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15 **UNITED STATES DISTRICT COURT**

16 **NORTHERN DISTRICT OF CALIFORNIA**

17 **SAN FRANCISCO DIVISION**

18 ALISON COLLINS

19 Plaintiff,

20 vs.

21 SAN FRANCISCO UNIFIED SCHOOL
22 DISTRICT, et al.

23 Defendants.

Case No.: 3:21-cv-02272-HSG

**APPLICATION AND MOTION FOR
ORDER DIRECTING DEFENDANTS TO
SHOW CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT ISSUE
RESTORING PLAINTIFF TO HER
POSITION AS VICE PRESIDENT OF
THE SAN FRANCISCO UNIFIED
SCHOOL DISTRICT BOARD AND TO
HER COMMITTEE APPOINTMENTS**

Date: Thursday, August 19, 2021

Time: 2:00 PM

Courtroom: Courtroom 2 – 4th Floor

Judge: Honorable Haywood S. Gilliam, Jr.

NOTICE OF MOTION AND MOTION

1
2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on June 30, 2021 at 1:30 pm in Department 6, or as soon
4 thereafter as the matter may be heard in Courtroom 6 of the above-entitled Court, located at 1301
5 Clay Street, Oakland, CA 94612, Allison Collins will and hereby does move this Court for an order
6 directing Defendants to show cause why a preliminary injunction should not issue restoring
7 Plaintiff to her position as vice president of the San Francisco Unified School District Board and
8 to her committee appointments

9 This motion is based on this Notice of Motion and **MOTION FOR ORDER**
10 **DIRECTING DEFENDANTS TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION**
11 **SHOULD NOT ISSUE RESTORING PLAINTIFF TO HER POSITION AS VICE**
12 **PRESIDENT OF THE SAN FRANCISCO UNIFIED SCHOOL DISTRICT BOARD AND**
13 **TO HER COMMITTEE APPOINTMENTS** and Memorandum of Points and Authorities in
14 Support Thereof, the Declarations of Allison Collins; the papers and pleadings on file in this action;
15 other oral and/or documentary evidence as may be presented at the hearing on this motion.

16
17 **Dated: May 26, 2021**

RESPECTFULLY SUBMITTED,
LAW OFFICES OF BONNER & BONNER

18
19 /s/Charles A. Bonner
Charles A. Bonner

20 **Attorney for Plaintiff**

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 COMMISSIONER COLLINS requests this Court to restore her position as Vice President
4 of the S. F. Unified School District Board (“Board”), as well as her memberships on the Board’s
5 committees upon which she served prior to her unlawful removal in violation of her First
6 Amendment right of free speech. The only means by which to remedy COMMISSIONER
7 COLLINS’ immediate and continuing irreparable harm and injuries is for this Court to issue a
8 temporary restraining order and injunction against Defendant San Francisco Unified School
9 District (“SFUSD”) and its Board by ordering them to restore the status quo by returning
10 COMMISSIONER COLLINS to the Board positions she held prior to DEFENDANTS engaging
11 in their categorically unlawful conduct.

12 As there is a strong likelihood that COMMISSIONER COLLINS will prevail on the merits
13 of her underlying First Amendment rights claim founded on DEFENDANTS’ unlawful actions
14 that were expressly based upon speech that was exercised well before COMMISSIONER
15 COLLINS was an elected member of the School District Board, this Court is well justified in
16 issuing a TRO as money damages can in no way remedy the irreparable damages, harms and
17 injuries that COMMISSIONER COLLINS is suffering and will continue to suffer were a TRO not
18 issued.

19 On March 24, 2021, COMMISSIONER COLLINS was summarily and without adequate
20 prior legal notice, removed from her position as Board Vice President, as well as the entirety of
21 her Board committee assignments **solely** because of the lawful exercise of her First Amendment
22 rights as a private citizen some two (2) years before she was elected to the Board and four (4) years
23 before the date of DEFENDANTS’ illegal actions. DEFENDANTS removed COMMISSIONER
24 COLLINS from her positions knowing that there was absolutely no evidence that she had repeated
25 the constitutionally protected remarks she made as a private citizen after she was elected to the
26 Board.

27 DEFENDANTS removed COMMISSIONER COLLINS despite the fact that there was no
28 evidence that she had ever publicly discriminated against any racial or ethnic group or had

1 advocated for such discrimination, both as a private citizen and while sitting as a Board member,
2 either in her role as Board Vice President and/or as a Board committee representative. At all
3 relevant times, DEFENDANTS knew that COMMISSIONER COLLINS would prevail on the
4 merits of her First Amendment claim because not only had DEFENDANTS taken an oath to
5 uphold the Constitution, but also because DEFENDANTS' Board resolution that stripped
6 COMMISSIONER COLLINS of her Board positions was based solely upon COMMISSIONER
7 COLLINS' speech that was unequivocally exercised while she was an unelected private person
8 some two (2) years before she was elected to the Board.

9 On March 24, 2021, DEFENDANTS drafted a "Resolution" to remove COMMISSIONER
10 COLLINS from her position as Vice-President of the Board. Thereafter, with only 24-hour notice,
11 DEFENDANTS hastily convened the Board to vote on their Resolution. The Board passed the
12 resolution with five votes in favor and two votes against, with COMMISSIONER COLLINS and
13 Board President Gabriela Lopez casting the two dissenting votes.

14 DEFENDANTS' actions were premised on a series of First Amendment protected tweets
15 that were published nearly four and a half years prior when COMMISSIONER COLLINS was a
16 private citizen and not yet a Board member or a government employee. The December 4, 2016
17 tweets were as follows:

18 1. Hey Twitter! Does anyone know about any news stories highlighting hate speech
19 or bullying of Asian students? Please send them my way.

20 2. I'm looking to combat anti-black racism in the Asian community at my daughters'
21 mostly Asian Am school.

22 3. Many Asian Ss and Ts I know won't engage in critical race convos unless they
23 see how they are impacted by white supremacy.

24 4. I grew up in mostly Asian Am schools and know this experience all too well.
25 Many Asian Am. believe they benefit from the "model minority" BS.

26 5. In fact many Asian American Ts, Ss, and Ps actively promote these myths. They
27 use white supremacist thinking to assimilate and "get ahead".

28 6. Talk to many @thelowell parents and you will hear praise of Tiger Moms and
disparagement of Black/Brown "culture".

1 7. I even see it in my FB timeline with former HS peers. Their TLs are full of White
and Asian ppl. No recognition #BlackLivesMatter exists.

2 8. 2 [weeks]was ago, my mixed-race/Black daughter heard boys teasing a Latino
3 about "Trump, Mexicans and the KKK." The boys were Asian- American.

4 9. She spoke up when none of the other staff did. The after-school counselor was
5 Asian.

6 10. My best friend from school says she feels alone in the Chinese community. She
7 feels ostracized when she speaks up against anti-black hate.

8 11. Where are the vocal Asians speaking up against Trump? Don't Asian Americans
9 know they are on his list as well?

10 12. Do they think they won't be deported? profiled? beaten? Being a house n****r
11 is still being a n****r. You're still considered "the help."

12 DEFENDANTS' "Resolution" singularly relied upon COMMISSIONER COLLINS'
13 speech that she exercised prior to attaining her elected office which, due to the far reach of the
14 internet, has significantly and irreparably injured and obstructed her ability to discharge her duties
15 as a Board member and has caused irreparable injuries to her reputation as both an elected official
16 and private citizen. The ramifications of DEFENDANTS' resolution have similarly hampered her
17 ability to serve and effectively represent her constituents and the citizens of San Francisco.

18 This instant Motion for Order to Show Cause respectfully requests this Court to issue
19 DEFENDANTS an Order to Show Cause why an injunction should not issue that would restore
20 COMMISSIONER COLLINS to her rightful position as the Board's Vice-President and to each
21 of her Board's committee assignments that she held prior to DEFENDANTS publicly penalizing
22 her for her protected speech.

23 **II. STATEMENT OF FACTS¹**

24 During the November 6, 2018 election, COMMISSIONER COLLINS was elected to the San
25 Francisco Unified School District Board of Education, where she continues to serve as a Board
26 commissioner. Out of the nineteen candidates who ran during the November 6, 2018 election,
27 COMMISSIONER COLLINS was elected with a plurality of the votes cast, totaling 122,865

28 _____
¹ Plaintiff hereby incorporate all facts stated in her Declaration, as fully set forth herein.

1 which represented 15% of the 817,920 total votes cast.² Declaration of Alison Collins, “Collins
2 Dec.” ¶8.

