UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 09-0995-GHK (FFMx)	Date	July 10, 2009
Title	*Jonathan Lopez, et al. v. Kelly G. Candaele, et al.*		

Presiding: The Honorable	**GEORGE H. KING, U. S. DISTRICT JUDGE**	
Beatrice Herrera	N/A	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None	None

Proceedings: (In Chambers) Order re: Plaintiff's Motion for Preliminary Injunction

This matter is before the Court on Plaintiff Jonathan Lopez's ("Plaintiff") Motion for Preliminary Injunction ("Motion"). We have considered the papers filed in support of and opposition to this Motion, as well as counsel's oral arguments on June 10, 2009. As the Parties are familiar with the facts, we will repeat them only as necessary. Accordingly, we rule as follows.

Plaintiff alleges that the Los Angeles Community College District's ("District") Sexual Harassment Policy ("Policy"), in use at Los Angeles City College ("LACC"), is unconstitutionally overbroad and vague, both facially and as applied. (Comp., 24–25.) On these grounds, Plaintiff moves for a preliminary injunction enjoining Defendants from enforcing the Policy.

Defendants Kelly G. Candaele, Mona Field, Georgia L. Mercer, Nancy Pearlman, Angela J. Reddock, Miguel Santiago, Sylvia Scott-Hayes, Gene Little, Jamillah Moore, Allison Jones, and Cristy Passman (collectively "Defendants") argue that the Policy is constitutional and prevents harassment on the District's campuses. We recognize the difficult task Defendants faced in sculpting the Policy. We further recognize that Defendants have, laudably, attempted to prevent sexual harassment on the District's campuses. Nevertheless, because the Policy regulates expression as well as conduct, we must ensure that it complies with the First Amendment. *See Cohen v. San Bernardino Valley Coll.*, 92 F.3d 968, 971 (9th Cir. 1996).

I. Jurisdiction

Our jurisdictional inquiry requires us to examine standing, mootness, and ripeness. *See DBSI/TRI IV Ltd. P'ship v. United States*, 465 F.3d 1031, 1038 (9th Cir. 2006). "To qualify as a party with standing to litigate, a person must show, first and foremost, an invasion of a legally protected interest that is concrete and particularized and actual or imminent." *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)) (internal quotation marks omitted). A plaintiff need not wait for actual prosecution under a statute to have standing to challenging it, but rather only "must allege that [he has] been threatened with prosecution, that a prosecution is likely, or even that a prosecution is remotely possible." *Culinary*

Workers Union, Local 226 v. Del Papa, 200 F.3d 614, 618 (9th Cir. 1999) (citing *Babbitt v. UFW Nat'l Union*, 442 U.S. 289, 299 (1979)) (internal quotation marks omitted). "Moreover, in recognition that the First Amendment needs breathing space, the Supreme Court has relaxed the prudential requirements of standing in the First Amendment context." *Canatella v. California*, 304 F.3d 843, 853 (9th Cir. 2002) (citing *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973); *Sec'y of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947 956 (1984)) (internal quotation marks omitted). Thus, a plaintiff has standing to challenge a law if it chills his First Amendment rights. *Culinary Workers*, 200 F.3d at 618–19. However, the plaintiff must show that the law at least arguably reaches speech in which he wishes to engage. *See Arizonans for Official English*, 510 U.S. at 64 ("An interest shared generally with the public at large in the proper application of the Constitution and laws will not do."); *Canatella*, 304 F.3d at 854 n.14 ("[W]e do not imply that the mere existence of the challenged provisions gives rise to an injury sufficient for standing purposes.").

