No. 25-5641

United States Court of Appeals for the Ninth Circuit

RODERICK E. THEIS II,

Plaintiff-Appellant,

– v. –

INTERMOUNTAIN EDUCATION SERVICE DISTRICT – BOARD OF DIRECTORS; MARK S. MULVIHILL, Superintendent, in their official capacity; AIMEE VANNICE,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

BRIEF FOR AMICUS CURIAE PARENTS RIGHTS IN EDUCATION IN SUPPORT OF APPELLANT

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CORPORATE DISCLOSURE STATEMENT

I hereby certify, as counsel for the *Amicus Curiae*, Parents' Rights in Education, that the *Amicus* is a 501(c)(3) nonprofit organization. It has no parent corporation, does not issue stock, and no corporation has any ownership interest in it.

/s/ Kevin J. Daniel

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INTERESTS OF AMICI

Parents' Rights in Education ("**PRE**") is a national nonprofit advocacy organization founded in Oregon in 2011 and now representing families across multiple states. PRE's mission is to empower parents, uphold local control, and protect education from politicization and ideological coercion. It affirms that parents have the primary authority to direct their children's education and that schools must respect family and community values. PRE promotes academic excellence and defends the freedom of parents and teachers to express sincerely held beliefs on moral, religious, and scientific matters relevant to education.

This case goes to the heart of PRE's mission. Appellant Roderick Theis ("**Rod**") was censored for displaying children's books reflecting a biological and faith-based view of sex and gender, even as other staff at his school expressed opposing views on the same topics. PRE therefore supports Rod's requested relief and urges this Court to reaffirm that public schools must remain forums for open dialogue rather than instruments of ideological conformity, as protecting diversity of thought and belief within public education is vital not only to individual constitutional rights but to the civic mission schools serve.

SUMMARY OF ARGUMENT

Public schools have long been recognized as the "nurseries of democracy." *Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 190 (2021). One of their highest civic functions is to cultivate citizens capable of engaging in open dialogue, tolerating dissent, and debating the issues that shape a free society. That function depends on the protection of free expression within the school community, including among the employees who model civic discourse for the next generation.

Appellee InterMountain Education Service District ("**InterMountain**") punished Rod for quietly displaying children's books expressing a biological and faith-based view of sex and gender, even though no parent or student complained. Opening Brief of Appellant at p. 20. At the same time, InterMountain freely allows staff to decorate their workspaces with personal items visible to children, such as transgender-pride flags and other political messages. *Id*. at 8-9, 19. The result is not neutrality: By allowing favored messages about gender identity while silencing dissenting ones, InterMountain modeled the habits of authoritarianism, not democracy.

The First Amendment does not tolerate such viewpoint discrimination. When the government opens the school environment to personal expression, it cannot favor one ideology while silencing another. Suppressing one side of a public conversation teaches students that disagreement invites punishment rather than dialogue.

As nurseries of democracy, public schools fulfill their civic purpose of cultivating democratic habits only when they model the freedoms they are meant to preserve. The Supreme Court has long recognized that both teachers and students retain constitutional rights of expression and belief, and that the marketplace of ideas within schools is vital to the nation's civic health. When administrators dictate which beliefs may be expressed, they cast the very pall of orthodoxy the First Amendment forbids and chill the exchange of ideas that democracy requires.

Parents especially have a deep stake in whether schools honor this principle, and the Supreme Court has affirmed that parents hold the primary authority to direct their children's moral and intellectual development. InterMountain's policies erode trust between families and schools by signaling that some beliefs are unwelcome.

Both public school employees and students do not shed their constitutional rights at the schoolhouse gate, and schools do not advance equality or inclusion by silencing lawful expression. Upholding the district's actions would teach students that silence is the price of conscience—a lesson antithetical to democratic education. The Constitution requires that schools permit viewpoint diversity, not operate as enclaves of orthodoxy instructing students that some ideas are unfit for civil discourse.