3 On March 23, 2021, at 2:30 p.m., DEFENDANT FAAUGA MOLIGA announced on Twitter
4 that “Commissioner Lam & I will be submitting resolution at 3/25 special meeting to remove
5 Commissioner Collins as V.P. and from all Committees to which she is assigned.” Collins, Dec.
6 ¶9. In violation of SFUSD Board Rules and Procedures providing that items be placed on the
7 agenda by the Board’s President, DEFENDANT MOLIGA (1) forced Resolution No. 213-25A1
8 Assertion of No-Confidence (“Resolution”) onto the Board’s agenda, (2) moved said Resolution
9 into a special closed session meeting, and (3) removed COMMISSIONER COLLINS from her
10 position as Vice President and from her place on the Board’s committees. Collins Dec. ¶9.

11 DEFENDANTS MOLIGA and LAM based the Resolution on tweets COMMISSIONER
12 COLLINS had made as a private citizen some two years before being elected to the Board. Diane
13 Yap, a Lowell High School alumna who was critical of a resolution COMMISSIONER COLLINS
14 had authored seeking to open Lowell High School’s enrollment to Black, Latinx, immigrant, and
15 disabled students, had combed through years of COMMISSIONER COLLINS’ tweets searching
16 for any disparaging ‘dirt’ on COMMISSIONER COLLINS in order to politically attack her on
17 account of her affirmative advocacy to increase diversity at Lowell High School. Collins Dec.
18 ¶¶10, 11.

19 DEFENDANTS colluded with and conspired with Diane Yap on pursuing a media campaign
20 intended to malign COMMISSIONER COLLINS despite Ms. Yap’s own repeated expressions of
21 racially disparaging statements against parents of Black and Latinx students, suggesting that these
22 students were academically inferior and undeserving of enrollment at Lowell. Collins Dec. ¶11.
23 DEFENDANTS MOLIGA and LAM’s Resolution propagated false statements that slandered
24 COMMISSIONER COLLINS’ character while demanding her resignation from the Board. On
25 March 19, 2021, DEFENDANT LAM called COMMISSIONER COLLINS and demanded her
26 resignation from the Board, threatening that “if you do not resign, it will get messy!”
27 COMMISSIONER COLLINS did not resign. The Resolution called for the removal of

28 _____
² <https://sfelections.sfgov.org/november-6-2018-election-results-summary>

1 COMMISSIONER COLLINS as Vice President, and removal from membership in all committees
2 on which she served. Collins Dec. ¶12.

3 On March 25, 2021, the Resolution was approved by a vote of 5-2. In so doing,
4 DEFENDANTS caused irreparable injury to COMMISSIONER COLLINS by depriving her of
5 the ability to effectively serve the entirety of the City's students and their parents, as well as the
6 BIPOC ("Black, Indigenous, People of Color") community, in her role as Vice President and
7 committee member. DEFENDANTS' illegal Resolution that unjustly penalized the only Black
8 person on the Board, severely undermined COMMISSIONER COLLINS' ability to advocate for
9 and introduce policies, measures and actions that were not only in the best interest of all the City's
10 students and parents, but in particular for the BIPOC and other undeserved student populations
11 and their parents. As COMMISSIONER COLLINS is one of the most active and accomplished
12 members on the Board, DEFENDANTS' actions have also severely hampered the work she was
13 elected to do and have additionally caused continued irreparable injury to her constituents. In the
14 past two (2) years, COMMISSIONER COLLINS has drafted more resolutions focused on cultural
15 equity and access than any other Board Commissioner and has rarely missed a meeting. Collins
16 Dec. ¶13.

17 Additionally, and most compellingly, DEFENDANTS' Resolution has placed
18 COMMISSIONER COLLINS and her family at substantial physical, political, professional and
19 economic risk.³

20 DEFENDANTS' deprivation of COMMISSIONER COLLINS' private protected speech is
21 unequivocally an irreparable injury because there exists no compelling governmental interest
22 supporting DEFENDANTS' conduct that comparatively outweighs COMMISSIONER
23 COLLINS' paramount First Amendment rights. With such paucity of rationale and legal
24 justification for expressly violating COMMISSIONER COLLINS' protected speech,
25 DEFENDANTS, as elected officials who swore to uphold the rights endowed in the Constitution,
26 have intentionally failed to uphold such rights when penalizing COMMISSIONER COLLINS for
27 her protected speech rights under the First Amendment. Collins Dec. ¶14.

28 ³ [https://go.boarddocs.com/ca/sfusd/Board.nsf/files/BZFRPW6F035A/\\$file/Lam%20Moliga%20Assertion%20No-Confidence.pdf](https://go.boarddocs.com/ca/sfusd/Board.nsf/files/BZFRPW6F035A/$file/Lam%20Moliga%20Assertion%20No-Confidence.pdf)

1 Before the Board’s vote on the illegal Resolution, COMMISSIONER COLLINS, along
2 with President Gabriela López, protested and gave notice that the Board’s proposed action was not
3 only an express violation of the Board rules, but an unjustified deviation from the normal Board
4 practices. COMMISSIONER COLLINS challenged whether DEFENDANTS had complied with
5 the enumerated rules mandating the placement of a “Non-routine Matter” on the agenda. Collins
6 Dec. ¶17. Nevertheless, DEFENDANTS unapologetically ignored these objections voiced by both
7 the Board’s President and the Vice President. Collins Dec. ¶16.

8 The Board’s mandatory rule provided that “non-routine matters *shall* generally appear on
9 the...agenda for at least two (2) days prior to adoption....” However, the Resolution was introduced
10 for a vote in only one meeting, and it was not introduced at a regular Board meeting but a special
11 meeting which, in fact, was a Closed Session Meeting to discuss the interim superintendent. This
12 mandatory rule was violated in every aspect, and such conduct summarily violated the Brown Act
13 whose purpose is to ensure public transparency in decision making of district policies. See Board
14 Rules and Procedures 9322 on Board Docs under the ‘Policies’ tab; Collins Dec. ¶17.

15 Additionally, COMMISSIONER COLLINS, along with President López, protested that the
16 DEFENDANTS were violating the Board’s Rule pertaining to crafting and ratifying the Board’s
17 agenda:

18 “The Board President, Vice President, Superintendent, and/or designee(s) shall review the
19 agenda before it is printed and shall have final authority over whether each item on the agenda
20 is placed in accordance with Board policy. At his/her discretion the president may delay
21 placing a resolution for first reading on the agenda for not more than one (1) meeting if there
22 are more agenda items than are manageable.” *Id.*

23 Collins Dec. ¶19.

24 Specifically, before the Resolution vote was taken during the March 25th board meeting in
25 order to strip COMMISSIONER COLLINS of her position and committee assignments,
26 COMMISSIONER COLLINS, at 1:23:03 video recording time, objected to and protested against
27 DEFENDANTS’ actions. Collins Dec. ¶20. During the March 25th board meeting and before the
28 vote to approve the Resolution, President López, at 1:27:44 video recording time, also noted the
irregularity of the process by commenting that the means by which DEFENDANT MOLIGA had

1 pushed the Resolution onto the agenda circumvented her Presidential leadership authority. Collins
2 Dec. ¶21.

3 In fact, throughout the preceding two (2) years that COMMISSIONER COLLINS had
4 served on the Board, at no time had a “non-routine matter” been placed on the agenda via a Tweet.
5 Collins Dec. ¶22. As stated above, President López and COMMISSIONER COLLINS strongly
6 opposed and protested the impropriety of placing the constitutionally infirm Resolution on the
7 Board’s agenda as it was in express disregard of the following Board Rule:

8 “Agenda Preparation. The Superintendent shall develop the agenda for each regular and
9 special meeting in accordance with Board policy. Each agenda shall reflect the district’s
10 vision and goals and the Board’s focus on student learning.”

11 However, in their rush to judgment and with a transparent aim to garner political advantage,
12 DEFENDANTS ignored both President Gabriela’s admonition and COMMISSIONER COLLINS’
13 protest that DEFENDANTS’ actions were in express violation of not only the procedural rules and
14 protocols, but in the Board’s expressly stated core mission that, “each agenda shall reflect the
15 district’s vision and goals and the Board’s focus on student learning”. Collins Dec.¶ 12.

16 Nevertheless, the Resolution, whose effect was to expressly violate COMMISSIONER
17 COLLINS right to protected speech, was added to the Board’s agenda by way of the highly
18 irregular, unlawful and preposterous means of a Tweet from DEFENDANT MOLIGA’S Twitter
19 account. Collins Dec.¶ 23. The illegal Board Resolution was drafted in the following manner:
20 (Exhibit A, Collins Dec.24 ¶).

