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8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 AMERICAN CIVIL LIBERTIES UNION OF
NEVADA, a domestic nonprofit organization;
11 CORIE HUMPHREY, an individual,

12 Plaintiffs,

13 vs.

14 CLARK COUNTY SCHOOL DISTRICT, a
political subdivision of the State of Nevada,

15 Defendant.

Case No.: 2:25-cv-00892

ORAL ARGUMENT REQUESTED

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17 **MOTION FOR PRELIMINARY INJUNCTION**

18 Plaintiffs ACLU of Nevada and Corie Humphrey (“Plaintiffs”), by and through
19 undersigned counsel, respectfully move this court, pursuant to Fed. R. Civ. P. 65(a) and based
20 upon the following Memorandum of Points and Authorities, for issuance of a Preliminary
21 Restraining Order enjoining Defendant Clark County School District (“CCSD”) from enforcing
22 provisions of CCSD’s policy regulating graduation regalia that violate the First Amendment of the
23 United States Constitution, Article I, Section 9, of the Nevada Constitution, and NRS 388.915 and
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1 order that Defendant CCSD allow ACLU of Nevada Emerging Leaders members graduating in
2 present and future years and Plaintiff Corie Humphrey to wear the specific regalia as requested in
3 this motion at their respective graduations.

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5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. INTRODUCTION**

7 Injunctive relief is necessary to prevent Defendant Clark County School District (“CCSD”)
8 from infringing upon the constitutional and statutory rights of Plaintiff Humphrey and Plaintiff
9 ACLU of Nevada’s members graduating from CCSD schools the week of May 27, 2025. Plaintiffs
10 request that this Court enjoin enforcement of specific provisions of R-5129(II) (hereafter “the
11 Regalia Policy”),¹ Defendant CCSD’s policy regulating how students may adorn and decorate their
12 graduations caps and gowns. The provisions at issue violate the First Amendment of the United
13 States, Article I, Section 9, of the Nevada Constitution, and NRS 388.915 by subjecting protected
14 decorations and adornments to unconstitutional prior restraint, unconstitutional content and
15 viewpoint discrimination, and other restrictions unauthorized by state law. Plaintiffs request this
16 Court enjoin Defendant CCSD from enforcing the unlawful provisions of R-5129(II) and order
17 that Plaintiff Humphrey and other ACLU of Nevada’s Emerging Leaders members be allowed to
18 wear specific adornments as detailed in this motion during their respective CCSD graduation
19 ceremonies.

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¹ Plaintiffs are not requesting the Court to enjoin the Regalia Policy in its entirety.

II. FACTUAL BACKGROUND

On March 27, 2025, Defendant CCSD implemented R-5129 Section II (the “Regalia Policy”), an official policy regulating how students may adorn or decorate their graduation regalia. Prior to the enactment of the Regalia Policy, ACLU of Nevada sent CCSD a letter explaining how the proposed regulation infringed upon graduates’ rights to free speech and expression as well as their rights under NRS 388.915. CCSD Regulation R-5129, ECF No. 6-2. ACLU Letter, ECF No. 6-4. CCSD did not respond to ACLU of Nevada’s letter or the affiliate’s concerns and instead adopted the proposed regulation mere months before high school graduations were set to commence.

The Regalia Policy places significant limitations on what students may wear to their graduation. It only recognizes that students “are permitted” to wear “traditional tribal regalia or recognized objects of religious or cultural significance.” ECF No. 6-2. Without considering whether a particular adornment is likely to disrupt or interfere with a graduation ceremony, it imposes the following additional limitations on tribal, religious, and cultural adornments:

- R-5129(II)(C) bans adornments that do not “lay flat” or exceed the dimensions of the cap;
- R-5129(II)(D) bans adornments that “cover more than 25 percent of the school selected graduation gown”;
- R-5129(II)(E) bans adornments that “constitute proselytizing speech”;
- R-5129(II)(F) requires that all decorations or adornments, no matter how clearly protected under NRS 388.915, receive prior approval from a school principal or designee before graduation.

ECF No. 6-2 at 1 The Regalia Policy does not provide any guidance in how the approval process in R-5129(II)(F) should work, only referring to other “separate administrative guidance.” ECF No.

1 6-2. Multiple CCSD schools have posted their own guidelines implementing the Regalia Policy.
2 These guidelines vary, at times significantly, from school-to-school.

3 Canyon Springs High School posted PDFs of graduation participation guidelines on its
4 website. Canyon Springs High School Graduation Guidelines, ECF No. 6-8; verified in
5 Declaration of Christopher Peterson (“Decl. Peterson”) at ¶ 8, ECF No. 6-3. The guidelines require
6 students to present all decorations and adornments to the school’s administration. ECF No. 6-8 at
7 2. In addition, the guidelines state that “Canyon Springs Administration has determined that
8 adornment of caps will not be permitted.” ECF No. 6-8 at 1.

9 Las Vegas High School provides its own, differing graduation information on its website.
10 Las Vegas High School Graduation Information, ECF No. 6-9; verified in ECF No. 6-3 at ¶ 9,
11 Decl. Peterson. Under the Commonly Asked Questions section of the graduation information page,
12 Las Vegas High School states that students can decorate their cap or wear other personal items,
13 but students must adhere to District guidelines. ECF No. 6-9 at 3. Las Vegas High School’s
14 information further provides that “religious and/or cultural regalia is permitted with administration
15 approval.” ECF No. 6-9 at 3.

