"I came to complete not to refute. I came light to the World." Jesus Christ

No. 23A210

IN THE SUPREME COURT OF THE UNITED STATES

Mark Bochra, individually and on Behalf of all others similarly situated,

Applicant,

V.

U.S. DEPARTMENT OF EDUCATION; Betsy Devos, in her official and individual capacity as former Secretary for the Department of Education and Kenneth Marcus, in his official and individual capacity as the former Secretary for OCR; Miguel Cardona, in his official Capacity as the Current Secretary for the Department of Education, Suzanne Goldberg in her official and individual capacity as the Former secretary for OCR, and Secretary Catherine Lhamon in her official Capacity as the current Secretary for OCR.[1]

Respondents.

To the Honorable Amy Coney Barrett, Associate Justice of the
Supreme Court and Circuit Justice for the Seventh Circuit

EMERGENCY APPLICATION FOR WRIT OF INJUNCTION PENDING APPEAL

Mark Bochra
5757 North Sheridan Road, Apt 13B
Chicago, IL 60660
Plaintiff, Pro Se

August 23, 2023

[1] The parties mostly involved were former secretary Betsy Devos and former secretary Kenneth Marcus but because leadership changed from the Trump administration to the Biden administration, current secretary for the department of education and current secretary for office for civil rights had to be named in the ongoing litigation. The new administration took over leadership during Mark's appeal process of his OCR Complaint; they were partially involved.

Similar to the *Sweet v. Cardona* (3:19-cv-03674) case which was later settled, it went from Former Secretary Betsy Devos to Current Secretary Miguel Cardona because of the official capacity over the Department of Education. Moreover, OCR are currently handling employment discrimination for Mark Bochra against Chicago Public School and many change of events took place related to the IHRA definition as well as changes to the OCR manual without going through regulatory channels in direct violation of again the APA; major rule the "appeal" process was removed from the OCR manual.

TO THE HONORABLE AMY CONEY BARRETT, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

Applicant Mark Bochra, *pro se*, tried his best to describe this complex case of discrimination and retaliation not just by Florida Coastal School of Law (FCSL) but by Office for Civil Rights (OCR) under Kenneth Marcus leadership who was working as an agent on behalf of Israel without registering under the Foreign Agents Registration Act (FARA), used the IHRA definition without the department's senior leadership awareness to personally grants Zoa's appeal; ECF No. 54 page 4 in *Bochra v. U.S. Department of Education* (1:21-cv-03887).

The IHRA definition injects religion and the name Jesus Christ into it by dictating that "Jews didn't kill Jesus Christ" which is an endorsed government view point discrimination and is being used on the Department of Education website in direct violation of the Establishment Clause of the First Amendment to the United States Constitution as well as the Administrative Procedure Act, 5 U.S.C. Chapter 5, §§ 551, *et seq.*

Applicant on his own behalf and on behalf of similarly situated people, filed a lawsuit in two parts, (1) seeking an injunctive and a declaratory relief against the Defendants under the Administrative Procedure Act, 5 U.S.C. Chapter 5, §§ 551, *et seq.*, and (2) styled his complaint in a form of a class action lawsuit under Rule 23 of the Federal Rules of Civil Procedure when the district court permits it because the outstanding questions before it affects the entire education system; either way, a nationwide injunctive and declaratory relief or certifying a class action lawsuit will remedy the complaint at hands and bring solace and rescue to America's entire Education system including Mark Bochra who suffered valid and clear injuries by Defendants' own misconducts. See **Exhibit "A"** Mark's response to the Justice Department.

On September 12, 2022, the U.S. District Court for the Northern District of Illinois dismissed the case with prejudice for lack of standing and without setting a scheduling order for the case, while failing to factor in the 6 raised Counts with in-depth analysis including a request for injunction and the removal of the IHRA from the Department of Education website and declaring it unconstitutional by adequately challenging it under the Administrative Procedure Act ("the APA") on four bases: (1) arbitrary & capricious, 5 U.S.C. § 706(2)(A); (2) "contrary to a constitutional right, power, [or] privilege," id. § 706(2)(B); (3) exceeding statutory authority, id. § 706(2)(C); and (4) promulgated "without observance of procedure required by law," id. § 706(2)(D). See **Exhibit "B"** of the Appendix, the District Court order.

The case raised the following counts.

1) Count I: Violation of 5 USC Chapter 5, §§ 551, *et seq.*: Adoption of a Rule that is Not in Accordance with Law (for Injunctive and Declaratory Relief)
2) Count II: Violation of 5 USC Chapter 5, §§ 551, et seq. Adoption of the IHRA definition that is Arbitrary or Capricious (for Injunctive and Declaratory Relief)
3) Count III: Violation of 5 U.S.C. Chapter 5, §§ 551, et seq.: Failure to comply with notice and comment requirements (for Injunctive and Declaratory Relief)
4) Count IV: Unlawfully Withheld and Unreasonably Delayed Agency Action APA § 706(1)
5) Count V: Arbitrary and Capricious Final Agency Action APA § 706(2)
6) Count VI: Procedural due Process – U.S. Const. Amend. 5

While the case was pending appeal, several Circuit Court cases such as *CFPB v. All Am. Check Cashing, Inc.,* 33 F.4th 218, 241 (5th Cir. 2022) (Jones, J., concurring) supported Mark's standing to lawsuit the Department of Education when an agency acts "arbitrary & capricious", 5 U.S.C. § 706(2)(A) and "contrary to a constitutional right, power, [or] privilege," id. § 706(2)(B). See also *Rojas v. City of Ocala, Fla.*, No. 18-12679 (11th Circuit). In addition to a recent unanimous 9-0 Supreme Court ruling in *Axon Enterprise v. Federal Trade Commission* No. 21-86.

