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United States District Court,
N.D. Illinois.
LYNCH et al
v.
HUBERMAN et al.

No. 10 C 1783.
March 26, 2010.

West KeySummary**Constitutional Law 92 2002**

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(Q) Education
92XVIII(Q)1 In General
92k1988 Employees
92k2002 k. Employee associations; collective bargaining activities. Most Cited Cases

Schools 345 72

345 Schools
345II Public Schools
345II(D) District Property
345k66 School Buildings
345k72 k. Control and use. Most Cited Cases

Sufficient evidence demonstrated that school board created designated public fora in public schools, in a First Amendment free speech suit filed by teachers union members against school board. The evidence showed that over seventy-eight different groups, including organizations that were not of interest or relevance to students, were permitted to have access to the school facilities for organizational activities before, during and after school hours. U.S.C.A. Const.Amends. 1, 14.

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STATEMENT

AMY J. ST. EVE, J.

***1** Defendants Rob Huberman, Chief Executive Officer of Chicago Public Schools ("CPS"), and the Board of Education of the City of Chicago (collectively, the "Board") recently issued a policy that prohibits Board employees from campaigning for union elections on school property during non-school hours, and from distributing campaign literature in support of those candidates on school grounds. Plaintiffs Deborah Lynch, Josephine Perry, Maureen Callaghan, Mary Ellen Sanchez, Mary Edmonds, Kevin Condon, Daniel Van Over, Cindy Heywood, and Allen Bearden ("Plaintiffs"), members of the Chicago Teachers Union ("CTU") running as a slate for elected union office, allege that the Board's policy violates their rights under the First and Fourteenth Amendments by restricting their workplace speech. Plaintiffs seek a preliminary injunction to prevent the Board from enforcing the policy. For the following reasons, the Court grants Plaintiffs' motion for preliminary injunction.

BACKGROUND

I. Procedural History

Plaintiffs filed their complaint and motion for temporary restraining order or preliminary injunction on March 22, 2010. The Board received notice of the hearing, and the Court heard argument and held evidentiary hearings on Plaintiffs' motion on March 23, 2010 and March 24, 2010. The Court heard testimony from and weighed the credibility of the following witnesses: (I) Deborah Lynch, a CPS teacher, CTU member, past president of CTU (2001-2004), and union candidate; (ii) Michael Bronson, a CPS teacher, CTU member, and union candidate; (iii) Maryellen Sanchez, a CPS teacher and CTU member; (iv) Russell Ehler, a CPS teacher and CTU member; (v) Sarah

Loftus, a retired CPS teacher and current CTU member; (vi) Cynthia Heywood, a CPS teacher, CTU member, and union candidate; and (vii) Rachel Resnick, Chief Labor Relations Officer for the Board. The Court also heard arguments from counsel for both parties.

II. The PACT Campaign

On May 21, 2010, members of the CTU will elect forty-three CTU officers and one hundred and fifty convention delegates. Plaintiffs are currently campaigning as part of a slate of candidates, ProActive Chicago Teachers and School Employees ("PACT"), for these elected positions. In the past few months, Plaintiffs have visited more than sixty schools to hold before and after school informational meetings about their candidacies, and have distributed campaign literature to more than 30,000 union members via transmission to school mailboxes by union delegates. PACT also has an informational website and has held two or three campaign activities at local bars and restaurants.

Deborah Lynch, a CPS teacher, CTU member, and PACT candidate, testified that the only way PACT can hold such off-campus meetings is by disseminating campaign literature to its membership. Ms. Lynch testified that the only way PACT can reach CTU members is by sharing information through union delegates because PACT does not have access to union members' contact information. Although Plaintiffs have the ability to request the CTU to send out a mailing to its members, the cost to do so, $20,000, is prohibitive given the grassroots nature of the campaign and the fact that teachers and staff are paying for the campaign. Ms. Lynch also testified that it is important for PACT to campaign in schools because that is where union members are located. PACT candidates hold informational meetings in CPS schools to raise issues and answer questions from CPS employees, and to distribute campaign materials. Ms. Lynch further testified that opposition groups in the upcoming CTU election also regularly hold campaign meetings on school property. Ms. Lynch testified that, prior to this lawsuit, she was unaware of any complaints regarding PACT'S campaign meetings or mailings, and that she has never complained to the Board about the campaign activities of opposition candidates. Maryellen Sanchez, a CPS teacher, CTU member, and union candidate who campaigned at various schools during non-school hours, also testified that to her knowledge no one had ever complained about PACT'S campaign activities or that PACT disrupted school operations in any way.

