

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**ARAB STUDENT UNION OF
JACKSON-REED HIGH SCHOOL**

Plaintiff,

v.

DISTRICT OF COLUMBIA, *et al.*,

Defendants.

Civil Action No. 1:24-cv-01195-ACR

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S
MOTION FOR A PRELIMINARY INJUNCTION**

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INTRODUCTION

Ignoring the incredible display of student action, protests, and increasing violence on school campuses across the country related to the Israel-Hamas war, Plaintiff Arab Student Union of Jackson-Reed High School comes to this Court requesting, on an emergency basis, an order requiring the District and Sah Brown, the Principal at Jackson-Reed High School (Jackson-Reed or JRHS), to grant Plaintiff's members completely unencumbered speech rights on topics related to the conflict. What, specifically, does Plaintiff want to do with this court-ordered freedom? Sponsor the screening of an inflammatory and offensive film—*The Occupation of the American Mind*—during lunch hour for the school's more than 1,900 highschoolers, Jewish and Israeli student among them; and hand out or display informational materials, some containing symbols that are so derogatory as to suggest that Israel, the only Jewish State, has no right to exist. True, Plaintiff's student members do not lose their rights to free expression upon entry into the classroom. But neither the Constitution nor any federal or local statute requires the District to forego editorial discretion over expressive activities that are misaligned with Jackson-Reed's core values and pedagogical goals *or* that have an obvious tendency to disrupt classroom work and invade the rights of Jewish and Israeli students to a safe and intimidation free learning environment. Plaintiff's proposal fails both standards, as explained below. The Court should deny Plaintiff's Motion for Preliminary Injunction [2] accordingly.

BACKGROUND

I. The October 7, 2023 Hamas-Led Attack on Israel and Ongoing Israel-Hamas War

On October 7, 2023, Hamas, a designated foreign terrorist organization, *see Designated Foreign Terrorist Organizations*, <https://www.state.gov/foreign-terrorist-organizations/> (last accessed May 1, 2024), began firing thousands of rockets into Tel Aviv and Jerusalem. Andrés R. Martínez, *Here's a timeline of Saturday's attacks and Israel's retaliation*, The New York

Times (Oct. 9, 2023), <https://tinyurl.com/59zmuxc2>. Within hours, Hamas fighters entered southern Israel from Gaza, and began killing Israeli civilians and taking hostages. *Id.* It is estimated that over 1,200 people were killed in the October 7 attack and Hamas fighters took 240 hostages. *See* Daniel Byman, et al., *Hamas's October 7 Attack: Visualizing the Data*, Center for Strategic and International Studies (Dec. 19, 2023), <https://tinyurl.com/25fhsv2x>. According to recent estimates, Hamas still has over 100 Israeli hostages in captivity. *See* Peter Sidel, et al., *Hamas Took More Than 200 Hostages From Israel. Here's What We Know.*, Wall Street Journal (Apr. 24, 2024, 4:41 PM), <https://tinyurl.com/3my9upct>.

The October 7 attack led Israel to declare war on Hamas. Martínez, *supra*. Israel subsequently invaded Gaza. Byman, et al., *supra*. Although both sides are engaged in diplomatic talks, the Israel-Hamas war is ongoing, and it is estimated that Israeli forces have killed more than 34,000 Palestinians in Gaza since declaring war. *See, e.g.*, Tia Goldenberg, *Netanyahu vows to invade Rafah 'with or without a deal' as cease-fire talks with Hamas continue*, The Associated Press (Apr. 30, 2024), <https://tinyurl.com/4nujjw9p>.

II. Domestic U.S. Responses to the Israel-Hamas War

There have been and continue to be significant and disruptive protests to the Israel-Hamas war on school campuses across the United States. On college campuses, students protesting the war have taken over academic buildings and built temporary tent encampments. *See Violence breaks out at some pro-Palestinian campus protests*, CBS News (last accessed May 1, 2024), <https://tinyurl.com/46u8xx86>. Police have arrested more than 1,000 people in recent weeks, and in some instances, “clashes” between pro-Israel and pro-Palestinian protesters have turned violent, with protestors shooting fireworks, throwing objects, and engaging in physical altercations. *Id.*

The unrest is not limited to college and university campuses. Locally, for example, Fairfax County high schools have held “walkouts” to protest the war, and despite attempts to “limit classroom disruption,” parents have noted concerns for student safety, with some parents of Jewish students concerned about their children’s attendance altogether, for fear of “being noticed for not participating.” Karina Elwood, *Muslim students stage walkouts in Fairfax high schools over Gaza war* (Oct. 28, 2023), <https://tinyurl.com/4bx743au>; *see also JUST IN: Alexandria City High School students walk out in protest against Israel-Hamas war*, ALXnow (Nov. 9, 2023), <https://tinyurl.com/y6h832x7> (reporting on a walk-out at an Alexandria City High School, accompanied by chanting, with some students refusing to return to class afterward); Michael Elsen-Rooney, *Raucous protest against pro-Israel Queens teacher is ‘teachable moment,’ Banks says*, Chalkbeat (Nov. 27, 2023), <https://tinyurl.com/2ap963kf> (describing significant disruption to educational environment when “hundreds of students filled the halls”—and ripped a water fountain from the wall—of a Queens-area high school to protest a teacher’s social media post in support of Israel); Cybele Mayes-Osterman, et al., *Pro-Palestinian protests reach some high schools amid widespread college demonstrations* (May 1, 2024), <https://tinyurl.com/y4ayjcwt> (reporting walkouts and sit-ins in a number of high schools across the country, at least one of which was canceled because it was “an intentional effort to create a hostile and isolating environment for Jewish students”).

Even closer to home, District of Columbia Public Schools (DCPS) has observed discord in the city’s own public schools related to the Israel-Hamas war. This has ranged from concerns over classroom teaching to reports of student intimidation. *See* Ex. 1, Decl. of Anthony Hiller (Hiller Decl.) ¶ 7; Ex. 2, Decl. of Patrice Maite (Maite Decl.) ¶¶ 6–7. At Jackson-Reed specifically, administrators have received numerous and increasing complaints from Jewish and

Israeli students and parents concerning student safety and well-being arising from purportedly insensitive classroom instruction, among others. Maites Decl. ¶¶ 4–7; Ex. 3, Decl. of Sah Brown (Brown Decl.) ¶ 14.

III. The District’s Initial Response to the October 7, 2023 Hamas-Led Attack on Israel

Recognizing the potential for strong emotional responses among students and faculty, in the days following the October 7, 2023 Hamas terrorist attack, a team within DCPS’s Office of Teaching and Learning (OTL) developed a “Guidance Document” with embedded resources meant to provide appropriate information for classroom instruction and discussion. *See* Hiller Decl. ¶ 2. OTL had similarly provided resource guides in response to issues like police brutality and the Black Lives Matter movement, school shootings, and the January 6th Insurrection. *See* Ex. 4, Decl. of Raymond Hamilton (Hamilton Decl.) ¶ 2. This guidance document was meant to be an iterative list of resources, which would be changed and adapted based on the evolving global conflict. Hiller Decl. ¶ 2. The document was initially compiled using resources from national teaching organizations and the Office of the State Superintendent for Education (OSSE) as well as other resources that OTL assessed to be appropriate for schools. *See* Hamilton Decl. ¶ 2.

As early as October 23, 2023, JRHS shared a statement about the war as well as the OTL Guidance Document on their website. *See Jackson-Reed eNews: Week of October 23, 2023*, Jackson-Reed High School (Oct. 23, 2023), <https://jacksonreedhs.org/enews-10-22-23/>.

IV. JRHS Policies For Student Organizations

As Plaintiff correctly notes, JRHS has approximately 60 student clubs and other organizations, of which Plaintiff is one. Compl. [1] ¶ 10; Brown Decl. ¶ 4. Every student club or organization at JRHS must have a faculty advisor, who is charged with ensuring that student clubs adhere to school values and comply with the required procedures for planning safe events.

Brown Decl. ¶¶ 4–5. The Jackson-Reed High School Faculty & Staff Handbook (Staff Handbook) contains specific processes for getting approval of events as well as for flyers and other materials advertising events. *Id.* ¶ 5. As regards flyers and posters, the Staff Handbook states that “all such materials must be approved by the appropriate assistant principal or the Director of Strategy and Logistics (DSL) before they are displayed and must be taken down at the conclusion of the event or program they are advertising” *Id.* ¶ 6. When these processes are not followed, school staff remove the non-conforming materials. *Id.*

For planning on-campus events, the Staff Handbook states that, before scheduling such events, “the faculty sponsor is required to communicate with the Coordinator for Strategy and Logistics to determine availability and complete an Internal Building Use Agreement . . . to notify school administrators of the proposed event.” *Id.* ¶ 8. These policies are periodically communicated to faculty in weekly updates. *Id.* The specific review process for events not only requires that faculty sponsors timely fill out the “Internal Building Use Agreement,” but also that organizations do a “Run of Show” presentation—generally, a written breakdown of the event’s timing and contents presented to the school’s administration. *Id.* ¶¶ 8, 23. This “Run of Show” presentation allows school administrators to ensure all facilities-related needs are met for the event and that the event is adequately planned. *Id.* ¶ 23. It is also a necessary step to ensure that the school administration is aware of what is occurring on-campus. *Id.*

Likewise, as with other events, “[w]hen student organizations, clubs, and unions seek to play movies on campus, faculty sponsors are expected to inform school administration.” Brown Decl. ¶ 10. This allows the school “to check the rating of the proposed film and consider the content to ensure that the showing is not likely to cause disruption and aligns with DCPS and Jackson-Reed core . . . values, including mutual student respect.” *Id.* Although movie showings

are relatively rare, other clubs, including the French Club and Comic Book Club, have shown movies during the current school year, *id.* ¶ 11; *see* Compl. ¶ 17—and both in fact sought and received prior approval to do so, Brown Decl. ¶ 11.

JRHS also has rules governing tabling. Student clubs must receive approval to use school space—including use of tables for tabling—which is typically handled by the faculty advisor. *See* Brown Decl. ¶ 8. And adjustments are sometimes made to student organizations’ tabling events to prevent disruption to the educational environment. *See id.* ¶ 9. For example, earlier this year, when the Birds & the Bees Sexual Health Club wanted to preach safe sex and dole out condoms during the lunch hour, Principal Brown approved the group to table but required them to wait until the end of the day to hand out condoms because, when the group’s free prophylactics were served up at lunch a year earlier, students flushed them down toilets, causing sewage problems. *Id.*

V. Plaintiff’s Expressive Activities

A. The Occupation of the American Mind

In December 2023, Principal Brown became aware that Plaintiff was advertising an on-campus showing of a film—*The Occupation of the American Mind*—using flyers posted at school. Brown Decl. ¶ 13. The matter was brought to Principal Brown’s attention during a December 6 open house event by a parent who removed one of the flyers and showed it to Principal Brown. *Id.*; Compl. ¶ 20. At that point, neither Plaintiff nor its faculty sponsor had sought permission for the flyers—or for the showing of the film, which Plaintiff was apparently planning for December 14 and 15. Brown Decl. ¶ 13.¹ Based on the lack of notice, Principal

¹ Plaintiff did not meet with Principal Brown “to seek permission to show the film” until December 12, 2023. Compl. ¶ 24; Brown Decl. ¶ 13.

