County-level school districts are required to report violations of section 1000.071(3) to the Florida Department of Education. § 1012.796(1)(d)1., Fla. Stat. (2023). The Florida Department of Education must then investigate potential violations of section 1000.071(3) and advise the Commissioner of its findings. § 1012.796(1)(a). From there, the Commissioner is tasked with determining whether there is probable cause for a violation and, if so, filing and prosecuting a complaint before an administrative law judge. § 1012.796(6). The administrative law judge sends recommendations to the Education Practices Commission (the "Commission"). The Commission, in turn, reviews the complaint and decides whether to dismiss the complaint or impos einn-4.2 (Da)o Tw4 (s )s8.3 Td[(ut)8.5 0 Td[(t)

Section 1000.071(3)'s prohibitions and the enforcement scheme put in place in August 2023 have directly impacted the Plaintiffs in this case. Plaintiffs Katie Wood and AV Schwandes were public school teachers at the beginning of the 2023–2024 school year. Ms. Wood is still a teacher at a public high school in Hillsborough County. But Mx. Schwandes lost their job as a public school teacher for Florida Virtual School.

Katie Wood is a transgender woman who is known at school—indeed, in every aspect of her life—as "Ms. Wood." She uses she/her pronouns to refer to herself and would prefer that others do as well. AV Schwandes is nonbinary and is known as "Mx. Schwandes." Mx. Schwandes uses they/them pronouns to refer to themself and would prefer that others do as well. This Court uses the parties' preferred pronouns throughout this Order.

Ms. Wood teaches the second half of Algebra I to tenth graders at Lennard

That all changed at the start of the 2023–2024 school year. The Hillsborough County School Board made clear to Ms. Wood that section 1000.071(3) prevented her from using her preferred pronouns and titles when communicating with students at school. Ms. Wood now refrains from intentionally using her preferred pronouns and title when interacting with students to avoid running afoul of section 1000.071(3).

Mx. Schwandes was a teacher at Florida Virtual School (FLVS) from July 2021 until October 2023. When Mx. Schwandes first started at FLVS, they used the titles "Professor" or "Mrs." without comment from their employer. In 2023, however, Mx. Schwandes's long-held feelings that they did not conform with either gender culminated in them coming out as nonbinary. Starting in early July 2023, Mx. Schwandes began to use the title "Mx." at FLVS.

FLVS opposed Mx. Schwandes's use of their preferred title. After Mx. Schwandes refused to comply with an FLVS directive to change their title in the school's systems, FLVS suspended them without pay. FLVS then fired Mx. Schwandes on October 24, 2023. On January 13, 2024, Mx. Schwandes received a letter from the Florida Department of Education indicating that the Office of Professional Services had opened an investigation into their "failure to follow directives from [their] employer." *See* ECF No. 45-1 ¶ 23.

Given the restrictions section 1000.071(3) has placed on both Ms. Wood and Mx. Schwandes, as employees of public schools, they filed suit challenging section 1000.071(3) under Title VII, Title IX, the First Amendment, and the Fourteenth Amendment. ECF No. 1. Shortly thereafter, Ms. Wood and Mx. Schwandes filed motions for preliminary injunction, arguing that they are entitled to emergency relief to remedy the ongoing harms caused by continued application of section 1000.071(3) to them. *See* ECF No. 11 and 45. For purposes of their motions, both Plaintiffs argue that they are entitled to relief based on their substantive Title VII and First Amendment claims.

II

A district court may grant a preliminary injunction if the movant shows: (1) it has a substantial likelihood of success on the merits; (2) it will suffer irreparable injury unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest. *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc). Although a "preliminary injunction is an extraordinary and drastic remedy," it should be granted if "the movant 'clearly carries the burden of persuasion' as to the four prerequisites." *United States v. Js*

adverse employment action on this record.[3] This Court starts with Ms. Wood's standing on her First Amendment claim, then it addresses Mx. Schwandes's standing on their First Amendment claim.

