

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ELIN WARN BETANZO,

Plaintiff,

Case No. 2:26-cv-12063

v.

Hon. Susan K. DeClercq

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY and LEE
ZELDIN, Administrator, United States
Environmental Protection Agency,

Defendants.

Michael J. Steinberg (P43085)
David Fegley (P85275)
Ellen Gunn*
Alexandra Berdon*
Dana Craig*
Civil Rights Litigation Initiative
University of Michigan Law School
701 S. State St., Suite 2020
Ann Arbor, MI 48109
(734) 763-1983
mjsteinb@umich.edu
dfegley@umich.edu
gunne@umich.edu
aberdon@umich.edu
danacrai@umich.edu

Christopher Marchesano
(N.Y. Bar No. 5152681)
Jacob Metz-Lerman
(N.Y. Bar No. 6168272)**
Climate Science Legal
Defense Fund
475 Riverside Dr., Suite 246
New York, NY 10115
(646) 801-0853
cmarchesano@csldf.org
jmetzlerman@csldf.org

Counsel for Plaintiff

*Student Attorney practicing pursuant to
Local Rule 83.21

**Application for Admission Pending

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Plaintiff Elin Warn Betanzo moves for a preliminary injunction pursuant to Federal Rule of Civil Procedure 65. Plaintiff respectfully requests the Court grant her Motion and issue a preliminary injunction ordering Defendants to reinstate Plaintiff to her position on the National Drinking Water Advisory Council for the remainder of her term and cease implementation of its “zero tolerance” policy on dissent.

A supporting brief accompanies this motion.

Local Rule 7.1(a) requires Plaintiff to ascertain whether this motion will be opposed. Plaintiff’s counsel contacted counsel for Defendants on October 8, 2026 to explain the nature of this motion and its legal basis and to request concurrence. Defense counsel denied concurrence on the same day.

Respectfully submitted,

/s/Michael J. Steinberg
Michael J. Steinberg (P43085)
David Fegley (P85275)
Ellen Gunn*
Alexandra Berdon*
Dana Craig*
Civil Rights Litigation Initiative
University of Michigan Law School
701 S. State St., Suite 2020
Ann Arbor, MI 48109
(734) 763-1983
mjsteinb@umich.edu
dfegley@umich.edu
gunne@umich.edu
aberdon@umich.edu
danacrai@umich.edu

Christopher Marchesano (N.Y. Bar No. 5152681)
Jacob Metz-Lerman (N.Y. Bar No. 6168272)**
Climate Science Legal Defense Fund
475 Riverside Dr., Suite 246
New York, NY 10115
(646) 801-0853
cmarchesano@csldf.org
jmetzlerman@csldf.org

Counsel for Plaintiff

*Student Attorney practicing pursuant to
Local Rule 83.21

**Application for Admission Pending

Dated: October 14, 2026

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ELIN WARN BETANZO,

Plaintiff

Case No. 2:26-cv-12063

v.

Hon. Susan K. DeClercq

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY and LEE
ZELDIN, Administrator, United States
Environmental Protection Agency,

Defendants.

Michael J. Steinberg (P43085)
David Fegley (P85275)
Ellen Gunn*
Alexandra Berdon*
Dana Craig*
Civil Rights Litigation Initiative
University of Michigan Law School
701 S. State St., Suite 2020
Ann Arbor, MI 48109
(734) 763-1983
mjsteinb@umich.edu
dfegley@umich.edu
gunne@umich.edu
aberdon@umich.edu
danacrai@umich.edu

Christopher Marchesano
(N.Y. Bar No. 5152681)
Jacob Metz-Lerman
(N.Y. Bar No. 6168272)**
Climate Science Legal Defense
Fund
475 Riverside Dr., Suite 246
New York, NY 10115
(646) 801-0853
cmarchesano@csldf.org
jmetzlerman@csldf.org

Counsel for Plaintiff

*Student Attorney practicing pursuant to
Local Rule 83.21

**Application for Admission Pending

**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY
INJUNCTION**

TABLE OF CONTENTS

INDEX OF AUTHORITIES..... iii

CONCISE STATEMENT OF ISSUES PRESENTED vi

CONTROLLING AND MOST APPROPRIATE AUTHORITY FOR RELIEF
SOUGHT..... vii

STATEMENT OF FACTS 1

ARGUMENT 4

 I. Ms. Warn Betanzo is Likely to Succeed on the Merits of her First
 Amendment Retaliation Claim Where (1) She Engaged in Protected Speech, (2)
 Defendants Took Adverse Action Against Her, and (3) Her Speech Was the
 Motivating Factor in Her Suspension and Removal. 5

 A. Ms. Warn Betanzo’s Signature on the Declaration Was Protected
 Speech Because She Spoke as a Citizen on Matters of Public Concern, and Her
 Free Speech Interests Outweigh Any Governmental Interest in Efficiency.....6

 1. Ms. Warn Betanzo Spoke in Her Capacity as a Citizen, Not as an EPA
 Employee. 6

 2. Ms. Warn Betanzo’s Speech Addressed Matters of Public Concern
 Because the Declaration Concerned Threats to Public Health and
 Government Wrongdoing. 7

 3. Ms. Warn Betanzo’s Free Speech Interests Outweigh Any
 Governmental Interest in Efficiency. 8

 B. Defendants Took Adverse Action Against Ms. Warn Betanzo by
 Suspending and Removing Her From NDWAC.....13

 C. Ms. Warn Betanzo’s Expression Was a Motivating Factor for the
 Government’s Actions. 13

 II. Ms. Warn Betanzo is Likely to Succeed on the Merits of Her Viewpoint
 Discrimination Claim Because Defendants Punished Her For Expressing
 Dissent. 15

 III. Ms. Warn Betanzo is Likely to Succeed on the Merits of her Right to
 Petition Claim Because She Satisfies the *Pickering* Balancing Test. 16

 IV. Ms. Warn Betanzo is Likely to Succeed on the Merits of her Overbreadth
 Claim Because the “Zero Tolerance” Policy Chills Protected Speech. 17

A. The “Zero Tolerance” Policy Substantially Restricts Citizen Speech on
Matters of Public Concern. 18

B. The Free Speech Interests of EPA Employees and the Public Far
Outweigh Any Government Interest in the “Zero Tolerance” Policy. 20

