

**CONSOVOY MCCARTHY PLLC**  
J. Michael Connolly (PHV pending)  
Paul R. Draper (Cal. Bar No. 345071)  
paul@consovoymccarthy.com  
Marie E. Sayer (PHV pending)  
1600 Wilson Blvd., Suite 700  
Arlington, VA 22209  
(703) 243-9423

**ALTVIEW LAW GROUP LLP**  
John M. Begakis (Cal. Bar No. 278681)  
9454 Wilshire Blvd., Suite 825  
Beverly Hills, CA 90212  
(310) 230-5580

*Counsel for Plaintiff*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

Case No. 8:26-cv-01574

DEFENDING EDUCATION,

*Plaintiff,*

v.

MARIA ANGUIANO, in her official  
capacity as Regents, et al.,

*Defendants.*

**PLAINTIFF’S MEMORANDUM  
OF POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION**

Date: August 5, 2026  
Time: 1:30PM  
Trial Date: Not set  
Action Filed: June 18, 2026

**TABLE OF CONTENTS**

1

2 Table of Authorities..... iii

3 Introduction..... 1

4 Background..... 3

5 I. The growing use of speech codes to punish student speech regarding  
gender identity..... 3

6 II. UC’s policies punish certain speech concerning gender identity..... 4

7 III. Defending Education and this litigation..... 9

8 Argument..... 12

9 I. DE is likely to succeed on the merits..... 13

10 A. The SVSH Policy unconstitutionally compels speech. .... 13

11 B. The SVSH Policy is a content- and viewpoint-based  
restriction on speech..... 16

12 C. The SVSH Policy is overbroad..... 20

13 D. The SVSH Policy is unconstitutionally vague. .... 24

14 II. DE satisfies the remaining preliminary injunction factors..... 27

15 III. The Court should not require an injunction bond..... 28

16 Conclusion ..... 28

17 Certificate of Compliance ..... 30

18 Certificate of Service..... 30

19

20

21

22

23

24

25

26

27

28

**TABLE OF AUTHORITIES**

**Cases**

1

2

3

4 *303 Creative LLC v. Elenis*,  
600 U.S. 570 (2023)..... 13

5 *Alabama v. Sec’y of Educ.*,  
2024 WL 3981994 (11th Cir. Aug, 22, 2024) ..... 22

6 *Am. Trucking Assoc. v. City of Los Angeles*,  
559 F.3d 1046 (9th Cir. 2009) ..... 27

7 *Anchor Stone Christian Church v. City of Santa Ana*,  
777 F. Supp. 3d 1126 (C.D. Cal. 2025) ..... 28

8 *Ass’n of Cleveland Fire Fighters v. City of Cleveland*,  
502 F.3d 545 (6th Cir. 2007)..... 25

9 *Baird v. Bonta*,  
81 F.4th 1036 (9th Cir. 2023) ..... 12, 27-28

10 *Bates v. Pakseresht*,  
146 F.4th 772 (9th Cir. 2025) ..... 15-17, 19

11 *Castaneda v. Garland*,  
562 F. Supp. 3d 545 (C.D. Cal. 2021) ..... 28

12 *Cohen v. San Bernardino Valley Coll.*,  
92 F.3d 968 (9th Cir. 1996)..... 25

13 *Connally v. Gen. Constr. Co.*,  
269 U.S. 385 (1925)..... 25

14 *Ctr. for Bio-Ethical Reform, Inc. v. Los Angeles Cnty. Sheriff Dep’t*,  
533 F.3d 780 (9th Cir. 2008)..... 17

15 *Dambrot v. Cent. Mich. Univ.*,  
55 F.3d 1177 (6th Cir. 1995)..... 25

16 *Davis v. Monroe County Bd. of Educ.*,  
526 U.S. 629 (1999)..... 21-22

17 *Defending Education v. Olentangy Loc. Sch. Dist. Bd. of Educ.*,  
158 F.4th 732, 738 (6th Cir. 2025)..... 3, 4, 9, 14-16, 19

18 *Defending Education v. Stewart*,  
6:26-cv-03237 (W.D. Mo. June 16, 2026)..... 9

19

20

21

22

23

24

25

26

27

28

1 *DeJohn v. Temple University*,  
 2 537 F.3d 301 (3d Cir. 2008) ..... 3

3 *Doe 1 v. Marshall*,  
 4 367 F. Supp. 3d 1310 (M.D. Ala. 2019) ..... 15-16

5 *Elrod v. Burns*,  
 6 427 U.S. 347 (1976).....27

7 *Forsyth County v. Nationalist Movement*,  
 8 505 U.S. 123 (1992)..... 17, 22

9 *Foti v. City of Menlo Park*,  
 10 146 F.3d 629 (9th Cir. 1998)..... 24, 26

11 *Gooding v. Wilson*,  
 12 405 U.S. 518 (1972).....20

13 *Grayned v. City of Rockford*,  
 14 408 U.S. 104 (1972).....24

15 *Green v. Miss USA, LLC*,  
 16 52 F.4th 773 (9th Cir. 2022) ..... 4, 13-14, 22

17 *Griffin v. Bryant*,  
 18 30 F. Supp. 3d 1139 (D.N.M. 2014)..... 18

19 *Healy v. James*,  
 20 408 U.S. 169 (1972).....1, 3, 25-26

21 *Hernandez v. Sessions*,  
 22 872 F.3d 976 (9th Cir. 2017).....27

23 *Hill v. Colorado*,  
 24 530 U.S. 730 (2002).....26

25 *Iancu v. Brunetti*,  
 26 588 U.S. 388 (2019)..... 19

27 *Janus v. AFSCME*,  
 28 585 U.S. 878 (2018)..... 13, 19, 22

*Johnson v. Couturier*,  
 572 F.3d 1067 (9th Cir. 2009) .....28

*Keyishian v. Bd. of Regents*,  
 385 U.S. 589 (1967)..... 3

*Mahanoy Area Sch. Dist. v. B.L. ex rel Levy*,  
 594 U.S. 180 (2021).....23

1 *Matal v. Tam*,  
 2 582 U.S. 218 (2017)..... 18, 22

3 *McCauley v. Univ. of the Virgin Islands*,  
 4 618 F.3d 232 (3d Cir. 2010).....24

5 *McGuire v. Marshall*,  
 6 741 F. Supp. 3d 1112 (M.D. Ala. 2024) .....26

7 *Meriwether v. Hartop*,  
 8 992 F.3d 492 (6th Cir 2021).....13-14, 20-21, 23

9 *Moody v. NetChoice*,  
 10 603 U.S. 707 (2024).....21

11 *Moss v. U.S. Secret Service*,  
 12 572 F.3d 962 (9th Cir. 2009)..... 19

13 *Papish v. Bd. of Curators of Univ. of Mo.*,  
 14 410 U.S. 667 (1973).....3

15 *Parents Defending Education v. Linn Mar Cmty. Sch. Dist.*,  
 16 83 F.4th 658 (8th Cir. 2023) .....24

17 *Pleasant Grove City v. Summum*,  
 18 555 U.S. 460 (2009)..... 19

19 *R.A.V. v. St. Paul*,  
 20 505 U.S. 377 (1992)..... 19

21 *Reed v. Town of Gilbert*,  
 22 576 U.S. 155 (2015)..... 16

23 *Riley v. Nat’l Fed’n of the Blind of N.C.*,  
 24 487 U.S. 781 (1988)..... 15

25 *Riley’s Am. Heritage Farms v. Elsasser*,  
 26 32 F.4th 707 (9th Cir. 2022) .....27

