

No. 24-361

In the Supreme Court of the United States

SPEECH FIRST, INC.,
Petitioner,

v.

PAMELA WHITTEN, IN HER OFFICIAL CAPACITY AS
PRESIDENT OF INDIANA UNIVERSITY, ET AL.,
Respondents.

*ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT*

**BRIEF FOR PARENTS DEFENDING
EDUCATION AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*

Parents Defending Education is a national, nonprofit, grassroots association. Its members include many parents with school-aged children. Launched in 2021, it uses advocacy, disclosure, and litigation to combat the increasing politicization of K-12 education. It opposes schools' growing efforts to indoctrinate children—over the objections of their parents—with divisive ideologies about topics like race, gender, and sexuality.

Parents Defending Education has a substantial interest in this case. Its members believe that our children's education should be based on scholarship and facts, and should nurture their development into the happy, resilient, free-thinking, educated citizens every democracy needs. Our classrooms should include rigorous instruction in history, civics, literature, math, the sciences, and the ideas and values that enrich our country. Students should be able to engage in a free exchange of ideas about these topics. Bias-response teams suppress that free speech, especially when set loose on vulnerable students subject to a school's control and oversight.*

* Under Rule 37.2, *amicus* provided timely notice of its intention to file this brief. Under Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission. *Amicus's* President serves on the Board of Directors of Petitioner Speech First, Inc.

SUMMARY OF THE ARGUMENT

“America’s public schools are the nurseries of democracy.” *Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 190 (2021). Our “democracy only works if we protect the ‘marketplace of ideas.’” *Id.* So “future generations” must “understand” the concept of “I disapprove of what you say, but I will defend to the death your right to say it.” *Id.*

Yet public schools today increasingly substitute ideological orthodoxy for a free exchange of ideas. The orthodoxy is familiar, centering on radical gender ideology, critical race theory, and partisan indoctrination. The enforcement mechanism for this orthodoxy is less familiar, especially in K-12 schools. Unfortunately, the same bias-response teams now found on most college campuses are infecting the country’s K-12 schools. An investigation by Parents Defending Education revealed that well over 2 million K-12 students are already subject to these teams. And just as on college campuses, K-12 bias-response teams institute a dissent-chilling surveillance regime designed to punish schoolchildren who think and speak for themselves.

The operation of bias-response teams is both simple and universal. Begin with an administrator, usually in the Office of Diversity, Equity, and Inclusion. Add in a policy with a vague definition of “bias incidents” that covers nearly any perceived slight—say, a “microinsult” or “microinvalidation.” Focus on feelings, not intent or objective reality. Let anyone—even someone who has nothing to do with the school—file complaints, anonymously. Before any investigation, require public denunciation. Then give

the equity officer sole discretion to investigate, often with no notice to the accused student (or parents). Keep the investigation very short, then let the same official impose a punishment—expulsion, suspension, referral to the police, a restorative “healing circle,” “reeducation” with DEI officers, a note in the student’s file. The point of it all is unmistakable: coerce young children and their parents into silence while administrators and consultants institute radical, age-inappropriate curricula and ideological indoctrination.

Unfortunately, the scheme works as efficiently in K-12 schools as it does on college campuses. What rational student would choose to speak on a controversial public topic and thereby be subjected to the rigamarole of DEI investigations, healing circles, and reeducation? That’s to say nothing of the ultimate punishment, especially on school campuses: the intentional social and cultural shaming that stems from an ideological environment combined with ever-present social media combined with overeager DEI enforcers. A student’s life can be ruined with an offhand comment. The result? Silence.

This official pressure to suppress speech contradicts the First Amendment. As detailed below, bias-response teams are increasingly common in K-12 schools. They can be found in at least 22 states and the District of Columbia. They operate under policies that give maximal discretion to DEI administrators to investigate and punish a wide range of protected speech. In this way, they exert tremendous pressure on students to self-censor. Contrary to the Seventh Circuit precedent relied on below, the chill on student speech is not only objective, but obvious. In their

current forms, bias-response teams serve barely any purpose *other* than to chill speech.

