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**IN THE SUPREME COURT OF THE UNITED STATES**

**Emergency Application to Circuit Justice Elena Kagan**

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**ARISING FROM THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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**DUSTIN THOMAS HOUSE DARDEN,**

*Plaintiff – Appellant,*

v.

**SUZANNE LAFRANCE, Mayor, in her individual  
and official capacities; et al.,**

*Defendants – Appellees.*

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**Court of Appeals Case No.: 26-1606**

**U.S. District Court of Alaska — Case No. 3:26-cv-00053-SLG**

**Ninth Circuit Order Denying Emergency Motion: Dkt. 8.1, April 8, 2026**

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**EMERGENCY APPLICATION FOR INJUNCTION PENDING  
APPEAL**

**TO CIRCUIT JUSTICE ELENA KAGAN**

**PURSUANT TO SUPREME COURT RULE 22 AND 28 U.S.C. § 1651**

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**Submitted by:**

Dustin Thomas House Darden, Pro Se

3951 Lakehurst Circle

Anchorage, Alaska 99502

lawhelpak@gmail.com

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**PARTIES TO THE PROCEEDING**

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**Applicant** is Dustin Thomas House Darden, pro se Plaintiff-Appellant,  
3951 Lakehurst Circle, Anchorage, Alaska 99502.

**Respondents** are Suzanne LaFrance (Mayor of Anchorage), Christopher Constant (Assembly Chair), and thirteen additional Anchorage Assembly members, represented by Ruth Botstein, Esq. and Kathryn R. Vogel, Esq., Municipal Attorney's Office, P.O. Box 196650, Anchorage, Alaska 99519-6650, uslit@muni.org, ruth.botstein@anchorageak.gov, kathryn.vogel@anchorageak.gov. Respondents also include Allied Universal Security Services, Brandon Pickering, Gregory Berryman, and Amia Joe, represented by Timothy W. Bowman, Esq., Farley & Graves, P.C., 807 G Street, Suite 250, Anchorage, Alaska 99501, tbowman@farleygraves.com.

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## **RELIEF SOUGHT**

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Applicant respectfully requests that Circuit Justice Kagan issue an injunction pending appeal under Supreme Court Rule 22 and 28 U.S.C. § 1651, ordering Respondents to cease enforcing their policy of viewpoint-based removal of speakers from Anchorage Assembly public testimony sessions — a policy that continues to chill the First Amendment rights of every Anchorage citizen who witnessed or learned of Applicant's armed removal for reciting the Pledge of Allegiance and proclaiming religious beliefs. This injury is ongoing, continuous, and independent of any election calendar.

Specifically, Applicant requests an order: (1) prohibiting Respondents from removing any speaker from Assembly public testimony based on religious expression, recitation of the Pledge of Allegiance, or any other viewpoint-based ground; and (2) restoring Applicant's full access to Assembly public forums on a viewpoint-neutral basis.

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## **JURISDICTION**

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This Court has jurisdiction under 28 U.S.C. § 1254(1) and 28 U.S.C. § 1651. The underlying appeal is pending before the United States Court of Appeals for the Ninth Circuit, Case No. 26-1606, arising from the March 16, 2026 order of Chief District Judge Sharon L. Gleason, United States District Court for the District of

Alaska, Case No. 3:26-cv-00053-SLG, denying Applicant's motion for a preliminary injunction. Justice Kagan is the Circuit Justice for the Ninth Circuit.

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## **PROCEEDINGS BELOW AND EXHAUSTION OF LOWER COURT REMEDIES**

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On February 2, 2026, Applicant filed a civil rights complaint under 42 U.S.C. § 1983 in the District of Alaska asserting First Amendment viewpoint discrimination, religious viewpoint discrimination, prior restraint, and related violations arising from his removal from the Anchorage Assembly public testimony podium on January 13, 2026, and complete exclusion from the January 27, 2026 Assembly meeting. Case No. 3:26-cv-00053-SLG.

On March 16, 2026, Chief District Judge Gleason denied Applicant's motion for a preliminary injunction, finding the removal was viewpoint neutral under *White v. City of Norwalk*, 900 F.2d 1421 (9th Cir. 1990), and that irreparable harm was speculative. District Court Docket 45.

On March 17, 2026, Applicant filed a Notice of Appeal and Emergency Motion to Expedite and for Injunctive Relief Pending Appeal in the Ninth Circuit, Case No. 26-1606,

Docket Entry 3. Applicant filed a full reply brief in support of the emergency motion. On April

8, 2026, the Ninth Circuit denied the emergency motion in a one-sentence order signed by the Clerk. Docket Entry 8.1. The denial stated only: 'The motion (Docket Entry No. 3) to expedite is denied. The existing briefing schedule remains in effect.'

No merits analysis was provided. Applicant now seeks relief from Circuit Justice Kagan.

The Ninth Circuit's automatic briefing schedule sets Applicant's opening brief due April 14, 2026. Full merits briefing will not conclude until after May 12, 2026. The ongoing First Amendment injury to the Anchorage public cannot wait for that schedule. Nor can the injury await the full trajectory of ordinary appellate proceedings. Even after merits briefing closes — with Applicant's opening brief due April 14 and Respondents' answering brief due May 12 — a three-judge panel must be assigned, the record reviewed, and an opinion drafted and circulated. Ninth Circuit merits panels routinely take six months to over a year to issue a decision after briefing is complete. If that panel decision is then challenged, a petition for rehearing en banc under Federal Rule of Appellate Procedure 35 and Ninth Circuit Rule 35-3 requires circulation to all twenty-nine active Ninth Circuit judges, a call for a vote, and if granted, full rebriefing before the en banc court — a process that itself routinely consumes an additional six months to two years. The total timeline from today to a final Ninth Circuit disposition could easily extend to 2028. Every Assembly meeting conducted under Respondents' viewpoint-discriminatory policy between now and that date is a meeting at which religious speakers and those who would recite the Pledge of Allegiance are deterred from participation by the memory of armed removal of a speaker for exactly that expression.

The urgency of First Amendment relief in the public forum context is not a novel proposition. In *Marshall v. Amuso*, 571 F. Supp. 3d 412 (E.D. Pa. 2021), the court found that removal of a public commenter from a government meeting — visible to the public audience present — was sufficient to support preliminary injunctive

relief on an expedited basis, independent of any election deadline, because the chilling effect on future public speech constituted ongoing irreparable harm that could not wait for ordinary merits adjudication. The Marshall court’s reasoning applies with full force here: the constitutional injury caused by a government body using armed agents to remove a speaker for religious expression in a designated public forum does not pause while appellate dockets clear. Justice Marshall’s foundational holding in *Police Department of Chicago v. Mosley*, 408 U.S. 92, 95-96 (1972), that government restriction of expression based on viewpoint is the highest order of First Amendment violation, compels the conclusion that relief must be immediate. The combination of Mosley’s constitutional command, *Marshall v. Amuso*’s recognition that public forum chilling effects are inherently emergent, and *Elrod v. Burns*’ categorical rule that loss of First Amendment freedoms constitutes irreparable injury per se, 427 U.S. 347, 373 (1976), leaves no basis for concluding that this injury can await a timeline measured in years.

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## STATEMENT OF FACTS

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On January 13, 2026, the Anchorage Assembly held a regularly noticed public meeting. A public comment period was opened. Applicant was invited to the public testimony podium. During his testimony, Applicant recited the Pledge of Allegiance and proclaimed his religious beliefs. Respondents dispatched armed security personnel who physically removed Applicant from the podium and from the Assembly chambers mid-testimony, in the presence of a live public audience and on a broadcast viewable online.

Respondents' own filing in the district court — Docket 31, page 2 — states in writing that Applicant was removed because his testimony *'included reciting the Pledge of Allegiance and proclaiming his religious beliefs.'* This admission is unambiguous, undisputed, and dispositive. It is the viewpoint basis for the removal stated in Respondents' own hand.

On January 27, 2026, Respondents excluded Applicant entirely from the subsequent Assembly meeting. He received no notice, no hearing, and no individualized finding. He was offered only the ability to watch online and submit written comments — a constitutionally inadequate substitute for in-person testimony in a designated public forum.