27 *Rosenberger v. Univ. of Virginia*,  
 28 515 U.S. 819 (1995)..... 18

*Saxe v. State Coll. Area Sch. Dist.*,  
 240 F.3d 200 (3d Cir. 2001) .....17-18, 22

*Snyder v. Phelps*,  
 562 U.S. 443 (2011)..... 3

*Speech First v. Cartwright*,  
 32 F.4th 1110 (11th Cir. 2022) ..... 1, 3, 17, 19

1 *Speech First v. Fenves*,  
2 979 F.3d 319 (5th Cir. 2020).....4, 25

3 *Telescope Media Grp. v. Lucero*,  
4 936 F.3d 740 (8th Cir. 2019)..... 19

5 *Tennessee v. Cardona*,  
6 737 F. Supp. 3d 510 (E.D. Ky. 2024)..... 15

7 *United States v. Williams*,  
8 553 U.S. 285 (2008)..... 21, 24

9 *Vill. of Hoffman Est. v. Flipside, Hoffman Est., Inc.*,  
10 455 U.S. 489 (1982).....24

11 *Virginia v. Hicks*,  
12 539 U.S. 113 (2003).....20

13 *West Virginia v. Barnette*,  
14 319 U.S. 624 (1943)..... 13

15

16

17

18

19

20

21

22

23

24

25

26

27

28

## INTRODUCTION

1  
2 “The vigilant protection of constitutional freedoms is nowhere more vital than  
3 in the community of American schools [of higher education].” *Healy v. James*, 408 U.S.  
4 169, 180 (1972) (cleaned up). Our universities “serve as the founts of—and the testing  
5 grounds for—new ideas. Their chief mission is to equip students to examine arguments  
6 critically” and “participate in the civic and political life of our democratic republic.”  
7 *Speech First v. Cartwright*, 32 F.4th 1110, 1128 (11th Cir. 2022). But the University of  
8 California has chosen a different path. It has enacted a far-reaching “harassment” pol-  
9 icy that punishes students for their speech and compels them to mouth support for  
10 UC’s preferred viewpoints.  
11  
12

13  
14 In particular, UC requires students to go along with UC’s preferred view that  
15 gender is a fluid, mutable characteristic. Under the guise of preventing sexual harass-  
16 ment, UC’s “Sexual Violence and Sexual Harassment Policy” prohibits so-called mis-  
17 gendering and deadnaming. Ex. A at 033.<sup>1</sup> And it threatens to punish students who  
18 express the “wrong” view on gender issues, like “complain[ing]” about a biological  
19 man using the women’s restroom. Ex. B at 048; Ex. C at 052. It does this through  
20 (1) the Policy’s overbroad and vague “hostile environment” harassment provision,  
21 which prohibits large swaths of “offensive” speech based on “gender, gender identity,  
22  
23  
24

---

25  
26 <sup>1</sup> Exhibits A-J are contained in the Declaration of Marie Sayer, which was filed  
27 contemporaneously with this motion. Citations to specific pages refer to the stamped,  
28 sequential exhibit pagination and not to a document’s internal pagination.

1 gender expression, sex- or gender-stereotyping, or sexual orientation,” Ex. A at 006,  
2 and (2) its Frequently Asked Question #14, which prohibits students from “misgen-  
3 dering” and using another student’s “dead name.” *Id.* at 033. The Policy applies on  
4 campus and off, including on students’ personal devices and over the internet, and  
5 students can be reported by anyone at any time. *Id.* at 014, 018.

7  
8 Defending Education seeks a preliminary injunction to protect the speech rights  
9 of its members: UC students who have views on sex and gender that UC disfavors.  
10 These students believe that people are either male or female, that biological sex is im-  
11 mutable and that people cannot change their sex. Accordingly, they want to use lan-  
12 guage, including pronouns and names, that reflects biological sex rather than some-  
13 one’s self-professed gender identity. *E.g.*, Student.A.Decl. ¶10. They “do not want to  
14 be forced to affirm that a biologically female classmate is actually a male—or vice  
15 versa—or that a classmate is ‘nonbinary’ and neither male nor female.” *E.g.*, *id.* ¶6.  
16 Being forced to express such speech would contradict their deeply held beliefs. *E.g.*, *id.*  
17 ¶5. But UC’s broadly written Policy treats these students’ speech as “harassment based  
18 on gender identity.” Ex. A at 033. So they are forced to silence themselves or avoid  
19 using sex-specific pronouns altogether.

23 UC’s Policy violates the First and Fourteenth Amendments. It compels speech,  
24 discriminates on content and viewpoint, and is overbroad and vague. The Court should  
25 enjoin its enforcement. Indeed, Defending Education recently secured a preliminary  
26 injunction against a similar pronoun policy governing K-12 schools, where students  
27  
28

1 have fewer First Amendment rights than university students. *See Defending Education v.*  
2 *Olentangy Loc. Sch. Dist. Bd. of Educ.*, 158 F.4th 732, 738 (6th Cir. 2025). And courts  
3 regularly enjoin speech-coercing hostile-environment provisions like UC’s. *E.g.*, *Cart-*  
4 *wright*, 32 F.4th at 1125-27; *DeJohn v. Temple University*, 537 F.3d 301, 313-18 (3d Cir.  
5 2008). This Court should do the same.

## 8 BACKGROUND

### 9 I. The growing use of speech codes to punish student speech regarding 10 gender identity.

11 The First Amendment “reflects ‘a profound national commitment to the prin-  
12 ciple that debate on public issues should be uninhibited, robust, and wide-open.’”  
13 *Snyder v. Phelps*, 562 U.S. 443, 452 (2011). Nowhere is this principle truer than on college  
14 campuses. Indeed, “[t]he college classroom with its surrounding environs is peculiarly  
15 the ‘marketplace of ideas.’” *Healy*, 408 U.S. at 180. “[T]he mere dissemination of  
16 ideas—no matter how offensive to good taste—on a state university campus may not  
17 be shut off in the name alone of ‘conventions of decency.’” *Papish v. Bd. of Curators of*  
18 *Univ. of Mo.*, 410 U.S. 667, 670 (1973).

19  
20  
21 But instead of promoting the “robust exchange of ideas,” *Keyishian v. Bd. of Re-*  
22 *gents*, 385 U.S. 589, 603 (1967), universities today are often more interested in protect-  
23 ing students from ideas that make them uncomfortable. They do this through speech  
24 codes. *See* Exs. D, E. Under the guise of preventing “discrimination” and “harass-  
25 ment,” speech codes impose vague, overbroad, and content-based (and sometimes  
26  
27  
28

1 viewpoint-based) restrictions on speech. Ex. D at 054; Ex. E at 068, 074. But “anti-  
2 discrimination” and “anti-harassment” policies cannot be used as a sword to compel  
3 students to speak in the way the government dictates, contrary to their deeply held  
4 beliefs. That is why courts have a “long-standing hesitation to enforce anti-discrimina-  
5 tion statutes in the speech context.” *Green v. Miss USA, LLC*, 52 F.4th 773, 792 (9th  
6 Cir. 2022); *see Speech First v. Fenves*, 979 F.3d 319, 338-39 n.17 (5th Cir. 2020) (collecting  
7 a “consistent line of cases that have uniformly found campus speech codes unconsti-  
8 tutionally overbroad or vague”).

9  
10  
11 The First Amendment notwithstanding, universities are increasingly using  
12 speech codes to censor minority viewpoints, especially when it comes to issues of gen-  
13 der identity. So-called “preferred pronoun policies” in particular subject students to  
14 formal discipline for referring to other students with pronouns that reflect biological  
15 sex rather than gender identity. *See, e.g., Defending Education*, 158 F.4th at 738. Other  
16 university policies are written so broadly or vaguely that they effectively shut down all  
17 discussion or debate on transgender issues. *See* Ex. E at 074.