Here, Plaintiff has standing to maintain the facial overbreadth challenge. As a student at LACC, he is subject to the Policy. Plaintiff's interest in the Policy is more than a general interest shared with the student body at large. He alleges that he is a Christian who is duty-bound to share his religious beliefs with other students. (Comp. ¶ 25–26.) However, he refrains from doing so for fear of punishment under the Policy. (*Id.* ¶¶ 58, 95.) As discussed below, Plaintiff has shown that the Policy likely reaches such speech. Thus, Plaintiff has standing to bring a facial challenge.[1]

Defendants contend that Plaintiff's case is moot and not ripe. This case stems from a presentation Plaintiff made in a speech class, where he spoke about his religion-based opposition to same-sex marriage. (Comp., 8–9.) Plaintiff's professor allegedly called Plaintiff a "fascist bastard," cut his speech short, and refused to give Plaintiff a grade. *Id.* Defendants argue that this case is moot because Plaintiff received an "A" in the speech class, he remains enrolled at LACC, and the professor has been disciplined. (Reply to Mot. for Dismissal, 2, Opp'n to Prelim. Inj., 9–10.)

Defendants' argument misses the mark because Plaintiff is also attacking the facial validity of the Policy, not merely the incident with the professor. Until Plaintiff is no longer a student at LACC, he is subject to the Policy, and therefore his facial challenge to the Policy is not moot. *See DeJohn v. Temple Univ.*, 537 F.3d 301, 311–13 (3d Cir. 2008). This case is likewise not mooted by Defendants' recent revelation that the Policy was supposedly repealed in 2007.[2] (*See* Order re: App. to Supp. Evid., June 19.) First, the Policy continues to appear on the District's and LACC's websites. (Lopez Decl. in Opp. to App. to Supp. Rec.) Thus, Plaintiff, and other students and employees, can reasonably believe they are subject to the Policy and experience a chilling effect. Moreover, "voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, i. e.,

[1]Because we conclude that Plaintiff has standing to bring a facial challenge, we need not reach Plaintiff's standing to bring an as applied challenge.

[2]We are chagrined that defense counsel and Defendants' representative who were present at the oral argument on June 10, 2009 were apparently ignorant of the status of a policy they purported to defend. This lack of preparedness is viewed with great disfavor.

does not make the case moot." *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979) (citing *United States v. W. T. Grant Co.*, 345 U.S. 629, 632 (1953)). This is especially true where, as here, a school continues to defend the constitutionality and need for that policy even after it was supposedly changed, because the school can reinstate the policy at any time, absent an injunction. *See DeJohn*, 537 F.3d at 309–10. Thus, Plaintiff's facial challenge to the Policy is not moot.

"Ripeness is peculiarly a question of timing. Its basic rationale is to prevent the courts, through premature adjudication, from entangling themselves in abstract disagreements." *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580 (1985) (internal quotation marks and citations omitted). In analyzing ripeness, a court considers (1) the fitness of the issues for judicial decision, and (2) the hardship to the parties of withholding court consideration. *Id.* at 581. Defendants concede that the issues are fit for judicial review because the questions are primarily legal in nature and no further factual development is needed. (Opp'n to Prelim. Inj., 12.) However, Defendants argue this case is not ripe because Plaintiff would not suffer a hardship if we declined to hear this facial challenge because he cannot allege that he faces a realistic threat from the Policy. *Id.*

We conclude that this case is ripe. No further factual development is required, as Defendants concede. Contrary to Defendants' contention, Plaintiff faces a hardship if we decline to entertain the challenge to the Policy, because Plaintiff's speech is chilled. Moreover, courts presented with similar cases have not dismissed for lack of ripeness. *See, e.g.*, *DeJohn*, 537 F.3d 301; *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200 (3d Cir. 2001). Thus, we conclude the case is ripe.

Because Plaintiff has standing to maintain a facial overbreadth challenge, the challenge is not moot, and the challenge is ripe, we have jurisdiction.