1

First, Ms. Wood's standing to bring her First Amendment claim. Any evaluation of Ms. Wood's First Amendment claim necessitates an inquiry into her ability to bring such claims—even when, as here, most parties do not raise any dispute as to her standing to proceed.[4]

Over time, the Supreme Court has developed a three-part test for determining when standing exists. Under that test, a plaintiff must show (1) that they have suffered an injury-in-fact that is (2) traceable to the defendant and that (3) can likely be redressed by a favorable ruling. *See Lujan*, 504 U.S. at 560–61. And "where a plaintiff moves for a preliminary injunction, the district court . . . should normally evaluate standing 'under the heightened standard for evaluating a motion for summary judgment.' " *Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 900 F.3d 250, 255 (6th Cir. 2018) (quoting *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d

[3] Of course, this Court will address standing in detail in its order on the pending motions to dismiss. But here, there are other issues with Plaintiffs' Title VII claims, so this Court refrains from passing on Plaintiffs' Title VII standing for purposes of this motion.

[4] The Hillsborough County School Board disputes Ms. Wood's standing on two elements—namely, traceability and redressability. The Hillsborough County School Board does not dispute that Ms. Wood has suffered an injury in fact.

905, 912 (D.C. Cir. 2015)); *see also Cacchillo v. Insmed, Inc.*, 638 F.3d 401, 404 (2d Cir. 2011). Thus, "a plaintiff cannot 'rest on such mere allegations, [as would be appropriate at the pleading stage,] but must set forth by affidavit or other evidence specific facts, which for purposes of the summary judgment motion will be taken to be true.' " *Cacchillo*, 638 F.3d at 404 (some alteration in original) (quoting *Lujan*, 504 U.S. at 561).

When First Amendment rights are involved, courts apply the injury-in-fact requirement most loosely, "lest free speech be chilled even before the law or regulation is enforced." *Harrell v. The Fla. Bar*, 608 F.3d 1241, 1254 (11th Cir. 2010). As such, an actual injury can exist when t(h b)8 t(h b)16.1([)-4.3 (a)42 ( B~~a~~)*[(r)3d(t m)4.

that section 1000.071(3)'s speech restrictions apply to her; (2) before Defendants' implementation of section 1000.071(3), she used her preferred pronouns and title when speaking with students; and (3) Defendants' threat of mandatory discipline if she engages in her proposed speech prevents her from speaking. This is a classic speech injury—Ms. Wood spoke in the past and wants to speak in the future, but she is deterred by a credible threat of discipline. This Court concludes that Ms. Wood has submitted sufficient evidence to establish an injury-in-fact.

As to traceability, this requires a showing that Ms. Wood's "injury [is] fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *31 Foster Children v. Bush*, 329 F.3d 1255, 1263 (11th Cir. 2003). Here, without dispute, Ms. Wood's injury fairly traceable to the State Defendants' conduct.[6] As Ms. Wood spells out in her papers, each State Defendant plays a role in enforcing section 1000.071(3)'s mandate by either (a) investigating any violation or (b) punishing her by revoking her teaching license or imposing other forms of professional discipline.

As for the Hillsborough County Schoo(,)-1.9th inve

1000.071(3). Wrong. What the Hillsborough County School Board describes as just "following Florida law" is actually *enforcement* of the law. The Hillsborough County School Board enforces section 1000.071(3) through Ms. Wood's supervisor—an agent of the Board—informing Ms. Wood about section 1000.071(3)'s requirements on several occasions, telling her which titles she can use, and directing Ms. Wood to erase "Ms. Wood" and her preferred pronouns from her classroom whiteboard. ECF No. 11-1. Further, the Hillsborough County School Board concedes that it *must* report any violation of section 1000.071(3) to the State Defendants, which would trigger disciplinary proceedings against Ms. Wood. Enforcement like this is crucial to the traceability and redressability analyses—when a "plaintiff has sued to enjoin a government official from enforcing a law, [she] must show, at the very least, that the official has the authority to enforce the particular provision that [she] has challenged, such that an injunction prohibiting enforcement would be effectual." *Support Working Animals, Inc. v. Gov. of Fla.*, 8 F.4th 1198, 1201 (11th Cir. 2021). Even if the impetus for the Hillsborough County School Board's actions comes from state law, its compliance still qualifies as enforcing state law. Based on this showing, Ms. Wood's chilled speech injury is fairly traceable to the Hillsborough County School Board's actions.