16 Del Sol Academy of the Performing Arts (“Del Sol Academy”) has provided conflicting
17 guidance to its seniors. Del Sol Academy Graduation Newsletter, ECF No. 6-10; verified in ECF
18 No. 6-3 at ¶ 10, Decl. Peterson. In a section of the school’s newsletter labeled “Caps, Gowns, and
19 Other Items”, Del Sol Academy posts CCSD’s guidelines from its Regalia Policy, including the
20 provision that “decorations or adornments on caps must lay flat/flush and not exceed the dimension
21 of the cap” ECF No. 6-10 at 1–2. However, in the same newsletter under a section labeled
22 “Dress Code”, Del Sol Academy states that “graduation caps cannot be decorated.” ECF No. 6-10
23 at 4. In another section titled “Graduation Date: May 29, 2025 at the Orleans” the newsletter states
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1 “Only CCSD sanctioned cords, medallions, stoles, etc. can be worn. No personal leis, money leis,
2 candy leis can be worn or they will be confiscated.” ECF No. 6-10 at 6.

3 Some schools provide no written guidelines for its students or even an approval process for
4 regalia. Plaintiff Humphrey’s school, East Career & Technical Academy, provided seniors with
5 graduation information during a senior assembly. Declaration of Corie Humphrey (“Decl.
6 Humphrey”) ¶ 9, ECF No. 6-5. At the assembly the students were shown a slide show that generally
7 tracked with the language of the Regalia Policy, but then school officials told students that when
8 students received their gowns prior to graduation, “how you get them is how you should come,”
9 which Plaintiff Humphrey was led to understand meant there should be no customization of the
10 caps or gowns. ECF No. 6-5 at ¶¶ 10–19, Decl. Humphrey. For example, while the slides stated
11 that students could wear traditional tribal, religious, or cultural regalia, the presenters made clear
12 that students were limited to a maximum of one lei, and no other mention of religious or cultural
13 regalia was made during the assembly. ECF No. 6-5 at ¶¶ 13–14, Decl. Humphrey. Plaintiff
14 Humphrey asked her assistant principal immediately after the assembly if she could wear stoles or
15 adornments that were not from school-sponsored clubs or academics, and the assistant principal
16 told her no. ECF No. 6-5 at ¶¶ 21–22, Decl. Humphrey.

17 **A. Facts Specific to ACLU of Nevada’s Emerging Leader Program**

18 The ACLU of Nevada brings this suit on behalf of its members, namely the members of its
19 organization who participate in ACLU of Nevada’s Emerging Leaders program, which is a youth
20 driven program focused on building the leaders of tomorrow through the cultivation of advocacy,
21 leadership, and civic engagement. Declaration of Athar Haseebullah (“Decl. Haseebullah”) at ¶
22 10, ECF No. 6-6. Members of the Emerging Leaders Program learn, among other skills, advocacy
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1 engagement and other expressive conduct protected by the First Amendment. ECF No. 6-6 at ¶¶
2 12 – 13, Decl. Haseebullah.

3 ACLU of Nevada currently has eleven members currently participating in the
4 organization's Emerging Leaders program who are CCSD high school students. ECF No. 6-6 at ¶
5 14, Decl. Haseebullah. Six of ACLU of Nevada's Emerging Leaders will graduate within the next
6 few weeks and so will be subject to The Regalia Policy. ECF No. 6-6 at ¶ 14, Decl. Haseebullah.
7 These six graduating students attend East Career and Technical Academy (Plaintiff Humphrey),
8 Del Sol Academy, Cheyenne High School, Canyon Springs High School, Northwest Career and
9 Technical Academy, and Mojave High School. ECF No. 6–6 at ¶ 15, Decl. Haseebullah. In honor
10 of this achievement, ACLU of Nevada will provide all graduating Emerging Leaders members
11 with an Emerging Leaders stole and cap pin to celebrate and recognize the member's participation
12 in the program. ECF No. 6-6 at ¶¶ 27–28, Decl. Haseebullah. There are also five Emerging Leaders
13 members who are juniors graduating from CCSD schools next year subject to the Regalia Policy
14 at the time they graduate. ECF No. 6-6 at ¶ 14, Decl. Haseebullah. As it has done with graduates
15 this year, ACLU of Nevada intends to provide these members with a pin and stole to recognize
16 their association with the organization. *See* ECF No. 6-6 at ¶¶ 27–28, Decl. Haseebullah. ACLU
17 of Nevada is concerned that its Emerging Leaders members will be unable to wear the graduation
18 stoles and pins commemorating their time in ACLU of Nevada's Emerging Leaders Program to
19 their respective graduations, or will be otherwise disciplined for attempting to do so. ECF No. 6-6
20 at ¶¶ 29–30, Decl. Haseebullah.

