THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

KENNY, et al.

Plaintiffs,

v.

WILSON, et al.

Defendants.

Civil Action No.: 2:16-cv-2794-CWH

REPLY MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTRODUCTION

Each year, thousands of South Carolina adolescents enter into the juvenile and criminal justice system on charges of Disturbing Schools and Disorderly Conduct. The examples of prior arrest, detention, and prosecution identified in Plaintiff's motion for preliminary injunction make clear the immediate risk that students will face criminal charges under these laws again this school year. Defendants do not contest any of the harms Plaintiffs face if charged under §§ 16-17-420 or 16-17-530. The potential for arbitrary and discriminatory enforcement, the lack of notice to students, and the significant harms faced by the students support Plaintiffs' request for preliminary injunction.

Defendants argue that this lawsuit would "tie the hands" of prosecutors and law enforcement because this action would "decriminalize behavior that is criminal according to our law and address school disciplinary issues which are policy decisions for the legislative branch." Defs.' Mem. Opp'n to Pls.' Mot. Prelim. Inj. 1 (ECF No. 30). This statement captures the Constitutional concerns raised by the challenged laws. Sections 16-17-420 and 16-17-530 are so broadly drafted that at their discretion, law enforcement and prosecutors may assign criminal consequences to matters of classroom management and school discipline. In so doing, these laws "entrust[] lawmaking to the moment-to-moment judgment of the policeman on his beat." *Kolender v. Lawson*, 461 U.S. 352, 360 (1983). Sections 16-17-420 and 16-17-530 thus fail to provide notice to students and others and encourage arbitrary and discriminatory enforcement. In these circumstances, a preliminary injunction serves Plaintiffs as well as the state. "[A] state is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found unconstitutional." *Centro Tepeyac v. Montgomery Cty., Md.*, 722 F.3d 184, 191 (4th Cir. 2013).

I. Plaintiffs Are Likely to Succeed on the Merits.

A. Abstention is Improper and Plaintiffs Have Standing

Plaintiffs address in their response to Defendants' motion to dismiss Defendants' contentions that this Court should abstain from hearing this case, that Plaintiffs lack standing, that the case is not ripe, that Plaintiffs fail to meet pleading standards, and that the *Rooker-Feldman* doctrine and res judicata apply. Similarly, Plaintiffs respond to Defendants' class certification defenses in their reply on that motion. These arguments are addressed in Plaintiffs' Response to Defendants' Motion to Dismiss and Plaintiffs' Reply Memorandum in Support of Class Certification, respectively, both of which are filed concurrently and incorporated herein.

B. Vagueness Standard

Relying on dicta in *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 497 (1982), and *Martin v. Lloyd*, 700 F.3d 132, 135-36 (4th Cir. 2012), Defendants argue that a law must be vague "in all of its applications" to be found unconstitutional on its face. ECF No. 30 at 33. However, as the Fourth Circuit has recognized, the Supreme Court firmly dispelled this theory of facial vagueness in *Johnson v. United States*, 135 S. Ct. 2551, 2560–61 (2015)("[O]ur *holdings* squarely contradict the theory that a vague provision is constitutional merely because there is some conduct that clearly falls within the provision's grasp."); *Kolbe v. Hogan*, 813 F.3d 160, 190 (4th Cir. 2016), *reh'g en banc granted*, 636 F. App'x 880 (4th Cir. 2016)(citing *Johnson*).

Johnson confirmed that a criminal law may be found void for vagueness "even where it could have . . . some valid application." *Martin v. Lloyd*, 700 F.3d 132, 135 (4th Cir. 2012)(quoting *Wright v. New Jersey*, 469 U.S. 1146, 1152 (1985)). This standard incorporates

two important understandings. First, under a criminal or civil law, the ability to imagine some circumstances that would clearly violate the law does not upend the entirety of the vagueness analysis, which looks to the sweep of a law. *See Johnson*, 135 S. Ct. at 2561. In *Johnson*, Justice Scalia gave the example of *United States v. L. Cohen Grocery Co.*, 255 U.S. 81 (1921), in which the Supreme Court considered a law prohibiting charging "unjust or unreasonable" rates. The Court found the law vague on its face, "even though one can easily envision rates so high that they are unreasonable by any measure." *Id.*

Second, criminal laws are approached with heightened skepticism. Unlike common economic regulations, criminal laws may be enforced through police powers, including use of force and physical detention, and carry criminal penalties, the consequences of which may extend through a person's lifetime. *See United States v. Nesbeth*, No. 15-CR-18 (FB), 2016 WL 3022073, at *5-6 (E.D.N.Y. May 24, 2016), *appeal withdrawn* (Sept. 9, 2016)(discussing the serious collateral consequences that can follow from a criminal conviction).

