

No. 24-1608

**UNITED STATES COURT OF APPEALS FOR
THE SEVENTH CIRCUIT**

E.D., a minor by and through her parents and next friends MICHAEL
DUELL and Lisa DUELL; NOBLESVILLE STUDENTS FOR LIFE,
Plaintiffs-Appellants,

v.

NOBLESVILLE SCHOOL DISTRICT, *et al.*,
Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of Indiana
Case No. 1:21-cv-03075-SEB-TAB

BRIEF OF AMICI CURIAE YOUNG AMERICA'S FOUNDATION,
STUDENTS FOR LIFE OF AMERICA, MANHATTAN INSTITUTE,
AND INDIANA FAMILY INSTITUTE IN SUPPORT OF PLAINTIFFS'-
APPELLANTS' PETITION FOR REHEARING
AND REHEARING EN BANC

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 24-1608

Short Caption: E.D., et al. v. Noblesville School District, et al.

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 24-1608

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Manhattan Institute

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(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

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(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

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INTEREST OF AMICI CURIAE¹

Young America's Foundation ("YAF") is a 501(c)(3) nonprofit organization with a mission to educate and inspire young Americans from middle school through college with the ideas of individual freedom, a strong national defense, free enterprise, and traditional values. One way YAF fulfills its mission is through student-led Young Americans for Freedom chapters on campuses across the nation.

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.

¹ Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), amici state that no party or counsel for a party other than amici, their members, or their counsel authored this brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of this brief.

The Manhattan Institute’s (“MI”) mission is to develop and disseminate new 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 public education and research organization recognized by the Internal Revenue Service as a 501(c)(3) nonprofit group. 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.

The amici are alarmed by the growing trend of censorship in public schools and colleges as the training ground for American citizenship and public discourse, and the panel’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 expelled 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 on eggshells," concerning controversies over "political ideology," and Principal McCaffrey 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.

This fact pattern is all too familiar to the amici as SFLA and YAF have faced similar treatment on high school and college campuses across the country and MI and IFI have advocated against similar constitutional infringements. The amici are deeply concerned that the panel's decision will be used as precedent to increase rather than correct this censorship.

This Court should grant rehearing or rehearing en banc to correct the doctrinal errors in the panel decision.

ARGUMENT

I. The Panel’s Decision Promotes Censorship rather than Constitutional Rights at School.

The panel’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.

The *amici* are gravely concerned by this case because 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 And those challenges continued in the 2024-2025 school year.³

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

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 Salinas, Leader at Wildcats for Life
Photo Courtesy of SFLA.

<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>.

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 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

These challenges occur at the college level as well. Administrators at Winthrop University in South Carolina recently denied an SFLA group recognition, finding the group "too emotional a topic." After persistence by group leader Riley Dill and intervention by SFLA's legal counsel, the administration reversed course and recognized the group.⁷

For additional evidence, consider the challenges faced by SFLA group leaders at Marquette High School in Missouri and Miami Dade College.⁸

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 Butler, "Facing Free Speech Challenges."

⁷ *Id.*

⁸ 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/>; Helen Senn, "Nominated for Best New Group: Students for Life at Miami Dade College – Kendall Campus," *Students for Life of America News*,



Riley Dill, Leader at Winthrop Students for Life
Photo Courtesy of SFLA.

And look no further than Noblesville High and the actions of the Defendants in this case. E.D. was, after all, 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.” Doc. 158-3; Doc. 152-2 at 75.

b. YAF student groups have experienced similar constitutional violations on high school and college campuses.

Student in YAF clubs also face regular violations of their rights to freedom of speech and freedom of association. For example, student

(June 4, 2025) <https://studentsforlife.org/2025/06/04/nominated-for-best-new-group-students-for-life-at-miami-dade-college-kendall-campus/>.