Mark filed a motion for injunction against the IHRA definition pending appeal before the 7th Circuit 22-2903 ECF No. 14 and it was denied the next day without a response from the Defendants in ECF No. 15 on January 5, 2023. Mark filed a motion for more clarified ruling explaining why the injunction was denied pending appeal and that was denied as well. The 7th Circuit denied the injunction against the IHRA definition without any particular reason or a response from the Defendants; please see **Exhibits "C"** and **"D"** of the Appendix.

The Supreme Court based on its ongoing cases that they are handling concerning federal agencies which abuses its power without checks and balances, is the only Court in the land that is well equipped to issue an injunction against the IHRA definition pending the appeal and/or to provide guidance to the 7th Circuit in terms of how they could handle this case, the IHRA definition affects the entire education system and only Mark Bochra, a pro se who challenged it in the Court, knows the danger of such definition. See Mark's brief **Exhibit "E".**

> Therefore whoever confesses me before men, him I will also confess before My Father who is in heaven. But whoever denies me before men, him I will also deny before My Father who is in heaven. [Matthew 10:32-39].

This is a simple verse known to the Coptic community and to many Christians.

PARTIES

Applicant is Mark Bochra, a pro se but no one else challenged the IHRA definition in the Court but Mark. Everyone else who objected over the use of the definition played politics to this very day.

Respondents are the U.S. DEPARTMENT OF EDUCATION; Betsy Devos, in her official and individual capacity as former Secretary for the Department of Education and Kenneth Marcus, in his official and individual capacity as the former Secretary for OCR; Miguel Cardona, in his official Capacity as the Current Secretary for the Department of Education, Suzanne Goldberg in her official and individual capacity as the Former secretary for OCR, and Secretary Catherine Lhamon in her official Capacity as the current Secretary for OCR.

DIRECTLY RELATED PROCEEDINGS

Bochra v. U.S. Department of Education (1:21-cv-03887), verified Complaint in ECF No. 9 and Decision and Order dismissing case in ECF No. 84.

Bochra v. U.S. Department of Education (1:21-cv-03887) No. 22-2903 (7th Circuit), Order Denying Motion for Injunction Pending Appeal in ECF. Nos. 14-15. Brief was filed in ECF No. 29.

JURISDICTION

Applicant has a pending appeal in the United States Court of Appeals for the Seventh Circuit, pursuant to 28 U.S.C. § 1291. This Court has jurisdiction pursuant to 28 U.S.C. § 1651.

"I came to complete not to refute. I came light to the World." Jesus Christ

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QUESTIONS PRESENTED

1. Whether applicant has a standing to lawsuit the Department of Education and challenge the IHRA definition seeking an injunction against it, removal of the IHRA from the Department of Education website, and declaring it unconstitutional by adequately challenging it under the Administrative Procedure Act ("the APA") on four bases: (1) arbitrary & capricious, 5 U.S.C. § 706(2)(A); (2) "contrary to a constitutional right, power, [or] privilege," id. § 706(2)(B); (3) exceeding statutory authority, id. § 706(2)(C); and (4) promulgated "without observance of procedure required by law," id. § 706(2)(D).

2. Whether the equal protection clause mandates that all Complainants with the Department of Education, Office for Civil Rights are treated fairly and equally regardless of their race, religion, or color; the IHRA definition violates the equal protection clause.

3. Whether or not imposing the IHRA definition without congress approval and going through the regulatory channels is in direct violation of the APA, as well as, unconstitutional when it brings in religion within the definition by saying "Jews didn't kill Jesus Christ" which is an endorsed government view point discrimination in violation of the 1st amendment. Can the department of education place a definition which says "Muhammad is not the Prophet of Islam" or "Moses did not receive the 10 commandments from God" on the Department of Education's website as an endorsed government view point for all to see?

4. Whether the recent unanimous 9-0 Supreme Court ruling in *Axon Enterprise v. Federal Trade Commission* No. 21-86 provides the plaintiff with a standing to lawsuit the Department of Education seeking an injunction against the IHRA definition declaring it unconstitutional in violation of the Administrative Procedure Act. See also recent ongoing Supreme Court case in *Loper Bright Enterprises v. Raimondo* No. 22-451.[2]

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[2] No wonder that many judges in the lower courts seem prepared to write the doctrine's eulogy. They are eager to stop aiding and abetting an "erode[d]" "role of the judiciary" and "diminishe[d]" "role of Congress." Egan v. Del. River Port Auth., 851 F.3d 263, 279 (3d Cir. 2017) (Jordan, J., concurring in the judgment). They are ready for the "Article III renaissance [that] is emerging against the judicial abdication performed in Chevron's name." Waterkeeper All. v. EPA, 853 F.3d 527, 539 (D.C. Cir. 2017) (Brown, J., concurring). And along with so many state courts, they are tired of seeing "our constitutional separation of powers" "disordered." Valent v. Comm'r of Soc. Sec., 205 L. Ed. 2d 417, 524 (6th Cir. 2019) (Kethledge, J., dissenting); see also, e.g., Voices for Int'l Bus. & Educ., Inc. v. NLRB, 905 F.3d 770, 781 (5th Cir. 2018) (Ho, J., concurring) ("Misuse of the Chevron doctrine means collapsing the[] three separated government functions into a single entity."); Aqua Prod., Inc. v. Matal, 872 F.3d 1290, 1334 (Fed. Cir. 2017) (Moore, J.) ("Chevron has affected a broad transfer of legislative and judicial function to the executive.").