Respondents have defended this removal policy as constitutional in every court filing in every court. The policy is currently in force. Every Assembly meeting conducted under this policy is a meeting at which speakers who share Applicant's religious expression or who would recite the Pledge are deterred from participating. That chilling effect is ongoing today.

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## ARGUMENT

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### **I. THE GOVERNMENT INVITED SPEECH AND USED ARMED AGENTS TO SUPPRESS DISFAVORED VIEWPOINT — A FIRST AMENDMENT USURPATION THAT IS ONGOING AND INDEPENDENT OF ANY ELECTION.**

The constitutional violation here requires no inference. The Anchorage Assembly publicly noticed a meeting, opened a public comment period, called Applicant to the podium, permitted him to begin testimony, and then dispatched armed security personnel to physically remove him because his testimony included the Pledge of Allegiance and a proclamation of religious faith. Respondents admit this in their own court filing.

This is a government usurpation of First Amendment rights. The Assembly created the forum, extended the invitation, waited to hear the viewpoint, and deployed state-authorized armed force to punish it. As Justice Marshall wrote for a unanimous Court in *Police Department of Chicago v. Mosley*, 408 U.S. 92, 95-96 (1972): 'above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.' A government body cannot create a public forum, invite the public to speak, and then use armed agents to remove speakers whose viewpoint it disfavors.

This also violates the unconstitutional conditions doctrine. The government may not grant access to a public benefit — here the right to testify at a publicly noticed meeting — on condition that the speaker surrender a constitutional right. *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). The Assembly granted Applicant podium access and then conditioned continued access on surrender of his right to religious expression. That condition is unconstitutional on its face.

**II. THE PLEDGE OF ALLEGIANCE IS PROCEDURALLY GERMANE TO  
A  
GOVERNMENT LEGISLATIVE MEETING — THE DISTRICT COURT'S  
GERMANENESS FINDING CANNOT SURVIVE RESPONDENTS' OWN  
WRITTEN ADMISSION.**

The Anchorage Assembly opens its own meetings with the Pledge of Allegiance. A speaker who recites the Pledge at an Assembly public comment period is not departing from the subject of government business — the speaker is invoking the same civic ritual the Assembly itself employs. The Pledge is procedurally consonant with, not disruptive of, the Assembly's own meeting practices.

More critically, Respondents' own Docket 31 does not state that Applicant failed to address the agenda item. It states his testimony *included* the Pledge and religious expression. A germaneness determination under *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990), requires a contemporaneous, individualized, content-neutral finding that the speech as a whole was not germane. Respondents made no such finding. They removed Applicant because of the viewpoint expressed. *White* does not cover viewpoint discrimination.

**III. THE ONGOING PUBLIC CHILLING EFFECT ON RELIGIOUS AND-  
CONSTITUTIONAL SPEECH IS INDEPENDENTLY SUFFICIENT AND  
HAS NO EXPIRATION DATE.**

The most important ground in this Application is the ongoing chilling effect on the First Amendment rights of every Anchorage citizen who witnessed or learned of Applicant's armed removal for religious expression and the Pledge of

Allegiance. This ground does not depend on any election. It was not mooted by April 7. It exists today and will exist at every future Assembly meeting conducted under Respondents' current policy.

*Mosley* protects not only the removed speaker but the public's right to hear and give speech of all viewpoints in an open forum unconstrained by government viewpoint preferences. 408 U.S. at 95-96. When the government publicly and on broadcast television dispatches armed personnel to remove a speaker for religious expression and the Pledge, it sends an unmistakable message to every other citizen: bring this viewpoint to this podium and the same will happen to you. That is the chilling effect doctrine. *Rhodes v. Robinson*, 408 F.3d 559, 568 (9th Cir. 2005) (test is whether a person of ordinary firmness would be deterred).

The Ninth Circuit has confirmed that the public comment period of a legislative assembly meeting is a designated public forum. *Norse v. City of Santa Cruz*, 629 F.3d 966, 975-76 (9th Cir. 2010) (en banc). In a designated public forum, viewpoint-based restrictions are presumptively unconstitutional and subject to strict scrutiny. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). Religious viewpoint discrimination triggers strict scrutiny independently. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993). Respondents have never identified a compelling government interest served by removing speakers for reciting the Pledge of Allegiance. They cannot meet strict scrutiny.

Respondents' policy remains in force and has been defended as constitutional in every filing before every court. The chilling effect persists. Every Assembly

meeting conducted under this policy is a meeting in which religious speakers and those who would recite the Pledge are deterred from participation. That continuous injury requires immediate injunctive relief regardless of any election calendar.

#### **IV. IRREPARABLE HARM IS ESTABLISHED AS A MATTER OF LAW.**

*Elrod v. Burns*, 427 U.S. 347, 373 (1976): 'The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.' This Court has never retreated from *Elrod*. A demonstrated First Amendment violation establishes irreparable harm as a matter of law. The district court's finding that harm was speculative cannot be reconciled with *Elrod* on this record, where the viewpoint basis for removal is admitted in writing by Respondents themselves.

#### **V. LIKELIHOOD OF SUCCESS ON THE MERITS IS STRONG.**

The merits question is straightforward: may a government body open a public forum, invite testimony, and then use armed agents to remove a speaker because his testimony included the Pledge of Allegiance and a proclamation of religious faith? Under *Mosley*, *Norse*, *Rosenberger*, and *Lukumi*, the answer is plainly no. Respondents' own written admission forecloses the only available defense — viewpoint neutrality — before any inference is required. The district court's reliance on *White v. City of Norwalk* was error because *White* addresses content-neutral germaneness determinations, not viewpoint exclusions based on religious expression and patriotic speech.

The unconstitutional conditions doctrine under *Perry v. Sindermann* provides an independent ground of likely success. The January 27 total exclusion without notice or hearing constitutes a prior restraint presumptively unconstitutional under *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546 (1975).

Notably, Respondents failed entirely to address the FRAP 8 four-factor standard in their Ninth Circuit opposition brief. They did not address *Mosley*, *Elrod*, *Norse*, or the chilling effect doctrine. The Ninth Circuit's one-sentence denial order contains no merits analysis.

Applicant's controlling legal arguments remain substantively unanswered in any court.

## **VI. BALANCE OF EQUITIES AND PUBLIC INTEREST FAVOR APPLICANT.**

Respondents suffer no cognizable harm from an order requiring them to maintain a viewpoint-neutral public forum. The government has no legitimate interest in preserving an unconstitutional practice. *Zepeda v. United States INS*, 753 F.2d 719, 727 (9th Cir. 1983). The public interest strongly favors correction of an ongoing viewpoint-discriminatory policy that uses armed state force to punish religious expression in a government-created public forum.

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## **CONCLUSION**

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The Anchorage Assembly publicly invited citizens to speak. When Applicant brought the Pledge of Allegiance and his religious faith to the podium in a publicly broadcast government meeting, Respondents sent armed men to remove him. They then admitted in writing that was the reason. They have defended that conduct as constitutional in every court. The First Amendment does not permit the government to operate a public forum as an instrument of viewpoint control, using armed force to punish expression it disfavors.

The ongoing chilling effect on the religious and constitutional speech of every Anchorage citizen who witnessed that removal is a continuous, non-election-specific First Amendment injury that this Court has authority to remedy now. Under *Mosley*, *Elrod*, *Norse*, *Rosenberger*, and *Lukumi*, the law is clear and controlling. Respondents have never answered the chilling effect argument in any court. The Ninth Circuit's denial contains no merits analysis.

Applicant respectfully requests that Circuit Justice Kagan issue an injunction pending appeal and, if she deems it appropriate, refer this application to the full Court.