Luke Wong at Harrison High School in New York challenged the school's administration after an assistant principal denied recognition for a YAF club for the third time.⁹ The administration provided three different and arbitrary reasons for the denial, including this statement: "We typically do not create clubs for organizations that students are involved with or could be involved with outside of school." *Id.* This statement ignored the fact that Harrison High recognized thirty-three different groups at the time, including Friends of Rachel, the Gay-Straight Alliance, Relay for Life, and Youth to Youth. Several of these clubs have ties to national organizations and provide activities for students "outside of school." *Id.* After a two-year legal battle, Harrison High finally relented and recognized the YAF club.¹⁰

This case, taken together with the censorship of SFLA groups, show a clear and troubling pattern. Eager students approach administrators about starting or advertising a SFLA or YAF club, and administrators respond by denying their request through ambiguity or

⁹ Kara Zupkus, "VICTORY: High School YAF Chapter Secures Recognition After Legal Battle," *Young America's Foundation* (July 19, 2023), <https://yaf.org/news/victory-high-school-yaf-chapter-secures-recognition-after-legal-battle/>.

¹⁰ *Id.*

pretext or by overtly declaring their political message or stance too controversial. This case clearly falls into that mold. Doc. 101 ¶¶ 344, 349; Doc. 158-30 at 1–3.

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

The Manhattan Institute 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.* Brief for FIRE and MI as Amici Curiae in Supp. Pl. and Reversal *Parents Defending Educ. v. Olentangy Loc. Sch. Dist. Bd. of Educ.*, 109 F.4th 453, 460 (6th Cir.); Brief for MI, IFS, YAF, CRAC, and AFP in Supp. Pl.-Appellant, *B.B. v. Capistrano Unified Sch. Dist.*, 2024 WL 612920, at *1 (C.D. Cal. Jan. 3, 2024).

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

For example, IFI supported House Enrolled Act No.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.¹¹ *See Zorach v. Clauson*, 343 U.S. 306, 315 (1952). Despite this well-settled precedent, a number of public school administrators in Indiana refused to adjust their school's schedule to accommodate the religious exercise of parents and their children. *See* Ind. Code § 20-33-2-19. The Indiana General Assembly responded by requiring school administrators to cooperate with parents that request such instruction for their children. *Id.*

Given these developments, amici MI and IFI are gravely concerned that the panel'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).

¹¹ 2024 Legislative Agenda, *Indiana Family Institute*, <https://hoosierfamily.org/issues/2024-legislative-agenda/>.

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; *B.L.*, 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).

The panel decision relies heavily on *Hazelwood Sch. Dist. v. Kuhlmeier* in affirming the District Court’s judgment. Op. 10-15; 484 U.S. 260 (1988). 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.

Id. at 569-70. Because this case involves a proposed student flyer and not a school publication or play that bears the “imprimatur of the school,” *Kuhlmeier* does not apply here. *See Id.*; Doc. 158-5 at 1, 5.

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.” *Id.* at 571. Surely 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” even in the context of a school publication. *N.J. by Jacob v. Sonnabend*, 37 F.4th 412, 423 (7th Cir. 2022).

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 panel 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. Op. 11. 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 Id.* at 569-70; *see 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.

CONCLUSION

For the above reasons, this Court should grant the petition for rehearing or rehearing en banc.

Respectfully submitted,

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September 18, 2025

CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of Fed. R. App. P. 29(b)(4) and 7th Cir. R. 29 because this brief contains 2,465 words, including words contained in the images and excluding parts of the brief exempted by Fed. R. App. P. 32(f), as determined by the word counting feature of Microsoft Office.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in Word using a proportionally spaced typeface, 14-point Century Schoolbook.

September 18, 2025

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CERTIFICATE OF SERVICE

I, Joshua D. Hershberger, counsel for amici curiae and a member of the Bar of this Court, certify that, on September 18, 2025, a copy of the attached Brief of Amici Curiae was filed with the Clerk and served on the parties through the Court's electronic filing system. I further certify that all parties required to be served have been served.

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