21 **SFUSD BOARD RESOLUTION NO. 213-25A1 ASSERTION OF NO-CONFIDENCE**

22 “For Adoption on Suspension of the Rules at First Reading

23 Subject: Resolution No. 213-25A1 Assertion of No-Confidence - Commissioners Jenny
24 Lam and Faauga Moliga

25 WHEREAS: Elected officials are community leaders, and students and their families look
26 to them for guidance; and

27 WHEREAS: The inflammatory statements made by Commissioner Collins towards the
28 Asian American community in 2016 perpetuate gross and harmful stereotypes and leave
no room for nuance or potential misunderstanding; and,

1 WHEREAS: Our relationship with elected officials must be predicated on mutual respect,
2 and when our elected officials falter, we are faced with the difficult decision of how to
hold them accountable; and

3 WHEREAS: When the social media comments resurfaced, what mattered most was that
4 she, as a leader and elected official, accept responsibility and atone for the trauma
inflicted on the community by her words; and

5 WHEREAS: Although Commissioner Collins has acknowledged that her words may
6 have caused pain, her public statements to-date have fallen short of sincere recognition of
7 the harm she has caused and Vice President Collins does not seem to take meaningful
responsibility for her actions.

8 THEREFORE, BE IT RESOLVED: That on behalf of the 54,000 thousands of students
9 in the San Francisco Unified School District, the Senior Administrative Staff, the elected
10 officials representing all levels of San Francisco government who have requested that
Commissioner Collins resign, the Commissioners of the San Francisco Board of
11 Education have lost confidence in Commissioner Collins and her ability to focus on the
pressing needs of the district at this time; and

12 FURTHER BE IT RESOLVED: That should Commissioner Collins not resign, the San
13 Francisco Board of Education moves to remove her from her leadership position as Vice
14 President and from all committees of the San Francisco Board of Education for the
duration of her term; and

15 BE IT FURTHER RESOLVED: That the focus of the San Francisco Board of Education
16 is the equitable re-opening of schools for our students, the health and safety of our
17 faculty, staff, administrators, students, and families, and ensuring the financial stability of
the district.

18 Special Meeting 3/25/21” Collins Dec. ¶26.

19 **IRREPARABLE INJURY**

20 **Irreparable Injury Caused by Stripping COMMISSIONER COLLINS of Her Position**
21 **as Vice President And Committee Memberships:**

22 DEFENDANTS’ Resolution caused COMMISSIONER COLLINS the following irreparable
23 injuries:

- 24 1. Stripping COMMISSIONER COLLINS of her unanimously elected position as Board Vice-
25 President and committee membership where DEFENDANTS’ conduct was without a
26 compelling governmental reason that outweighed COMMISSIONER COLLINS’ paramount
27 First Amendment rights as a private, non-governmental employee;
28

- 1 2. Denying COMMISSIONER COLLINS due process without adequate notice and opportunity
2 to prepare a meaningful response to DEFENDANTS’ Resolution;
- 3 3. Invading COMMISSIONER COLLINS’ right of Privacy under both Article 1, Section 1 of the
4 California Constitution and the Fourth Amendment of the United States Constitution by
5 publicizing and propagating a matter of employment relations;
- 6 4. Precluding COMMISSIONER COLLINS from executing the roles and responsibilities
7 delegated to her as Vice-President as outlined in Board Rule and Procedure 9121.1. “The Board
8 Rule and Procedure 9121.1 states: “Vice President. This Rule and Procedure applies to the San
9 Francisco Unified School District and the County Office of Education. In addition to
10 performing the duties of the Board of Education's President in the President's absence, and
11 assuming the office of the President in the event the president leaves office before his/her term
12 is expired, pursuant to Board Rules and Procedures 9121, the Vice President shall also preside
13 at all meetings of the Committee of the Whole, Closed Session and at other meetings as
14 designated by the President in accordance with Board rules;”
- 15 5. Precluding COMMISSIONER COLLINS from participating in joint S.F. City and S.F. Board
16 of Education meetings as the Board’s representative. This includes serving on the SF Board of
17 Supervisors RISE Task Force to which she was told by the President she would be assigned to
18 serve. This important city task force plans to define a city district partnership to support
19 philanthropic investment in public education. This is work that COMMISSIONER COLLINS
20 has been shepherding since before she was on the Board. Due to DEFENDANTS’ conduct,
21 she is now effectively removed from a body whose work she was pivotal in advancing;
- 22 6. Precluding COMMISSIONER COLLINS from participating in reviewing the Board’s agendas
23 where under Board Rule 9322, the Vice President is to work with the Superintendent, Deputy
24 Superintendents and Board President each week to determine items for the agenda.
25 Determining items for the agenda helps drive policy discussions. COMMISSIONER
26 COLLINS is deprived of this imperative determination that fundamentally sets the district’s
27 priorities;

- 1 7. Precluding COMMISSIONER COLLINS from attaining the position of Board President,
2 where holding the position of Vice-President usually leads to the appointment as Board
3 President. In holding the position of Vice President, COMMISSIONER COLLINS was
4 undoubtedly in line to become Board President in the upcoming year which constitutes
5 COMMISSIONER COLLINS' last term in office. It is a common practice to elevate the Board
6 Vice President to President the following year. Despite COMMISSIONER COLLINS
7 obtaining a record of achievement in her role as Board Vice President, the Board's unlawful
8 action now means it is extremely unlikely COMMISSIONER COLLINS will be Board
9 President during COMMISSIONER COLLINS' last term of office. Thus, as an overt act in
10 furtherance of DEFENDANTS' plan, scheme, agreement and conspiracy, DEFENDANT
11 LAM nominated DEFENDANT MOLIGA to be Vice President. DEFENDANTS LAM and
12 MOLIGA drafted the resolution to remove COMMISSIONER COLLINS and have positioned
13 themselves to be next in line. This blatant and unlawful power grab illustrates that they clearly
14 understand the real and perceived value of the office. DEFENDANTS conspired to use
15 COMMISSIONER COLLINS' private, pre-elected tweets in order to spread malicious lies
16 about COMMISSIONER COLLINS' character in order for them to advance politically;
- 17 8. Precluding COMMISSIONER COLLINS to speak as the Board President's representative as
18 otherwise afforded the Vice President under Board Rule 9121.1 and, as a result,
19 COMMISSIONER COLLINS is no longer authorized to speak on behalf of or as the Board
20 President's voice;
- 21 9. Precluding COMMISSIONER COLLINS from chairing Board committee meetings and other
22 contiguous meetings as delegated to the office of Vice-President pursuant to SFUSD and
23 County Office of Education Rule and Procedure 9121.1 wherein the Vice President "shall also
24 preside at all meetings of the Committee of the Whole, Closed Session and at other meetings
25 as designated by the President in accordance with Board rules." Such preclusion effectively
26 strips COMMISSIONER COLLINS of setting the meeting agendas and thereby the priorities
27 that come before the Board;
- 28

1 10. Diminishing COMMISSIONER COLLINS' overall contributions to the Board due to her
2 having been stripped of the highly visible and impactful position of Board Vice President and
3 instead crediting the accomplishments she had thus far achieved in that role to others on the
4 Board;

5 11. Subjecting COMMISSIONER COLLINS to gender bias with the appointment of
6 DEFENDANT MOLIGA as Board Vice-President, given that MOLIGA's past conduct has
7 shown a bias against and an affirmative undermining of female Commissioners' leadership;

8 12. Diminishing COMMISSIONER COLLINS' future political and employment opportunities
9 due to DEFENDANTS' unlawful actions that have been disseminated through the media far
10 and wide.

11 Collins Dec. ¶¶ 29-39.

12 **Irreparable Injury Caused to COMMISSIONER COLLINS' Constituents by**
13 **Stripping COMMISSIONER COLLINS of Her Role as Vice President and**
14 **Committee Memberships:**

15 The following paragraphs articulate the irreparable harms that have befallen both
16 COMMISSIONER COLLINS and the constituency whom she represents and who wholeheartedly
17 depend on her advocacy for their interests and well-being to be protected and advanced.

18 (1) By holding the position of Vice-President, COMMISSIONER COLLINS was in a
19 well situated position to better support the Board's President. Both COMMISSIONER COLLINS
20 and Board President López ran for Board positions together, and after receiving both the highest
21 and second highest number of votes during the Board election, firmly supported one another on
22 the Board. They were aligned in supporting racial justice in their district. They are both seasoned
23 educators who understand educational pedagogy. They are also strong voices for Black and Brown
24 families in the district and for site-based educators. Many of their voters voted for them as a team.
25 Because of DEFENDANTS' conduct, COMMISSIONER COLLINS is now deprived of the ability
26 to support President López and effectively advocate on behalf of their shared priorities. In now
27 holding the position of Board Vice President, DEFENDANT MOLIGA has repeatedly undermined
28 President López' leadership which has detrimentally impacted COMMISSIONER COLLINS'

1 effectiveness as an elected official and by extension, her and President López’s shared
2 constituency.

3 Collins’ Dec. ¶40.

4 (2) As a Black mother and educator, COMMISSIONER COLLINS’ leadership means
5 representation for constituents who seldom have a seat at the table. Removing
6 COMMISSIONER COLLINS from Board Leadership means removing an important voice from
7 spaces that are often unwelcome to communities of color and Black women’s perspectives.