To protect America’s laboratories of democracy from official and sustained suppression of student speech, the Court should grant certiorari and hold that students have standing to challenge the operation of bias-response regimes.

REASONS FOR GRANTING THE WRIT

I. Bias response teams pervade K-12 schools.

K-12 schools are always eager to mimic their higher education comrades. The adoption of bias-response teams is no exception. A recent investigation by Parents Defending Education found that at least 22 states and the District of Columbia have bias-response teams in public schools. Well over 2 million students—and potentially many more—face these bias-response regimes, across at least 4,565 schools.¹

A bias response or reporting system lets students and staff, and sometimes the community, report alleged incidents of bias or biased actions against an individual or group. Definitions of key terms vary among schools, particularly as to the central component of a “bias incident.” A report to the relevant entity—often some equity-focused administrative office—results in investigations and potential preventive and responsive actions. These actions can

¹ Parents Defending Education, *Bias Response Systems* (Sept. 11, 2023), <https://defendinged.org/investigations/bias-response-systems/>.

include counseling, remediation, “restorative justice,” referral to authorities, or other punitive consequences.

Most of these bias-response teams do not appear to focus on the concerns that *should* animate efforts to protect school safety, like bullying, violence, and disruption of learning. Many of these schools have separate, preexisting entities that deal with those problems. Bias-response teams instead focus on perceived “microaggressions” and similar speech-focused incidents. “In effect, one person says something that offends another.”² Thus, bias-response teams operate as anonymous snitch systems that are vulnerable to abuse and misuse by not only peers and parents but also by community members. As one professor of psychology explained recently, “there is little evidence that they work and plenty of reasons to suspect that they are harmful.”³

Many bias-response teams at K-12 schools rely on a document entitled “Responding to Hate and Bias at School,” published by the Southern Poverty Law Center.⁴ That document provides examples of

² Christopher J. Ferguson, *Bias-Response Teams are a Bad Idea*, The Chronicle of Higher Education (June 5, 2023), <https://www.chronicle.com/article/bias-response-teams-are-a-bad-idea>.

³ *Id.*

⁴ Brian Willoughby, *A Guide for Administrators, Counselors and Teachers: Responding to Hate and Bias at School*, Teaching Tolerance, <https://perma.cc/QAD2-QXSQ> (last visited Oct. 19, 2024); see, e.g., Chicago Public Schools, *Responding to Hate and Bias at School* (June 28, 2022), <https://perma.cc/45QN-N4G5>; Wellesley Public Schools, *Responding to Bias-based Incidents* (Aug. 2022), <https://perma.cc/XG4T-YY49>.

supposed bias or potential bias events, including “casual pejoratives,” “school ‘pride’” events, “assemblies and holidays,” and “student recognition.”⁵ For instance, “student recognition” can become a “bias event” because “long-standing traditions may contribute to a sense of entitlement among some students, and feelings of frustration or inadequacy in others.”⁶ The document urges administrators to “[l]et everyone know that incidents and concerns should be reported to school leaders in person or anonymously.”⁷ As for responding to bias incidents, the document calls for schools to “denounce the act” *before* investigating it.⁸

Examples of K-12 bias-response teams in action provide the most damning evidence that they suppress protected speech. Start with Maryland’s largest school district, Montgomery County Public Schools. That district’s Hate-Bias Incident Reporting Form urges individuals—including “bystander[s]”—to report “any conduct or incident that” “[i]nvolves discrimination based on personal characteristics” through “any form of communication,” on or off school property and including over the internet.⁹ “Personal characteristics” are vast: “race, ethnicity, color, ancestry, national origin, religion, immigration status, sex, gender, gender identity, gender expression,

⁵ Willoughby, *supra* note 4, at 5.

