UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

PRIVACY MATTERS, a voluntary unincorporated association, and **PARENT A**, president of Privacy Matters, Plaintiffs, vs. **UNITED STATES DEPARTMENT OF EDUCATION; JOHN B. KING, JR.,** in his official capacity as United States Secretary of Education; **UNITED STATES DEPARTMENT OF JUSTICE; LORETTA E. LYNCH,** in her official capacity as United States Attorney General; and **INDEPENDENT SCHOOL DISTRICT NUMBER 706, STATE OF MINNESOTA.** **Defendants.**	**Case No. 0:16-cv-03015-WMW-LIB** Judge Wilhelmina M. Wright Magistrate Judge Leo I. Brisbois **ORAL ARGUMENT REQUESTED**

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs Privacy Matters respectfully move this Court for a preliminary injunction enjoining the Defendant Independent School District Number 706, their officers, agents, employees, and all other persons acting in concert with them from enforcing the policy and practice of regulating access to private facilities under their control, including locker rooms, shower rooms, restrooms, and overnight accommodations on school sponsored trips, based on gender identity rather than sex. Plaintiffs further respectfully move the Court for a preliminary injunction enjoining Defendants Department of Education and Department of Justice, their officers, agents, employees, and all other persons acting in concert with them from

enforcing against Independent School District Number 706, or any other Minnesota school district, their agency rule declaring (1) that the term "sex" in Title IX of the Education Amendments of 1972 and its regulations includes "gender identity" and (2) that Title IX requires schools to allow students to access overnight accommodations, locker rooms, and restrooms consistent with their professed gender identity.

Plaintiffs Privacy Matters satisfy the four factors for obtaining a preliminary injunction: (1) it is likely to "succeed on the merits", (2) it is likely to suffer "irreparable harm", (3) the balance of equities favors Plaintiffs, and (3) an injunction is in "the public interest." *Dataphase Sys., Inc. v. CL Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981). Plaintiffs demonstrate that these factors are satisfied in the accompanying memorandum of law. That memorandum, along with the supporting exhibits and the Verified Complaint, form the basis of this motion and the relief requested above.

Plaintiffs also respectfully request that this Court waive any bond requirement under Rule 65(c). Courts in the Eighth Circuit have long held that "[t]he amount of the bond rests within the sound discretion of the trial court…." *Stockslager v. Carroll Elec. Co-op. Corp.*, 528 F.2d 949, 951 (8th Cir. 1976). Imposing a bond requirement here would be especially inequitable given Defendants' patently unlawful actions and Plaintiffs' strong likelihood of success on the merits. This conclusion is bolstered by the fact that neither Defendants nor anyone else will suffer harm – financial or otherwise – by this Court's enjoining the offending policies and practices. *See Int'l Controls Corp. v. Vesco*, 490 F.2d 1334, 1356 (2d Cir. 1974) (stating that "the district court may dispense with security where there has been no proof of likelihood of harm to the party

enjoined."). While a preliminary injunction costs the government nothing, the requirement of a bond may disincentivize citizens vindicating their constitutional and statutory rights against government overreach.

Furthermore, waiving the bond requirement is particularly appropriate here because Plaintiffs are seeking to vindicate constitutional and statutory rights, and so its lawsuit is in the public interest. *Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps. of Eng'rs*, 826 F.3d 1030, 1043 (8th Cir. 2016) (upholding district court's bond waiver based on the district court's "evaluation of public interest in this specific case."); *see also Moltan Co. v. Eagle-Picher Indus., Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995) (affirming the district court's decision refusing to require posting of security because of the strength of plaintiff's case and the "strong public interest involved"); *City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1094 (5th Cir. 1981) (noting the public interest litigation exception to the bond requirement).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the preliminary injunction issue.

Respectfully submitted this the 16th day of September, 2016.

By: /s/ Jordan Lorence

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**Admitted Pro Hac Vice*

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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2016, I electronically filed the foregoing Motion for Preliminary Injunction with the Clerk of Court using the ECF system. Because Defendants have not yet entered an appearance, I have served the Defendants listed below via U.S. Certified Mail, Return Receipt Requested. Defendant Independent School District Number 706 will be personally served upon the following members of the school board: Bill Hafdahl, Stacey Sundquist, Tom Tammaro, Sonya Pineo, Kimberly Stokes, and Greg Manninen.

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