## 21 **II. UC’s policies punish certain speech concerning gender identity.**

22 UC has joined this growing and unconstitutional trend. On December 22, 2025,  
23 UC issued a revised version of its “Sexual Violence and Sexual Harassment” Policy,  
24 which became effective January 1, 2026. Ex. A at 005. The Policy is designed to punish  
25 disfavored speech concerning, among other things, gender identity. It compels speech  
26 and discriminates on the basis of content and viewpoint, and it can be applied to a  
27  
28

1 substantial amount of protected speech, including speech that is at the core of the First  
2 Amendment. It “applies at all University campuses,” including UCLA, UCI, and  
3 UCSD, and it applies to everyone connected with the UC System, including all under-  
4 graduate, graduate, and professional students. *Id.*

6 Two parts of the SVSH Policy unconstitutionally restrict student speech: its ban  
7 on hostile-environment harassment and its ban on so-called misgendering and dead-  
8 naming.

10 **The Hostile-Environment Provision.** The SVSH Policy prohibits, among  
11 other things, “sexual harassment” through a “hostile environment.” *Id.* at 010. Hostile-  
12 environment harassment includes “unwelcome ... sex-based conduct” that is “suffi-  
13 ciently severe, persistent or pervasive that it unreasonably denies, adversely limits, or  
14 interferes with a person’s participation in or benefit from the education, employment  
15 or other programs or activities of the University and creates an environment that a  
16 reasonable person would find to be intimidating or offensive.” *Id.* The Policy defines  
17 “other sex-based conduct” to include “acts of verbal, nonverbal, or physical aggression,  
18 intimidation, or hostility based on gender, gender identity, gender expression, sex- or  
19 gender-stereotyping, or sexual orientation.” *Id.*

23 UC leaves no doubt that its ban on hostile-environment harassment covers pro-  
24 tected speech. In addition to prohibiting certain “verbal” conduct, UC offers a non-  
25 exhaustive set of “examples” of prohibited language. *Id.* at 033-34. That list includes  
26  
27  
28

1 the use of “derogatory names or slurs” or other “offensive terms.” *Id.* It also includes  
2 “jokes” made about someone’s “sexual orientation.” *Id.*

3  
4 **FAQ #14.** Included in the SVSH Policy are a series of “Frequently Asked Ques-  
5 tions.” *Id.* at 030-34. One question (FAQ #14) provides “examples of harassment  
6 based on gender identity.” *Id.* at 033. The FAQ states that “intentional or repeated use  
7 of a name or pronoun inconsistent with the individual’s gender identity (i.e., misgen-  
8 dering)” is “Prohibited Conduct.” *Id.* FAQ #14 further prohibits “intentionally and  
9 repeatedly call[ing]” a “transgender man” by “his dead name (i.e., refer[ring] to a name  
10 that a transgender person was given at birth but that they no longer use).” And it pro-  
11 hibits “intentionally and repeatedly refer[ring]” to a transgender man “by ‘Miss’ or  
12 ‘Ms.’” *Id.*

13  
14  
15 **Enforcement.** The SVSH Policy applies broadly, covering student speech that  
16 occurs during any UC program or activity, on any campus or other UC property, and  
17 even off-campus and unrelated to a UC program or activity so long as there are “con-  
18 tinuing adverse effects on” or a “hostile environment” for students. *Id.* at 013-14. The  
19 Policy prohibits speech whether it occurs in person, over the internet, or via “other  
20 devices or forms of contact.” *Id.* at 014. And it makes it easy to report students for  
21 engaging in prohibited conduct. “Any person can report conduct that may be Prohib-  
22 ited Conduct,” even if they were not the target of the supposed harassment, and com-  
23 plaints can be submitted anonymously. *Id.* at 013, 018. In addition, most UC employees  
24  
25  
26  
27  
28

1 are required to report suspicions of prohibited conduct, even if they are not sure that  
2 the conduct actually occurred. *Id.* at 012-13.

3  
4 There is “no time limit for reporting.” *Id.* at 014. And there are plenty of options  
5 for reporting: UCLA, UCSD, and UCI allow reports to be made online via reporting  
6 forms, via email, over the phone, or in person. Exs. F, G, H. University officials can  
7 also take action themselves without receiving a report. Ex. A at 023.

8  
9 Students found to have engaged in prohibited conduct face consequences “up  
10 to and including dismissal” from the UC System. Ex. A at 016, 026. Short of that, UC  
11 threatens punishments including “revocation” of an awarded academic degree,  
12 “[s]uspension,” “[e]xclusion” from areas of the campus or UC functions, “[e]xclusion  
13 from participation in designated privileges and activities for a specified period of time,”  
14 “[d]isciplinary probation” that can likewise “restric[t] the student’s privileges or eligi-  
15 bility for activities,” “removal from university housing,” and “written notice or reprim-  
16 and to the student that a violation ... has occurred and that continued or repeated  
17 violations ... may be cause for further disciplinary action.” Ex. I at 109-12. Other con-  
18 sequences could include “educational efforts, employment consequences, or educa-  
19 tional consequences” and “informal counseling.” Ex. A at 016. At all times, UC  
20 “keep[s] records of reports of Prohibited Conduct, and any actions taken in response  
21 to reports, including records” of “investigations, resolutions, and disciplinary action.”  
22 *Id.* at 027.

1           **The SHAPE Training.** UC schools will aggressively pursue violations of the  
2 SVSH Policy, including the hostile-environment provision and FAQ #14. Students at  
3 UC schools are required to annually complete a mandatory training—the “Sexual Har-  
4 assment, Anti-Discrimination, Prevention and Education” (SHAPE) training—to en-  
5 sure their understanding of the SVSH Policy. Exs. B, C. If students do not complete  
6 the SHAPE training, they receive a “hold” on their student account that can prevent  
7 them from registering for classes. *See, e.g.*, Student.A.Decl.¶18; Ex. B at 049; Ex. C at  
8 052.

9           The SHAPE training gives the following situation as an example of punishable  
10 harassment based on gender identity:

11           My name is Mona, and I am transgender. My classmate Jane continues to  
12 call me James, which was my name before I transitioned. Jane refers to  
13 me as a man and complains when I use the women’s restroom. I’ve asked  
14 her to stop, but she does not. I feel very disrespected and want this to  
15 stop.

