

In the
United States Court of Appeals
For the
Ninth Circuit

B.B., by and through her mother, Chelsea Boyle,

Plaintiff-Appellant,

v.

CAPISTRANO UNIFIED SCHOOL DISTRICT, JESUS BECERRA,
an individual in his individual and official capacities and
CLEO VICTA, an individual in her individual and official capacities,

Defendants-Appellees.

*Appeal from a Decision of the United States District Court for the Central District of California,
No. 8:23-cv-00306-DOC-ADS · Honorable David O. Carter*

**BRIEF OF *AMICI CURIAE* CALIFORNIA POLICY CENTER AND
CALIFORNIANS FOR EQUAL RIGHTS FOUNDATION
IN SUPPORT OF PLAINTIFFS-APPELLANTS AND REVERSAL**

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No counsel for a party authored any part of this brief. No one other than *amicus curiae*, its members, or its counsel financed the preparation or submission of this brief.

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INTEREST OF *AMICUS CURIAE*¹

California Policy Center, Inc. (“California Policy Center”) is an educational non-profit 501c(3) organization working for the prosperity of all Californians by eliminating public-sector barriers to freedom. California Policy Center’s primary areas of focus are education reform, workplace freedom, government transparency, and governance. California Policy Center educates, supports and advises local elected officials and members of the public on constitutional governance issues including free speech and equal protection, and engages in strategic litigation to accomplish its mission.

The Californians for Equal Rights Foundation (“CFER”) is a non-partisan, non-profit 501c(3) organization established to safeguard and build awareness on the causes of equal rights and merit through policy monitoring, voter education, legal advocacy, research, alliance building and media outreach.

CFER is committed to defending California’s Proposition 209, which bans racial discrimination and racial preferences in public policies. Proposition 209, which

¹ Pursuant to Circuit Rule 29-3, Counsel for California Policy Center and CFER sought consent from the parties to file this brief. Plaintiffs-Appellants consented; Defendants-Appellees stated “[a]t this time, we do not have the authority from our clients to consent to your request.” Counsel for Defendants-Appellants did not respond to several follow-up requests.

No counsel for any party authored this brief in whole or in part, and no entity or person, aside from amici curiae, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

added Section 31 to Article I of the California Constitution, prohibits the state from discriminating against, or granting preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. Cal. Const. Art. I, § 31(a).

The underlying case involves restriction of speech that deviates from government-prescribed racial ideology orthodoxy promoted in K-12 schools by teachers' unions and social justice activists and enshrined in law and policy by the California Legislature and California Department of Education. The protection of free speech, equal treatment of all people regardless of race, and excellence in education is of great concern to *amici* and their members. *Amici* have extensive knowledge of education law and policy in California and provide critical context to assist the Court in reaching a decision in this case.

Accordingly, *amici* have a strong interest in the proper interpretation of the First Amendment in K-12 schools, especially with regard to speech that deviates from prescribed racial ideology orthodoxy.

SUMMARY OF THE ARGUMENT

When Appellant B.B. was in first grade, she drew a picture containing the words “Black Lives Mater [sic]... any life,” for a classmate “to make her feel comfortable after her class learned about Martin Luther King Jr.” ER-14. School principal, Appellee Jesus Becerra, punished B.B. for the picture by depriving her of

recess for two weeks and prohibiting her from drawing. Appellants' Br. 3. B.B. sued for First Amendment violations, and the district court granted summary judgment to Appellees, finding that B.B.'s drawing was not protected speech. ER-5, 14. The district court upheld Appellees' punishment of B.B. for deviating from government-prescribed orthodoxy on racial ideology in California public schools. ER-14, 15.

This brief explains the infusion of racial ideology into California public schools and the impact the district court's decision will have on students, teachers and administrators if it is upheld. When the government imposes a political viewpoint in its public schools, cancel culture operates to turn that viewpoint into a government-imposed orthodoxy, which in turn suppresses the speech of students who dare to digress from that orthodoxy. The need to protect speech that deviates from the orthodoxy is particularly acute when the subject is race, because public schools are prohibited from discriminating on that ground. Without robust First Amendment protections, students, teachers and administrators are compelled to think and speak in compliance with a prescribed orthodoxy on racial and social justice issues, lest they risk punishment, even termination.