STATEMENT OF THE CASE

Under Title IV of the HEA, 20 U.S.C. § 1070, *et seq.*, the Department is responsible for overseeing the federal student loan program, including the Federal Family Education Loan (FFEL), 20 U.S.C. § 1071, *et. seq.*, and William D. Ford Direct Loan Programs, 20 U.S.C. § 1087a, *et seq*. Under the Direct Loan Program, the Department directly lends money to eligible student borrowers so that they can attend "participating institutions of higher education," as approved and regulated by the Department. 20 U.S.C. § 1087a. Under the FFEL program (under which no new loans have been issued since July 1, 2010), private lenders issued student loans, which were then insured by guaranty agencies, and in turn reinsured by the Department. 20 U.S.C. § 1078.

Providing an education free from discrimination and retaliation is the central mission of Office for Civil Rights (OCR). When an institution of higher education fails to provide an education free from discrimination and/or retaliation, Office for Civil rights has the duty and the responsibility to provide an antidote to a virus called "evil"; failure to provide remedies, not only violates OCR special mission "to ensure *equal access* to education and to promote educational excellence through vigorous enforcement of civil rights in our nation's schools"[3] but also renders the civil right act moot on its face.

The head of a federal Executive Department may adopt rules for the conduct and government of her agency. 5 U.S.C. §301. Adoption of such rules must comply with the requirements of the rule-making procedures of the federal Administrative Procedure Act ("APA"), 5 U.S.C. §551, et seq., if the proposed rules meet the definition of "rule" found in 5 U.S.C. §551(4): " … the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency . . . ."

The APA requires that courts "shall … hold unlawful and set aside agency action, findings, and conclusions found to be … arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A), (B).

The APA also requires that rules proposed by a federal agency first be published in the Federal Register, with the terms or substance of the proposed rule, the legal authority for the proposed rule, and specific information regarding when a public hearing on the proposed rule

[3] See https://www2.ed.gov/about/offices/list/ocr/aboutocr.html

will take place. 5 U.S.C. §§ 553(b), (d). Under the APA, the proposing agency must consider, prior to adoption of the rule, all written data, views, or arguments submitted by interested persons regarding the proposed rule. 5 U.S.C. §§ 553(c), (d). This set of APA provisions for publication and consideration of comments is referred to as the "notice-and-comment requirement."

The APA requires a federal agency to render responsive decisions on matters within its purview in a prompt and definite fashion. For example, the APA requires that, "[w]ith due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it." 5 U.S.C. § 555(b).

The APA similarly requires that "prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding." 5 U.S.C. § 555(e). And, the APA requires that "[e]ach agency . . . [g]ive an interested person the right to petition for the issuance, amendment, or repeal of a rule." 5 U.S.C. §553(e). "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. §702. "Agency action "includes the "failure to act." 5 U.S.C.§553(e).

A Court "shall – compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §706(1). A Court shall also "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706(2)(A). 5 U.S.C. §702 creates a cause of action in federal court for any person who has suffered legal wrong because of, or been adversely affected or aggrieved by, an agency action or failure to act as required by the rule-making statutes. The statute waives the sovereign immunity of the federal government for such a lawsuit, so long as the lawsuit is against a federal agency or a federal employee who acted or failed to act in her official capacity or under color of legal authority, and the suit does not request monetary damages.

28 U.S.C. § 2201 permits the Court to issue a declaratory judgment that the Defendants have violated 5 U.S.C. Chapter 5 in adopting the IHRA definition as well as certain provisions in August 26, 2020 OCR Manual, as identified below.

The Department of Education, Office for Civil Rights is responsible for enforcing the civil rights statutes applicable to educational institutions. ("As the Assistant Secretary for Civil Rights, Kenneth Marcus at that time before his resignation was responsible for the administration of the DOE's Office for Civil Rights ('OCR') in accordance with law, including mandating procedures for the handling and processing of complaints of illegal discrimination made to OCR for investigation.").

The Office for Civil Rights ("OCR") within the U.S. Department of Education ("DOE") has a special mission: "to ensure *equal access* to education and to promote educational excellence through vigorous enforcement of civil rights in our nation's schools." https://www2.ed.gov/about/offices/list/ocr/aboutocr.html. This office serves "student populations facing discrimination and the advocates and institutions promoting systemic solutions to civil rights problems" *Id. See* Am. Comp ¶ 1, ECF No. 9. Contrary to its mission and without any public notice, DOE summarily eliminated substantive rights of the very people it purports to serve by changing its Case Processing Manual to abdicate its basic duty to investigate legitimate complaints of discrimination by students and their parents. Not only that, but DOE has set out a special class of race with a special set of treatments compare to another (*Jewish Students vs. the Gentiles*) by adopting an obscure definition named (IHRA)[4] without congress intent, public notice, and comments in the Federal Register.[5] *See* Am. Comp ¶ 4 and ¶¶ 8-11, ECF No. 9.

Former Secretary of OCR, Kenneth Marcus without congress approval or senior departments' leadership, personally granted Zoa's appeal while using the IHRA definition fulfilling what he said in a leaked video of wanting to force the federal government to use the IHRA definition for America; Kenneth Marcus had the intent, and did the act, acting as an agent on behalf of Israel betraying America and its constitution.

> The goal is to have the *federal government* to establish a *definition of anti-Semitism* that is parallel to the *State Department Definition* [*sic*] said Kenneth Marcus in a leaked video under the title "the Lobby USA."[6]

A year later Kenneth Marcus did what he just said by his own hands. *See* Am. Comp ¶¶ 70 – 79, ECF No. 9.