InterMountain's restrictions on Rod, and the District Court's decision to confine his expression of sincerely held views to moments when no students are

present, run contrary to these foundational principles. If the Court does not grant Rod's requested relief, InterMountain and other school districts will be emboldened to continue or expand such practices of censorship, impoverishing future generations of democratic citizens by teaching them that when an unpopular opinion is expressed, the proper response is not engagement or debate, but silencing and punishment.

ARGUMENT

I. PUBLIC SCHOOLS, AS "NURSERIES OF DEMOCRACY", HAVE A CONSTITUTIONAL DUTY TO PROTECT FREE EXPRESSION, NOT SUPPRESS VIEWPOINTS THEY DISFAVOR.

A. Public Schools Exist to Form Citizens, Not to Enforce Orthodoxy

From the founding generation forward, Americans have understood education as an instrument of self government. The Northwest Ordinance in 1787 declared that "religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." The Supreme Court has long affirmed this civic role, recognizing that "America's public schools are the nurseries of democracy." *Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 190 (2021).

In *Keyishian v. Board of Regents*, the Court described the classroom as "peculiarly the marketplace of ideas" and warned that "the Nation's future depends upon leaders trained through wide exposure to that robust exchange." 385 U.S. 589, 603 (1967). The health of our representative democracy thus depends upon citizens who have experienced, from their earliest education, how a free society engages with competing ideas.

For over a century, the Supreme Court has affirmed that this civic mission depends on safeguarding intellectual freedom within schools. In *Meyer v. Nebraska*, 262 U.S. 390 (1923), and its companion case *Bartels v. Iowa*, 262 U.S. 404 (1923), the Court struck down laws forbidding teachers from instructing children in foreign

languages, holding that such restrictions materially interfered with "the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own." *Meyer*, 262 U.S. at 401. The Court recognized that by dictating what ideas could be taught, the state stifled the very independence of thought and diversity of learning that sustain a free and self-governing people.

That same principle animated *Tinker v. Des Moines Independent Community School District*, where the Court famously declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" when holding that students have a right to protest at school. 393 U.S. 503, 506 (1969). *Tinker* did not create a novel privilege; it reaffirmed that the Constitution accompanies the citizen into the schoolhouse. The Court explained that because schools "educat[e] the young for citizenship," they bear a special duty to safeguard "the Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." *Id*. at 507 (quoting *West Virginia v. Barnette*, 319 U.S. 624, 637 (1943)). A school that suppresses dissent or punishes lawful expression abandons that civic mission and teaches obedience, not citizenship.

The lesson is consistent: civic education requires intellectual freedom. When schools suppress lawful viewpoints, they model obedience, not citizenship. Here,

InterMountain has chosen to allow one set of ideological symbols and messages in its schools while prohibiting others. Teachers and other staff were permitted to express views celebrating gender fluidity and identity politics, but when Rod ***quietly displayed*** children's books reflecting a biological and faith-based view of sex and gender, he was censored. That policy of selective enforcement teaches students not the habits of democracy, but the lesson that dissent is forbidden and punishable.

That is precisely backward. The security of a free Republic depends not on suppressing unpopular views in public schools but on safeguarding the constitutional rights of free speech, free press and free assembly that are the foundation of "a free society." *Shelton v. Tucker*, 364 U.S. 479, 485–86 (1960) (citing *De Jonge v. Oregon*, 299 U.S. 353, 364 (1937)). Public schools cannot serve as "nurseries of democracy" if their own employees are punished for embodying the diversity of thought that democracy requires.

B. Viewpoint Discrimination in the Name of "Inclusion" Undermines the Civic Mission of Education

The Court has described the classroom as "peculiarly the marketplace of ideas," *Keyishian*, 385 U.S. at 603, and the "community of American schools" as a place where "vigilant protection of constitutional freedoms is nowhere more vital." *Shelton*, 364 U.S. at 487. Those statements are not rhetorical flourishes; they reflect a constitutional understanding that the health of democracy depends on educational institutions that model intellectual freedom. Schools cannot perform that civic

function if they punish teachers or counselors for holding or expressing disfavored but lawful viewpoints.