Brown immediately canceled the showing of *The Occupation of the American Mind* and directed the removal of Plaintiff's flyers. *See id.*

Around the same time, Principal Brown began receiving outreach from concerned parents, students, faculty, and other stakeholders regarding Plaintiff's proposed showing of *The Occupation of the American Mind*—many related to student safety and well-being in light of the ongoing Israel-Hamas war. *Id.* ¶ 14. Accordingly, Principal Brown not only viewed and researched the film himself, but also contacted DCPS OTL staff for assistance in determining whether it was appropriate to show at JRHS. *Id.* ¶¶ 14–15; Hiller Decl. ¶ 3. OTL reviewed *The Occupation of the American Mind* between December 12 and December 15, and confirmed to Brown, who is authorized to make the final decision about whether the film can be shown at JRHS, that the film's antisemitic² messaging could interfere with the rights of Israeli and Jewish students and rendered it inappropriate as a standalone source. Hiller Decl. ¶¶ 3, 5. With the information from OTL, Brown Decl. ¶¶ 15, 18, the concerns raised to him from students, parents, and faculty, *id.* ¶ 14, and his own assessment and research of the film, Principal Brown concluded that Plaintiff's proposed showing of the film was “likely to cause disruption to Jackson-Reed's learning environment and threaten the rights of certain members of the Jackson-Reed student body and faculty to feel safe on campus,” *id.* ¶ 15; *see* Compl. ¶ 25. Thus, on

² The United States Department of State has a working definition of antisemitism adopted in 2016 in collaboration with “31 member states of the International Holocaust Remembrance Alliance” which defines antisemitism as: “a certain perception of Jews, which may be expressed as hatred toward Jews.” U.S. Dep't of State, *Defining Antisemitism*, <https://www.state.gov/defining-antisemitism/> (last visited May 6, 2024). The State Department goes on to provide examples of antisemitism including “[m]aking mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective—such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.” *Id.*

December 10, 2023, Principal Brown notified Plaintiff and the group’s faculty sponsor that the organization would not be permitted to show the film. Brown Decl. ¶ 15.

Principal Brown then met with stakeholders, including with parents of members of Plaintiff on December 15, 2023, regarding his decision. *Id.* ¶ 20. At the December meeting, Principal Brown explained his concerns about *The Occupation of the American Mind* and reiterated that he would not permit it to be shown in the school, but noted that, of course parents were free to screen the film in their own homes. *Id.* One individual indicated a concern that showing the film in their home could result in “something . . . happen[ing].” *Id.* Principal Brown took this to mean that even parents of Plaintiff’s members and individuals supporting Plaintiff’s position understood the film to be sufficiently controversial to cause discord and lead to conflict—even when shown off-campus—further underscoring the likelihood that the material could disrupt the learning environment at Jackson-Reed. *Id.* In particular, Principal Brown was uncomfortable with the idea of any number of his 1,983 high-school-aged students—all of whom have lunch at the same time—attending the showing of the film, confronting its controversial messages (*especially* without contextual information or moderated discussion), and then returning to the classroom, after the lunch block, expected to “simply go back to business as usual.” *Id.*

B. Plaintiff’s Proposed List of Three Additional Films

In rejecting Plaintiff’s proposal to show *The Occupation of the American Mind*, Principal Brown offered to review and consider other films proposed by the group. Hamilton Decl. ¶ 3. On January 3, 2024, Plaintiff emailed Principal Brown a list of alternate films. Compl. ¶ 30.³

³ Plaintiff’s Complaint alleges Plaintiff’s student-members submitted four other films for approval, Compl. ¶ 30; the District is only aware of three: *The Wanted 18*, *5 Broken Cameras*, and *Farha*. Hamilton Decl. ¶ 3.

Principal Brown then submitted the films to OTL for review and feedback. *See* Compl. ¶ 27; Brown Decl. ¶ 15; Hamilton Decl. ¶ 3. Between February 5, 2024, and March 12, 2024, Raymond Hamilton, the Director for Social Studies Content and Curriculum within OTL, viewed and researched the three films submitted for review and determined that “any of [the] films provides sufficient context and would be fine to show at Jackson-Reed if paired with sourcing questions and with a critical lens applied.” Hamilton Decl. ¶¶ 1, 3, 8. This feedback was shared directly with Plaintiff in a planning meeting for their Palestinian Culture Night on March 12, 2024, and with the JRHS administration on March 28, 2024. *Id.* ¶ 8.⁴

C. The April 25, 2024 On-Campus Palestinian Culture Night

Plaintiff originally proposed holding a Palestinian Culture Night in January 2024, Compl. ¶ 37, but the organization’s members and faculty sponsor failed to engage the school’s events-planning process, so their initial proposal never reached the tarmac, *see* Background IV; Brown Decl. ¶ 22 (“[Plaintiff] is required to get events approved in advance, the same as all other student organizations.”). Principal Brown, though, proposed several alternatives to the January event: Plaintiff could join in the yearly International Culture Night and present aspects of Palestinian culture; or Plaintiff could have their own Palestinian Culture Night at a later date, providing adequate time to engage the school’s planning process. *See id.* Principal Brown suggested that this latter option could consist of one or more cultural events in April, to coincide with Arab Heritage Month. *Id.* And, ultimately, Plaintiff and the school settled on April 25—a date that would allow students observing Ramadan to attend an after-hours event while still observing the holiday. *Id.* ¶ 24; Ex. 5, Decl. of Tomeka McKenzie (McKenzie Decl.) ¶ 8.

⁴ To-date, neither Plaintiff nor Plaintiff’s faculty sponsor has supplied sourcing questions or other information related to any of the alternative films or otherwise indicated a renewed intent to show these films on campus. Brown Decl. ¶ 21.

Principal Brown delegated the responsibility for planning the event with Plaintiff to Resident Principal Tomeka McKenzie. Brown Decl. ¶ 27. Plaintiff envisioned a “significant event requiring a lot of planning,” so Resident Principal McKenzie met with Plaintiff’s members often, starting in February, to help the students prepare. McKenzie Decl. ¶ 2. McKenzie even invited the faculty sponsor for the Student Government Association and others to attend at least one such meeting because of their experience planning large school events like prom, spirit week, and homecoming. *Id.* ¶ 5. As part of this months-long process, and consistent with other large events held at JRHS, Plaintiff’s members prepared a “Run of Show” presentation in the form of a PowerPoint deck. *Id.* ¶ 6; Brown Decl. ¶ 23. School administration proposed changes to Plaintiff’s Run of Show, but only related to the proposed location of the food and the appropriate number of tablecloths. McKenzie Decl. ¶ 7.⁵

The Palestinian Culture Night was held, as planned, on April 25, 2024. *Id.* ¶ 11. According to several in attendance, near the end of the event, people yelled “Free Palestine.” *Id.* ¶ 11; Maites Decl. ¶ 10. And a school counselor in attendance at the Palestinian Culture Night reported observing a book on ethnic cleansing on a table during the event. Maites Decl. ¶ 10. One song played at the event was “Leve Palestina, krossa sionismen,” by the Swedish band Kofia, the lyrics of which explicitly call for crushing Zionism, the concept that Jewish people have a right to their ancestral homeland. *Id.* ¶ 10; *Kofia Leve Palestina, krossa sionismen*

⁵ Plaintiff alleges that the April 25 event was “so heavily censored and restricted that it no longer present[ed] the message that Plaintiff and its members had envisioned for [it].” Compl. ¶ 50. But Plaintiff provides no *facts* to support this claim. In fact, Resident Principal McKenzie did not “censor” any material that Plaintiff “planned to present in their PowerPoint” or inform them that anything in the PowerPoint “was not appropriate or could not be shared.” McKenzie Decl. ¶ 7.

English translation, Lyrics Translate, <https://tinyurl.com/2t96mp5r> (last accessed May 2, 2024).⁶

Following the event, as recently as May 1, Principal Brown received complaints from students, parents, and faculty concerning Plaintiff's event. Brown Decl. ¶ 32.

D. Plaintiff's Tabling Activities and Distribution of Printed Material

Plaintiff, like other clubs, had to seek approval to table, *supra* Background IV; and their printed materials were (and will be, in the future) subject to the same review procedure as for flyers and posters—requiring advance approval. *Id.* ¶¶ 5–6. Plaintiff alleges that the group's printed materials for tabling were modified before being approved, including the removal of controversial symbols, Compl. ¶¶ 56–61, and that a school administrator allegedly asked students to not hand out stickers with the outline of Palestine or ones that read, “Free Palestine,” during a March 6 tabling event, *id.* ¶ 63–64. Plaintiff is interested in conducting tabling events without “censor[ship],” *id.* ¶ 64, but would of course need advance approval of tabling space, and printed materials, the same as all other clubs and organizations. Brown Decl. ¶¶ 5–6, 8.

E. Ongoing Volatility and Disruption at Jackson-Reed

Students—and parents and community organizations on behalf of students—have continued to report concerns about their safety and emotional well-being in light of the ongoing Israel-Hamas war and directly related to Plaintiff's expressive activities. Maite's ¶¶ 4–7, 12; Brown Decl. ¶¶ 14, 18, 20, 30–31. These concerns have not only included Plaintiff's proposed screening of *The Occupation of the American Mind* and related flyers, *see* Maite's Decl. ¶ 9; Brown Decl. ¶¶ 14–15; Hiller Decl. ¶ 3; *cf.* Compl. ¶ 20, but also Plaintiff's Palestinian Culture

⁶ Lyrics include the following: “Long, long, long live Palestine / Long live Palestine and crush Zionism . . . / And we have fired missiles / At our enemies / And the whole world knows our struggle . . . / And we will liberate our land / From imperialism.” *Kofia Leve Palestina, krossa sionismen English translation*, Lyrics Translate, <https://tinyurl.com/2t96mp5r> (last accessed May 2, 2024).

Night, Brown Decl. ¶¶ 29–31; Maites Decl. ¶¶ 10–12. Several stakeholders, including parents, have specifically contacted Principal Brown to challenge Jackson-Reed’s apparent association with what many perceive as antisemitic messaging promoted at Plaintiff’s events. Brown Decl. ¶ 29. Jewish and Israeli students have also reported intimidation causing ongoing disruptions in JRHS classrooms. *E.g.*, Maites Decl. ¶¶ 5–7.

LEGAL STANDARD

A preliminary injunction is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Trump v. Thompson*, 20 F.4th 10, 31 (D.C. Cir. 2021) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)). “A moving party is required to make “a ‘clear showing’ that (1) it has a likelihood of success on the merits, (2) the balance of equities favors preliminary relief, (3) an injunction is in the public interest, and (4) it will likely suffer irreparable harm before the district court can resolve the merits of the case.” *Singh v. Berger*, 56 F.4th 88, 95 (D.C. Cir. 2022). “The likelihood of success and irreparability of harm ‘are the most critical’ factors.” *Thompson*, 20 F.4th at 31 (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009)). And the last two factors merge when the government opposes an injunction. *See id.* (citing *Nken*, 556 U.S. at 435). A plaintiff bears the burden of proving all four prongs of the standard before relief can be granted. *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1292 (D.C. Cir. 2009); *see Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006) (movant must demonstrate “by a clear showing” that the requested emergency relief is warranted).