***2** Rachel Resnick, Chief Labor Relations Officer for the Board, testified that she was involved in addressing complaints regarding both the 2007 union election and the current union election. Regarding the 2007 complaints, Ms. Resnick testified that she received complaints via e-mail and telephone calls, and that she participated in meetings regarding election campaign activities on school property. She noted that she received these complaints from teachers, principals, and various caucuses running for election. Ms. Resnick characterized the tone of some of the complaints as acrimonious or contentious. The Board also introduced into evidence a March 9, 2007 email from Ted Dallas, Vice President of the CTU, requesting Ms. Resnick to investigate the use of a school intercom by a staff member during school hours to urge CTU members to complete a survey prepared by the PACT caucus. Ms. Resnick responded to Mr. Dallas that the principal at Mr. Dallas's school would make it clear to all staff that campaigning for any slate was not permissible on school grounds. With regard to the complaints that led to the Board's recent memorandum, Ms. Resnick testified that she has had thirty to forty conversations regarding the current union campaign activities. She has received complaints from teachers regarding receipt of campaign materials from a particular slate, and complaints regarding the tone and language of the materials. She has also received queries from principals regarding what to do when campaign materials posted on school walls do not employ professional language. She has also had conversations with principals who have asked for guidance when caucus candidates request tables to be set up by school officials so that they can have teachers sign petitions and receive campaign material.

III. The Board's Policy

The Rules of the Board of Education of the City of Chicago ("Board Rules") govern use of school facilities after regular hours of building operation. Sec. 6-25.II provides that "School Affiliated Non-Student Groups," defined as "groups whose mission is [sic] promote the educational mission and/or the efficient operations of a school," may use the school facilities within certain restrictions. Sec. 6-25.V provides that "Community and Other Non-School Affiliated Student Groups," defined as

"groups whose mission is unrelated to the Chicago Public Schools," "may use the school facilities for free, as determined by the principal, for free public lectures, concerts, or other educational and social interests, when school is not in session, subject to the reasonable restrictions on the time, place and manner of such usage imposed by the principal." (R. 7-3, Ex. C.) Ms. Resnick also testified that in order for these before or after school activities to occur, groups need permission from the school principal, and an administrator needs to be present on-site, as well as an engineer or custodian to keep the facilities running.

***3** Rule 6-18 governs circulation and distribution of unauthorized written materials and provides that: "No employee or other person shall circulate, permit to be circulated, distribute or exhibit, whether in written or electronic form on school grounds ... any advertisements, circular, subscription list, invitation or notice of meetings, any book, map or other article, or any other material or a commercial, political or sectarian nature, among the pupils, teachers, or other employees, except by approval of the principal [or other executives], setting forth the time, manner and place of the circulation or distribution." (R. 7-4, Ex. D.) Board Rule 6-18 also prohibits the distribution of obscene or libelous material to school employees, but does not otherwise provide any content-based restrictions. Ms. Resnick testified that the Board's policies prohibit the distribution of any political materials to school mailboxes, and that materials that are placed in teachers' school mailboxes are "somehow either related to a benefit that teachers or students would receive from an organization or business."