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[4] See IHRA definition https://www.holocaustremembrance.com/working-definition-antisemitism
[5] See OCR notice on IHRA https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-anti-semitism-20210119.pdf
[6] See https://youtu.be/XytkI7afHcQ?t=2004

Respondents failed to respond to Applicant's lawsuit and response in ECF Nos. 9 and 54 wherein, he mentioned Kenneth Marcus, how he used the IHRA definition personally granting Zoa's appeal and the communication history between Mark Bochra and Kenneth Marcus. In fact, Respondents waived their rights to challenge many of Mark's legal arguments which challenges the IHRA definition under the APA on four bases: (1) arbitrary & capricious, 5 U.S.C. § 706(2)(A); (2) "contrary to a constitutional right, power, [or] privilege," id. § 706(2)(B); (3) exceeding statutory authority, id. § 706(2)(C); and (4) promulgated "without observance of procedure required by law," id. § 706(2)(D). *CFPB v. All Am. Check Cashing, Inc.,* 33 F.4th 218, 241 (5th Cir. 2022) (Jones, J., concurring).

In ECF No. 54, Mark's response, he first (a) established the role of OCR; see ECF No. 54 pages 53-54; (b) Mark also spoke about Kenneth Marcus, an agent acting on behalf of Israel and how he used the IHRA definition by personally granting Zoa's appeal ECF No. 54 pages 4, Respondents never challenged Applicant's assertions surrounding Kenneth Marcus and his use of the IHRA definition as a force of law (the definition was used by Kenneth Marcus and is on the department's website); (c) Respondents never challenged that congress did not authorize them to adopt the IHRA definition ECF No. 54 pages 66-67 and a president cannot amend a regulation through an executive order ECF No. 54 pages 71-76; (d) Respondents never challenged Applicant's argument that the IHRA definition lacks statutory authority and is arbitrary and capricious ECF No. 54 pages 82-84; (e) Respondents never challenged Applicant's argument that the IHRA definition was in violation of notice and comment requirement, is a major rule in violation of congressional review act, and an ongoing coercion doctrine, ECF No. 54 pages 86-88 & 95-96; (h) Respondents never challenged that a budget must be created to use the IHRA definition, see Kenneth Marcus own words ECF No. 54 pages 47, 72-73, 87-88.

> In order to codify a regulation, it must be formally proposed through the federal register, provide time for public comment, and be approved by the Department of Justice, Office of Management and Budget and the Small Business Administration, Marcus said

Last Respondents deceptively tried to convince the Court that OCR protects Christians when OCR don't have jurisdiction over religion discrimination and never undertook the religion discrimination portion of the Applicant's OCR Complaint.

REASONS FOR GRANTING THE APPLICATION

An injunction pending appellate review is warranted when the applicant demonstrates it is "likely to prevail, that denying . . . relief would lead to irreparable injury, and that granting relief would not harm the public interest." *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 66 (2020) (per curiam) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). The Court also has discretion to issue an injunction "based on all the circumstances of the case," without its order "be[ing] construed as an expression of the Court's views on the merits" of the underlying claim. *Little Sisters of the Poor Home for the Aged v. Sebelius*, 571 U.S. 1171 (2014). A Circuit Justice or the full Court may also grant injunctive relief "[i]f there is a 'significant possibility' that the Court would. . ." grant certiorari ". . . and reverse, and if there is a likelihood that irreparable injury will result if relief is not granted." *Am. Trucking Ass'ns, Inc. v. Gray*, 483 U.S. 1306, 1308 (1987) (Blackmun, J., in chambers) (considering whether there is a "fair prospect" of reversal). These are the same well-known factors used for preliminary injunctions. *See id.* (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).

Under this standard, the first prong does not require ultimate success on the merits. An application for an injunction may be granted without serving "as an expression of the Court's views on the merits," to prevent enforcement of a potentially unconstitutional statute. See Little Sisters of the Poor Home for the Aged v. Sebelius, 571 U.S. 1171 (2014) (mem.). The Court has thus granted emergency injunctions pending appeal when there is a "fair prospect" of reversal and a likelihood of "irreparable harm . . . from the denial of equitable relief." Lucas v. Townsend, 486 U.S. 1301, 1304 (1988) (Kennedy, J., in chambers); see also, e.g., Wheaton Coll. v. Burwell, 134 S. Ct. 2806, 2807 (2014) (granting injunction enjoining enforcement of challenged provisions of the Affordable Care Act "pending final disposition of appellate review"); Roman Catholic Diocese, 141 S. Ct. at 66 (granting injunction enjoining enforcement of executive order limiting attendance at religious services).

Applicant satisfy the standard for an emergency injunction. First, this appeal presents a clear case for relief. Respondents are poised to enact a transformational policy with profound political and economic reach on the flimsiest of statutory pretexts. The Executive has thus improperly seized from Congress the prerogative to "make major policy decisions." *West Virginia v. EPA*, 142 S. Ct. 2587, 2609 (2022). And as in *Little Sisters*, 571 U.S. at 1171, the relevant statutory provision is likely unconstitutional.