“The primary purpose of a preliminary injunction is to preserve the object of the controversy in its then existing condition—to preserve the status quo.” *Aamer v. Obama*, 742 F.3d 1023, 1043 (D.C. Cir. 2014) (internal quotation marks omitted); *see also Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) (“The purpose of a preliminary injunction is . . . to

preserve the relative positions of the parties until a trial on the merits can be held.”). “Bearing in mind that a grant of preliminary relief could prove to be ‘mistaken’ once the merits are finally decided, courts are institutionally wary of granting relief that disrupts, rather than preserves, the status quo, especially when that relief cannot be undone if the non-movant ultimately wins on the merits.” *Singh*, 56 F.4th at 95 (citation omitted).

ARGUMENT

I. Plaintiff Is Not Likely to Succeed on the Merits.

Plaintiff’s entitlement to emergency relief turns on the Court’s assessment of the merits. *See* Mot. for a Prelim. Inj. at 27 (“If the Court finds that Plaintiff has shown a likelihood that its constitutional rights are being violated, it follows that Plaintiff is suffering irreparable harm.”); *Sherley v. Sebelius*, 644 F.3d 388, 393 (D.C. Cir. 2011) (suggesting that *Winter* makes the showing of a likelihood of success on the merits a free-standing requirement for a preliminary injunction). To prevail, Plaintiff must prove a “substantial likelihood of success.” *England*, 454 F.3d at 297. Plaintiff has not met that burden, and the Motion fails accordingly. *Sherley*, 664 F.3d at 392 (quoting *Winter*, 555 U.S. at 374).

A. Plaintiff Has Not Shown a Violation of the First Amendment.

It is “clear that students do not ‘shed their constitutional rights to freedom of speech or expression,’ even ‘at the school house gate.’” *Mahanoy Area Sch. Dist. v. B. L. by & through Levy*, 141 S. Ct. 2038, 2044 (2021) (*Mahanoy*) (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969)). But “the First Amendment rights of students in the public schools are not automatically coextensive with the rights of adults in other settings.” *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988) (quoting *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 682 (1986)). Therefore, the First Amendment rights of students in public schools

“must be ‘applied in light of the special characteristics of the school environment.’” *Kuhlmeier*, 484 U.S. at 266 (quoting *Tinker*, 393 U.S. at 506).

Most recently, the *Mahanoy* court laid out the analysis for regulation of student speech in public schools. 141 S. Ct. at 2045. Contrary to Plaintiff’s assertion that “[t]he *Tinker* standard remains *the* law,” Mot. for a Prelim. Inj. at 13 (emphasis added), the *Mahanoy* court laid out “three specific categories of student speech that schools may regulate” *before* reaching the *Tinker* standard. 141 S. Ct. at 2045. A school may regulate student speech that is “(1) ‘indecent,’ ‘lewd,’ or ‘vulgar’ speech uttered during a school assembly on school grounds, (2) speech, uttered during a class trip, that promotes ‘illegal drug use,’ and (3) speech that others may reasonably perceive as ‘bear[ing] the imprimatur of the school,’ such as that appearing in a school-sponsored newspaper.” *Id.* (internal citations omitted). While the first two categories are narrow—related to specific categories of student speech—the last category, derived from the holding in *Kuhlmeier*, is not—applying to any category of speech that others perceive as bearing the imprimatur of the school. *Id.* (citing *Kulhmeier*, 484 U.S. at 271).

After these “three specific categories of student speech” comes the standard from *Tinker*: “schools have a special interest in regulating speech that ‘materially disrupts classwork or involves substantial disorder or invasion of the rights of others.’” *Mahanoy*, 141 S. Ct. at 2045 (citing *Tinker*, 393 U.S. at 513). And the special characteristics of schools “calls for special leeway when schools regulate speech that occurs under its supervision.” *Id.* “[S]chool officials need a degree of flexible authority to respond to disciplinary challenges. . . . Courts thus provide educators a high degree of deference in the exercise of their professional judgment lest they ‘substitute their own notions of sound educational policy for those of the school authorities which they review.’” *Kutchinski v. Freeland Cmty. Sch. Dist.*, 69 F.4th 350, 360 (6th Cir. 2023)

(quoting *Morse v. Frederick*, 551 U.S. 393, 428 (2007) (Breyer, J. concurring in the judgment in part and dissenting in part) and *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206 (1982)).

Plaintiff has not established a likelihood that the District has violated Plaintiff’s First Amendment rights to speech or expression. Nor can they. Plaintiff’s speech, as a “recognized student club at Jackson-Reed High School,” Compl. ¶ 1, falls directly within the *Kuhlmeier* standard: “others may reasonably perceive”—and *have* perceived, Brown Decl. ¶ 29—the events that Plaintiff has held on-campus as being school-sponsored, school-approved, and therefore bearing the “imprimatur of the school,” *Kuhlmeier*, 484 U.S. at 271. Nevertheless, even if the Court were to find that Plaintiff’s speech could not reasonably bear the “imprimatur” of the school, *see id.*, Jackson-Reed’s regulation of Plaintiff’s speech falls well within the bounds of *Tinker*—both as speech and expression that was actually and reasonably determined by the school to be “materially disrupt[ive],” more than capable of causing “substantial disorder,” and as speech that invaded (or may reasonably invade) the rights of other students, *Tinker*, 393 U.S. at 513.

1. Screening and Advertising The Occupation of the American Mind

Here are the facts. Plaintiff failed to follow the process for obtaining approval to screen *The Occupation of the American Mind* in school ahead of time, and the group (or more specifically, the group’s faculty sponsor) failed to get approval as required in the Staff Handbook for flyers advertising the event. Brown Decl. ¶ 13. Other student clubs have complied with these procedures. *Id.* ¶ 11. So Plaintiff’s showing was canceled; and their flyers were pulled off the walls. *Id.* ¶ 13. When Plaintiff pressed the issue, the District—Principal Brown, with help from DCPS OTL—thoughtfully reviewed Plaintiff’s proposal and rejected it on the merits. *Id.* ¶ 15. The film, as it turns out, is rife with antisemitic messaging, and given the atmosphere at

JRHS and around the country, an open showing during lunch hour, especially one without appropriate guardrails (which Plaintiff did not—and has not—proposed) was completely off the table. *Id.* ¶¶ 15, 17, 20–21.

Both *Kuhlmeier* and *Tinker* require that this Court reject Plaintiff’s First Amendment claim on these facts. The Supreme Court articulated the difference between *Kuhlmeier* and *Tinker* as such: “The question whether the First Amendment requires a school to tolerate particular student speech—the question . . . addressed in *Tinker*—is different from the question whether the First Amendment requires a school affirmatively to promote particular student speech”—the question addressed in *Kuhlmeier*. 484 U.S. at 270–71. As for the latter question, *Kuhlmeier* supports the proposition that “schools may regulate . . . speech that others may reasonably perceive as ‘bear[ing] the imprimatur of the school.’” *Mahanoy*, 594 U.S. at 187–88 (alterations in original) (citing *Kuhlmeier*, 484 U.S. at 271).

That is the case here. Principal Brown determined that Plaintiff’s advertising for *The Occupation of the American Mind* could lead others to “reasonably conclude that [Plaintiff’s] proposed showing of the film was a school-sponsored event. This is a primary reason why student organizations like [Plaintiff] need to get . . . events approved in advance: The school cannot put its name on an event that is inconsistent with [the school’s] core values.” Brown Decl. ¶ 16. And Principal Brown explicitly made this clear in a December 12, 2023 meeting with Plaintiff’s members: “He said . . . that he would not feel comfortable associating the school with a person whose views are critical of people that are part of the school community.” Compl. ¶ 25.

And Jackson-Reed’s facilities have not been opened “for indiscriminate use by the general public or by some segment of the public, such as student organizations.” *Kuhlmeier*, 484

U.S. at 267. Rather, JRHS explicitly creates a procedure for using its facilities designed to give school administrators the opportunity to review proposed uses in advance to ensure they are consistent with the school’s values and policies, will not create a disruption to the educational environment, and do not infringe the rights of others. Brown Decl. ¶¶ 5–8. Jackson-Reed’s “facilities have instead been reserved for other intended purposes, ‘communicative or otherwise,’ [and as such] no public forum has been created, and school officials may impose reasonable restrictions on the speech of students, teachers, and other members of the school community.” *Kuhlmeier*, 484 U.S. at 267 (quoting *Perry Edu. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 46 n.7 (1983)). Even if the Court finds that a forum has been created, it is at best a limited purpose public forum. *See Perry*, 460 U.S. 37, 46 n.7 (“A public forum may be created for a limited purpose such as use by certain groups, e.g., *Widmar v. Vincent* (student groups), or for the discussion of certain subjects, e.g., *City of Madison Joint School District v. Wisconsin Public Employment Relations Comm’n* (school board business).” (internal citations omitted)). And in limited purpose public forums, regulations “must [only] be reasonable and viewpoint neutral.” *Christian Legal Soc’y Chapter of the Univ. of Cal. v. Martinez*, 561 U.S. 661, 679 (2010). In schools, denying access to speech carrying the school’s imprimatur because it is contrary to legitimate pedagogical concerns is categorically reasonable. *See Kuhlmeier*, 484 U.S. at 271, 273 (describing the question *Kuhlmeier* answers as “educators’ authority over school-sponsored” speech and permitting regulations where the school “exercis[es] editorial control over the style and content . . . so long as their actions are reasonably related to legitimate pedagogical concerns”).

Although Principal Brown may not have articulated his concerns by using the word “disruption” when speaking with Plaintiff’s student members, Compl. ¶ 26, that is not a

requirement under *Kuhlmeier*: “[T]he standard articulated in *Tinker* for determining when a school may punish student expression need not also be the standard for determining when a school may refuse to lend its name and resources to the dissemination of student expression.” 484 U.S. at 272–73. Rather, the applicable standard in *Kuhlmeier* is whether an educator’s “actions are reasonably related to legitimate pedagogical concerns” in “exercising editorial control over the style and content of student speech in school-sponsored expressive activities.” *Id.* at 273. That was the case here: Principal Brown made the reasonable determination that it would not meet the pedagogical goals of Jackson-Reed High School to sponsor the screening of a film so aggressively negative towards a subset of the school’s community. Plaintiff does not dispute or even address this determination, even though it appears plainly in their Complaint. Compl. ¶ 25. And “[h]anging flyers on school walls advertising clubs that meet during school hours and on school grounds with a faculty advisor is expressive activity that could reasonably be perceived to bear the imprimatur of the school.” *E.D. v. Noblesville Sch. Dist.*, 2024 U.S. Dist. LEXIS 45930, at *47–48 (S.D. Ind. Mar. 15, 2024), *appeal filed* Apr. 15, 2024.