IV. The Board's Practices

Affidavits and testimony introduced by Plaintiffs demonstrate that over seventy-eight non-school related community and commercial organizations regularly hold meetings at Chicago public schools during non-school hours. These groups include: religious groups, community organizations, coaching associations, GED classes, tax assistance programs, COSTCO, National Education Insurance, Nutra System, Weightwatchers, financial advisors (AIG, Netlife, Prudential), vendors of school supplies, Boy Scouts of America, environmental groups, cosmetic companies, sororities and home security system companies, among others. This evidence was uncontested. The affidavits and testimony also show that employees have received materials in their school mailboxes from over forty-seven groups, including the following: various colleges, Chicago Public Library, ING Financial Services, COSTCO, OfficeMax, Local School Council ("LSC") candidate information, Chicago sports teams (Bulls, White Sox), Kohls, Carsons, day care centers, Art Institute of Chicago, J.C. Penny's, United Negro College Fund, Borders, Target, New York Life and Jiffy Lube.[FN1] For example, Cynthia Heywood testified that she received flyers from catering groups, Borders, the Bulls, the White Sox, and Carsons in her school mailbox. Russell Ehler testified that Columbia College, GED classes, and Chicago wrestling coaches association all held meetings and events at school facilities, and that he has received materials from various financial institutions, the Bulls, the White Sox, ESPN magazine, and various institutions of higher education in his school mailbox. Maryellen Sanchez testified that the Boy Scouts, various financial institutions, insurance companies, home security system companies, Reading is Fun, and other vendors hold meetings and events at school facilities, and that she has received materials from Borders, Lake Shore Learning, Office Max, Office Depot, Staples, and United Negro College Fund in her school mailbox.

> FN1. The parties presented no evidence regarding whether these outside organizations secured permission from school principals prior to hosting events or distributing materials on school campuses.

***4** Prior to March 12, 2010, PACT candidates also held before and after school informational meetings regarding their candidacies and campaigns at schools in Chicago. PACT also distributed campaign materials to CTU members via union delegates who placed campaign brochures and announcements in union members' school mailboxes. Sarah Loftus, a former CPS teacher, CTU member, and union candidate, credibly testified that until she retired from teaching in 2007, she repeatedly received union campaign materials in her school mailbox. The LSC, a group made up of teachers, parents, administrators and community representatives that sets policies for schools and oversees school budgets, also routinely campaigns on school property.

V. The March 12, 2010 Memorandum

On March 12, 2010, Defendant Huberman issued a memorandum to all CPS principals (the "March 12,

2010 Memorandum"). (R. 7-2, March 12, 2010 Memorandum.) Ms. Resnick testified that the Board issued the memorandum due to its desire to maintain a neutral appearance in the current union campaign. The March 12, 2010 Memorandum prohibits the use of school facilities for union campaign activities and prohibits the distribution of campaign materials on school grounds. The memorandum directs schools to address violations of the directive in accordance with the Employee Discipline Code. The March 12, 2010 Memorandum provides that the Board is taking these actions to ensure that: (i) CPS resources are used for school business only, (ii) CPS administrators maintain a position of neutrality with respect to union elections, and (iii) CPS employees use their duty time for school business. With regard to the distribution of campaign materials, the memorandum also states that the Board is "taking this action to avoid the appearance that any CPS administrator endorses a candidate, to ensure that administrators do not have to waste time monitoring the distribution and review of campaign materials on work time, and to avoid the disruption that can plague highly contested union elections." *Id.*

Ms. Lynch testified that without the in-school activities that the March 12, 2010 Memorandum prohibits, "there is no union campaign. It's as if Mr. Huberman with this memo has suspended the union campaign." Other candidates testified that their campaigns have been hindered since the issuance of the March 12, 2010 Memorandum, and that certain schools have cancelled scheduled PACT meetings. Witnesses also testified that, due to the March 12, 2010 Memorandum, they fear discipline if they continue to campaign for PACT at school facilities during non-school hours.