II. Overbreadth

Supreme Court precedents "leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Healy v. James*, 408 U.S. 169, 180 (1972) (internal quotation marks omitted). Nevertheless, Defendants argue that the overbreadth doctrine should not be applied in this case because the doctrine has never been applied by the Ninth Circuit in a student free speech case. (Opp'n to Prelim. Inj., 13–14). However, Defendants have not cited any case, much less one from the Ninth Circuit or the Supreme Court, that has precluded application of the overbreadth doctrine in an appropriate student speech case. Moreover, district courts from within the Ninth Circuit have applied the overbreadth doctrine to student speech cases. *See, e.g., Coll. Republicans v. Reed*, 523 F. Supp. 2d 1005, 1012 (N.D. Cal. 2007); *Kyriacou v. Peralta Cmty. Coll. Dist.*, No. 08-4630, 2009 U.S. Dist. LEXIS 32464 (N.D. Cal. Mar. 31, 2009). Furthermore, the Ninth Circuit has applied the overbreadth doctrine to a sexual harassment policy at a community college, though the case related to the speech of a professor rather than a student. *Cohen*, 92 F.3d at 971–72. Finally, other jurisdictions have applied the overbreadth doctrine to student speech cases. *See, e.g.*, *DeJohn*, 537 F.3d at 313; *Saxe*, 240 F.3d at 214; *Doe v. Univ. of Mich.*, 721 F. Supp. 852, 864 (E.D. Mich. 1989); *Booher v. Bd. of*

Regents, No. 96-135, 1998 U.S. Dist. LEXIS 11404, at *21 (E.D. Ky. July 21, 1998). Thus, we conclude the overbreadth doctrine is applicable here.

Laws regulating speech must be narrowly tailored because "'First Amendment freedoms need breathing space to survive.'" *Cohen*, 92 F.3d at 972 (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963)). Protected speech may include offensive speech because "'[i]t is firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers, . . .'" *Ctr. for Bio-Ethical Reform, Inc. v. Los Angeles County Sheriff Dep't*, 533 F.3d 780, 787–88 (9th Cir. 2008) (quoting *Bachellar v. Maryland*, 397 U.S. 564, 567 (1970)).

In a facial overbreadth challenge, "[t]he showing that a law punishes a substantial amount of protected free speech, judged in relation to the statute's plainly legitimate sweep, suffices to invalidate all enforcement of that law, until and unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression." *Virginia v. Hicks*, 539 U.S. 113, 118–19 (2003) (internal quotation marks and citations omitted). "[A] law's application to protected speech [must] be substantial, not only in an absolute sense, but also relative to the scope of the law's plainly legitimate applications before applying the strong medicine of overbreadth invalidation." *Id.* at 119-20 (internal quotation marks omitted).

The definitions section of the Policy, Section 15003, states:

> Sexual harassment is defined as: Unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature, made by someone from or in the workplace or in the educational setting, under any of the following conditions: . . (3) The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile or offensive work or educational environment. . . .

(Comp., Ex. 7 at 41.) Two websites, one maintained by the District and the other by LACC, purport to expound upon the Policy. The District's website states that sexual harassment can include "[d]isparaging sexual remarks about your gender[, r]epeated sexist jokes, dirty jokes or sexual slurs about your clothing, body, or sexual activities[, and d]isplay of sexually suggestive objects, pictures, cartoons, posters, screen savers[.]" (*Id*., Ex. 10 at 146.) Moreover, the site states, "If [you are] unsure if certain comments or behavior are offensive do not do it, do not say it. . . . Ask if something you do or say is being perceived as offensive or unwelcome. If the answer is yes, stop the behavior." (*Id*. at 147.) LACC's website states that "[s]exual harassment can be intentional or unintentional." The website further states:

> It is important to be aware that sexual remarks or physical conduct of a sexual nature may be offensive or can make some people uncomfortable even if you wouldn't feel the same way yourself. It is therefore sometimes difficult to know what type of behavior is sexual harassment. However the defining characteristic of sexual harassment is that it is unwanted and pervasive.

> It's important to clearly let an offender know that certain actions are unwelcome. The four most common types of sexual harassment are:
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> 1. Sexual Harassment based on your gender: This is generalized sexist statements, actions and behavior that convey insulting, intrusive or degrading attitudes/comments about women or men. Examples include insulting remarks; intrusive comments about physical appearance; offensive written material such as graffiti, calendars, cartoons, emails; obscene gestures or sounds; sexual slurs, obscene jokes, humor about sex.
>
> . . . .

(*Id.*, Ex. 11 at 150–51.)