16           Ex. B at 48-49. Even though this example presents protected speech under the First  
17 Amendment, students are asked to decide “what kind of prohibited conduct” the sce-  
18 nario describes and the correct answer is “hostile environment.” *Id.* (Students are not  
19 given the option to say that the speech is not harassment.) The SHAPE training further  
20 states that a “hostile environment may be created when someone demands that others  
21 use a particular bathroom that does not correspond to their gender identity or uses the  
22 incorrect pronoun.” *Id.* It also explains that “[i]ntentionally calling someone their name  
23  
24  
25  
26  
27  
28

1 used prior to transition, as opposed to their lived name, is called dead-naming, and may  
2 be a form of sexual harassment.” *Id.*

### 3 4 **III. Defending Education and this litigation.**

5 Defending Education is a nationwide, grassroots, 501(c)(3) nonprofit member-  
6 ship organization whose members include students, parents, educators, and others  
7 concerned about the state of education in America. Perry.Decl.¶3. DE’s mission is to  
8 prevent—through advocacy, disclosure, and, if necessary, litigation—the politicization  
9 of education. *Id.* DE has brought similar (and successful) challenges against pronoun  
10 policies and other speech codes in the school context. *E.g., Defending Education*, 158  
11 F.4th at 738; *Defending Education v. Stewart*, 6:26-cv-03237 (W.D. Mo. June 16, 2026),  
12 ECF 4-1 (university agreeing to dismantle its “bias response team”).  
13  
14

15 DE has members who are harmed by the Policy, including Students A-D.  
16 Perry.Decl.¶6. Students A-D attend UC System schools. Student.A.Decl.¶3 (UCLA);  
17 Student.B.Decl.¶3 (UCSD); Student.C.Decl.¶3 (UCI); Student.D.Decl.¶3 (UCI). Stu-  
18 dents A-D believe that people are either male or female, that biological sex is immuta-  
19 ble, and that sex does not change based on someone’s internal feelings. *E.g.,* Stu-  
20 dent.A.Decl.¶5; Student.B.Decl.¶5; Student.C.Decl.¶5; Student.D.Decl.¶5. The stu-  
21 dents “regularly interact with other students and members of” their school communi-  
22 ties “who identify as transgender or nonbinary.” *See* Student.D.Decl.¶8; *see also* Stu-  
23 dent.A.Decl.¶8; Student.B.Decl.¶8; Student.C.Decl.¶8. For example, one student has  
24 “had at least one transgender or nonbinary student in each class” he has taken.  
25  
26  
27  
28

1 Student.C.Decl.¶8. The students have “no ill-will towards people who identify as  
2 transgender or nonbinary, but [they] do not want to be forced to affirm that a biologi-  
3 cally female classmate is actually a male—or vice versa—or that a classmate is ‘nonbi-  
4 nary’ and neither male nor female.” Student.A.Decl.¶6; Student.B.Decl.¶6; Stu-  
5 dent.C.Decl.¶6; Student.D.Decl.¶6. Doing so would contradict their deeply held be-  
6 liefs. Student.A.Decl.¶¶5-7; Student.B.Decl.¶¶5-7; Student.C.Decl.¶¶5-7; Stu-  
7 dent.D.Decl.¶¶5-7.

8  
9  
10 When issues involving gender identity arise in class or in UC-affiliated activities,  
11 the students “want to speak about these topics and repeatedly state [their] belief that  
12 biological sex is immutable.” Student.A.Decl.¶9; Student.B.Decl.¶9; Stu-  
13 dent.C.Decl.¶9; Student.D.Decl.¶9. The students want to use “pronouns and names  
14 that are consistent with [their] classmates’ and professors’ biological sex repeatedly and  
15 at all times, including inside and outside the classroom, in the classmates’ presence, and  
16 when referring to the classmates outside their presence.” Student.A.Decl.¶10; Stu-  
17 dent.B.Decl.¶10; Student.C.Decl.¶10; Student.D.Decl.¶10.

18  
19  
20 The students also want to “communicate [their] beliefs about controversial top-  
21 ics, including gender identity, on a regular basis and [do so] using [their] personal  
22 phone, computer, and on social media.” Student.A.Decl.¶12; Student.B.Decl.¶12; Stu-  
23 dent.C.Decl.¶12; Student.D.Decl.¶12. The students want to “discuss these topics with  
24 other students and the broader” campus “community both on and off campus, includ-  
25 ing during off-campus events with no connection to any school-related activity.” *Id.*

1 But under the Policy, the students can be punished for their protected speech,  
2 including for expressing an opinion about the nature of biological sex, declining to use  
3 another students preferred pronouns, disagreeing with another student’s assertion  
4 about whether they are male or female, stating that a biological male who identifies as  
5 female should not be allowed to compete in women’s sports, or expressing discomfort  
6 about sharing bathrooms with teachers or students of the opposite sex. DE’s members  
7 are aware that “‘intentionally and repeatedly call[ing]’ another student by his or her  
8 ‘deadname’ or biological pronouns is considered ‘deadnaming’ and ‘misgendering,’ and  
9 constitutes harassment.” Student.A.Decl.¶19; Student.B.Decl.¶20; Student.C.Decl.¶20;  
10 Student.D.Decl.¶20. They have also taken the SHAPE training that told them UC de-  
11 fines harassment to include the refusal to use another person’s preferred name or pro-  
12 nouns and complaining about biological men who identify as women using the  
13 women’s restroom. Student.A.Decl.¶18; Student.B.Decl.¶14; Student.C.Decl.¶19; Stu-  
14 dent.D.Decl.¶19.

15 Because of the Policy, the students remain silent in school environments or  
16 avoid using specific pronouns altogether. *See, e.g.*, Student.A.Decl.¶16 (“[W]hen asked  
17 my pronouns..., I skip the question and hope no one notices.”); Student.B.Decl.¶17  
18 (“[W]hen discussions about gender come up in online forums, ... I avoid sharing my  
19 own views.”); Student.C.Decl.¶17 (“I would like to encourage debate about these issues  
20 in groups I am involved in on campus, but [because of] UC’s policies, ... we do not  
21 have events where gender discussions would come up.”); Student.D.Decl.¶15 (“I am  
22  
23  
24  
25  
26  
27  
28

1 often in classes or small groups with people who identify as transgender and have to  
2 work hard to avoid pronouns or names in those situations.”). The students self-censor  
3 because they “fear that expressing [their] belief that sex is immutable—by using bio-  
4 logically accurate pronouns or otherwise explaining [their] views—will cause [them] to  
5 be punished for violating UC’s policies.” Student.A.Decl.¶13; Student.B.Decl.¶13; Stu-  
6 dent.C.Decl.¶13; Student.D.Decl.¶13. For example, the students “refrain from using  
7 pronouns and avoid conversations involving sex and gender in public.” Stu-  
8 dent.A.Decl.¶15; Student.B.Decl.¶16; Student.C.Decl.¶15; Student.D.Decl.¶15. DE  
9 brings this lawsuit on behalf of its members so that the Students can be free to express  
10 their deeply held beliefs—on or off campus—without fear of punishment.  
11  
12  
13

## 14 ARGUMENT

15 DE is entitled to a preliminary injunction if it establishes four things: (1) it is  
16 “likely to succeed on the merits of [its] claim”; (2) it is “likely to suffer irreparable harm  
17 absent the preliminary injunction”; (3) “the balance of the equities tips in [DE’s] favor”;  
18 and (4) “a preliminary injunction is in the public interest.” *Baird v. Bonta*, 81 F.4th 1036,  
19 1040 (9th Cir. 2023). In cases involving violations of constitutional rights, the first fac-  
20 tor is typically dispositive. *Id.* (explaining that success on the merits “usually demon-  
21 strates [plaintiff] is suffering irreparable harm” and “tips the public interest sharply in  
22 [plaintiff’s] favor”). Because DE satisfies all four requirements, the Court should issue  
23 a preliminary injunction.  
24  
25  
26  
27  
28

1     **I. DE is likely to succeed on the merits.**

2           DE is likely to prevail on the merits of its claims because the SVSH Policy un-  
3 constitutionally compels speech, regulates speech based on viewpoint and content, and  
4 is overbroad and vague.