LEGAL STANDARD

"A preliminary injunction is an extraordinary remedy intended to preserve the status quo until the merits of a case may be resolved," *Indiana Civil Liberties Union v. O'Bannon*, 259 F.3d 766, 770 (7th Cir.2001), and as "a very serious remedy, [it is] never to be indulged in except in a case clearly demanding it." *Barbecue Marx, Inc. v. 551 Ogden, Inc.*, 235 F.3d 1041, 1044 (7th Cir.2000) (internal quotation omitted). "A party seeking to obtain a preliminary injunction must demonstrate: (1) its case has some likelihood of success on the merits; (2) that no adequate remedy at law exists; and (3) it will suffer irreparable harm if the injunction is not granted." *Ty, Inc. v. Jones Group, Inc.*, 237 F.3d 891, 895 (7th Cir.2001). "If the court is satisfied that these three conditions have been met, then it must consider the irreparable harm that the nonmoving party will suffer if preliminary relief is granted, balancing such harm against the irreparable harm the moving party will suffer if relief is denied." *Jones Group*, 237 F.3 at 895 (citing *Storck USA, L.P. v. Farley Candy Co.*, 14 F.3d 311, 314 (7th Cir.1994)). "Finally, the court must consider the public interest (non-parties) in denying or granting the injunction." *Id.* (parentheses in original). The court then weighs all of these factors, in a process that "involves engaging in ... [a] sliding scale approach; the more likely the plaintiff will succeed on the merits, the less the balance of irreparable harms need favor the plaintiff's position." *Id.*

ANALYSIS

I. Likelihood of Success on the Merits

***5** To succeed on their claim, Plaintiffs must demonstrate that they have some likelihood of success on their First Amendment claim. *Ty, Inc.*, 237 F.3d at 895 (7th Cir.2001). Courts apply different levels of scrutiny in free speech cases depending on whether the relevant forum is a traditional public forum, designated public forum, limited public forum, or nonpublic forum. *Ill. Dunesland Pres. Soc'y v. Ill. Dep't of Natural Res.*, 584 F.3d 719, 722-723 (7th Cir.2009). *See also Pleasant Grove City v. Summum*, ---U.S. ----, ----, 129 S.Ct. 1125, 1132, 172 L.Ed.2d 853 (2009). Plaintiffs contend that CPS facilities during non-school hours and employee mailboxes are designated public fora because the Board has "deliberately open[ed] its schools to-and, indeed, inviting-a wide-ranging assortment of teacher groups and clubs, student organizations, community organizations, and businesses." (R. 7-1, Board's Memorandum, p. 9-10.) The Board contends that these locations are nonpublic fora because the Board only permits limited access to non-school groups. In order to determine whether Plaintiffs are likely to succeed on their claim, the Court must first determine the nature of the relevant forum.

A. Defining the Relevant Forum

The Seventh Circuit has held that "[t]he relevant forum is defined by focusing on 'the access sought by the speaker.' If a speaker seeks 'general access' to an entire piece of public property, then that property is the relevant forum. If a speaker seeks a more limited access, however, then we must tailor our approach to

ascertain 'the perimeters of a forum within the confines of government property.' " *Air Line Pilots Ass'n Int'l v. Department of Aviation*, 45 F.3d 1144, 1151 (7th Cir.1995) (internal citations omitted). There are two fora at issue in this case: (i) public school facilities before and after school hours (for holding meetings and hand-delivering campaign materials), and (ii) teacher mailboxes (for delivering campaign materials).

B. The Status of Public School Facilities During Non-School Hours and Teacher Mailboxes

Both the Supreme Court and the Seventh Circuit have recently set forth the standard that courts must apply to determine whether a particular location is a public forum, a nonpublic forum, or something in between those designations. In *Ill. Dunesland Pres. Socy. v.*, 584 F.3d at 722-723, the Seventh Circuit, relying in part on the Supreme Court's decision in *Pleasant Grove City v. Summum*, 129 S.Ct. at 1132, addressing the public/nonpublic forum distinction, explained:

> A 'forum' in that jargon is a piece of public property usable for expressive activity by members of the public ('private speech,' in forum jargon). The Supreme Court distinguishes a 'traditional public forum' from a 'designated public forum' and both from a 'nonpublic forum.'
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> A traditional public forum is a street or park, or some other type of public property that like a street or park has long ... been used for expressive activity, such as marches and leafletting. A designated public forum, illustrated by a public theater, is a facility that the government has created to be, or has subsequently opened for use as, a site for expressive activity by private persons. Usually, as in the case of a public theater, it is available only for specified forms of private expressive activity: plays, in the case of a theater, rather than political speeches ....
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> ***6** The third category-the 'nonpublic forum'-consists of government-owned facilities ... that could be and sometimes are used for private expressive activities but are not primarily intended for such use. The government can limit private expression in such a facility to expression that furthers the purpose for which the facility was created.
>
> Some decisions recognize a fourth category, a variant of the second, variously called a 'limited designated public forum'..., a 'limited public forum,' or a 'limited forum.' [citing *Pleasant Grove City*]. The terms denote a public facility limited to the discussion of certain subjects or reserved for some types or classes of speaker.
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> *Id.* at 722-23 (internal citations omitted).

The Supreme Court explains that "a government entity may create 'a designated public forum' if government property that has not traditionally been regarded as a public forum is intentionally opened up for that purpose. Government restrictions on speech in a designated public forum are subject to the same strict scrutiny as restrictions in a traditional public forum." *Pleasant Grove City*, 129 S.Ct. at 1132 (internal citations omitted). Accordingly, reasonable time, place, and manner restrictions are allowed, *see Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 45, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983), but content-based restrictions must be narrowly tailored to serve a compelling government interest. *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 800, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985). Conversely, in limited public forums, "a government entity may impose restrictions on speech that are reasonable and viewpoint-neutral." *Id.* (citing *Good News Club v. Milford Central School*, 533 U.S. 98, 106-107, 121 S.Ct. 2093, 150 L.Ed.2d 151 (2001)).

The Seventh Circuit has previously addressed whether a school may be considered a public forum. In *May v. Evansville-Vanderburgh School Corp.*, the Seventh Circuit held that an elementary school was not a public forum where the school was not used for meetings unrelated to school business. The court explained that, "[t]he government does not create a public forum by inaction or by permitting limited discourse, *but only by intentionally opening a non-traditional forum for public discourse."* 787 F.2d 1105, 1118 (7th Cir.1986) (internal citation and quotation omitted) (emphasis added). Similarly, in *Vukadinovich v. Board of Sch. Trustees*, the Seventh Circuit again found that "[p]ublic schools ... become public fora 'only if school authorities have "by policy or by practice" opened those facilities "for indiscriminate use by the general public" or by some segment of the public such as student organizations.' " 978 F.2d 403, 409 (7th Cir.1992).

Here, the evidence overwhelmingly demonstrates that the Board has opened up CPS facilities for a wide-variety of non-school related purposes during before and after school hours. The evidence shows that over seventy-eight different groups, including financial institutions, vendors, coaching associations, community organizations, vendors of school supplies, environmental groups, and dieting groups, hold meetings and informational sessions on CPS campuses. While the Board Rules may purport to limit access to the use of school grounds to certain outside organizations, the evidence demonstrates that, in practice, the Board has opened its campuses for a wide range of public discourse that has nothing to do with the education of the students. Plaintiffs have therefore demonstrated that the Board has created designated public fora because they have "opened [school facilities] for use as, a site for expressive activity by private persons." *Id.* *Ill. Dunesland Pres. Soc'y*, 584 F.3d at 722-723. *See also* *Gregoire v. Centennial Sch. Dist.*, 907 F.2d 1366, 1378-79, 1382 (3d Cir.1990) (holding that defendant had created a designated public forum in high school facilities by opening them up to a wide range of programming and a variety of community, civic and political organizations).