So too, due process requires a stronger degree of certainty where a statute threatens to infringe upon constitutionally protected conduct. *See Smith v. Goguen*, 415 U.S. 566, 573 (1974). Defendants argue that Plaintiffs' allegations of encroachment upon First Amendment protected conduct should be disregarded because Plaintiffs have not asserted a claim for relief specifically invoking the First Amendment. ECF No. 30 at 33 n.3. This contention misstates the role of the First Amendment in the vagueness analysis. Plaintiffs' vagueness claim arises directly under the Due Process Clause. Encroachment upon First Amendment and otherwise constitutionally protected conduct heightens the degree of concern but does not alter the vagueness analysis, which focuses on notice and the potential for arbitrary and discriminatory enforcement. *See, e.g.*, *Goguen*, 415 U.S. at 573 (recognizing First Amendment implications in applying due process

vagueness analysis); *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972) ("[W]here a vague statute abuts upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of those freedoms."); *Lloyd*, 700 F.3d at 135 (recognizing the relevance of burdens on constitutionally protected conduct under the due process analysis).

Defendants do not contest the implication of First Amendment interests in this case. They would be hard pressed to do so under the South Carolina Supreme Court's holding in *In re Amir X.S.*, 639 S.E.2d 144, 149 (2006). The *Amir* court concluded that "§ 16-17-420 is most accurately characterized as 'intertwining' speech and non-speech elements." *Id.* (internal citation omitted).The court concluded under the overbreadth standard only that while this might include constitutionally protected expression, "we find this is not 'substantially' so." *Id.* The South Carolina Supreme Court did not reach the statute's facial vagueness. Plaintiffs have identified numerous incidents in which their First Amendment freedoms and those of others have or are likely to be impinged by the operation of the challenged laws. Pls.' Mot. Prelim. Inj. 21-25, 27-28 (ECF No. 5). Plaintiffs make no argument as to the statutes' compliance with the more stringent standard of the overbreadth doctrine. Plaintiffs have demonstrated that §§ 16-17-420 and 16-17-530 about the sensitive area of constitutionally protected conduct with consequences that compel additional concerns under the Due Process void for vagueness doctrine.

C. Section 16-17-420 is Void for Vagueness

Section 16-17-420 reflects more than "practical difficulties" in drafting criminal statutes. ECF No. 30 at 34. Rather, the law's shifting application over time and in differing contexts demonstrates the lack of any sufficiently defined core. The drafters of the law, over a century ago, appeared to have as their focus the protection of women and girls. *See* Compl. ¶ 43. An amendment to eliminate the focus on women and girls allowed the statute to be applied against

the campus protests of the early 1970's. *Id.* ¶ 44. Beginning in the late 1980's, the law's malleable terms were turned to focus on school conduct. *Id.* ¶¶ 45, 51-54. While this appears to be the primary use of the law today, it has also been invoked broadly enough to cover property owned by a college. ECF No. 5 at 22.

a. Section 16-17-420 has not been narrowed and it contains no scienter requirement.

The South Carolina Supreme Court has not provided a limiting instruction that would narrow the application of § 16-17-420. Defendants point to *Amir*, 639 S.E.2d at 148-49, which did not reach the question of facial vagueness, as providing a limiting instruction. However, the language highlighted from *Amir* merely concludes that the statute is clear and restates its terms. *See* ECF No. 30 at 35-36. As the *Amir* court stated, "§ 16–17–420 is limited in its application by its own terms." *Amir*, 639 S.E.2d at 149. Even if this language were to constitute a limiting instruction, it fails to cure the vagueness of § 16-17-420.

Although Defendants argue that § 16-17-420 incorporates a standard of intent, ECF No. 30 at 35-37, this is plainly not the case. The term "willfully or unnecessarily" does not constitute a scienter requirement. The term "unnecessary" does not equate to a degree of individual knowledge or mental state. Moreover, as set out in Plaintiff's motion, the law has been interpreted to apply without regard to the actual disruption of students. ECF No. 5 at 18. The statute stretches notions of scienter beyond recognition.