C. The EPA Policy Cannot be Narrowed to Remove the Threat to
Constitutionally Protected Speech. 22

V. Ms. Warn Betanzo and the General Public Will Suffer Irreparable Harm
Absent a Preliminary Injunction.....23

VI. Issuing a Preliminary Injunction Would Not Cause Substantial Harm to
Others and is in the Public Interest.....24

CONCLUSION 25

INDEX OF AUTHORITIES

Cases

<i>Ashford v. Univ. of Mich.</i> , 89 F.4th 960 (6th Cir. 2024).....	13
<i>Baar v. Jefferson Cty. Bd. of Educ.</i> , 311 F. App'x 817 (6th Cir. 2009).....	20
<i>Barrett v. Harrington</i> , 130 F.3d 246 (6th Cir. 1997).....	1, 12
<i>Bays v. City of Fairborn</i> , 668 F.3d 814 (6th Cir. 2012)	5
<i>Benison v. Ross</i> , 765 F.3d 649 (6th Cir. 2014)	14
<i>Blick v. Ann Arbor Pub. Sch. Dist.</i> , 105 F.4th 868 (6th Cir. 2024)	18
<i>Boddy v. Grech</i> , 178 F.4th 264 (6th Cir. 2026)	1, 12
<i>Bonnell v. Lorenzo</i> , 241 F.3d 800 (6th Cir. 2001)	8
<i>Borough of Duryea v. Guarnieri</i> , 564 U.S. 379 (2011).....	16
<i>Brown v. Trenton</i> , 867 F.2d 318 (6th Cir. 1989)	22
<i>Buddenberg v. Weisdack</i> , 939 F.3d 732 (6th Cir. 2019).....	11
<i>Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.</i> , 511 F.3d 535 (6th Cir. 2007)	5
<i>Chapman v. United States</i> , 500 U.S. 453 (1991).....	23
<i>Charvat v. E. Ohio Reg'l Wastewater Auth.</i> , 246 F.3d 607 (6th Cir. 2001)	7
<i>Connick v. Myers</i> , 461 U.S. 138 (1983).....	passim
<i>Dambrot v. Cent. Mich. Univ.</i> , 55 F.3d 1177 (6th Cir. 1995)	18, 19
<i>Doe v. Univ. of Cincinnati</i> , 872 F.3d 393 (6th Cir. 2017).....	24
<i>Doe v. Univ. of Mich.</i> , 721 F. Supp. 852 (E.D. Mich. 1989).....	19
<i>Dye v. Off. of the Racing Comm'n</i> , 702 F.3d 286 (6th Cir. 2012).....	13
<i>Edgar v. Haines</i> , 2 F.4th 298 (4th Cir. 2021)	18
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976)	23
<i>Garcetti v. Ceballos</i> , 547 U.S. 410 (2006)	6, 8
<i>Gillis v. Miller</i> , 845 F.3d 677 (6th Cir. 2017).....	9
<i>Hernandez v. City of Phx.</i> , 43 F.4th 966 (9th Cir. 2022).....	17, 20
<i>Hill v. Lappin</i> , 630 F.3d 468 (6th Cir. 2010)	13
<i>Janus v. AFSCME, Council 31</i> , 585 U.S. 878 (2018)	20
<i>Jones v. Caruso</i> , 569 F.3d 258 (6th Cir. 2009).....	5
<i>Kirkland v. City of Maryville</i> , 54 F.4th 901 (6th Cir. 2022).....	8
<i>Lane v. Franks</i> , 573 U.S. 228 (2014).....	7, 8, 11, 21
<i>League of Women Voters of U.S. v. Newby</i> , 838 F.3d 1 (D.C. Cir. 2016)).....	24
<i>Marohnic v. Walker</i> , 800 F.2d 613 (6th Cir. 1986)	11
<i>Marquardt v. Carlton</i> , No. 21-3832, 2023 WL 395027 (6th Cir. Jan. 25, 2023)	9
<i>Meyers v. City of Cincinnati</i> , 934 F.2d 726 (6th Cir. 1991).....	12

<i>Miller v. City of Canton</i> , 319 F. App'x 411 (6th Cir. 2009).....	10
<i>Nat'l Rifle Ass'n of Am. v. Vullo</i> , 602 U.S. 175 (2024).....	15
<i>Newsom v. Norris</i> , 888 F.2d 371 (6th Cir. 1989)	23
<i>Nieves v. Bartlett</i> , 587 U.S. 391 (2019).....	14
<i>Noble v. Cincinnati & Hamilton Cnty. Pub. Libr.</i> , 112 F.4th 373 (6th Cir. 2024).....	9, 10, 12
<i>Obama for Am. v. Husted</i> , 697 F.3d 423 (6th Cir. 2012)	5
<i>Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205</i> , 391 U.S. 563 (1968)	6, 7, 20
<i>Rankin v. McPherson</i> , 483 U.S. 378 (1987).....	8, 9, 11, 16
<i>Rosenberger v. Rector & Visitors of the Univ. of Va.</i> , 515 U.S. 819 (1995)	15
<i>S. Glazer's Distribs. of Ohio, L.L.C. v. Great Lakes Brewing Co.</i> , 860 F.3d 844 (6th Cir. 2017).....	5
<i>Sanchez Cruz v. Mullin</i> , No. 25-CV-13347, 2026 WL 1298529 (E.D. Mich. May 12, 2026).....	24
<i>Sensabaugh v. Halliburton</i> , 937 F.3d 621 (6th Cir. 2019)	14
<i>Speet v. Schuette</i> , 726 F.3d 867 (6th Cir. 2013)	19, 20, 22, 23
<i>Thaddeus-X v. Blatter</i> , 175 F.3d 378 (6th Cir. 1999).....	5
<i>Turner Broad. Sys. v. FCC</i> , 512 U.S. 622 (1994).....	20
<i>United States v. Hansen</i> , 599 U.S. 762 (2023)	17
<i>United States v. Nat'l Treasury Emps. Union ("NTEU")</i> , 513 U.S. 454 (1995)	17, 20, 21
<i>Vitolo v. Guzman</i> , 999 F.3d 353 (6th Cir. 2021)	24
<i>Welty v. Dunaway</i> , 749 F. Supp. 3d 882 (M.D. Tenn. 2024)	22
<i>Whiting v. City of Athens</i> , 170 F.4th 439 (6th Cir. 2026).....	5
<i>Whitney v. California</i> , 274 U.S. 357 (1927).....	22
<i>Whitney v. City of Milan</i> , 677 F.3d 292 (6th Cir. 2012).....	10
<i>Williams v. Com. of Ky.</i> , 24 F.3d 1526 (6th Cir. 1994).....	10, 11

Statutes

42 U.S.C. § 300j-5(b).....	1
5 U.S.C. § 1002(b)(6).....	11
5 U.S.C. § 1004(b)(3).....	11

Other Authorities

<i>Data Dashboard</i> , P'ship for Pub. Serv., https://bestplacestowork.org/data-dashboard/	4, 21
Drew Friedman, <i>Fired EPA Employees Challenge Agency, Alleging Free Speech Violations</i> , Fed. News Network (Dec. 3, 2025, at 18:11 ET),	