***7** Plaintiffs have similarly demonstrated that the Board has opened up employee mailboxes to a wide variety of organizations, thereby creating a designated public forum in the mailboxes as well. The Board relies on *Davidson v. Community Consol. Sch. Dist. 181*, 130 F.3d 265 (7th Cir.1997), for the proposition that a school district's internal mail system is a nonpublic forum. In *Davidson*, however, the Seventh Circuit held that a particular school district's internal mail system was a nonpublic forum because the normal and intended function of such a system was to facilitate internal communication, and that a school district did not violate the First Amendment when it limited the use of that mail system. The Seventh Circuit further held "that the District's decision to limit the use of the internal mail system to those involved in the governance of the District, including the Union," but to prohibit union candidates from using the mail system for campaign activities, was "content neutral and rationally related to the purpose of the mail system." *Id.* at 268, n. 4. The facts of the present case, however, differ from *Davidson.* Plaintiffs have demonstrated that over forty-eight community, educational, civic, and commercial organizations routinely employ school mailboxes to disseminate flyers and informational brochures. Accordingly, Plaintiffs have established that Defendants created a designated public forum.

Defendants argue that the Supreme Court's holding in *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983) controls this case. *Perry* involved a teachers association that a school district barred from access to its inter-school mail system, after a union was elected exclusive bargaining representative for the teachers in the school district. The teachers association alleged that the preferential access to the internal mail system was a violation of its First Amendment rights. *Id.* at 38. The teachers association argued that the interschool mail system was a limited public forum, and that the school district could not bar it from using the system because it permitted other non-school groups to access the system. Holding that the school mail system was not a public forum, the Supreme Court explained:

> The internal mail system, at least by policy, is not held open to the general public. It is instead [plaintiff's] position that the school mail facilities have become a "limited public forum" from which it may not be excluded because of the periodic use of the system by private non-school-connected groups ....
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> [This argument is not] persuasive. The use of the internal school mail by groups not affiliated with the schools is no doubt a relevant consideration. If by policy or by practice the Perry School District has opened its mail system for indiscriminate use by the general public, then [plaintiff] could justifiably argue a public forum has been created. This, however, is not the case. As the case comes before us, there is no indication in the record that the school mailboxes and interschool delivery system are open for use by the general public. Permission to use the system to communicate with teachers must be secured from the individual building principal. There is no court finding or evidence in the record which demonstrates that this permission has been granted as a matter of course to all who seek to distribute material. We can only conclude that the schools do allow some outside organizations such as the YMCA, Cub Scouts, and other civic and church organizations to use the facilities. This type of selective access does not transform government property into a public forum....

> ***8** Moreover, even if we assume that by granting access to the Cub Scouts, YMCA's, and parochial schools, the School District has created a "limited" public forum, the constitutional right of access would in any event extend only to other entities of similar character. While the school mail facilities thus might be a forum generally open for use by the Girl Scouts, the local boys' club, and other organizations that engage in activities of interest and educational relevance to students, they would not as a consequence be open to an organization such as [plaintiff], which is concerned with the terms and conditions of teacher employment.
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> *Id.* at 47-48.

Contrary to the facts in *Perry*, here Plaintiffs have established that the school district has opened up its facilities and mailboxes to an extremely wide range of organizations, including organizations that are not of interest or relevance to students. In other words, there is no evidence of "selective access." While the Board presented evidence that its written policy provides that school principals may limit access to outside organizations, Defendants did not present evidence that any principals have limited access to school facilities. Instead, the evidence demonstrates that an extremely wide range of groups have access to school facilities and mailboxes, including many groups that have nothing to do with furthering education.

Moreover, the Supreme Court's finding in *Perry* that "exclusion of [a] rival union may reasonably be considered a means of insuring labor peace within the schools" because the policy "serves to prevent the District's school from becoming a battlefield of inter-union squabbles" does not govern the facts of this case for two reasons. *Id.* at 52. First, the Supreme Court articulated the school district's policy as a "reasonable" policy in light of the purpose for which the forum at issue served, the appropriate analysis in a nonpublic forum case. Second, the Supreme Court specifically noted that pursuant to state law, "during election periods, [plaintiff] is assured of equal access to all modes of communication," including the internal mail system. *Id.* at 41, 53. Accordingly, the Supreme Court's pronouncement only amounts to a finding that it was reasonable for the school district in *Perry* to avoid "inter-union" squabbles during non-election time frames.