Finally, redressability. Redressability considers "whether the injury that a plaintiff alleges is likely to be redressed through the litigation." *Sprint Commc'ns*

*Co., L.P. v. APCC Servs., Inc.*, 554 U.S. 269, 287 (2008) (emphasis removed). The State Defendants don't dispute that an injunction prohibiting them from enforcing section 1000.071(3) against Ms. Wood would likely redress her injury. This makes sense because, as set out above, each State Defendant plays a role in enforcing section 1000.071(3)'s mandate. And for the same reasons that Ms. Wood's injury is fairly traceable to the Hillsborough County School Board, an injunction prohibiting it from enforcing section 1000.071(3) against her would provide substantial redress. Accordingly, Ms. Wood has satisfied all three elements of Article III standing to proceed with her motion for preliminary injunction on her First Amendment claim.

2

Next, Mx. Schwandes's standing to bring their First Amendment claim. In their motion for a preliminary injunction, Mx. Schwandes claims that their speech is being chilled by the State Defendants' enforcement of section 1000.071(3). *See* ECF No. 45 at 2. Mx. Schwandes frames this claim as a prior restraint on their speech.

by a statute or rule . . . .” *Bloedorn v. Grube*, 631 F.3d 1218, 1228 (11th Cir. 2011). Here, Mx. Schwandes has not identified any speech that they *would* engage in at a foreseeable time that is barred by section 1000.071(3).[7] Unlike Ms. Wood, Mx. Schwandes has not averred that they are subject to section 1000.071(3)’s speech restrictions by virtue of any current public employment. Nor has Mx. Schwandes

has met their burden to show an ongoing actual or imminent First Amendment injury for purposes of a preliminary injunction. Accordingly, Mx. Schwandes's motion for a preliminary injunction on their First Amendment claim is due to be denied for lack of standing.

Next, this Court turns to the merits of Plaintiffs' Title VII claims.

B

As to the merits of Plaintiffs' Title VII claims, neither Plaintiff has demonstrated a substantial likelihood of success with respect to their Title VII claims.

First, Ms. Wood. Ms. Wood argues that requiring her to comply with section 1000.071(3) by referring to herself as "Teacher Wood" is an adverse employment action under Title VII. Ms. Wood further argues she faces an "ongoing and irreparable" Title VII injury because she is "forced to live under threat of termination and delicensing" while she is at work. ECF No. 11 at 30. This requirement causes Ms. Wood extreme anxiety. ECF No. 11-1 ¶ 10. Ms. Wood also argues that the impact of section 1000.071(3) is not limited to her subjective feelings—a reasonable person in her position would find their terms and conditions of employment adverse if they were required to introduce themselves using different pronouns.

To succeed under Title VII, Ms. Wood must do more than demonstrate that compliance with section 1000.071(3) is painful. She must assert facts sufficient to

show that the policy constitutes "a serious and material change in the terms, conditions, or privileges of employment." *Crawford v. Carroll*, 529 F.3d 961, 970–71 (11th Cir. 2008). While no bright-line test has been adopted for what type of change counts as "serious and material," in this Circuit, adverse employment actions are generally those "that affect continued employment or pay—things like terminations, demotions, suspensions without pay, and pay raises or cuts—as well as other things that are similarly significant standing alone." *Davis v. Legal Servs. Alabama, Inc.*, 19 F.4th 1261, 1266 (11th Cir. 2021). Direct economic consequences are not necessarily required for such a showing. Standing alone, a seemingly neutral action, such as a transfer to a different position, may be adverse if it involves reduction in prestige or responsibility. *See Holland v. Gee*, 677 F.3d 1047, 1057 (11th Cir. 2012).

