FREE SPEECH: THE BIDEN ADMINISTRATION'S CHILLING OF PARENTS' FUNDAMENTAL RIGHTS

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BEFORE THE
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OF THE
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FREE SPEECH: THE BIDEN ADMINISTRATION’S CHILLING OF PARENTS’ FUNDAMENTAL RIGHTS

Thursday, March 23, 2023

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON THE CONSTITUTION AND LIMITED GOVERNMENT

COMMITTEE ON THE JUDICIARY

Washington, DC

The Committee met, pursuant to notice, at 2:37 p.m., in Room 2141, Rayburn House Office Building, Hon. Mike Johnson [Chair of the Subcommittee] presiding.


Mr. JOHNSON of Louisiana. The Subcommittee will come to order.

Without objection, the Chair is authorized to declare a recess at any time.

We welcome everybody to today’s hearing on free speech and the Biden Administration’s chilling of parents’ fundamental rights.

I will now recognize myself for an opening statement. We want to thank our witnesses for being here this afternoon. I know you are all busy people. You were delayed a little bit because of our vote series, so thanks for being gracious with your time.

This is our Committee’s first hearing regarding the Biden Administration’s chilling of parents’ fundamental rights. It sounds provocative, but the evidence shows clearly that this is exactly what is happening. Given the level of attacks this administration has waged against parents, it is surely not going to be the last of these hearings.

Today’s focus will be on how the National School Boards Association colluded with the Biden Administration to insert Federal law enforcement into local school board meetings. It is clear that the Biden Administration has no tolerance for those with ideological beliefs different from their own. The Constitution guarantees freedom of speech and thought to all Americans and that certainly includes the rights of parents over their children’s education.

When did it become the role of the government to decide what children should be taught without informing their parents? The vilification of concerned parents by this administration is a gross assault by the Federal government and one that aims to bolster
identity politics at the expense of the interests and the goals of parents in simply raising their families.

Recognizing that the family is the most important and sacred institution in any society, the U.S. Supreme Court has held for more than a century that the due process clause of the 14th Amendment protects a parent’s fundamental right to “make decisions as to the care, custody, and control of their own children.”

The First Amendment also protects a parent’s right to speak and advocate for their children, but that right has been significantly stifled over the past few years because the leftists have decided they apparently know better than parents do. That is an outrage, and the American people are rising up to say that they will no longer tolerate it.

As the radical leftists push this woke agenda on America’s children, parents across the Nation began to speak up. They went to their local school board meetings, and they spoke out. They shared their views on issues like critical race theory and mask mandates and school closures and controversial curriculum. As more people spoke out, the NSBA, the National School Boards Association, colluded with the Biden Administration and we use that term intentionally because that is how it is described. They colluded with the administration to intimidate these parents into silence by siccing Federal law enforcement on them.

These are just a few of the facts and summary. On September 29, 2021, the NSBA sent a letter to President Biden and in the letter they equated concerned parents voicing their opinion at school board meetings with domestic terrorism. They urged the Biden Administration to use the PATRIOT Act against them, to use the Federal statutory authorities against them.

On October 4th, just five days after the NSBA sent its letter, Attorney General Merrick Garland issued a memorandum that directed the FBI and U.S. Attorney’s Offices to address a purported, “disturbing spike in harassment, intimidation, and threats of violence at school board meetings.”

The PATRIOT Act was passed in response to 9/11 to combat international terrorism. This administration is now employing it to target concerned parents. Attorney General Garland did not define intimidation, harassment, and threats in his memo, and that ambiguity has had the effort, of course, of chilling protected First Amendment activity by parents and law enforcement because they have to guess as to what speech is legally allowed, now, at school board meetings. It is absurd.

Whistleblower testimony shows that FBI agents themselves had immediate concerns about the Attorney General’s memo. One FBI whistleblower testified to our Judiciary Committee that they were “stunned that the highest ranking law enforcement official in the country would publish something like that” because “it was leading toward targeting parents for speaking up about their children’s education,” and that it would “absolutely chill parents’ First Amendment rights.” That agent was stating the obvious.

The Biden Administration’s DOJ went even further than that. On October 20th, the FBI’s Assistant Director of the Counterterrorism Division and the Assistant Director for the Criminal Division in an email notifying FBI personnel about a new
EDUOFFICIALS threat tag that they created to apply to school board investigations. Another FBI whistleblower told our Committee that the memo and the creation of the threat tag suggested, ... that the demand for terrorism vastly outstrips the supply. So, we are going to try to expand out as much as we can in order to meet the metrics that we have in order to show that we are a successful agency.