8 Collins Dec. ¶41;

9 (3) Removing COMMISSIONER COLLINS from Board committee assignments has
10 resulted in silencing her ability to debate and/or vote on the particular issues addressed by the
11 committees she previously served, i.e., Board committees on Policy, Ad Hoc Student Assignment
12 System, and Building and Grounds. As the only Black SFUSD parent who has children currently
13 enrolled in the district, COMMISSIONER COLLINS brings a vitally important voice to Board
14 questions of enrollment which, given the district’s current charge of decreasing racial segregation
15 in S.F. schools, is imperative. Collins Dec. ¶42;

16 (4) By removing COMMISSIONER COLLINS’ voice from Board committees, all S.F.
17 constituents are gravely harmed because the committees are now only served by two Board
18 members rather than three, which exponentially reduces the extent to which the committee’s
19 decisions are sufficiently informed. Collins Dec. ¶42;

20 (5) When considering that COMMISSIONER COLLINS worked closely with the
21 Board President when determining committee assignments so that the Board Leadership (both
22 President and Vice President) were well informed regarding all actions taken by the Board’s
23 various committees, the absence of COMMISSIONER COLLINS in that leadership position has
24 not only directly impacted her duties but has also impacted the efficient function of the Board in
25 its entirety. Collins Dec. ¶43.

26 (6) The impact on COMMISSIONER COLLINS’ constituency is reflected in a
27 constituent parent’s statement to the Board protesting the Board’s Resolution. District parent
28 leader Rionda Batiste, a Black parent leader serving on the African American Parent Advisory

1 council provided the following testimony at the March 25, 2021 meeting stating:

2 “Today I’m deeply saddened by the actions of this board. I was filled with
3 hope when the board spoke up in support of Black lives. I honestly felt that
4 for once, Black lives really mattered to SFUSD. However, I am reminded
5 once again to Black lives do not matter. I heard specifically a calling out that
6 the Black population is only 13%. So does that mean that our 13% no longer
7 matters? I’m also reminded, that despite the statement to the opposite, that
8 restorative practices mean nothing to SFUSD. Removing Alison from her
9 position as VP and from her committees will only negate all the hard work
10 that Alison has done, and continues to do for all of our babies. Despite the
11 fact that Black students and our families within this district make up a small
12 number, we *do* matter.” Collins Dec. ¶ 44.

13 (7) COMMISSIONER COLLINS suffers irreparable injury because her constituents
14 have been detrimentally impacted as a result of DEFNDANTS’ rush to censure COMMISSIONER
15 COLLINS by way of their Resolution. COMMISSIONER COLLINS’ constituents were given a
16 mere two days to decipher DEFNDANTS’ Resolution and to provide oppositional input to the
17 Board. As stated in Board Rules and Procedures 9322: “A Board member or member of the public
18 may request that a matter within the jurisdiction of the Board be placed on the agenda of a regular
19 meeting. The request shall be in writing and be submitted to the Superintendent or designee with
20 supporting documents and information, if any, at least seven days before the scheduled meeting
21 date. Items submitted less than seven days before the scheduled meeting date may be postponed
22 to a later meeting in order to allow sufficient time for consideration and research of the issue.”
23 Collins Dec. ¶45-46

24 (8) Because DEFENDANTS ‘officially’ deprived COMMISSIONER COLLINS of her
25 Board position and consequent responsibilities, irreparable injuries have ensued wherein
26 COMMISSIONER COLLINS can no longer serve her constituents from a position of Board
27 leadership. In accordance with Board Rules and Procedures 9121, “In addition to performing the
28 duties of the Board of Education's President in the President's absence, and assuming the office of
the President in the event the president leaves office before his/her term is expired, pursuant to
Board Rules and Procedures 9121, the Vice President shall also preside at all meetings of the
Committee of the Whole, Closed Session and at other meetings as designated by the President in
accordance with Board rules.” Collins Dec. ¶46.

1 **Irreparable injury caused to COMMISSIONER COLLINS and COMMISSIONER**
2 **COLLINS’ family by maligning her character and making COMMISSIONER**
3 **COLLINS a target of harassment and physical and economic attacks:**

4 By drafting and placing a Resolution on the Board’s agenda whose express purpose
5 was to publicly censure COMMISSIONER COLLINS for protected speech exercised prior to her
6 assumption of public office, DEFENDANTS essentially placed COMMISSIONER COLLINS’
7 character and reputation on the agenda by more than inferentially designating her as not only a
8 racist but someone who is being scapegoated for the entirety of Anti-Asian hate speech and
9 violence that has flared up across the nation. DEFENDANTS’ Resolution has impacted and injured
10 COMMISSIONER COLLINS in the following manner: Collins Dec. ¶47.

11 a. **Toxic workplace environment**—In every Board meeting since March 23rd, 2021,
12 DEFENDANTS have effectively sanctioned and thereby invited direct harassment and slander of
13 COMMISSIONER COLLINS’ character. Prior to permitting public comment at every Board
14 meeting since COMMISSIONER COLLINS’ censure, Board staff have consistently and regularly
15 directed the public to “refrain from naming employees or community members by name.” Such
16 practice was flagrantly disregarded during public comment periods pertaining to the shaming of
17 COMMISSIONER COLLINS. In fact, DEFENDANTS MOLIGA and LAM went so far as to
18 criticize President López for refusing to expand the time allotted to public comment which
19 included threats, like the following captured by ABC7 News⁴. Collins Dec. ¶47(a).

20 "Regardless of whether you choose to do the right thing and resign or not, you will pay the
21 ultimate price and that's the loss of your dignity and your reputation. For the rest of your
22 life, you will be haunted by your actions, wherever you go people will see you for what
23 you really are - a racist," said a resident."

24 b. **Damage to professional relationships** — DEFENDANTS’ actions have resulted
25 in creating an internal Board environment where staff have been made to feel uncomfortable in
26 their interactions and communications with COMMISSIONER COLLINS. The projects that
27 COMMISSIONER COLLINS’ spearheaded, i.e., resolutions pertaining to Lowell High School
28 and Equity Studies, have been significantly stymied and are moving forward with great difficulty.
Collins Dec. ¶47(b).

⁴ <https://abc7news.com/sfusd-board-vp-alison-collins-asian-tweets-anti/10444050/>

1 c. **Social ostracization and exclusion** —By expressly stating in their Resolution that
2 COMMISSIONER COLLINS is perpetuating “gross and harmful stereotypes”, DEFENDANTS
3 have publicly and officially labeled COMMISSIONER COLLINS as a racist. This is an irreparable
4 injury to COMMISSIONER COLLINS’ reputation as a Board member, community leader, and as
5 a member of a political and social network that affirmatively opposes racism. COMMISSIONER
6 COLLINS’ social network is replete with community members who engage in education and local
7 politics. DEFENDANTS’ resolution that effectively labelled COMMISSIONER COLLINS as
8 racist is unequivocally an irreparable injury. Collins Dec. ¶47(c).

9 d. **Slandering COMMISSIONER COLLINS’ professional reputation**
10 DEFENDANTS’ Resolution caused COMMISSIONER COLLINS irreparable injury in that, due
11 to its provocative language, the Resolution’s passage generated worldwide media attention that
12 stretched throughout the United States, Europe and the South Pacific. The entirety of these media
13 reports either directly or inferentially designated COMMISSIONER COLLINS as a racist.
14 DEFENDANTS’ slanderous Resolution has also found representation on Wikipedia which
15 perpetuates these injurious false narratives. Collins Dec. ¶47(d).

16 e. **Destruction of COMMISSIONER COLLINS’ political future** — In affirming
17 the Resolution, DEFENDANTS have ratified lies about COMMISSIONER COLLINS which have
18 resulted in the diminishment of COMMISSIONER COLLINS’s ability to run for a subsequent
19 Board seat or for any other office or commission, not only in San Francisco, but nationwide.
20 Collins Dec. ¶47(e).

