

**CASE NO. 24-7676**

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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CONCERNED JEWISH PARENTS AND TEACHERS OF LOS ANGELES,  
*et al.*,

Plaintiffs-Appellants,

v.

LIBERATED ETHNIC STUDIES MODEL CURRICULUM CONSORTIUM,  
*et al.*,

Defendants-Appellees,

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On Appeal from the United States District Court  
for the Central District of California  
Case No. 2:22-CV-03243-FMO-E

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**BRIEF OF *AMICUS CURIAE* MANHATTAN INSTITUTE  
IN SUPPORT OF PLAINTIFFS-APPELLANTS AND REVERSAL**

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May 12, 2025

**CORPORATE DISCLOSURE STATEMENT  
AND CERTIFICATE OF INTERESTED PERSONS**

*Amicus Curiae* Manhattan Institute (MI) states it has no parent corporation and does not issue stock. Counsel certifies that MI is the only entity that has an interest in the outcome of this case that was not included in the Certificates of Interested Persons in previously filed briefs.

Dated: May 12, 2025

*s/ Ilya Shapiro*  
Ilya Shapiro

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## **INTEREST OF *AMICUS CURIAE*<sup>1</sup>**

The Manhattan Institute for Policy Research (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, it has historically sponsored scholarship and filed briefs supporting constitutionally protected liberties, advocating for educational opportunity, and opposing government overreach. This case concerns MI because it highlights an ongoing and prevalent misinterpretation of the First Amendment’s applicability in educational contexts. MI also has institutional expertise on modern-day antisemitism.

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

The plaintiffs are Jewish parents, teachers, and students in the Los Angeles Unified School District (LAUSD). Zionism, the belief in a state of Israel as a Jewish homeland, is not only a central tenet of their faith, but an essential component of Judaism for them—and most Jews. The Liberated Ethnic Studies Model Curriculum Consortium (the “Consortium”) has developed school materials to “confront

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<sup>1</sup> Pursuant to Fed. R. App. P. 29, counsel for *amicus* sought consent to file this brief from all parties and received it from Plaintiffs-Appellants and some Defendants-Appellees, but counsel for other Defendants-Appellees did not respond or provided equivocal responses. Accordingly, a motion for leave to file accompanies this brief. Further, no party’s counsel authored any part of this brief and no person other than *amicus* funded its preparation or submission.

Zionism” and are using that anti-Zionist curriculum in LAUSD teaching, with plans to expand it into further. The plaintiffs sued to stop the Consortium and LAUSD from violating their constitutional and other civil rights under federal and state law.

In dismissing the plaintiffs’ complaint, the district court saw First Amendment rights where there weren’t any and disregarded claims that were plain to see. It expanded speech protections well beyond their previous scope and—while attempting to avoid passing judgement on religious questions—gave credence to a curriculum that enshrines anti-religious teachings and creates a hostile environment for Jewish students and teachers.

Although the district court endowed schoolteachers, acting in their official function, with free speech rights, there is no precedent for giving public officials such rights when they are engaged in their public duties. Case law shows that teachers at the K-12 level do not have academic freedom; they’re supposed to teach the curriculum given to them. Given the impressionable nature of children it would be unwise to grant teachers the ability to speak freely in a classroom, expecting children to understand the nuance between opinion and fact.

The district court also failed to recognize how central Zionism is to the Jewish religion and people. Zionism is a defining feature of Jewish identity for the vast majority of American Jews. Yet the Consortium seeks to insert political activism and

propaganda into California's K-12 curricula. The district court misunderstood the nature of the antisemitism in the Consortium's materials. Antisemitism is not simply a religious or racial phenomenon; it can manifest in the form of the exclusive demonization of Jews and the Jewish nation—which is how anti-Zionism becomes antisemitism.

