UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

HANNAH MAGEE PORTÉE, *Plaintiff,*	§	
v.	§	**NO: 1:23-CV-00551-RP**
MIKE MORATH, in his official capacity as COMMISSIONER OF EDUCATION, TEXAS EDUCATION AGENCY, AND STATE BOARD FOR EDUCATOR CERTIFICATION *Defendants.*	§	

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

TO THE HONORABLE ROBERT PITMAN, UNITED STATES DISTRICT JUDGE:

Plaintiff, **HANNAH MAGEE PORTÉE,** moves this Court for a preliminary injunction pending final judgment in this action. The preliminary injunction will enjoin Defendants Mike Morath, in his official capacity as the Texas **COMMISSIONER OF EDUCATION**, the **TEXAS EDUCATION AGENCY**, and the **STATE BOARD FOR EDUCATOR CERTIFICATION**—their agents, servants, employees, and attorneys, and all persons in active concert and participation with these defendants, from:

1. **Enforcing regulations, preempted by the Servicemembers Civil Relief Act, that disregard the federally mandated portability and validity of Plaintiff's out-of-state school counselor licenses.**
2. **Arbitrarily interfering with Plaintiff's vested property interest in her portable and valid out-of-state school counselor licenses as afforded to her by the Servicemembers Civil Relief Act, by declaring that since she cannot demonstrate two years of full-time,**

wage-earning experience in the role of a licensed school counselor, the State of Texas will not recognize her out of state licensure.

3. **Enforcing regulations that prohibit Texas schools from employing Plaintiff in the State of Texas as a licensed school counselor**.

I.
SUMMARY

Federal law is the "supreme Law of the Land."[1] When a state law looks like it might conflict with a federal statute or regulation, courts consider preemption to see if the state law in question must yield.[2] Not only must the State of Texas, through Defendants, yield to federal protections afforded to Hannah and other impacted military spouses, but this Court should *immediately* issue an injunction that prevents the Defendants from *violating* federal law and infringing on Plaintiff's federal protections.

Defendants are violating Plaintiff's federal rights by rejecting the portability and validity of her out-of-state school counselor licenses as afforded to her under the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. § 3901, et seq., and more specifically under 50 U.S.C. § 4025a. Through these violations, the Defendants are causing irreparable harm by interfering with her protected property right vested in her portable and valid out-of-state licenses by refusing to authorize her to utilize her licenses in the State of Texas as mandated by the SCRA, and by also barring her ability to seek *any* employment as a licensed school counselor in the State of Texas.

It is essential that the Court issue the requested preliminary injunction to prevent immediate and irreparable injury because, as established by Plaintiff's affidavit and documents, unless

[1] U.S. Const. art. VI.

[2] *Perry v. Mercedes Benz of N. Am., Inc*., 957 F.2d 1257, 1261 (5th Cir. 1992).

restrained by the Court, the defendants will continue violating Plaintiff's rights afforded to her by the SCRA and Fifth Amendment of the United States Constitution.[3]

II.
FACTUAL BACKGROUND

Defendant **MIKE MORATH**, in his official capacity as the Texas COMMISSIONER OF EDUCATION, serves as the educational leader of Texas as well as the executive officer of TEA,[4] and is responsible for adopting rules establishing exceptions to the examination requirements for an educator from outside the state, including military spouses like Hannah, to obtain a certificate in this state.[5]

Defendant **TEXAS EDUCATION AGENCY** is a state agency tasked by the State Legislature to "administer and monitor compliance with education programs required by federal and state law,"[6] and certain staff of the TEA are assigned by the Commissioner to perform the administrative functions and services of the SBEC, including the reviewing and approving of a military spouse's request such as Hannah's, for an in-state educator certification.[7]

Defendant Texas **STATE BOARD FOR EDUCATOR CERTIFICATION** is a state board created by the Texas Legislature to "regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public-school educators,"[8] and has authority to

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[3] *See* Fed. R. Civ. P. 65.

[4] TEX. EDUC. CODE § 7.055(b)(1).

[5] *Id.* § 21.052(a-1).

[6] *Id.* § 7.021(b)(1).

[7] 19 TEX. ADMIN. CODE §§ 227.101(b)(5), 228.2(35), 230.117(a), 234.5.