Rather than addressing the legality of the policy itself, the lower courts simply rewarded ED's attempts to evade review. The district court incorrectly concluded that the Applicant lacked standing because their was no (1) a "concrete and particularized" injury that is (2) "fairly traceable" to the challenged action of the defendant and (3) "likely" to be "redressed by a favorable decision." Id., at 560–561 (alterations and internal quotation marks omitted). However, in this case, Applicant had standing to lawsuit the Department of Education and challenge the IHRA definition seeking an injunction against it, removal of the IHRA from the Department of Education website, and declaring it unconstitutional by adequately challenging it under the Administrative Procedure Act ("the APA") on four bases: (1) arbitrary & capricious, 5 U.S.C. § 706(2)(A); (2) "contrary to a constitutional right, power, [or] privilege," id. § 706(2)(B); (3) exceeding statutory authority, id. § 706(2)(C); and (4) promulgated "without observance of procedure required by law," id. § 706(2)(D).

See *Shurtleff et al v. City of Boston et al* (20–1800).[7] This case was the definition of what constituted a government endorsed view point or not. The Supreme Court held that the Boston's flag-raising program does not express government speech. Pp. 5–12 and so everyone is entitled to fly their preferred flag.

> The Free Speech Clause does not prevent the government from declining to express a view. See *Pleasant Grove City v. Summum*, 555 U. S. 460, 467–469. The government must be able to decide what to say and what not to say when it states an opinion, speaks for the community, formulates policies, or implements programs. The boundary between government speech and private expression can blur when, as here, the government invites the people to participate in a program. In those situations, the Court conducts a holistic inquiry to determine whether the government intends to speak for itself or, rather, to regulate private expression. The Court's cases have looked to several types of evidence to guide the analysis, including: the history of the expression at issue; the public's likely perception as to who (the government or a private person) is speaking; and the extent to which the government has actively shaped or controlled the expression. See Walker v. Texas Div., Sons of Confederate Veterans, Inc., 576 U. S. 200, 209–213. Considering these indicia in Summum, the Court held that the messages of permanent monuments in a public park constituted government speech, even when the monuments were privately funded and donated. See 555 U. S., at 470–473. In Walker, the Court found that license plate designs proposed by private groups also amounted to government speech because, among other reasons, the State that issued the plates "maintain[ed] direct control over the messages conveyed" by "actively" reviewing designs and rejecting over a dozen proposals. 576 U. S., at 213. On the other hand, in Matal v. Tam, the Court concluded that trade marking words or symbols generated by private registrants did not amount to government speech because the Patent and Trademark Office did not exercise sufficient

[7] See 20-1800 Shurtleff v. Boston (05/02/2022) (supremecourt.gov)

> control over the nature and content of those marks to convey a governmental message. 582 U. S.___, ___. Pp. 5–6.
>
> Because the flag-raising program did not express government speech, Boston's refusal to let petitioners fly their flag violated the Free Speech Clause of the First Amendment. When the government does not speak for itself, it may not exclude private speech based on "religious viewpoint"; doing so "constitutes impermissible viewpoint discrimination." Good News Club v. Milford Central School, 533 U. S. 98, 112. Boston concedes that it denied petitioners' request out of Establishment Clause concerns, solely because the proposed flag "promot[ed] a specific religion." App. to Pet. for Cert. 155a. In light of the Court's government-speech holding, Boston's refusal to allow petitioners to raise their flag because of its religious viewpoint violated the Free Speech Clause. Pp. 12–13.

The Justice Department in its Amicus Curiae Brief to the Supreme Court stated that "the government-speech doctrine allows the government to rely on contributions from private actors, but does not apply when the government creates a forum for a diversity of private views." The justice Department added that because the City's flag-raising program is a forum for private speech, the denial of petitioners' application was impermissible viewpoint discrimination and they cited many case laws within their brief.[8]

> *Adderley v. Florida*, 385 U.S. 39 (1966); *American Legion v. American Humanist Association*, 139 S. Ct. 2067 (2019); *A.N.S.W.E.R. Coalition v. Jewell*, 153 F. Supp. 3d 395 (D.D.C. 2016), affirmed on other grounds, 845 F.3d 1199 (D.C. Cir. 2017); *Arkansas Educational Television Commission v. Forbes*, 523 U.S. 666 (1998); *Capitol Square Review & Advisory Board* v. *Pinette*, 515 U.S. 753 (1995); *Community for Creative Non-Violence* v. *Lujan*, 908 F.2d 992 (D.C. Cir. 1990); *Cornelius* v. *NAACP Legal Defense & Educational Fund, Inc.*, 473 U.S. 788 (1985); *Good News Club* v. *Milford Central School*, 533 U.S. 98 (2001); *Greer* v. *Spock*, 424 U.S. 828 (1976); *International Society for Krishna Consciousness, Inc.* v. *Lee*, 505 U.S. 672 (1992); *Johanns* v. *Livestock Marketing Association*, 544 U.S. 550 (2005); *Lamb's Chapel* v. *Center Moriches Union Free School District*, 508 U.S. 384 (1993); *Legal Services Corp.* v. *Velazquez*, 531 U.S. 522 (2001); *Lehman* v. *City of Shaker Heights*, 418 U.S. 298 (1974); *Matal* v. *Tam*, 137 S. Ct. 1744 (2017); *Minnesota Voters Alliance* v. *Mansky*, 138 S. Ct. 1876 (2018); *National Endowment for the Arts* v. *Finley*, 524 U.S. 569 (1998); *Perry Education Association* v. *Perry Local Educators' Association*, 460 U.S. 37 (1983); *Pleasant Grove City* v. *Summum*, 555 U.S. 460 (2009); *Rosenberger* v. *Rector & Visitors of University of Virginia*, 515 U.S. 819 (1995); *Rust* v. *Sullivan*, 500 U.S. 173 (1991); *United States Postal Service* v. *Council of Greenburgh Civic Associations*, 453 U.S. 114 (1981); *Walker* v. *Sons of Confederate Veterans*, 576 U.S. 200 (2015); *Widmar* v. *Vincent*, 454 U.S. 263 (1981)

Second, Applicant's request is both extraordinarily time-sensitive and solely within this Court's power to redress. Third, the balance of equities weighs heavily in favor of maintaining the status quo.