Plaintiffs do not seek to ban any books or prohibit any particular discussion, but they are surely entitled to ensure that biased educational materials that create a hostile environment for both Jewish students and Jewish teachers—and which gives public sanction to ethnic hatred—should be kept out of the curriculum. Most school districts would recognize that ideas associated with racism or bigotry need to be presented in a careful manner. By opting to use the Consortium's curricula, the LAUSD inserts bigotry and hatred into its curriculum without any room for nuance. What's going on is akin to screening *The Birth of a Nation* as a historical documentary. Given the centrality of Zionism in Jewish belief, using the Consortium's materials enshrines anti-religious doctrines without providing proper context or opposing views. No curricula would present controversial questions about the life of Jesus or Mohammed without appropriate background, but LAUSD is happy to do that for Zionism and Judaism.

## ARGUMENT

### I. THE DISTRICT COURT ERRED IN FINDING THAT PLAINTIFFS' COMPLAINT IMPLICATED THE FIRST AMENDMENT BECAUSE THE CURRICULUM AT ISSUE INVOLVES PUBLIC SPEECH

The lower court erred in concluding that plaintiffs were seeking to “suppress any speech by the non-District defendants.” *Concerned Jewish Parents & Teachers of L.A. v. Liberated Ethnic Studies Model Curriculum Consortium*, No. 2:22-cv-03243-FMO-E, 2024 WL 5274857 at \*37–42 (C.D. Cal. Feb. 7, 2024). On the contrary, the plaintiffs seek only “to compel public disclosure of, and to enjoin, the use by the Los Angeles public schools of Defendants’ overtly racist and antisemitic teaching material.” Complaint ¶ 1, *Concerned Jewish Parents. v. LESMCC*, No. 2:22-cv-03243-FMO-E (C.D. Cal. Apr. 27, 2022).

Any curriculum in any public school is public speech, which is not subject to the same First Amendment protections as non-public speech. *See generally Garcetti v. Ceballos*, 547 U.S. 410 (2006). The curriculum at issue here is overtly bigoted and antisemitic, as well as being deficient in other areas. While the Consortium defendants have a right to advocate for the adoption of any curriculum they chose, the LAUSD cannot act on that advocacy by adopting a curriculum or instructing its teachers to convey ideas in a manner that flies in the face of civil rights laws.

Moreover, it is important to recognize how impressionable children are. Even if a curriculum is not taught in a coercive manner, children will still readily accept the information they receive and struggle to distinguish fact from opinion.

**A. The Use of the Consortium’s Curriculum Is Public Speech, So Its Prohibition Cannot Violate the First Amendment**

As the district court already recognized, “high school teachers do not have freedom of speech to the full extent of the First Amendment” (District Court at 38). The district court rightly recognized *Garcetti* as codifying that principle. In *Garcetti*, the Supreme Court’s limitation of speech rights hinged on the fact that the public employee’s comments were made pursuant to his official duties. *Garcetti*, 547 U.S. at 420 (“Restricting speech that owes its existence to a public employee’s professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen.”). *See also Johnson v. Poway Unif. Sch. Dist.*, 658 F.3d 954, 968 (9th Cir. 2011) (finding that school district acted constitutionally in restricting teacher’s speech); *Downs v. L.A. Sch. Dist.*, 228 F.3d 1003, 1016–17 (9th Cir. 2000) (holding that teachers have lower First Amendment protections when speaking during work).

Similarly, in *Hazelwood School District v. Kuhlmeier*, the Supreme Court held that a public high school could censor student speech if the school’s actions were related to pedagogical concerns. 484 U.S. 260, 273 (1988). The Court recognized

that the student newspaper was not an open forum, but rather a “supervised learning experience for journalism students” and, hence, part of the purview of the school’s functions as a public institution. *Id.* at 279. Because the school newspaper was part of the school’s function as a public institution, it was not awarded the same free-speech protection as are private individuals or non-state actors.

In sum, when it comes to the official public duties of state employees, specifically teachers at the K-12 level, there is limited academic freedom and free speech protection. Here, the district defendants’ official duties are state action and the teaching and promulgating of the curriculum constitute public speech. Accordingly, the teachers in the LAUSD cannot invoke their First Amendment rights to justify speech and curricular instruction in their roles as public employees.