Defendants also seek to analogize § 16-17-420 to the statute considered by the Supreme Court in *Grayned v. City of Rockford*, 408 U.S. 104 (1972). ECF No. 30 at 39-40. As argued in Plaintiffs' motion, *Grayned* is far from comparable to the case at issue. In *Grayned*, the Supreme Court found the statute under consideration to include willful action, causation, and a "demonstrated interference with school activities." 408 U.S. at 114. Even with these provisions

included, the Court found the law's constitutionality to be a "close" question. *Id.* at 109. Moreover, the statute at issue in *Grayned* was written to apply only to disturbance emanating from outside the school, *id.* at 107-08, and the Court did not contemplate the law's application to school children. *See also McAlpine v. Reese*, 309 F. Supp. 136 (E.D. Mich. 1970)(adult protest on grounds outside school). Section 16-17-420 is distinct in every way. It requires no proof of willful action, demonstrated causation, or even actual interference. *See* ECF No. 5 at18-19. Even further, these standardless terms are applied to adolescents, whose stage of development and experience level make the need for clear guidance even more imperative. *Id.* at 16. If the statute in *Grayned* fell close to the constitutional line, § 16-17-420 clearly crosses over it.

Defendants cite additional state court cases in support of their argument. Yet these cases are also clearly distinguished as they, at a minimum, require willful disruption either by the terms of the statute or through a state court narrowing interpretation. *See Com. v. Bohmer*, 372 N.E.2d 1381, 1386 (Mass. 1978)(statute requiring "willful[]" interruption applied to actions on college campus); *State v. Schoner*, 591 P.2d 1305, 1306 (Ariz. Ct. App. 1997)(statute requiring "willful[]" disruption applied to protestors outside a school); *State v. Wiggins*, 158 S.E.2d 37 (N.C. 1967)(statute requiring willful disruption applied to adults protesting outside a school); *Toledo v. Thompson-Bean*, 879 N.E.2d 799, 804 (Ohio Ct. App. 2007)(in case against an adult, state statute "construed to apply only to willful acts done with intent to disturb"); *M.C. v. State*, 695 So.2d 477, 484 (Fla. Dist. Ct. App. 1997)(finding intent); *A.M.P. v. State*, 927 So.2d 97, 100 (Fla. Dist. Ct. App. 2006)(fight in the bathroom before school did not constitute disruption of school where there was no evidence of intent to disrupt or of actual disruption of school functions). To the extent that the Georgia court in *In re D.H.*, 663 S.E.2d 139 (Ga. 2008), did not require at least these elements, it stands as an unpersuasive outlier.

This Court's role in interpreting state law is more limited than that of a state court. A federal court may only "extrapolate [a statute's] allowable meaning from the statutory text and authoritative interpretations of similar laws by courts of the State." *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 813 (2011)(internal quotations and citations omitted). "[I]t is not within [the federal court's] power to construe and narrow state laws." *Id.* This Court should not read a requirement of intent into the South Carolina law where the state courts have declined to do so. *Amir*, 639 S.E.2d at 149.

Further, even if § 16-17-420 were construed narrowly to require intent, a scienter requirement would not be sufficient to save the law, which is replete with vagueness. A scienter requirement is particularly unlikely to cure an otherwise vague criminal statute. While a scienter requirement may help to mitigate vagueness for the purpose of notice, *see Hoffman Estates* 455 U.S. at 499, in the criminal context, "perhaps the most meaningful aspect of the vagueness doctrine is . . . the requirement that a legislature establish minimal guidelines to govern law enforcement." *United States v. Lanning*, 723 F.3d 476, 482 (4th Cir. 2013) quoting *Smith v. Goguen*, 415 U.S. 566, 574 (1974)).

b. Each operational term of Section 16-17-420 is vague, rendering the statute unconstitutional.

Defendants argue that each of the terms, "Interfer[ing] in any way," "act[ing] in an obnoxious manner," and "loitering," is not vague because it is required to be done "willfully or unnecessarily."[1]ECF No. 30 at 40. As set forth above, this term fails to provide a scienter requirement. Moreover, a scienter requirement cannot give definition to a distinct term.