We conclude that the Policy prohibits a substantial amount of protected free speech, even judged in relation to unprotected conduct that it can validly prohibit. First, as the above quotations make clear, the Policy prohibits some speech solely because the speaker "has the purpose" of causing an effect, regardless of whether the speech actually has any effect. The Supreme Court has held that a school may not prohibit speech unless the speech will "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969) (quoting *Burnside v. Byars*, 363 F.2d 744, 749 (5th Cir. 1966)).[3] Other circuits have found similar sexual harassment policies that restrict speech based on the speaker's motives to be unconstitutional in light of *Tinker*. *See DeJohn*, 537 F.3d at 317 ("[T]he focus on motive is contrary to *Tinker*'s requirement that speech cannot be prohibited in the absence of a tenable threat of disruption."); *Saxe*, 240 F.3d at 216–17 ("As an initial matter, the Policy punishes not only speech that actually causes disruption, but also speech that merely intends to do so: by its terms, it covers speech 'which has the purpose or effect of' interfering with educational performance or creating a hostile environment. This ignores *Tinker*'s requirement that a school must reasonably believe that speech will cause actual, material disruption before prohibiting it."). Notably, in *Saxe*, a similar policy was found unconstitutional though it was adopted by an elementary and high school district, whose students receive less First Amendment protection than college students. *Compare Healy v. James*, 408 U.S. 169, 180 (1972) *with Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 682–83 (1986). Thus, the Policy's regulation of speech based solely on the motive of the speaker is unconstitutional.

Moreover, by using subjective words such as "hostile" and "offensive," the Policy is so subjective and broad that it applies to protected speech. In *DeJohn*, the Third Circuit concluded that such a policy must be invalidated unless it contains "a requirement that the conduct objectively and subjectively creates a hostile environment or substantially interferes with an individual's work." 537 F.3d at 318 (citing *Davis Next Friend LaShonda D. v. Monroe County Bd. of Educ.*, 526 U.S. 629, 652

[3]There are certain categories of speech, inapplicable here, that are excepted from the *Tinker* standard. *See, e.g., Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 685 (1986) (holding that a high school may ban from classrooms and assemblies "vulgar and lewd speech [that] would undermine the school's basic educational mission."); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988) (holding that a high school may control the content of student speech in school-sponsored expressive activities so long as the controls are reasonably related to legitimate pedagogical concerns).

(1999)). Here, the Policy does not contain both a subjective and objective requirement. To the contrary, the District's website admonishes, "If [you are] unsure if certain comments or behavior are offensive do not do it, do not say it. . . . Ask if something you do or say is being perceived as offensive or unwelcome." (Comp., Ex. 10 at 147.) Thus, the Policy reaches constitutionally protected speech that is merely offensive to some listeners, such as discussions of religion, homosexual relations and marriage, sexual morality and freedom, polygamy, or even gender politics and policies. Indeed, the LACC's website indicates that sexual harassment can include "sexist statements . . . or degrading attitudes/comments about women or men." (*Id*., Ex. 11 at 151.) This could include an individual's outdated, though protected, opinions on the proper role of the genders. While it may be desirable to promote harmony and civility, these values cannot be enforced at the expense of protected speech under the First Amendment.

Thus, the Policy is unconstitutionally overbroad.

II. Narrowing

Before striking down a law as facially unconstitutional, a court must consider any narrowing construction that could render the law consistent with the First Amendment. *See Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 n.5 (1982). "Constitutional narrowing seeks to add a constraint to the statute that its drafters plainly had not meant to put there; it is akin to partial invalidation of the statute. . . . In performing our constitutional narrowing function, we may come up with any interpretation we have reason to believe [the District] would not have rejected." *Ma v. Ashcroft*, 257 F.3d 1095, 1111 (9th Cir. 2001) (quoting *United States v. X-Citement Video, Inc.*, 982 F.2d 1285, 1295 n. 6 (9th Cir. 1992) (Kozinski, J., dissenting), *rev'd* 513 U.S. 64 (1994). Therefore, we may sever portions of the Policy if doing so renders the remaining portions constitutional, unless it is evident that the District would not have enacted the remaining portions of the Policy. *Regan v. Time, Inc.*, 468 U.S. 641, 652–53 (1984). However, we may not "rewrite" the Policy to cure constitutional problems. *Tucker v. Cal. Dep't of Educ.*, 97 F.3d 1204, 1217 (9th Cir. 1996).