Respectfully submitted,

Dustin Darden

**Dustin Thomas House Darden**

**Pro Se Applicant / Plaintiff-Appellant**

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Anchorage, Alaska 99502

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Date: April 11, 2026

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**IN THE SUPREME COURT OF THE UNITED STATES**

**Emergency Application to Circuit Justice Elena Kagan**

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**ARISING FROM THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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**DUSTIN THOMAS HOUSE DARDEN,**

*Plaintiff – Appellant,*

**v.**

**SUZANNE LAFRANCE, Mayor, in her individual  
and official capacities; et al.,**

*Defendants – Appellees.*

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**Court of Appeals Case No.: 26-1606**

**U.S. District Court of Alaska — Case No. 3:26-cv-00053-SLG**

**Ninth Circuit Order Denying Emergency Motion: Dkt. 8.1, April 8, 2026**

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**CERTIFICATE OF SERVICE**

**EMERGENCY APPLICATION FOR INJUNCTION PENDING  
APPEAL**

**TO CIRCUIT JUSTICE ELENA KAGAN**

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**PURSUANT TO SUPREME COURT RULE 22 AND 28 U.S.C. § 1651  
TO: THE HONORABLE SCOTT S. HARRIS,  
CLERK OF THE SUPREME COURT OF THE UNITED  
STATES; AND TO ALL COUNSEL OF RECORD:**

I hereby certify that on the date indicated below, I caused to be served a true and correct copy of the foregoing Emergency Application for Injunction Pending Appeal to Circuit Justice Elena Kagan, together with all attachments thereto, by United States Postal Service Certified Mail, Return Receipt Requested, postage prepaid, upon the following parties simultaneously with the filing of the Application with the Office of the Clerk of the Supreme Court of the United States:

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**1. OFFICE OF THE CLERK — SUPREME COURT OF THE UNITED STATES**

**Original Plus Two Copies — Three Complete Sets**

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**Clerk:** Scott S. Harris, Clerk of Court

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1 First Street NE

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**Certified Mail No.:** 9589 0710 5270 3408 1092 42

**Return Receipt No.:** 9590 9402 9048 4122 8271 57

**2. COUNSEL FOR MUNICIPAL DEFENDANTS-APPELLEES**

**Representing: Mayor Suzanne LaFrance; Assembly Chair Christopher Constant; and all**

**Municipal Defendants-Appellees**

---

**Attorneys:** Ruth Botstein, Esq. / Kathryn R. Vogel, Esq.

**Firm:** Municipality of Anchorage, Department of Law — Civil Division

**Address:** P.O. Box 196650

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**Method:** USPS Certified Mail, Return Receipt Requested

**Certified Mail No.:** 9589 0710 5270 3232 8119 39

**Return Receipt No.:** 9590 9402 9048 4122 8271 19

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**3. COUNSEL FOR DEFENDANT ALLIED UNIVERSAL SECURITY SERVICES,**

**BRANDON PICKERING, GREGORY BERRYMAN, AND AMIA JOE**

**Representing: Allied Universal Security Services; Brandon Pickering  
(John Doe 1);**

**Gregory Berryman (John Doe 2); Amia Joe (Jane Doe 3)**

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**Attorney:** Timothy W. Bowman, Esq.

**Firm:** Farley & Graves, P.C.

**Address:** 807 G Street, Suite 250

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I declare under penalty of perjury under the laws of the United States of America pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct, and that service was accomplished by United States Postal Service Certified Mail, Return Receipt Requested, postage prepaid, on all parties listed above on the same date this Emergency Application was deposited with the United States Postal

Service for delivery to the Office of the Clerk of the Supreme Court of the United States. The Certified Mail tracking numbers and signed return receipt cards are retained in Applicant's files as proof of service and delivery.

Service on all counsel of record has been made by a manner at least as expeditious as the manner used to file the document with the Court, as required by Supreme Court Rule 29.3.

Respectfully submitted,

Dated this 11<sup>th</sup> day of April 2026, at

Anchorage, Alaska.

Dustin Darden

**Dustin Thomas House Darden**

Pro Se Applicant / Plaintiff-Appellant

3951 Lakehurst Circle

Anchorage, Alaska 99502

lawhelpak@gmail.com

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

DUSTIN THOMAS HOUSE DARDEN,

Plaintiff,

v.

SUZANNE LAFRANCE, *in her  
individual capacity and official  
capacity as Mayor of Anchorage, et  
al.*,

Defendants.

Case No. 3:26-cv-00053-SLG

**ORDER ON ALL PENDING MOTIONS**

Before the Court are five pending motions:

1. Plaintiff Dustin Thomas House Darden's Motion for a Temporary Restraining Order at Docket 19. Municipal Defendants<sup>1</sup> responded in opposition at Docket 32, to which Plaintiff replied at Docket 36.

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<sup>1</sup> Municipal Defendants are Suzanne LaFrance, Anchorage Mayor, in her individual and official capacities; Christopher Constant, Anchorage Assembly Chair, in his individual and official capacities; Eva Gardner, in her individual and official capacities; Sean Case, Chief of the Anchorage Police Department ("APD"), in his individual and official capacities; Anna Brawley, in her individual and official capacities; Daniel Volland, in his individual and official capacities; Jared Goecker, in his individual and official capacities; Scott Myers, in his individual and official capacities; Erin Baldwin Day, in her individual and official capacities; Felix Rivera, in his individual and official capacities; George Martinez, in his individual and official capacities; Yarrow Silvers, in his individual and official capacities; Zac Johnson, in his individual and official capacities; Keith McCormick, in his individual and official capacities; Kameron Perez-Verdia, in his individual and official capacities; M. Weinrick, APD Officer, in his individual and official capacities; C.B. Waland, APD Officer, in his individual and official capacities; Carpenter, APD Officer, in his individual and official capacities; Amburn, APD Officer, in his individual and official capacities; D. Gutierrez, APD Officer, in his individual and official capacities; Rivera, APD Officer, in his individual and official capacities, and the Municipality of Anchorage. Plaintiff also names as Defendants Allied Universal Security Services, John Doe 1, an Allied Security Guard; John Doe 2, an Allied Security Guard;

2. Plaintiff's Amended Emergency Motion for a Preliminary Injunction at Docket 21. Municipal Defendants responded in opposition at Docket 31, to which Plaintiff replied at Docket 34.
3. Plaintiff's Motion for Expedited Consideration for Emergency Motion for Preliminary Injunction at Docket 22.
4. Municipal Defendants' Motion for 14-Day Extension of Time in Which to Respond to Amended Complaint at Docket 38. Plaintiff responded in opposition at Docket 40, to which Municipal Defendants replied at Docket 44.
5. Plaintiff's Request for Entry of Default Against Municipal Defendants Pursuant to Fed. R. Civ. P. 55(a) at Docket 39. Municipal Defendants responded in opposition at Docket 41, to which Plaintiff replied at Docket 42.<sup>2</sup>

Oral argument was not requested on any motion and is not necessary to the Court's determination.<sup>3</sup>

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and Jane Doe 1, an Allied Security Guard.

<sup>2</sup> Also pending before the Court is Municipal Defendants' Motion for Extension of Time to Respond to Preliminary Injunction Motion at Docket 18. That motion was in regard to an initial Emergency Motion for Preliminary Injunction filed by Plaintiff at Docket 3. Plaintiff's initial motion was mooted when he filed his Amended Emergency Motion at Docket 21 and addressed herein. See Docket 43. As such, Municipal Defendants' Motion at Docket 18 is DENIED as moot.

<sup>3</sup> Plaintiff requested a hearing "no later than March 7, 2026" at the end of his Motion for Expedited Consideration for Emergency Motion for Preliminary Injunction. Docket 22 at 2. District of Alaska Local Civil Rule 7.1(f) requires that a request for oral argument be made "either by placing 'Oral Argument Requested' immediately below the title of a motion or the response to a motion or by separate filing within 5 days of the last filing pertaining to a motion." No compliant request for oral

## BACKGROUND

This suit arises out of Plaintiff's "forcibl[e] remov[al] from the Anchorage Assembly chambers during public testimony" on January 13, 2026.<sup>4</sup> Plaintiff alleges that on that evening, he was "exercise[ing] his fundamental right to address his elected representatives during the designated public comment period."<sup>5</sup>

A video recording of the incident is posted on the Municipality of Anchorage's YouTube page.<sup>6</sup> The Court takes judicial notice of the recording as the parties agree to its accuracy and authenticity, "[j]udicial notice of city council minutes, transcript, and video recording as public records is proper," and such recordings "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."<sup>7</sup>

The video shows that Plaintiff spoke at four separate times during the public comment period on four agenda items on January 13, 2026.<sup>8</sup> First, Plaintiff

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argument was made as to any of the pending motions before the Court.