⁶ *Id.*

⁷ *Id.* at 6.

⁸ *Id.* at 14–15.

⁹ Montgomery County Public Schools, *Hate-Bias Incident Reporting Form* (Feb. 2023), <https://perma.cc/L4EP-SCVJ>.

sexual orientation, family/parental status, marital status, age, physical or mental disability, poverty and socioeconomic status, language, or other legally or constitutionally protected attributes or affiliations.”¹⁰ Prohibited communications include “teasing,” “spreading gossip,” and a vague catch-all of “demeaning/critical remarks.”¹¹

Under district policy, immediately after the bias form is submitted and before any investigation, “[a]ll [alleged] hate-bias incidents *must* be reported to the” Montgomery County Police Department.¹² Meanwhile, the school principal “will triage the situation and work with members of the Behavioral Threat Assessment Team (BTAT) to determine the degree (scope and scale) of risk.”¹³ The Office of School Support and Well-Being “will create an incident report” in school systems “and notify Student Welfare and Compliance, mobilizing a central support team.”¹⁴ Only after the principal “complet[es] the investigation” is any parent or guardian notified.¹⁵ Then the “Equity Unit” helps “determin[e] next steps with staff and student professional development and training,” along with “student discipline measures.”¹⁶

¹⁰ *Id.*

¹¹ *Id.*

¹² Montgomery County Public Schools, *Quick Reference: Hate Bias Incident Reporting Procedures* (Mar. 2023), <https://perma.cc/EF48-DPJ7>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

Schools’ responses to reported incidents must “clear[ly]” “operationalize[] an antiracist response,” which the district defines as creating “equitable educational, social-emotional, and health outcomes for students, staff, and families of color.”¹⁷ In one “Hate-Bias Resource,” the district tells teachers to create “community agreements” governing discussions about race.¹⁸ Though the agreements are supposed to encourage student “engage[ment] in uncomfortable conversations about race,” one of the terms of the agreements is to “[c]hallenge color ‘blindness.’”¹⁹ *Contra Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting) (“Our Constitution is color-blind, and neither knows nor tolerates classes among citizens.”).

“Unsurprisingly, such an expansive policy has prompted students to report any and all perceived slights.” *Speech First, Inc. v. Sands*, 144 S. Ct. 675, 677 (2024) (Thomas, J., dissenting). The district recently noted “a 400% increase in reported incidents compared to the previous five years”—about one per school day.²⁰ The official Montgomery County Police logs are full of “bias summaries” of investigations like, “A kindergarten student made a joke and called a 5th

¹⁷ Montgomery County Public Schools, *Antiracist System Action Plan* (May 2023), <https://perma.cc/R7SQ-7C7W>.

¹⁸ Montgomery County Public Schools, *Suggestions for Handling Challenging Situations*, <https://perma.cc/4FPH-KWE9> (last visited Oct. 22, 2024).

¹⁹ *Id.*

²⁰ Heather M. Ross, *Montgomery County School Bias Incidents Up 400%*, Washington Jewish Week (Aug. 9, 2023), <https://perma.cc/8VYM-SPRZ>.

grade student a derogatory term. The 5th grade student was offended and reported the incident to school staff.”²¹ The police coded this with a “bias class” of “verbal intimidation/simple assault.”²²

The Montgomery schools, however, have recently backtracked on reporting *all* allegations to the police. As one member of “the district’s hate advisory group” explained, “police have been called disproportionately on Black and Brown students,” so the district will no longer call the police for “a ‘level yellow’ incident,” e.g., “if a person lacks context or an intent to be hurtful.”²³ But all “hate-bias” allegations will still be reported, including allegations of “offensive ‘jokes’ about gender identity.”²⁴

Ironically, even as the district purports to care about “demeaning” statements based on a student’s characteristics, it implemented mandatory LGBTQ+ readings for pre-kindergarten through second grade students—and forbade parental notification and opt-outs. For instance, one book assigned to pre-K classrooms, the *Pride Puppy!*, “chronicles a family’s visit to a ‘Pride Day’ parade and their search for a runaway puppy, using the letters of the alphabet to illustrate what a child might see at a pride parade.”²⁵

²¹ EJustice, *MCPD Bias Recording Database, May Bias Summary* (June 5, 2024), <https://perma.cc/JF6A-RL45>.