21 f. **Damage to professional opportunities** — Even if COMMISSIONER COLLINS
22 chooses not to run for future office, Google searches will now and continue to produce a multitude
23 of articles, blogs, and news reportage that references DEFENDANTS’ resolution and affirmative
24 vote which falsely designates and infers that COMMISSIONER COLLINS is in fact a racist.
25 COMMISSIONER COLLINS has spent over 20 years working as an advocate in the public
26 education sector, specifically working on promoting social justice and equal educational access.
27 Such a diametrically opposite labeling of COMMISSIONER COLLINS’ identity and disposition
28 could not be further from the truth of COMMISSIONER COLLINS’ unwavering record of

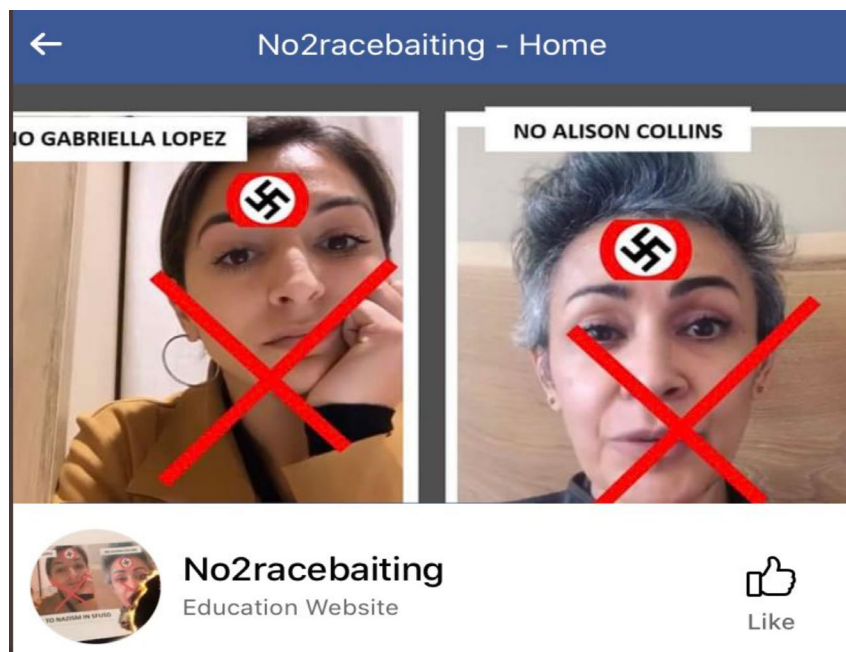
1 tirelessly working to eradicate racism in the domain of public education. Such record is reflected
2 throughout COMMISSIONER COLLINS' work as an education consultant who led programs and
3 teachings on anti-racism, as well as having provided coaching on the same subject to leaders in
4 both the education and community organizing fields. Due solely to DEFENDANTS' conduct,
5 COMMISSIONER COLLINS' resume is irredeemably tarnished and defamed. There is
6 reasonably no manner by which COMMISSIONER COLLINS' reputation can be repaired, given
7 the irreparable harm caused by DEFENDANTS' Resolution, and she will be perpetually required
8 to respond to attacks to her integrity, character and ideological inclination. As a result,
9 COMMISSIONER COLLINS' injury is one of a perpetually irreparable nature.

10 Collins Dec. ¶ 47(f).

11 **g. Physical risk to COMMISSIONER COLLINS and COMMISSIONER**
12 **COLLINS' children and family** - Several weeks ago, COMMISSIONER COLLINS was in the
13 neighborhood market with her daughter shopping for food for her family. As she was leaving the
14 store, a stranger queried COMMISSIONER COLLINS if she was "Alison Collins." She answered,
15 "Yes," to which the stranger aggressively responded, "Fuck you!" This experience, as well as the
16 appearance of several individuals including a man standing outside COMMISSIONER COLLINS'
17 private home doorway carrying a sign that said, "Resign" in reference to last fall's Board
18 unanimous vote to temporarily suspend selective enrollment due to lack of grades and standardized
19 test scores resulting from the Covid quarantine. Such incidents have provided COMMISSIONER
20 COLLINS reasonable grounds to worry with anxiety regarding her own safety, as well as the safety
21 of her children and husband, both within the privacy of their own home or when out in public.
22 COMMISSIONER COLLINS' fear for her children's and family's safety has exponentially
23 increased. The teachers of COMMISSIONER COLLINS' children have reached out to
24 COMMISSIONER COLLINS and expressed interest in supporting her girls' physical and
25 emotional well-being. Collins Dec. ¶ 47(g).

26 DEFENDANTS' Resolution has caused irreparable injury to COMMISSIONER
27 COLLINS in that it has inflamed and perpetuated increased attacks on President López and
28 COMMISSIONER COLLINS because of their advocacy for equity in education, specifically at

1 Lowell High School. Last fall, COMMISSIONER COLLINS and President López were targeted
 2 by hate speech. Ida Mojada of the S.F. Examiner wrote an article titled: “Angered by Lowell
 3 decision, SFUSD grad targets school board members with violent imagery”⁵—Facebook page
 4 depicts two women of color on board with swastikas and x-marks on their faces: The following is
 5 an image that appeared in a video uploaded to a Facebook site: Collins Dec. ¶47(h).



17

18 COMMISSIONER COLLINS is an experienced educator and community organizer who has
 19 worked for education equity in San Francisco for more than 20 years. As a former high school
 20 English teacher and instructional coach, COMMISSIONER COLLINS has also conducted
 21 professional development for hundreds of educators across the Bay Area on topics such as
 22 bullying, anger management, and conflict resolution skills. (Collins Dec. ¶¶47-48). She provided
 23 informed development for the anti-bullying curriculum adopted by Groundspark and was a
 24 contributing author to the Peer Resources Peer Leader Training curriculum. She also co-authored
 25 a curriculum used by UC Berkeley’s TRIO programs to assist low-income first-generation college
 26 bound students to access higher education. (Collins Dec. ¶¶47-48) COMMISSIONER COLLINS
 27 is committed to giving back to the public education system that helped her mother rise out of

28 ⁵ <https://www.sfexaminer.com/news/angered-by-lowell-decision-sfUSD-grad-targets-school-board-members-with-violent-imagery/>

1 poverty and helped COMMISSIONER COLLINS' father become one of the first Black professors
2 at UCLA. Collins Dec. ¶¶49-51.

3 COMMISSIONER COLLINS holds a master's degree in education from San Francisco State
4 University. Both of her children attend SFUSD schools. (Collins Dec. ¶50) She has authored or
5 co-authored many resolutions, and contrary to those voices who benefit from stoking antagonism
6 between the Asian American and Black community, holds strong support from the Asian
7 American community in San Francisco. Collins Dec. ¶52.

8 III. ARGUMENT⁶

9 As an elected official, COMMISSIONER COLLINS represents the constituents who
10 elected her. Her constituents entrusted her to carry forth an agenda that faithfully represents and
11 advocates for their interests. Collins Dec. ¶¶40, 41, 44. Because of DEFENDANTS' conduct that
12 expressly trampled upon COMMISSIONER COLLINS' right to freely express her views,
13 COMMISSIONER COLLINS has incurred irrevocable harm in that her chilled speech has resulted
14 in greatly diminishing her ability to advocate on behalf of her constituency, as well as to enact her
15 constituency's policy agenda. Collins Dec. ¶42

16 Due to DEFENDANTS' conduct and as the above recitation of harms makes plain,
17 COMMISSIONER COLLINS has now been prohibited from and/or limited in undertaking her
18 elected duties in which she would have otherwise been able to engage had DEFENDANTS chosen
19 to not intentionally violate COMMISSIONER COLLINS' protected speech rights. Collins Dec.
20 ¶¶32, 33, 34, 38. DEFENDANTS have thus effectively subverted COMMISSIONER COLLINS'
21 ability to fully express her views and opinions, as well as her constituency's ability to have their
22 views and opinions represented by their elected Board member. Collins Dec. ¶¶40, 41, 42, 46.

23 COMMISSIONER COLLINS seeks an order to show cause why this Court should not
24 issue a preliminary injunction that would prevent the Board from carrying out the intended and
25 stated purpose of Resolution No. 213-25A1 and rightfully return COMMISSIONER COLLINS to
26 her prior committee and leadership positions. By prohibiting DEFENDANTS from implementing
27 Board Resolution No. 213-26A1, this Court would be maintaining the status quo during the

28 _____
⁶ Plaintiff hereby incorporates all of the facts and causes of action in her Complaint for Damages. (Docket 1)

1 pendency of this action and thus, effectively prevent COMMISSIONER COLLINS from suffering
2 further irreparable harm. If the Court does not issue the preliminary injunction and
3 COMMISSIONER COLLINS succeeds in her action, she will have missed out on opportunities
4 that are only provided by assuming the role of Vice President that would enable her to effectively
5 and freely speak and advocate on behalf of the constituents she was elected to represent. Collins
6 Dec. ¶¶40, 42, 46. By the time the Court rules that Board Resolution No. 213-26A1 is void because
7 it violates COMMISSIONER COLLINS' First Amendment free speech rights, COMMISSIONER
8 COLLINS, as well as her constituency, will have suffered profound and irreparable harm on
9 account of being stripped from holding the position of Vice President, as well as having to
10 relinquish participation in the particular Board committees where her contribution and direction
11 are irreplaceable. Collins Dec. ¶¶34, 35, 42.

12 **A. Legal Standard**

13 The grant or denial of a motion for a preliminary injunction lies within the discretion of the
14 district court, and its order will be reversed only if the court relied on an erroneous legal premise
15 or had otherwise abused its discretion. *Sports Form, Inc. v. United Press Int'l, Inc.*, 686 F.2d 750,
16 752 (9th Cir. 1982). The district court is charged with basing its decision upon consideration of
17 the relevant factors. *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416, 28 L. Ed.
18 2d 136, 91 S. Ct. 814 (1971). Thus, a court will be reversed were it to apply an incorrect
19 preliminary injunction standard, *Benda v. Grand Lodge of Int'l Ass'n of Machinists & Aerospace*
20 *Workers*, 584 F.2d 308, 314-15 (9th Cir. 1978) or if the court misapprehends the law with respect
21 to the underlying issues in the litigation. *Sports Form*, 686 F.2d at 752(abuse of discretion also
22 exists where the court rests its conclusions on clearly erroneous findings of fact).