[1] Defendants do not contest the vagueness of the phrase "disturb in any way." ECF No. 5 at 18-21.

Defendants also argue that as to the terms "interfere" and "obnoxious," the statute is saved because courts have construed other statutes as limited to prohibiting fighting words. ECF No. 30 at 40, 41. However, the state courts have never read this limitation into § 16-17-420. In fact, a South Carolina Attorney General's Opinion stands in clear contradiction and reads the statute to prohibit "[u]se of foul or offensive language toward a principal, teacher, or police officer," or "[u]se of obscene or profane language near a 'schoolhouse.'" 1994 S.C. Op. Att'y Gen. 25, 1994 WL 199757 (April 11, 1994). The Attorney General's Opinion is "afforded great weight in South Carolina, particularly in matters of statutory construction." *Cahaly v. LaRosa*, 25 F. Supp. 3d 817, 826 (D.S.C. 2014), *vacated in part on other grounds*, 796 F.3d 399, 402 (4th Cir. 2015). Moreover, limiting the application of these terms to "fighting words" does nothing to cure the law's vague prohibitions when applied to conduct.

Regarding the term "obnoxious," Defendants point to New York and Pennsylvania district court cases. However, these cases do not provide the support for Defendants' claim. The statute considered in *Bad Frog Brewery, Inc. v. New York State Liquor Auth.*, 973 F. Supp. 280, 288 (N.D.N.Y. 1997), was found on appeal to be an impermissible regulation of commercial speech under the First Amendment. *Bad Frog Brewery, Inc. v. New York State Liquor Auth.*, 134 F.3d 87, 101 (2d Cir. 1998) (vagueness was not raised on appeal). In *Fox v. Philadelphia Turf Club, Inc.*, No. CIV.A. 86-6346, 1987 WL 17751, at *1 (E.D. Pa. Sept. 30, 1987)(unreported), the court concluded without analysis that the law was not vague. As such, it does not provide persuasive guidance for this Court's determination. Further, each of these cases—involving regulation of beer advertising and horse racing licensure, respectively—represents the type of economic regulation subject to the least amount of vagueness scrutiny. *See Hoffman Estates* 455 U.S. at 498.

Moreover, other courts have found reliance on the term "obnoxious" to render a law unconstitutionally vague. *See Bright Lights, Inc. v. City of Newport*, 830 F. Supp. 378, 388 (E.D. Ky. 1993)(adult entertainment licensing ordinance relying on standard of "obnoxious" found unconstitutionally vague); *City of Council Bluffs v. Cain*, 342 N.W.2d 810, 814 (Iowa 1983)(civil ordinance relying on standard of "obnoxious" failed to provide notice and was unconstitutionally vague); *People v. Olsonite Corp.*, 80 Mich. App 763, 774 (Mich. Ct. App. 1978) (environmental ordinance using term 'obnoxious' unconstitutionally vague).

Defendants next contend that the use of the term "loitering" in §16-17-420 is not vague because the term is limited to "loitering that impairs school functions." ECF No. 30 at 42. This argument also fails. The term "impairs school functions" is found nowhere in the law. Further, while section (1)(a) of the law prohibits "to interfere with or disturb in any way . . . the students or teachers of any school or college," this provision stands distinct from the loitering prohibitions enumerated by the statute. S.C. Code § 16-17-420. Moreover, as Plaintiffs argue in their motion, the statutory terms "disturb" and "interfere" are likewise vague and could not provide clarity to the term loiter even if they did apply. ECF No. 5 at 18-22.

Defendants assert that the "Plaintiffs have not alleged in the Complaint that the statute infringes on constitutionally protected conduct." ECF No. 30 at 42. This contention is both incorrect, *see, e.g.*, Compl. ¶¶ 2, 6, 52, and distorts the emphasis of the vagueness analysis. Section 16-17-420 makes criminal common adolescent behaviors through a broad composite law. Such a law violates Plaintiffs' constitutional rights to fair notice of when their behavior will be considered criminal, and to be free from arbitrary and discriminatory enforcement. *See, e.g.*, *Lanning*, 723 F.3d at 482 encourages discriminatory enforcement. It can be and is levied against students exercising constitutionally protected rights. It is applied unevenly to students in some

parts of the state, but not others. It is also used to charge Black students at highly disparate rates, in some places more than six times the rate of their white peers. ECF No. 5 at 7. The statute is beyond salvage and should be declared void for vagueness.