The district court characterized B.B.'s artwork as "innocent" and "well-intentioned." ER-14, 15. The court cited the New York Times, which deemed a different phrase—"All Lives Matter"—offensive, to support its assertion that B.B.'s speech was not protected. ER-14, fn 4. The court explained that "teachers are far

better equipped than federal courts at identifying when speech crosses the line from harmless schoolyard banter to impermissible harassment.” ER-14.

The district court has thus established a new standard for speech in school, one in which a government official may penalize the “innocent” and “well-intentioned” speech of a child if he alone determines that the child has diverged from an orthodoxy defined by a New York Times article. *See* ER-14. This does not come close to meeting the exacting standard established in *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, where student speech was protected even where school administrators believed their anti-war protests were disruptive. (1969) 393 U.S. 503, 508, 513, 514. Under the new standard of the district court, if a teacher or administrator believes a child’s words are related to a phrase the New York Times deems offensive—even if the words are different and do not cause material disruption, substantial disorder or invasion of the rights of others—that child has no right to say them in school. *Id.*

Racial ideology has become a dominant theme in California public education. Since 2017, California has instituted a radical and divisive program of “ethnic studies” through legislative and administrative means.² The California Teachers

² Dr. Wenyuan Wu, *A Diverse Bipartisan Effort Against California’s Divisive Critical Ethnic Studies Curriculum*, Philanthropy Roundtable (October 13, 2021), <https://www.philanthropyroundtable.org/a-diverse-bi-partisan-effort-against-california-s-divisive-critical-ethnic-studies-curriculum/>.

Association (“CTA”), which represents approximately 310,000 public school teachers in California, has become increasingly focused on racial justice activism in schools.³ From June 30 through July 2, 2024, the National Education Association (“NEA”), CTA’s parent organization, held its annual Conference on Racial and Social Justice. That conference hosted 71 sessions⁴ to prepare America’s public school teachers “for a new era of engagement and activism within the context of a rapidly changing educational landscape.”⁵ The Capistrano Unified Education Association, which represents educators in Appellee Capistrano Unified School District, is a local affiliate of CTA and NEA.⁶

Across California, school districts have embraced the revolutionary paradigm of critical or liberated ethnic studies through teaching intersectional identity politics to third graders; training white teachers to “embrace diversity” and atone for “spirit murdering black children”; and priming students to become “anti-racist activists.”⁷

³ California Teachers Association, *WE MUST ACT: RACIAL JUSTICE NOW! Black Lives Matter*, <https://www.cta.org/our-advocacy/social-justice/black-lives-matter>.

⁴ NEA Conference on Racial and Social Justice, Sessions & Descriptions, <https://www.nea.org/sites/default/files/2024-05/24-session-titles-and-descriptions.pdf>.

⁵ NEA Conference on Racial and Social Justice, Conference History <https://www.nea.org/professional-excellence/conferences-events/conference-racial-social-justice/history>.

⁶ Agreement Between Capistrano Unified School District and Capistrano Unified Education Association, Article 1.1, <https://www.capousd.org/subsites/Human-Resource-Services/Contracts/CUEA/index.html>;

<https://drive.google.com/file/d/1yUIo6-4wG1z7czmWlaWtDrWu2Tnvjw5G/view>.

⁷ Orange County Board of Education, *Special Community Forums on*

If the district court's rationale stands, and the infusion of racial ideology in elementary schools continues, young children attempting to connect with their peers will be punished when they fail to parrot appropriately the new government-prescribed social justice orthodoxy.

In this era of cancel culture, failure to afford the strong First Amendment protections established by the United States Supreme Court means teachers and administrators are easily pressured to punish innocent, non-offensive speech as racist, out of fear that they will lose their jobs. One example is Tiffany Riley, a Vermont school principal who was fired for not sufficiently displaying her support of the Black Lives Matter organization.⁸

If the district court's new standard for speech in school is upheld, a government-prescribed orthodoxy will follow, silencing discussion and dissent and punishing curious children who wish nothing more than to develop friendships with diverse peers.

The importance of protecting free expression to counter the dangers of prescribed orthodoxy cannot be overstated, especially in a time of rampant

"California's Ethnic Study Model Curriculum," (Jan. 2022) p. 13, <https://ocbe.us/Documents/Board%20Updates/Policy%20Paper%20on%20Ethnic%20Studies%20and%20Critical%20Race%20Theory%20in%20California.pdf>.