But even if Principal Brown’s determination not to “lend [Jackson-Reed High School’s] name and resources to” a screening of *The Occupation of the American Mind* was somehow not “reasonably related to legitimate pedagogical concerns,” *Kuhlmeier*, 484 U.S. at 272–73, there was sufficient information for Principal Brown to reasonably determine that showing the film during lunch hour, as Plaintiff proposed, was likely to “materially disrupt[] classwork [and] involve[] substantial disorder or invasion of the rights of others,” *Tinker*, 393 U.S. at 513. As Brown puts it, “[p]resenting a film of this nature at lunch and then expecting the students to return to their classes without any sponsored or otherwise thoughtful opportunity to discuss the very confrontations they are being asked to make in watching the film is likely to leave students

with a plethora of questions.” Brown Decl. ¶ 20.⁷ All things considered, Principal Brown made the reasonable determination that a showing of *The Occupation of the American Mind* would result in disruption because “[i]t is unlikely that, and [he] could not expect, [his 1,900+] high school students to simply go back to business as usual.” *Id.*

This, of course, was not against the neutral backdrop that Plaintiff attempts to paint, *see* Compl. ¶¶ 12–26; the situation was and is far more tense. In reality, classroom decorum at Jackson-Reed has already been disrupted by content related to the Israel-Hamas War. *See* Maite Decl. ¶¶ 4–7. Students have contacted school faculty with concerns about their safety, pointing specifically to Plaintiff’s posters depicting symbols that students perceived as anti-Israel or antisemitic. *Id.* ¶ 5. Within the classroom, “[s]tudents . . . reported that teachers have departed from their class’s subject matter to discuss their personal feelings about the war. Jewish and Israeli students have reported that these classroom diversions have caused them to be afraid to raise their hand and talk about their perspectives for fear of backlash.” *Id.* ¶ 6. Principal Brown was aware of these concerns, *id.* ¶ 8, and others which highlighted how Jewish and Israeli students were already being affected by these disruptions. Brown Decl. ¶¶ 14–15, 20–21, 29, 31. Principal Brown had sufficient “facts which . . . reasonably . . . led [him] to forecast substantial disruption of or material interference with school activities.” *Tinker*, 393 U.S. at 514. Accordingly, neither the District nor Principal Brown infringed Plaintiff’s First Amendment rights by denying the screening of *The Occupation of the American Mind*.

⁷ Plaintiff proposed showing the 49-minute film in two parts, which would leave approximately 30 minutes each time for discussion. Compl. ¶ 12, 15. Plaintiff, however, did not present (and still has not presented) any proposal for any third-party moderation, the distribution of any contextualizing information, or any other safeguards to ensure the film’s explosive messaging could be received and processed responsibly. Other jurisdictions required organizations to take these steps before showing the film to adults who obviously were not required to promptly return to classes shortly after the experience. Brown Decl. ¶¶ 15, 20.

2. Tabling Events and Printed Materials

As Plaintiff points out, Plaintiff’s members were not restricted from having tabling events and distributing modified copies of their “zine.” Mot. for a Prelim. Inj. at 15. Regarding tabling, Plaintiff is largely concerned with the removal of “two symbols of significance to Palestinians.” *Id.* Plaintiff attempts to handwave the District’s concerns about these symbols by concluding, without analysis, that “[i]t cannot credibly be supposed that allowing Plaintiff to distribute the original version of its zine would have caused substantial disruption.” *Id.* But the District in fact determined that it could reasonably “refuse to lend its name and resources to the dissemination of” symbols that infringe on the rights of Jewish and Israeli students at JRHS. *Kuhlmeier*, 484 U.S. at 272–73; Brown Decl. ¶¶ 21, 29–30. And Plaintiff ignores the significant disruptions in schools around D.C. and around the country as well as the significant outrage over these same symbols that Principal Brown and others received from students, parents, and community organizations—all of which provided sufficient facts for Principal Brown to reasonably determine that Plaintiff’s proposed “zine” was, in fact, likely to cause significant disruption and disorder. *See Tinker*, 393 U.S. at 513; Brown Decl. ¶¶ 13–15, 19, 21, 29–30; Maite Decl. ¶¶ 4–7; Hiller Decl. ¶ 8; McKenzie Decl. ¶ 12.

First, apply *Kuhlmeier*. The symbols at issue have been present on other non-approved flyers, posters, and materials used variously by Plaintiff’s members—all of which have been removed as much as possible by the school—because it is inherently reasonable for the school to refuse to associate with symbols and rhetoric suggesting that a group of students on campus should not exist. *See* Brown Decl. ¶¶ 21, 29–30; *Kuhlmeier*, 484 U.S. at 271; *see also* Maite Decl. ¶ 5. As discussed above in the context of *The Occupation of the American Mind*, Principal Brown reasonably determined that displaying such symbols conflicts with the pedagogical

goals—and indeed, the core values—of Jackson-Reed High School. *See also supra* at 18 (analyzing the school’s limited purpose public forum under *Kuhlmeier*).

The result is the same under *Tinker*. Principal Brown made the reasonable determination that “imagery and other things [Plaintiff] has proposed over the course of the past several months boil down to the potential for strong emotional responses by students and members of [the] school community . . . [which] can . . . lead to disruption of the classroom environment and make students feel unsafe.” Brown Decl. ¶ 21. That is enough to satisfy the *Tinker* standard: Student speech may be regulated if it “involves substantial disorder” or may result in the “invasion of the rights of others.” 393 U.S. at 513. Students, of course, have the right to feel safe at school. *See Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie Cnty. v. Earls*, 536 U.S. 822, 830 (2002) (finding that schools have a “responsib[ility] for maintaining discipline, health, and safety”); 5-E DCMR § 2401.5.

Plaintiff argues that, in *Tinker*, some students “made hostile remarks” to the Petitioner-students who were wearing black anti-war armbands, and that those hostile remarks could not provide a basis to restrict their speech. Mot. for a Prelim. Inj. at 13 (citing *Tinker*, 393 U.S. at 513). But the result in *Tinker* would have been different if the students’ plain black armbands bore a symbol—a swastika, for example—suggesting that a group of students at the school should not exist. That is this case. *See* Brown Decl. ¶¶ 19, 21; Maite Decl. ¶ 5.

* * *

As such, Plaintiff has not met its burden of making a clear showing of substantial likelihood of success on the merits of its First Amendment claims.⁸

⁸ Plaintiff is not seeking preliminary injunctive relief related to hosting a Palestinian cultural event. Mot. for a Prelim. Inj. at 10 n.27. Accordingly, it is not necessary to assess the

B. The District Has Not Violated The Equal Access Act.

Plaintiff’s Equal Access Act claim is similarly unavailing. The Equal Access Act prohibits a public secondary school with a “limited open forum” from discriminating against “students who wish to conduct a meeting within that [forum] on the basis of the religious, political, philosophical, or other content of the speech at such meetings.” 20 U.S.C. § 4071(a); *see* Compl. ¶ 100. Plaintiff’s Complaint does not actually specify how or on what basis the organization (or its members) was discriminated against. *See* Compl. ¶ 103. But the Motion for Preliminary Injunction offers two potential clues: According to Plaintiff, the Birds & The Bees Sexual Health Club distributed condoms and informational pamphlets on campus; and, similarly, the Gender and Sexual Alliance has hosted events, including a movie screening. Pl’s Mot. for a Prelim. Inj. at 17–18. With respect to the Birds & the Bees, Plaintiff contends that “[t]he school has not interfered with that [organization’s expressive] activity.” *Id.* at 18.⁹ Although not stated directly, Plaintiff’s theory appears to be that if one club can present information without modification by the school, another club must be afforded the same latitude—content wholly notwithstanding. Plaintiff misses the mark for two reasons—one legal, the other factual.

First, the Equal Access Act incorporates the *Tinker* standard. It is true that a public secondary school must permit students equal access and fair opportunity to hold meetings, but only “provide[d] that . . . the meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school.” 20 U.S.C. § 4071(c); *see also Hsu*

likelihood of success on the merits of whether the District has violated Plaintiff’s First Amendment rights as alleged in Plaintiff’s Complaint related to the Palestinian Cultural Night.

⁹ Plaintiff’s motion is silent on whether the “Gender and Sexual Alliance” events were assessed by the school. *See generally* Mot. for a Prelim. Inj. But Plaintiff’s Complaint alleges that “[t]he school has not interfered with those activities [of the Gender and Sexuality Alliance club].” Compl. ¶ 68.

by and through *Hsu v. Roslyn Union Free Sch. Dist. No. 3*, 85 F.3d 839, 870 n.30 (2d Cir. 1996) (discussing how the Equal Access Act differs from *Tinker* “only immaterially” and that the “Act allows the suppression of expression that interferes with ‘the orderly conduct of educational activities’” which “embraces practically everything schools do”). And of course, “[n]othing in [the Equal Access Act] shall be construed to limit the authority of the school, its agents or employees, to maintain order and discipline on school premises, [and] to protect the well-being of students and faculty.” 20 U.S.C. § 4071(f); *see also Gernetzke v. Kenosha Unified Sch. Dist. No. 1*, 274 F.3d 464, 467 (7th Cir. 2001), *cert. denied*, 535 U.S. 1017 (2002) (finding no liability under Equal Access Act’ for school principal’s decision to forbid the display of a Christian cross in a mural painted by the school’s Bible Club in school’s hallway). Further, as discussed above, the school’s regulation of Plaintiff’s “proposed speech” falls well within the *Tinker* standard for regulating disruptive speech.

Second, JRHS did, in fact, reasonably modify the Birds & the Bees expressive activity. As explained, Principal Brown permitted the Birds & the Bees to peddle safe sex tips at lunchtime but *denied* the group’s request to handout condoms until after the final bell. Brown Decl. ¶ 9. Plaintiff’s Complaint says otherwise but only in one conclusory jab, Compl. ¶ 53; and Plaintiff’s *evidence* expressly confirms Principal Brown’s account, Decl. of ASU Member [2-1] ¶ 22 (“The school did request that we distribute condoms after class rather than during lunch hour, and we were happy to do that.”).¹⁰ Plaintiff’s tabling activity and printed materials—which appears to be the crux of Plaintiff’s Equal Access Act claim, as alleged, *see* Mot. for a Prelim.

¹⁰ As for the other example, Plaintiff offers no evidence at all—literally nothing to support the conclusion that the Gender and Sexual Alliance’s expressive activities were not subject to review or modification by the school. *See e.g.*, Decl. of ASU Member ¶ 22 (listing five events permitted by the school but making no representations regarding review process, including whether activities were or were not modified).

Inj. at 18—was treated no different. There is an approval process for tabling activities and printed materials. Brown Decl. ¶¶ 5, 8–9. Clubs and organizations, as part of the approval process, are sometimes asked to modify their activities to ensure the “orderly conduct of educational activities within the school.” 20 U.S.C. § 4071(c); Brown Decl. ¶¶ 5, 8–9. The mere fact that Plaintiff was asked to adhere to this school policy does not violate the Equal Access Act. And even if Plaintiff were the only student club asked to modify their tabling activities to ensure the “orderly conduct of educational activities within the school”—and they were not, *see* Brown Decl. ¶ 9—such a modification would still be insufficient to state a claim under the Equal Access Act. Plaintiff is thus not likely to succeed on the merits of an Equal Access Act claim.

C. Plaintiff Cannot Establish a Violation of the D.C. Student Bill of Rights.

The D.C. Student Bill of Rights, 5-E DCMR § 2401, provides students substantially identical rights as the First Amendment. As discussed above, Plaintiff has not shown a likelihood of success on the merits of its First Amendment claim, and for the same reason, Plaintiff’s Student Bill of Rights claim should fail. But there is a more fundamental flaw with the latter claim: There is no private right of action created by the D.C. Student Bill of Rights.¹¹

Plaintiff alleges in its Complaint that the “Court has supplemental jurisdiction to enforce the D.C. Student Bill of Rights against the Defendants.” Compl. ¶ 110. Not so. Plaintiff has not met its threshold burden of proof in showing that 5-E DCMR § 2401 conveys a private right of action. *See Kelleher v. Dream Catcher, LLC*, 363 F. Supp. 3d 322, 326 (D.D.C. 2017) (“[T]he burden is on Plaintiff ‘to demonstrate that, in spite of the absence of any explicit authorization, the D.C. Council intended to imply a right’ [of private enforcement].”) (citing *Coates v. Elzie*,

¹¹ Plaintiff cites no authority suggesting that courts have determined whether there is a private right of enforcement under the D.C. Student Bill of Rights. And the District is unaware of any.