[8] TEX. EDUC. CODE § 21.031(a).

implement procedures to issue a certificate to a military spouse, like Hannah, with out-of-state certifications.[9]

Under the SCRA:

(a) ***In general****. In any case in which a servicemember or the spouse of a servicemember who has a covered license and such servicemember or spouse relocates his or her residency because of military orders for military service to a location that is not in the jurisdiction of the licensing authority that issued the covered license, such covered license shall be considered valid at a similar scope of practice and in the discipline applied for in the jurisdiction of such new residency for the duration of such military orders if such servicemember or spouse—*

(1) provides a copy of such military orders to the licensing authority in the jurisdiction in which the new residency is located;

(2) remains in good standing with—

(A) the licensing authority that issued the covered license: and

(B) every other licensing authority that has issued to the servicemember or the spouse of a servicemember a license valid at a similar scope of practice and in the discipline applied in the jurisdiction of such licensing authority;

(3) submits to the authority of the licensing authority in the new jurisdiction for the purposes of standards of practice, discipline, and fulfillment of any continuing education requirements.

(b). Interstate licensure compacts. If a servicemember or spouse of a servicemember is licensed and able to operate in multiple jurisdictions through an interstate licensure compact, with

[9] *Id*. § 21.052.

respect to services provided in the jurisdiction of the interstate licensure compact by a licensee covered by such compact, the servicemember or spouse of a servicemember shall be subject to the requirements of the compact or the applicable provisions of law of the applicable State and not this section.

(c). Covered license defined. In this section, the term "covered license" means a professional license or certificate —

(1) that is in good standing with the licensing authority that issued such professional license or certificate:

(2) that the service member or spouse of a servicemember has actively used during the two years immediately preceding the relocation described in subsection (a); and

(3) that is not a license to practice law.

The SCRA does not impose any threshold requirement that a spouse must first demonstrate two years of full-time, wage-earning experience in the role for what they are certified. Yet Defendants ignore the contours of Plaintiff's federally-protect rights under the SCRA by requiring her, as a military spouse, to meet an arbitrary requirement of establishing two years of full-time employment as a licensed school counselor before the State will recognize her out-of-state licenses.

Hannah was licensed as a school counselor through the State of Ohio Department of Education on July 1, 2021.[10]. She was then licensed as a school counselor through Missouri's

[10] Dkt. No. 5-1, ¶ 4.a.

Board of Education on July 7, 2022.[11] On July 29, 2022, Hannah married David Portée, an active-duty Air Force officer, stationed at the time at Scott Air Force Base in Illinois.[12] During this time, Hannah was employed as a guidance counselor at an elementary school in Missouri, and a long-term substitute counselor at a middle school in Ohio.[13] When her husband was reassigned to Laughlin Air Force Base in Texas, and was required to report for duty on January 9, 2023, Hannah terminated her employment to be with her husband.[14]

On October 4, 2022, before moving to Texas, Hannah applied through Defendants' process (the TEA Educator Certification Online System) to obtain a SBEC-issued school counselor certificate so that she may seek gainful employment as a school counselor in Texas while supporting her husband in defense of this country.[15] This process included Hannah paying for fingerprinting and a background check.[16] Hannah was immediately informed that she failed to provide information verifying two years of full-time, wage-earning experience in the role of a school counselor (a State requirement that is more restrictive than the SCRA portability provisions).[17] Following this initial denial in obtaining permission to work as a school counselor in Texas, Hannah attempted to get a temporary license issued by one or more Defendants so that she could meet Defendants' employment criteria. This was unsuccessful.

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[11] *Id.* ¶ 4.b.

[12] *Id.* ¶ 4.c.

[13] *Id.* ¶ 4.d.

[14] *Id.* ¶ 4.e.

[15] *Id.* ¶ 4.f.

[16] *Id.*

[17] *Id.* ¶ 4.g.

Once Hannah discovered, in February 2023, that SCRA was recently amended in a way that mandated Defendants to recognize the validity and portability of her licenses, she again reached out to Defendants' agents to make sure she complied with her requirements under the SCRA, and to see whether Defendants would recognized her federal right to have her Missouri and Ohio-issued school counselor licenses recognized as valid in this State.[18]

Hannah was again denied her federal right to work by the Director of Educator Credentialing, Mr. Trenton Law, who informed her on February 27, 2023: "[I]n order for us to complete the review of credentials for the school Counselor area, you must either submit documentation verifying two (2) academic years of full time, wage-earning experience in the role of school counselor or provide documentation of a classroom teaching certificate."[19] He continued, "If you do not have either of these, then completing an educator preparation program (EPP) will be required."[20] Mr. Law stated that "the [federal provision] you mentioned [during our call] …stating something to the effect of automatically transferring certifications…. would not apply to Texas."[21]

Finally, Hannah received written notice from Defendants on April 4, 2023, in which they emphatically stated,

"To be reviewed for a standalone student service or administrative certificate, you must provide verification of 2 academic years of full-time, wage-earning experience in a public or private school as a SCHOOL COUNSELOR (capitals in original), signed by your superintendent

[18] *Id.* ¶ 4.h.