²² *Id.*

²³ Nicole Asbury, *Montgomery Schools Revises Protocols for Alleged Hate Incidents Amid Rise in Reports*, Washington Post (Sept. 21, 2024).

²⁴ Montgomery County Public Schools, *Responding to Incidents of Hate-Bias* (2024), <https://perma.cc/CSZ4-46XW>.

²⁵ *Mahmoud v. McKnight*, 688 F. Supp. 3d 265, 272 (D. Md. 2023).

A “Search and Find Word List” at the end of the book invites children to search for things they might see, including a “[drag] king” and “[drag] queen,” “leather,” and “underwear.”²⁶

Notwithstanding the district’s purported hate-bias policy, if a student voiced the “wrong” religious views on gender issues, teachers were encouraged to tell the class that “not everyone believes that,” call the student’s views “hurtful” and “negative,” and say that they do not “understand” identity.²⁷ What the district appears to care about, then, is enforcing its own ideology through the hate-bias system—and silencing dissenting voices.

Over in the Chicago Public Schools, students are also urged to report “bias related incident[s],” defined as “language and/or behavior that causes harm which is motivated by bias against a person because of their actual or perceived identities.”²⁸ One example provided is if “[a] student makes jokes disparaging the neighborhood their classmate lives in.”²⁹ Reports may be made anonymously and may result in “[d]isciplinary responses,” “[a] Restorative Justice Peer Conference,” and “[r]egular appointments with [a] school social worker or counselor.”³⁰

In the San Francisco Unified School District, students are told to report “hate-motivated” comments

²⁶ *Id.* at 276.

²⁷ *Id.* at 279.

²⁸ Chicago Public Schools, *Bias Report Forms*, <https://perma.cc/Y8NR-8JPW> (last visited Oct. 22, 2024).

²⁹ *Id.*

³⁰ *Id.*

or “bias incidents,” which are defined simply as “biased conduct, speech, or expression that has an impact.”³¹ Complaints are filed with the district’s Office of Equity, which can perform “a full investigation” but only must “inform the victim-student/family regarding the status of the investigation.” Students allegedly “exhibiting ‘hate-motivated’ behavior” will “be subject to discipline” and “provided counseling and appropriate sensitivity training and diversity education.”³²

Until sued by Parents Defending Education, the Wellesley Public Schools in Massachusetts had a bias response policy that defined “bias incident,” in part, as when “someone treats another person differently or makes an offensive comment because of their membership in a protected group.”³³ Complainants (who could be anonymous) could report bias incidents based on many characteristics, including “[p]olitical affiliation” and “[o]ther.”³⁴ Students who used words like “normal” and “regular” to “refer to one person or way of life as opposed to another” purportedly engage in “biased” speech because they “perpetuate[] hegemony.”³⁵ Using words like “forefathers, mankind,

³¹ San Francisco Unified School District & County Office of Education, *Administrative Regulation 5145.9 on Hate-Motivated Behavior* (June 6, 2022), <https://perma.cc/Z5CT-DG8J>.

³² *Id.*

³³ Plaintiff’s Memorandum in Support of its Motion for a Preliminary Injunction, *Parents Defending Education v. Wellesley Public Schools*, No. 21-cv-11709, Doc. 7, at 8 (E.D. Mass. Oct. 22, 2021).

³⁴ *Id.* at 9.