21 **B. Facts Specific to Individual Plaintiff Corie Humphrey**

22 Plaintiff Humphrey graduates from East Career & Technical Academy on May 27, 2025.
23 ECF No. 6-5 at ¶ 6, Decl. Humphrey. If authorized, Plaintiff Humphrey will wear a stole with the
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1 message “Black Girl Magic” written on it to represent her Black culture. ECF No. 6-5 at ¶ 7(a),
2 Decl. Humphrey. She also intends to wear the decoration or adornment provided to her by ACLU
3 of Nevada’s Emerging Leaders or otherwise wear a black and red stole representing the time she
4 has committed to the Emerging Leaders program. ECF No. 6-5 at ¶ 7(b), Decl. Humphrey. She
5 would also wear a pin from National Honors Society, other stoles and cords provided by her school,
6 and decorations of small paper flowers, gems, and crystals on her graduation cap. ECF No. 6-5 at
7 ¶ 7(e), Decl. Humphrey. However, during a school senior assembly about graduation, Plaintiff
8 Humphrey learned that decorations or adornments on caps would not be permitted. ECF No. 6-5
9 at ¶¶ 16-19, Decl. Humphrey. In addition, she was told by those presenting at the assembly that
10 only stoles and cords from school-sponsored clubs and academics would be permitted as
11 adornments on gowns. ECF No. 6-5 at ¶ 20, Decl. Humphrey. After the assembly, Plaintiff
12 Humphrey asked if there was any way she could wear a stole or cord that was not for a school
13 club, and she was told no by the assistant principal. ECF No. 6-5 at ¶¶ 21-22, Decl. Humphrey.
14 Plaintiff Humphrey is concerned she will either be barred from wearing the decorations and
15 adornments she intends to wear at her graduation ceremony, or that she will be disciplined if she
16 does attempt to wear decorations or adornments not related to school-sponsored activities, such as
17 her stole that says “Black Girl Magic” or stole and pin from ACLU of Nevada’s Emerging Leaders
18 Program. ECF No. 6-5 at ¶¶ 26-27, Decl. Humphrey.

19 **I. PROCEDURAL HISTORY**

20 On May 15, 2025, Plaintiffs filed their complaint in the Eighth Judicial District Court of
21 Nevada. On May 16, 2025, Plaintiffs filed a motion for a temporary restraining order or
22 preliminary injunction on order shortening time. Def.’s Notice of Removal Ex. B, ECF No.1 at 45.
23 Plaintiffs’ counsel provided Defendant CCSD’s general counsel with notice of these filings. Email
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1 to CCSD Counsel, ECF No. 6-7; *see also* ECF No. 1 at 3:6 (acknowledging service for filings).
2 On May 20, 2025, the state district court issued an order shortening time setting a hearing for
3 Plaintiffs’ motion for TRO. ECF No. 6-3 at ¶ 16, Decl. Peterson. That same day Defendant CCSD
4 filed a notice of removal to this Court. ECF No. 1. On May 21, 2025 Plaintiffs filed a motion for
5 temporary restraining order to this Court. ECF No. 6. Plaintiffs now submit this Motion for
6 Preliminary Injunction to this Court seeking relief.

7 **II. LEGAL STANDARD**

8 In considering whether to grant a preliminary injunction pursuant to Fed. R. Civ. P. 65(a),
9 a court must consider whether “(1) [the plaintiff] is likely to succeed on the merits, (2) he is likely
10 to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in
11 his favor, and (4) an injunction is in the public interest.” *East Bay Sanctuary Covenant v. Biden*,
12 993 F.3d 640, 668 (9th Cir. 2021). “When the government is a party, the last two factors (equities
13 and public interest) merge.” *Id.* “These factors are evaluated on a sliding scale.” *Id.* Courts must
14 balance the elements of the preliminary injunction test, so that a “stronger showing of one element
15 may offset a weaker showing of another.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
16 1131 (9th Cir. 2011). In the context of the First Amendment, courts recognize that the loss of First
17 Amendment freedoms “unquestionably constitutes irreparable injury.” *TGP Commc’ns, LLC v.*
18 *Sellers*, No. 22-16826, 2022 U.S. App. LEXIS 33641, at *17 (9th Cir. Dec. 5, 2022).

19 **III. LEGAL ARGUMENT**

20 On their face multiple provisions in the Regalia Policy infringes upon Plaintiffs’
21 constitutional and statutory rights. First, the Regalia Policy violates NRS 388.915 by placing
22 limitations on students’ right to wear traditional tribal regalia or recognized objects of cultural or
23 religious significance that are not authorized under NRS 388.915, including limitations on quantity
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1 and size separate from an item's potential for disruption, requiring cap adornments to "lay flat",
2 limiting "proselytizing" messages, and requiring pre-approval from school officials without clear
3 standards that those officials must follow, and authorizing school officials who are not identified
4 in NRS 388.915 to deny approval. Ex. 1 at 1. Second, the Regalia Policy acts imposes an
5 unconstitutional prior restraint on expressive conduct in violation of the First Amendment in
6 vesting unbridled discretion in school officials to approve or deny symbolic speech. Third, the
7 Regalia Policy is content-based discrimination violating the First Amendment by allowing for
8 religious or cultural adornments while barring other protected expressions, such as political,
9 artistic, or personal speech. CCSD's ban on "proselytizing speech" is also impermissible content-
10 based discrimination.

11 The Regalia Policy also violates the First Amendment and related Nevada law as applied
12 to Plaintiff Humphrey and Plaintiff ACLU of Nevada's members. Relying on its authority under
13 the CCSD Regala Policy, Plaintiff Humphrey's school placed an outright ban on many decorations
14 and adornments allowed by other schools. This included nearly all decorations and adornments of
15 religious, cultural, or tribal significance and Plaintiff Humphrey was expressly denied her right to
16 wear decorations and adornments not provided by the school. Similar restrictions at other schools
17 such as Canyon Springs threaten to prevent ACLU of Nevada's Emerging Leaders members from
18 wearing the adornments that ACLU of Nevada will provide them for their respective graduations.

