No. 25-906

In The
Supreme Court of the United States

E.D., a minor by and through her parents and next friends, MICHAEL DUELL AND LISA DUELL; NOBLESVILLE STUDENTS FOR LIFE,

Petitioners,

v.

NOBLESVILLE SCHOOL DISTRICT, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the Seventh Circuit

BRIEF FOR AMICI CURIAE STUDENTS FOR LIFE OF AMERICA, MANHATTAN INSTITUTE, INDIANA FAMILY INSTITUTE, AND UPPER MIDWEST LAW CENTER IN SUPPORT OF PETITIONERS

Ilya Shapiro
Trevor Burrus
MANHATTAN INSTITUTE
52 Vanderbilt Avenue
New York, NY 10017
(212) 599-7000
ishapiro@manhattan.institute.com

Charles Brent Robbins
Counsel of Record
Nicholas J. Nelson
UPPER MIDWEST LAW CENTER
12600 Whitewater Dr, Ste 140
Minnetonka, MN 55343
(612) 428-7000
brent.robbins@umlc.org
nicholas.nelson@umlc.org
Counsel for Amici Curiae

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INTEREST OF *AMICI CURIAE*[1]

Students for Life of America ("SFLA") is the nation's largest pro-life youth organization that uniquely represents the generation most targeted for abortion. SFLA, a 501(c)(3) charity, exists to recruit, train, and mobilize the Pro-Life Generation to abolish abortion and provide policy, legal, and community support for women and their children, born and preborn. Headquartered in Fredericksburg, VA, SFLA has more than 1,500 student chapters with thousands of members on middle, high school, college, university, medical, and law school campuses in all 50 states and Puerto Rico.

The Manhattan Institute ("MI") is a nonpartisan public policy research foundation whose mission is to develop and disseminate ideas that foster greater economic choice and individual responsibility. To that end, MI has historically sponsored scholarship supporting the rule of law and opposing government overreach, including in the marketplace of ideas and educational institutions.

The Indiana Family Institute ("IFI") opened its doors in 1990 as a nonpartisan, nonprofit public education and research organization. IFI works in association with forty other Family Policy Councils across the nation and advocates for free speech protections on high school and college campuses.

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[1] Counsel provided timely notice to all parties of *amici*'s intent to file this brief. No counsel for any party authored this brief in any part; no person or entity other than *amici*, their members, or their counsel made a monetary contribution intended to fund its preparation or submission.

The Upper Midwest Law Center ("UMLC") is a nonpartisan public-interest law firm headquartered in Minnetonka, Minnesota which litigates for individual liberty and religious freedom against governmental and special interest overreach. UMLC regularly represents litigants in cases challenging the constitutionality of government action such as in this case.

Amici are alarmed by the growing trend of censorship in public schools and colleges as the training ground for citizenship and public discourse, and the Seventh Circuit's decision in this matter restricts rather than protects constitutional rights.

INTRODUCTION AND SUMMARY OF ARGUMENT

Schools are the nurseries of democracy, but the Defendants' actions in this matter curtailed rather than encouraged constitutional rights on the school campus. See *Mahanoy Area Sch. Dist. v. B.L. ex rel. Levy*, 594 U.S. 180, 190 (2021).

The facts of this case are straightforward. E.D. approached the administration of Noblesville High School about launching an SFLA chapter. The Defendants provided conflicting instructions that poorly masked a concern over the content of E.D.'s speech and especially the "Defund Planned Parenthood" image on her proposed flyer. Defendant Luna explained that the school was "…dancing or walking on eggshells," concerning controversies of a "political nature." *See* Appendix at 38a. Principal McCaffrey then took the unprecedented step of revoking the chapter's recognition as a student group because the proposed flyer contained a "political"

picture and because the content was not "appropriate" for students. *See Appendix* at 40a.

This fact pattern is all too familiar to the amici as SFLA has faced similar treatment on high school and college campuses across the country. MI, IFI, and UMLC have advocated against similar constitutional infringements. The amici are deeply concerned that the Seventh Circuit's decision will be used as precedent to increase censorship in high schools and college campuses.

This Court should grant certiorari to correct the doctrinal errors in the Seventh Circuit's decision.

ARGUMENT

I. The Panel's Decision Promotes Censorship Rather than Constitutional Rights at School

The Seventh Circuit's decision sets a concerning precedent that could be used to chill and even cancel the amici's constitutionally protected speech and association at public high schools and universities.