Here, we could excise the word "purpose" from the Policy so that it reads: "(3) The conduct has the effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile or offensive work or educational environment. . . ." However, that does not cure the constitutional infirmities. A "negative impact" upon the work or academic performance of another does not necessarily justify restricting First Amendment freedoms. Rather, under *Tinker*, student speech must "collide with the rights of others" to be proscribed, even when the topic of the speech is controversial subjects. 393 U.S. at 511 (1969). Speech that has a "negative impact" does not necessarily collide with the rights of others, and cannot be broadly proscribed.

Indeed, the *DeJohn* court came to the same conclusion when attempting to narrow a very similar policy.[4] The court stated:

[4]The policy at issue in *Dejohn* stated: "[A]ll forms of sexual harassment are prohibited, including the following: an unwelcome sexual advance, request for sexual favors, or other expressive, visual or

> Even if we ignore the "purpose" component, the Policy's prong that deals with conduct that "unreasonably interfere[s] with an individual's work" probably falls short of satisfying the *Tinker* standard. If we were to construe "unreasonable" as encompassing a subjective and objective component, it still does not necessarily follow that speech which effects an unreasonable interference with an individual's work justifies restricting another's First Amendment freedoms. Under *Tinker*, students may express their opinions, even on controversial subjects, so long as they do so "without colliding with the rights of others." *Tinker*, 393 U.S. at 512. As we observed in *Saxe*, while the precise scope of this language is unclear, *Saxe*, 240 F.3d at 217, we do believe that a school has a compelling interest in preventing harassment. Yet, unless harassment is qualified with a standard akin to a severe or pervasive requirement, a harassment policy may suppress core protected speech.

Id. at 319–20.

This analysis is equally applicable to the instant case. Although the instant Policy replaces the language in *DeJohn* ("conduct has the purpose or effect of unreasonably interfering with an individual's work . . .") with the language "conduct has the purpose or effect of having a negative impact upon the individual's work . . ," we do not believe this change is a material improvement. The change does not address the concerns expressed by the *DeJohn* court that core protected speech is suppressed even if that speech does not collide with the rights of others.

Moreover, the Policy's prohibition of speech that "creat[es] an intimidating, hostile or offensive work or educational environment" sweeps within it significant protected speech. For example, Plaintiff's protected speech in his speech class was offensive to some of his classmates (Comp., Ex. 4 at 35–36) and thus could be prohibited by the Policy. The *DeJohn* court concluded almost identical language could not be narrowed. 537 F.3d at 320 ("It is difficult to cabin this phrase, which could encompass any speech that might simply be offensive to a listener, or a group of listeners, believing that they are being subjected to or surrounded by hostility.").

Since we conclude that the Policy cannot be saved by excising words from Section 15003(A)(3), we must consider whether all of Section 15003(A)(3) can be severed from the Policy. Section 15003(A) is strangely drafted in that the conduct is referred to throughout Section 15003(A), though it is defined in Section 15003(A)(3). Therefore, removing Section 15003(A)(3) would leave "conduct" with no definition in the remainder of Section 15003(A). Section 15003(A) states:

> A. Sexual harassment is defined as:

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physical conduct of a sexual or gender-motivated nature when . . . (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work, educational performance, or status; or (d) such conduct has the purpose or effect of creating an intimidating, hostile, or offensive environment." 537 F.3d at 305.

> Unwelcome sexual advances, requests for sexual favors, and *other verbal, visual or physical conduct* of a sexual nature, made by someone from or in the workplace or in the educational setting, under any of the following conditions:
>
> 1. Submission to *the conduct* is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.
> 2. Submission to, or rejection of, *the conduct* is used as the basis for employment or academic decisions affecting the individual.
> 3. *The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile or offensive work or educational environment.*
> 4. Submission to, or rejection of, *the conduct* by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the District.
> 5. Retaliation against anyone who makes a complaint, refers a matter for investigation or complaint, participates in investigation of a complaint, represents or serves as an advocate for an alleged victim or alleged offender, or otherwise furthers the principles of this policy.