**B. In Considering the Free Speech Protections of Teachers, the Court Must Consider the Highly Impressionable Nature of the Child Mind**

Besides the questionable nature of the material being presented to children it is important to understand the particular impressionability of K-12 students. There is always a bias in teaching, in determining how something is presented and what is emphasized. Children are accustomed to accepting the ideas and assertions presented to them. Even if LAUSD does not present controversial topics in a coercive manner, children will still readily accept the information given and are by virtue of their developmental stage unable to distinguish fact from opinion or contested theory.

A child is thus never “simply hearing other views” in a classroom setting. There is always a bias in human communication that even well-intended teachers will introduce in what they choose to portray. Children are accustomed to accepting assertions put forth by an adult authority figure unquestioningly; they lack the critical-thinking skills to evaluate attacks on Zionism and the Jewish people.

For young people in K-12 and even sometimes for those somewhat older, there is often an implicit psychological assumption that information communicated by an authority figure is correct and any discomfort associated with that information is the student’s problem. Children often experience pressure from their teacher to conform to what he or she provides them. Particularly in younger grades, this authority figure likely instructs the child in other subjects where there is an expectation of accepting unquestioningly (such as math), which dynamic will carry into other subjects.

Kids experience pressure to conform to what their teacher is saying. Especially on controversial topics that young students may not be equipped to talk about, it will be hard for them to develop their own opinion or distinguish opinion from fact.

What’s more, the material produced by the Consortium is hardly a pinnacle of open dialogue. Instead, it is specifically meant to challenge “imperial/colonial hegemonic beliefs and practices on ideological, institutional, interpersonal, and internalized levels.” *Liberated Ethnic Studies Model Curriculum Consortium*,

Defending Education, <https://tinyurl.com/3mt3ex34>. The Consortium seeks to implant specific ideas into the curriculum it writes and produces. These ideas are conveyed with a specific worldview, and with the intent of brainwashing students and making them activists. The Court can appreciate why this sort of material is problematic and highly impressionable on young minds.

## **II. THE DISTRICT COURT ERRED IN DISMISSING THE PLAINTIFFS' FREE EXERCISE CLAIM BECAUSE IT MISUNDERSTOOD THE RELATIONSHIP BETWEEN ZIONISM AND JUDAISM**

The district court held that the plaintiffs did not adequately allege a substantial burden on their religious exercise, but that's because it did not understand how integral Zionism is to Judaism, thus misunderstanding antisemitism itself. Adopting a curriculum that is explicitly anti-Zionist is akin to adopting a white-supremacist curriculum. Either way, there's an equal-protection problem. Moreover, by enshrining anti-Zionism into their curriculum, the LAUSD is essentially promoting disbelief in what many Jews consider to be a central tenet of their religion.

The Supreme Court has made it emphatically clear that schools cannot embrace religious doctrines or profess disbelief in them. That is because “[w]hen the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain.” *Engel v. Vitale*, 370 U.S. 421,

431 (1962). The Supreme Court has also held that “neither a State nor the Federal Government can constitutionally force a person ‘to profess a belief or disbelief in any religion.’” *School Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 220 (1963) (quoting *Torcaso v. Watkins*, 367 U.S. 488, 493 (1961)). Yet if LAUSD adopts LESMCC’s curriculum, it would be denouncing a central aspect of Judaism.

While some Jews may not profess to believe in Zionism, the vast majority do. *AJC Survey Shows American Jews Are Deeply and Increasingly Connected to Israel*, American Jewish Committee—2024 Survey of American Jewish Opinion, June 10, 2024, <https://tinyurl.com/5n792mfy>. Indeed, Zionism animates the religious faith of believing Jews, as it is a central principal of the Hebrew Bible that God granted the land of Israel to the Jewish people as an inheritance. *See, e.g.* Genesis 12:7 (“The Lord appeared to Abram and said, ‘To your offspring I will give this land.’”); Genesis 15:18-21 (“To your descendants I give this land, from the Wadi of Egypt to the great river, the Euphrates . . . .”); Joshua 14:1-4 (“Now these are the areas which the Israelites received as an inheritance in the land of Canaan . . . .”); Numbers 34:3-9 (“Your southern side will include some of the Desert of Zin . . . where it will turn, join the Wadi of Egypt and tend at the Mediterranean Sea.”).