[19] *Id.* ¶ 4.i.

[20] *Id.*

[21] *Id.*

or authorized representative on a verification of experience form. For experience earned in a US private school or any school outside the US, a verification of accreditation status form is required. Verification forms are available by going to tea.texas.gov, under Out-of-State Certification. . . You have one year from your initial application date of 10/4/2022 to submit the required documents for a review of credentials and test exemption consideration. After a year, you will be required to reapply and resubmit the $164.00 application fee as per Texas Administrative Code 230.117(b) – "An individual who does not submit all required documents for the review at the time of application will have one year to submit all required documents, or the individual will be required to reapply and resubmit the application fee."[22]

Here, Plaintiff substantially complied with SCRA requirements. She provided a copy of her husband's military orders to Defendants, she remained in good standing with Ohio and Missouri licensing authorities, and she agrees to submit to Texas's continuing education standards.[23] Defendants do not have any interstate licensure compacts that would exempt them from complying with the SCRA portability provisions. Plaintiff's license is one cove red by the SCRA, and she utilized her license within the last two years as required by the SCRA. Despite applying and interviewing for licensed school counselor opportunities in Texas, Plaintiff is not able to seek gainful employment because of Defendants' regulations, and therefore has been irreparably harmed.[24]

[22] *Id.* ¶ 4.k.

[23] *Id.* ¶ 4.h.

[24] *Id.* ¶ 4.l.

III.
AUTHORITIES AND ARGUMENTS

A. Legal Standard for Issuing a Preliminary Injunction

"A plaintiff requesting the extraordinary remedy of a preliminary injunction must establish the following four factors: (i) a substantial likelihood of success on the merits; (ii) a substantial threat that failure to grant the injunction will result in irreparable injury; (iii) the threatened injury outweighs any damage that the injunction may cause the opposing party; and (iv) the injunction will not disserve the public interest."[25] "None of these elements, however, is controlling."[26] Rather, the Court must consider the elements jointly, and a strong showing of one element may compensate for a weaker showing of another."[27]

While required to show a probability of success on the merits of the claim, "[t]he likelihood of success need not be one of absolute certainty, however."[28] "The movant is not required to proof

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[25] *De Leon v. Perry*, 975 F. Supp.2d 632, 649 (W.D. Tex.2014) (citing *Winter v. Natural Res. Def. Council, Inc*., 555 U.S. 7, 20 (2008); *Valley v. Rapides Parish Sch. Bd*., 118 F.3d 1047, 1050 (5th Cir. 1997).

[26] *Texas Democratic Party v. Abbott*, 461 F. Supp.3d 406, 430 (W.D. Tex. 2020) (citing *Florida Med. Ass'n v. United States Dep't of Health, Educ. and Welfare*, 601 F.2d 199, 203 n.2 (5th Cir. 1979) ("[A] sliding scale can be employed, balancing the hardships associated with the issuance or denial of a preliminary injunction with the degree of likelihood of success on the merits.).

[27] *Id*.

[28] *Casarez v. Val Verde County*, 957 F. Supp. 847, 858 (W.D. Tex. 1997) (citing *Sebastian v. Texas Dept. of Corrections,* 541 F. Supp. 970, 975 (S.D. Tex. 1982)).

her case."[29] Nor is it "necessary that the [movant's] right to a final decision, after a trial, be absolutely certain[or] wholly without doubt."[30] "A reasonable probability of success, not an overwhelming likelihood, is all that need be shown for preliminary injunctive relief."[31] "A preliminary injunction may issue if plaintiff has raised questions going to the merits so serious and substantial as to make them fair ground for litigation and thus for more deliberate investigation.[32]

1. Plaintiff will likely succeed on the merits of her claim that Defendants are violating her federally protected rights.