<https://federalnewsnetwork.com/workforce-rights/governance/2025/12/fired-epa-employees-challenge-agency-alleging-free-speech-violations/>.....4, 14

Kevin Bogardus, *Trump EPA Punished Dissenters Despite ‘Legal Risk’ Warning*, E&E News by POLITICO (Apr. 2, 2026, at 013:26 ET), <https://www.eenews.net/articles/trump-epa-punished-dissenters-despite-legal-risk-warning/>.....4

Walker Bragman, *National Science Foundation Workers to Issue “Alexandria Declaration” Decrying “Catastrophic Changes” Under Trump Administration (Updated)*, Important Context (July 12, 2025), <https://www.importantcontext.news/national-science-foundation-workers/>...4, 21

CONCISE STATEMENT OF ISSUES PRESENTED

1. Is Ms. Warn Betanzo likely to succeed on the merits of her First Amendment retaliation claim where (1) she engaged in protected speech, (2) Defendants took adverse action against her, and (3) her speech was the motivating factor in her suspension and removal?

Yes.

2. Is Ms. Warn Betanzo likely to succeed on the merits of her viewpoint discrimination claim because Defendants punished her for expressing dissent?

Yes.

3. Is Ms. Warn Betanzo likely to succeed on the merits of her right to petition claim because she satisfies the *Pickering* balancing test?

Yes.

4. Is Ms. Warn Betanzo likely to succeed on the merits of her overbreadth claim because the “zero tolerance” policy chills protected speech?

Yes.

5. Will Ms. Warn Betanzo and the general public suffer irreparable harm absent a preliminary injunction?

Yes.

6. Will issuing a preliminary injunction cause substantial harm to others?

No.

7. Is issuing a preliminary injunction in the public interest?

Yes

**CONTROLLING AND MOST APPROPRIATE AUTHORITY FOR
RELIEF SOUGHT**

For the proposition that Ms. Warn Betanzo’s signature on the Declaration of Dissent was protected speech:

Connick v. Myers, 461 U.S. 138 (1983)

Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205, 391 U.S. 563 (1968)

Noble v. Cincinnati & Hamilton Cnty. Pub. Libr., 112 F.4th 373 (6th Cir. 2024)

Williams v. Com. of Ky., 24 F.3d 1526 (6th Cir. 1994)

For the proposition that Defendants took adverse action against Ms. Warn Betanzo by suspending her and removing her from NDWAC:

Dye v. Off. of the Racing Comm’n, 702 F.3d 286 (6th Cir. 2012)

Ashford v. Univ. of Mich., 89 F.4th 960 (6th Cir. 2024)

For the proposition that Ms. Warn Betanzo’s expression was a motivating factor for Defendants’ actions:

Sensabaugh v. Halliburton, 937 F.3d 621 (6th Cir. 2019)

Nieves v. Bartlett, 587 U.S. 391 (2019)

For the proposition that Ms. Warn Betanzo is likely to succeed on the merits of her viewpoint discrimination claim:

Rosenberger v. Rector & Visitors of the Univ. of Va., 515 U.S. 819 (1995)

Rankin v. McPherson, 483 U.S. 378 (1987)

For the proposition that Ms. Warn Betanzo is likely to success on the merits of the right to petition claim:

Borough of Duryea v. Guarnieri, 564 U.S. 379 (2011)

For the proposition that Ms. Warn Betanzo is likely to succeed on the merits of her overbreadth claim:

United States v. Nat’l Treasury Emps. Union (“NTEU”), 513 U.S. 454 (1995).

Blick v. Ann Arbor Pub. Sch. Dist., 105 F.4th 868 (6th Cir. 2024)

Speet v. Schuette, 726 F.3d 867 (6th Cir. 2013)

Dambrot v. Cent. Mich. Univ., 55 F.3d 1177 (6th Cir. 1995)

For the proposition that Ms. Warn Betanzo and the general public will suffer irreparable harm absent a preliminary injunction:

Elrod v. Burns, 427 U.S. 347 (1976)

Newsom v. Norris, 888 F.2d 371 (6th Cir. 1989)

For the proposition that issuing a preliminary injunction would not cause substantial harm to others and is in the public interest:

Vitolo v. Guzman, 999 F.3d 353 (6th Cir. 2021)

Doe v. Univ. of Cincinnati, 872 F.3d 393 (6th Cir. 2017)

INTRODUCTION

“Freedom to criticize public officials and expose their wrongdoing is at the core of First Amendment values.” *Boddy v. Grech*, 178 F.4th 264, 274 (6th Cir. 2026) (quoting *Barrett v. Harrington*, 130 F.3d 246, 263 (6th Cir. 1997)). Plaintiff Elin Warn Betanzo exercised this freedom when she signed a petition that criticized Environmental Protection Agency (EPA) leadership for undermining the agency’s mission of protecting public health and the environment. In response, the EPA announced a “zero tolerance” policy on dissent and removed Ms. Warn Betanzo from her position on the National Drinking Water Advisory Council (NDWAC). In doing so, the EPA retaliated against Ms. Warn Betanzo for expressing a dissenting view and rolled out a policy that substantially chills employee speech.

Because Defendants’ conduct violates the First Amendment, the balancing of equities favors Plaintiff, and an injunction would clearly serve the public interest, this Court should grant Plaintiff’s motion for a preliminary injunction.

STATEMENT OF FACTS

Ms. Warn Betanzo is an engineer and drinking water expert who played a key role in uncovering the Flint Water Crisis in 2015. *See* Declaration of Elin Warn Betanzo (“Exh. A”) at ¶¶ 1, 3. In 2021, Ms. Warn Betanzo was nominated to serve on NDWAC, which advises the EPA on implementation of the Safe Drinking Water Act of 1974. *See* 42 U.S.C. § 300j-5(b). *Id.* at ¶ 5. Ms. Warn Betanzo served a full

term on NDWAC from 2021 to 2024, during which she repeatedly received positive feedback. *Id.* at ¶ 6. At the EPA’s invitation, Ms. Warn Betanzo returned for another three-year term beginning in 2025. *Id.*

On July 1, 2025, Ms. Warn Betanzo joined several hundred current and former EPA staff in signing a public petition called the EPA Declaration of Dissent (“the Declaration”). *See* Exh. B. The Declaration criticized the EPA for disregarding scientific expertise, publishing misinformation, dismantling key offices, rolling back regulations for pollutants, and fostering a culture of fear among employees. *Id.* The Declaration described these actions as a threat to public health and safety, and noted that some actions may have violated federal law. *Id.*

The Declaration states that it was written by EPA employees in their personal capacity and without agency resources. *Id.* Ms. Warn Betanzo signed the Declaration on her personal laptop, outside of work hours, as a private citizen. *See* Exh. A at ¶ 9. The Declaration did not conflict or interfere with Ms. Warn Betanzo’s NDWAC duties. *Id.* The contents of the petition did not discuss or relate to any of Ms. Warn Betanzo’s colleagues or immediate supervisors; it was solely critical of policy decisions made by the agency’s top leadership. *See* Exh. B; Exh. A at ¶ 10.