768 A.2d 997, 1001 (D.C. 2001)). And Plaintiff cannot show that the D.C. Council intended for there to be a private right of action under the D.C. Student Bill of Rights, as the D.C. Council did not create the D.C. Student Bill of Rights. District of Columbia Courts have refused to find a private right of action where there is “no hint of how the Council of the District of Columbia intended the regulations to be enforceable judicially.” *Coates*, 768 A.2d at 1001. Mere Council approval of regulations promulgated by the Mayor cannot alone show enforceability. *Id.* at 1001–02.

And indeed, a private right of action is contraindicated in the D.C. Municipal Regulations containing the D.C. Student Bill of Rights, which provides a student grievance procedure that applies “to all grievances or complaints brought . . . where it is alleged that the rights of students, or any individual student, are being denied or abridged.” 5-B DCMR § 2405.2(b). It does not provide a private right of action in courts. *Id.* Nor is it necessary to imply such a right. Final agency action is appealable to the D.C. Court of Appeals under the D.C. Administrative Procedure Act—which would apply to the “final administrative decision of the school system” in the Student Grievance Procedure. *Id.* § 2405.6; D.C. Code § 2-510 (providing judicial review under the D.C. Administrative Procedure Act). And as much as the D.C. Student Bill of Rights incorporates constitutionally protected rights, those constitutional rights are of course separately enforceable by private action under § 1983.

II. Plaintiff Cannot Prove Irreparable Harm.

The D.C. Circuit “has set a high standard for irreparable injury.” *England*, 454 F.3d at 297. In order to establish irreparable injury, the movant must show (1) “the injury complained of is of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm,” and (2) “the injury must be beyond remediation.” *Id.* (cleaned up) (citing *Wisc. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)).

In the context of the First Amendment, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Singh*, 56 F.4th at 109 (quoting *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (per curiam)). Although “the mere allegation that the government is violating the [First Amendment] may suffice to satisfy the irreparable harm prong, . . . a preliminary injunction will not issue unless the moving party also shows, on the same facts, a substantial likelihood of success on the merits.” *England*, 454 F.3d at 304. Therefore, this Circuit “has construed *Elrod* [*v. Burns*, 427 U.S. 347 (1976) (plurality op.)] to require movants to do more than merely allege a violation of freedom of expression in order to satisfy the irreparable injury prong of the preliminary injunction frame-work.” *England*, 454 F.3d at 301.

And Plaintiff fails to identify in the Motion for a Preliminary Injunction any harm that will likely result from the District’s action with no preliminary injunctive relief. *See* Mot. for a Prelim. Inj. at 27 (arguing only that if Plaintiff is likely to succeed on the merits, then they must have shown irreparable harm). “[P]roving irreparable injury is a considerable burden, requiring proof that the movant’s injury is certain, great and actual—not theoretical—and imminent, creating a clear and present need for extraordinary equitable relief to prevent harm.” *Power Mobility Coal. v. Leavitt*, 404 F. Supp. 2d 190, 204 (D.D.C. 2005) (internal citations and quotation marks omitted); *Manzanita Band of Kumeyaay Nation v. Wolf*, 496 F. Supp. 3d 257, 260 (D.D.C. 2020) (same). If a party fails to make an adequate showing, a court may deny a motion for preliminary relief without considering the other factors. *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 747 (D.C. Cir. 1995).

In their Complaint, Plaintiff raises four points as “facts relating to ongoing irreparable injury,” but these too do not carry the considerable burden required. Compl. ¶¶ 69–73. Plaintiff

continues to “wish” to show *The Occupation of the American Mind*. *Id.* ¶ 69. Plaintiff continues to “wish” to present another Palestinian Culture Night next year. *Id.* ¶ 70. *But see* Mot. for a Prelim. Inj. at 10 n.27 (“Plaintiff does not seek preliminary injunctive relief regarding such an event at this time.”). And Plaintiff continues to “wish” to conduct tabling events and hand out materials. Compl. ¶ 71. According to Plaintiff, time is of the essence because the Israel-Hamas war is ongoing, and the end of the school year for seniors is June 7. *Id.* ¶¶ 72–73.

All things considered, it is unclear why any of this results in injury that is “certain, great and actual . . . and imminent.” *See Leavitt*, 404 F. Supp. 2d at 204. Plaintiff has been allowed to table and hand out materials—the same as other student clubs at JRHS. *See* Compl. ¶ 56; Brown Decl. ¶ 9. Plaintiff has had a Palestinian cultural event without censorship. McKenzie Decl. ¶ 7. And Plaintiff cannot show *The Occupation of the American Mind* given the near certainty of significant disruption to the classroom. Brown Decl. ¶¶ 20–21. And admittedly, the Israel-Hamas war is ongoing, and JRHS seniors’ last day of school is June 7, but it is unclear what “certain, great and actual” harm seniors will suffer if unable to opt-in to a showing of *The Occupation of the American Mind* before their last day of high school—any such harm would be to third-parties (non-ASU member students) not to Plaintiff or Plaintiff’s members.

But even if the Court is persuaded that irreparable injury is fulfilled by the mere allegation of the loss of constitutional freedoms, *see* Mot. for a Prelim. Inj. at 17, then Plaintiff still fails on this prong, as it requires that Plaintiff show a likelihood of success on the merits. *Elrod*, 427 U.S. at 373. And as Plaintiff has demonstrated no likelihood of success on the merits of their claims, there can be no irreparable injury. *See England*, 454 F.3d at 304. Accordingly, the Court should deny Plaintiff’s Motion for a Preliminary Injunction.

III. The Balance of the Equities and the Public Interest Favor the District

Even if a movant shows a likelihood of success and irreparable injury, the Court must still balance the equities between the parties and consider the public interest. *See Open Tech. Fund v. Pack*, 470 F. Supp. 3d 8, 31 (D.D.C. 2020). Those two factors “merge when the Government is the opposing party.” *Nken*, 556 U.S. at 435.

Plaintiff argues that “[i]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Simms v. District of Columbia*, 872 F. Supp. 2d 90, 105 (D.D.C. 2012) (internal quotation and citation omitted); Mot. for a Prelim. Inj. at 28. But Plaintiff also points back to the first factor for a preliminary injunction: “the strength of the [movant’s] showing on public interest rises and falls with the strength of its showing on the likelihood of success on the merits.”¹² Mot. for a Prelim. Inj. at 28. Admittedly, “[i]n First Amendment cases, the likelihood of success ‘will often be the determinative factor’ in the preliminary injunction analysis.” *Pursuing Am.’s Greatness v. Fed. Election Comm’n*, 831 F.3d 500, 511 (D.C. Cir. 2016) (citing *Joelner v. Vill. of Wash. Park, Ill.*, 378 F.3d 613, 620 (7th Cir. 2004)). And, as discussed above, Plaintiff has not shown a likelihood of success on the merits of their claims, and therefore the balance of the equities and the public interest strongly favor the District.

It is “presume[ed], absent a showing to the contrary, that a government acts in the public interest.” *Allied Tube & Conduit Corp. v. Indian Head*, 486 U.S. 492, 501 (1988) (internal alterations omitted) (quoting *Hallie v. Eau Claire*, 471 U.S. 34, 35 (1985)). And courts have

¹² Plaintiff dangerously misstates their burden on this prong. Plaintiff improperly attempts to assert that it is the District’s burden to prove the strength of the public interest prong: “[T]he Circuit has explained, ‘the strength of the [defendant’s] showing on public interest rises and falls with the strength of its showing on likelihood of success on the merits.’” Mot. for a Prelim. Inj. at 28 (alteration in original) (citing *Archdiocese of Washington v. WMATA*, 897 F.3d 314, 335 (D.C. Cir. 2018)). But Archdiocese of Washington was the plaintiff-movant in that case, not the defendant—and it remains Plaintiff’s burden prove all four prongs of the standard for a preliminary injunction before relief can be granted. *Davis*, 571 F.3d at 1292.

held that the balance of the equities tips against movants when a preliminary injunction would “upend the status quo” and impose a “certain and substantial” burden on the non-movant.

Sherley, 644 F.3d at 398.

The relief Plaintiff seeks in enjoining the District upends the status quo and imposes a substantial burden on the District. Plaintiff asks for preliminary relief from this Court to order the District to allow Plaintiff to show *The Occupation of the American Mind*—irrespective of the near certainty that it will cause significant disruption to the school’s classroom environment; to order the District to allow Plaintiff *carte blanche* to host a third Palestinian Culture Night with whatever “expressive content Plaintiff wishes to include”; and to order the District to allow Plaintiff similarly unparalleled opportunity to distribute a “zine” and stickers on campus with whatever “expressive content Plaintiff wishes to include.” Compl. at 19; Proposed Prelim. Inj. at 1–2.

This relief would subvert the “vitally important” job that school principals have in making reasonable determinations to keep schools safe and orderly, *Morse v. Frederick*, 551 U.S. 393, 409 (2007), and the District’s “responsib[ility] for maintaining discipline, health, and safety,” *Earls*, 536 U.S. at 830 (assessing limits of student’s constitutional rights in the context of the Fourth Amendment). It would strip the District and Principal Brown of any opportunity to reasonably limit expressive speech under *Kuhlmeier* or *Tinker*. In short, it goes too far. In so doing, Plaintiff’s Motion for a Preliminary Injunction reveals that the balance of the equities lies instead with allowing the District and Principal Brown to continue to “permit Plaintiff to engage in expressive activities pursuant to the same rules, procedures, and practices . . . that govern the activities of all other Jackson-Reed High School recognized student organizations”—just as they always have, and always will. *Contra* Pl’s Proposed Prelim. Inj. at 2.

CONCLUSION

For these reasons, the Court should deny Plaintiff's Motion for a Preliminary Injunction

Date: May 6, 2024

Respectfully submitted,

BRIAN L. SCHWALB
Attorney General for the District of Columbia

STEPHANIE E. LITOS
Deputy Attorney General
Civil Litigation Division

/s/ Matthew R. Blecher

MATTHEW R. BLECHER [1012957]
Chief, Equity Section, Civil Litigation
Division

/s/ Marcus D. Ireland

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Counsel for Defendants

* Counsel is a member in good standing of the Virginia State Bar, authorized by the Office of the Attorney General for the District of Columbia to provide legal services pursuant to Local Civil Rule 83.2(g). Counsel certifies that he is personally familiar with the Local Rules of this Court as well as the other materials set forth in Local Civil Rules 83.8(b) and 83.9(a).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ARAB STUDENT UNION OF
JACKSON-REED HIGH SCHOOL

Plaintiff,

v.

DISTRICT OF COLUMBIA, *et al.*,

Defendants.

Civil Action No. 1:24-cv-01195-ACR

ORDER

Upon consideration of Plaintiff's Motion for a Preliminary Injunction (the Motion), Defendant District of Columbia and Principal Sah Brown's opposition, any reply to it, and the entire record, it is **ORDERED** that the Motion is **DENIED**.