A. SFLA student groups have experienced similar constitutional violations on high school and college campuses.

Unfortunately, this case is not novel. Instead, it follows a common pattern of censorship. SFLA reported that free speech violations on school campuses tripled over the 2022-2023 school year, including destruction or theft of displays, censorship by school administrators, and even death threats.[2]

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[2] Caroline Wharton, "SFLA Reports Free Speech Violations on School Campuses have TRIPLED!," *Students for Life of America News* (April 12, 2023),

And those challenges for SFLA continued in the 2024-2025 school year.[3]

By way of example, an SFLA club at Sonia Sotomayor High School in San Antonio, Texas, recently faced censorship by the school administration. Diego Salinas, a senior at the school, followed the school's process for applying for group recognition and started an Instagram account with the handle "Sotomayor Students for Life." Despite many other groups using the school's name and logo on social media (such as a bible study, mariachi, and Asian & Pacific American groups), Salinas reported that the administration required Diego to delete the Instagram account and then suspended the group from meeting on campus after their first gathering.[4]

Diego reported that the group's faculty sponsor then quit over pressure from the school, and the Vice Principal and Principal declined to reinstate the

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https://studentsforlife.org/2023/04/12/sfla-reports-free-speech-violations-on-school-campuses-have-tripled/.

[3] Jordan Butler, "Facing Free Speech Challenges, Students for Life of America Expands to Roughly Half of All Private and Public Universities Nationwide During the 2024-2025 School Year," *Students for Life of America News* (June 13, 2025) https://studentsforlife.org/2025/06/13/facing-free-speech-challenges-students-for-life-of-america-expands-to-roughly-half-of-all-private-and-public-universities-nationwide-during-the-2024-2025-school-year/.

[4] Hannah Tiede, "'Distinct discrimination' | Pro-life group says it was forced to halt meetings at Sotomayor High School," *KENS5 San Antonio* (October 24, 2024),

https://www.kens5.com/article/news/education/sotomayor-high-school-pro-life-censored-san-antonio/273-e7178c1e-a503-496f-b53e-148ea12109ee.

group despite his offers to change the name to remove "Sotomayor."[5] Unfortunately, as of the summer of 2025, the school has still not reinstated the group.[6]

Similarly, Hubert Lykins at the Pennsylvania Virtual Charter School felt called to start a Students for Life group. School officials rejected his application stating that it would "interfere with the educational process or infringe upon the rights of others."[7] Only after intervention from SFLA's legal counsel did the school reverse course and permit Hubert to exercise his Free Speech and Free Exercise rights.[8]

These challenges occur at the college level as well. The Foundation for Individual Rights Expression (FIRE) reported in their 2026 survey that the overwhelming majority of colleges received an "F" grade for their free speech climate.[9] For example,

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[5] Diego Salinas, "I Got 'Canceled' By My High School for Starting a Students for Life of America Group: Here's How I'm Fighting Back," *Students for Life of America News* (October 21, 2024), https://studentsforlife.org/2024/10/21/i-got-cancelled-by-my-high-school-for-starting-a-students-for-life-of-america-group-heres-how-im-fighting-back/.

[6] *Id.*

[7] Hubert Lykins, "My School Shunned Me for Promoting Life: I Did This in Response," *Students for Life of America News* (May 21, 2025), https://studentsforlife.org/2025/05/21/my-school-shunned-me-for-promoting-life-i-did-this-in-response/

[8] *Id.*

[9] "166 of the 257 schools surveyed got an F for their speech climate." Foundation for Individual Rights Expression, "2026 College Free Speech Rankings: America's Colleges Get an 'F' for Poor Free Speech Climate" (September 9, 2025) https://www.fire.org/news/2026-college-free-speech-rankings-

administrators at Winthrop University in South Carolina recently denied an SFLA group recognition, finding the group was advocating for "too emotional a topic." After group leader Riley Dill challenged the denial, with support from SFLA's legal counsel, the administration reversed course and recognized the group.[10]

For additional evidence, consider the challenges faced by SFLA group leaders at Marquette High School in Missouri[11] and Miami Dade College.[12] In both cases, school administrators attempted to deny students the ability to exercise their free speech, religious liberty, and freedom of association rights because administrators did not approve of the pro-life message advocated by the students.[13] Only after

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americas-colleges-get-f-poor-free-speech-climate

[10] Jordan Butler, "VICTORY: Winthrop University Changes Course on Students for Life Group, Honoring Riley Dill's Pro-Life Free Speech Rights," *Students for Life of America News* (April 18, 2025) https://studentsforlife.org/2025/04/18/victory-winthrop-university-changes-course-on-students-for-life-group-honoring-riley-dills-pro-life-free-speech-rights/