6           **A. The SVSH Policy unconstitutionally compels speech.**

7           The Supreme Court has “held time and again that freedom of speech ‘includes  
8 both the right to speak freely and the right to refrain from speaking at all.’” *Janus v.*  
9 *AFSCME*, 585 U.S. 878, 892 (2018). “[N]o official, high or petty, can prescribe what  
10 shall be orthodox in politics, nationalism, religion, or other matters of opinion or force  
11 citizens to confess by word or act their faith therein.” *West Virginia v. Barnette*, 319 U.S.  
12 624, 642 (1943). “Compelling individuals to mouth support for views they find objec-  
13 tionable violates that cardinal constitutional command, and in most contexts, any such  
14 effort would be universally condemned.” *Janus*, 585 U.S. at 892. “[T]he First Amend-  
15 ment protects an individual’s right to speak his mind regardless of whether the govern-  
16 ment considers his speech sensible and well intentioned or deeply ‘misguided.’” *303*  
17 *Creative LLC v. Elenis*, 600 U.S. 570, 586 (2023).

18           That includes speech on matters of sex and gender. “Pronouns,” for example,  
19 “can and do convey a powerful message implicating a sensitive topic of public con-  
20 cern.” *Meriwether v. Hartop*, 992 F.3d 492, 508 (6th Cir 2021). They reflect a “struggle  
21 over the social control of language in a crucial debate about the nature and foundation,  
22 or indeed real existence, of the sexes.” *Green*, 52 F.4th at 784 n.12 (quoting *Meriwether*,

1 992 F.3d at 508). Non-biological pronouns send the message that “[p]eople can have a  
2 gender identity inconsistent with their sex at birth.” *Meriwether*, 992 F.3d at 507; *see also*  
3 *Green*, 52 F.4th at 784 (explaining that the use of the word “woman” itself “communi-  
4 cates [plaintiff’s] views on womanhood”). Pronoun policies thus compel individuals to  
5 “communicate a message contrary” to their own position that sex is immutable and  
6 cannot be changed. *Green*, 52 F.4th at 785. They “skew th[e] debate” over pronouns by  
7 “forcing one side to change the way it conveys its message or by compelling it to ex-  
8 press a different view.” *Defending Education*, 158 F.4th at 738.

9  
10  
11 Here, Students A-D believe that biological sex is inherent and immutable. *E.g.*,  
12 Student.A.Decl.¶5; Student.B.Decl.¶5; Student.C.Decl.¶5; Student.D.Decl.¶5. They  
13 bear “no ill will” toward other students, but they “do not want to be forced to affirm  
14 that a biological male is actually female—or vice versa—or that another student is nei-  
15 ther male nor female.” Student.A.Decl.¶6; Student.B.Decl.¶6; Student.C.Decl.¶6; Stu-  
16 dent.D.Decl.¶6. Doing so would contradict their deeply held beliefs and, as they see it,  
17 harm the other individual by encouraging him or her to believe a lie. *Id.* Yet, that is  
18 exactly what the hostile-environment provision and FAQ #14 require. According to  
19 UC, it is “prohibited conduct” for a student to “intentionally and repeatedly” refer to  
20 a person by their “dead name” or by “a name or pronoun inconsistent with their gender  
21 identity.” Ex. A at 033. Put simply, if Students A-D don’t use UC’s preferred language,  
22 they violate the university’s policy.  
23  
24  
25  
26  
27  
28

1           The Ninth Circuit’s decision in *Bates v. Paksresht* is directly on point. 146 F.4th  
2 772 (9th Cir. 2025). There, a devout Christian woman sought to open her home to  
3 children in foster care through adoption. *Id.* at 776. Oregon denied her application  
4 because she objected to the State’s policy requiring prospective parents to “respect,  
5 accept, and support” a child’s sexual orientation, gender identity, and gender expres-  
6 sion by using “adopted children’s preferred pronouns” and “acceptable and inclusive  
7 language.” *Id.* at 776, 778. The Ninth Circuit held that this policy “quite clearly ...  
8 compels speech” and was likely unconstitutional. *Id.* at 785-86. That was because “pa-  
9 rental speech that promotes the state’s conceptions of sexual orientation and gender  
10 identity is required, and speech that contradicts the state’s views is prohibited.” *Id.* at  
11 785. The policy thus forced applicants to “reinforce the state’s perspective of sexuality  
12 and gender identity as evolving concepts.” *Id.*

13           That the SVSH Policy does not literally require students to speak is of no mo-  
14 ment. Even if Students A-D could avoid the SVSH Policy’s penalties by holding their  
15 tongues, compelled silence is compelled speech. *Riley v. Nat’l Fed’n of the Blind of N.C.*,  
16 487 U.S. 781, 796-97 (1988). Moreover, using pronouns is a “virtual necessity” for  
17 engaging in conversation. *Doe 1 v. Marshall*, 367 F. Supp. 3d 1310, 1325 (M.D. Ala.  
18 2019). Pronouns are “central to everyday speech.” *Defending Education*, 158 F.4th at 791  
19 (Bush, J., concurring); *Tennessee v. Cardona*, 737 F. Supp. 3d 510, 549 (E.D. Ky. 2024)  
20 (“[P]ronoun usage is pervasive given its ubiquity in conversation.”). In “ordinary con-  
21 versation ... it would be all but ‘impossible’ to train oneself not to use pronouns when  
22  
23  
24  
25  
26  
27  
28

1 referring to others.” *Defending Education*, 158 F.4th at 758; *see, e.g.*, Student.D.Decl.¶16  
2 (explaining that her “classmates gave [her] dirty looks and whispered about [her]” when  
3 she “slipped up” and accidentally “referred to a transgender-identifying student with  
4 biological pronouns” during a “class discussion”). UC thus “cannot force [students] to  
5 choose between carrying a government message” and remaining silent in another stu-  
6 dent’s presence. *Doe 1*, 367 F. Supp. 3d at 1326.  
7

8  
9 In short, the Constitution prohibits UC from taking sides in the gender-identity  
10 debate. Whether a policy “compels” students to use a preferred name and pronoun,  
11 contrary to sex, or “restricts” them from using preferred pronouns, contrary to sex, it  
12 transgresses the First Amendment. *Bates*, 146 F.4th at 784-85 (“The situation would be  
13 no different if the state had restricted ... speech favoring more ‘progressive’ views of  
14 sexuality and gender identity, while compelling speech along the lines of [a] more tra-  
15 ditional understanding”). Universities cannot compel their preferred viewpoints.  
16  
17

18 **B. The SVSH Policy is a content- and viewpoint-based restriction on**  
19 **speech.**

20 Under the First Amendment, a government “has no power to restrict expression  
21 because of its message, its ideas, its subject matter, or its content.” *Reed v. Town of Gilbert*,  
22 576 U.S. 155, 163 (2015). A policy is “content based” if it “applies to particular speech  
23 because of the topic discussed or the idea or message expressed.” *Id.* Content-based  
24 restrictions are “presumptively unconstitutional and may be justified only if the gov-  
25 ernment proves that they are narrowly tailored to serve compelling state interests.” *Id.*  
26  
27  
28

1 The hostile-environment provision and FAQ #14 are content-based. As FAQ  
2 #14 and the SHAPE training confirm, UC prohibits “misgendering,” calling a person  
3 by their “dead name,” and “complain[ing]” when a biological man uses the women’s  
4 restroom. Ex. A at 033; Ex. B at 048-49. The SVSH Policy thus “restricts certain speech  
5 ... on the topics of sexual orientation and gender identity.” *Bates*, 146 F.4th at 785. By  
6 “impos[ing] differential burdens upon speech on account of the topics discussed,” and  
7 “draw[ing] facial distinctions defining regulated speech by particular subject matter,”  
8 the Policy regulates speech based on content. *Cartwright*, 32 F.4th at 1126 (cleaned up).