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[8] See brief http://www.supremecourt.gov/DocketPDF/20/20-1800/201010/20211122165123662_20-1800tsacUnitedStates.pdf

I. APPLICANT IS LIKELY TO SUCCEED ON HIS CLAIM THAT THE IHRA DEFINITION EXCEEDS RESPONDENTS' CONSTITUTIONAL AND STATUTORY AUTHORITY

A. APPLICANT HAS STANDING TO CHALLENGE THE IHRA DEFINITION

"This case begins and ends with standing." *Carney v. Adams*, 592 U. S. ___, ___. The Court's authority under the Constitution is limited to resolving "Cases" or "Controversies." Art. III, §2. The Court's jurisprudence has "established that the irreducible constitutional minimum of standing contains three elements" that a plaintiff must plead and—ultimately—prove. *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 560. Those elements are: (1) a "concrete and particularized" injury that is (2) "fairly traceable" to the challenged action of the defendant and (3) "likely" to be "redressed by a favorable decision." Id., at 560–561 (alterations and internal quotation marks omitted).

The Supreme Court found, however, that when a statute affords a litigant "a procedural right to protect his concrete interests," the litigant may establish Article III jurisdiction without meeting the usual "standards for redressability and immediacy." Id., at 572, n. 7. For example, we hypothesized a person "living adjacent to the site for proposed construction of a federally licensed dam" and explained that this person "has standing to challenge the licensing agency's failure to prepare an environmental impact statement, even though he cannot establish with any certainty that the statement will cause the license to be withheld or altered." *Ibid.* In this context, the fact that the defendant might well come to the same decision after abiding by the contested procedural requirement does not deprive a plaintiff of standing; see *Sackett v. Environmental Protection Agency,* 598 U.S. ___ (2023) No. 21-454.

Respondents waived their rights to challenge many of Applicant's legal arguments which challenges the IHRA definition under the APA on four bases: (1) arbitrary & capricious, 5 U.S.C. § 706(2)(A); (2) "contrary to a constitutional right, power, [or] privilege," id. § 706(2)(B); (3) exceeding statutory authority, id. § 706(2)(C); and (4) promulgated "without observance of procedure required by law," id. § 706(2)(D). *CFPB v. All Am. Check Cashing, Inc.,* 33 F.4th 218, 241 (5th Cir. 2022) (Jones, J., concurring).

The Biden administration came up with a new definition called the "nexus definition" yet he still promised a sector of the Jewish lobby that the white house is supporting the use of the IHRA definition; see ECF No. 121 pages 9-14. See also ECF No. 54 page 24-27.

B. THE IHRA DEFINITION VIOLATES THE CONSTITUTIONAL SEPERATION OF POWERS

The President's "power, if any, to issue [an] order must stem either from an act of Congress or from the Constitution itself." Youngstown Sheet & Tube Co., 343 U.S. at 585. And an "agency literally has no power to act . . . unless and until Congress confers power upon it." La. Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 374 (1986). When the executive acts, it mostly points to "clear congressional authorization." West Virginia, 142 S. Ct at 2609.

Respondents in their response seeking to dismiss Applicant's lawsuit asked the district court to ignore many of Applicant's raised arguments but they never challenged the raised arguments, thus waiving their rights to challenge them. The IHRA definition, however, grants no clear authorization for Respondents to implement a nationwide rule on all of America, a definition which says "Jews didn't kill Jesus Christ." Now comingling religion with a definition as an endorsed government view point.

In *Rojas v. City of Ocala, Fla.*, No. 18-12679 (11th Circuit), a group of atheist lawsuit the City of Ocala under the Establishment Clause of the First Amendment to the United States Constitution, the government cannot initiate, organize, sponsor, or conduct a community prayer vigil. Yet, the same event in private hands would be protected by the First Amendment. See Bd. of Ed. of Westside Comm. Schs. v. Mergens, 496 U.S. 226, 250, 110 S.Ct. 2356, 110 L.Ed.2d 191 (1990) (opinion of O'Connor, J.) ("[T]here is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.") (emphasis in original). In this way, the rights of all citizens—religious and non-religious—are preserved. The 11th Circuit reasoned with the following

> After this appeal was filed, however, the Supreme Court drove a stake through the heart of the ghoul and told us that the Lemon test is gone, buried for good, never again to sit up in its grave. Finally and unambiguously, the Court has "abandoned Lemon and its endorsement test offshoot." *Kennedy v. Bremerton Sch. Dist.*, 142 S.Ct. 2407, 2427 (2022). In the course of doing so, the Court asserted that it had already done it – "long ago," id. - which was news to a third of the Court's Justices, see id. at 2434 (Sotomayor, J., dissenting, joined by Breyer and Kagan, JJ.) ("Today's decision . . . overrules Lemon ....").

The 11th Circuit directed lower court to reconsider the ruling that found the prayer vigil unconstitutional and the Supreme Court declined to hear the City's case at this time.[9]

The IHRA definition is unconstitutional under the Administrative Procedure Act ("the APA") on four bases: (1) arbitrary & capricious, 5 U.S.C. § 706(2)(A); (2) "contrary to a constitutional right, power, [or] privilege," id. § 706(2)(B); (3) exceeding statutory authority, id. § 706(2)(C); and (4) promulgated "without observance of procedure required by law," id. § 706(2)(D).