At this stage, Ms. Wood has not demonstrated that her required compliance with section 1000.071(3), standing alone, has impacted her salary or her status as a teacher. The record before this Court does not indicate that Ms. Wood was transferred, demoted, or passed over for training or promotion. Further, Ms. Wood has not asserted that the prestige or responsibility of her position as an educator has been diminished. In short, Ms. Wood has not sufficiently demonstrated that she suffered the type of adverse employment action that is actionable under Title VII.

Even though she has not met her burden with respect to suffering an adverse employment action, Ms. Wood could still pursue relief under Title VII on a hostile work environment theory.[8] This would require Ms. Wood to demonstrate that she experiences mistreatment based on her sex and that the mistreatment is "sufficiently severe or pervasive that it can be said to alter the terms, conditions, or privileges of employment." *Monaghan v. Worldpay US, Inc.*, 955 F.3d 855, 861 (11th Cir. 2020). Under this theory, Ms. Wood would not need to prove she suffered a "tangible effect[]" with respect to her employment. *Copeland v. Georgia Dep't of Corr.*, --- F.4th ---, 2024 WL 1316677, at *5 (11th Cir. Mar. 28, 2024) (internal citation omitted).

But succeeding on this theory requires a showing that the workplace is "permeated with discriminatory intimidation, ridicule, and insult . . . ," *Rojas v. Florida*, 285 F.3d 1339, 1344 (11th Cir. 2002), and that the misconduct is either

whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Id.*

Based on the record before this Court, Ms. Wood has simply not presented sufficient facts to demonstrate a substantial likelihood of success under a hostile work environment theory. This Court credits Ms. Wood's declaration. And, after reading Ms. Wood's declaration, this Court can imagine that her workplace may have become hostile after section 1000.071(3) was implemented. However, Ms. Wood has not met her burden to demonstrate as much. Success on the merits cannot rest on this Court's imagination. There is no doubt that Ms. Wood must comply with the law and use the title "Teacher" on a daily basis. There is no doubt that Ms. Wood is not permitted to correct students who misgender her when they accidentally or intentionally refer to her as "Mr." or as "him." Beyond that, however, the record does not reveal how often she is misgendered, or otherwise mistreated, by others in the workplace.[9]

[9] The Eleventh Circuit's recent decision in *Copeland* provides useful guidance regarding

Nor has Ms. Wood sufficiently established, based on this record, that the conduct was severe. Ms. Wood notes that "several students have referred to me using he/him pronouns or by Mr." ECF No. 11-1 at 5. While misgendering can be evidence of sex-based harassment, the circumstances surrounding the misgendering remain unclear. For example, it is not clear whether the misgendering was intentional, or whether Ms. Wood's supervisors condoned, or were even aware of, the specific incidents asserted.

At this stage, Ms. Wood bears the burden to prove that she suffered an adverse employment action or that she faces a hostile work environment.12.1 (n)8etionaxd

court in *Davis* rejected that such circumstances, standing alone, could constitute an adverse employment action.[10] Instead, the court reasoned that a paid suspension represented "a useful tool" an employer could use to "investigate when an employee has been accused of wrongdoing" and that employers should not be exposed to Title VII liability for using it. *Davis*, 19 F.4th at 126712671.231(m)12.8 (p)-4.4 ( 0 -2.291 TD[(VI)35

Accordingly, both Plaintiffs have failed to demonstrate a likelihood of success on the merits with respect to their Title VII claims.