⁸ Bari Weiss, *We Got Here Because of Cowardice. We Get Out With Courage*, Commentary (Nov. 2021), <https://www.commentary.org/articles/bari-weiss/resist-woke-revolution/>.

inculcation of K-12 students in social justice activism. Abiding the Constitution’s commitment to freedom of speech means all of us will encounter ideas we consider unattractive, misguided, or even hurtful. *See 303 Creative v. Elenis* (2023) 600 U.S. 570, 603. But tolerance, not coercion, is our Nation’s answer. *Id.*

ARGUMENT

1. **The California Government is Spreading a Prescribed Racial Ideology in Public Schools**

B.B.’s first grade class learned about the concept of “Black Lives Matter” from a book read to them by their teacher. ER-94-97, 102-03. B.B.’s school also displayed a picture that included the phrase “Black Lives Matter” along with a clenched fist that B.B. saw every day. ED 102-03. B.B.’s exposure to the Black Lives Matter social justice movement tracks with broader efforts across California and the nation to infuse racial justice activism into public education.

Ethnic studies courses in California embrace a political agenda under the pretense of advancing “racial justice” and combating omnipresent “systemic racism.”⁹ For example, third graders from Cupertino, California participated in a math class where they “deconstructed” their racial and social identities based on

⁹ Dr. Wenyuan Wu, *Should I Get Canceled for Telling the Emperor He Has No Clothes On?* Minding the Campus (March 1, 2021), <https://www.mindingthecampus.org/2021/03/01/should-i-get-canceled-for-telling-the-emperor-he-has-no-clothes-on/>.

“power and privilege.”¹⁰ Their teacher asked the students to create an “identity map,” listing their race, class, gender, religion, family structure, and other characteristics.¹¹ The teacher explained that the students live in a “dominant culture” of “white, middle class, cisgender, educated, able-bodied, Christian, English speaker[s],” who “created and maintained” this culture in order “to hold power and stay in power.”¹²

Glassbrook Elementary in Hayward Unified School District spent \$250,000 in federal funds on a program called “Woke Kindergarten.”¹³ Glassbrook teachers questioned the decision to adopt the program, saying “Woke Kindergarten is rooted in progressive politics and activism with anti-police, anti-capitalism and anti-Israel messages mixed in with the goal of making schools safe, joyful and supportive for all children.”¹⁴

Glassbrook teacher Tiger Craven-Neely was told a primary objective of Woke Kindergarten was to “disrupt whiteness” in the school, and that the sessions were “not a place to express white guilt.”¹⁵ Mr. Craven-Neely questioned Woke Kindergarten’s

¹⁰ Christopher F. Rufo, *Woke Elementary*, City Journal (Jan. 13, 2021) <https://www.city-journal.org/article/woke-elementary>.

¹¹ *Id.*

¹² *Id.*

¹³ Jill Tucker, *This Bay Area school district spent \$250,000 on Woke Kindergarten program. Test scores fell even further*, San Francisco Chronicle (Feb. 3, 2024) <https://www.sfchronicle.com/bayarea/article/woke-kindergarten-glassbrook-hayward-18635504.php>; *see also* Woke Kindergarten, <https://www.wokekindergarten.org>.

¹⁴ *Id.*

¹⁵ *Id.*

use of the phrase “so-called United States,” lessons on Woke Kindergarten’s website offering “Lil’ Comrade Convos,” and posing a world without police, money or landlords.¹⁶ Another teacher told the San Francisco Chronicle that Woke Kindergarten offered only one perspective on issues and that there was no tolerance for questions, and requested anonymity for fear of retaliation at the school.¹⁷ Within days of Mr. Craven-Neely’s questions about Woke Kindergarten appearing in the San Francisco Chronicle, Mr. Craven-Neely was suspended from teaching at Glassbrook elementary.¹⁸

San Diego Unified School District hired critical race theorist Bettina Love to provide the keynote address at the district’s Principal Institute and district-wide training on how to “challenge the oppressive practices that live within the systems and structures of school organizations.”¹⁹ Public school teachers in San Diego subsequently underwent “white privilege” training sessions during which they

¹⁶ *Id.*; see also <https://www.wokekindergarten.org/lilcomradeconvos>.

¹⁷ Jill Tucker, *This Bay Area school district spent \$250,000 on Woke Kindergarten program. Test scores fell even further*, San Francisco Chronicle (Feb. 3, 2024) <https://www.sfchronicle.com/bayarea/article/woke-kindergarten-glassbrook-hayward-18635504.php>.