D. Section 16-17-530 is Unconstitutionally Vague as Applied to Elementary and Secondary School Students

Defendants again suggest incorrectly that Plaintiffs' challenge to § 16-17-530 must show the law is vague "in all its applications." ECF No. 30 at 44. As stated above, this is an incorrect statement of the rule applied to facial challenges. It is further inapposite here, as Plaintiffs challenge the Disorderly Conduct statute as applied to elementary and secondary school students.

Defendants' contend that § 16-17-530 is saved from vagueness because the state courts have required speech to amount to "fighting words" when spoken to a police officer. ECF No. 30 at 43-45. This argument does not reach the crux of the law's vagueness. First, to the extent that courts have attempted to cure the infirmity of the statute, these attempts have failed and provide further evidence of the law's incurable vagueness. As the Supreme Court has acknowledged, "the failure of persistent efforts…to establish a standard can provide evidence of vagueness." *Johnson v. United States*, 135 S. Ct. 2551, 2558 (2015)(internal quotations and citation omitted).

Case law limiting the statute's reach to fighting words in the context of adult violations has proved insufficient to prevent the law's application to reach the speech of adolescent students. Although Defendants agree in their brief that such enforcement would be unconstitutional, ECF No. 30 at 43, a South Carolina Attorney General's Opinion advises that § 16-17-530 does in fact prohibit "[u]se of foul or offensive language toward a principal, teacher, or police officer," or "[u]se of obscene or profane language near a 'schoolhouse.'" 1994 S.C. Op. Att'y Gen. 25, 1994 WL 199757 (April 11, 1994). Consistent with this guidance, law enforcement officers charge students with disorderly conduct for disfavored speech, including

the use of profanity. The incident report for Niya Kenny's arrest for criticizing a School Resource Officer (SRO) recorded the offense as one of "disorderly conduct." Additional incident reports identified by Plaintiffs also reflect students charged with disorderly conduct crimes for speech. *See* ECF No. 5, Kayiza Decl. Ex. B.2 ("The subject stated in a loud and boisterous manner toward the SRO 'fuck you.' Several students and staff members were in the hall way and heard the subject make that statement so the subject was escorted by the SRO to the SRO office."); *id.* at Ex. B.3 ("While standing by the cafeteria [the SRO and other adults] could clearly hear [John Doe] (Student) using obscene language while in the presence of adults and other students. [The SRO] approached [John Doe] and advised him to refrain from the language or he would be charged.").

Whether under the law's prohibition on "obscene or profane language . . . in hearing distance of any schoolhouse" or construed to fall under the law's malleable prohibition against "conducting [oneself] in a disorderly or boisterous manner," the simple fact is that students are charged under § 16-17-530 for acts of speech. The vague terms of § 16-17-530 allow and even encourage these incidents of arbitrary and discriminatory enforcement.

The criminalization of adolescent speech is also made easier by the ability to apply § 16-17-530 to common adolescent conduct. Where a broad range of student conduct may be characterized as "disorderly," speech related to even the slightest indicators of behavior may be drawn into the statute's sweep. For example, one SRO wrote in his incident report that a student was charged for using profanity "in a loud and boisterous manner." ECF No. 5, Kayiza Decl. Ex. B.2.

This leads to Plaintiffs' second contention. The phrase "conducting [oneself] in a disorderly or boisterous manner" fails to provide any ascertainable standard, whether applied to

student speech or to other forms of student behavior. Even assuming for the sake of argument that the statute's prohibition on speech is narrowed to fighting words, this does not cure the law's vagueness as applied to behavior. At least as applied to adolescents in the school context, it is impossible to objectively ascertain whether adolescent conduct constitutes youthful exuberance, misconduct, or a crime. *See* ECF No. 5 at 28, 4-5 and sources cited therein. School Codes of Conduct exemplify the impossibility of this endeavor, ECF No. 30 at 8-10, and within the school context, the Disturbing Schools statute, § 16-17-420, appears to color the definition and application of § 16-17-530, Disorderly Conduct. ECF No. 5 at 28. S.P.'s case demonstrates the potential for a simple failure to follow directions to be treated as a crime under § 16-17-420. Compl. ¶¶ 99-100.