23 **B. Application of the Preliminary Injunction Standard**

24 Federal Rule of Civil Procedure 65 permits the issuance of a preliminary injunction to
25 preserve the positions of the parties until a full trial can be conducted. *Iconix, Inc. v. Tokuda*
26 (N.D.Cal. 2006) 457 F.Supp.2d 969, 974.) The basic function of a preliminary injunction is to
27 preserve the status quo pending a determination of the action on the merits. *L.A. Memorial*
28 *Coliseum Commission v. National Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980). The

1 moving party may meet its burden by demonstrating either (1) a combination of probable success
2 on the merits and the possibility of irreparable injury, or (2) that serious questions are raised and
3 the balance of hardships tips sharply in its favor. *Id.* at 1201. These are not separate tests, but the
4 outer reaches 'of a single continuum.'" *L.A. Coliseum*, 634 F.2d at 1201.

5 Under the sliding scale theory, a party seeking an injunction "need not demonstrate that he
6 will succeed on the merits but must at least show that his cause presents serious questions of law
7 worthy of litigation." *Topanga Press, Inc. v. City of Los Angeles*, 989 F.2d 1524, 1528 (9th Cir.
8 1993). "Serious questions" are those which are "substantial, difficult, and doubtful, as to make
9 them fair ground for litigation and thus for more deliberative investigation." *Senate of State of Cal.*
10 *v. Mosbacher*, 968 F. 2d 974, 977-78 (9th Cir. 1992), *citing Gilder v. PGA Tour, Inc.*, 936 F. 2d
11 417, 422 (9th Cir. 1991)); *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir.
12 1988) ("serious questions refers to questions which cannot be resolved one way or the other at the
13 hearing on the injunction and as to which the court perceives a need to preserve the status quo lest
14 one side prevent resolution of the questions or execution of any judgment by altering the status
15 quo."). Although the serious questions posed by the movant "need not promise a certainty of
16 success, nor even a probability of success," he or she must nevertheless demonstrate a "fair chance
17 of success" on the merits. *Gilder*, 936 F.2d at 422. Finally, in cases where the public interest may
18 be affected, the court must consider the public interest as a factor in balancing the hardships. *Harris*
19 *v. Bd. of Supervisors*, 366 F.3d 754, 760, 766 (9th Cir. 2004), *citing Fund for Animals, Inc. v.*
20 *Lujan*, 962 F.2d 1391, 1400 (9th Cir. 1992).

21 In this case, the status quo is the position COMMISSIONER COLLINS enjoyed before the
22 retaliatory actions by the Board that stripped her of her leadership and committee positions. "[T]he
23 status quo is not simply any situation before the filing of the lawsuit, but rather the last uncontested
24 status that preceded the parties' controversy." *Dep't of Parks & Rec. v. Bazaar Del Mundo, Inc.*,
25 448 F.3d 1118, 1124 (9th Cir. 2006), *quoting GoTo.Com, Inc. v. Walt Disney Co.*, 202 F.3d 1199,
26 1210 (9th Cir. 2000)). In *GoTo.Com*, a trademark infringement case, the Ninth Circuit held that
27 the status quo which was to be preserved by the district court's preliminary injunction "existed
28 before [the defendant] began using its allegedly infringing logo." *GoTo.Com*, 202 F.3d at 1210.

1 In this case, the status quo would be the condition that existed before the Board illegally voted to
2 strip COMMISSIONER COLLINS of her Board positions that was a decision based exclusively
3 and expressly on MRS. COLLINS' protected speech.

4 **1. COMMISSIONER COLLINS Can Demonstrate That She Will Likely Succeed
5 On The Merits Of Her First Amendment Claims**

6 COMMISSIONER COLLINS brings her action under 42. U.S.C. §1983, alleging that the
7 individual School Board members retaliated against her for her protected speech.
8 COMMISSIONER COLLINS' analysis starts with the well-established understanding that a
9 public employer "may not discharge an employee on a basis that infringes that employee's
10 constitutionally protected interest in freedom of speech." *Rankin v. McPherson*, 483 U.S. 378,
11 383(1987). Since the resolution in question explicitly states that the basis for DEFENDANTS'
12 action was COMMISSIONER COLLINS' 2016 statements, there is no question that the Board's
13 action was based on COMMISSIONER COLLINS' speech.

14 At the time that COMMISSIONER COLLINS engaged in her protected speech, she was
15 not an elected Board member of the S.F. School Board, but rather a private citizen engaging in a
16 civil discussion about race relations in a particular San Francisco public school, as well as within
17 the school system in general. Since COMMISSIONER COLLINS was neither a Board member,
18 a State or City employee, nor an agent of the Board (or any other State or City entity) at the time
19 she spoke on a matter of public concern, the allowances afforded government employers to limit
20 the speech of government employees do not apply.

21 Nevertheless, in applying the standards for analyzing whether speech exercised by a
22 government employee is protected when said speech is communicated within the context of the
23 employee's work environment, COMMISSIONER COLLINS' speech, when analyzed from this
24 perspective, would still show a reasonable likelihood of success.

25 Thus, in the context of a government employee alleging retaliation for speech made while
26 a government employee, the Ninth Circuit employs the *Pickering* five-step analysis: (1) whether
27 the plaintiff spoke on a matter of public concern; (2) whether the plaintiff spoke as a private citizen
28 or public employee; (3) whether the plaintiff's protected speech was a substantial or motivating
factor in the adverse employment action; (4) whether the state had an adequate justification for

1 treating the employee differently from other members of the general public; and (5) whether the
2 state would have taken the adverse employment action even absent the protected speech. *Eng v.*
3 *Cooley* (9th Cir. 2009) 552 F.3d 1062, 1070.

4 This test is designed for a situation where the employer/employee relationship is in effect
5 at the time of the subject speech. See, e.g. *Id.* at 1064. (the *Eng* plaintiff was a deputy district
6 attorney when he engaged in the speech that was the subject of his lawsuit); *Pickering v. Bd. of*
7 *Educ.* 391 U.S. 563, 564(1968) (the *Pickering* plaintiff was a High School teacher dismissed from
8 his position for sending a letter to a local newspaper.)

9 In the context of a current employee engaging in speech, the *Pickering* balancing test makes
10 sense. As the Supreme Court stated, "[t]he problem in any case is to arrive at a balance between
11 the interests of the [public employee], as a citizen, in commenting upon matters of public concern
12 and the interest of the State, as an employer, in promoting the efficiency of the public services it
13 performs through its employees." *Id.* at 568.

14 In the case at bar, however, the speech that DEFENDANTS relied upon to strip
15 COMMISSIONER COLLINS of her leadership and committee assignments occurred in 2016,
16 some two years prior to her election to the School Board. Thus, in this context, there is no
17 application for the *Pickering* test because the speech was not made by a government employee in
18 a context where the government would have otherwise held a reasonable level of control over her
19 speech.

20 However, as argued, were the Court to apply the balance of the *Pickering* factors,
21 COMMISSIONER COLLINS can still show that she is likely to prevail.

22 First, COMMISSIONER COLLINS bears the burden of showing that her speech addressed
23 an issue of public concern. *Eng* 552 F.3d at 1070. The public concern inquiry is purely a question
24 of law. *Id.* "Speech involves a matter of public concern when it can fairly be considered to relate
25 to 'any matter of political, social, or other concern to the community. *Id.* As COMMISSIONER
26 COLLINS' speech specifically addressed the well documented bullying and/or hate speech
27 impacting Black and Brown students, said speech, as a matter of law, involves a matter of public
28 concern.

1 Second, COMMISSIONER COLLINS bears the burden of showing the speech was spoken
2 in the capacity of a private citizen, not a public employee. *Id.* at 1071. Again, this element is
3 undeniable as a matter of law since COMMISSIONER COLLINS was not on the School Board in
4 2016 when she published her 2016 tweets as a private citizen.

5 Third, COMMISSIONER COLLINS must show that the School Board and its members
6 took adverse employment action. *Id.* Again, DEFENDANTS and the Board explicitly stated that
7 its action was taken to expressly punish COMMISSIONER COLLINS for her 2016 speech and
8 because she would not resign on account of said speech.

9 With the fourth step, the burden shifts to DEFENDANTS to prove that their legitimate
10 administrative interests outweigh the employee's First Amendment rights. In this case, there is no
11 "administrative interest." DEFENDANTS cannot show that, were COMMISSIONER COLLINS
12 to remain in her committee and leadership roles, such state of affairs would have "some potential
13 to affect the entity's operations." *Garcetti*, 547 U.S. at 418.