19 Plaintiffs seek injunctive relief to cease the violation of their constitutional and statutory
20 rights and to ensure these rights are protected as this matter progresses. Plaintiffs have and will
21 continue to suffer irreparable injury under the United States and Nevada Constitutions for the
22 infringement of their speech and expressions as a result of the unconstitutional provisions of The
23 Regalia Policy. Due to this, and because graduation is imminently approaching, the injury
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1 Plaintiffs' face is both irreparable and immediate. The type of harm inflicted by these constitutional
 2 and statutory violations is not the type that may be wholly remedied by compensatory damages,
 3 especially since Plaintiff Humphrey and the students in the Emerging Leaders program will only
 4 have this one opportunity to celebrate their graduation from high school alongside their families
 5 and friends.

6 The balance of the relative hardships of the parties weighs in favor of granting the
 7 preliminary injunction, as the order will not harm CCSD, while enforcement of the Regalia Policy
 8 will infringe upon the constitutional and statutory rights of both Plaintiffs and other students
 9 graduating from Defendant CCSD schools. Finally, it is always in the public interest to prevent
 10 the violation of a party's constitutional rights. *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023).
 11 As such, granting Plaintiffs' request for a preliminary injunction is proper.

12 **A. Plaintiffs are likely to succeed on the merits because the Regalia Policy violates**
 13 **NRS 388.915, the First Amendment of the United States Constitution, and Article**
 14 **I, Section 9 of the Nevada Constitution.**

15 A preliminary injunction may be issued when the party seeking it establishes that it is likely
 16 to succeed on the merits. *Junior Sports Magazines Inc. v. Bonta*, 80 F.4th 1109, 1115 (9th Cir.
 17 2023). This is factor is the most important considered, especially in constitutional claims, as the
 18 remaining "factors typically favor enjoining laws thought to be unconstitutional." *Junior Sports*
 19 *Magazines*, 80 F.4th at 1115. "Plaintiffs do not need to promise a "certainty of success, nor even
 20 present a probability of success, but must involve a 'fair chance of success on the merits.'" *W.*
 21 *Exploration LLC v. U.S. Dep't of the Interior*, No. 3:15-CV-00491-MMD-VPC, 2016 WL 54671,
 22 at *2 (D. Nev. Jan. 5, 2016) (quoting *Nat'l Wildlife Fed'n v. Coston*, 773 F.2d 1513, 1517 (9th Cir.
 23 1985)). "When seeking a preliminary injunction 'in the First Amendment context, the moving
 24 party bears the initial burden of making a colorable claim that its First Amendment rights have

1 been infringed, or are threatened with infringement, at which point the burden shifts to the
 2 government to justify the restriction.” *Sanders Cnty. Republican Cent. Comm. v. Bullock*, 698
 3 F.3d 741, 744 (9th Cir. 2012).

4 Plaintiffs demonstrate below that they are likely to succeed on the merits for their claims
 5 under NRS 388.915, the First Amendment of the U.S. Constitution, and Article I, Section 9 of the
 6 Nevada Constitution, justifying the issuance of a preliminary injunction.

7 **1. The Regalia Policy violates NRS 388.915 by imposing restrictions not**
 8 **authorized by the statute.**

9 NRS 388.915 provides: “A pupil of a public school, including, without limitation, a pupil
 10 of a university school for profoundly gifted pupils, is entitled to wear traditional tribal regalia or
 11 recognized objects of religious or cultural significance as an adornment at a school graduation
 12 ceremony.” This right is only limited to the extent that “the board of trustees of a school district,
 13 the governing body of a charter school or the governing body of a university school for profoundly
 14 gifted pupils [may prohibit] an item that is likely to cause a substantial disruption of, or material
 15 interference with, such a ceremony.” NRS 388.915(2).

16 The restrictions in the Regalia Policy far exceed the scope of what can be regulated by CCSD
 17 pursuant to the exception recognized in NRS 388.915(2). Among the restrictions that exceed the
 18 authority recognized in NRS 388.915(2) are:

- 19 • R-5129(II)(C), which bans adornments that do not “lay flat” or exceed the dimensions of
 20 the cap regardless whether the adornment is likely to cause a substantial disruption or
 21 material interference with the graduation ceremony;
- 22 • R-5129(II)(D), which bans adornments that “cover more than 25 percent of the school
 23 selected graduation gown” regardless whether the adornment is likely to cause a substantial
 24 disruption or material interference with the graduation ceremony;

- 1 • R-5129(II)(E), which bans adornments that “constitute proselytizing speech” even if it does
- 2 not “create a substantial disruption of, or material interference with,” the ceremony;² and
- 3 • R-5129(II)(F), which requires that all decorations or adornments, no matter how clearly
- 4 protected under NRS 388.915, receive prior approval from a school principal or designee
- 5 before graduation.

6 These restrictions violate the right granted to students by NRS 388.915, though R-5129(II)(F),
 7 which grants complete discretion to approve or deny adornments to school administrators who are
 8 not referenced in NRS 388.915, and an egregious violation of federal and state law.

9 **2. The Regalia Policy violates the First Amendment of the United States**
 10 **Constitution and Article I, Section 9 of the Nevada Constitution.**

11 The First Amendment of the United States Constitution, incorporated to the states through
 12 the Fourteenth Amendment of the United States, prohibits laws “abridging the freedom of speech.”
 13 Providing people with recourse for violations of rights under the First Amendment, 42 U.S.C. §
 14 1983 provides: “Every person who, under color of any statute, ordinance, regulation, custom, or
 15 usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other
 16 person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities
 17 secured by the Constitution and laws, shall be liable to the party injured” “A local government
 18 entity is liable under § 1983 when ‘action pursuant to official municipal policy of some nature
 19 cause[s] a constitutional tort.’” *Oviatt v. Pearce*, 954 F.2d 1470, 1473-74 (9th Cir. 1992) (quoting
 20 *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691, 98 S. Ct. 2018, 2036 (1978)).