When educators are permitted to express their viewpoints, students learn the civic virtues of open inquiry and mutual respect. But when administrators suppress even mild expressions of conscience—especially, as here, in personal workspaces where no disruption occurs—they teach conformity and fear. That is the opposite of democratic education.

That policy of selective enforcement violates the First Amendment twice over: First, because it discriminates based on viewpoint; and second, because it abandons the civil neutrality public education demands. As Justice Jackson wrote in *West Virginia v. Barnette*, "[i]f there is any fixed star in our constitutional constellation, it is that no official… can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." 319 U.S. 624, 642 (1943). Schools that preach inclusion while punishing dissent teach students that civic participation is conditional upon ideological conformity. A civic community that can tolerate only one side of a debate cannot train citizens for democracy.

II. POLICIES THAT PRIVILEGE ONE IDEOLOGY AND SUPPRESS ITS OPPOSITE CAST THE "PALL OF ORTHODOXY" THE FIRST AMENDMENT FORBIDS, CHILLING THE FREE EXCHANGE OF IDEAS ESSENTIAL TO DEMOCRACY.

The Supreme Court has long rejected efforts by the State to impose ideological conformity in education, as the government may not prescribe "what shall be

orthodox in politics, nationalism, religion, or other matters of opinion." *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). That command speaks not only to the rights of individuals but to the very purpose of public education in a constitutional republic. A school that protects expression teaches democracy; a school that punishes it teaches submission.

From loyalty oaths in the Cold War to modern codes of "bias" or "equity," the constitutional defect is the same: when government decides which ideas may be expressed, it transforms education into indoctrination. The First Amendment demands better of public schools.

A. The Supreme Court has repeatedly condemned government efforts to impose ideological conformity in education

The Court's decision in *Keyishian v. Board of Regents*, 385 U.S. 589 (1967), is the definitive statement on this point. There, New York required teachers to certify that they were not members of "subversive" organizations. The Court struck down the law, warning that it "cast a pall of orthodoxy over the classroom" and declaring that "our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned." *Id.* at 603. Academic freedom, the Court explained, is of "transcendent value to all of us and not merely to the teachers concerned." *Id.* That holding did not depend on the specific politics of the day. It reflected a timeless constitutional principle: the

government may not condition employment in education on adherence to officially approved ideas.

In the school setting, the danger of overreach is acute because vague or sweeping restrictions cause employees to "steer far wider of the unlawful zone," silencing themselves rather than risk sanction. *Keyishian*, 385 U.S. at 604 (quoting *Speiser v. Randall*, 357 U.S. 513, 526 (1958)). That chilling effect is not theoretical. As *De Jonge v. Oregon*, 299 U.S. 353, 365 (1937), explained, "imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people." That principle applies with special force to schools, where teachers, aside from parents, are often the first line of civic example for the next generation.

B. InterMountain's actions impose precisely the kind of orthodoxy the First Amendment forbids

In the InterrMountain Education Service District, staff freely displayed symbols and materials expressing support for the Left-leaning side of the contemporary debate over sex, gender identity, and other topics. Yet, when Rod quietly displayed two children's books in his office that reflected a biological and faith-based perspective, Intermountain ordered their removal. No parent or student had complained. The only apparent offense was that the books expressed a disfavored idea.

That is *textbook viewpoint discrimination.* When a public employer opens its workplace to personal expression, it cannot allow one perspective while suppressing its opposite. The government "must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995) (citation omitted). InterMountain's policy fails that test.

Such selective enforcement creates precisely the "pall of orthodoxy" that *Keyishian* forbids. It teaches educators that the safe course is silence, and it teaches students that dissenting views are unwelcome in public life. Both outcomes erode the democratic mission of schools. As the Court observed in *Tinker*, schools must not become "enclaves of totalitarianism" that "strangle the free mind at its source." 393 U.S. at 511. That warning has lost none of its force.