"States . . . lack authority to nullify *a federal right* . . . they believe is inconsistent with their local policies."[33] The Supreme Court has held that "[e]ven without an express provision for preemption . . . state law must yield to a congressional Act in at least two circumstances."[34] "When Congress intends federal law to 'occupy the field,' state law in that area is preempted.[35] "And even if Congress has not occupied the field, state law is naturally preempted to the extent of any

[29] *Id*. (citing *Lakedreams v. Taylor*, 932 F.2d 1103, 1109 n. 11 (5th Cir. 1991)).

[30] *Sebastian,* 541 F. Supp. at 975 (citing *Hamilton Watch Co. v. Benrus Watch Co*., 206 F.2d 738, 740 (2d Cir. 1953)).

[31] *Casarez,* 957 F. Supp., at 858 (citing *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 422 (9th Cir. 1991) ("If the balance of harm tips decidedly toward the plaintiff, then the plaintiff need not show as robust a likelihood of success on the merits as when the balance tips less decidedly.").

[32] *Id*. (citing *Finlan v. City of Dallas*, 888 F. Supp. 779, 791 (N.D. Tex. 1995)).

[33] *Hayward v. Drown*, 556 U.S. 729, 736 (2009) (emphasis added).

[34] *Id*. at 372.

[35] *Id.*

conflict with a federal statute."[36] The Court will find preemption where "under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[37]

Congress, in 1940, originally enacted the Soldiers' and Sailors' Civil Relief Act (SSCRA),[38] to provide civil protections and rights to individuals based on their service in the military. In 2003, Congress enacted the SCRA[39] in response to the increased deployment of Servicemembers and as a modernization and restatement of the protections and rights previously available under the SSCRA.[40] The SCRA has been amended since its initial passage, and Congress continues to consider amendments from time to time. Most recently, Congress enacted amendments to benefit military spouses.[41]

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[36] *Id*. (citing *Hines v. Davidowitz*, 312 U.S. 52, 66-67 (1941)).

[37] *Id*. (citing *Hines* at 67).

[38] Pub. L No. 76-961, 54 Stat. 1178 (1940) (previously codified at 50 U.S.C. §§ 501 et seq.).

[39] Pub. L. No. 108-189, 117 Stat. 2836 (2003) (previously codified as amended at 50 U.S.C. §§ 501-96). One of the amendments effected by Pub. L. No. 108-189 is the change in the name of the act from Soldiers' and Sailors' Civil Relief Act (SSCRA) to Servicemembers Civil Relief Act (SCRA). The name of the act was changed to the more inclusive SCRA "because soldiers, sailors, marines and airmen are collectively referred to as 'servicemembers' in other statutes." H.Rept. 108-81, at 35 (2003).

[40] H.Rept. 108-81, at 32 (2003).

[41] *See*, *e.g*., Pub. L. No. 117-333, §§ 17-19, 136 Stat. 6121, 6136-38 (2023) (various amendments, including provision for portability of professional licenses for servicemembers and their spouses

The SCRA is an exercise of Congress's power to raise and support armies[42] and to declare war.[43] The purpose of the act is to provide for, strengthen, and expedite the national defense by protecting servicemembers, enabling them to "devote their entire energy to the defense needs of the Nation."[44]

Added in 2023, the SCRA provides for the recognition of professional licenses and certificates issued by other jurisdictions to military spouses who have relocated to a new jurisdiction pursuant to military orders, providing that the license remains in good standing with the issuing authority and any other issuing authority that has issued a similar license to the

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who relocate due to military orders, codified at 50 U.S.C. § 4025a); Pub. L. No. 116-92, § 1739(a), 133 Stat. 1197, 1820 (2019) (guaranteeing spouse's residency for all purposes) (codified at 50 U.S.C. § 4027); Pub. L. No. 115-407, §§ 301-03, 132 Stat. 5367, 5373 (2018) (codified at 50 U.S.C. §§ 3955, 4001, 4025) (permitting spouse of deceased servicemember to terminate lease, permitting servicemember's spouse to elect same residence for tax purposes, and permitting servicemember's spouse to elect state of residency for voting purposes regardless of date of marriage); Pub. L. No. 111-97, § 2(a), 123 Stat. 3007 (2009) (amending previous 50 U.S.C. § 595, currently codified at 50 U.S.C. § 4025) (the Military Spouses Residency Relief Act extended residency protections to the spouses of active-duty servicemembers).