Shortly after the Declaration was sent to EPA leadership, agency officials worked to identify current employees among the signatories. *See* Exh. C; Exh. D. They also consulted with agency counsel about potential grounds for retaliation

against the signatories. *See* Exh. E; Exh. F. Agency counsel advised against retaliation, warning EPA administrators that the petition constituted protected First Amendment speech and that “any other action against [the signatories] ... may be viewed as retaliatory or ... may have a chilling effect on other employees.” *See* Exh. E.

Ignoring this advice, EPA officials suspended Ms. Warn Betanzo on July 3, 2025, telling her that “EPA leadership is investigating your potential signature on a petition.” *See* Exh. G. The EPA suspended nearly every active employee who signed the petition—approximately 144 employees. *See* Exh. C; Exh. H. To justify the suspensions, the EPA announced that it “has a zero-tolerance policy for career bureaucrats unlawfully undermining, sabotaging and undercutting the administration’s agenda as voted for by the great people of this country last November.” *See* Exh. H. Defendant Zeldin issued a similar statement, adding that: “Our ZERO tolerance policy is in full force and effect and will be unapologetically implemented unconditionally.” *See* Exh. I.

EPA employees told reporters that the suspensions had a “real chilling effect” on employee speech. *See* Exh. J. Ms. Warn Betanzo herself felt afraid to speak out for weeks after her suspension. *See* Exh. A at ¶ 12. The suspensions also led employees at the National Science Foundation (NSF) to halt plans to release their

own petition.¹ A subsequent survey of federal employees found that only 3.5% of EPA employees felt they could “report a suspected violation of a law, rule or regulation without experiencing retaliation.”²

On January 21, 2026, the EPA dismissed Ms. Warn Betanzo. *See* Exh. K. The EPA fired more than a dozen other employees for signing the Declaration, and many more were suspended without pay.³ Since first announcing the “zero tolerance” policy on July 3, 2025, the EPA has repeatedly reiterated that the policy is still in effect.⁴

ARGUMENT

Courts consider four factors when determining whether to issue a preliminary injunction: “(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury absent the injunction; (3)

¹ Walker Bragman, *National Science Foundation Workers to Issue “Alexandria Declaration” Decrying “Catastrophic Changes” Under Trump Administration (Updated)*, Important Context (July 12, 2025),

<https://www.importantcontext.news/national-science-foundation-workers/>.

² *Data Dashboard*, P’ship for Pub. Serv., <https://bestplacestowork.org/data-dashboard/> (last visited Oct. 12, 2026).

³ Drew Friedman, *Fired EPA Employees Challenge Agency, Alleging Free Speech Violations*, Fed. News Network (Dec. 3, 2025, at 18:11 ET), <https://federalnewsnetwork.com/workforce-rightsgovernance/2025/12/fired-epa-employees-challenge-agency-alleging-free-speech-violations/>.

⁴ Kevin Bogardus, *Trump EPA Punished Dissenters Despite ‘Legal Risk’ Warning*, E&E News by POLITICO (Apr. 2, 2026, at 013:26 ET), <https://www.eenews.net/articles/trump-epa-punished-dissenters-despite-legal-risk-warning/>.

whether the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of an injunction.” *Bays v. City of Fairborn*, 668 F.3d 814, 818–819 (6th Cir. 2012) (citing *Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.*, 511 F.3d 535, 542 (6th Cir. 2007)). “[T]hese are factors to be balanced, not prerequisites to be met.” *S. Glazer’s Distribs. of Ohio, L.L.C. v. Great Lakes Brewing Co.*, 860 F.3d 844, 849 (6th Cir. 2017). Moreover, “[w]hen a party seeks a preliminary injunction on the basis of a potential constitutional violation, ‘the likelihood of success on the merits often will be the determinative factor.’” *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (quoting *Jones v. Caruso*, 569 F.3d 258, 265 (6th Cir. 2009)). Here, all four factors weigh strongly in favor of issuing a preliminary injunction.

I. Ms. Warn Betanzo is Likely to Succeed on the Merits of her First Amendment Retaliation Claim Where (1) She Engaged in Protected Speech, (2) Defendants Took Adverse Action Against Her, and (3) Her Speech Was the Motivating Factor in Her Suspension and Removal.

A First Amendment retaliation claim is established when: “(1) the plaintiff engaged in protected conduct; (2) an adverse action was taken against the plaintiff that would deter a person of ordinary firmness from continuing to engage in that conduct; and (3) . . . the adverse action was motivated at least in part by the plaintiff’s protected conduct.” *Whiting v. City of Athens*, 170 F.4th 439, 448 (6th Cir. 2026) (quoting *Thaddeus-X v. Blatter*, 175 F.3d 378, 394 (6th Cir. 1999) (en banc)).

Here, all three elements are met. Ms. Warn Betanzo engaged in protected speech which caused the EPA to retaliate by suspending and removing her from her position on NDWAC. Thus, Ms. Warn Betanzo has a high likelihood of success on her retaliation claim, as was recognized by EPA's own counsel. *See* Exh. E.

A. Ms. Warn Betanzo's Signature on the Declaration Was Protected Speech Because She Spoke as a Citizen on Matters of Public Concern, and Her Free Speech Interests Outweigh Any Governmental Interest in Efficiency.

It is well settled that the government cannot retaliate against a public employee for exercising their "constitutionally protected interest in freedom of expression." *See Connick v. Myers*, 461 U.S. 138, 142 (1983). The First Amendment protects a public employee's speech where (1) they speak in their capacity "as a citizen"; (2) they speak on "matters of public concern"; and (3) the employee's speech outweighs the government's interest in "promoting the efficiency of the public services it performs." *See Pickering v. Bd. of Educ. of Twp. High Sch. Dist.* 205, 391 U.S. 563, 568 (1968).

1. Ms. Warn Betanzo Spoke in Her Capacity as a Citizen, Not as an EPA Employee.

Ms. Warn Betanzo signed the Declaration in her capacity as a citizen. A public employee speaks as a citizen when their speech is made "outside the course of performing their official duties." *See Garcetti v. Ceballos*, 547 U.S. 410, 423 (2006). "[T]he mere fact that a citizen's speech concerns information acquired by virtue of

his public employment does not transform that speech into employee—rather than citizen—speech.” *Lane v. Franks*, 573 U.S. 228, 240 (2014). Indeed, public employees’ speech “on subject matter related to their employment holds special value precisely because those employees gain knowledge of matters of public concern through their employment.” *Id.* See also *Pickering*, 391 U.S. at 571–72 (holding that a teacher spoke as a citizen when he criticized the school board in a letter to a newspaper).