> "An elective despotism was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced . . . , as that no one could transcend their legal limits, without being effectually checked and restrained by the others." The Federalist No. 48 (J. Madison)(quoting Thomas Jefferson's Notes on the State of Virginia (1781)). In particular, as George Mason put it in Philadelphia in 1787, "[t]he purse & the sword ought never to get into the same hands." The Records of the Federal Convention of 1787, at 139–40 (M.Farrand ed. 1937). These foundational precepts of the American system of government animate the Plaintiffs' claims in this action. They also compel our decision today.

The 5th Circuit ruled in favor of the plaintiff under the APA in *Consumer Financial Protection Bureau v. Community Financial Services* Ass'n of *America*, Ltd., 21-50826. The IHRA definition violates the Establishment Clause of the First Amendment; the same is true with Equal Protection Clause under the 5th amendment.

C. THE MAJOR-QUESTIONS DOCTRINE APPLIES

The major-questions doctrine applies to the Plan. In *West Virginia v. EPA*, the Supreme Court explained that it "expect[s] Congress to speak clearly if it wishes to assign to an agency decisions of vast economic and political significance." 142 S. Ct. at 2605 (citation omitted). In such cases, "modest words, vague terms, or subtle devices" cannot confer upon the Executive Branch the power to make "a radical or fundamental change" to a statutory scheme. Id. at 2609 (citations omitted). The Court presumes that "Congress intends to make major policy decisions itself, not leave those decisions to agencies." Id. (citation omitted). In short, in "certain extraordinary cases," executive officials "must point to clear congressional authorization for the power [they] claim[ ]." Id. at 2634.

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[9] See https://www.supremecourt.gov/orders/courtorders/030623zor_f2bh.pdf

Respondents never claimed the authority to resolve a matter of great "economic and political significance." And Respondents are attempting to create a definition that Congress has "conspicuously and repeatedly declined to enact itself." Through the IHRA definition, Respondents are also exercising "unheralded power."; see also *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 324 (2014) ("When an agency claims to discover in a long-extant statute an unheralded power to regulate a significant portion of the American economy, we typically greet its announcement with a measure of skepticism.")

The use of the IHRA definition or endorsing it on the department of education website is precisely the type of policy closely scrutinized by the Supreme Court under the Major Questions Doctrine. See *generally West Virginia*, 142 S. Ct. at 2620 (Gorsuch, J., concurring) (collecting cases applying the Major Questions doctrine).

D. RESPONDENTS CANNOT POINT TO ANY CLEAR CONGRESSIONAL AUTHORIZATION FOR ITS USE OF THE IHRA DEFINITION

Because the Major Questions Doctrine applies, Respondents must identify "clear congressional authorization." *Util. Air Reg. Grp.*, 573 U.S. at 324. In reviewing Respondents' alleged authority, courts should employ "skepticism." West Virginia, 142 S. Ct. at 2614.

Respondents never challenged Applicants' raised arguments, rather its only argument to the district court is separation of power and that the district court does not have jurisdiction to review a federal agency; see pages 6-7 ECF No 60 Respondents' reply reciting the following:

> *See also United States v. Richardson,* 418 U.S. 166, 188 (1974) (Powell, J., concurring) (explaining that the case-or-controversy requirement is essential to our government's balance of powers; "We should be ever mindful of the contradictions that would arise if a democracy were to permit general oversight of the elected branches of government by a nonrepresentative, and in large measure insulated, judicial branch."). Because Bochra's response did nothing to address how he has standing to challenge the so-called "adoption of the IHRA definition," those claims should be dismissed. For the foregoing reasons, the court should dismiss this action for lack of subject matter jurisdiction and failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(1) and (b)(6). *Sic*

District court agreed with this 1 paragraph reasoning without any oral argument and dismissed the lawsuit based on lack of jurisdiction.

E. THE IHRA DEFINITION VIOLATES THE ADMINISTRATIVE PROCEDURE ACT

The Administrative Procedure Act embodies a "basic presumption of judicial review," Abbott Laboratories v. Gardner, 387 U.S. 136, 140 (1967), and instructs reviewing courts to set aside agency action that is "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(B). For all the reasons stated above, Respondents have exceeded their constitutional powers and the IHRA definition violates constitutional rights.

The IHRA definition is unconstitutional under the Administrative Procedure Act ("the APA") on four bases: (1) arbitrary & capricious, 5 U.S.C. § 706(2)(A); (2) "contrary to a constitutional right, power, [or] privilege," id. § 706(2)(B); (3) exceeding statutory authority, id. § 706(2)(C); and (4) promulgated "without observance of procedure required by law," id. § 706(2)(D).

> "An elective despotism was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced . . . , as that no one could transcend their legal limits, without being effectually checked and restrained by the others." The Federalist No. 48 (J. Madison)(quoting Thomas Jefferson's Notes on the State of Virginia (1781)). In particular, as George Mason put it in Philadelphia in 1787, "[t]he purse & the sword ought never to get into the same hands." The Records of the Federal Convention of 1787, at 139–40 (M.Farrand ed. 1937). These foundational precepts of the American system of government animate the Plaintiffs' claims in this action. They also compel our decision today.

The 5th Circuit ruled in favor of the plaintiff under the APA in *Consumer Financial Protection Bureau v. Community Financial Services* Ass'n of *America*, Ltd., 21-50826. The IHRA definition violates the Establishment Clause of the First Amendment; the same is true with Equal Protection Clause under the 5th amendment.