14 As COMMISSIONER COLLINS was elected by her constituency and not by
15 DEFENDANT Board members, her fitness to serve was by no means relegated to
16 DEFENDANTS' individual judgment. As a result, since DEFENDANTS cannot remove
17 COMMISSIONER COLLINS from her elected position, it is well within COMMISSIONER
18 COLLINS' prerogative to either resign or remain on the Board. But for reliance upon speech
19 exercised as a private citizen some two years prior to COMMISSIONER COLLINS' election to
20 the Board, the DEFENDANTS had no reason for holding that COMMISSIONER COLLINS was
21 undertaking her Vice Presidency in an unsatisfactory or deficient manner so that DEFENDANTS
22 could hold a reasonable belief that the Board's operations would be impacted if COMMISSIONER
23 COLLINS maintained her leadership and committee positions.

24 Lastly under Pickering, the government has the burden of demonstrating that it would have
25 reached the same decision in the absence of the employee's protected conduct. *Id.* at 1072.
26 DEFENDANTS clearly will not be able to establish this element as the record reflects that
27 COMMISSIONER COLLINS was performing her duties in a more than satisfactory manner.
28

1 COMMISSIONER COLLINS' speech was the one and only reason for the retaliation. Thus, under
2 a Pickering analysis, COMMISSIONER COLLINS prevails.

3 If in fact the *Pickering* analysis is indeed inappropriate, as is a reasonable conclusion given
4 the facts at bar, the Court must resort to the traditional analysis of how and when the government
5 can limit speech of its citizens. There are several factors that courts consider since "speech is not
6 wholly protected from government regulation in all places." *Frisby v. Schultz* 487 U.S. 474,
7 479(1988). Primarily, the location of the speech is highly relevant to the degree of protection
8 afforded. *Id.* ("to ascertain what limits, if any, may be placed on protected speech, we have often
9 focused on the 'place' of that speech, considering the nature of the forum the speaker seeks to
10 employ.")

11 In this case, the speech was made over Twitter, a social media platform designed to foster
12 community discussions regarding matters of public concern. Given that Twitter reasonably falls
13 within the category of public forum, COMMISSIONER COLLINS' reliance a social media forum
14 like Twitter should provide COMMISSIONER COLLINS' speech with the highest degree of
15 protection. *See, Perry Ed. Assn. v. Perry Local Educators' Assn.* 460 U.S. 37, 45(1983)(speech
16 uttered in a traditional public forum is afforded the highest degree of protection from state
17 regulation.) In, *Perry* the plaintiff sought access to the interschool mail system and teacher
18 mailboxes which was denied him on account that such forums were delegated to a rival union. *Id.*
19 at 41. In ruling that "[t]he Constitution forbids a State to enforce certain exclusions from a forum
20 generally open to the public," the Supreme Court held "a content-based prohibition must be
21 narrowly drawn to effectuate a compelling state interest." *Id.* at 46.

22 Here, the speech at issue was a tweet on Twitter. Twitter, and other forms of social media
23 communications are the modern-day equivalents of a mail system, where the user can send a
24 message directly to those with whom she or he is in communication. In this case, the purpose of
25 the tweet was to discuss issues of race in the S.F. public schools and how it impacts minority
26 students of different racial and ethnic backgrounds. Since the School Board expressly retaliated
27 against COMMISSIONER COLLINS for her speech, DEFENDANTS will have to show that their
28 actions were narrowly tailored to effectuate a compelling state interest. *Id.* Given the age and

1 context of COMMISSIONER COLLINS' tweets and the fact that she was elected after making the
2 tweets, DEFENDANTS will not be able to meet this burden. If the tweets dispositively disqualified
3 COMMISSIONER COLLINS as a School Board member, the correct solution is an electoral
4 recall, not a unilateral retaliatory action by the DEFENDANT Board members.

5 **2. COMMISSIONER COLLINS Can Demonstrate That Significant Irreparable
6 Harm Will Flow From Defendants' Conduct**

7 The second factor in a preliminary injunction analysis is the possibility of irreparable
8 injury. *L.A. Coliseum*, 634 F.2d at 1201. The Supreme Court has repeatedly held that the basis for
9 injunctive relief in the federal courts has always been an irreparable injury and the inadequacy of
10 legal remedies. *Weinberger v. Romero-Barcelo* 456 U.S. 305, 312(1982). It is well settled that the
11 loss of First Amendment freedoms for even "minimal periods constitutes irreparable injury
12 justifying the grant of a preliminary injunction [or a temporary restraining order]." *Elrod v. Burns*,
13 427 U.S. 347, 373(1976) ("the loss of First Amendment freedoms, for even minimal periods of
14 time, unquestionably constitutes irreparable injury.") "So too, direct penalization . . . of First
15 Amendment rights constitutes irreparable injury" for the purposes of granting temporary injunctive
16 relief. *Id.* In the Ninth Circuit, a party seeking preliminary injunctive relief in a First Amendment
17 context "can establish irreparable injury sufficient to merit the grant of relief by demonstrating the
18 existence of a colorable First Amendment claim." *Sammartano v. First Judicial District Court*,
19 303 F.3d 959, 973 (9th Cir. 2002).

20 In this case, COMMISSIONER COLLINS respectfully directs this Court to
21 COMMISSIONER COLLINS' exhaustive recitation of the manner in which the stripping of her
22 role as Board Vice-President and her committee assignments irreparably injured both her own
23 personal ambition of obtaining the most effective means and position by which to serve and
24 forward the needs of her community, Collins Dec. ¶¶ 33, 34, 35, 38, as well as severely curtailing
25 her ability to effectively carry out her role as a Board member who was drawn to elected office
26 out of a heart felt and passionate drive for achieving equity and inclusivity for the next generation.
27 Collins Dec. ¶¶ 29, 33, 34, 35, 40, 42.

28 The overarching consideration with respect to 'irreparability' as it reflects upon
COMMISSIONER COLLINS' injuries is the fact that as an elected Board member,

1 COMMISSIONER COLLINS term of office is fixed and with each day passing, she is irretrievably
2 losing opportunities to advance, not only her own personal objectives as a Board member, but
3 those policies, programs, and objectives that she had promised her constituency, (and upon whom
4 they relied), that she would tirelessly work to accomplish. Thus, each day that COMMISSIONER
5 COLLINS serves her term of office without the benefit of her rightfully appointed position as
6 Board Vice-President and membership in her Board committees, COMMISSIONER COLLINS is
7 irreparably being denied the opportunity to partake in the enumerated duties that such Board
8 positions hold, as well as obstructing her ability to avail herself of the benefits and opportunities
9 that derive from such positions. Therefore, the injuries COMMISSIONER COLLINS has incurred
10 and continues to incur are indeed ‘irreparable’ with the passing of each consecutive day.

11 Specifically, on account of DEFENDANTS’ action of stripping away COMMISSIONER
12 COLLINS’ Vice Presidency position and committee assignments, COMMISSIONER COLLINS
13 has sustained the irreparable harm of, first and foremost, being punished solely on account of her
14 exercising her First Amendment freedoms and the chill that such punishment has and will continue
15 to exert on COMMISSIONER COLLINS’ public life as an elected official. *Elrod*, 427 U.S. at
16 373("the loss of First Amendment freedoms, for even minimal periods of time, unquestionably
17 constitutes irreparable injury"); Collins Dec. ¶¶ 29. The stripping of the Vice-Presidency now
18 precludes COMMISSIONER COLLINS from not only holding this extremely visible and
19 impactful position whose status immeasurably afforded her constituency a heightened and
20 powerful voice on their behalf, but from having a voice in setting the Board of Education’s agenda,
21 which is integral in setting the Board’s policy directions. Collins Dec. ¶34 Thus,
22 COMMISSIONER COLLINS’ ability to advance policies that explicitly enhance inclusivity and
23 racial justice within the school system is acutely diminished. As the Commissioner who holds the
24 seat of Vice President regularly transitions and assumes the seat of President, such established
25 course is now closed to COMMISSIONER COLLINS. She is now forced to forego both the
26 personal achievement that such position would provide as well as the ability to promote the very
27 core policies and programs that COMMISSIONER COLLINS has been cultivating over her twenty
28 plus career of advocating for educational equity and opportunity. Collins Dec. ¶35.

1 COMMISSIONER COLLINS has incurred irreparable injuries on account of
2 DEFENDANTS' actions which have crippled her ability to effectively advocate for her
3 constituency which, in turn, have incurred their own irreparable injuries because of their elected
4 official, COMMISSIONER COLLINS', severely diminished capacity to advance policies and
5 programs that serve their particular needs. Collins Dec. ¶¶ 40, 41, 42, 45, 46. Given that an elected
6 official is only allotted a finite and limited time frame within which to advance the policy agenda
7 of his or her constituents, DEFENDANTS' action of stripping her of her Vice President position
8 and committee assignments have irreparably disabled COMMISSIONER COLLINS' ability to
9 fulfill the campaign objectives that the S.F. voters elected her to accomplish. This is most glaring
10 for the Black and Brown members of COMMISSIONER COLLINS' constituency who were able
11 to rely on COMMISSIONER COLLINS' leadership position to perhaps finally attain programs
12 and realize policies that addressed their particular needs that have otherwise been ignored or
13 disregarded. Collins Dec. ¶¶40, 41, 44.