Here, Ms. Warn Betanzo signed the petition as a private citizen, using her personal laptop and email address. See Exh. A at ¶ 9. She did not use EPA time, resources, or her EPA title. *Id.* The Declaration expressly affirms that it was citizen speech, and EPA lawyers agreed. See Exh. B; Exh. E.

2. Ms. Warn Betanzo’s Speech Addressed Matters of Public Concern Because the Declaration Concerned Threats to Public Health and Government Wrongdoing.

A matter of public concern is “any matter of political, social, or other concern to the community.” See *Connick*, 461 U.S. at 146. In determining whether speech addresses a matter of public concern, a court must consider its “content, form, and context.” *Id.* at 147. Potential threats to the health and safety of the public are matters of significant public concern. See *Charvat v. E. Ohio Reg’l Wastewater Auth.*, 246 F.3d 607, 617–18 (6th Cir. 2001) (holding that letters reporting a water treatment plant’s violation of environmental regulations were “a perfect example of protected

speech” on a matter of public concern). “[A]llegations of public corruption, mismanagement, or misconduct in government” are also “[q]uintessential examples.” *Kirkland v. City of Maryville*, 54 F.4th 901, 908 (6th Cir. 2022).

Here, the Declaration alleged gross mismanagement by agency leadership, abuses of authority, violations of the Hatch Act, and actions that threatened public health and safety—all quintessential matters of public concern. *See* Exh. B. Moreover, the “context and form” of the Declaration—a publicly distributed petition that generated significant media attention—establish that Ms. Warn Betanzo spoke on a matter of public concern. *See Bonnell v. Lorenzo*, 241 F.3d 800, 817 (6th Cir. 2001) (finding that the distribution of an essay to faculty members and media outlets brought the “issue to the fore as a matter of public interest.”).

3. Ms. Warn Betanzo’s Free Speech Interests Outweigh Any Governmental Interest in Efficiency.

Under the *Pickering* balancing test, the “next question is whether the government had ‘an adequate justification for treating the employee differently from any other member of the public’ based on the government’s needs as an employer.” *Lane v. Franks*, 573 U.S. 228, 242 (2014) (quoting *Garcetti*, 547 U.S. at 418). That justification must be based on the “government’s interest in the effective and efficient fulfillment of its responsibilities to the public.” *See Connick*, 461 U.S. at 150. The government has the “burden of justifying the discharge on legitimate grounds.” *Rankin v. McPherson*, 483 U.S. 378, 388 (1987). The government may

need to make a “stronger showing . . . if the employee’s speech more substantially involved matters of public concern.” *See Connick*, 461 U.S. at 152.

In evaluating the government’s efficiency interests, courts consider whether the employee’s speech “(1) impairs discipline by superiors or harmony among co-workers, (2) has a detrimental impact on close working relationships for which confidence and personal loyalty are necessary, (3) impedes the performance of [the employee’s] duties or interferes with regular operations of the enterprise, or (4) undermines the [government’s] mission.” *Noble v. Cincinnati & Hamilton Cnty. Pub. Libr.*, 112 F.4th 373, 382–83 (6th Cir. 2024) (quoting *Marquardt v. Carlton*, No. 21-3832, 2023 WL 395027, at *3 (6th Cir. Jan. 25, 2023)). “Where . . . an employee serves no confidential, policymaking, or public contact role, the danger to the agency’s successful functioning from that employee’s private speech is minimal.” *See Rankin*, 483 U.S. at 390–91.

Where, as in this case, there is no “actual disruption of the public agency,” the court “must assess whether the employer could reasonably predict that the employee speech would cause disruption in light of the manner, time, and place the speech was uttered, as well as the context in which the dispute arose.” *Gillis v. Miller*, 845 F.3d 677, 687 (6th Cir. 2017) (cleaned up). The government’s “anticipation of disruption must be objectively reasonable.” *Noble*, 112 F.4th at 384. Speculative or conclusory concerns are insufficient to overcome an employee’s free-speech interests. *See, e.g.,*

Whitney v. City of Milan, 677 F.3d 292, 298 (6th Cir. 2012); *Miller v. City of Canton*, 319 F. App'x 411, 418 (6th Cir. 2009).

Here, Ms. Warn Betanzo's speech did not interfere with the EPA's interest in effective and efficient functioning. Ms. Warn Betanzo's speech did not "impair discipline by supervisors or harmony among co-workers," impact her "close working relationships," or interfere with her duties. *See Noble*, 112 F.4th at 382. The Declaration did not discuss or relate to any of Ms. Warn Betanzo's colleagues or immediate supervisors. *See* Exh. B. And public criticism of government policy does not inherently cause disharmony or disruption. *See, e.g., Williams v. Com. of Ky.*, 24 F.3d 1526, 1537 (6th Cir. 1994). In *Williams*, the Sixth Circuit found "no indication" that the plaintiff's public criticism of her government employer "undermined working relationships in the office, interfered with her duties, or impaired discipline." 24 F.3d at 1536–37.

The time, manner, and place of the Declaration also prevented any disruption to government functions. Unlike in *Connick*, where the plaintiff caused a disruption by preparing and distributing a survey in the office during working hours, *see* 461 U.S. at 153, the Declaration was distributed and released through public, non-governmental channels outside of working hours. Accordingly, the Declaration had no impact on Ms. Warn Betanzo's duties as a member of NDWAC.

At its worst, Ms. Warn Betanzo’s speech could only have a “minimal” impact on EPA functioning because she was not in a confidential, policymaking, or public contact role. *See Rankin*, 483 U.S. at 390–91. Advisory committees, such as NDWAC, solely provide advice to the government; they do not determine government policy, speak for the government, or represent the agency’s views. *See* 5 U.S.C. § 1002(b)(6). Rather, advisory committees make recommendations according to their “independent judgment.” *See* 5 U.S.C. § 1004(b)(3). This role invites members to publicly criticize the EPA’s drinking water policy, which Ms. Warn Betanzo did throughout her first term on NDWAC. *See* Exh. A at ¶ 7. Her public criticism therefore could not have destroyed a “relationship of loyalty and trust required of confidential employees.” *See Williams*, 24 F.3d at 1536.

