S. at 508). "There must be *demonstrable factors* that would give rise to any reasonable forecast by the school administration of *substantial and material disruption* of school activities before expression may be constitutionally restrained." *Id.* (emphasis added, internal marks omitted).

Moreover, a school's forecast of substantial and material disruption must be based on the school's *specific* circumstances, not "abstract" concerns or events at other schools, even within the same district. "Conduct that may … tend to incite disruption or disorder—and so be constitutionally proscribable—" in one school may be "constitutionally protected in [another] school or under [another] set of circumstances." *Id.* at 1274.

Here, no "real or substantial threat of actual disorder" justified Defendants' revocation of Maxwell's parking decal based on the political message displayed on his truck. Defendants Sparger and Canetti never identified such a threat when they ordered Maxwell to remove the message from the truck, or when Maxwell's father demanded written explanations. When Maxwell's attorney sent the School District a letter objecting to the revocation Maxwell's parking decal, citing *Tinker*, the School District's letter in response failed to identify any such threat. Verified Compl. ¶¶ 37-38 & Exhs. A, B.

Instead, the School only cited Policy 805—which does not pertain to disruptive speech or messages on student vehicles—and stated that the reason it prohibited Maxwell from parking his

truck with the elephant in the parking lot was because doing so would "appear[] to give the imprimatur of public endorsement of partisan political positions or a particular candidate." *Id.* ¶ 38 & Exh. B. The School District gave no reason to believe that the truck's presence would imply that the school endorsed the message, and the notion is implausible on its face. *Cf. Chandler v. McMinnville Sch. Dist*., 978 F.2d 524, 530 (9th Cir. 1992) (students wearing political buttons that "expressed a position on a local political issue" could not reasonably be viewed as bearing the school's imprimatur). Such speculation cannot satisfy the school's burden under *Tinker* and other First Amendment cases to show a likelihood of disruption.

A federal district court in Louisiana recently considered a case with highly similar facts and concluded that the First Amendment prohibited a school from censoring a student's expression of support for President Trump in a school parking space. There, the school allowed students to paint murals on their respective parking spaces in exchange for payment of a fee. *Thomas v. Varnado*, No. 20-2425, 2020 WL 5993156, *1 (E.D. La. Oct. 9, 2020). The school initially approved a student's mural depicting President Trump wearing sunglasses and a bandana, but then painted over it, telling the student that it was "too political." *Id.*

After the student sued, the school tried to justify its censorship by citing the "particularly contentious" nature of the election and concerns "that the painting would cause further division and disruption among students" and that the painting "would give rise to an increase of vandalism, destruction of property, and fighting in an area of the school where it would be difficult to control." *Id.* at *4. The school also cited "incidents at other schools across the country, including pro-Trump parking spots being vandalized"; "a prior incident involving a Confederate flag, stoking tensions at another school in the district"; "a number of conflicts on social media over the summer, in which students who were typically friends were fighting

against one another about race and politics"; and "the murder of a black student perpetrated by a white individual during the previous school year." *Id.* at *1, 4. And the school said it "desire[d] to avoid controversy and to prevent the student from receiving any negative attention himself." *Id.* at *4.

The court concluded that none of the school's arguments could justify censoring the student's political expression under the First Amendment and *Tinker*. "[W]ithout additional facts describing racial or political tensions at the school connected with the upcoming election, there [was] no evidence to support that the painting of President Trump would, on its own, cause disruption of school activities, given that it [was] limited to [the student's] parking space and painted in accordance with school rules." *Id.* The Court further noted that the student's parking space simply "depict[ed] the sitting President of the United States," which is not comparable to "a symbol such as a Confederate flag, which has an established meaning as a 'symbol of racism and intolerance, regardless of whatever other meaning may be associated with it.'" *Id.* The Court therefore issued an injunction to allow the student to restore his political message in his parking space. *Id.* at *5.

Supreme Court and Eleventh Circuit precedent demand the same result here. In fact, the Defendants in this case have far less basis for censoring Maxwell's speech than the Louisiana school did in *Varnado,* since Maxwell is not painting a message on school owned property, and there is far less risk that the school itself will be associated with his speech. He simply wishes to display the sitting President's last name on a statue of an elephant, the time-honored symbol of the Republican Party, and Defendants have not alleged, much less shown, that this poses a real

and substantial threat of disruption.[2] Nor is there evidence that the student political speech that the school *does* allow—including Biden bumper stickers and Black Lives Matter apparel—has caused any disruption. Verified Compl. ¶¶ 46-47.