9  
10 In addition, the hostile-environment provision’s definition of prohibited speech  
11 turns on the *listener’s* reaction: Speech is disallowed if it is perceived as “unwelcome,”  
12 “hostile,” “offensive,” “intimidating,” or “aggress[ive].” Ex. A at 010. It is well estab-  
13 lished, though, that a listener’s “reaction to speech is not a content-neutral basis for  
14 regulation.” *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134 (1992); *see also Saxe*  
15 *v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 209 (3d Cir. 2001) (Alito, J.) (“The Supreme  
16 Court has made it clear ... that the government may not prohibit speech under a ‘sec-  
17 ondary effects’ rationale based solely on the emotive impact that its offensive content  
18 may have on a listener.”). Because the hostile-environment provision “allow[s] or dis-  
19 allow[s] speech depending on the reaction of the audience,” it “run[s] afoul of ... pro-  
20 hibitions on content-restrictive regulations.” *Ctr. for Bio-Ethical Reform, Inc. v. Los Angeles*  
21 *Cnty. Sheriff Dep’t*, 533 F.3d 780, 787 (9th Cir. 2008).

1 More flagrantly, the hostile-environment provision and FAQ #14 punish speech  
2 based on viewpoint. *See Rosenberger v. Univ. of Virginia*, 515 U.S. 819, 829 (1995) (view-  
3 point discrimination is “an egregious form of content discrimination”). The hostile-  
4 environment provision, for its part, is facially viewpoint-based. It bars speech that is,  
5 among other things, “hostile,” “unwelcome,” “aggress[ive],” or “intimidat[ing]” to-  
6 wards someone based on “gender, gender identity, gender expression, sex- or gender-  
7 stereotyping, or sexual orientation.” Ex. A at 010. But “[g]iving offense is a viewpoint.”  
8 *Matal v. Tam*, 582 U.S. 218, 243 (2017). Policies that prohibit “offensive” speech—that  
9 is, speech concerning biological sex that UC disfavors—therefore impose “viewpoint-  
10 discriminatory restrictions.” *Saxe*, 240 F.3d at 206. Plus, because the hostile-envi-  
11 ronment standard turns on membership in certain protected categories, it effectively pro-  
12 hibits statements critical of a named group while permitting supportive statements. A  
13 statement that *affirms* someone’s gender identity is allowed, but a statement that makes  
14 them feel *unwelcome* is not. “It is difficult to imagine” a *more* viewpoint-discriminatory  
15 policy than one that allows “laudatory” speech “while prohibiting a different point  
16 of view (negatively critical) on a particular subject matter.” *Griffin v. Bryant*, 30 F. Supp.  
17 3d 1139, 1184 (D.N.M. 2014).

18  
19  
20  
21  
22  
23 FAQ #14 and the hostile-environment provision also prohibit misgendering,  
24 deadnaming, and other speech expressing the view that biological distinctions between  
25 males and females should be respected. Ex. A at 033; Ex. B at 048-49. In other words,  
26 they “pu[t] a thumb on the scale in favor of” the view “that individuals can have  
27  
28

1 genders that differ from their sex” and “that our society should refer to individuals  
2 using preferred pronouns.” *Defending Education*, 158 F.4th at 755. Just as UC couldn’t  
3 prohibit “speech favoring more ‘progressive’ views of sexuality and gender identity,” it  
4 can’t prohibit Students A-D from sharing their “more traditional understanding.” *Bates*,  
5 146 F.4th at 785. Thus, because they regulate viewpoint, the hostile-environment pro-  
6 vision and the FAQ are “prohibited.” *Minn. Voters All. v. Mansky*, 585 U.S. 1, 11 (2018).  
7

8  
9 Speech restrictions “based on viewpoint are prohibited” altogether. *Id.* at 11.; *see*  
10 *also, e.g., Iancu v. Brunetti*, 588 U.S. 388, 399 (2019); *Cartwright*, 32 F.4th at 1126 (“Re-  
11 strictions ... based on viewpoint are prohibited, seemingly as a per se matter.” (cleaned  
12 up)). “[G]overnment suppression of speech based on the speaker’s motivating ideol-  
13 ogy, opinion, or perspective is impermissible.” *Moss v. U.S. Secret Service*, 572 F.3d 962,  
14 970 (9th Cir. 2009). But even if the Policy were merely content-based, it would still be  
15 subject to strict scrutiny. *See Pleasant Grove City v. Summum*, 555 U.S. 460, 469 (2009).  
16  
17 And the Policy cannot satisfy that test either. “[R]egulating speech because it is dis-  
18 criminatory or offensive is not a compelling state interest, however hurtful the speech  
19 may be.” *Telescope Media Grp. v. Lucero*, 936 F.3d 740, 755 (8th Cir. 2019). Even if it  
20 were, the Policy is not narrowly tailored. “In fact the only interest distinctively served  
21 by” the Policy “is that of displaying [UC’s] special hostility towards” traditional views  
22 on sex and gender. *R.A.V. v. St. Paul*, 505 U.S. 377, 396 (1992). Suppressing disfavored  
23 viewpoints is not a compelling state interest.  
24  
25  
26  
27  
28

1           **C. The SVSH Policy is overbroad.**

2           The First Amendment prohibits regulations that “punis[h] a substantial amount  
3 of protected free speech, judged in relation to the statute’s plainly legitimate sweep.”  
4 *Virginia v. Hicks*, 539 U.S. 113, 118-19 (2003) (cleaned up). This “expansive remedy”  
5 guards against the possibility that “the threat of enforcement of an overbroad law may  
6 deter or ‘chill’ constitutionally protected speech.” *Id.* The freedoms protected by the  
7 First Amendment, in other words, “need breathing space to survive,” so the govern-  
8 ment may regulate speech “only with narrow specificity.” *Gooding v. Wilson*, 405 U.S.  
9 518, 522 (1972).

10           As explained above, the hostile-environment provision and FAQ #14 are un-  
11 constitutional in a substantial number of applications because they compel speech and  
12 discriminate based on content and viewpoint. Consider the statement: “I have no ill  
13 will toward you, but you are not a boy/girl. People are created either male or female  
14 and so you can never transition from one sex to another.” *See* Student.A.Decl.¶¶5-7;  
15 Student.B.Decl.¶¶5-7; Student.C.Decl.¶¶5-7; Student.D.Decl.¶¶5-7. Or the view that  
16 biological men do not belong in the women’s restroom. *See* Student.C.Decl.¶11. Or the  
17 opinion that it is “unfair” for men to compete in women’s sports. *See* Stu-  
18 dent.B.Decl.¶13. Or the use of “pronouns and given names that are consistent with a  
19 classmate’s biological sex.” *See* Student.D.Decl.¶10. These viewpoints are all protected  
20 speech, *see Meriwether*, 992 F.3d at 511-12, but they are prohibited because they would  
21 be seen by the listener as hostile, unwelcoming, intimidating, or aggressive, Ex. A at  
22  
23  
24  
25  
26  
27  
28

1 010. Indeed, FAQ #14 and UC’s SHAPE training state explicitly that misgendering,  
2 deadnaming, and voicing qualms about men in women’s restrooms are punishable  
3 speech. *See* Ex. A at 033; Ex. B at 048-49.  
4

5 For FAQ #14 in particular, the unconstitutional applications of its ban on non-  
6 gender-affirming speech aren’t just substantial relative to any legitimate applications;  
7 they are substantial “in an absolute sense” too. *United States v. Williams*, 553 U.S. 285,  
8 292 (2008). Prohibiting speech on biological pronouns and names is the FAQ’s *sole*  
9 function. In other words, coercing speech on “a sensitive topic of public concern,”  
10 *Meriwether*, 992 F.3d at 508, is its “heartland applicatio[n],” *Moody v. NetChoice*, 603 U.S.  
11 707, 744 (2024).  
12  
13

