

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

STUDENTS AND PARENTS FOR PRIVACY, a voluntary unincorporated association; **C.A.**, a minor, by and through her parent and guardian, **N.A.**; **A.M.**, a minor, by and through her parents and guardians, **S.M.** and **R.M.**; **N.G.**, a minor, by and through her parent and guardian, **R.G.**; **A.V.**, a minor, by and through her parents and guardians, **T.V.** and **A.T.V.**; and **B.W.**, a minor, by and through his parents and guardians, **D.W.** and **V.W.**,

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 **SCHOOL DIRECTORS OF TOWNSHIP HIGH SCHOOL DISTRICT 211, COUNTY OF COOK AND STATE OF ILLINOIS**.

Defendants.

Case No. 1:16-cv-04945

The Honorable Jorge L. Alonso

Plaintiffs' Motion For Preliminary Injunction

ORAL ARGUMENT REQUESTED

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs Students and Parents for Privacy, C.A., N.A., A.M., S.M., R.M., N.G., R.G., A.V., T.V., A.T.V., B.W., D.W., and V.W. ("Plaintiffs") respectfully move this Court for a preliminary injunction to enjoin enforcement of the Locker Room Agreement, by which the Defendants allow a biological male student access to the locker rooms designated for girls, and also the Restroom Policy, by which the Defendant School Directors allow restroom entry and usage based on gender identity, irrespective of biological sex.

The Plaintiffs also respectfully move this Court for a preliminary injunction to enjoin the Defendants Department of Education and Department of Justice from taking any action based on the Department of Education's new rule that redefines the word "sex" in Title IX, including implementing the revocation of funding as indicated in the Letter of Findings sent to District 211 and from communicating to District 211 through these documents or in any other manner that the term "sex" means, or includes, gender identity or that Title IX bars gender identity discrimination or mandates that regulated entities allow students to use restrooms, locker rooms, and showers based on their gender identity.

Plaintiffs also respectfully request that this Court waive the Rule 65 bond requirement for a preliminary injunction. Courts in the Seventh Circuit have discretion to waive the bond requirement. *Scherr v. Volpe*, 466 F.2d 1027, 1035 (7th Cir. 1972). This is especially true where, as here, Plaintiffs demonstrate "strong likelihood of success on the merits[.]" *Id.* See *Memorandum in Support of Plaintiffs' Motion for Preliminary Injunction* ("PI Memo"), filed contemporaneously with this Motion. Waiving the bond requirement is also warranted because the Plaintiffs seek to vindicate constitutional and statutory rights, *see id.*, and so their lawsuit is in the public interest. See *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 804 n.8 (3d Cir. 1989) (collecting cases); *City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1094 (5th Cir. 1981) (noting that courts have recognized that public interest litigation is an exception to the Rule 65 bond requirement); *Crowley v. Local No. 82, Furniture & Piano Moving, Furniture Store Drivers, Helpers, Warehousemen, & Packers*, 679 F.2d 978, 1000 (1st Cir. 1982), *rev'd on other grounds*, 467 U.S. 526 (1984) ("no bond is required in suits to enforce important federal rights or public interests.") (quotation marks omitted).

This Court explained that “courts have declined to require plaintiffs to post a bond in cases involving constitutional rights.” *Smith v. Board of Election Comm’rs for City of Chicago*, 591 F. Supp. 70, 71 (N.D. Ill. 1984). This Court itself has exercised that discretion. *Olshock v. Vill. of Skokie*, 401 F. Supp. 1219 (N.D. Ill. 1975). The Plaintiffs raise important claims that serve the public interest by vindicating students’ constitutional and statutory rights. *See PI Memo*. The government defendants will not be harmed by the issuance of an injunction, because the government cannot be harmed when it is prevented from enforcing unconstitutional laws. *Joelner v. Vill. of Wash. Park*, 378 F.3d 613, 620 (7th Cir. 2004). 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. As this Court explained, to “order plaintiffs [seeking to vindicate constitutional rights] to post [a] bond . . . would condition the exercise of plaintiffs’ constitutional rights upon their financial status.” *Smith*, 591 F. Supp. at 72. Such a requirement “would undoubtedly create an unfair hardship for [plaintiffs] and impact negatively on the exercise of their constitutional rights” as well as others who wish to exercise their constitutional rights. *Id.* Plaintiffs therefore request that their injunction issue with no bond requirement.

This motion is made on the grounds specified in this motion, Plaintiffs’ memorandum in support thereof, the Verified Complaint, the declaration of Plaintiff V.W., and the exhibits attached thereto.

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Respectfully submitted this 23rd day of May, 2016.

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**Pro hac vice applications granted on May 11,
2016, by Order of this Court.*

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2016, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following counsel of record who are registered users of the ECF system:

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I hereby certify that I sent the foregoing document via Certified Mail to the following Defendants who have not yet appeared:

United States Department of Education
John B. King, Jr., U.S. Secretary of Education
United States Department of Justice
Loretta E. Lynch, U.S. Attorney General

By: /s/ Jeremy D. Tedesco
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THIS DOCUMENT HAS BEEN ELECTRONICALLY FILED