[11] Caroline Wharton, "Did Someone Forget the First Amendment? Public High School Denies SFLA Group Because It Didn't "Feel Right," *Students for Life of America News*, (November 29, 2023), https://studentsforlife.org/2023/11/29/did-someone-forget-the-first-amendment-public-high-school-denies-sfla-group-because-it-didnt-feel-right/

[12] Helen Senn, "Nominated for Best New Group: Students for Life at Miami Dade College – Kendall Campus," *Students for Life of America News*, (June 4, 2025) https://studentsforlife.org/2025/06/04/nominated-for-best-new-group-students-for-life-at-miami-dade-college-kendall-campus/.

[13] Wharton, "Did Someone Forget the First Amendment? Public

SFLA's attorneys threatened legal action did the schools permit the Marquette students to express their pro-life views.[14] The Miami Dade College situation is still pending. [15]

These geographically diverse situations show a clear and troubling pattern. Eager students approach administrators about starting or advertising a SFLA club, and administrators respond by denying their request through ambiguity, pretext, or by overtly declaring their political message or stance too controversial. This case clearly falls into the same mold. E.D. was attempting to start an SFLA student chapter and was met with inconsistent instructions and then an unprecedented derecognition of the nascent pro-life club due to a flyer the administration deemed "inappropriate" and too "political." *See* Appendix at 38a. Unfortunately, the Seventh Circuit's decision permits and justifies this unacceptable and unconstitutional behavior by school leaders. If allowed to stand, it will be used by administrators across the nation to justify their undermining of student free speech rights.

High School Denies SFLA Group Because It Didn't "Feel Right,"; Senn, "Nominated for Best New Group: Students for Life at Miami Dade College – Kendall Campus,"

[14] Wharton, "Did Someone Forget the First Amendment? Public High School Denies SFLA Group Because It Didn't "Feel Right"

[15] Senn, "Nominated for Best New Group: Students for Life at Miami Dade College – Kendall Campus"

B. MI and IFI have responded to a growing trend of public-school administrators ignoring constitutional rights.

MI has noted with growing concern the rise of censorship in public schools across the country, including the case of a student in Ohio simply wearing an expressive t-shirt and an elementary student in California drawing an innocent picture depicting a friend of a different race. *See, e.g.* Br. for FIRE and Manhattan Institute as Amici Curiae in Supp. Pl. and Reversal in *Parents Defending Educ. v. Olentangy Loc. Sch. Dist. Bd. of Educ.*, 109 F.4th 453, 460 (6th Cir. 2024); Br. for Manhattan Institute, IFS, YAF, CRAC, and AFP as Amici Curiae in Supp. Pl.-Appellant, *B.B. v. Capistrano Unified Sch. Dist.*, No. 8:23-CV-00306, 2024 LEXIS 2288, at *1 (C.D. Cal. Jan. 3, 2024).

IFI is also concerned by the Seventh Circuit's decision due to instances of school officials in Indiana ignoring the constitutional rights of parents and students.

For example, IFI supported Indiana House Bill 1137 during the 2024 legislative session because a number of public school administrators were not cooperating with parents to allow their children to participate in religious release time instruction.[16] Despite well-settled precedent, *Zorach v. Clauson*, 343 U.S. 306, 315 (1952), a number of public school administrators in Indiana refused to adjust their schools' schedule to accommodate the religious

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[16] 2024 Legislative Agenda, *Indiana Family Institute*, https://hoosierfamily.org/issues/2024-legislative-agenda/.

exercise rights of parents and their children. *See* Ind. Code § 20-33-2-19 (2025). The Indiana General Assembly responded by requiring school administrators to cooperate with parents that request such accommodation for their children. *Id.*

In sum, *amicus* SFLA is already experiencing significant discrimination and censorship on high school and college campuses. And all *amici* are gravely concerned that the Seventh Circuit's decision here will be used as precedent to promote rather than correct the growing trend of censorship on high school and college campuses.

II. A Public High School May Not Limit a Student's Speech Due to the Student's Political Viewpoint Without Material and Substantial Proof of Disruption

Students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969); *Bethel Sch. Dist. v. Fraser*, 475 U.S. 675, 680 (1986); *Morse v. Frederick*, 551 U.S. 393, 397 (2007). Under the *Tinker* standard, school officials have the burden of justifying student speech restrictions by showing that "the speech in question would materially and substantially disrupt the work and discipline of the school or invade the rights of others." *Id.* at 509; *Mahanoy.*, 594 U.S. at 187.