Even if Ms. Warn Betanzo’s speech caused disruption or disharmony, this disharmony would be insufficient to overcome her interest in exposing government wrongdoing. “[I]n cases involving allegations of official misconduct and public corruption, ‘the employer’s side of the *Pickering* scale is entirely empty.’” *Buddenberg v. Weisdack*, 939 F.3d 732, 740 (6th Cir. 2019) (quoting *Lane*, 573 U.S. at 242). “[W]hen an employee exposes unscrupulous behavior in the workplace, his interests are co-extensive with those of his employer; both want the organization to function in a proper manner.” *Williams*, 24 F.3d at 1537 (quoting *Marohnic v. Walker*, 800 F.2d 613, 616 (6th Cir. 1986)). Thus, the Sixth Circuit held that “no

reasonable official” could conclude that disharmony—caused by the plaintiff reporting specific colleagues for political corruption—outweighed the plaintiff’s interest in making these reports. *Id.* So, too, here, the EPA can offer no legitimate interest that balances against Plaintiff’s right to expose gross mismanagement by agency leadership, abuses of authority, violations of the Hatch Act, and the public’s right to hear such allegations.

Ms. Warn Betanzo’s free speech interests outweigh any governmental interest in efficiency. Her speech aligned with government interests, had no impact on government functioning, and was incapable of causing a meaningful disruption. By contrast, Ms. Warn Betanzo’s interests are entitled to significant weight given the bedrock First Amendment principles at stake in her case. “Freedom to criticize public officials and expose their wrongdoing is at the core of First Amendment values.” *Boddy v. Grech*, 178 F.4th 264, 274 (6th Cir. 2026) (quoting *Barrett v. Harrington*, 130 F.3d 246, 263 (6th Cir. 1997)). Defendants’ efforts to chill dissent and punish Ms. Warn Betanzo solely for criticizing the government reinforce the conclusion that the *Pickering* balance weighs in her favor. *See Noble*, 112 F.4th at 384 (“That the [public employer] fired [the employee] for speech expressing a view contrary to the powers-that-be at that institution casts doubt on its motive for firing him and undercuts its workplace harmony interest.”); *see also Meyers v. City of Cincinnati*, 934 F.2d 726, 730 (6th Cir. 1991) (holding that an employer does not

have a “legitimate interest” in restricting speech they do not like). Therefore, Ms. Warn Betanzo’s signature on the Declaration was protected speech.

B. Defendants Took Adverse Action Against Ms. Warn Betanzo by Suspending and Removing Her From NDWAC.

Under the second part of the retaliation test, the employee must show that the government took an adverse action against them. “An adverse action is one that is ‘capable of deterring a person of ordinary firmness’ from exercising the constitutional right in question.” *Hill v. Lappin*, 630 F.3d 468, 472 (6th Cir. 2010) (citation omitted). “It is elemental that terminations are adverse employment actions.” *Dye v. Off. of the Racing Comm’n*, 702 F.3d 286, 303 (6th Cir. 2012).

Here, Ms. Warn Betanzo was initially placed on indefinite suspension without pay. *See* Exh. G; Exh. A at ¶ 14. The EPA kept Ms. Warn Betanzo in limbo, with no information, for six months. *See* Exh. A at ¶ 13. On its own, this unpaid and indefinite suspension would chill an ordinary person’s speech. *See Ashford v. Univ. of Mich.*, 89 F.4th 960, 974 (6th Cir. 2024) (“A person of ‘ordinary firmness’ would view a ten-day suspension without pay as an adverse action that deters future, similar speech.”). The EPA then summarily dismissed Ms. Warn Betanzo in January 2026, only a year into her three-year term. *See* Exh. K. Accordingly, Defendants took adverse action when they suspended and removed Ms. Betanzo from NDWAC.

C. Ms. Warn Betanzo’s Expression Was a Motivating Factor for the Government’s Actions.

Finally, the employee must show that their speech was a “substantial or motivating factor” in the government’s adverse action. *See Sensabaugh v. Halliburton*, 937 F.3d 621, 629 (6th Cir. 2019). A causal connection can be established “through direct or circumstantial evidence.” *Benison v. Ross*, 765 F.3d 649, 661 (6th Cir. 2014). In the context of public employment, “evidence of the motive and the discharge” alone may demonstrate a causal connection. *See Nieves v. Bartlett*, 587 U.S. 391, 399 (2019).

Here, Ms. Warn Betanzo’s speech was the motivating factor in her suspension and subsequent removal. Defendants suspended Ms. Warn Betanzo two days after she signed the Declaration, stating that “EPA leadership is investigating your potential signature on a petition.” *See* Exh. G. That same day, Defendants suspended approximately 144 employees who signed the petition and publicly condemned these employees for violating the agency’s “zero-tolerance policy for career bureaucrats unlawfully undermining, sabotaging, and undercutting the administration’s agenda.” *See* Exh. H; Exh. I. Defendants later dismissed Ms. Warn Betanzo, making her the only NDWAC member to be dismissed before the end of her term. *See* Exh. A at ¶ 15. Defendants also punished other employees—by firing at least 17 and suspending others without pay—for the express reason that they signed the Declaration.⁵ At every turn, Defendants openly declared their retaliatory motive. They made a point

⁵ Friedman, *supra* note 3.

of punishing the signatories for their speech so that other employees would be scared into silence.

Because Defendants openly retaliated against Ms. Warn Betanzo for exercising her constitutionally protected right to expression, she has a high likelihood of success on her retaliation claim.⁶

II. Ms. Warn Betanzo is Likely to Succeed on the Merits of Her Viewpoint Discrimination Claim Because Defendants Punished Her For Expressing Dissent.

The government does not have a legitimate interest in punishing employees merely because it dislikes their expression. “At the heart of the First Amendment’s Free Speech Clause is the recognition that viewpoint discrimination is uniquely harmful to a free and democratic society.” *Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175, 187 (2024). “The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.” *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995) (citations omitted). “Vigilance is necessary to ensure that public employers do not use authority over employees to silence discourse, not

⁶ Internal emails obtained through the Freedom of Information Act reveal that EPA lawyers agree. *See* Exh. E; Exh. F. An EPA Assistant General Counsel determined that “the letter is likely protected free speech under the First Amendment” and explicitly advised against taking retaliatory actions. *See* Exh. E. The agency’s Ethics Office Director similarly concluded that “[t]he employees are simply exercising their first amendment rights to express their opinions.” *See* Exh. F.

because it hampers public functions but simply because superiors disagree with the content of employees' speech." *Rankin v. McPherson*, 483 U.S. 378, 384 (1987).