For these reasons, § 16-17-530 is vague as applied to elementary and secondary school students. None of the cases cited by Defendants address a law or circumstances on all fours with this case. Certainly, none have considered a law criminalizing "disorder" by elementary or secondary school students. For example, in *United States v. Cassiagnol*, the Fourth Circuit considered a GSA regulation that prohibited "unseemly or disorderly conduct on government properties." 420 F.2d 868, 871 (4th Cir. 1970). The court found that, in contrast with "generally worded statutes which were operating in an unlimited spectrum, unlimited in their scope and in their application," the GSA regulation "could be applied only to situations involving government property under the charge and control of GSA and only in conjunction with other rules and regulations pertaining to government property. . . . [A]ll of which were prominently posted . . . ." *Id.*; *see also Groppi v. Froehlich*, 311 F. Supp. 765, 770 (W.D. Wis. 1970)(in considering charges against an adult, the court found that "'[d]isorderly' is indeed an unfortunately vague and broad term. But in the context of the modifying phrases of § 13.26(1)(b), it is rescued from

invalidity."); *Livingston v. State*, 995 A.2d 812, 821 (Md. App. 2010)(in considering charges against an adult, the court found that the term "disorder" was given meaning by the particular context of the tuberculosis treatment center as set out in the statute); *Lowery v. Adams*, 344 F. Supp. 446, 454 (W.D. Ky. 1972)(addressing a college policy); *Occupy Fort Myers v. City of Fort Myers*, 882 F. Supp. 2d 1320, 1338 (M.D. Fla. 2011)(considering charges against an adult and determining that the "meanings and application" of "disorderly conduct" was "well established under Florida law."); *Tigrett v. Rector & Visitors of Univ. of Virginia*, 97 F.Supp.2d 752, 761 (W.D. Va. 2000)("Plaintiff's main argument is that the savings clause [in the university code of conduct] is itself void for vagueness and makes the entire section void for vagueness.").

Section 16-17-530 contains no further definition of the terms "disorderly" or "boisterous" that might help elucidate the terms meanings. Nor does the law contain a scienter requirement. These vague terms fail to provide warning, particularly to adolescent students. Even more important, the law encourages arbitrary and discriminatory enforcement in the school setting, allowing similar behaviors to be treated with a reprimand or with arrest.

II. Plaintiffs Have Satisfied the Other Preliminary Injunction Factors

A. Plaintiffs Will Suffer Irreparable Injury if the Preliminary Injunction is Withheld.

Defendants' attempt to dispose of Plaintiffs' evidence of the likelihood of future injury with a bare assertion that Plaintiffs "merely indulge in rampant speculation about fears of possible future charges." ECF No. 30 at 6. To the contrary, Plaintiffs have clearly established a risk of future arrest and prosecution, as set out in Plaintiffs' Response to Defendants' Motion to Dismiss. Plaintiffs also identify further harms that stem from the enforcement of S.C. Code §§ 16-17-420 and 16-17-530, including fines, incarceration, stigma, lost educational opportunities,

and the chilling of First Amendment Protected freedoms, and warrant preliminary injunction. ECF No. 5 at 29, 10-14. Defendants do not contest the likelihood or magnitude of these harms.

B. The Balance of Hardships Weighs in Favor of An Injunction and An Injunction is in the Public Interest.

Plaintiffs challenge two criminal statutes, S.C. Code §§ 16-17-420, Disturbing Schools, and 16-17-530, Disorderly Conduct, under which adolescents have been detained, arrested, and charged for behavior as minor as refusing to follow a teachers' instructions, as well as behaviors that are constitutionally protected, such as questioning the actions of a police officer.

It is difficult to imagine that an injunction against these two statutes "would tie the hands of law enforcement as to serious criminal conduct." ECF No. 30 at 6. Rather, Plaintiffs have identified a number of interests served by a preliminary injunction, including the interests of the justice system. ECF No. 5 at 30-31. As stated in Plaintiffs' motion, "[i]f anything, the system is improved by such an injunction" against laws likely to be found unconstitutional. *Centro Tepeyac*, 722 F.3d at 191 (internal quotation and citation omitted).

CONCLUSION

For the foregoing reasons and the reasons set forth in Plaintiffs' opening submission, this Court should grant Plaintiffs' Motion for Preliminary Injunction.

Dated: xx, 2016

Respectfully submitted,

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