Further, the mere possibility that "other students may have disagreed" with Maxwell's message or said that it "offen[ded] or disgust[ed]" them would not suffice to justify the censorship. *Holloman*, 370 F.3d at 1274-75. As the Supreme Court stated in *Tinker*, "[a]ny variation from the [student] majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk." 393 U.S. at 508.

Even if Defendants believed some students would react violently because they disagree with Maxwell's message—a wholly speculative possibility for which there is no evidence, and which Defendants have not cited as a basis for suppressing Plaintiff's speech—that still would not justify censorship of Plaintiff's message. As the Eleventh Circuit has explained, "we cannot afford students less constitutional protection simply because their peers might illegally express

[2] Courts have prevented schools from suppressing student expression more obviously provocative than the expression at issue in this case. *See, e.g., Nuxoll ex rel. Nuxoll v. Indian Prairie Sch. Dist. No. 204*, 523 F.3d 668, 675-76 (7th Cir. 2008) (granting preliminary injunction allowing student to wear "Be Happy, Not Gay" t-shirt); *Guiles ex rel. Guiles v. Marineau*, 461 F.3d 320, 330-31 (2d Cir. 2006) (holding school's prohibition of t-shirt depicting President George W. Bush as, among other things, "Chicken-Hawk-In-Chief" and a "Cocaine Addict" violated First Amendment); *A.M. by and through Norris v. Cape Elizabeth Sch. Dist.*, 422 F.Supp.3d 353 (D. Me. 2019) (granting preliminary injunction against punishment of student for posting "THERE'S A RAPIST IN OUR SCHOOL AND YOU KNOW WHO IT IS" on bathroom mirror); *Barber ex rel. Barber v. Dearborn Public Schs.*, 286 F.Supp.2d 847 (E.D. Mich. 2003) (granting preliminary injunction to allow student to wear t-shirt depicting President George W. Bush as an "International Terrorist"); *K.D. ex rel. Dibble v. Fillmore Cent. Sch. Dist.*, No. 05-CV-0336(E), 2005 WL 2175166 (W.D.N.Y. Sept. 6, 2005) (granting preliminary injunction to allow student to wear "abortion is homicide" t-shirt); *Chambers v. Babbitt*, 145 F.Supp.2d 1068 (D. Minn. 2001) (granting preliminary injunction to allow student to wear "Straight Pride" shirt).

disagreement through violence instead of reason…. Principals have the duty to maintain order in public schools, but they may not do so while turning a blind eye to basic notions of right and wrong." *Id.* at 1276.

Maxwell is therefore likely to prevail on the merits of his First Amendment claim.

B. Without a temporary restraining order, Plaintiff will suffer irreparable harm.

Maxwell will suffer irreparable harm unless this Court issues a temporary restraining order to restore his ability to park his truck, including its political message, at his school. The message on his truck supports a candidate for office in the 2020 general election, implicitly urging viewers to vote for President Trump. Therefore, Plaintiff must communicate his message *now* if he is to communicate it at all; an injunction after the election will be too late. *Cf. Jones v. Governor of Fla.*, 950 F.3d 795, 828-29 (11th Cir. 2020) (recognizing irreparable harm to individuals denied ability to vote because "[o]nce an election occurs, there can be no do-over and no redress") (quoting *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014)).

And his injury will be irreparable because an award of monetary damages will not adequately compensate him for the loss of his First Amendment rights. *See KH Outdoor,* 458 F.3d at 1272 ("'[D]irect penalization, as opposed to incidental inhibition' of First Amendment rights … could not be remedied absent an injunction." (citation omitted)).

C. A temporary restraining order will not harm Defendants.

A temporary restraining order will not harm Defendants. The government suffers no harm, irreparable or otherwise, when it is enjoined from engaging in activity that is unconstitutional or likely to be declared unconstitutional. *See id.* at 1272-73 (collecting cases).

The only harm Defendants have alleged that they would suffer if Plaintiff's expression is not suppressed is the possibility that some people would infer that the School District endorses Plaintiff's message. Even if that concern had some basis in reality—which it does not—the "serious and substantial injury" to Maxwell resulting from Defendants' infringement of his First Amendment rights would "clearly outweigh[]" it. *Id.* at 1272; *see also Barrett v. Walker County Sch. Dist.*, 872 F.3d 1209, 1229-30 (11th Cir. 2017) (administrative burden on school superintendent "hardly compare[s] to the deprivation of [individuals'] constitutional right to engage in free speech").