³⁵ *Id.* at 10.

and businessman” apparently exhibits bias because the words “deny the contributions (even the existence) of females.”³⁶

Unsurprisingly, one middle-school student explained that they stopped speaking in class after watching other students repeatedly report their classmates to school authorities for engaging in “biased” speech when they shared their political views.³⁷ The student was, in their own words, “shamed into silence” by the policy because “if you’re not in full agreement with what the teachers and most students think, you get a target on your back.”³⁸

Though Wellesley Public Schools trimmed back its bias policy to purportedly exclude political views, it still defines “bias” to include things like:

- “[D]escribing ‘Ten Black Achievers in Science’”;
- Describing Native Americans “as ‘roaming,’ ‘wandering,’ or ‘roving’ across the land”;
- and,
- “A music book with an eye-catching, multiethnic cover that projects a world of diverse songs and symphonies but in actuality contains largely traditional white male composers.”³⁹

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Wellesley Public Schools, *Seven Forms of Bias*, <https://perma.cc/27MA-8QHY> (last visited Oct. 22, 2024).

Other examples of bias-response teams abound. In D.C. Public Schools, students and others are repeatedly told that “[n]o matter the intent, report the incident.”⁴⁰ “Bias” is vaguely and circularly defined as “conduct, speech or expression motivated, in whole or in part, by bias, prejudice, or discrimination.”⁴¹ “Examples include racism, sexism, disability discrimination *or any other form of alleged discrimination or bias, regardless of intent.*”⁴² D.C. also urges students to report any other “[u]nfair treatment.”⁴³ The “Comprehensive Alternative Resolution & Equity Team” will then investigate the complaint, and the “Central Equity Response Team” will give “restorative guidance” and other discipline “aligned with the DCPS Equity Framework” to the offending student.⁴⁴

Jefferson County Public Schools in Kentucky has encouraged anonymous reports if anyone “see[s] or suspect[s] harmful or unethical behavior.” “Unethical” is undefined.⁴⁵ Though the school district provides as one example “[r]acial intolerance,” it itself requires “diverse” instruction—with “diverse” “defined as pertaining to any and all cultures that are NOT

⁴⁰ D.C. Public Schools, *Speak Up! How to Report Incidents of Hate/Bias*, <https://perma.cc/DR9E-A6P3> (last visited Oct. 22, 2024).

⁴¹ *Id.*

⁴² *Id.* (emphasis added).

⁴³ *Id.*

⁴⁴ D.C. Public Schools, *Protocol for Responding to Incidents of Hate and Bias* (Apr. 15, 2021), <https://tinyurl.com/3exupvsz>.

⁴⁵ *Jefferson County Public Schools Compliance Hotline*, <https://perma.cc/H3MU-ZPSC> (last visited Oct. 22, 2024).

heterosexual, male-centered, white, Western, and/or Christian.”⁴⁶

Acalanes Union High School District in California has a “Bias Incident Reporting System” for anonymous reports of “acts of racism, bias, sexism, microaggressions, etc.”⁴⁷ “Microaggressions” are defined as “everyday verbal, nonverbal, and environmental slights, snubs or insults whether intentional or unintentional,” and include a “microinsult” (“[c]omment that communicates the demographic group is not respected”) and a “microinvalidation” (“[c]omment or action that dismisses the historically disadvantaged group members”).⁴⁸

Webster Groves School District in Missouri has used a “Bias Incident Reporting” system and “encourage[s]” reporting “any incident[] that negatively impact[s] our campus culture” “that was done to you or to someone else.”⁴⁹ Not only can reports be from a third party, they can also be anonymous.⁵⁰

Finally, Plymouth-Canton Community Schools in Michigan encourages reports of bias incidents (including those based on “height” and “weight”) by

⁴⁶ Jefferson County Public Schools, *The Affirming Racial Equity Tool*, <https://perma.cc/75FD-SBDR> (last visited Sept. 7, 2023).

⁴⁷ Acalanes Union High School District, *Bias Incident Reporting System*, <https://perma.cc/PSS8-8BSH> (last visited Oct. 22, 2024).