(Comp., Ex. 7 at 41 (emphasis added).) Thus, Section 15003(A)(3) cannot be severed from the Policy.

Therefore, the Policy cannot be rendered constitutional by excising words or severing sections.

The Policy does contain a paragraph that somewhat limits its reach. However it is not sufficient to render the Policy constitutional. That paragraph states:

> The Board of Trustees reaffirms its commitment to academic freedom, but recognizes that academic freedom does not allow sexual harassment. The discussion of sexual ideas, taboos, behavior or language which is an intrinsic part of the course content shall in no event constitute sexual harassment. It is recognized that an essential function of education is a probing of received opinions and an exploration of ideas which may cause some students discomfort. It is further recognized that academic freedom insures the faculty's right to teach and the student's right to learn.

(Comp., Ex. 7 at 40–41.) Even when the Policy is considered in light of this paragraph, the Policy reaches speech unrelated to a class, such as discussions in any public and common areas at LACC. Even speech related to a class can be restricted by the Policy if the speech is not an intrinsic part of the course content. Thus, the Policy is not sufficiently narrowed by this paragraph.

Defendants' only suggestion for narrowing the Policy is, inexplicably, to give the Policy its plain meaning. (Opp'n to Prelim. Inj., 16; *see also* Mot. for Dismissal, 11.) However, the plain meaning of the statute creates the problems listed above. Likewise, Defendants were unable to suggest any useful method of narrowing at the hearing.

Therefore, we conclude that the Policy is not susceptible to a narrowing construction.

IV. Injunctive Relief

To obtain a preliminary injunction, Plaintiff must establish that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm absent an injunction, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *Winter v. NRDC, Inc.*, 129 S. Ct. 365, 374 (2008).

Here, the elements are satisfied. Plaintiff is likely to succeed on the merits, for the reasons discussed above. He, and other individuals subject to the Policy, face irreparable injury because "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). The balance of hardships favors granting the injunction because Plaintiff and other individuals subject to the Policy face the deprivation of their constitutional liberties, whereas Defendants are merely enjoined from enforcing the likely unconstitutionally overbroad Policy. Finally, the public interest favors the injunction because there is a significant public interest in upholding First Amendment rights. *Sammartano v. First Jud. Dist. Ct.*, 303 F.3d 959, 974 (9th Cir. 2002). We recognize that the public also has an interest in prohibiting sexual harassment on the District's campuses. However, a properly-drafted statute could achieve that end without running afoul of the First Amendment.

V. Security

Where, as here, the party seeking a preliminary injunction is not the United States or its officers or agents, a court may issue a preliminary injunction "only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). However, because a court has discretion as to the amount of security required, a court can waive the security requirement. *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999). Valid concerns in setting the security include the cost to the defendant if later found to have been wrongfully enjoined, the public interest underlying the litigation, and the unremarkable financial means of the plaintiff. *Id.*

Here, Defendants face little cost if wrongfully enjoined. The public interest favors a waiver of security because, as described above, the public has a significant interest in upholding First Amendment rights. Finally, Plaintiff, a college student, has limited financial means.

Therefore, we waive the security requirement for this preliminary injunction.

VI. Preliminary Injunction

Plaintiff's Motion for Preliminary Injunction is **GRANTED**. Defendants, their officers, agents, servants, employees, and attorneys, and other persons who are in active participation with such people, who receive actual notice by personal service or otherwise, are hereby **ENJOINED** from enforcing or

publicizing the purported existence of the Policy during the pendency of these proceedings. In aid of this injunction, the Policy, along with any partial quotation, paraphrase, explanation, or other reference to the Policy that violates this Order, **SHALL** be removed from the District's and LACC's websites, including but not limited to the webpages referenced in exhibits 10 and 11 to the Complaint. Within **fourteen (14) days** hereof, Defendants **SHALL** submit a declaration under penalty of perjury from an individual with personal knowledge attesting that such references have been removed from the websites. The declarant **SHALL** specify the actions taken to comply with this Order.

IT IS SO ORDERED.

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Initials of Deputy Clerk Bea