Moreover, the School District's putative concern is speculative, baseless, and unrealistic. Nothing about the truck's appearance suggests it is communicating on behalf of the School District. And Maxwell seeks to park it in a student parking lot, where there are no official school vehicles that might lead one to conclude that the truck is also a school vehicle. Verified Compl. ¶ 18. Of course virtually everyone knows, as a matter of common sense, that public schools do not and would not openly endorse any candidates for office in any way, let alone this particular candidate by this particular means.

D. A temporary restraining order will serve the public interest.

A temporary restraining order will serve the public interest. "The public interest is always served in promoting First Amendment values." *Barrett*, 872 F.3d at 1230 (internal marks omitted). And the public has no interest in the infringement of First Amendment rights. *KH Outdoor*, 458 F.3d at 1272.

E. No bond should be required

Federal Rule of Civil Procedure 65(c) requires that, before issuing an injunction, the Court require the movant to post a bond "in an amount that the court considers proper." But this

Court may dispense with the bond requirement when an injunction is unlikely to result in harm to the party enjoined, the exercise of constitutional rights is at issue, or a suit is brought in the public interest. *See BellSouth Telecomms., Inc. v. MCIMetro Access Transmission Servs., LLC*, 425 F.3d 964, 971 (11th Cir. 2005). Where the party seeking the injunction is likely to succeed on the merits, the party to be enjoined is a government body that will not incur significant monetary costs from the injunction's issuance, and requiring such a bond would injure the constitutional rights of the moving party, the Court is within its discretion to waive the bond requirement. *University Books & Videos, Inc. v. Metro. Dade County*, 33 F. Supp.2d 1364, 1374 (S.D. Fla. 1999). That is plainly the case here, given that the Plaintiff is a high school student seeking to vindicate his constitutional right to freedom of political speech, and the school will incur no loss, monetary or otherwise, by the granting of the injunction. *See also, e.g., Doctor John's, Inc. v. City of Sioux City*, 305 F.Supp.2d 1022, 1043-44 (N.D. Iowa 2004) (waiving bond requirement because "the rights potentially impinged by the governmental entity's actions are of such gravity that protection of those rights should not be contingent upon an ability to pay"). Even if Defendants could show "harm" resulting from the requested injunction, it would be impossible to quantify it for purposes of a bond posting. *Bartels v. Biernat*, 405 F. Supp. 1012, 1019 (E.D. Wis. 1975) (bond waiver appropriate where "the amount of any order for bond or security would be based on gross speculation or conjecture"). Plaintiff therefore respectfully requests that the Court either waive Rule 65(c)'s bond requirement or set it at a nominal amount.

Conclusion

A temporary restraining order is essential to prevent irreparable harm to Plaintiff Tyler Maxwell's First Amendment right to political speech, would not harm Defendants, and would serve the public interest. Maxwell therefore respectfully asks the Court to immediately enter a

temporary restraining order enjoining the school from preventing him from parking his truck (including the elephant) in the Spruce Creek High School student parking lot.

Dated: October 22, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 22, 2020, immediately upon filing, I will place the foregoing Plaintiff's Motion for Temporary Restraining Order, as well as Plaintiff's Verified Complaint for Injunctive and Declaratory Relief, with a process server for immediate service on Defendants School District of Volusia County, School Board of Volusia County, Ida Wright, Linda Cuthbert, Carl Persis, Ruben Colón, and Jamie Haynes at the following address:

Volusia County Schools
DeLand Administrative Complex
200 N. Clara Avenue
DeLand, FL 32720

Immediately after filing, I will also place the motion, as well as Plaintiff's Verified Complaint for Injunctive and Declaratory Relief, with a process server for immediate service on Defendants Todd J. Sparger and Alan P. Canetti at the following address:

Spruce Creek High School
801 Taylor Road
Port Orange, FL 32127

I will also arrange for the motion, as well as Plaintiff's Verified Complaint for Injunctive and Declaratory Relief, to be sent immediately by email to the School District of Volusia County's general counsel, Kevin W. Pendley, at kwpendle@volusia.k12.fl.us.

/s/ Joseph S. Van de Bogart