⁴⁸ Acalanes Union High School District, *Equity Definitions*, <https://perma.cc/F8GL-S7GY> (last visited Sept. 7, 2023).

⁴⁹ Webster Groves School District, *Bias Incident Reporting*, <https://perma.cc/G29A-4L9V> (last visited Sept. 7, 2023).

⁵⁰ *Id.*

“those within the School District community *as well as third parties*, who feel aggrieved.”⁵¹ “The identity of the [person] who files the report or complaint will not be voluntarily shared with the alleged perpetrator(s),” who will face “prompt and appropriate remedial action” “up to expulsion.”⁵²

Common themes emerge in these examples, of which dozens more exist. Schools implement vague policies administered by an equity officer empowered to conduct any investigation and punish students for perceived slights against others, no matter the students’ intent or their statements’ factual basis.

II. K-12 bias-response teams chill speech.

As these examples show, bias-response teams pervade K-12 schools, and they operate in ways that suppress protected speech. They threaten young schoolchildren with punishment based on vague policy terms administered with minimal process by Office of Equity zealots. The inevitable result is that schoolchildren curb their speech to avoid both potential discipline and the pervasive, intentional cultural shaming that attaches to any student who unknowingly commits some perceived “microinvalidation.” In these ways, bias-response teams objectively silence speech protected by the First Amendment.

⁵¹ Plymouth-Canton Community Schools, *P-CCS Hate and Bias Reporting Form*, <https://perma.cc/U8NK-MBMP> (last visited Oct. 22, 2024) (emphasis added).

⁵² *Id.*

“[A] principal function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.” *Texas v. Johnson*, 491 U.S. 397, 408–09 (1989) (cleaned up). “[T]he point of all speech protection is to shield just those choices of content that in someone’s eyes are misguided, or even hurtful.” *Snyder v. Phelps*, 562 U.S. 443, 458 (2011) (cleaned up). Thus, “the free speech clause protects a wide variety of speech that listeners may consider deeply offensive, including statements that impugn another’s race or national origin or that denigrate religious beliefs.” *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 206 (3d Cir. 2001) (Alito, J.). “[T]he government may not prohibit speech . . . based solely on the emotive impact that its offensive content may have on a listener.” *Id.* at 209 (citing *Boos v. Barry*, 485 U.S. 312, 321 (1988)).

That is because “[t]he First Amendment embodies our choice as a Nation that, when it comes to such speech, the guiding principle is freedom—the unfettered interchange of ideas.” *Az. Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 750 (2011) (cleaned up). The First Amendment is founded on “the hypothesis that speech can rebut speech, propaganda will answer propaganda, [and] free debate of ideas will result in the wisest governmental policies.” *Dennis v. United States*, 341 U.S. 494, 503 (1951).

Censoring speech “deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the

speaker's voice." *Citizens United v. FEC*, 558 U.S. 310, 340–41 (2010). It also "deprive[s] the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration." *Id.* at 341. "There is an equality of status in the field of ideas, and government must afford all points of view an equal opportunity to be heard." *Carey v. Brown*, 447 U.S. 455, 463 (1980) (cleaned up).

By and large, the First Amendment applies in K-12 schools. "[S]tudents do not 'shed their constitutional rights to freedom of speech or expression,' even 'at the school house gate.'" *Mahanoy*, 594 U.S. at 187 (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969)). "This has been the unmistakable holding of this Court for" a century. *Tinker*, 393 U.S. at 506. "[P]ublic school students, like all other Americans, have the right to express 'unpopular' ideas on public issues, even when those ideas are expressed in language that some find 'inappropriate' or 'hurtful.'" *Mahanoy*, 594 U.S. at 195 (Alito, J., concurring) (cleaned up). "[E]xpression that does not interfere with a class (such as by straying from the topic, interrupting the teacher or other students, etc.) cannot be suppressed unless it 'involves substantial disorder or invasion of the rights of others.'" *Id.* at 201 (quoting *Tinker*, 393 U.S. at 513).