<sup>4</sup> Docket 24 at 2, ¶ 1.

<sup>5</sup> Docket 24 at 2, ¶ 2.

<sup>6</sup> Docket 24 at 16, ¶ 66 ("The official meeting transcript and video recording preserve Chair Constant's exact words, providing unambiguous proof of the retaliatory nature of Plaintiffs removal. This recording is maintained by the Municipality of Anchorage on its YouTube channel."); Docket 31 at 3-4 (citing "Assembly Regular - January 13, 2026 - 2026-01-13 17:00:00," <https://www.youtube.com/watch?v=xqEPg-BIWLM> [hereinafter Video]).

<sup>7</sup> *Insight Psych. & Addiction, Inc. v. City of Costa Mesa*, 801 F. Supp. 3d 942, 954 (C.D. Cal. 2025); Fed. R. Evid. 201(b)(2).

<sup>8</sup> See generally Video at 1:36:31-1:39:40, 1:49:05-1:53:13, 2:26:20-2:30:00, 2:47:22-2:49:11.

approached the podium during the public comment period for an ordinance to revise certain community council map boundaries; Plaintiff stated that he needed to grab some paperwork from the lobby and asked Defendant Christopher Constant, the Chair of the Assembly, to keep the clock running while he left the room.<sup>9</sup> Plaintiff returned to the podium about a minute later and testified that “AO 2025-119 is not located in the law for review and with that being said at this time I would like to invoke my First Amendment right to the United States Constitution, the freedom of speech, the freedom of religion, the freedom to redress my government of grievances.”<sup>10</sup> Plaintiff also cited to the Fifth Amendment and mentioned prayer and salvation.<sup>11</sup> After Plaintiff’s speaking time ran out, Defendant Constant said, “Thank you, Mr. Darden” and asked if there were any other members of the public who wished to testify on the council boundary item.<sup>12</sup>

Next, Plaintiff testified during the public comment period for the rezoning of 2.5 acres of land located in Eagle River.<sup>13</sup> Plaintiff testified that since “there was no opposition visible from the public” he found it “appropriate to make a formal

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<sup>9</sup> Video at 1:36:31-1:37:23.

<sup>10</sup> Video at 1:38:10-1:38:46.

<sup>11</sup> Video at 1:38:46-1:39:39.

<sup>12</sup> Video at 1:39:39-1:39:40.

<sup>13</sup> Video at 1:49:05-1:53:13.

objection” to the ordinance.<sup>14</sup> He then criticized the ordinance as “being brought in a fashion without interest from the public” which he found “concerning.”<sup>15</sup> Defendant Assembly Member Scott Myers raised a point of order, noting that the ordinance had been brought before the people of Eagle River for input multiple times.<sup>16</sup> Defendant Chair Constant did not uphold the point of order, ruling that Plaintiff “is speaking to the item that is before us, despite the [lack of] veracity” and encouraged Plaintiff to “try to keep it tight to the matters before us in the public hearings.”<sup>17</sup>

Plaintiff then continued to testify, noting “a point of order on the prior restraint of the most guarded constitutional amendment, which is the First Amendment.”<sup>18</sup> Defendant Constant interrupted to tell Plaintiff that he was “veering off into an area outside of the ordinance before us.”<sup>19</sup> Plaintiff then stated that he was allotted three minutes to speak and that he had been interrupted; Defendant Constant responded that “this is a limited public forum and you are allowed to speak on the matter before us, not on any subject” and that Plaintiff was “being warned.”<sup>20</sup>

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<sup>14</sup> Video at 1:49:30-1:50:08.

<sup>15</sup> Video at 1:50:08-1:50:41.

<sup>16</sup> Video at 1:50:47-1:50:56.

<sup>17</sup> Video at 1:50:56-1:51:12.

<sup>18</sup> Video at 1:51:18-1:51:34.

<sup>19</sup> Video at 1:51:34-1:51:44.

<sup>20</sup> Video at 1:51:46-1:52:06.

Plaintiff then used the remainder of his time to discuss how the germaneness requirement could be interpreted as intimidating members of the public from speaking on items of interest to them and that he had been unable to “compel a rational thought without fear of armed guards, armed agents of the state, by your intimidating tactics.”<sup>21</sup> After Plaintiff’s speaking time expired, Defendant Constant reiterated: “You have been warned, admonished, to keep your testimony to the items being heard before us.” Plaintiff replied, “Excuse me? I have been warned for what?” Defendant Constant reiterated: “To keep your testimony germane to the matter before us.”<sup>22</sup>

About half an hour later, Plaintiff testified during the public comment period on a school district capital bond.<sup>23</sup> Plaintiff testified about Christian religious concepts and that he is a taxpayer and this bond would thus affect him.<sup>24</sup> He then mentioned the Fifth and Sixth Amendments and the “arbitrary censorship” he witnessed.<sup>25</sup> Defendant Constant again asked Plaintiff to “speak to the specifics of this ordinance . . . please hue to the content of this ordinance.”<sup>26</sup> Plaintiff then

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<sup>21</sup> Video at 1:52:06-1:52:52.

<sup>22</sup> Video at 1:52:52-1:53:10.

<sup>23</sup> Video at 2:26:20-2:30:00.

<sup>24</sup> Video at 2:26:25-2:27:12.

<sup>25</sup> Video at 2:27:12-2:27:48.

<sup>26</sup> Video at 2:27:54-2:28:05.

testified that the Assembly was “extract[ing] money from [his] bank account” in order to fund the bond.<sup>27</sup> He then described how God “had King David fight a giant, with the stone. Hit him once in the head, and he was gone. Because he was prepared. Because he already took on the bear; he took on the lion.”<sup>28</sup> At this point, Defendant Assembly Member Baldwin Day raised a point of order “wondering if Mr. Darden could comment on the substance of this bond package” and questioning the germaneness of Plaintiff’s testimony.<sup>29</sup> Defendant Constant upheld the point of order, and again reminded Plaintiff to “do your best to stick to the item before us.”<sup>30</sup> Plaintiff then used the remainder of his time to discuss his citizenship and religion.<sup>31</sup>

Lastly, Plaintiff approached the podium a fourth time during the public comment period on an ordinance regarding a new tax service area in Eagle River to fund streetlights.<sup>32</sup> “The proposed ordinance, AO 2025-140, would place on the April 7, 2026 municipal election ballot a proposal to expand the tax service area for maintenance and operation of streetlights for a new subdivision in Eagle River

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<sup>27</sup> Video at 2:28:05-2:28:22.

<sup>28</sup> Video at 2:28:27-2:28:40.

<sup>29</sup> Video at 2:28:40-2:29:03.

<sup>30</sup> Video at 2:29:04-2:29:08.

<sup>31</sup> Video at 2:29:08-2:29:59.

<sup>32</sup> Video at 2:46:45-2:49:11.

with the existing Eagle River Light Service Area.”<sup>33</sup> The ordinance does not mention LED lights or blue lights.<sup>34</sup>

Plaintiff began his testimony by describing himself as a “citizen of heaven” who has been “washed in the blood of Jesus Christ,” the “King of Kings, the King of Glory,” who “defeated death; on the third day he rose, the ground shook; he set time and history; it’s 2026, 2026 years after his birth.”<sup>35</sup> Plaintiff then began discussing “LED lightbulbs” and that “blue lights are bad . . . for you” because they are “like laser beams.”<sup>36</sup> Defendant Assembly Member Scott Myers then called a point of order asking to get the discussion back on topic as the ordinance had nothing to do with blue lights or laser beams.<sup>37</sup> Defendant Constant then explained that the ordinance was about “a special light service area” and asked that Plaintiff “speak to the matter before [the Assembly].”<sup>38</sup> Plaintiff resumed testifying, speaking again about his citizenship and recited a portion of the pledge of

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<sup>33</sup> Docket 31 at 8 (citing Docket 31-1).

<sup>34</sup> Docket 31-1.

<sup>35</sup> Video at 2:47:10-2:47:37.

<sup>36</sup> Video at 2:47:42-2:48:00.