Here, Defendants argue that Ms. Wood's speech falls squarely within the scope of her official duties. ECF No. 60 at 37. Defendants' argument is simple—"Teachers are hired to speak to students; it's their job." *Id*. Thus, according to Defendants, every word that comes out of a teacher's mouth while speaking to students at school is subject to government restriction without First Amendment protection, end of story. But *Kennedy* rejects the notion that anything a teacher says at school is automatically government speech.[15] So, the question becomes whether identifying yourself to students throughout the school day is government speech.

inquiry" this Court must perform involves a context-specific and fact-intensive review to determine whether a public employee's speech is made pursuant to their official duties. Accordingly, as *Kennedy* and *Garcetti* require, this Court proceeds with its own "practical inquiry" to determine whether Ms. Wood is speaking pursuant to her official duties whenever she provides her pronouns or title to students while at work.

Consider the nature of the expression. Ms. Wood wishes to refer to herself as "Ms. Wood" and disclose her preference to be referred to with "she/her" pronouns. She does this because, for her, the title "Ms." and the pronouns "she/her" are directly tied—indeed, "essential"—to her identity as a woman. *See* ECF No. 11-1 ¶ 2 ("I am a transgender woman. My gender identity is female, but my sex assigned at birth is male. I socially transitioned to being a woman in 2020, everywhere in my life . . . . Being able to express myself as a woman publicly, including by using my Ms. title and she/her pronouns, is essential to my identity."). Like Coach Kennedy's professed faith, Ms. Wood's preferred pronouns and title are uniquely personal to her. In the same sense that Coach Kennedy's public prayers identify him as a man of faith, Ms. Wood's expression of her preferred title and pronouns identify her as a woman.

Before the challenged provision went into effect, she referred to herself as "Ms. Wood" in any communications she had with students. *Id*. Thus, her speech occurred throughout the school day, during *any* communications Ms. Wood had with students, regardless of whether Ms. Wood was instructing her class.

Certainly, no one would mistake Ms. Wood's reference to herself—based on her personal identity—to be conveying the government's message regarding her identity. Moreover, neither Coach Kennedy's public prayers nor Ms. Wood's expression of preferred pronouns in school seeks "to convey a government-created message." Both Coach Kennedy and Ms. Wood are expressing their own personal messages about their own personal identities to their students—identities that exist independent from their roles as coach or teacher. Coincidentally, in both cases, the message of both their public prayer and their preferred title and pronouns appears to be at odds with the messages the government would have them express about their identities while at work.

Apparently recognizing the limitations *Kennedy* and *Garcetti* place on the extent to which the government can control its employees' speech, Defendants attempt to redefine their speech code as a regulation of "curricular" speech in line with the State of Florida's "pedagogical interest" in controlling the message on sex and gender identity at school. Why do Defendants attempt to force Ms. Wood's desired speech into the "curriculum" category? Perhaps they believe that reframing

the issue as one of competing pedagogical choices would avoid the First Amendment problem that the State of Florida has, once again, created for itself. But Defendants' position is undercut by the scope of the challenged restriction.

Section 1000.071(3) does not apply solely to teachers or coaches—public school employees that one may ordinarily associate with *teaching* students. The restriction applies to *all* employees and contractors of public K-12 educational institutions. *See* § 1000.071(3), Fla. Stat. ("*An employee or contractor of a public K-12 educational institution*

*Village Sch. Dist.*, 624 F.3d 332 (6th Cir. 2010) and *Mayer v. Monroe Cnty. Comm. Sch. Corp.*, 474 F.3d 477 (7th Cir. 2007)). These cases deal with true "curricular" disputes regarding the materials or subjects the teachers had been hired to teach and do not answer the questi

and pronouns to students. Her self-identifying speech, which effectively signals her personal identity as a woman, is independent from the speech she has been hired to provide. It owes its existence not to her professional responsibilities as a math teacher, but instead to her identity as a woman—an identity that remains true to Ms. Wood both inside and outside the classroom.

In short, this Court finds that Ms. Wood is speaking as a citizen when she provides her preferred title and pronouns to students. Next, this Court considers whether such speech is a matter of public concern.