Because the undisputed evidence demonstrates that the Board has opened up CPS facilities during before and after school hours to a wide variety of organizations, and that the Board has permitted a large number of organizations to disseminate non-school related information via employee mailboxes, Plaintiffs have demonstrated that these locations are designated public fora. The Court accordingly turns to the appropriate scrutiny to apply to a restriction on speech in a designated public forum.

C. Scrutiny of Speech Limitation

"Government restrictions on speech in a designated public forum are subject to the same strict scrutiny as restrictions in a traditional public forum." *Pleasant Grove City v. Summum*, --- U.S. ----, ----, 129 S.Ct. 1125, 1132, 172 L.Ed.2d 853 (2009). Reasonable time, place, and manner restrictions are allowed, *see Perry Ed. Assn.*, 460 U.S. at 45, but content-based restrictions must be narrowly tailored to serve a compelling government interest. *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 800, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985). The Board has conceded that the restrictions contained in the March 12, 2010 Memorandum, which apply only to speech that involves campaigning activity, are content-based. Because the Board has not proffered a compelling government interest for its restrictions, Plaintiffs have established a likelihood of success on the merits of their First Amendment claim.

***9** According to the Board, the rationale for its policy prohibiting union campaigning on school grounds is that the Board wishes to retain the appearance of neutrality in union elections, conserve school resources for school purposes, and prevent employees from engaging in non-work related activities during working hours. The Board's intentions, however, are belied by its previously established Board Rules which indicate that the Board permits a wide variety of outside groups to use school facilities during non-school hours. Moreover, the evidence shows that it is the Board's practice to permit over seventy-eight community and commercial groups to use school facilities and over forty-seven groups to distribute information via school mailboxes. While Ms. Resnick testified that she believed that the groups using CPS facilities were tied to student or teacher interests, the evidence demonstrates an almost unlimited assortment of organizations used school facilities and/or distributed information to employees.

The Board has also failed to show that its purported interest in maintaining neutrality in union elections is compelling. The evidence demonstrates that union candidates have campaigned on school property and distributed campaign literature in the CPS schools for years. While the Board has presented evidence regarding complaints associated with union campaign activity, the Board has not presented any specific instances of complaints based on the use of school property to host campaign events. Furthermore, the Board has not presented any evidence as to how such activity available to all candidates would impact its neutrality. Additionally, the evidence demonstrates that union candidates are not the only group that campaign on campus. Multiple witnesses testified that candidates for LSC positions in various schools regularly campaign on school campuses.

The Board's contentions that its policy is important to provide a quality education to CPS students and to ensure that CPS resources are used for school business are also not persuasive. The union campaign activity will only take place when students are not present. Finally, the Board has not presented any evidence to demonstrate that union campaigning has interfered with employees' productivity or work during school hours. It is also uncontested that the activities at issue do not take place during school hours.

Additionally, given that many other groups distribute coupons and flyers to teachers via their school mailboxes, the school's ability to review and distribute mail does not appear to be a reasonable justification for a bar on candidates delivering campaign materials via this avenue. The evidence shows that the Board permits a wide range of flyers and informational brochures to be distributed to employee mailboxes. Moreover, the Board has not explained how the distribution of union campaign materials would require any further monitoring by the Board, or how the distribution would disrupt the workplace. *See, e.g.*, *Weingarten v. Bd. of Educ.*, 591 F.Supp.2d 511, 522 (S.D.N.Y.2008) ("[T]he rationale offered by defendants-'leafleting' through the mailboxes might overwhelm a school's ability to review and distribute mail-does not appear on the record before me to be a reasonable justification for a blanket bar on the union delivering candidate-related materials in mailboxes that are not open to students.")