<sup>37</sup> Video at 2:48:00-2:48:13; see Docket 24 at 2, ¶ 2; Docket 24 at 13-14, ¶¶ 49, 53 (“Plaintiff attended the January 13, 2026 meeting to address the LED streetlight ordinances. Plaintiffs interest in LED lighting stems from health and safety concerns, informed by his religious and philosophical worldview. . . . As a Christian, Plaintiff believes God created natural light for human benefit (Genesis 1:3-4) and that artificial blue light from LEDs may be harmful to God’s creation.”).

<sup>38</sup> Video at 2:48:13-2:48:26.

allegiance.<sup>39</sup> He stated that he has a First Amendment right to petition his government and that he was “just about done with the interruptions.”<sup>40</sup>

At that point, Defendant Constant told Plaintiff that he was “out of order” and had “been warned”; Defendant Constant then asked security to remove Plaintiff.<sup>41</sup> Plaintiff responded that “security has no authority over me” and stated that “no one better touch me.”<sup>42</sup> The video feed was then terminated.

Defendants Allied Security Guards Jone Doe 1, John Doe 2, and Jane Doe 1 then allegedly approached Plaintiff.<sup>43</sup> Defendant Municipal Attorney Eva Gardner then handed Plaintiff “a handwritten trespass notice drafted by Assembly Chair Constant purporting to ban Plaintiff from one Assembly meeting.”<sup>44</sup> Plaintiff alleges that then “Anchorage Police Department [(“APD”)] officers arrived and, acting at the direction of the Assembly Chair, ordered Plaintiff to leave. Plaintiff immediately complied.”<sup>45</sup>

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<sup>39</sup> Video at 2:48:27-2:48:49.

<sup>40</sup> Video at 2:48:49-2:48:56; see Docket 24 at 2, ¶ 3.

<sup>41</sup> Video at 2:48:55-2:49:01; see Docket 24 at 2, ¶ 3.

<sup>42</sup> Video at 2:49:01-2:49:15.

<sup>43</sup> Docket 24 at 2-3, ¶ 4.

<sup>44</sup> Docket 24 at 3, ¶ 5; see Docket 24 at 18, ¶ 80; Docket 3-1 (Trespass Notice identifying January 13, 2026, incident in the Assembly Chambers where Dustin Darden “refused to testify on the matters on the agenda during the public hearing” such that he was being trespassed for “disorderly conduct.”).

<sup>45</sup> Docket 24 at 3, ¶ 6; see Docket 24 at 17-18, ¶¶ 71, 78 (alleging conduct by Defendant APD officers M. Weinrick and D. Gutierrez).

On January 27, 2026, Defendant Anchorage Police Department Chief Sean Case “direct[ed] that Plaintiff was trespassed from the January 27 Assembly meeting despite Plaintiff’s written notice to Chief Case that the trespass order violated clearly established constitutional law.”<sup>46</sup> Plaintiff alleges that he indeed was excluded from the January 27, 2026, Assembly meeting.<sup>47</sup>

Plaintiff alleges that the January 27 “meeting addressed critical matters, including: (a) AO 2026-14: A special tax levy proposition for Anchorage School District operational expenses, to appear on the April 7, 2026 ballot; (b) multiple bond propositions totaling over \$57 million for various municipal purposes; and (c) AO 2026-15: Amendment to the Home Rule Charter.”<sup>48</sup> Plaintiff alleges that, “[a]s a declared candidate for Anchorage School Board, Plaintiff had particular interest in testifying on AO 2026-14 (the education tax levy) and making his positions known to voters before the April 7, 2026 election.”<sup>49</sup>

Plaintiff brings eight counts against Defendants: (1) retaliation in violation of the First Amendment;<sup>50</sup> (2) viewpoint discrimination in violation of the First

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<sup>46</sup> Docket 24 at 3, ¶ 7; see Docket 24 at 21, ¶¶ 90-92; Docket 3-2 at 4.

<sup>47</sup> Docket 24 at 3, ¶ 8.

<sup>48</sup> Docket 24 at 20, ¶ 85.

<sup>49</sup> Docket 24 at 20, ¶ 86.

<sup>50</sup> Docket 24 at 29-31, ¶¶ 116-21.

Amendment;<sup>51</sup> (3) a prior restraint in violation of the First Amendment;<sup>52</sup> (4) an unlawful seizure in violation of the Fourth Amendment;<sup>53</sup> (5) a procedural due process violation pursuant to the Fourteenth Amendment;<sup>54</sup> (6) an allegation of municipal liability pursuant to *Monell v. Dep't of Social Services*;<sup>55</sup> (7) a request for declaratory relief;<sup>56</sup> and (8) a violation of public meeting requirements under municipal and state law.<sup>57</sup>

As relief, Plaintiff seeks a declaration that “the trespass notice is unconstitutional,” “Plaintiff has a constitutional right to attend Anchorage Assembly meetings and participate in public comment periods,” “Defendants violated Plaintiffs clearly established First, Fourth, and Fourteenth Amendment rights on January 13 and January 27, 2026,” Defendants “are not entitled to qualified immunity,” “Allied Universal security guards acted under color of state law,” “the public hearings on AO 2025-140 and the ballot measures approved January 27, 2026 were constitutionally defective,” and the trespass notice and Plaintiff’s

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<sup>51</sup> Docket 24 at 31-32, ¶¶ 121-26.

<sup>52</sup> Docket 24 at 32-33, ¶¶ 127-31.

<sup>53</sup> Docket 24 at 33-34, ¶¶ 132-35.

<sup>54</sup> Docket 24 at 34-35, ¶¶ 136-39.

<sup>55</sup> Docket 24 at 35-36, ¶¶ 140-44 (citing *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978)).

<sup>56</sup> Docket 24 at 36-37, ¶¶ 145-47.

<sup>57</sup> Docket 24 at 37-39, ¶¶ 148-53.

exclusion from the January 27, 2026 Assembly meeting violated municipal and state law.<sup>58</sup>

Plaintiff also seeks as relief “a preliminary and permanent injunction ordering Defendants to rescind the trespass notice, permit Plaintiff to attend all future Assembly meetings, and refrain from removing Plaintiff or any member of the public based on speech content or viewpoint.”<sup>59</sup> He also asks the Court to order the Municipality to “conduct new public hearings on the ballot measures” and “to provide constitutional training to Assembly members, security guards, and APD officers.”<sup>60</sup> Finally, Plaintiff seeks compensatory and punitive damages, as well as costs and interest.<sup>61</sup>

There are several pending motions in this case, including Plaintiff’s Motion for a Temporary Restraining Order and Motion for a Preliminary Injunction.<sup>62</sup> The Court now turns to those motions.

### **JURISDICTION**

The Court has jurisdiction pursuant to 28 U.S.C. § 1331 because this civil action includes a claim arising under federal law, 42 U.S.C. § 1983.

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<sup>58</sup> Docket 24 at 39-40.

<sup>59</sup> Docket 24 at 40.

<sup>60</sup> Docket 24 at 40.

<sup>61</sup> Docket 24 at 40-41.

<sup>62</sup> Docket 19; Docket 21.

## LEGAL STANDARD

### I. Temporary Restraining Order and Preliminary Injunction

The standard for obtaining a temporary restraining order is “substantially identical” to that for a preliminary injunction.<sup>63</sup> In *Winter v. Natural Resources Defense Council, Inc.*, the United States Supreme Court held that plaintiffs seeking preliminary injunctive relief must establish that (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) a preliminary injunction is in the public interest.<sup>64</sup> When, as here, the government is a party to the action, the balance of equities factor and the public interest factor merge.<sup>65</sup> The Supreme Court in *Winter* characterized “injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.”<sup>66</sup>

Following *Winter*, the Ninth Circuit addressed the first element—the likelihood of success on the merits—and held that its “serious questions” approach to preliminary injunctions was still valid “when applied as part of the four-element *Winter* test.”<sup>67</sup> Under that approach, if a plaintiff shows “that there are ‘serious

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<sup>63</sup> *Stuhlberg Int’l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

<sup>64</sup> 555 U.S. 7, 20 (2008).

<sup>65</sup> *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014).

<sup>66</sup> *Winter*, 555 U.S. at 22 (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam)).