[42] U.S. CONST. art. I, § 8, cl. 12.

[43] Id. art. I, § 8, cl. 11; *see Dameron v. Brodhead*, 345 U.S. 322, 325 (1953) (citing Congress' powers to declare war, raise and support armies, and enact laws necessary and proper for their exercise to uphold a portion of the SCRA).

[44] 50 U.S.C. § 3902.

licensee.[45] The licensee must meet standards of practice for the relevant profession in the new jurisdiction, including fulfilling any continuing education requirements, and is subject to the relevant disciplinary authority there.[46] The licensee must have actively used the license during the two years preceding relocation to the new jurisdiction.[47]

Here, Defendants are interfering with a field occupied by Congress—the portability of a military spouse's out-of-state license—by enforcing local regulation to deny Plaintiff her federally-protected right to have her licenses recognized as valid in the State of Texas.

Hannah met all her requirements under the SCRA. She gave up out-of-state employment as a school counselor so she could move to Texas with her military husband pursuant to military orders.[48] Defendants are licensing authorities. Plaintiff provided a copy of military orders to Defendants.[49] Plaintiff is in good standing with the Ohio and Missouri licensing authorities.[50] Plaintiff utilized her licenses in the two years preceding her moving to Texas solely due to her husband's military obligations.[51] Plaintiff consents to Defendants' jurisdiction for the regulation of school counselors including continuing education requirements and disciplinary authority.[52]

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[45] Pub. L. No. 117-333, § 19(a), 136 Stat. 6136, 6137 (2023) (codified at 50 U.S.C. § 4025a).

[46] 50 U.S.C. § 4025a(a).

[47] *Id.* § 4025a(c).

[48] Dkt. No. 5-1, ¶ 4.e.

[49] *Id.* ¶ 4.h.

[50] *Id.* ¶¶ 4.a, b.

[51] *Id.* ¶¶ 4.d, e; ¶ 6.

[52] *Id.* ¶ 4.h.

Despite federal law requiring Texas to recognize the validity of Hannah's professional school counselor licenses, Defendants are utilizing state law and regulations to require that she provide proof of two years of full-time, wage-earning employment before they will issue her any license recognized in this State. Defendants' conduct in violating Plaintiff's federally protected rights prevents her from seeking employment as a licensed school counselor. The Texas Education Code prohibits any school district from employing a person as a school counselor "unless the person holds an appropriate certificate or permit issued" by the Commissioner, TEA, or SBEC.[53] Ostensibly, Plaintiff is prevented from applying to several unfilled school counselor openings due to Defendants' failure to recognize Plaintiff's federal right of license portability.

Plaintiff is not able to seek gainful employment as a school counselor in Texas and has been irreparably harmed because of Defendants' continued and ongoing violations of the SCRA. The Defendants' restrictions imposed on Plaintiff in obtaining a SBEC-issued school counselor certificate are likely preempted by the federally mandated provisions under the SCRA and therefore Plaintiff is likely to succeed on the merits of her claim.

2. Plaintiff is suffering irreparable harm in the absence of a preliminary injunction because the Defendants' enforcement of laws and rules inconsistent with the SCRA interferes with Plaintiff's property interest in her professional licenses in violation of her substantive due process rights.

"An injury is irreparable if it cannot be undone through monetary remedies."[54] "To show irreparable injury if the threatened action is not enjoined, it is not necessary to demonstrate that

[53] TEX. EDUC. CODE § 21.003(a).

[54] *Casarez*, 956 F. Supp. at 864-65 (citing *Spiegel v. City of Houston*, 636 F.2d 997, 1001 (5th Cir. 1981).

the harm is inevitable and irreparable."[55] The threat of irreparable harm must be "likely in the absence of an injunction."[56] "The plaintiff need only show a significant threat of injury from the impending action,[57] that the injury is imminent, and that money damages would not fully repair the harm."[58]

Plaintiff asserts that she is suffering irreparable harm due to substantive due process violations. Substantive due process bars certain government actions "when [they] can properly be characterized as arbitrary, or conscience shocking, in a constitutional sense."[59]

Plaintiff has a protected property interest in maintaining a portable professional license and seeking employment as a licensed school counselor in the State of Texas. "'Privileges, licenses, certificates, and franchises . . . qualify as property interests for purposes of procedural due process.' This is because, once issued, a license or permit 'may become essential in the pursuit of a livelihood.'"[60]

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[55] *Humana, Inc. v. Avram A. Jacobson, M.D., P.A.*, 804 F.2d 1390, 1394 (5th Cir. 1986)

[56] *Winter*, 555 U.S. at 22.