The Supreme Court held that District Courts may ordinarily hear those challenges by way of 28 U. S. C. §1331's grant of jurisdiction for claims "arising under" federal law. See *Thunder Basin*, 510 U. S., at 207–212; *Elgin v. Department of Treasury*, 567 U. S. 1, 10–15 (2012); see also *Free Enterprise Fund v. Public Company Accounting Oversight Bd.*, 561 U. S. 477, 489 (2010) (noting that statutory schemes for agency review "[g]enerally" are "exclusive"). The agency effectively fills in for the district court, with the court of appeals providing judicial review.

> The Court identified three considerations designed to aid in that inquiry, commonly known now as the Thunder Basin factors. First, could precluding district court jurisdiction "foreclose all meaningful judicial review" of the claim? Id., at 212–213. Next, is the claim "wholly collateral to [the] statute's review provisions"? Id., at 212 (internal quotation marks omitted). And last, is the claim "outside the agency's expertise"? Ibid. When the answer to all three questions is yes, "we presume that Congress does not intend to limit jurisdiction." Free Enterprise Fund, 561U. S., at 489. But the same conclusion might follow if the factors point in different directions. The ultimate question is how best to understand what Congress has done— whether the statutory review scheme, though exclusive where it applies, reaches the claim in question.

The first Thunder Basin factor recognizes that Congress rarely allows claims about agency action to escape effective judicial review. See, e.g., *Bowen v. Michigan Academy of Family Physicians*, 476 U. S. 667, 670 (1986). The second and third reflect in related ways the point of special review provisions—to give the agency a heightened role in the matters it customarily handles, and can apply distinctive knowledge to. This recent Supreme Court ruling provides Plaintiff with a standing seeking judicial review to challenge the IHRA definition that it is unconstitutional to use or endorse on the government's website in direct violation of the APA.

Freedom of speech is not just about speech. It is also about the right to debate with fellow citizens on self-government,[10] to discover the truth in the marketplace of ideas,[11] to express one's identity,[12] and to realize self-fulfillment in a free society.[13] That freedom is of first importance to many Americans such that the United States Supreme Court has relaxed procedural requirements for citizens to vindicate their right to freedom of speech,[14] while making it harder for the government to regulate it.[15] This case is about one such regulation.

Moreover, as a "statement of general or particular applicability and future effect designed to implement . . . policy," the IHRA definition is a major rule meets the requirements of a rule and must be submitted to notice and comment. *See* 5 U.S.C. § 553. It was not.

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[10] See N.Y. Times v. Sullivan, 376 U.S. 254 (1964) (establishing a heightened standard to find defamation because the government may not chill criticism of public figures).

[11] See Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) ("[T]hat the best test of truth is the power of the thought to get itself accepted in the competition of the market.").

[12] W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943) (holding that refusing to salute the American flag is a protected right to express dissent as a form of autonomy and self-expression).

[13] Procunier v. Martinez, 416 U.S. 396, 427 (Marshall, J., concurring).

[14] Broadrick v. Oklahoma, 413 U.S. 601, 612 (1973).

[15] Reno v. ACLU, 521 U.S. 844, 874 (1997); Ashcroft v. ACLU, 535 U.S. 564, 573 (2002); see also Brown v. Ent. Merchs. Ass'n, 564 U.S. 786, 794 (2011).

II. APPLICANT WILL BE IRREPARABLY HARMED ABSENT AN INJUNCTION

Constitutional violations generally constitute proof of an irreparable harm. Wright & Miller, *Grounds for Granting or Denying a Preliminary Injunction—Irreparable Harm*, 11A Fed. Prac. & Proc. Civ. § 2948.1 (3d ed.) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.") (collecting cases). Here, an injunction would prevent a constitutional violation. Absent one, Respondents would continue to endorse and use the IHRA definition on its official website as an endorsed government view point which included the statement "Jews didn't kill Jesus Christ".

Moreover, irreparable harm is "harm that cannot be repaired and for which money compensation is inadequate." *Orr v. Shicker*, 953 F.3d 490, 502 (7th Cir. 2020) (citation omitted). Damages are not available in this case because of sovereign immunity: "Federal constitutional claims for damages are cognizable only under *Bivens*." *Loumiet v. United States*, 828 F.3d 935, 945 (D.C. Cir. 2016). Since monetary relief is not available here, the harm is irreparable.

III. THE PUBLIC INTEREST AND BALANCE OF HARM WEIGH HEAVILY IN FAVOR OF AN INJUNCTION

The final two factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). The "public interest would be served" by an injunction preventing a constitutional violation. *Preston v. Thompson*, 589 F.2d 300, 303, n.3. And the "government suffers no harm from an injunction that merely ends unconstitutional practices and/or ensures that constitutional standards are implemented." *Doe v. Kelly*, 878 F.3d 710, 718 (9th Cir. 2017).

CONCLUSION

Applicant requests that this Court issue an injunction pending appeal enjoining Respondents from implementing the Plan, and if the Seventh Circuit affirms the district court's order, pending the filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court.

Respectfully submitted,

/s/ Mark Bochra
Plaintiff, Pro Se

"I came to complete not to refute. I came light to the World." Jesus Christ

CERTIFICATE OF SERVICE

The undersigned hereby certifies pursuant to the Supreme Court Rule 29.5(b), that on August 24, 2023, the aforesaid Emergency Application For Writ of Injunction pending Appeal and Motion for Leave to Proceed in Forma Pauperis were mailed via UPS Ground Mail to the Clerk, of the Supreme Court United States Supreme Court, One First Street, N.E., Washington, D.C. 20543. A copy of the filed motion was sent electronically to Respondents Solicitor General and Respondents' Council via e-mail.

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