<sup>67</sup> *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131–32 (9th Cir. 2011).

questions going to the merits’—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the ‘balance of hardships tips *sharply* in the plaintiff’s favor.’”<sup>68</sup> All four *Winter* elements must still be satisfied under this approach.<sup>69</sup>

Injunctive relief is an equitable remedy, and “[t]he essence of equity jurisdiction is the power of the court to fashion a remedy depending upon the necessities of the particular case.”<sup>70</sup>

## **II. Extension of Time to Respond**

Federal Rule of Civil Procedure 6(b)(1) provides that, “[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time . . . on motion made after the time has expired if the party failed to act because of excusable neglect.”

## **DISCUSSION**

### **I. Plaintiff’s Motion for a Temporary Restraining Order and Amended Motion for an Emergency Preliminary Injunction**

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<sup>68</sup> *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (emphasis in original) (quoting *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013)).

<sup>69</sup> *See All. for the Wild Rockies*, 632 F.3d at 1135 (“Of course, plaintiffs must also satisfy the other *Winter* factors.”); *see also Ass’n des Eleveurs de Canards et d’Oies du Quebec v. Harris*, 729 F.3d 937, 944 (9th Cir. 2013) (describing standard for preliminary injunction).

<sup>70</sup> *United States v. Odessa Union Warehouse Co-op*, 833 F.2d 172, 175 (9th Cir. 1987).

Plaintiff moves for a temporary restraining order and preliminary injunction.<sup>71</sup> He maintains that “exigent circumstances require immediate relief” because “[t]he Municipality must mail ballots for the April 7, 2026 municipal election by approximately March 17, 2026,” and “those ballots will include propositions approved at the January 13 and 27, 2026 Assembly meetings from which Plaintiff was unconstitutionally excluded.”<sup>72</sup> He seeks an order staying “the printing and mailing of ballots containing propositions approved at the January 27, 2026 Assembly meeting and AO 2025-140” and directing “Defendants to permit Plaintiff and any member of the public to attend and testify at Anchorage Assembly meetings without content-based or viewpoint-based censorship.”<sup>73</sup>

*a. Likelihood of Success on the Merits/Serious Questions*

Plaintiff maintains that he is likely to succeed on the merits.<sup>74</sup> He contends that the video recording of the Assembly meeting shows that he was “speaking about LED lights during the Assembly’s consideration of LED streetlight ordinances” when he was “interrupted based on the content of his speech” and “ordered removed.”<sup>75</sup> He maintains that his removal violates the First Amendment,

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<sup>71</sup> Docket 19; Docket 21.

<sup>72</sup> Docket 19 at 2; see Docket 21 at 4, 9.

<sup>73</sup> Docket 19 at 2.

<sup>74</sup> Docket 19 at 3; see *Winter*, 555 U.S. at 20.

<sup>75</sup> Docket 19 at 3; see Docket 21 at 5-7.

Anchorage Municipal Charter § 17.05, Anchorage Municipal Code (“AMC”) § 1.25.010, AMC § 2.30.030, and Alaska Statute § 44.62.310(a).<sup>76</sup>

i. First Amendment Claim

Municipal Defendants respond that Plaintiff’s “First Amendment claim lacks merit.”<sup>77</sup> They maintain that “legislative bodies may enforce reasonable time, place, and manner restrictions—including requiring that public comments be germane to the legislative business at hand.”<sup>78</sup> According to Municipal Defendants, “public bodies may confine their meetings to specified subject matter,” and therefore “a legislative body does ‘not violate the first amendment when it restricts public speakers to the subject at hand.’”<sup>79</sup>

The Court finds that Plaintiff is not likely to succeed, nor has he shown serious questions on the merits, on his claim that his removal from the January 13, 2026 Assembly meeting violated the First Amendment. Pursuant to the First Amendment, “limitations on speech at” “city council and city board meetings”

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<sup>76</sup> Docket 19 at 4.

<sup>77</sup> Docket 31 at 12; see Docket 32 at 2 (“The Municipal Defendants oppose all of Mr. Darden’s motions for preliminary injunctive relief, including his request for a TRO. Given the similarity of the motions, . . . Municipal Defendants hereby incorporate by reference their Preliminary Injunction opposition at Docket 31 and would refer the Court to those arguments in opposition to Mr. Darden’s request for a TRO.”).

<sup>78</sup> Docket 31 at 12.

<sup>79</sup> Docket 31 at 13 (first quoting *Madison Joint Sch. Dist. No. 8 v. Wisconsin Emp. Rels. Comm’n*, 429 U.S. 167, 175 n.8 (1976); and then quoting *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990)).

“must be reasonable and viewpoint neutral, but that is all they need to be.”<sup>80</sup> “While a speaker may not be stopped from speaking because the moderator disagrees with the viewpoint he is expressing, it certainly may stop him if his speech becomes irrelevant or repetitious.”<sup>81</sup>

The Court’s review of the video shows that Plaintiff, after being warned several times that his testimony needed to be relevant to the ordinance being discussed, again failed to keep his testimony on topic. Specifically, the fourth ordinance for discussion when Plaintiff spoke was AO 2025-140, which would place a proposal to expand the tax service area for maintenance and operation of streetlights for a new subdivision in Eagle River on the April 7, 2026 ballot.<sup>82</sup> The ordinance does not mention LED lights or blue lights.<sup>83</sup> After Plaintiff spoke about LED and blue lights, Defendant Constant explained that the ordinance was about “a special light service area” and asked that Plaintiff “speak to the matter before [the Assembly].”<sup>84</sup> Plaintiff resumed testifying, but he did not testify further about LED lights or streetlights at all. Instead, he testified about his citizenship, recited a portion of the pledge of allegiance, cited the First Amendment, and stated that

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<sup>80</sup> *Kindt v. Santa Monica Rent Control Bd.*, 67 F.3d 266, 271 (9th Cir. 1995).

<sup>81</sup> *White*, 900 F.2d at 1425 (internal citation omitted).

<sup>82</sup> Docket 31 at 8 (citing Docket 31-1).

<sup>83</sup> Docket 31-1.

<sup>84</sup> Video at 2:48:13-2:48:26.

he was “just about done with the interruptions.”<sup>85</sup> These topics are clearly not germane to AO 2025-140.

Further, Plaintiff had been given several warnings that he must limit his testimony to the matter then up for discussion before the Assembly. And there is no indication that Defendant Meyers objected to Plaintiff’s speech because of Plaintiff’s viewpoint; rather, Defendant Meyers believed that Plaintiff’s testimony was not germane to the extension of the streetlight service area and Defendant Constant had Plaintiff removed for his repeated failure to testify on topic. As such, Defendant Constant’s removal of Plaintiff from the January 13, 2026 Assembly meeting was reasonable and viewpoint neutral.

The Court therefore finds that Plaintiff has not shown a likelihood of success on the merits or that there are serious questions going to the merits on his First Amendment claim.<sup>86</sup>

ii. Claims Under Anchorage and Alaska Law

Municipal Defendants contend that Plaintiff cannot show a likelihood of success on his claims under municipal and state law. Plaintiff raises a claim under Alaska Statute § 44.62.310(a)—the Open Meetings Act—and related municipal

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<sup>85</sup> Video at 2:48:27-2:48:56.

<sup>86</sup> At this juncture, the Court does not assess Plaintiff’s claims that a preliminary injunction is warranted based on Plaintiff’s claim that his trespass from the January 27, 2026 Assembly meeting is an unconstitutional prior restraint or that his removal violated the Fourth Amendment. Docket 21 at 7-8. That is because, as explained below, Plaintiff cannot show that he will suffer irreparable harm absent a temporary restraining order or a preliminary injunction.

charter and code provisions. “The purpose of the open meetings act is to assure that government units transact business openly.”<sup>87</sup> As such, Alaska Statute § 44.62.310(a) requires that “All meetings of a governmental body of a public entity of the state are open to the public” except as otherwise provided and not relevant here. A “public entity” includes “an entity of . . . a political subdivision of the state including . . . a municipality.”<sup>88</sup> Similarly, AMC § 1.25.010 provides generally that “[t]he policy of the municipality is that all meetings of the assembly . . . shall be open to the public” and that reasonable public notice shall be given for all meetings required to be public. AMC § 2.30.030 provides the date, time, and place for regular Assembly meetings and provides that the chair of the Assembly has the authority to make rulings and to promote the efficient and orderly conduct of Assembly business. This includes the authority to “order a person to be removed from a meeting for creating an actual disturbance to the meeting.” Anchorage Municipal Charter § 17.05 similarly provides that “[a]ll meetings of the assembly . . . shall be public.”