The gathering of Jewish exiles to the land of Israel and reestablishment of Jerusalem and the Solomonic Temple is part of the daily liturgy of Jewish prayer.

Many commandments of the Torah hinge on the land of Israel and it is central to Jewish identity that Jews originate from Judea/Israel and have maintained their national and ethnic identity through history by dint of their descentance from the original Jews who lived there. When Benjamin Disraeli, the British Prime Minister who converted to Anglicanism as a child, was insulted for being a Jew, he is quoted to have responded, “Yes, I am a Jew, and while the ancestors of the right honorable gentleman were brutal savages in an unknown island, mine were priests in the temple of Solomon.” *The Little Brown Book of Anecdotes* (Clifton Fadiman, ed.) (1985).

The district court dismissed the Complaint on the ground that it did not state any ways in which the curriculum would burden the plaintiffs’ free exercise rights, but the centrality of Zionism to Judaism means that anti-Zionism often and easily overlaps with antisemitism—which is perceived as both a religious and racial phenomenon. Historically, antisemites used religious ideas about Jews killing the Christian savior or claims of racial superiority interchangeably to justify persecution of Jews. Today, antisemitism often disguises itself as a political phenomenon in vehement opposition to the state of Israel. *See* Jonathan Sacks, *Anti-Zionism is the New Antisemitism*, *Newsweek* (Apr. 3, 2016), <https://tinyurl.com/4pne8hdd>.

Although criticism of Israeli policy does not violate anybody’s civil rights, when this criticism becomes a tool to demonize and singles out Jewish people for

special opprobrium, it becomes antisemitism. The material promoted by the Consortium has exactly this character, even as it denies being antisemitic by arguing that antisemitism is a right-wing phenomenon. (Query why any school curriculum should be explicitly left-wing.) But it then proceeds to associate the state of Israel with some of the worst global crimes. For example, material shared by the Consortium includes the following from a text entitled “Together We Rise”: “global systems of oppression bearing down on Indigenous, Black, brown, queer, and other marginalized communities . . . dictatorships, sexism, and heteropatriarchy . . . police brutality; mass incarceration and torture; gentrification and forced displacement; surveillance and repression; denial of access to basic needs; militarized borders and refugee bans; airstrikes and military incursions; and the ability of corporations to profit off of all of this suffering.” *Together We Rise: Palestine as a Model of Resistance*, US Campaign for Palestinian Rights, <https://tinyurl.com/3hbbncz6>. This sort of demonization, in a self-evidently propagandized and provocative manner that seeks to brandish any association with Zionism as criminal bespeaks a deep hatred towards Jews that goes beyond political activism.

No school district would permit the teaching of eugenics or incorporate poems such as *The White Man’s Burden* into the curriculum without proper background and information about how these writings and ideas have been destructive for society.

Presenting material such as *The Turner Diaries* without proper background information would constitute grave negligence and would create potential equal protection problems as it would undermine the ability of black students to learn without feeling excluded or prejudiced. Yet here the LAUSD is incorporating the Consortium's curriculum without providing any contextual or counter-material.

The plaintiffs do not request that the Court ban any books or block discussion of the Israeli-Arab conflict. Instead, they seek to stop the implementation of the Consortium's overtly bigoted curriculum without offering any counter materials. That antisemitic curriculum creates a hostile environment for both students and teachers and inhibits the ability of Jewish students to learn. Just as any school would provide background information before its students watched the film *The Birth of a Nation*, the plaintiffs are seeking to ensure there is fair and balanced discussion of sensitive topics like the Israel-Palestine conflict.

Just as school curricula throughout the country take great care to present topics such as the life of Jesus, the life of Mohammad, and the life of Buddha—without explicit bias—the plaintiffs seek only to ensure that LAUSD will not implement a curriculum that makes schools hostile places for Jewish students.

## CONCLUSION

For the foregoing reasons, and those stated by Plaintiffs-Appellants, the judgment below should be reversed.

Respectfully submitted,

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May 12, 2025

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## CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2025, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit for filing and transmittal of a Notice of Electronic Filing to the participants in this appeal who are registered CM/ECF users.

DATED: May 12, 2025

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