14 Misgendering and deadnaming aside, the hostile-environment provision is over-  
15 broad because it goes far beyond the circumscribed standard for actionable harassment  
16 laid out by the Supreme Court in *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 652  
17 (1999). While universities can prohibit genuinely harassing *conduct*, they do not have  
18 unlimited authority to punish *protected speech*. To comply with this First Amendment  
19 boundary, harassment policies must be limited to conduct that is “so severe, pervasive,  
20 and objectively offensive that it denies its victims the equal access to education.” *Id.*  
21 But UC’s hostile-environment provision comes nowhere close to satisfying that stand-  
22 ard. Instead of targeting conduct that is sufficiently “severe, pervasive *and* objectively  
23 offensive,” *id.* (emphasis added), it asks only whether the speech is “severe, persistent,  
24 *or* pervasive,” Ex. A at 010 (emphasis added). And instead of punishing such activity  
25  
26  
27  
28

1 only when it “denies” other students “equal access to education,” *Davis*, 526 U.S. at 652  
2 (emphasis added), the provision asks whether the conduct “denies, adversely limits,”  
3 or even just “interferes” with a student’s education, employment, or other UC activities  
4 or programs, Ex. A at 010.

5  
6 Courts regularly find policies that fail to honor the line drawn by *Davis* to be  
7 overbroad because they sweep in “a substantial amount of speech that is constitution-  
8 ally protected.” *Forsyth County*, 505 U.S. at 130; *see, e.g., Saxe*, 240 F.3d at 210, 215-16  
9 (high school speech policy punishing “harassment” was overbroad because it “pro-  
10 hibit[ed] substantially more conduct than would give rise to liability under” *Davis*); *Al-*  
11 *abama v. Sec’y of Educ.*, 2024 WL 3981994, \*6 (11th Cir. Aug, 22, 2024) (finding that a  
12 policy that “contravenes” the *Davis* standard “runs headlong into the First Amendment  
13 concerns animating” that decision). Simply put, there is no “harassment exception” to  
14 the First Amendment’s free speech clause.” *Saxe*, 240 F.3d at 204; *see also Matal*, 582  
15 U.S. at 244-47.

16  
17  
18  
19 The hostile-environment provision’s overbreadth problems are exacerbated by  
20 its focus on speech regarding “sexual orientation and gender identity,” which are “sen-  
21 sitive political topics [that] are undoubtedly matters of profound value and concern to  
22 the public.” *Janus*, 585 U.S. at 913-14 (cleaned up); *see also Green*, 52 F.4th at 784 n.12  
23 (explaining that “for controversies regarding transgenderism,” “an individual’s use or  
24 omission of certain words and phrases in this context often reflects a ‘struggle over the  
25 social control of language in a crucial debate about the nature and foundation, or  
26  
27  
28

1 indeed real existence, of the sexes”). Here, in particular, the provision covers speech  
2 that “relates to” Student A-D’s “core religious and philosophical beliefs,” where “First  
3 Amendment interests are especially strong.” *Merivether*, 992 F.3d at 509.

4  
5 Finally, the SVSH Policy is overbroad because it applies to speech that occurs  
6 off-campus and unrelated to any UC programs. The only required hook is that the  
7 speech have some “continuing ... effects on” members of the UC community. Ex. A  
8 at 014. Indeed, the Policy applies whether the speech occurs in person, over the inter-  
9 net, or via “other devices or forms of contact.” *Id.* For example, Students A-D want to  
10 share their beliefs about sex and gender using their phones, computers, and on social  
11 media, and they want to speak about these issues “during off-campus events with no  
12 connection to school-related activity.” *E.g.*, Student.D.Decl.¶12. But because of the  
13 SVSH Policy, they “avoid sharing [their] views” for fear of getting in trouble. Stu-  
14 dent.B.Decl.¶¶13, 17.

15  
16  
17  
18 The Supreme Court, however, has held that universities’ power to punish off-  
19 campus speech is extremely limited. *See Mahanoy Area Sch. Dist. v. B.L. ex rel Levy*, 594  
20 U.S. 180, 189 (2021). Indeed, in *Mahanoy*, the Supreme Court held that a public high  
21 school student’s use of “vulgar language and gestures criticizing both the school and  
22 the school’s cheerleading team” on social media and off school grounds was constitu-  
23 tionally protected. *Id.* at 183-84. In reaching that result, the Court stressed that “[w]hen  
24 it comes to political or religious speech that occurs outside school or a school program  
25 or activity, the school will have a heavy burden to justify intervention.” *Id.* at 190.

1 “Public university administrators are granted *less leeway* in regulating student  
2 speech than are public elementary or high school administrators.” *McCauley v. Univ. of*  
3 *the Virgin Islands*, 618 F.3d 232, 242 (3d Cir. 2010) (cleaned up). So UC’s ability to  
4 control off-campus student speech is even *more* limited here. By sweeping in off-cam-  
5 pus and online speech unrelated to UC activities, then, the SVSH Policy “prohibits a  
6 substantial amount of protected speech” and is overbroad. *Williams*, 553 U.S. at 292.  
7  
8

9 **D. The SVSH Policy is unconstitutionally vague.**

10 “It is a basic principle of due process that an enactment is void for vagueness if  
11 its prohibitions are not clearly defined.” *Grayned v. City of Rockford*, 408 U.S. 104, 108  
12 (1972). This principle addresses two concerns: it ensures that regulated parties are not  
13 “punish[ed]” for “behavior that they could not have known was illegal,” and it protects  
14 against “‘arbitrary and discriminatory enforcement’ by government officers.” *Foti v. City*  
15 *of Menlo Park*, 146 F.3d 629, 638 (9th Cir. 1998); *see also Parents Defending Education v.*  
16 *Linn Mar Cmty. Sch. Dist.*, 83 F.4th 658, 668-69 (8th Cir. 2023). And “when First  
17 Amendment freedoms are at stake, an even greater degree of specificity and clarity of  
18 law is required.” *Foti*, 146 F.3d at 638; *see also Vill. of Hoffman Est. v. Flipside, Hoffman*  
19 *Est., Inc.*, 455 U.S. 489, 499 (1982) (If the challenged policy “interferes with the right  
20 of free speech or of association, a more stringent vagueness test should apply.”).  
21  
22  
23  
24

25 To be consistent with the First and Fourteenth Amendments, a policy “must be  
26 sufficiently clear so as to allow persons of ‘ordinary intelligence a reasonable oppor-  
27 tunity to know what is prohibited.” *Foti*, 146 F.3d at 638. Policies cannot “forbi[d] or  
28

1 requir[e] the doing of an act in terms so vague that [individuals] of common intelligence  
2 must necessarily guess at its meaning and differ as to its application.” *Ass’n of Cleveland*  
3 *Fire Fighters v. City of Cleveland*, 502 F.3d 545, 551 (6th Cir. 2007) (quoting *Connally v.*  
4 *Gen. Constr. Co.*, 269 U.S. 385, 391 (1925)). Policies must have “explicit standards for  
5 those who apply them,” so as not to “delegat[e] basic policy matters to [officials] for  
6 resolution on an ad hoc and subjective basis.” *Grayned*, 408 U.S. at 108-09.  
7  
8