As shown in the above examples, speech burdened by bias-response regimes extends far beyond the limited categories that schools may regulate, and includes almost any perceived slight. And it makes little difference to the First Amendment analysis whether the school district's DEI office might ultimately decide not to formally discipline a student

who allegedly commits a “microinsult.” It is the very existence of the bias-response regime—with its vague terms, broad administrative discretion, and serious consequences—that burdens speech.

The First Amendment stands against any governmental effort to burden the free speech of individuals—even if that action falls short of outright suppression. “[T]he First Amendment cannot tolerate” government actions that “create a strong impetus toward self-censorship.” *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29, 50 (1971) (plurality opinion), abrogated on other grounds by *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974). Indeed, “avoid[ing] the hazard of self-censorship” is an important aspect of First Amendment law. *Counterman v. Colorado*, 600 U.S. 66, 77 (2023) (cleaned up); see *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 566 (2011) (“Lawmakers may no more silence unwanted speech by burdening its utterance than by censoring its content.”).

“Under some circumstances, indirect ‘discouragements’ undoubtedly have the same coercive effect upon the exercise of First Amendment rights as imprisonment, fines, injunctions or taxes.” *Am. Commc’ns Ass’n v. Douds*, 339 U.S. 382, 402 (1950). For that reason, the First Amendment generally “protects against indirect coercion or penalties,” “not just outright prohibitions” *Carson v. Makin*, 596 U.S. 767, 778 (2022) (cleaned up); see *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 463 (2017) (same). The government need not impose direct sanctions—or even “list specific consequences”—for there to be “a constitutional violation.” *Kennedy v. Warren*, 66 F.4th 1199, 1213 (9th Cir. 2023) (Bennett,

J., concurring); *cf. Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 197–98 (2024) (highlighting “constitutional concerns” about a government strategy to stifle the advocacy of an organization that “was not even the directly regulated party”).

The dangers of indirect speech coercion are especially severe in schools. This Court has consistently recognized that “there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools.” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 574 (2022) (Sotomayor, J., dissenting) (quoting *Lee v. Weisman*, 505 U.S. 577, 592 (1992)). “The State exerts great authority and coercive power through mandatory attendance requirements, and because of the students’ emulation of teachers as role models and the children’s susceptibility to peer pressure.” *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987).

This pressure is even more prevalent today in both K-12 schools and higher education. The combination of ideologically-driven administrators⁵³ and consultants—usually part of the “DEI Industry”⁵⁴—and universal internet communication means that the

⁵³ See generally Parents Defending Education, *IndoctrINation Map*, <https://defendinged.org/map/> (last visited Oct. 22, 2024).

⁵⁴ Conor Friedersdorf, *The DEI Industry Needs to Check its Privilege*, *The Atlantic* (May 31, 2023), <https://perma.cc/F754-BRCB>; Jesse Singal, *What if Diversity Training is Doing More Harm Than Good?*, *N.Y. Times* (Jan. 17, 2023), <https://www.nytimes.com/2023/01/17/opinion/dei-trainings-effective.html>.

risks of chilling speech “are heightened in the 21st century and seem to grow with each passing year.” *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 617 (2021). “[A]nyone with access to a computer” (*id.*) can cause great personal misery to non-conformists. Bias-response teams foster this type of outside pressure, as almost all the examples described above encourage administrators to involve community members and groups—more appendages of the DEI Industry—in designing “solutions” and reeducation regimes. *Contra Norwood v. Harrison*, 413 U.S. 455, 465 (1973) (The government “may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish.”).