Here, Defendants punished Ms. Warn Betanzo pursuant to a policy that expressly discriminates between viewpoints. The EPA justified its retaliation by pointing to its "zero-tolerance policy for career bureaucrats unlawfully undermining, sabotaging and undercutting the administration's agenda *as voted for by the great people of this country last November*." See Exh. H (emphasis added). The policy explicitly seeks to silence views associated with the President's political opposition. Defendants punished the signatories not because their speech "hampere[d] public functions[,] but simply because [Defendants] disagree[d] with the content of [their] speech." See *Rankin*, 483 U.S. at 384. But for the particular views expressed in the Declaration, Ms. Warn Betanzo would not have violated the "zero tolerance" policy or faced retaliation. The policy, and its application to Ms. Warn Betanzo, brazenly defy the First Amendment and constitute impermissible viewpoint discrimination.

III. Ms. Warn Betanzo is Likely to Succeed on the Merits of her Right to Petition Claim Because She Satisfies the *Pickering* Balancing Test.

Ms. Warn Betanzo is likely to succeed on the merits of her claim under the Petitions Clause of the First Amendment. For public employees, courts use the same test as is used for free speech claims. See *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 389 (2011). As discussed above, Ms. Warn Betanzo has a high likelihood of success under this test and thus is likely to succeed under the Petitions Clause.

IV. Ms. Warn Betanzo is Likely to Succeed on the Merits of her Overbreadth Claim Because the “Zero Tolerance” Policy Chills Protected Speech.

Ms. Warn Betanzo will likely prevail on her overbreadth claim because the EPA’s “zero tolerance” policy substantially chills protected speech. The overbreadth doctrine protects against policies that “may deter or ‘chill’ constitutionally protected speech” by allowing litigants “to vindicate the rights of the silenced, as well as society’s broader interest in hearing them speak.” *See United States v. Hansen*, 599 U.S. 762, 770 (2023). In this way, the overbreadth doctrine relaxes the traditional requirements for standing and facial challenges.

When considering an overbreadth challenge to a policy that restricts employee speech, courts apply a modified version of the *Pickering* balancing test, as laid out in *United States v. Nat’l Treasury Emps. Union (“NTEU”)*, 513 U.S. 454, 467 (1995). This test follows the same general structure of the *Pickering* test, asking (1) whether the challenged policy applies to citizen speech on matters of public concern, and (2) whether the government has an adequate justification for this restriction. *Id.* at 465–66; *see also Hernandez v. City of Phx.*, 43 F.4th 966, 980 (9th Cir. 2022). However, as discussed below, the government must carry a heavier burden to prevail under *NTEU*. A policy that restricts employee speech is facially overbroad if, under the *NTEU* test, it “has a ‘substantial number’ of unconstitutional applications as compared to its ‘plainly legitimate sweep.’” *See Blick v. Ann Arbor Pub. Sch. Dist.*,

105 F.4th 868, 879 (6th Cir. 2024) (citing *Edgar v. Haines*, 2 F.4th 298, 313 (4th Cir. 2021)).

A. The “Zero Tolerance” Policy Substantially Restricts Citizen Speech on Matters of Public Concern.

The first step of the *NTEU* test considers whether the challenged policy applies to citizen speech on matters of public concern. A policy raises overbreadth concerns if it reaches “many employees and topics.” *See Blick*, 105 F.4th at 878. In evaluating the scope of a policy, courts consider the policy’s text and how the government has applied it. *See, e.g., Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177, 1183 (6th Cir. 1995) (rejecting the government’s construction of a policy because said construction conflicted with the government’s enforcement of the policy).

Here, the “zero tolerance” policy reaches a substantial amount of protected speech. The policy applies to all 12,000 EPA employees and broadly restricts expression “undermining, sabotaging and undercutting the administration’s agenda.” *See* Exh. H. By its terms, the policy is not narrowly tailored to expression made in an employee capacity. Instead, it stretches to include any public criticism that “undermines” the administration. And any speech that violates the policy would surely be a matter of public concern, since it would relate to the administration’s political agenda. This broad construction is reinforced by the EPA’s application of the “zero tolerance” policy: the agency announced the policy in response to speech that its own lawyers concluded was private citizen speech on matters of public

concern. *See Speet v. Schuette*, 726 F.3d 867, 878 (6th Cir. 2013) (assessing the scope of a statute by looking at how the statute had been enforced).

The policy is not saved by the fact that it only restricts “unlawful” activities. In *Dambrot*, the Sixth Circuit held that a harassment policy was overbroad even though it included a disclaimer that stated: “The University will not extend its application of discriminatory harassment so far as to interfere impermissibly with individual[s’] rights to free speech.” 55 F.3d at 1183. The court declined to accept the University’s assurances that the policy would be applied constitutionally, noting that there was “nothing to ensure the University will not violate First Amendment rights even if that is not their intention.” *Id.*; *see also Doe v. Univ. of Mich.*, 721 F. Supp. 852, 864 (E.D. Mich. 1989) (rejecting the argument that a policy did not apply to protected speech where a pattern of enforcement showed otherwise). Likewise, the EPA cannot shield its policy with a circular assurance that the policy only applies to unprotected speech—particularly when the EPA has already demonstrated a pattern of applying the policy to protected speech.

Accordingly, the “zero tolerance” policy reaches a substantial amount of protected speech. Its sweeping terms regulate a large number of employees and topics, including citizen speech on matters of public concern. The EPA further confirmed the policy’s expansive scope by applying it to protected speech by Ms. Warn Betanzo and over a hundred other employees.

B. The Free Speech Interests of EPA Employees and the Public Far Outweigh Any Government Interest in the “Zero Tolerance” Policy.

When a policy broadly restricts employee speech, as the “zero tolerance” policy does, courts then consider whether the government has an adequate justification for the restriction. *See Hernandez*, 43 F.4th at 980. The “widespread impact” of a speech-restrictive policy “gives rise to far more serious concerns than could any single supervisory decision.” *See NTEU*, 513 U.S. at 468. Accordingly, the government has a “heavier burden and is entitled to considerably less deference” under a test that “more closely resembles exacting scrutiny than the traditional *Pickering* analysis.” *See Janus v. AFSCME, Council 31*, 585 U.S. 878, 907 (2018) (citing *NTEU*, 513 U.S. at 466, 475–76) (cleaned up).

To meet this heavy burden, the government must show that the expressive interests of present and future employees, and the public’s interest as an audience, “are outweighed by that expression’s ‘necessary impact on the actual operation’ of the Government.” *See NTEU*, 513 U.S. at 468 (quoting *Pickering*, 391 U.S. at 571). The government must identify harms that are “real, not merely conjectural,” and the restriction must “in fact alleviate these harms in a direct and material way.” *Id.* at 475 (quoting *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 664 (1994)). A policy must be narrowly tailored to address these predicted harms. *See Speet*, 726 F.3d at 880. The more that a policy burdens speech, the stronger the government’s interests must be. *See Baar v. Jefferson Cty. Bd. of Educ.*, 311 F. App’x 817, 823 (6th Cir. 2009).