21 The First Amendment applies to decorations and adornments on graduation regalia. *Waln*
 22 *v. Dysart Sch. Dist.*, 54 F.4th 1152, 1162 (9th Cir. 2022). The First Amendment protects verbal

23 ² Under the plain language of this provision, which includes all “items” brought by students to
 24 the graduation ceremony, even religious texts like pocket bibles would be banned from a
 graduation.

1 and written expression, as well as symbols and conduct that attempt to convey a particularized
2 message that will likely be understood by viewers. *Texas v. Johnson*, 491 U.S. 397, 404, 109 S.
3 Ct. 2533, 2539 (1989). The First Amendment protects wearing or using recognized symbols that
4 convey traditional, cultural, or religious beliefs, as well as political and social views. *See Jacobs*
5 *v. Clark Cnty. Sch. Dist.*, 526 F.3d 419, 428 (9th Cir. 2008) (citing *Canady v. Bossier Par. Sch.*
6 *Bd.*, 240 F.3d 437, 440-41 (5th Cir. 2001) (finding wearing clothing as symbol of opinion or cause,
7 including heritage, religious beliefs, and political/social views, undoubtedly protected under First
8 Amendment as messages likely to be understood by viewers)). *See also United States v. Swisher*,
9 811 F.3d 299, 311 (9th Cir. 2016) (stating use of recognized symbols, like emblems or flags,
10 constitutes symbolic speech). Such activities receive protection in spaces deemed public forums.

11 When school districts open a forum to certain groups or topics, they create a “limited public
12 forum” where the First Amendment applies. *Hills v. Scottsdale Unified Sch. Dist.*, 329 F.3d 1044,
13 1049 (9th Cir. 2003). While some content-based discrimination banned in traditional public forums
14 is acceptable in limited public forums, such discrimination must be limited to “preserv[ing] the
15 purpose of the limited forum.” *Hills*, 329 F.3d at 1050. Furthermore, viewpoint discrimination is
16 always prohibited regardless of forum.

17 On its face, the Regalia Policy directly regulates First Amendment activity. The Regalia
18 Policy authorizes decorations and adornments but only if they are tribal regalia and religiously or
19 culturally significant objects. The Policy also expressly imposes many limitations on these tribal,
20 religious, and cultural symbols, including restrictions on size, quantity, and any items that
21 “proselytize”. All of these items protected under the First Amendment must have prior approval
22 by school principals or their designees before they can be worn at graduation with no apparent
23 limitation on an individual school principal’s authority to deny approval. The Policy clearly
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1 regulates items protected by the First Amendment other than tribal regalia and religiously or
2 culturally significant objects in that the Regalia Policy does not authorize their use; when some
3 items are “permitted”, unmentioned items are necessarily impermissible, effectively banning other
4 symbols or statements expressing political, artistic, or personal messages.

5 The Regalia Policy imposes these restrictions in a space where the First Amendment
6 applies. By allowing decorations and adornments that express a message, i.e. tribal regalia and
7 religiously and culturally significant objects, CCSD has created a limited public forum. When
8 regulating expressive activities within a limited forum, CCSD is barred from engaging prior
9 restraint and limiting any content-based discrimination to what is necessary to preserve the forum.
10 As discussed below, it has failed to do either.

11 Article I, Section 9 of the Constitution of Nevada provides the same protections of speech
12 and expressive activity as the First Amendment to the U.S. Constitution. *Univ. & Cmty. College*
13 *Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 722, 100 P.3d 179, 187 (2004). Therefore,
14 in demonstrating that Plaintiffs have a reasonable likelihood of success on the merits of their claims
15 under the First Amendment of the United States Constitution below, Plaintiffs also demonstrate
16 likely success on the merits of their claim that CCSD and its officials infringed upon Plaintiffs’
17 rights to free speech and expression in violation of Article I, Section 9 of the Nevada Constitution.

18 **a. The Regalia Policy is a facially unconstitutional prior restraint.**

19 Prior restraints on speech “are the most serious and least tolerable infringement on First
20 Amendment rights.” *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 559, 96 S. Ct. 2791, 2803 (1975)).
21 As such, “[p]rior restraints on speech are disfavored and carry a ‘heavy presumption of
22 invalidity.’” *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1023 (9th
23 Cir. 2009). Under the prior restraint doctrine, a policy “cannot condition the free exercise of First
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1 Amendment rights on the unbridled discretion of government officials.” *World Wide Rush, LLC*.
2 *v. City of L.A.*, 606 F.3d 676, 687 (9th Cir. 2010) (quoting *Desert Outdoor Advert. v. City of*
3 *Moreno Valley*, 103 F.3d 814, 818 (9th Cir. 1996)). Conferring unbridled discretion upon school
4 officials creates the danger of censorship and makes it difficult to protect students from
5 unconstitutional viewpoint discrimination. *Kaahumanu v. Hawaii*, 682 F.3d 789, 802 (9th Cir.
6 2012) (citing *Long Beach Area Peace Network*, 574 F.3d at 1025). Prior restrictions on First
7 Amendment speech and expression are unconstitutional where a policy is absent of “narrowly
8 drawn, reasonable, and definite standards” that guide the government official as such lack of
9 guidance vests that official with unbridled discretion to make allowances on the basis of content
10 or viewpoint. *World Wide Rush*, 606 F.3d at 687. Even within the context of a limited public forum
11 this “rigorous standard of review” applies. *See Southeastern Productions, Ltd. v. Conrad*, 420 U.S.
12 546, 558 (explaining “[a]ny system of prior restraint, however, comes to this Court bearing a heavy
13 presumption against its constitutional validity” even in the context of a limited public forum).