¹⁸ Bethan Sexton, *Woke Kindergarten whistleblower is SUSPENDED by failing Bay Area school: Gay teacher bullied at tense meeting after revealing bosses spent \$250K on 'disrupting whiteness' curriculum despite appalling math and reading scores*, The Daily Mail (Feb. 10, 2024), <https://www.dailymail.co.uk/news/article-13068069/Woke-Kindergarten-whistleblower-SUSPENDED-glassbrook-school.html>.

¹⁹ Christopher F. Rufo, *Radicals in the Classroom* (Jan. 5, 2021) <https://christopherrufo.com/p/radicals-in-the-classroom> (Source document, Bettina Love’s San Diego Powerpoint, linked in the article).

acknowledged indigenous land rights and atoned for “spirit murdering black children.”²⁰

In July 2023, the California Department of Education approved its “2023 Mathematics Framework for California Public Schools,” an “equity” and “social justice” focused math education framework that education experts from across the political spectrum warn will increase achievement gaps and decrease learning among lower income and minority students.²¹

Unions representing public school educators reinforce and promote the government-prescribed racial ideology orthodoxy. The 71 sessions offered at NEA’s 2024 annual Conference on Racial and Social Justice included discussions about

²⁰ Dr. Wenyuan Wu, *Should I Get Canceled for Telling the Emperor He Has No Clothes On?* Minding the Campus (March 1, 2021) <https://www.mindingthecampus.org/2021/03/01/should-i-get-canceled-for-telling-the-emperor-he-has-no-clothes-on/>; Christopher F. Rufo, *Radicals in the Classroom*, City Journal (Jan. 5, 2021) <https://www.city-journal.org/article/radicals-in-the-classroom>; Bettina L. Love, *How Schools Are ‘Spirit Murdering’ Black and Brown Students*, Education Week (May 23, 2019) <https://www.edweek.org/leadership/opinion-how-schools-are-spirit-murdering-black-and-brown-students/2019/05>.

²¹ Kenneth Shrup, *Bipartisan backlash against California’s ‘equity’ and ‘social justice’ math framework*, The Center Square (Jul. 21, 2023), https://www.thecentersquare.com/california/article_469e017c-281c-11ee-8274-cf1730f7da4c.html; *see also* 2023 Mathematics Framework, California Department of Education, <https://www.cde.ca.gov/ci/ma/cf/>.

“White Supremacy Culture”²² and “Decolonization,”²³ among other ideologically charged topics.

2. California Department of Education Ethnic Studies Model Curriculum Promotes Racial Ideology to Elementary School-Aged Children

The California Department of Education’s Model Curriculum for Ethnic Studies (“ESMC”) was officially adopted on March 18, 2021.²⁴ The ESMC focuses on “microaggressions,” which it defines as a “contemporary form of racism—invisible, intentional or unintentional, and subtle in nature; usually outside the level of conscious awareness, but which cumulatively and over time create an uncomfortable or hostile environment for the victim.”²⁵ The district court’s characterization of B.B.’s drawing as “similar to ‘All Lives Matter,’ a sentence with an inclusive denotation but one that is widely perceived as racially insensitive and

²² NEA Conference on Racial and Social Justice, Sessions & Descriptions, <https://www.nea.org/sites/default/files/2024-05/24-session-titles-and-descriptions.pdf>, e.g. Session C11: Fear or Not: Leading Racial and Social Justice Work in a Culture of Fear; Session C21: Understanding Power, Privilege, and Oppression; Session C22: Voting Extremists Off Bucks County School Boards.

²³ NEA Conference on Racial and Social Justice, Sessions & Descriptions, <https://www.nea.org/sites/default/files/2024-05/24-session-titles-and-descriptions.pdf>, e.g. Session A8: Challenges When Moving From “Transforming” to “Decolonizing”; Session B22: Unsettling the Colonial Mindset: Indigenizing Classrooms and Communities.

²⁴ Ethnic Studies Model Curriculum webpage, California Department of Education, <https://www.cde.ca.gov/ci/cr/cf/esmc.asp>.

²⁵ Ethnic Studies Model Curriculum, California Department of Education, Sacramento, 2022, p. 301, <https://www.cde.ca.gov/ci/cr/cf/documents/ethnicstudiescurriculum.pdf>.

belittling when directed at people of color,” shows the district court considers B.B.’s artwork a “microaggression.” ER-14.