Here, the “zero tolerance” policy threatens the First Amendment interests of thousands of federal employees and the general public. Pursuant to this policy, over 140 employees have already faced retaliation for protected speech. *See* Exh. H. Surveys and interviews with EPA employees confirm a widespread fear of retaliation.⁷ The policy has even chilled employees at other agencies, including NSF employees who declined to issue their own letter of dissent.⁸ This chilling “imposes a significant burden on the public’s right to read and hear what the employees would otherwise have written and said.” *See NTEU*, 513 U.S. at 470. The public has a special interest in hearing precisely the type of employee speech that the “zero tolerance” policy restricts—“informed opinion[s]” on matters of public debate. *See Lane v. Franks*, 573 U.S. 228, 236 (2014).

On the other side of the ledger, the government has little to justify the “zero tolerance” policy. To the extent that the policy punishes unlawful sabotage or insubordination, these actions are already barred by a wealth of laws, regulations, and policies that render the policy superfluous. The EPA cannot point to any real, non-speculative reason to “fear that serious evil will result if free speech is practiced.” *See NTEU*, 513 U.S. at 475 (quoting *Whitney v. California*, 274 U.S. 357,

⁷ *See* Partnership for Public Service, *supra* note 2.

⁸ Bragman, *supra* note 1.

376 (1927) (Brandeis, J., concurring)). As such, the EPA cannot satisfy its heavy burden to justify the necessity of the “zero tolerance” policy.

The policy is unconstitutionally overbroad because it has restricted, and continues to restrict, a substantial amount of protected speech and it is not narrowly tailored to serve the government’s interest in efficiency. *See Speet*, 726 F.3d at 878 (holding that a statute was overbroad because it had been applied to protected speech in hundreds of instances). Indeed, the policy was precisely “calculated to discourage” constitutionally protected speech. *Cf. Brown v. Trenton*, 867 F.2d 318, 324 (6th Cir. 1989) (upholding a challenged code on the basis that there was no evidence of misuse of the code and no showing that the code’s “mere existence is calculated to discourage the exercise of any constitutional right.”). The EPA announced the “zero tolerance” policy in response to speech that its own lawyers deemed was protected, showing open disdain for the First Amendment rights of Ms. Warn Betanzo, other EPA employees, and the general public.

C. The EPA Policy Cannot be Narrowed to Remove the Threat to Constitutionally Protected Speech.

A court may uphold an overbroad policy if it can find a narrow interpretation which would eliminate the policy’s unconstitutional nature. *See Welty v. Dunaway*, 749 F. Supp. 3d at 912, *appeal dismissed*, 145 F.4th 628 (6th Cir. 2025). However, courts will not “consider a limiting construction . . . if the statute is not fairly subject to an interpretation which will render unnecessary or substantially modify the federal

constitutional question.” *Speet*, 726 F.3d at 879 (internal quotation marks omitted). Courts cannot “rewrite” a policy to make it constitutionally valid. *See Chapman v. United States*, 500 U.S. 453, 464 (1991).

Here, there is no way to interpret the “zero tolerance” policy as constitutionally valid. The policy’s broad, standardless language and the EPA’s pattern of unconstitutional enforcement leave no room for reinterpretation. As noted above, the policy cannot be read to exclude protected speech because such a reading would still give EPA officials unfettered discretion to determine what is and isn’t protected—discretion they have already abused, against the advice of agency lawyers. If left intact, the policy will continue to intimidate employees into silence.

V. Ms. Warn Betanzo and the General Public Will Suffer Irreparable Harm Absent a Preliminary Injunction.

Plaintiff, other present and future EPA employees, and the general public will face irreparable harm without preliminary injunctive relief. The Supreme Court has stated that “the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). “[A]n individual, who has been subjected to direct and intentional retaliation for having exercised the protected constitutional right of expression, continues to suffer irreparable injury even after termination of some tangible benefit such as employment.” *Newsom v. Norris*, 888 F.2d 371, 378 (6th Cir. 1989).

Here, Ms. Warn Betanzo's suspension in July 2025 and subsequent removal mean that she has been deprived of her First Amendment rights as a public employee for more than a year. Her harm is ongoing and it stems from Defendants' retaliatory termination pursuant to an unconstitutional, overbroad policy. As discussed above, this policy is also causing ongoing and irreparable harm to other EPA employees and the general public, who have an interest in the free speech of public employees. The policy poses a serious risk of depriving the public of information about government wrongdoing and threats to public health and safety.

VI. Issuing a Preliminary Injunction Would Not Cause Substantial Harm to Others and is in the Public Interest.

A preliminary injunction would not cause substantial harm to others. The Sixth Circuit recognizes “no cognizable harm . . . from stopping unconstitutional conduct.” *Vitolo v. Guzman*, 999 F.3d 353, 360 (6th Cir. 2021). Further, “it is always in the public’s interest to prevent a violation of an individual’s constitutional rights.” *Doe v. Univ. of Cincinnati*, 872 F.3d 393, 407 (6th Cir. 2017). “There is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.” *Sanchez Cruz v. Mullin*, No. 25-CV-13347, 2026 WL 1298529, at *6 (E.D. Mich. May 12, 2026) (quoting *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016)).

Here, a preliminary injunction would stop the EPA’s unconstitutional conduct, protect the public’s interest in public employee speech, and ensure that the

EPA abides by federal law. A preliminary injunction ordering the EPA to reinstate Ms. Warn Betanzo would serve the public interest, and the balancing of equities weighs in favor of preliminary injunctive relief.

CONCLUSION

For the foregoing reasons, this Court should grant Plaintiff's motion for preliminary injunction and order Defendants to cease implementation of the "zero tolerance" policy on dissent and reinstate Plaintiff to her position on NDWAC so that she may serve out her full three-year term.

Respectfully submitted,

/s/Michael J. Steinberg

Michael J. Steinberg (P43085)
David Fegley (P85275)
Ellen Gunn*
Alexandra Berdon*
Dana Craig*
Civil Rights Litigation Initiative
University of Michigan Law School
701 S. State St., Suite 2020
Ann Arbor, MI 48109
(734) 763-1983
mjsteinb@umich.edu
dfegley@umich.edu
gunne@umich.edu
aberdon@umich.edu
danacrai@umich.edu

Dated: October 14, 2026

Christopher Marchesano (N.Y. Bar
No. 5152681)
Jacob Metz-Lerman (N.Y. Bar No.
6168272)**
Climate Science Legal Defense Fund
475 Riverside Dr., Suite 246
New York, NY 10115
(646) 801-0853
cmarchesano@csldf.org
jmetzlerman@csldf.org

Counsel for Plaintiff

*Student Attorney practicing pursuant
to Local Rule 83.21

**Application for Admission Pending