14 The Regalia Policy is a facially unconstitutional prior restraint on any graduating CCSD
15 student including Plaintiff Humphrey and Plaintiff ACLU of Nevada’s members attending CCSD
16 high schools. The Regalia Policy “conditions the exercise of First Amendment rights,” i.e. wearing
17 objects that convey particularized messages of religious, cultural, political, artistic, and personal
18 significance, on the “unbridled discretion” of school administrators. It is evident that the Regalia
19 Policy contains no narrow, objective, or definite standards to guide school officials, as
20 demonstrated by the individual schools’ widely divergent graduation regalia guidelines. CCSD’s
21 failure to provide definite standards allows schools and their officials the opportunity to deny
22 decorations or adornments for any arbitrary reason school officials proscribe, increasing the danger
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1 of censorship and content-based discrimination. This danger is evidenced by the impact of the
2 schools' vastly differing guidelines.

3 For example, Canyon Springs High School and East Career and Technical Academy have
4 instituted an outright ban on decorations and adornments on caps. Las Vegas High School permits
5 students to decorate their caps, so long as students adhere to district guidelines. Meanwhile, Del
6 Sol Academy's graduation guidelines contain conflicting information – providing that “any
7 decorations or adornments on the caps must lay flat/flush and not exceed the dimension of the cap
8 . . .” in one section of their newsletter, while stating that “graduation caps cannot be decorated” in
9 another section. In sum, some students will have cap adornments and some will not have the ability
10 to do so because of CCSD's arbitrary and unlawful policy.

11 The United States Court of Appeals for the Ninth Circuit has determined that graduation
12 regalia policies affecting First Amendment rights must be applied evenhandedly throughout the
13 school district, not only among students within a single school. *Waln*, 54 F.4th at 1163 (finding
14 plaintiff plausibly alleged violation where policy was unevenly enforced to prevent plaintiff from
15 wearing eagle feather to express her religious view, while student from another school was
16 permitted to display secular message). Permitting some students in CCSD to adorn their caps with
17 protected expressions, while banning others from doing the same, is unconstitutional under the
18 First Amendment and further reflects the unbridled discretion this policy vests in school officials.
19 And, as demonstrated above, this type of violation is inevitable given the schools' current
20 guidelines, illustrating the nature of the unbridled discretion the Regalia Policy has vested in school
21 officials.

22 This unrestrained, unfettered discretion – which results in a high danger of censorship and
23 makes it difficult to protect students from unconstitutional viewpoint discrimination – is exactly
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1 why facial challenges to prior restraints are permitted. The Regalia Policy, and the unbridled
 2 discretion it vests in school officials, is an intolerable, unconstitutional prior restraint under the
 3 First Amendment of the United States.

4 **b. The Regalia Policy engages in unconstitutional content and viewpoint**
 5 **discrimination.**

6 While schools have some authority to regulate speech, students do not “shed their
 7 constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des*
 8 *Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506, 89 S. Ct. 733, 736 (1969). “[T]he First
 9 Amendment stands against attempts to disfavor certain subjects or viewpoints. Prohibited, too, are
 10 restrictions distinguishing among different speakers, allowing speech by some but not others.”
 11 *Citizens United v. FEC*, 558 U.S. 310, 340, 130 S. Ct. 876, 898-99 (2010) (citations omitted).
 12 Content-based regulations “are presumptively unconstitutional and may be justified only if the
 13 government proves that they are narrowly tailored to serve compelling state interests.” *Reed v.*
 14 *Town of Gilbert*, 576 U.S. 155, 163, 135 S. Ct. 2218, 2226 (2015). While some content-based
 15 restrictions banned in traditional public forums may be acceptable in limited public forums, such
 16 disfavored regulation must be limited to “preserv[ing] the purpose of the limited forum.” *Hills*,
 17 329 F.3d at 1050; *see TGP Communs., Ltd. Liab. Co. v. Sellers*, No. 22-16826, 2022 U.S. App.
 18 LEXIS 33641, at *9 (9th Cir. Dec. 5, 2022) (“And even in limited public forums where the
 19 government opens a traditionally private place for speech on limited topics [. . .] the First
 20 Amendment's protections against content-based and viewpoint-based restrictions are robust.”).

21 The Regalia Policy infringes upon CCSD graduates’ right to free speech, including
 22 Plaintiffs, on its face by engaging in regulating content without tailoring that content to the purpose
 23 of the forum. The Regalia Policy allows decorations and adornments expressing tribal, religious,
 24 or cultural messages but bars decorations or adornments expressing any other sentiment such as

1 political, artistic, associational, or personal messages. This broad ban necessarily sweeps in
2 symbols that would not otherwise undermine the purpose of a graduation's forum: after all, "I love
3 you, Mom" on a student's stole is no less likely to disrupt a graduation than a cross or national
4 flag.