On October 10, 2021, California Governor Gavin Newsom signed AB101 into law, making ethnic studies a high school graduation requirement and mandating ethnic studies to follow the controversial ESMC.²⁶ See Cal. Educ. Code §§ 51225.3, 51226.7. The ESMC contains such buzzwords as “transformative resistance,” “racial healing and critical hope,” “the four I’s of oppression,” and “counter v. dominant narrative.”²⁷ These terms emphasize a bifurcated and race-centric structure of oppressor versus oppressed and an activist orientation toward social justice as a collective answer to perceived systemic racism.²⁸

The California Department of Education encourages infusing ethnic studies into elementary school in ESMC Chapter 3, declaring that “[u]nderstanding how race and ethnicity impacts [SIC] society should be an essential core component of every students’ K–12 education experience.”²⁹

Chapter Four of the ESMC provides links to sample lessons and topics

²⁶ Dr. Wenyuan Wu, *A Diverse Bipartisan Effort Against California’s Divisive Critical Ethnic Studies Curriculum*, Philanthropy Roundtable (October 13, 2021), <https://www.philanthropyroundtable.org/a-diverse-bi-partisan-effort-against-california-s-divisive-critical-ethnic-studies-curriculum/>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Ethnic Studies Model Curriculum Chapter 3, California Department of Education, Sacramento, 2022, p.53, <https://www.cde.ca.gov/ci/cr/cf/documents/esmcchapter3.pdf>.

endorsed by the California Department of Education. One sample lesson is a Southern Poverty Law Center article from “Learning for Justice” called “Bringing Black Lives Matter into the Classroom: Part II.”³⁰ In this resource, educator Jamilah Pitts offers several ways to discuss Black Lives Matter across all grade levels. The document includes a section called “Elementary Applications,” in which teachers discuss how to introduce police violence and the Black Lives Matter movement to elementary school students. A second grade teacher from Oakland, California shares how she “prepares students all year to talk about issues of identity, diversity, justice and action.”³¹

The California Department of Education’s links to ESMC Lesson Resources include “Teaching Tolerance,” which “provides free resources to educators—teachers, administrators, counselors, and other practitioners—who work with children from kindergarten through high school.”³² The “Topics” page provides resources in areas such as “Race and Ethnicity,” including a “Discussing Whiteness” webinar displaying the following description: “Why does whiteness fly beneath the radar?”

³⁰ ESMC Chapter Four Resources Links, Link 94, <https://www.cde.ca.gov/ci/cr/cf/ch4.asp>; see also Jamilah Pitts, *BRINGING BLACK LIVES MATTER INTO THE CLASSROOM | PART II*, SPLC Learning for Justice (Summer 2017), <https://www.learningforjustice.org/magazine/summer-2017/bringing-black-lives-matter-into-the-classroom-part-ii>.

³¹ *Id.*

³² Ethnic Studies Model Curriculum, Published by the California Department of Education, Sacramento, 2022, p. 420, <https://www.cde.ca.gov/ci/cr/cf/documents/ethnicstudiescurriculum.pdf>.

Explore this question, and reflect on the role of white privilege and white racial identity formation in anti-racism work.”³³

This infusion of racial ideology in K-12 public schools, coupled with cancel culture and censorship of dissent, results in government-enforced ideological conformity. If the district court’s decision is upheld, schools are within their rights to punish children—whether depriving them of recess and the ability to draw in school or otherwise—if their speech could be considered a “microaggression” as defined by the government orthodoxy established by the ESMC. This means first grade children can be penalized for unintentional, subtle, unconscious language that might possibly make a person uncomfortable—like the phrase “any life”—even where there is no evidence of material disruption, substantial disorder or invasion of the rights of others. Accordingly, it is imperative to enforce the demanding standards for protecting speech in school dictated by the United States Supreme Court in *Tinker*. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.* (1969) 393 U.S. 503, 508, 513, 514.

3. Severe Consequences for Deviation from Government-Prescribed Racial Ideology Orthodoxy Require Robust Protection of Speech

Cancel culture is a social phenomenon that occurs when people ostracize, boycott, or shun someone who has acted or spoken in a way some activists deem unacceptable. When students, teachers, administrators or parents dissent from the

³³ *Id.*; ESMC Chapter Five Resources Links, Link 28, <https://www.cde.ca.gov/ci/cr/cf/ch5.asp#link27>; *see also*, SPLC Learning for Justice, “Race & Ethnicity” <https://www.learningforjustice.org/topics/race-ethnicity>.

obsessive focus on racial and social justice in public schools, even with a well-intentioned question, they are frequently met with cancellation, including social rejection and professional consequences.