9       The hostile-environment provision is void for vagueness because it gives stu-  
10 dents no guidance about what speech is permitted and what speech isn’t. Indeed, it  
11 circularly defines “hostile environment” to include “acts of verbal ... hostility.” Ex. A  
12 at 010. And the remaining terms don’t provide any clarification either. Students are  
13 told they could be punished if their speech is sufficiently “hostil[e],” “aggressi[ve]” or  
14 “intimidat[ing].” *Id.* But those terms are undefined and inherently subjective. They “beg  
15 for clarification.” *Fennes*, 979 F.3d at 332 & n.9; *see also Cohen v. San Bernardino Valley*  
16 *Coll.*, 92 F.3d 968, 972 (9th Cir. 1996). They require students to “make a subjective  
17 reference” to determine what speech is prohibited. *Dambrot v. Cent. Mich. Univ.*, 55 F.3d  
18 1177, 1182, 1184 (6th Cir. 1995) (finding void for vagueness a policy prohibiting be-  
19 havior that subjected another to “an intimidating, hostile, or offensive ... environ-  
20 ment”).  
21  
22  
23  
24

25       On top of all of that, the SVSH Policy purports to regulate at least *some* off-  
26 campus speech, but leaves the exact scope of that coverage unclear. Students are told  
27 only that their off-campus speech is punishable if it has “continuing adverse effects  
28

1 on” or “creates a hostile environment for” people on UC properties or in UC programs  
2 or activities, Ex. A at 014, but those limitations are themselves vague for the reasons  
3 explained above, *see McGuire v. Marshall*, 741 F. Supp. 3d 1112, 1185-86 (M.D. Ala.  
4 2024) (explaining that a law may be unconstitutionally vague when its geographic scope  
5 is unclear).

7  
8 Indeed, UC itself acknowledges that determining whether any given speech vi-  
9 olates the Policy is an open-ended inquiry that depends on the “totality of the circum-  
10 stances in which the conduct occurred.” Ex. A at 010. And that is quintessential vague-  
11 ness. Policies that require officials to “evaluate a myriad of factors” create a “danger”  
12 that they “might resort to enforcing [the policies] only against ... messages” they “dis-  
13 lik[e].” *Foti*, 146 F.3d at 639.

15  
16 At bottom, the SVSH Policy’s vague standards deprive students of “a reasonable  
17 opportunity to understand what conduct [the Policy] prohibits.” *Hill v. Colorado*, 530  
18 U.S. 730, 732 (2002). And they create a serious risk that school officials will enforce  
19 the Policy in an arbitrary manner, determining on an “ad hoc and subjective basis”  
20 what speech is offensive (and thus deserves punishment) and what speech is accepta-  
21 ble. *Grayned*, 408 U.S. at 109. *Foti*, 146 F.3d at 639.<sup>2</sup>

---

24  
25 <sup>2</sup> In addition to the SVSH Policy, UC has an “Anti-Discrimination Policy” that  
26 also “applies at all university campuses” and “addresses Harassment that is not covered  
27 under the” SVSH Policy. Ex. J at 115, 117. To the extent the Anti-Discrimination Pol-  
28 icy is coterminous with the SVSH Policy and compels or prohibits the Students’

1 **II. DE satisfies the remaining preliminary injunction factors.**

2 Because DE is likely to prevail on its constitutional claims, it readily meets the  
3 other preliminary injunction criteria. *See, e.g., Baird*, 81 F.4th at 1040.

4  
5 **Irreparable Harm.** In constitutional cases, irreparable harm “follows inexora-  
6 bly” from a finding on the likelihood of success on the merits. *Hernandez v. Sessions*, 872  
7 F.3d 976, 995 (9th Cir. 2017). “It is well established that the deprivation of constitu-  
8 tional rights ‘unquestionably constitutes irreparable injury.’” *Id.* at 994; *see also Elrod v.*  
9 *Burns*, 427 U.S. 347, 373 (1976) (The “loss of First Amendment freedoms, for even  
10 minimal periods of time” constitutes irreparable harm.). This case proves the point.  
11 Without a preliminary injunction, DE’s members will be deprived of their First and  
12 Fourteenth Amendment rights, harms that “cannot be adequately remedied through  
13 damages.” *Am. Trucking Assoc. v. City of Los Angeles*, 559 F.3d 1046, 1059 (9th Cir. 2009).

14  
15  
16 **Balance of Harms & the Public Interest.** As with irreparable harm, DE’s  
17 likely success on the merits “tips [these] merged third and fourth factors decisively” in  
18 its favor. *Baird*, 81 F.4th at 1042. It is “always in the public interest to prevent the  
19 violation of a party’s constitutional rights.” *Riley’s Am. Heritage Farms v. Elsassner*, 32 F.4th  
20 707, 731 (9th Cir. 2022). And the government “cannot reasonably assert” it is harmed  
21  
22  
23  
24  
25

26  
27 \_\_\_\_\_  
28 speech, that policy also violates the First and Fourteenth Amendments for the same  
reasons as the SVSH Policy.

1 when it is “enjoined from constitutional violations.” *Baird*, 81 F.4th at 1042. These  
2 factors strongly favor a preliminary injunction here.

3  
4 **III. The Court should not require an injunction bond.**

5 This Court has broad “discretion” under Rule 65(c) “as to the amount of secu-  
6 rity required, *if any*,” for a preliminary injunction. *Castaneda v. Garland*, 562 F. Supp. 3d  
7 545, 562 (C.D. Cal. 2021) (quoting *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir.  
8 2009)). Because this case involves “public interests” and the “vindicat[ion]” of “a con-  
9 stitutional right,” the Court should “dispense with the security requirement.” *Anchor*  
10 *Stone Christian Church v. City of Santa Ana*, 777 F. Supp. 3d 1126, 1155 (C.D. Cal. 2025).

11  
12  
13 **CONCLUSION**

14 For these reasons, the Court should grant DE’s motion and preliminarily enjoin  
15 Defendants from enforcing the challenged provisions during this litigation.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Dated: June 24, 2026

Respectfully submitted,

/s/ Paul R. Draper

3 **ALTVIEW LAW GROUP LLP**

**CONSOVOY MCCARTHY PLLC**

4 John M. Begakis (Cal. Bar No. 278681)  
9454 Wilshire Blvd., Suite 825  
5 Beverly Hills, CA 90212  
6 (310) 230-5580  
john@altviewlawgroup.com

J. Michael Connolly (PHV pending)  
Paul R. Draper (Cal. Bar No. 345071)  
Marie E. Sayer (PHV pending)  
1600 Wilson Blvd., Suite 700  
Arlington, VA 22209  
mike@consovoymccarthy.com  
paul@consovoymccarthy.com  
mari@consovoymccarthy.com

7  
8 *Local Counsel*

*Counsel for Plaintiff*

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **CERTIFICATE OF COMPLIANCE**

2 The undersigned, counsel of record for Defending Education, certifies that this  
3 brief contains 6,880 words, which complies with the word limit of Local Rule 11-6.1.  
4

5  
6 **CERTIFICATE OF SERVICE**

7 I certify that on June 24, 2026, I electronically filed the foregoing memorandum,  
8 along with the accompanying motion, proposed order, and declarations, with the Clerk  
9 of the Court using the Court's ECF system, which will automatically email notification  
10 to all counsel of record. On June 24, 2026, I also served the foregoing memorandum  
11 and accompanying documents by email and by certified mail, return receipt requested,  
12 at the following addresses:  
13  
14

15 Charles F. Robinson  
16 General Counsel  
17 Rhonda Stewart Goldstein  
18 Deputy General Counsel, Litigation  
19 Office of The General Counsel of The Regents  
20 1111 Franklin Street, 8th Floor,  
21 Oakland, California 94607-5200  
22 charles.robinson@ucop.edu  
23 rhonda.goldstein@ucop.edu

24 Dated: June 24, 2026

25 /s/ Paul R. Draper  
26 Counsel for Plaintiff  
27  
28