5 CCSD also engages in content-discrimination through its outright ban on decorations,
6 adornments, and items which "constitute proselytizing speech." "[I]t is well established that '[t]he
7 First Amendment's hostility to content-based discrimination extends not only to restrictions on
8 particular viewpoints, but also to prohibition of public discussion of an entire topic.'" *Reed*, 576
9 U.S. at 169, 135 S. Ct. at 2230 (quoting *Consol. Edison Co. v. Pub. Serv. Comm'n*, 447 U.S. 530,
10 537, 100 S. Ct. 2326, 2333 (1980)). Again this outright ban is not tailored to preserve a graduation:
11 a stole that reads "Find Christ" no more likely to disrupt a ceremony than any other message.

12 Finally, CCSD is engaging in viewpoint discrimination, which is impermissible in even a
13 limited public forum, when it allows students at one school to engage in speech and bars students
14 at another from having that same opportunity. *See Waln*, 54 F.4th at 1163 (finding that a defendant
15 school district engaged in viewpoint discrimination when it barred a student from wearing a
16 religiously significant eagle feather on her cap when students at another school were allowed to
17 decorate their graduation caps); *Hills v. Scottsdale Unified Sch. Dist.*, 329 F.3d 1044, 1051 (9th
18 Cir. 2003) ("[V]iew-point discrimination is *not* permissible when it is directed at speech otherwise
19 falling within the forum's limitations." (emphasis in the original)). As seen by the differences in
20 enforcement between different CCSD schools premised on the wide latitude offered by the Regalia
21 Policy, CCSD is violating the First Amendment through viewpoint discrimination.

22 Where, as here, a plaintiff shows that the government engages in content-based and
23 viewpoint discrimination, they demonstrate a likelihood of success on the merits which justifies
24

1 the granting of a preliminary injunction. *See TGP Commc'ns.*, No. 22-16826, 2022 U.S. App.
2 LEXIS 33641, at *14.

3 **3. The Regalia Policy as applied to Plaintiff Humphrey and the ACLU of**
4 **Nevada's members violates their rights to free speech and expression under**
5 **the First Amendment of the U.S. Constitution and Article I, Section 9 of the**
6 **Nevada Constitution.**

7 The Regalia Policy, as applied to Plaintiff Humphrey, is an unconstitutional prior restraint
8 on her rights to free speech and discretion, as the approval process CCSD requires is, in itself, a
9 prior restraint on Plaintiff Humphrey's speech. As discussed above, this prior restraint is
10 unconstitutional, as CCSD vests unbridled discretion in the school officials approving Plaintiff
11 Humphrey's and other graduating students' decorations and designs, and Eastern Career and
12 Technical Academy's officials have used their unbridled discretion to ban any decoration or
13 adornment that is not issued by the school.

14 Using the discretion provided to them, school officials discriminatorily enforced the
15 Regalia Policy against Ms. Humphrey. Ms. Humphrey wants to wear a stole that express her Black
16 culture through the words "Black Girl Magic", and a stole that communicates her association with
17 ACLU of Nevada's Emerging Leaders program. These adornments and decorations send a
18 particular message about her culture and her time spent with the groups that were an integral and
19 meaningful part of her journey to graduation. Plaintiff Humphrey would have had the opportunity
20 to wear some, if not all, of her decorations and adornments if she attended another school like Las
21 Vegas High School or Del Sol Academy that allowed students to wear items that were not issued
22 by the school, but she is barred because she attends East Career and Technical Academy.

23 More generally, ACLU of Nevada's members will have their rights violated as applied to
24 them as they will be barred from wearing the stole and pin issued to them by the ACLU of Nevada
for their respective graduations in the same manner as Plaintiff Humphrey.

B. Plaintiffs will be irreparably and immediately harmed by the ongoing violation of their constitutional and statutory rights.

Irreparable harm is “harm for which there is no adequate legal remedy, such as an award for damages.” *East Bay Sanctuary Covenant*, 993 F.3d at 677. “A loss of First Amendment freedoms constitutes an irreparable injury.” *Meinecke v. City of Seattle*, 99 F.4th 514, 526 (9th Cir. 2024) (citing *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 694 (9th Cir. 2023) (“It is axiomatic that [t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” (citation omitted))). “A party seeking preliminary injunctive relief in a First Amendment context can establish irreparable injury sufficient to merit the grant of relief by demonstrating the existence of a colorable First Amendment claim.” *Pasaye v. Dzurenda*, 375 F. Supp. 3d 1159, 1170-71 (D. Nev. 2019), on reconsideration in part, No. 217CV02574JADVCF, 2019 WL 2905044 (D. Nev. July 5, 2019).

Here, Plaintiffs have demonstrated colorable claims for CCSD’s violations of Nevada Revised Statute 388.915, the First Amendment of the U.S. Constitution, and Article I, Section 9 of the Nevada Constitution. Further, Plaintiffs’ loss of First Amendment freedoms “unquestionably constitutes irreparable injury.” Plaintiffs have experienced ongoing violations due to CCSD’s prior approval requirement in violation of their rights and the content-based evaluations that CCSD engages in to determine which items are “approved.”

The First Amendment violation is particularly tangible here. Plaintiff Humphrey and other Plaintiff ACLU of Nevada Emerging Leader members are graduating next week. If this Court does not grant the requested relief, Plaintiffs will never have the opportunity to wear the decorations and adornments they are entitled to wear. And if this issue is not addressed now, the Emerging Leaders members graduating next year will face the same harm.

C. Consideration of the balance of equities and the public interest weighs in favor of granting Plaintiffs’ request for a preliminary injunction.