Date: _____

ANA C. REYES
United States District Judge

EXHIBIT 1

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**ARAB STUDENT UNION OF
JACKSON-REED HIGH SCHOOL**

Plaintiff,

v.

DISTRICT OF COLUMBIA, *et al.*,

Defendants.

Civil Action No. 1:24-cv-01195-ACR

DECLARATION OF ANTHONY HILLER

I, Anthony Hiller, declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the following is true, correct, and based on my personal knowledge:

1. I am Senior Director for Literacy and Humanities in the Office of Teaching and Learning (OTL) at District of Columbia Public Schools (DCPS). I have been in this position for 2 years and 10 months and have been with DCPS for 10 years and 7 months.

2. Following the October 7, 2023 Hamas attack on Israel, OTL decided to make a “Guidance Document” with embedded resources. We had learned from events in previous years, such as the January 6, 2021 insurrection, that it is beneficial to have a list of resources available for educators, especially where there is a potential for strong feelings in the community. The OTL Guidance Document was not meant to be a list of static resources, because the Israel-Hamas war is an evolving global conflict, and we want to give latitude to each school to be able to adjust materials and conversations based on the needs of their individual school community.

3. At the request of Principal Brown and his staff at Jackson-Reed High School, my office assessed *The Occupation of the American Mind*, which I understood to have been

proposed by the Arab Student Union of Jackson-Reed High School (ASU) as a film that ASU wished to show during lunch hour. We received the ask to review the film on Tuesday, December 12th, 2023 and immediately went to work. We sent an initial follow up to the school administration on Thursday, December 14th and then had a follow up phone call on Friday, December 15th. To be frank, we found the material inappropriate to be viewed as a stand-alone source. It contained express and implied antisemitic messaging, and we determined that, if shown on campus during school hours, it would interfere with the rights of Israeli and Jewish students and those students associated in less direct ways with Judaism and the nation of Israel to feel safe in their DCPS school. We also looked at local screenings of the film, including in Takoma Park, Maryland, where a screening with adults was delayed until there was a panel of moderators to contextualize the film, to prevent disruption in the community. We wanted to know ASU's purpose in showing the film, and how they would present this contextual material to prevent a similar result.

4. Part of what education aims to accomplish is teaching students how to receive and process complex issues by engaging in sourcing, contextualizing, and corroboration skill-building using multiple perspectives that leverage a wide-variety of primary and secondary sources. Further, educators aim to cultivate and nurture collaborative spaces where discourse opportunities promote speaking and listening skills that support the development of students' individual voices, perspectives, and agency. This film, however, had the power—if used without broader context, guiding sourcing questions, or sources that demonstrated other perspectives—to cross the delicate line between simply controversial or provocative to more likely hurtful in ways that would undermine our responsibility to ensure every student feels safe and welcome within their DCPS school.

5. We provided this feedback to Principal Brown, who ultimately has the authority to determine whether the film can be shown at Jackson-Reed.

6. My team has also reviewed the three films provided by ASU as alternatives to *The Occupation of the American Mind*. We shared that one or more of the alternate films would be appropriate to show, if presented with contextual material that will make it less likely that there will be disruption as a result of the film. But to my knowledge, ASU never proposed contextual material that could serve this purpose.

7. There have been numerous related concerns raised by students and parents. Not only were there concerns about safety if *The Occupation of the American Mind* was shown, along with strong feedback from members of the community regarding lesson design and instructional materials on this topic, but there have been disruptions to classroom teaching already. One teacher taught in December 2023 a lesson about Gaza and the concept of genocide, and it generated heated email chains among parents and faculty. Later, in March 2024 the World History I team at the school facilitated a planned lesson on the historical context of the conflict. Undoubtedly, teaching about this particular conflict requires tremendous cultural sensitivity in all aspects of the planning and instruction.

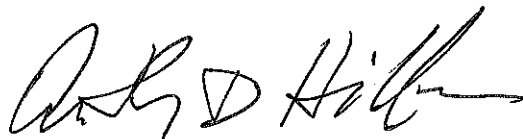
8. We also received concerns from students and parents about flyers advertising the Palestinian Culture Night, specifically the use of symbols on a version of the flyer appearing on social media. There were symbols on it that students and parents found to be offensive, and specifically, that communicated the message that they, as individuals who associate with Judaism or the nation of Israel, did not have the right to exist. However, ASU was allowed by Jackson-Reed administration to still have a Palestinian Culture Night on April 25, 2024. To ensure the

event was safe for everyone, there was security present, and attendees were required to sign in and go through weapons abatement.

9. I did not personally attend the Palestinian Culture Night event.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, D.C. on May 6, 2024.

A handwritten signature in black ink, appearing to read "Anthony Hiller", written over a horizontal line.

Anthony Hiller
Senior Director for Literacy and Humanities
District of Columbia Public Schools
1200 First Street, N.E.
Washington, D.C. 20002

EXHIBIT 2

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**ARAB STUDENT UNION OF
JACKSON-REED HIGH SCHOOL**

Plaintiff,

v.

DISTRICT OF COLUMBIA, *et al.*,

Defendants.

Civil Action No. 1:24-cv-01195-ACR

DECLARATION OF PATRICE MAITES

I, Patrice Maites, declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the following is true, correct, and based on my personal knowledge:

1. I am a school counselor at Jackson-Reed High School (“Jackson-Reed”). I have been in this position for about 14 years.

2. As a school counselor, I am a resource and point of contact for students and families to raise and discuss concerns, among other responsibilities.

3. On October 7, 2023, Hamas attacked Israel from the Gaza Strip resulting in over 1000 deaths, primarily of Israeli citizens, and the taking of over 200 hostages. Following the events of October 7, students and parents of students began contacting me with their concerns related to student safety.

4. Since October 7, both Jewish and Israeli students and their families have continued to contact me with significant, reasonable, and genuine concerns about student safety and well-being, the prevalence of antisemitism on campus and in the community more broadly,

and the effects of the Israeli-Hamas War on their mental health. Notably, some students had family members who were taken hostage or killed by Hamas.

5. The students have reported to me that their feelings of fear and concern have grown as the war continues and they see antisemitic behaviors at Jackson-Reed. For example, students have reported seeing swastikas and “Free Palestine” stickers in bathrooms as well as posters hung in school facilities depicting a map of Palestine and Israel with the Israeli-borders removed, which students told me they interpreted to mean that Israel should be destroyed, or at least not exist. That is how I interpreted these maps of Palestine as well.

6. Students have reported that teachers have departed from their class’s subject matter to discuss their personal feelings about the war, often expressing anti-Israel sentiments. Jewish and Israeli students have reported that these classroom diversions have caused them to be afraid to raise their hand and talk about their perspectives for fear of backlash.

7. Jewish and Israeli students have reported to me that they felt intimidated from expressing their views because of their connection to Israel, and this interfered with their ability to learn in the classroom. Some students in a history class were shown materials relating to Israel that upset them greatly. They told me that the materials presented a biased, one-sided, and in some instances, false depiction of the conflict. In my view, showing the film described in paragraph 9 below would be likely to intensify these feelings of intimidation by the Jewish students.

8. I raised these concerns with Principal Brown in multiple conversations since October 7, 2023.

9. Students and parents alike have raised many concerns about the proposal to show the film *The Occupation of the American Mind*, the antisemitic and false narratives about Israel

that are expressed throughout it, and their fear for Jewish and Israeli students' safety and well-being if the film was shown at Jackson-Reed. The film is narrated by Roger Waters, who I understand was cited by the State Department in June 2023 as having a long record of using antisemitic tropes, of using imagery that is deeply offensive to the Jewish people, and who has minimized the Holocaust (<https://apnews.com/article/us-germany-roger-waters-antisemitism-3aa8d1dadf8d633f2c3274a6a8f9ef6f>).

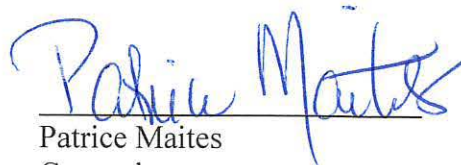
10. On April 25, 2024, I attended the Palestinian Culture Event held at Jackson-Reed. While at the Palestinian Culture Event, I saw a book on ethnic cleansing prominently displayed on a table. I also observed posters and heard chants of "Free Palestine," saw maps showing Palestine as encompassing all of the West Bank, Gaza and Israel, and saw pictures of "keys" displayed at the Event representing homes in Israel itself of Palestinians and their progeny living in the West Bank and Gaza. These have antisemitic undertones implying that Israel is illegally occupying "Palestine," including Israel itself, and that, especially given the maps of "Palestine" and the keys, the "Free Palestine" chants are understood by Jewish and Israeli students (and by me) to mean the elimination or destruction of Israel. I also observed three Jackson-Reed teachers who were present at the Event joining the students on their feet cheering for "Free Palestine" in front of the maps showing Palestine as including the State of Israel.

11. During the event, I also understand that based on a translation that I have seen one of the songs that was performed explicitly referred to the eradication of Israel. The song, which was played in Swedish, was "Leve Palestina, crossa sionismen" by Kofia.

12. Since October 7, 2023, and the beginning of the Israeli-Hamas war, both students and their parents have brought to my attention many concerns for student safety and well-being because of the incidents described above, and I have relayed these concerns to Principal Brown.

I believe that if the film *The Occupation of the American Mind* were shown at Jackson-Reed, it would have a damaging effect on Jewish students and would significantly interfere with the educational mission and activities of the school. Indeed, the false and antisemitic stereotypes contained in the film are directly contrary to the educational mission of our school. In my mind, showing this film would have the same damaging effect on Jewish students as a showing of the film *Birth of a Nation* would have on black students, and would be just as disruptive to the school's educational mission.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 6, 2024.



Patrice Maites
Counselor
Jackson-Reed High School
3950 Chesapeake Street, NW
Washington, DC 20016

EXHIBIT 3

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**ARAB STUDENT UNION OF
JACKSON-REED HIGH SCHOOL**

Plaintiff,

v.

DISTRICT OF COLUMBIA, *et al.*,

Defendants.

Civil Action No. 1:24-cv-01195-ACR

DECLARATION OF SAH BROWN

I, Sah Brown, declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the following is true, correct, and based on my personal knowledge:

1. I am the Principal at Jackson-Reed High School within the District of Columbia Public Schools (DCPS) system. This is my ninth year as a Principal, and I have been the Principal at Jackson-Reed for one year and ten months.

2. Jackson-Reed is the District's largest high school and serves a diverse population of more than 1,980 students through a staff of some 240 administrators, teachers, and support staff members.

3. Jackson-Reed High School's stated mission is to build a safe, supportive, and welcoming community of dedicated and self-reflective learners equipped to joyfully embrace our opportunities for growth on the path to active citizenship.

4. Jackson-Reed is the home to approximately 60 student organizations, clubs, and unions. Each one is required to have a faculty sponsor, who serves as the point of contact between the school administration and the student organization, club, or union. Faculty sponsors

supervise the organizations and represent the school. Student organizations, clubs, and unions are expected to align with school policies and the school mission, and the faculty sponsor helps ensure that this requirement is met. I have been working hard during my tenure to standardize processes and policies for student organizations.