In sum, “we have chosen” “[a]s a Nation” “to protect even hurtful speech.” *Snyder*, 562 U.S. at 461. “[T]he public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.” *Street v. New York*, 394 U.S. 576, 592 (1969). Of course, “[b]ullying and severe harassment are serious (and age-old) problems,” *Mahanoy*, 594 U.S. at 209 (Alito, J., concurring), and such behavior should not be tolerated in our schools. But bullying can be (and has been) addressed through means other than speech-suppressing bias-response teams. Bias-response teams are used by diversity and equity officers to suppress disfavored speech and pressure students to conform to the prevailing orthodoxy. That is both the intent and result of bias-response teams. And that is why they contravene the First Amendment.

III. Students subject to bias-response regimes have standing.

For these reasons, students subject to the typical bias-response team regime easily have standing to challenge it, no matter if the team itself can impose formal discipline. Bias-response teams exist to police “messages and behaviors” that convey messages.⁵⁵ Vulnerable schoolchildren know that anyone—even someone who does not attend the school—may tattle on them (anonymously), triggering an (often secret) investigation in which others are informed of the allegations and which may result in (at minimum) reeducation and “healing circles.” This “apparatus of censorship” self-evidently and objectively chills a young person’s speech. *Freedman v. Maryland*, 380 U.S. 51, 57 (1965). Such apparatuses are “always fraught with danger and viewed with suspicion,” *id.*, and their use on students subject to a school’s oversight and control only exacerbates the dangers.

Each aspect of the bias-response team regime confirms the objective chill on speech. Start with its vague terms. As shown above, the typical definitions of key words—“bias incident,” especially—are either non-existent or limitless. And “vague [rules] chill speech” because “[p]eople of common intelligence must necessarily guess at [the rule’s] meaning and differ as to its application.” *Citizens United*, 558 U.S. at 324; see *Reno v. ACLU*, 521 U.S. 844, 871–72 (1997) (“The vagueness of such a regulation raises special First Amendment concerns because of its obvious chilling

⁵⁵ Willoughby, *supra* note 4, at 4.

effect on free speech.”). Vague rules also give rise to the “dangers of arbitrary and discriminatory applications.” *Vill. of Hoffman Ests. v. Flipside*, 455 U.S. 489, 498 (1982).

On that topic, next consider the administration of the bias-response regime. Sole discretion usually resides in some administrator in an office of diversity and equity. That administrator is judge, jury, and executioner. And “[i]n the area of freedom of expression it is well established that one has standing to challenge a statute on the ground that it delegates overly broad licensing discretion to an administrative office.” *Freedman*, 380 U.S. at 56. The bias-response process has no review or other “sufficient safeguards for confining the censor’s action to judicially determined constitutional limits.” *Id.* at 57.

Last consider the discipline meted out by the equity officer. The district court emphasized below that “[a]ny student engagement with Bias Response & Education is ‘entirely voluntary’” because if a reported student “does not want to meet or otherwise engage,” he does not have to. App. 7a. Potentially being referred to the police is hardly a trivial matter. *See* App. 5a–6a. And the “healing circles” or “voluntary conversations” that the bias-response teams tout as “restorative” are ample punishments in themselves. As Judge Wilkinson explained, “[t]his is an invitation from the [administrator] to the student to come to the [administrator’s] office, not for tea or coffee, but for the express purpose of discussing the student’s speech.” *Speech First, Inc. v. Sands*, 69 F.4th 184, 210 (4th Cir. 2023) (dissenting op.). Faddish “nomenclature does not alter reality and does not contradict the

proscriptive nature of the policies.” *Speech First, Inc. v. Fenves*, 979 F.3d 319, 333 (5th Cir. 2020). For the threatened student, “[b]etter to avoid the whole darn thing by keeping one’s mouth shut.” *Sands*, 69 F.4th at 211 (Wilkinson, J., dissenting).

The Seventh Circuit’s decision to deny standing to students subjected to bias-response regimes is egregiously wrong. To hold that such regimes could not objectively chill speech is to miss their whole point: policing ideas on America’s campuses. The erroneous holding below deprives young people of the ability to exercise their First Amendment right to speak freely without threat of government censorship. This Court’s review is needed.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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