14 Thus, no amount of money damages can substitute nor remedy such injuries, particularly
15 given COMMISSIONER COLLINS' underlying passion and motivation for obtaining an elected
16 School Board position. COMMISSIONER COLLINS specifically ran for membership to the
17 School Board in order to solely manifest changes to an educational system that for over twenty
18 years, she had been observing and working in to promote more equity, opportunity and inclusivity
19 in its operation.

20 Lastly, the complete vilification of COMMISSIONER COLLINS' character and reputation
21 that has resulted due to DEFENDANTS' actions is well beyond repair and is incomprehensible,
22 given COMMISSIONER COLLINS' lifelong commitment and affirmative efforts to battle against
23 racial oppression and injustice. Now, ironically, COMMISSIONER COLLINS has been
24 incessantly slandered, bullied and defamed as a racist which, given the means by which
25 contemporary society is publicly informed, such designation is not only a scarlet letter but a scarlet
26 tattoo that is beyond erasure. Thus, by immediately restoring COMMISSIONER COLLINS to her
27 previously held Board positions, this Court will be immensely contributing to the restoration of
28 COMMISSIONER COLLINS' good name and reputation. Additionally, by this Court recognizing

1 and remediating DEFENDANTS’ blatant violation of COMMISSIONER COLLINS’ protected
2 speech, the animosity and ostracization that she continues to face, both within her workplace and
3 on the streets of San Francisco, will hopefully diminish, along with the well-founded fears that she
4 now must unfortunately bear of physical and emotional harm to herself and her family. Collins
5 Dec. ¶¶48(a), (b), (c).

6 In *Chalk v. United States Dist. Court Cent. Dist.* 840 F.2d 701(9th Cir. 1988), the defendant
7 Orange County Department of Education reassigned plaintiff to a position that had no direct
8 contact with students after it learned of plaintiff’s AIDS diagnosis. *Id.* at 703. The district court
9 denied plaintiff’s motion for a preliminary injunction seeking reinstatement to his prior position.
10 *Id.* The district court found that despite demonstrating a strong possibility of success on the merits,
11 plaintiff was unable to show irreparable injury. *Id.* at 709. The evidence established that the
12 plaintiff was still employed and making the same salary but had been reassigned to a position
13 preparing grant proposals. *Id.*

14 In reversing, the Ninth Circuit held that the district court erroneously “focused on the
15 monetary loss” to plaintiff. *Id.* The district court failed to take into consideration the loss plaintiff
16 suffered from being reassigned from his position teaching hearing-impaired children in a small
17 classroom setting which was a job for which he developed special skills beyond those normally
18 required to become a teacher. *Id.* The district court failed to take into consideration the fact that
19 plaintiff’s “closeness to his students and his participation in their lives is a source of tremendous
20 personal satisfaction and joy to him and of benefit to them.” *Id.* The Ninth Circuit held that “[s]uch
21 non-monetary deprivation is a substantial injury which the court was required to consider.” *Id.*
22 *See Finot v. Pasadena City Bd. of Educ.*, 250 Cal. App. 2d 189, 202-03, 58 Cal. Rptr. 520, 529
23 (1967) (teacher’s reassignment from classroom duty to home teaching, imposed in retaliation for
24 an exercise of first amendment rights, was a “legally remediable detriment.”)

25 In this case, while COMMISSIONER COLLINS is still an elected member of the S.F.
26 School board, her leadership position and committee memberships provided her with an ability
27 to partake in her role as a Board member that was qualitatively more productive and rewarding
28 than serving without those responsibilities. While certain aspects of COMMISSIONER

1 COLLINS current job might be similar to how they were prior to DEFENDANTS' March 25,
2 2021 Resolution, the public censoring and stripping of titles and duties imposed expressly on
3 account of COMMISSIONER COLLINS exercising her First Amendment speech is inarguably a
4 'demotion' and thus, a blight on her reputation, reasonably causing irreparable injury. Given the
5 likely duration of the present legal action, the proper course for the Court to take is to issue an
6 order to show cause why the parties should not return to the status quo: their pre-Resolution No.
7 213-25A1 arrangements and appointments.

8 **3. The Balance of Hardships Tips In Favor of COMMISSIONER COLLINS**

9
10 Having demonstrated a strong probability of success on the merits and the possibility of
11 irreparable injury, COMMISSIONER COLLINS has shown all that is necessary for a preliminary
12 injunction to issue. *Chalk*, 840 F.2d at 710. However, since "at least a minimal tip in the balance
13 of hardships must be found even when the strongest showing on the merits is made," *L.A.*
14 *Coliseum*, 634 F.2d at 1203-04, the potential injury incurred by DEFENDANTS' must also be
15 considered. DEFENDANTS cannot show any cognizable injury that will arise were
16 COMMISSIONER COLLINS to resume her leadership and committee positions.
17 COMMISSIONER COLLINS' Twitter comments were made in 2016 and were publicly available
18 for all to see. This includes the voters who voted for her. COMMISSIONER COLLINS will remain
19 on the School board for the remainder of her term and potentially another term if she chooses to
20 run and is reelected. When returned to her prior positions, the only potential injury the Board could
21 claim would be an increase in public comments regarding COMMISSIONER COLLINS during
22 School board meetings, as well as conceivably some degree of heightened critical media attention.
23 However, given COMMISSIONER COLLINS' probability of success on the merits and the
24 speculative nature of DEFENDANTS' injuries, the injuries befalling COMMISSIONER
25 COLLINS reasonably far outweigh those DEFENDANTS might conceivably incur. *Chalk*, 840
26 F.2d at 710. Simply put, were COMMISSIONER COLLINS to return to her leadership and
27 committee positions, the operations of the School board would by no means be thwarted nor
28

1 fundamentally impacted and would quite conceivably serve as a catalyst for truth and
2 reconciliation.

3 Moreover, if in fact COMMISSIONER COLLINS' comments rose to a level sufficient to
4 disqualify her future participation as a School board member, the proper protocol for such
5 disqualification is an electoral recall. The voters of San Francisco rather than members of the
6 School board should determine whether comments made prior to COMMISSIONER COLLINS
7 attaining elected office should suffice to render COMMISSIONER COLLINS ineligible and unfit
8 for serving on the School board. The fact that individual Board members took COMMISSIONER
9 COLLINS' speech as personally objectionable does not give them the right to usurp the will of the
10 voters of San Francisco. Unless unequivocally rejected, such retaliation will chill
11 COMMISSIONER COLLINS' future speech, as well as hastening a heightened potential of
12 chilling the speech of elected officials overall within the City of San Francisco and beyond.

13 Finally, public interest is one of the traditional equitable criteria which a court should
14 consider in granting injunctive relief. See *L.A. Coliseum*, 634 F.2d at 1200. In this case, as
15 referenced above, the public voted for COMMISSIONER COLLINS to serve on the School Board.
16 If voters in San Francisco are concerned that COMMISSIONER COLLINS' speech rendered her
17 unfit and unqualified to continue to carry out her duties on the School board, they should be the
18 ones who make that decision through electoral means. The public interest factor weighs heavily in
19 favor of COMMISSIONER COLLINS, as her public rebuke and censure at the hands of
20 DEFENDANTS has effectively undermined and diminished COMMISSIONER COLLINS'
21 capacity to represent her constituents' interests on account of her removal from the School Board's
22 leadership position as well as her committee memberships. Such 'demotions,' along with the
23 overall chilling effect on COMMISSIONER COLLINS' present and future speech due to
24 DEFENDANTS' vehement and relentless response to COMMISSIONER COLLINS' past speech
25 has greatly diminished her capacity to effectively serve her elected position. Thus, the public
26 interest is gravely impacted and one that strongly tips in favor of placing COMMISSIONER
27 COLLINS back into the positions she held prior the furor over her free speech that led
28 DEFENDANTS to engage in facially constitutionally offensive conduct.

1 show cause why a preliminary injunction should not be granted that results in COMMISSIONER
2 COLLINS' return to the positions and memberships she held prior to DEFENDANTS' adoption
3 of its unconstitutional March 25, 2021 Resolution. As discussed above, without the requested
4 relief, COMMISSIONER COLLINS will suffer irreparable injury and harm.

5
6 DATED: May 26, 2021

RESPECTFULLY SUBMITTED,

7
8 **LAW OFFICES OF BONNER & BONNER**

9
10 /s/ Charles A. Bonner

11 Charles A. Bonner

12 ATTORNEY FOR PLAINTIFF
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