5. The Jackson-Reed High School Faculty & Staff Handbook lays out the specific guidelines for all employees. Staff members received an electronic copy of the Jackson-Reed High School Faculty & Staff Handbook at the beginning of the year. Specific guidance for Club sponsors was distributed and reviewed on January 26, 2024. This document clarified expectations for all faculty sponsors as it relates to supervising school based clubs and activities.

6. As specifically relates to posters and flyers, all such materials must be approved by the appropriate assistant principal or the Director of Strategy and Logistics before they are displayed and must be taken down at the conclusion of the event or program they are advertising. When these procedures are not followed for posting of flyers, school staff are expected to, and generally do, remove the materials. Once approved, flyers may be displayed. This policy is contained in our Faculty & Staff Handbook.

7. On occasion content in posters or flyers must be modified to be consistent with policy and our core values. For example, when the JRHS Players, a theatre club, was advertising the play 12 Angry Jurors, they originally proposed an advertisement that had a knife and train on the tracks. Because Jackson-Reed has students who have been assaulted on the Metro before, we suggested a modification to the poster to remove the knife. The poster was approved with that minor image modification.

8. Before a student organization, club, or union schedules any event that will use school facilities, the faculty sponsor is required to communicate with the Coordinator for

Strategy and Logistics to determine availability and complete an Internal Building Use Agreement—a form that requires certain basic information about the proposed event, including name, email, phone number, club/department, event, department chair approval, date, time, area of building, participants, custodial needs, technology needs, and volunteers needed—to notify school administrators of the proposed event. This process ensures that I am aware of, and our Director of Strategy & Logistics has the opportunity to approve—through DCPS central office staff, as necessary—all proposed events in advance; that appropriate space and other accommodations are available to support the event, and that the event is displayed on the school’s central calendar. This process also provides the school an opportunity to ensure that events using the school’s facilities are consistent with Jackson-Reed’s values and will not disturb the educational environment of the school. This process and form are additionally communicated periodically to faculty in weekly updates.

9. On occasion, adjustments must be made when student organizations seek to host events on campus, like with tabling. For example, the “Birds & the Bees Sexual Health Club” sought to table during lunch in the 2022-23 school year and wanted to hand out condoms to support safe sexual practices, and I approved that event. However, after the tabling, it was discovered that students had been misusing condoms and flushing them down the school’s toilets. These actions caused a sewage clog. In the current school year (2023-24), when the “Birds & the Bees Sexual Health Club” sought to hold the same tabling program, I approved the tabling but required that any condoms be handed out after school as students were leaving to avoid the problems that had arisen the previous year.

10. When student organizations, clubs, and unions seek to play movies on campus, faculty sponsors are expected to inform school administration. This ensures that my staff and I

have the opportunity to check the rating of the proposed film and consider the content to ensure that the showing is not likely to cause disruption and aligns with DCPS and Jackson-Reed core R.O.A.R. values, including mutual student respect.

11. Movies are not often played by student organizations, with the exception of Marvel Mondays, an event held on campus during the lunch hour, where the “Comic Book Club” shows Marvel movies. This school year, 2023-2024, the “French Club” also requested to play a movie with subtitles. Both the “Comic Book Club” and the “French Club” informed me of their intent to watch movies in advance, and the requests were reviewed by my staff and I, consistent with this process.

12. I have reviewed the Complaint in this action and familiarized myself with the allegations of the Plaintiff, the Arab Student Union of Jackson-Reed High School (ASU).

13. ASU did not seek permission to show *The Occupation of the American Mind* prior to advertising that they were going to show it on December 14 and 15, 2023. Nor did ASU’s faculty sponsor go through the proper procedures to get the flyers approved. Based on that, when I was made aware of the posters by a concerned parent at an open house event on December 6, 2023, the day ASU put them up, I instructed my staff to take them down, just as I had done before when other individuals posted signs without approval.

14. Since then, many students and parents have expressed concerns to me, directly and through my staff, regarding the showing of *The Occupation of the American Mind* on Jackson-Reed’s campus. This has included outreach concerning student safety and well-being in light of the October 7, 2023, terrorist attack on Israel. Faculty members at Jackson-Reed have also brought concerns to me about the showing of the film.

15. Because of the volatility of the Israel-Hamas war, and because I had received these very serious concerns from numerous sources, I decided to personally review the proposed film. My review included watching the film itself as well as researching past showings of the film at other events across the nation and locally, for example the Takoma Park, Maryland showing in 2019 which prompted a protest and ultimately required a panel of moderators following the event for adults. I also requested feedback from DCPS's Office of Teaching and Learning (OTL). Based on my review, I concluded that the film seemed likely to cause division among students, families, and faculty on this volatile issue, especially in light of the film's messaging, which has been referred to as antisemitic, and the narrator—Roger Waters—who I had seen had been asked not to speak at UPenn in the Fall of 2023 for fear of disruption if he appeared in person. As such, I believed that the film was likely to cause disruption to Jackson-Reed's learning environment and threaten the rights of certain members of the Jackson-Reed student body and faculty to feel safe on campus. I informed ASU and ASU's faculty sponsor on December 10, 2023, that ASU would not be permitted to show the film.

16. I was also concerned with ASU's use of Jackson-Reed High School's name and social media tags in their advertising of the film's viewing. People who see the school's name and social media tags in relation to the event could reasonably conclude that ASU's proposed showing of the film was a school-sponsored event. This is a primary reason why student organizations like ASU need to get flyers, posters, and events approved in advance: The school cannot put its name on an event that is inconsistent with our core values or DCPS expectations.

17. I have many concerns about the potential disruptions to class and the order of the school based on the showing of *The Occupation of the American Mind*. Some of these include concerns about security if people who oppose the showing of the film present themselves

unannounced at the school and disturbing the order of our classes or become agitated about exposing Israeli-students to anti-Israel sentiments that call for the eradication of the Israeli people. I heard these concerns echoed by students, parents, staff members and community organizations—and when I hear concerns from such a wide array of stakeholder groups, I recognize the need to investigate further.

18. I have also spent a lot of time working with DCPS’s OTL to ensure that sources intended to be shared with students at Jackson-Reed are consistent with our core values, will not cause disruption to the learning environment, will not disrupt the normal order of the school, and will not infringe the rights of our students.

19. I believe that ensuring a safe learning environment encompasses not only physical safety but also the mental well-being of students, and messages calling for the eradication of Israel could obviously impact the psychological well-being and feeling of safety on-campus for Israeli students, Jewish students, and students who associate with Israel or Judaism for any number of reasons.

20. In one hybrid meeting—on December 15, 2023—with parents and other individuals in support of the ASU showing the film, I laid out some of my concerns about *The Occupation of the American Mind* and informed them that they were of course welcome to screen it in their homes. One individual asked me “What if something were to happen while students watched the film offsite?” and if “something happened” it would be my fault. I took this to mean that parents and other individuals in support of ASU members—or at least this one individual—also understood that this film was likely to cause significant disruption, even if shown off school grounds, where attendance could be restricted. By the same logic, showing the film in school, during lunch, where any number of Jackson-Reed’s approximately students could

attend, posed an obvious and significant risk that the educational environment after the end of the lunch block would be disrupted. Presenting a film of this nature at lunch and then expecting the students to return to their classes without any sponsored or otherwise thoughtful opportunity to discuss the very confrontations they are being asked to make in watching the film is likely to leave students with a plethora of questions. Questions for which students naturally would seek answers from their teachers, even if the subject matter is not part of the curriculum for that class. And because some of our teachers felt apprehensive addressing questions outside the school's curriculum, answers are not necessarily going to satisfy the questioning students. It is unlikely, and I could not expect, that the high school students would simply go back to business as usual.

21. I have informed ASU and ASU's faculty sponsor that my concerns with the showing of *The Occupation of the American Mind* as well as with some of the imagery and other things the group has proposed over the course of the past several months boil down to the potential for strong emotional responses by students and members of our school community. While strong emotional responses can lead to important discussions, they can also lead to disruption of the classroom environment and make students feel unsafe. And strong emotional responses are not limited to discussions, but also physical responses which create a concern for safety. ASU has proposed alternate films, and I understand they received feedback on those films on March 12, 2024. To-date, ASU has not supplied sourcing questions or other information related to these alternate films, nor have they requested again to show these films. When they do so, I will assess whether they can be shown at JRHS.

22. When ASU sought to host a large after school cultural event, the school was happy to sponsor it but wanted to do so consistent with past cultural events. ASU originally planned the event for January, but it was not formally approved for that date before ASU began

advertising it. ASU is required to get events approved in advance, the same as all other student organizations. I proposed multiple options, each of which would allow time to get approval and plan the event. The school holds an International Culture Night annually, at which many students celebrate their respective cultures, and I informed the ASU that they could be part of that event. However, ASU wanted to hold an event specifically focused on highlighting Palestinian culture. I also proposed that : ASU could plan one or more events in April, which would coincide with Arab Heritage Month.

23. As we did for large events, such as Pep Rallies, hosted by the Student Government Association, Engineering Night, hosted by our NAF Academy, and our Athletic Awards, hosted by our Athletic Department, we required ASU to do a “Run of Show,” which walked school administrators through the program to ensure that all needs were met and so that my staff and I would have a high level of awareness of what would be occurring on the school’s campus. That is, so we knew what, at least on a general level, the school would be sponsoring.

24. Although there was some discussion of an event early in April, ultimately we decided to hold an event in late April, to respect students who were observing Ramadan and might not be able to attend an after-hours event as a result.

25. I became aware that ASU members contacted Instructional Superintendent Kimberly Martin to raise concerns of ASU events not being supported by administration. It was clarified to the students that there are procedures that should be followed. Instructional Superintendent Kimberly Martin sent an email to a student in the ASU on February 12, 2024 indicating that I was in the process of approving Jackson-Reed holding an event that they wanted to conduct.

26. Jackson-Reed High School is a learning environment that we want to be free of disruption and has not opened its doors to hosting political rallies, nor does it intend to. Because of that position and given the high probability that the Palestinian Culture Event might weave politics into the programming and become a divisive, disruptive, political rally—like I had seen occurring across the country on college campuses—I wanted to make sure that the program stuck to an approved celebration of culture, including song, dance, art, and food.

27. I assigned the oversight and assistance in planning the school-sponsored Palestinian Culture Night to Jackson-Reed’s Resident Principal Tomeka McKenzie.

28. I was made aware that ASU was using a different flyer to advertise the Palestinian Culture Night on social media than the one approved for the event. The online flyer was posted to the official Jackson-Reed Arab Student Union Instagram page (@jrhs_asu) and was tagged alongside Jackson-Reed Students for Justice in Palestine (@jrhs_sjp)—an account and organization unaffiliated with Jackson-Reed. As I have been monitoring the disruptions occurring across the nation related to the topic of Palestine and Israel and the Israel-Hamas war, I am aware that groups with the tag “Students for Justice in Palestine” have been present at college campuses across the country that are experiencing protests, disruptions, and property damage.

29. I have concerns for safety and disruptions when official pages affiliated with Jackson-Reed High School post things that are not aligned to the values of Jackson-Reed and DCPS or approved by school administration because I know that—true or not—those postings will be viewed as associated with Jackson-Reed. Many parents and students have contacted me concerned about whether the school supports these positions because of the posts indicating an affiliation with Jackson-Reed.