In Vermont, school principal Tiffany Riley was fired for not sufficiently articulating her support for Black Lives Matter.³⁴ In the days leading up to graduation in 2020, community members contacted Ms. Riley to express concerns over the display of an American flag at graduation, intimating “that display of the flag is associated with exclusion of African American citizens from political considerations.”³⁵ Community members shared a link to an opinion piece describing concerns about the American flag as a symbol associated with anti-minority views,³⁶ and demanded that Black Lives Matter be represented at graduation with flags, paintings, and posters.³⁷ Ms. Riley was called “racist” by members of the community

³⁴ Bari Weiss, *We Got Here Because of Cowardice. We Get Out With Courage*, Commentary (Nov. 2021), <https://www.commentary.org/articles/bari-weiss/resist-woke-revolution/>.

³⁵ Board of School Directors Mount Ascutney School District Windsor, Vermont, *In Re: Tiffany Riley*, 16 V.S.A. § 243(D), Notice of Decision, p. 5, <https://resources.finalsite.net/images/v1602874734/wsesunet/suwhtngctrdo4xccvlys/Riley-16VSA243dDecision-signed.pdf>.

³⁶ *Id.* (citing Chase Quinn, *I grew up with the American flag. Now, the stars and stripes seem hostile*, *The Guardian* (Jul. 4, 2017) <https://www.theguardian.com/world/2017/jul/04/american-flag-stars-and-stripes-sinister-july-4>).

³⁷ Board of School Directors Mount Ascutney School District Windsor, Vermont, *In Re: Tiffany Riley*, 16 V.S.A. § 243(D), Notice of Decision, p. 6-8, <https://resources.finalsite.net/images/v1602874734/wsesunet/suwhtngctrdo4xccvlys/Riley-16VSA243dDecision-signed.pdf>.

for not attending a Black Lives Matter rally and for not hanging a Black Lives Matter sign at her school.³⁸ In a series of social media posts, Ms. Riley explained her position, that she agreed with the “Black Lives Matter” message but disagreed with the organization’s coercive measures.³⁹ Perhaps most offensive to her critics, Ms. Riley said she also supported law enforcement.⁴⁰ Ultimately, the Board of School Directors for Mount Ascutney School District terminated her contract.⁴¹

In Hayward, California, elementary school teacher Tiger Craven-Neely was suspended for publicly questioning Woke Kindergarten’s use of the phrase “so-called United States,” lessons on Woke Kindergarten’s website offering “Lil’ Comrade Convos,” and positing a world without police, money or landlords.⁴²

The combination of cancel culture coupled with the obsessive focus on racial and social justice ideology in schools means anyone who dares to question the new orthodoxy risks their job and social status. If a teacher or administrator does not adequately punish a child for failing to parrot the exact language expected under the new racial ideology orthodoxy, that teacher or administrator faces potential

³⁸ *Id.* at p. 12.

³⁹ *Id.* at p. 8.

⁴⁰ *Id.* at pp. 8, 9.

⁴¹ *Id.* at p. 21.

⁴² Jill Tucker, *This Bay Area school district spent \$250,000 on Woke Kindergarten program. Test scores fell even further*, San Francisco Chronicle (Feb. 3, 2024) <https://www.sfchronicle.com/bayarea/article/woke-kindergarten-glassbrook-hayward-18635504.php>; *see also* <https://www.wokekindergarten.org/lilcomradeconvos>.

cancelation. Once the orthodoxy of the government’s racial ideology is forced upon teachers and administrators, young children like B.B. don’t stand a chance. Without the firm and robust protections for speech required by the United States Supreme Court in *Tinker*, more children will be penalized for speech that does not cause material disruption, substantial disorder or invasion of the rights of others. *See* Appellants’ Br. 10; *Tinker v. Des Moines Indep. Cmty. Sch. Dist.* (1969) 393 U.S. 503, 508, 513, 514. More adults will be pressured into penalizing students who fail to sufficiently parrot the specific language of the government-prescribed racial justice orthodoxy.

The district court turns the *Tinker* standard on its head by giving teachers and administrators broad deference to penalize innocuous speech that deviates from social justice orthodoxy, instead of imposing on them a heavy burden required by Supreme Court precedent to justify restriction of speech. “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *West Virginia State Board of Education v. Barnette* (1943) 319 U.S. 624, 642. Reversing the district court’s decision is critical not just for the protection of student speech, but for the protection of the rights of teachers and administrators to refrain from penalizing students for non-disruptive speech that may not align with social justice orthodoxy.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

Date: July 22, 2024

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

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