[57] *Humana*, 804 F. 2d at 1394 (citing *Zenith Radio Corp. v. Hazeltine Research, Inc*., 395 U.S. 100, 130, 89 S.Ct. 1562, 1580, 23 L.Ed.2d 129 (1969).

[58] *Id*. (citing *Enterprise International, Inc. v. Corporacion Estatal Petrolera Ecuatoriana*, 762 F.2d 464, 472-73 (5th Cir.) reh'g denied, (1985).

[59] *Breen v. Tex. A & M Univ*., 485 F.3d 325, 332 (5th Cir. 2007).

[60] *Bowlby v. City of Aberdeen*, 681 F.3d 215, 220 (5th Cir. 2012) (quoting *Wells Fargo Armored Serv. Corp. v. Ga. Pub. Serv. Comm'n*, 547 F.2d 938, 941 (5th Cir. 1977)) (citing *Bell v. Burson*, 402 U.S. 535, 539 (1971)).

Here, Defendants are unreasonably interfering with her Plaintiff's ability to enjoy private employment as a licensed school counselor.

Moreover, it is summer, and this is the opportune time for Hannah, as a licensed school counselor, to pursue being hired for the coming academic year.[61] She has applied for school counselor positions and interviewed for two of them.[62] However, she is not receiving formal job offers because she is not permitted to use her licenses in the State of Texas due to Defendants' regulations.[63] Plaintiff faces the threat of substantial harm based on the loss of her property right in her out-of-state portable, valid licenses, as well as being completely prohibited from seeking valuable working opportunities—simply because Defendants refuse to recognize the validity and portability of her school counselor license as required by the SCRA.

3. The balance of harms strongly favors Plaintiff.

For the Court to issue a preliminary injunction enjoining Defendants from enforcing preempted laws and regulations that interfere with Plaintiff's federally protected right to hold a valid out-of-state professional license in the State of Texas, Plaintiff must establish that her threatened injuries outweigh any damage that the injunction may cause to Defendants.[64] "The degree of harm necessary decreases when the plaintiff demonstrates success on the merits."[65]

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[61] Dkt. No. 5-1, ¶ 4.l.

[62] *Id.*

[63] *Id.*

[64] *Perry*, 975 F. Supp. 2d at 664 (citing *Winter*, 555 U.S. at 20).

[65] *Calms v. United States*, 926 F. Supp. 582, 592 (N.D. Tex. 1996).

Here, Plaintiff asserts the equities greatly favor an injunction, as "there is no harm from issuing a preliminary injunction that prevents the enforcement of an unconstitutional statute."[66] Moreover, the only provision that Defendants are utilizing to interfere with Plaintiff's rights is that she failed to submit verification of two academic years of full-time, wage-earning experience in a public or private school in the licensed position before issuing a Texas educator certification.[67]

Defendants' use of this portion of the administrative code to deny Plaintiff her federal right of portability serves no legitimate purpose that could possibly favor Defendants.

4. Granting the requested injunction will not disserve the Public.

Defendants are "in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found unconstitutional."[68] "[T]he public interest is promoted by the robust enforcement of constitutional rights."[69] "Therefore, a preliminary injunction preventing the enforcement of an unconstitutional law serves, rather than contradicts, the public interest."[70]

Further, "public policy. . . rest[s] solely on the side of granting the injunction."[71] Defendants should be ashamed of enforcing a policy that harms military spouses and their ability

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[66] *Id*. (citing *Giovani Carandola, Ltd. v. Bason*, 303 F. 3d 507, 521 (4th Cir. 2002)).

[67] 19 TEX. ADMIN. CODE § 230.113(b).

[68] *Bason*, 303 F. 3d at 521.

[69] *Calms, 926 F. Supp*. at 665 (quoting *Am. Freedom Def. Initiative v. Suburban MobilityAuthority for Reg. Transp*., 698 F.3d 885, 896 (6th Cir. 2012)).

[70] *Perry*, 975 F. Supp. 2d at 665 (citing *Ingebretsen v. Jackson Pub. Sch. Dist*., 88 F.3d 274, 280 (5th Cir. 1996)).