30. The difference between the approved and un-approved flyers consists of the use of controversial symbols that I determined would disrupt our learning environment—symbols that have raised concerns of implying that Israel should not exist. These are the same symbols that my team, Resident Principal McKenzie, after consulting with OTL, removed from a “zine” that ASU had proposed for a tabling event in March, 2024—which were removed for the same reasons that these symbols were not approved for flyers advertising the Palestinian Culture Night.

31. I do not know if a teacher or other faculty member asked ASU to not hand out stickers that said “Free Palestine”—if that happened, it was without my authorization.

32. As recently as May 1, 2024, I have received complaints from parents, staff members and students who attended the Palestinian Culture Night raising concerns about specific messages within songs calling for the crushing of Zionism, a Jewish movement for the establishment of the Jewish nation of Israel, political chants and imagery that was on display.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, D.C. on May 6, 2024.

A handwritten signature in black ink, appearing to read "Sah Brown", written over a horizontal line.

Sah Brown
Principal, Jackson-Reed High School
3950 Chesapeake Street, N.W.,
Washington, D.C. 20016

EXHIBIT 4

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**ARAB STUDENT UNION OF
JACKSON-REED HIGH SCHOOL**

Plaintiff,

v.

DISTRICT OF COLUMBIA, *et al.*,

Defendants.

Civil Action No. 1:24-cv-01195-ACR

DECLARATION OF RAYMOND HAMILTON

I, Raymond Hamilton, declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the following is true, correct, and based on my personal knowledge:

1. I am the Director for Social Studies Content and Curriculum in the Office of Teaching and Learning (OTL) at District of Columbia Public Schools (DCPS). I have been in this position for 11 months and have been with DCPS for 7 years and 9 months. I report directly to Anthony Hiller, Senior Director for Literacy and Humanities.

2. In early October 2023, following the Hamas attack on Israel, OTL worked on a “Guidance Document” to provide a list of nuanced resources for educators within DCPS to discuss issues around Israel, Palestine, Hamas, and the ongoing Israel-Hamas war, generally. The goal in developing this guidance document was to provide resources so that teachers would have materials in case the topic arose. We try to provide resources for teachers in response to significant current events that may raise questions from students. We have applied a similar process to several issues in the past including: police brutality/Black Lives Matter, school shootings, and the January 6th Insurrection. In creating the Guidance Document, I worked with

others across Central Office, including those from a contact within the Office of the State Superintendent for Education (OSSE), examined resources from other social studies organizations of which I am a member, and looked at what other cities around the country (ex. New York City) had shared. The Guidance Document is an iterative document that has been updated and changed a few times with written sources added and taken away to include up-to-date information providing context to the situation in the Middle East.

3. I was asked on February 5, 2024, to review a list of three films submitted for approval to be showing during school hours by the Arab Student Union of Jackson-Reed High School (ASU). These films were *The Wanted 18*, *5 Broken Cameras*, and *Farha*. I understand that these were presented as alternatives to a film that ASU originally wanted to screen—*The Occupation of the American Mind*.

4. I have never watched *The Occupation of the American Mind*, but I reviewed each of the other three films that ASU submitted as alternatives. One of the main concerns with *The Occupation of the American Mind* was the presence of antisemitic tropes and stereotypes, so the three alternative films were reviewed with an eye specifically for that type of content. I watched the films and read reviews of each of them, specifically looking for antisemitic tropes and stereotypes, factual accuracy, and whether the film could serve to advance dialogue and discourse among students, or conversely create division—and in turn, potential disruption at the school.

5. *5 Broken Cameras* is a documentary style film that chronicles one Palestinian man's interactions with the Israeli Government while filming activity near a disputed border area over time. The interactions resulted in the man having 5 cameras damaged in separate incidents.

In the film, the man addresses the impact of the Israeli settlements on the land he and his family occupy. I did not find much concern when reviewing this film.

6. *The Wanted 18* was good to the extent it addresses a real world incident between Palestinians and the Israeli Government, albeit one-sided. The subject material is very straightforward, with an obvious slant in favor of Palestine. My concern with this film is the format. The film depicts a real world incident of the Israeli Government declaring a herd of cows a threat to their government and the subsequent approach of confiscating them. But the format has the cows as claymation figures who are targeted and seen as evading the authorities. I felt that the formatting minimized the real conflict taking place and would possibly offend people given the seriousness of the conflict.

7. *Farha* is based on a true story but has been identified by the creator as mostly fictional. I think that there are many better alternatives to address the conflict than a film which takes several admitted artistic liberties.

8. Ultimately, I felt that any of these films provides sufficient context and would be fine to show at Jackson-Reed if paired with sourcing questions and with a critical lens applied. I shared this feedback with Jackson-Reed's administration on March 28, 2024, and also with ASU directly on March 12, 2024.

9. The only meeting I had personally with the ASU was on March 12, 2024, when I attended a meeting with Tomeka McKenzie, Resident Principal at Jackson-Reed High School, to help with the planning for an upcoming Palestinian Culture Night. Although I initially shared that I was there as a representative from Central Office, I was asked to offer my feedback on the three films presented as alternatives to *The Occupation of the American Mind*, and I did so in my personal capacity, not as a representative for Central Office. I was left with the impression that

ASU members were not satisfied with my feedback, and I shared that it was okay to not agree with it.

10. I asked ASU in that meeting what their goal was in showing these films, whether it was to raise awareness about Palestine and the Israel-Hamas war, open a dialogue, or something else. ASU members responded that they wanted to raise awareness. So, I asked my question again, slightly reframed—whether they simply wanted to raise awareness, such that once people knew about the conflict they would be satisfied; or whether, in addition, they wanted to open a dialogue. In response, ASU indicated that they were trying to do both at the same time.

11. My concern—the reason for this questioning—was that if we showed films that peddled tropes and stereotypes, we were far more likely to divide, offend, and disrupt than to set students up for productive dialogue. And, if our goal is to raise awareness, there are far more effective and less divisive means to accomplish that than what ASU was proposing.

12. I explained to ASU members in that meeting that the ultimate decision of whether to show a given film rests with each school's administration, not with Central Office but that we would support the schools to help them make the most informed decision for their stakeholders. Central Office's goals are to provide support, give feedback and help share resources for those decisions to be made in each school.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, D.C. on May 6, 2024.



Raymond Hamilton
Director, Social Studies Content and Curriculum
District of Columbia Public Schools
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EXHIBIT 5

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ARAB STUDENT UNION OF
JACKSON-REED HIGH SCHOOL

Plaintiff,

v.

DISTRICT OF COLUMBIA, *et al.*,

Defendants.

Civil Action No. 1:24-cv-01195-ACR

DECLARATION OF TOMEKA MCKENZIE

I, Tomeka McKenzie, declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the following is true, correct, and based on my personal knowledge:

1. I am the Resident Principal at Jackson-Reed High School within the District of Columbia Public Schools (DCPS) system. I have been in this position for 8 months. In this position, my role and responsibilities include: shadowing the Principal as a mentee, supervising Social Studies, 9th grade counselors, 9th grade behavioral team, Term 1 & 2 leadership of the Local School Advisory Teams, Principal Designee, as well as any additional responsibilities as they relate to the resident program.
2. I was involved in helping the Arab Student Union of Jackson-Reed High School (ASU) plan and prepare for their Palestinian Culture Night. This was a significant event requiring a lot of planning. Beginning in February 2024, I held multiple meetings with ASU members and their faculty sponsor to ensure that everything—from advertising of the event to content of the organization's presentations—was set up to run smoothly and that the event could meet ASU's needs while remaining consistent with the school's core values. As with all events

of this magnitude, we had walk-throughs or “Run-of-Shows” to ensure preparedness and that the event is consistent with Jackson-Reed’s core values.

3. In our first meeting, which occurred on February 14, 2024, we discussed what kind of event ASU wanted to hold. We brainstormed ideas including whether ASU would want to host a symposium or an Arab Culture Event, celebrating all Arab cultures. ASU was very clear that they wanted to host an event like what they had held off campus, at a restaurant in January 2024, which they described to me as including song, food, art, and dance celebrating Palestinian Culture.

4. I met with ASU students and their faculty sponsor again the following week, on February 20, 2024; at that point, it became clear to me that ASU was not interested in holding an event related to all Arab cultures, generally, nor a symposium but rather specifically for the purpose of spotlighting Palestine due to the events on October 7, 2024.

5. At our third meeting on February 27, 2024, we discussed what ASU would need to successfully pull off the event. I brought in other people who have held similar large-style events like prom, spirit week, and homecoming, including the faculty sponsor for Student Government Association (SGA), the Directors of our Global Studies Program and Career and Technical Education for Hospitality—all to assist ASU in covering all the necessary areas, like hospitality/food, set-up, and similar things.

6. As part of the “Run of Show” required by the school for these types of events, I asked ASU to prepare a PowerPoint for our fourth meeting to provide an overview of the event. At the fourth meeting, ASU provided clarity on what the event would consist of, specifically, music, dance, art, and food related to Palestinian culture. As I understood it, ASU wanted to highlight Palestinians’ rich culture instead of people seeing them as terrorists.

7. We did ask ASU to let school administration know everything they wanted to present at the Palestinian Culture Night so we could ensure compliance with school policies, student rights, and the safety of students. ASU sent a PowerPoint as requested in our last in person meeting on March 12th. The PowerPoint was presented by the ASU president later that week, and the team and I provided feedback concerning the lack of a "Run-of-Show," food, logistics, and so on. These were discussed as part of the PowerPoint that was provided at the last meeting. The only changes that were suggested based on the PowerPoint ASU provided to me was related to the location of food—moving it closer to the cafeteria—and asking whether they thought they would need more tablecloths. They did not bring up to me any intention to present anything else outside of the PowerPoint at the event. Nor did I or anyone else tell ASU that anything they planned to present in their PowerPoint was not appropriate or could not be shared.

8. It took time to get everything finalized, not only because the event ASU envisioned was robust and potentially controversial, but also because ASU's faculty sponsor needed to submit paperwork to use school facilities that was discussed in our February 27th meeting as well as contacting PTSO for a grant for funding. ASU and I also expressed an interest in holding the event after Ramadan to provide observers of Ramadan an opportunity to fully participate without having to break their fast early.

9. ASU requested a security presence at the Palestinian Culture Night to protect the event. Security was provided for the event by DCPS.

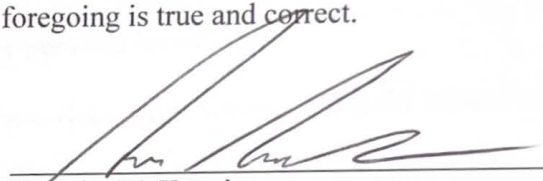
10. Overall, the planning for this event, including the run of show and meetings prior to holding it, were consistent with planning for large events held by SGA. The level of planning is also similar to the planning for a large event recently held by the Black Student Union.

11. I attended the Palestinian Culture Night on April 25, 2024. Near the end of event, people yelled "Free Palestine," and I observed several individuals who appeared to me to be visibly upset.

12. Prior to the Palestinian Culture Night and the March 6, 2024 tableting event, parents and students have raised concerns with me and others about the content that was presented by ASU. And I am aware that some students who attended the Palestinian Culture Night reported that there was messaging that, to them, implied that Israel should not exist. Many of these reports have also described antisemitism experienced in relation to those comments and certain literature presented at the event.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, D.C. on May 6, 2024.



Tomeka McKenzie
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