***10** Because the Board has failed to proffer a compelling interest for its restraint on speech, Plaintiffs are likely to succeed on the merits of their claim.

II. No Adequate Remedy at Law

The Seventh Circuit has held that money damages cannot fully compensate a plaintiff for loss of free speech rights prior to an election. *Brownsburg Area Patrons Affecting Change v. Baldwin*, 137 F.3d 503, 507 (7th Cir.1998) ("[Plaintiff] lacks an adequate remedy at law as any post-election remedy would not compensate it for the loss of the freedom of speech.") (citing *Grossbaum v. Indianapolis-Marion County Bldg. Auth.*, 63 F.3d 581, 585 (7th Cir.1995)). *See also National People's Action v. Wilmette*, 914 F.2d 1008, 1013 (7th Cir.1990) ("[I]njunctions are especially appropriate in the context of first amendment violations because of the inadequacy of money damages."); *Flower Cab Co. v. Petitte*, 685 F.2d 192, 195 (7th Cir.1982) ("In [first amendment] cases the quantification of injury is difficult and damages are therefore not an adequate remedy."). Given the free speech rights at issue and the impending election on May 21, 2010, Plaintiffs have shown that they lack an adequate remedy at law.

III. Irreparable Harm

Plaintiffs allege that they will suffer irreparable harm unless an injunction issues because Plaintiffs will continue to suffer injury if their speech is restrained. The union election is less than two months away. Ms. Lynch's credible testimony demonstrates that the only way that PACT can reach CTU members is by sharing information through union delegates because PACT does not have access to union members' contact information and the cost to request a CTU mailing is prohibitive given the grassroots nature of the campaign. Indeed, Ms. Lynch testified that without in-school activities, "there is no union campaign."

Moreover, even without Ms. Lynch's testimony, Plaintiff's could establish irreparable harm. The Seventh Circuit has held that, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Brownsburg Area Patrons Affecting Change*, 137 F.3d at 507 (citing *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976) (plurality opinion)). *See also National People's Action*, 914 F.2d at 1013 ("Even a temporary deprivation of first amen-

dment freedom of expression rights is generally sufficient to prove irreparable harm.") Because the Board's policy curtails First Amendment rights, Plaintiffs have demonstrated that continuation of the Board's policy will result in irreparable injury.

IV. Balancing the Harms

Because Plaintiffs have met all three requirements for the imposition of a preliminary injunction, the Court must balance any irreparable harm that Defendants will suffer against the irreparable harm Plaintiffs will suffer if the Court denies them relief. *Jones Group,* 237 F.3 at 895 (citing *Storck USA, L.P. v. Farley Candy Co.*, 14 F.3d 311, 314 (7th Cir.1994)). While Ms. Resnick testified that the Board does not allow political materials to be placed in school mailboxes, Plaintiffs have presented evidence that PACT has campaigned on school grounds and distributed school materials to union members' mailboxes for years. Defendants have not demonstrated that they will suffer significant harm if Plaintiffs are permitted to continue to campaign during non-school hours until the resolution of this lawsuit, especially given that the election is less than two months away. Moreover, given the First Amendment issues presented, Plaintiffs will clearly suffer harm if the injunction does not issue. Finally, Defendants have presented no evidence that the public will be harmed by the issuance of an injunction, or any evidence that the granting of the preliminary injunction will affect the education of children at school. Accordingly, the balancing of the harms weighs in favor of granting the preliminary injunction.

CONCLUSION

***11** For the foregoing reasons, the Court grants Plaintiffs' request for a preliminary injunction. Defendants are prohibited from interfering with (i) Plaintiffs' right to organize before and after school meetings in Chicago Public Schools during non-work hours to discuss their candidacies for elected union office, and (ii) Plaintiffs' right to have campaign literature distributed in school facilities, including school mailboxes, before and after school hours.

N.D.Ill.,2010.
Lynch v. Huberman
Slip Copy, 2010 WL 3156006 (N.D.Ill.)

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