Plaintiff maintains that his removal from the January 13, 2026 Assembly meeting and his trespass and exclusion from the January 27, 2026 Assembly meeting violate these state and municipal laws.<sup>89</sup> Municipal Defendants maintain

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<sup>87</sup> *Anchorage Sch. Dist. v. Anchorage Daily News*, 779 P.2d 1191, 1193 (Alaska 1989).

<sup>88</sup> Alaska Stat. § 44.62.310(h)(3).

<sup>89</sup> Docket 19 at 4-5; Docket 21 at 7.

that Plaintiff's "personal ejection from 1.5 meetings" "does not alter the fundamental character of the meeting as a public one" and therefore those meetings were not held in violation of the Open Meetings Act and related law.<sup>90</sup> Further, Municipal Defendants contend that Plaintiff "could still watch and listen to the meetings online, and he also had the option to submit written comments, which any person can do using a web form."<sup>91</sup>

The Court finds that Plaintiff has not shown a likelihood of success or that serious questions go to the merits on his claim under the Open Meetings Act and related Anchorage municipal law. The January 13 and January 27, 2026 Assembly meetings were open to the public and, while Plaintiff was removed during the January 13, 2026 meeting and was not permitted to attend in person at the January 27, 2026 meeting, Plaintiff could still watch and listen to the meetings online and submit his written testimony if he wished to be heard on any of the matters considered by the Assembly. And, in any event, the Court agrees with Municipal Defendants that Plaintiff "makes no attempt to show that the statutory factors favor him or would allow the Court to make the required findings" in order to void the January 27, 2026 meeting.<sup>92</sup>

*b. Irreparable Harm*

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<sup>90</sup> Docket 31 at 23.

<sup>91</sup> Docket 31 at 10.

<sup>92</sup> Docket 31 at 25; *see generally* Docket 34.

Plaintiff contends that he will suffer irreparable harm absent a temporary restraining order or preliminary injunction because municipal ballots are being printed imminently and will include ballot measures that were approved at the January 13 and January 27, 2026 meetings.<sup>93</sup> He also maintains that there will be irreparable harm without a court order because he “may face arbitrary exclusion if he returns” to an Assembly meeting and the Assembly has chilled the speech of others who might wish to speak on items before the Assembly.<sup>94</sup>

A plaintiff seeking preliminary injunctive relief must “demonstrate that irreparable harm is *likely* in the absence of an injunction.”<sup>95</sup> A mere possibility of irreparable harm is not sufficient.<sup>96</sup> The Court agrees with Municipal Defendants that Plaintiff’s assertion that he may be excluded from further Assembly meetings and that others will have their speech chilled because of Defendants’ conduct towards him is, at most, a mere possibility of harm. Plaintiff does not allege that he has now been trespassed from attending Assembly meetings and his assertion that his speech and the speech of others may be chilled is speculative.

Therefore, the Court finds that in addition to failing to show a likelihood of success on the merits or that serious questions go to the merits on his First

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<sup>93</sup> Docket 19 at 5; Docket 21 at 9.

<sup>94</sup> Docket 19 at 5-6; Docket 21 at 8-9.

<sup>95</sup> *Winter*, 555 U.S. at 375 (emphasis in original).

<sup>96</sup> *Id.*

Amendment and Open Meeting Act claims, Plaintiff has not shown that he will suffer irreparable injury absent a temporary restraining order or a preliminary injunction as to any of the claims raised in his motion for a temporary restraining order or a preliminary injunction.

*c. Balance of the Equities/Public Interest*

In light of the foregoing findings—that Plaintiff has failed to show a likelihood of success on the merits or that he faces irreparable harm—the Court need not and does not address the final *Winter* factors.

In sum, Plaintiff's Motion for a Temporary Restraining Order at Docket 19 and Amended Motion for Preliminary Injunction at Docket 21 are DENIED.

**II. Plaintiff's Motion for Expedited Consideration**

Because this order denies Plaintiff's Motion for a Temporary Restraining Order and Amended Motion for Preliminary Injunction, the Court DENIES as moot Plaintiff's Motion for Expedited Consideration for Emergency Motion for Preliminary Injunction at Docket 22.

**III. Municipal Defendants' Motion for Extension of Time**

Federal Rule of Civil Procedure 6(b)(1) provides that, “[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time . . . on motion made after the time has expired if the party failed to act because of excusable neglect.” Plaintiff's Amended Complaint was docketed by this Court

on February 18, 2026.<sup>97</sup> Pursuant to Federal Rule of Civil Procedure 15(a)(3), Municipal Defendants' response to Plaintiff's Amended Complaint was due 14 days after Plaintiff filed his Amended Complaint, March 4, 2026.

On March 9, 2026, Municipal Defendants move for an extension of time to respond to Plaintiff's Amended Complaint to March 24, 2026.<sup>98</sup> Municipal Defendants seek an extension because "lead counsel, who was tasked with taking lead on the response to the complaint, then experienced, in very quick succession, the death of her father, illness, and an immovable out-of-state family travel obligation."<sup>99</sup> Further, amid these personal events, Municipal Defendants miscalendared the deadline for their response as March 10, 2026; and hence, filed their motion for an extension after the deadline for their answer had expired.<sup>100</sup>

Municipal Defendants maintain that they have shown good cause exists to grant the extension due to their excusable neglect because Plaintiff will not be prejudiced by the extension as Plaintiff's motions for a temporary restraining order and preliminary injunction are fully briefed, "[t]he length of the just-over-4-day delay in filing the extension motion at issue here, and the requested extension . . . is modest," there is no indication that "the calendaring mistake here was the result of

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<sup>97</sup> Docket 24.

<sup>98</sup> Docket 38 at 1.

<sup>99</sup> Docket 44 at 3 (citing Docket 38-1 at 2-3).

<sup>100</sup> Docket 44 at 3 (citing Docket 38-1 at 3).

bad faith, strategic gamesmanship, or intentional delay,” and “a brief, good faith calendaring error made during lead counsel’s extenuating personal circumstances, resulting in no prejudice to the other side, is plainly excusable under binding precedent.”<sup>101</sup>

The Court finds that good cause exists to grant Municipal Defendants’ motion for an extension of time. Considering the modest length of the requested extension, counsel’s difficult personal circumstances, the lack of intentional tardiness, and the Municipal Defendants’ timely response to Plaintiff’s emergency motions, good cause exists to extend the deadline for Municipal Defendants to respond to Plaintiff’s Amended Complaint until March 24, 2026. Municipal Defendants’ Motion for Extension of Time . . . in Which to Respond to Amended Complaint at Docket 38 is **GRANTED**.

Because Municipal Defendants’ response to Plaintiff’s Amended Complaint is now due by March 24, 2026, Plaintiff’s Motion for Entry of Default at Docket 39 is **DENIED**.

### **CONCLUSION**

In light of the foregoing, IT IS HEREBY ORDERED:

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<sup>101</sup> Docket 44 at 5-7 (“Congress plainly contemplated that the courts would be permitted, where appropriate, to accept late filings caused,” as here, “by inadvertence, mistake, or carelessness.”) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1993)).

1. Municipal Defendants' Motion for Extension of Time to Respond to Preliminary Injunction Motion at Docket 18 is **DENIED** as moot. See Docket 43.
2. Plaintiff's Motion for a Temporary Restraining Order at Docket 19 is **DENIED**.
3. Plaintiff's Amended Emergency Motion for a Preliminary Injunction at Docket 21 is **DENIED**.
4. Plaintiff's Motion for Expedited Consideration for Emergency Motion for Preliminary Injunction at Docket 22 is **DENIED** as moot.
5. Municipal Defendants' Motion for 14-Day Extension of Time in Which to Respond to Amended Complaint at Docket 38 is **GRANTED**. Municipal Defendants shall respond to Plaintiff's Amended Complaint by **March 24, 2026**.
6. Plaintiff's Request for Entry of Default Against Municipal Defendants Pursuant to Fed. R. Civ. P. 55(a) at Docket 39 is **DENIED**.