2

Having concluded that Ms. Wood is speaking as a citizen when she shares her title ("Ms. Wood") and preferred pronouns ("she/her") with her students, this Court must next determine whether this speech is on a matter of public concern. *Garcetti*, 547 U.S. at 418. Speech that can be "fairly considered as relating to any matter of political, social, or other concern to the community," or which "is a subject of legitimate news interest; that is, subject of general interest and of value and concern to the public," is considered speech on a matter of p0.004 T8w (c)123.5 (c)12.1 (h o)8.3 (

*see also Mitchell v. Hillsborough Cnty.*, 468 F.3d 1276, 1283 (11th Cir. 2006) (quoting *Connick*, 461 U.S. at 147–48).

The Eleventh Circuit has recognized that "[c]ontent is undoubtedly the most

the national conversation," but "[o]n the other hand, many critics have decried gender-appropriate language as 'political correctness run amok' among many other less courteous critiques"). Defendants agree that "the use of preferred pronouns and titles 'has produced a passionate political and social debate.' " ECF No. 60 at 9 (quoting *Meriwether*, 992 F.3d at 508).

Here, the State of Florida has decided to weigh in on this "passionate political and social debate." Indeed,

communicating her preferred pronouns and title to her students, Ms. Wood is sending a message to the public—in this case, a message that they claim the State of Florida has the right to control. *See*

school is essential to her "basic humanity," as it publicly declares her existence as "a transgender person." ECF No. 11-1 ¶ 21. And nobody seems to dispute that the existence of transgender people in public schools is a matter of public concern in Florida. *See, e.g.*, *Adams ex rel. Kasper v. Sch. Bd. of St. Johns County*, 57 F.4th 791, 817–21 (11th Cir. 2022) (Lagoa, J., specially concurring) (noting concerns about equating "sex" to "transgender status" with respect to Title IX's protections in public schools, which could lead to "a commingling of the biological sexes in the female athletics arena" that "would significantly undermine the benefits afforded to female athletes under Title IX's allowance for sex-separated sports teams"); *id*. at 838–39 (Pryor, J., dissenting) (discussing evidence of Florida school district's task force formed to review policies relating to, among other issues, policies "concerning the treatment of transgender students"); *see also* ECF No. 77-1 at 5 (settlement agreement from Case No.: 4:22cv134-AW/MJF addressing scope of Florida law limiting classroom instruction on "gender identity," and narrowing scope of law so as to permit "transgender teachers [to put] a family photo on their desk . . . or [to] refer[] to themselves and their spouse (and their own children)").

Here, the record demonstrates that Ms. Wood is motivated to speak publicly about her identity, as the purpose of sharing her preferred title and pronouns serves to publicly affirm her identity as a transgender woman. That Ms. Wood's gender identity is a deeply personal matter for her does not eliminate the public concern

attendant to Ms. Wood’s self

politicize deeply personal matters only to then deprive citizens of First Amendment protections on the ground that those matters are indeed deeply personal.

Defendants' argument in opposition also necessarily depends upon this Court first concluding that the speech at issue is pursuant to official duties. *See* ECF No. 60 at 43–44 (citing *Evans-Marshall*, 624 F.3d at 342). But, as this Court has already explained at length, Ms. Wood *is* speaking as a citizen when she shares her preferred

government's interests *always* trump your interests in speaking as a citizen on a matter of public concern, Defendants are incorrect. *See Kennedy*, 597 U.S. at 543–44.

Next, Defendants claim that Ms. Wood's speech would impede her job duties, because one of her duties is to "further the State's pedagogical agenda in interactions with students." ECF No. 60 at 46–47. To the extent Defendants simply repackage their failed government speech argument, that dog won't hunt.[19] As explained at length *supra*, if the matter of Ms. Wood's pronouns and title were of a curricular nature, Ms. Wood's claim likely would not make it past *Garcetti*'s step one.