[71] *Calms*, 926 F. Supp. at 592.

to utilize professional licenses and seek related employment simply because they relocate to Texas in support of their military spouses.

Here, ordering Plaintiff's requested relief serves the public interest. "[I]t is in the public interest to override legislation that, as found here, infringes on an individual's federal constitutional rights," [72] and harms the federal right of our nation's military spouses to work. Moreover, allowing Plaintiff to utilize her professional license to fill statewide school vacancies benefits the State and the People.

B. If a conflict exists, federal law on point preempts state law.

"A fundamental principle of the Constitution is that Congress has the power to preempt state law."[73] The Supreme Court has held that, "[W]hen the question is whether a Federal act overrides a state law, the entire scheme of the statute must be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power."[74]

"The test of whether both federal and state regulations may operate, or the state regulation must give way, is whether both regulations can be enforced without impairing the federal superintendence of the field, not whether they are aimed at similar or different objectives."[75] "Such

[72] *Perry*, 975 F. Supp. 2d at 664.

[73] *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000) (citing U.S. Const., Art VI, cl. 2; *Gibbons v. Ogden*, 9 Wheat, 1, 211, 6. L.Ed.23 (1824)).

[74] *Savage v. Jones*, 225 U.S. 501, 533, (1912).

[75] *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963).

actual conflict between and state federal law exists when 'compliance with both federal and state regulations is a physical impossibility,'[76] or when state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'"[77] In other words, it is inherent in the Supremacy Clause's provision that federal law "shall be the supreme law of the land," and that state courts must enforce federal law.[78]

Here, compliance with the provisions of 50 U.S.C. § 4025a and Texas Education Agency's regulatory provisions for recognizing an out-of-state school counselor license is physically impossible and the state regulations stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. Therefore, Defendants must recognize the validity and portability of Hannah Magee Portée's Missouri and Ohio-issued school counselor licenses and allow her the opportunity to seek employment as a school counselor in the state of Texas.

IV.

CONCLUSION

Plaintiff submits she has "clearly carried the burden of persuasion"[79] showing the Court, (i) a substantial likelihood of success on the merits of her claim that under the Supremacy clause,

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[76] *Brown v. Hotel and Restaurant Employees and Bartenders Int'l Union Local 54*, 468 U.S. 491, 501 (1984) (quoting *Florida Lime & Avocado* 373 U.S. at 132).

[77] *Brown*, 468 U.S. at 501 (quoting *Hines*, 312 U.S. at 67).

[78] U.S. Const., art VI, cl. 2.

[79] *Providence Title Co. v. Fleming*, No. 21-40578, 2023WL316138, 2023 U.S. App. LEXIS 1363 (5th Cir. Jan. 19, 2023) (quoting *Anderson v. Jackson*, 556 F.3d 351, 360 (5th Cir. 2009) ("And only when the movant has 'clearly carried the burden of persuasion' should a court grant preliminary injunctive relief.").

the State is in violation of 50 U.S. C. § 4025(a) of the SCRA; (ii) there is a substantial threat Plaintiff will suffer irreparable injury if the injunction is not issued, because the State's failure to acknowledge her federal right to work under the provisions of the SCRA as a military spouse harms her at a critical time during which schools hire for the coming year; (iii) the threatened injury to plaintiff if the injunction is denied outweighs any harm that will result to the State of Texas if the injunction is granted; and (iv) the grant of an injunction will not disserve, but rather serve the public interest when the State of Texas validates the right to work provisions under the SCRA for military spouses living in Texas solely to support their husband or wife serving in the national defense of this Country.

V.

PRAYER

Wherefore, Plaintiff requests a Preliminary Injunction be ordered and a hearing be scheduled as soon as practical.

Respectfully Submitted,

GRABLE GRIMSHAW PLLC

/s/ Brandon J. Grable
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CERTIFICATE OF SERVICE

I hereby affirm that on this 16th day of June 2023, the foregoing document was filed with the Court's CM/ECF electronic filing system and that a copy of said document was served upon all parties of record.

Ms. Taylor Gifford, with the Office of the Attorney General, contacted my office and said that she was representing the defendants in this matter. I attempted to confer with her to see if she would accept the service of this motion. I have not heard back as of this filing, so I will facilitate formal service on Defendants next week if they do not make an appearance by end of the day. I will also provide a courtesy copy to taylor.gifford@oag.texas.gov.

/s/ Brandon J. Grable
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