C. Upholding the district court's decision would invite broader censorship and silence the diversity of thought democracy requires

If the district court's ruling below stands, school administrators nationwide will be emboldened to silence any expression that diverges from prevailing orthodoxy on issues of public concern. The effect would be to transform policies against "bias" into instruments of ideological enforcement, chilling teachers, counselors, and staff from even modest expression of conscience. The result would not be a neutral environment, but one in which students encounter only state-approved ideas.

III. PARENTS HAVE AN INTEREST IN ENSURING THEIR CHILDREN ARE READY TO CONFRONT A WORLD OF DIFFERING OPINIONS.

Parents entrust public schools not only with teaching facts, but with cultivating the habits of citizenship—including reasoning, empathy, and the courage to engage differing views with respect. That mission fails when schools model censorship rather than dialogue. By silencing Rod, a counselor, for displaying books that reflect a mainstream, faith-based understanding of sex and gender, InterMountain teaches students that dissent invites punishment, not conversation. Such a lesson undermines the very civic capacity schools exist to nurture,

Parents have a constitutional and moral interest in schools that respect the diversity of belief within their communities. The Supreme Court has long recognized that parents hold the primary authority to direct the moral and intellectual development of their children. *See Meyer v. Nebraska,* 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). Most recently, the Court reaffirmed this principle in *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025), holding that public-school policies can pose a very real threat of undermining the religious beliefs and practices that parents wish to instill in their children and impermissibly burden parental rights and the free exercise of religion. *Id.* at 2355. The Court emphasized that government may not condition access to public education on parents' willingness to forgo their religious or moral convictions. *Id.* at 2352.

These rights depend upon schools maintaining viewpoint neutrality so parents of every conviction can trust the public classroom as a common civic space. InterMountain's actions corrode that trust. When a school district deems a faith-based or biological perspective "unsafe," it tells parents who share that perspective that their participation in public education is conditional. The public school must be a forum for free inquiry, not a platform for state-approved ideology.

IV. SUPPRESSING VIEWPOINTS TEACHES THE WRONG CIVIC LESSON.

What schools tolerate—and what they punish—teaches more powerfully than any civics textbook. When administrators interrogate an employee's conscience and threaten discipline for lawful expression, students absorb the message: disagreement is dangerous.

That lesson is civically ruinous. The Founders assumed that citizens would be habituated to argument—to the "multitude of tongues" from which truth emerges. *Keyishian*, 385 U.S. at 603. The First Amendment's protection of free expression in schools is therefore instrumental: it preserves the democratic process itself.

Today's students will be tomorrow's jurors, voters, and policymakers. If they learn that speech may be suppressed whenever it offends prevailing sentiment, they will carry that lesson into the public square. The Court should not permit public institutions to train citizens for tyranny under the banner of inclusion.

CONCLUSION

Public schools stand at the heart of our democratic experiment. They are where young citizens first witness how freedom is lived—where disagreement is not danger, and that respect for conscience is not weakness but strength. When school officials silence lawful viewpoints to preserve an appearance of consensus, they teach precisely the opposite lesson. They teach that power decides truth.

Parents' Rights in Education ("**PRE**") and the families it represents believe that public education fulfills its highest purpose only when it welcomes the free exchange of ideas and models the civic courage to tolerate difference. PRE's members entrust schools with forming the next generation of Americans capable of reasoning, debating, and living together in freedom. A victory for Rod is a victory for every parent who expects public schools to honor constitutional values rather than impose ideological uniformity.

For these reasons, and those set forth in Appellant's brief, the Court should reverse the judgment below and grant relief consistent with the First Amendment's guarantees of free speech, free exercise, and viewpoint neutrality.

Dated October 24, 2025

Respectfully submitted,

/s/ Kevin J. Daniel

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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