Finally, Defendants' argument also suggests that even if a teacher is speaking as a citizen on a matter of public concern, and that speech conflicts with the State's official viewpoint on a given topic, then the State's interest in furthering its viewpoint necessarily trumps the teacher's interest in speaking. In doing so, the Defendants cite no case that supports the proposition that the State's interest in

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open about being a transgender woman and has never hidden that fact from her superiors, coworkers, or students. ECF No. 11-1 ¶¶ 3, 6. According to Ms. Wood, her principal told her she would be supported in this regard.

This is particularly troubling given that section 1000.071(3) incorporates a viewpoint discriminatory prohibition on Ms. Wood's speech. The State of Florida has expressly adopted a viewpoint on the use of pronouns that do not align with a person's sex assigned at birth. § 1000.071(1), Fla. Stat. ("[I]t is false to ascribe to a person a pronoun that does not correspond to such person's sex."). And Section 1000.071(3) extends the State's viewpoint to censor speech that runs counter to it. As the Eleventh Circuit recently noted, government penalization of certain viewpoints is "the greatest First Amendment sin." *Honeyfund.com Inc.*, 94 F.4th at 1277. But here, Defendants suggest that the State can penalize Ms. Wood for expressing a contrary viewpoint with respect to her pronouns.

What's more, this prohibition applies to everyone who works in public K8.4 (iz)3.5 (e)3.

preferred pronouns with students outweighs the State of Florida's interests in enforcing a viewpoint-based restriction on her speech. Accordingly, Ms. Wood is substantially likely to succeed on the merits of her First Amendment claim.

III

Recall that the remaining preliminary injunction factors are (1) th(m)4.3 (o)8.2 (nArti12.2

outlined above, Ms. Wood has established that she is substantially likely to succeed on her First Amendment claim because section 1000.071(3), by its text, prohibits her from providing her preferred personal pronouns and title to her students. That is "an unconstitutional direct penalization of protected speech," which, as the Eleventh Circuit has repeatedly concluded, "constitutes a per se irreparable injury." *Otto v. City of Boca Raton*

the delay and the reason, if one is given, for it. Transcript (Tr.) at 23[24]

2007) (holding that Eleventh Circuit caselaw on direct-penalization First Amendment violations required a finding of irreparable harm despite a seven-month delay) (citing *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006)). Simply put, a few months' delay does not, as a rule, preclude a finding of irreparable harm. It is, at most, one factor to "be considered." *Larweth*, 841 F. App'x at 159.

Here, this Court finds that Ms. Wood's delay does not undermine her showing of irreparable h

*DeSantis*, 559 F. Supp. 3d 1238, 1285 (N.D. Fla. 2021) (examining

One week later, Ms. Wood's principal and assistant principal of curriculum told her that she needed to erase "Ms. Wood" and "she/her" from her whiteboard to comply with state law and that she could have her teaching certificate taken away if she did not do so. *Id*. ¶ 13. Afterward, Ms. Wood followed up with a meeting with her Chief of Staff for the school district regarding the challenged provision. *Id*. ¶ 16. She was again "told the title and pronoun policy was state law and out of the district's hands." *Id*. It was at this point, according to Ms. Wood, that she "realized there was nothing the district could do [and] resolved to fight the state law." *Id.*

Based on the record at this stage, this Court finds that Ms. Wood acted with "reasonable diligence" in seeking preliminary injunctive relief. *See Benisek v. Lamone*, 585 U.S. 155, 159 (2018). Far from spending the semester sitting on her hands, Ms. Wood engaged in a thorough dialogue at the local level—that is, with her school and her school district—to find a solution. That those efforts were unsuccessful does not undermine their validity as a reason for her delay. The law does not penalize a plaintiff who seeks to ameliorate a statute's chill on her speech by engaging in good faith with the authorities enforcing that statute. That is what Ms. Wood did here.