DATED this 16th day of March, 2026, at Anchorage, Alaska.

/s/ Sharon L. Gleason  
UNITED STATES DISTRICT JUDGE

**FILED**

UNITED STATES COURT OF APPEALS

APR 8 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

DUSTIN THOMAS HOUSE DARDEN,

Plaintiff - Appellant,

v.

SUZANNE LAFRANCE, Mayor, in her  
individual and official capacities; et al.,

Defendants - Appellees.

No. 26-1606

D.C. No.

3:26-cv-00053-SLG

District of Alaska,  
Anchorage

ORDER

The motion (Docket Entry No. 3) to expedite is denied.

The existing briefing schedule remains in effect.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

Ruth Botstein  
Assistant Municipal Attorney  
Kathryn R. Vogel  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

DUSTIN THOMAS HOUSE DARDEN, )  
)  
Plaintiff, )  
)  
SUZANNE LAFRANCE Mayor, in her )  
individual and official capacities; CHRISTOPHER )  
CONSTANT Assembly chair, in his individual and )  
official capacities; EVA GARDNER, in her individual )  
and official capacities; SEAN CASE, in his individual )  
and official capacities; ANNA BRAWLEY, in her )  
individual and official capacities; DANIEL )  
VOLLAND, in his individual and official )  
capacities; JARED GOECKER, in his individual and )  
official capacities; SCOTT MYERS, in his individual )  
and official capacities; ERIN BALDWIN DAY, in her )  
individual and official capacities; FELIX )  
RIVERA, in his individual and official capacities; )  
GEORGE MARTINEZ, in his individual and official )  
capacities; YARROW SILVERS, in his )  
individual and official capacities; ZAC JOHNSON, )  
in his individual and official capacities; KEITH )  
MCCORMICK, in his individual and official )  
capacities; KAMERON PEREZ-VERDI A, in his )  
individual and official capacities; ALLIED )  
UNIVERSAL SECURITY SERVICES; JOHN DOE 1 )  
(Armed Allied Security Guard); JOHN DOE 2 )  
(Allied Security Guard); JANE DOE 1 (Allied )

3:26-cv-00053 SLG

Municipal Defendants' Opposition to Amended Emergency Motion for Preliminary Injunction  
*Darden, Dustin v Suzanne Lafrance et al*; Case No. 3:26-cv-00053SLG  
Page 1 of 35

Security Guard); M. WEINRICK, APD Officer, in his )  
 individual and official capacities; C.B. WALAND, )  
 APD Officer, in his individual and official capacities; )  
 CARPENTER, APD Officer, in his individual and )  
 official capacities; AMBURN, APD Officer, in )  
 his individual and official capacities; D. GUTIERREZ, )  
 APD Officer, in his individual and official )  
 capacities; RIVERA, APD Officer, in his individual )  
 and official capacities, MUNICIPALITY OF )  
 ANCHORAGE, )  
 Defendants. )  
 \_\_\_\_\_ )

**MUNICIPAL DEFENDANTS’ OPPOSITION TO AMENDED EMERGENCY  
 MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff Dustin Darden has moved for preliminary injunctive relief at Docket 21.<sup>1</sup> After testifying four separate times at the January 13, 2026 meeting of the Anchorage Assembly, becoming increasingly unable or unwilling to limit his comments to the items under discussion, and ignoring numerous admonitions from the Assembly Chair and other Assembly Members to remain on topic, Mr. Darden was trespassed from the Assembly meeting because his commentary—which included reciting the Pledge of Allegiance and proclaiming his religious beliefs—was not connected to the agenda item before the

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<sup>1</sup> More precisely, Mr. Darden has filed several overlapping requests for equitable relief. At Docket 3, he filed an Emergency Motion for Preliminary Injunction. But before this motion was fully briefed, Mr. Darden amended his complaint [Docket 24] and, based on the revised complaint, filed an Amended Emergency Motion for Preliminary Injunction [Docket 21] as well as an Emergency Motion for Temporary Restraining Order [Docket 19]. All three motions seeking injunctive relief are very similar. The Municipal Defendants believe that the amended Preliminary Injunction filing at Docket 21 superseded and mooted the prior filing at Docket 3 and thus that Docket 21 is now the live motion before the Court, and now oppose it.

Mr. Darden's arguments to the contrary are unavailing. His assertion that he spoke "on an agenda topic, and violated no procedural rule"<sup>68</sup> is incorrect for the reasons explained above. Reciting the pledge of allegiance, stating one's citizenship and religious beliefs, and giving a speech about redress of grievances and the First Amendment is not germane to whether or not a new service area should be created in a subdivision in Eagle River. Such testimony "on any topic" is thus in order only during general audience participation at the end of the Assembly meeting.<sup>69</sup> It is specifically out of order during public testimony on a specific agenda item, at which time "[t]he speaker must focus testimony to the topic of the public hearing."<sup>70</sup> Mr. Darden's personal disagreement with that viewpoint-neutral time-place-and-manner rule does not prevent the Municipality from constitutionally enforcing that rule against Mr. Darden.

Mr. Darden's conclusory assertion that he was cut off "because [assembly members] disagreed with what he was saying about LED lights"<sup>71</sup> is foreclosed by the uncontested facts. Member Myers explained that he raised a point of order not because he disagreed with the content of Mr. Darden's speech but because, in his view, Mr. Darden's testimony was not germane: the service area agenda item "ha[d] nothing to do with blue lights or laser beams; I didn't see that anywhere in this proposal."<sup>72</sup> Review of the ordinance under

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<sup>68</sup> Docket 21 at 6.

<sup>69</sup> AMC 2.30.040G.

<sup>70</sup> AMC 2.30.055B.

<sup>71</sup> Docket 2121, at 6,

<sup>72</sup> Video at 2:47:59-2:48:11.

View documents on PACER (PACER Docket) (<https://ca9-showdoc.azurewebsites.us/26-1606>)

**Date Filed** 3/17/2026

**Entry #** 1

**Docket Text** **CASE OPENED.** A copy of your notice of appeal / petition filed in 3:26-cv-00053-SLG has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit.

The U.S. Court of Appeals docket number **26-1606** has been assigned to this case. All communications with the court must indicate this Court of Appeals docket number. Please carefully review the docket to ensure the name(s) and contact information are correct. It is your responsibility to alert the court if your contact information changes.

**Resources Available**

For more information about case processing and to assist you in preparing your brief, please review the Case Opening Information (for attorneys (<https://cdn.ca9.uscourts.gov/datastore/acms/Attorney-Appeal-Case-Opening-Dec-2019.pdf>) and pro se litigants (<https://cdn.ca9.uscourts.gov/datastore/acms/Pro-Se-Appeals-Case-Opening.pdf>)) and review the Appellate Practice Guide (<https://cdn.ca9.uscourts.gov/datastore/uploads/guides/AppellatePracticeGuide.pdf>). Attorneys should consider contacting the court's Appellate Mentoring Program ([https://cdn.ca9.uscourts.gov/datastore/general/2013/03/22/ninth\\_circuit\\_appl\\_lawyer\\_rep\\_mentoring\\_project.pdf](https://cdn.ca9.uscourts.gov/datastore/general/2013/03/22/ninth_circuit_appl_lawyer_rep_mentoring_project.pdf)) for help with the brief and argument. [Entered: 03/17/2026 03:44 PM]

**Date Filed** 3/17/2026

**Entry #** 2

**Docket Text** **PRELIMINARY INJUNCTION SCHEDULE NOTICE.** Preliminary Injunction Answering Brief Due (Appellee) 5/12/2026, Preliminary Injunction Opening Brief Due (Appellant) 4/14/2026. **For appeal no. 26-1606, 3:26-cv-00053-SLG.** All briefs shall be served and filed pursuant to FRAP 31 and 9th Cir. R. 31-2.1.

Failure of the petitioner(s)/appellant(s) to comply with this briefing schedule will result in automatic dismissal of the appeal. See 9th Cir. R. 42-1. [Entered: 03/17/2026 03:49 PM]

**Date Filed** 3/17/2026

**Entry #** 3

**Docket Text** **MOTION** to Expedite filed by Appellant Dustin Thomas House Darden. [Entered: 03/17/2026 04:10 PM]