Further, student speech restrictions may not be viewpoint based. *Tinker* "straight-forwardly tells us that, in order for school officials to justify prohibition of a particular expression of opinion, they must be able to show that this 'action was caused by

something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.'" *Nuxoll ex rel. Nuxoll v. Indian Prairie Sch. Dist. #204*, 523 F.3d 668, 676 (7th Cir. 2008).

In certain exceptional circumstances, the Court has recognized permissible limitations on student speech. Vulgar speech, for example, may be limited in a school setting. *Bethel*, 475 U.S. at 682. Speech encouraging illegal drug use may also be restricted. *Morse*, 551 U.S. at 397. Neither of these two categories are applicable to this case.

In *Hazelwood Sch. Dist. v. Kuhlmeier,* 484 U.S. 260 (1988), the Supreme Court articulated a third exception to *Tinker*. *Kuhlmeier* held that prohibiting publication of controversial and potentially damaging stories in a newspaper that was part of the education curriculum, funded by the school, and under the school's name was permissible "so long as their actions are reasonably related to legitimate pedagogical concerns." *Id.* at 276. In so holding, however, the Court made it clear that students "cannot be punished merely for expressing their personal views on the school premises." *Id.* at 266.

The Seventh Circuit's decision relies heavily on *Kuhlmeier* in affirming the District Court's judgment. *E.D. v. Noblesville School Dist.*, 151 F.4th 907, 915-919 (7th Cir. 2025). However, the Supreme Court's decision in *Kuhlmeier* clearly distinguished between a school promoting student speech in a school newspaper or school play and a school simply allowing individual student expression, as follows:

> The question whether the First Amendment requires a school to tolerate particular student speech—the question that we addressed in *Tinker*—is different from the question whether the First Amendment requires a school affirmatively to promote particular student speech. The former question addresses educators' ability to silence a student's personal expression that happens to occur on the school premises. The latter question concerns educator's authority over school-sponsored publications, theatrical productions, and other expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school.

Kuhlmeier, 484 U.S. at 270-71.

Because this case involves a proposed student flyer, and not a school publication or play that bears the "imprimatur of the school," it strains logical reason to argue that *Kuhlmeier* applies here. *Id.* If *Kuhlmeier* does apply in the context of this case, the schoolhouse would indeed be a rights-shedding factory, as any administrator could ban any student club that publicly expressed or advertised any viewpoint. This result is foreclosed by *Tinker* and a common sense understanding of the First Amendment in the school context. *Tinker*, 393 U.S. 506; *Mahanoy*, 594 U.S. at 191-94.

Further, even *Kuhlmeier* does not countenance viewpoint discrimination. A school may regulate school-sponsored speech that bears the imprimatur of the school if the school's actions "are reasonably

related to legitimate pedagogical concerns." 484 U.S. at 276. Limiting a student's speech due to political viewpoint without reason or proof of substantial disruption falls outside the definition of a "legitimate pedagogical concern." *Id.; Nuxoll*, 523 F.3rd at 675-66.

Regardless, this case involves a proposed student flyer and is exactly the type of case that "directly and sharply" implicates the First Amendment. *Kuhlmeier*, 484 U.S. at 273. The Seventh Circuit's decision would allow schools to extensively regulate student expression as bearing the imprimatur of the school by simply requiring administrator initials or other indicia of a pre-approval. *Noblesville*, 151 F.4th at 915. This holding shreds the First Amendment protections for student-initiated speech that "happens to occur on the school premises" and is a clear doctrinal error. *See Kuhlmeier*, 484 U.S. at 270-71; *Tinker,* 393 U.S. at 506.

In sum, a public high school may not limit a student's speech due to the student's political viewpoint without material and substantial proof of disruption, which is not at issue in this case.

CONCLUSION

For the above reasons and those stated in the cert. petition, this Court should grant the petition.

Respectfully submitted,

Charles Brent Robbins
Counsel of Record
Nicholas J. Nelson
UPPER MIDWEST LAW CENTER
12600 Whitewater Dr., Suite 140
Minnetonka, MN 55343
(612) 428-7000
brent.robbins@umlc.org
nicholas.nelson@umlc.org

Ilya Shapiro
MANHATTAN INSTITUTE
52 Vanderbilt Ave.
New York, NY 10017
(212) 599-7000
ishapiro@manhattan.institute.com

Counsel for Amici Curiae

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