When the government is a party, the last two factors (equities and public interest) merge.” *East Bay Sanctuary Covenant*, 993 F.3d at 668. “Because ‘public interest concerns are implicated when a constitutional right has been violated, ... all citizens have a stake in upholding the Constitution,’ meaning ‘it is always in the public interest to prevent the violation of a party’s constitutional rights.’” *Baird*, 81 F.4th at 1042 (internal citations omitted). “When a party raises serious First Amendment questions, that alone compels a finding that the balance of hardships tips sharply in its favor.” *Meinecke*, 99 F.4th at 526. Here, the balance of equities weighs in favor of granting Plaintiffs’ request for a preliminary injunction. The public interest is great, as “it is always in the public interest to prevent the violation of a party’s constitutional rights.” Like in *TGP Commc’ns, LLC v. Sellers*, where the court found the public interest was served by ensuring the County’s administration of press-pass credentials complied with the First Amendment, here, the public interest is served by ensuring Defendant CCSD complies with the First Amendment when enforcing its Regalia Policy. No. 22-16826, 2022 U.S. App. LEXIS 33641, at *17 (9th Cir. Dec. 5, 2022). Because Plaintiffs raise serious First Amendment questions, that alone “compels a finding that the balance of hardships tips sharply” in Plaintiffs’ favor.

In addition, Defendant CCSD would suffer no harm from a preliminary injunction. Defendant CCSD and its officials are still able to limit speech within the confines of what is permitted by the law. If an item is likely to cause a substantial disruption to, or material interference with, a graduation ceremony, Defendant CCSD may still prohibit that item. Furthermore, nothing prohibits Defendant CCSD from enacting a voluntary rather than mandatory pre-approval process. However, rather than working within the bounds of this exception, Defendant CCSD gives school officials unfettered discretion to infringe upon students’ First Amendment rights for any arbitrary

1 reason – or for no reason at all. Defendant CCSD “cannot reasonably assert that it is harmed in
2 any legally cognizable sense by being enjoined from constitutional violations.” *Baird*, 81 F.4th at
3 1042 (quoting *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983)). *See also Rodriguez v. Robbins*,
4 715 F.3d 1127, 1145 (9th Cir. 2013) (holding government “cannot suffer harm from an injunction
5 that merely ends an unlawful practice” implicating “constitutional concerns”).

6 While enjoining Defendant CCSD from enforcing its policy will result in no loss or
7 inconvenience to the District, without a preliminary injunction Plaintiffs will continue to face
8 ongoing violations of their rights resulting from Defendant CCSD’s unconstitutional prior
9 restraint, Defendant CCSD’s unconstitutional prior approval process, and Defendant CCSD and
10 its officers’ unconstitutional implementation of the approval process. Further, enforcement of the
11 unlawful provisions of the Regalia Policy will ultimately result in Defendant CCSD’s
12 unconstitutional suppression of Plaintiffs’ rights to free speech and expression. Injury to Plaintiffs
13 will be “immediate, certain, and great” if their request for a preliminary injunction is denied, as
14 constitutional and statutory violations are certain to result without this Court’s action, and the
15 Plaintiffs will face irreparable injury that cannot be easily remedied – the Plaintiff Corie Humphrey
16 and the other graduating students will never have the opportunity to wear what they want to wear
17 to their graduation. Therefore, on balance of equities, the hardships to both parties and the public
18 interest weigh in favor of granting Plaintiffs’ request for a preliminary injunction.

19 IV. CLAIM FOR RELIEF

20 Plaintiffs are entitled to relief preventing Defendant CCSD, and its local schools’
21 administrations and officials, from carrying out and implementing unlawful policies, practices, and
22 acts that violate Plaintiff Humphrey and Plaintiff ACLU of Nevada’s member’s rights under NRS
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24

388.915, the First Amendment of the U.S. Constitution, and Article I, Section 9 of the Nevada Constitution. As such, the Plaintiffs request that the Court enjoin Defendant CCSD from:

- a. Enforcing R-5129(II)(C), R-5129(II)(D), R-5129(II)(E) to the extent the subsection bans decorations and adornments which “constitute proselytizing speech”, and R-5129(II)(F).
- b. Regulating students’ right to wear traditional tribal regalia and recognized items of cultural and religious significance in any manner outside that which is expressly authorized by NRS 388.915.
- c. Banning ACLU Emerging Leaders members to wear decorations and adornments expressing protected speech, including a stole and cap pin symbolizing their time in Emerging Leaders.
- d. Banning Plaintiff Humphrey from wearing the adornments and decorations she reasonably requests to wear at her graduation, specifically (1) her stole with “Black Girl Magic” written on it; (2) her red and black sash/stole and pin from ACLU of Nevada’s Emerging Leaders Program; and (3) her graduation cap decorated with small flowers, gems, and crystals.

V. CONCLUSION

Plaintiffs have shown a strong likelihood of success on the merits, irreparable and imminent harm through Defendant CCSD’s infringement upon Plaintiffs’ rights, that the balance of equities is in Plaintiffs’ favor, and there is a clear public interest in protecting constitutional and statutory rights. Plaintiffs respectfully request that this Court grant this Motion for Preliminary Injunction.

1 Dated this 22nd day of May 2025.

2 **AMERICAN CIVIL LIBERTIES**
3 **UNION OF NEVADA**

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CERTIFICATE OF SERVICE

I herby certify that on the 21st day of May, 2025, I electronically filed a true and correct copy of the forgoing MOTION FOR PRELIMINARY INJUNCTION I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished on all participants by:

- ☒ CM/ECF
☐ Electronic mail; or
☐ US Mail or Carrier Service

/s/Christopher Peterson
An employee of the ACLU of Nevada