The law does not demand that a plaintiff move for preliminary injunction the moment a challenged statute is enacted. Such an approach often poses ripeness issues. *See, e.g.*, *Falls v. DeSantis*, Case No.: 4:22cv166-MW/MJF, 2023 WL

*Wollschlaeger v. Governor, Fla.*, 848 F.3d 1293, 1304 (11th Cir. 2017) (quoting *Susan B. Anthony List*, 573 U.S. at 159); *see NFC Freedom, Inc. v. Diaz*, --- F. Supp. 3d ---, Case No.: 4:23cv360-MW/MJF, 2023 WL 7283920 (N.D. Fla. Nov. 3, 2023)

it took her to secure counsel and file suit. This Court has considered the delay and weighed it against Ms. Wood's justifications for the delay, while also mindful of the principle that "direct penalization of protected speech . . . constitutes a per se irreparable injury." *Otto*, 981 F.3d at 870 (citation omitted). On balance, this Court finds that Ms. Wood has demonstrated that she would suffer an irreparable injury absent an injunction, notwithstanding her delay in seeking relief. Accordingly, the irreparable harm factor weighs in favor of an injunction here.

As to the remaining preliminary injunction factors, weighing Ms. Wood's First Amendment injury against Defendants' interest, the scale tips decisively in Ms. Wood's favor. *See KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006). This is because the state "has no legitimate interest in enforcing an unconstitutional ordinance." *Id.* And an injunction would not be adverse to the public interest. After all, as noted above, "[t]he public has no interest in enforcing an unconstitutional ordinance." *Id.* at 1272–73. As the Supreme Court has recognized, "[t]he First Amendment, in particular, serves significant societal interests." *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 776 (1978).

In sum, because Ms. Wood has carried her burden as to all four of the preliminary injunction factors with respect to her First Amendment claim, this Court finds that she is entitled to a preliminary injunction.

B

Having determined that Ms. Wood is entitled to a preliminary injunction, this

partial invalidation so narrows it as to remove the threat or deterrence to constitutionally protected expression' ").

In Ms. Wood's case, she has not alleged a First Amendment overbreadth claim in her complaint. *See* ECF No. 1. Nor has she persuasively explained why she is entitled to a statewide injunction. As the Eleventh Circuit reiterated in *HM Florida-Orl, LLC*, injunctions should generally "be limited in scope to the extent necessary to protect the interests of the parties." 2023 WL 6785071, at *3 (quoting *Garrido v. Dudek*, 731 F.3d 1152, 1159 (11th Cir. 2013)). It doesn't matter that Ms. Wood described her claim as a "facial challenge" at the hearing on her motion—a party's characterization of their challenge as facial or as-applied is not determinative, *Jacobs v. Florida Bar*, 50 F.3d 901, 905 n.17 (11th Cir. 1995). a

1000.071(3). *See* ECF No. 61 at 7. However, section 1000.071(3)'s unlawful impact on Ms. Wood's First Amendment rights weighs against requiring a bond, so this Court waives the bond requirement.

V

Finally, having determined a preliminary injunction is warranted, this Court addresses whether it will stay that injunction pending appeal. Stays pending appeal are governed by a four-part test: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest

against a single person—Ms. Wood. Defendants have every right to appeal, and this Court sees no reason to delay Defendants in seeking an appeal by requiring them to move to stay under Rule 62.

VI

This Court is reminded of Walt Whitman's "Song of Myself," a gleefully sweeping masterpiece of American poetry that opens with these lines:

> I celebrate myself, and sing myself,
> And what I assume you shall assume,
> For every atom belonging to me as good belongs to you.

In sharing her preferred title and pronouns, Ms. Wood celebrates herself and sings herself—not in a disruptive or coercive way, but in a way that subtly vindicates her identity, her dignity, and her humanity. Section 1000.071(3) has silenced her and, by silencing her, forced her to inhabit an identity that is not her own. The State of Florida has not justified this grave restraint, and so the United States Constitution

2.