Wow.

Committee Republicans have repeatedly called on Attorney General Garland to rescind that ill-conceived memo, especially after the NSBA issued a retraction and apology for its letter. On February 23rd of this year, Chair Jordan had to subpoena the Justice Department, the FBI, and the Education Department for documents necessary to complete our oversight on this issue. They resisted that. To date, we only have 14 pages turned over by the FBI. From information obtained through the subpoenas, it is clear that the Biden Administration has misused Federal law enforcement and counterterrorism resources for political purposes. Still, the Attorney General's memo is standing out there. He will not rescind it.

The Biden Administration's goal is clearly to silence the critics of its radical educational policies. Obviously, some Democrats today want to silence parents who disagree with their woke agenda to indoctrinate American children with controversial and inappropriate curriculum. If you think I am engaging in hyperbole, you need to stay tuned for this hearing.

The radical left has infiltrated nearly every institution in this country and our education system is one of the most glaring examples. Just imagine just for a moment, if a Republican president designated an entire group of Americans as terrorists simply because they disagreed with the administration, Democrats and the media would go berserk. Yet, strangely, when the Biden Administration does this, they all look the other way.

A good conscience and the Constitution require us to address this with urgency. Our responsibility in these hearings and in all these investigations throughout this entire Congress is to do three things very clearly: First, Clearly present the undisputed facts for the American people to evaluate for themselves and for us; second, to use as a guide to craft legislation to reform this chaos and ensure it is never allowed to happen again; and third, use the power of the purse that we have here in the House to ensure that Federal agencies are never again allowed to abuse and use the precious treasure of taxpayers against them.

The Biden Administration’s draconian approach to governance is a grave concern for Committee Republicans and I think all Americans. We will continue to fight to restore parental rights guaranteed in the Constitution.

We look forward to hearing from our witnesses today, and I yield back.

I now recognize the Ranking Member, the gentlewoman from Pennsylvania, for her opening statement.

Ms. SCANLON. Thank you, and because this is the first hearing of the Subcommittee on the Constitution this Congress, I want to congratulate my colleagues, Representative Johnson on becoming Chair of this important Committee. As the Subcommittee’s new Ranking Member, I look forward to working with you and the other...
Members of the Subcommittee to find common ground wherever possible so that we can work together for the benefit of the American people.

Of course, one of the challenges is finding an agreed-on set of facts and I have to challenge much of what we just heard.

Having served on school boards and having seen what has been happening across the country in recent months, recent years, I would have to say that the real First Amendment threats that our schools, teachers, students, and parents are facing is the attempt to turn classrooms into the epicenter of divisive culture wars. Extremists are imposing their beliefs on all students and parents through library book bans, bans on certain subjects in the public-school curricula, and censorship of educators, all to the detriment of students learning.

Since 2021, State legislatures have introduced over 300 bills in 44 States which can be characterized as educational gag orders. Twenty of these bills have become law and other States and localities have enacted such restrictions without legislation. Make no mistake, these bans represent the use of government power to deny students the chance to read books, to learn the full scope of our history, or even to be acknowledged as full members of American society.

It is telling what types of materials these bans have targeted. These speech-restrictive measures are part of a systemic effort by MAGA extremists to eliminate portrayals of LGBTQ+ people and to erase the accurate teachings of racism from the American story. This march toward censorship and book bans deprives our students of an accurate and fact-based education. As these politically motivated stunts take effect, they shortchange our children and silence parents who want their children to be fully educated on these subjects.

Extremist politicians are more interested in abusing their power to bring divisive culture wars into our kids’ classrooms and our neighborhood schools than they are in proposing solutions to actually help students and parents. If we are concerned about chilling free speech, we should be concerned that the conservative attacks on free speech have caused those who write and publish books to be censored themselves. According to The New York Times, one textbook publisher has gone so far as to remove all mentions of race in the description of Rosa Parks’ experience to gain approval to disseminate those books in Florida schools.

There is a huge difference between attempts to suppress free speech based on content as we have been seeing in recent years and addressing speech that may be criminal because it threatens violence which we have seen directed toward educators and school board members across the country.

Our Republican colleagues have tried to frame these potentially criminal acts to intimidate school board officials as examples of protected free speech by caring and involved parents. They are not. Any reasonable person can see the difference between threats of political violence and legitimate political discourse.

Unfortunately, this hearing is based on that false narrative or alternative facts, if you prefer to call it that, designed to promote chaos and division in our communities. Over the past few years,
partisan divides have grown, and bad actors have exploited those divisions for political gain. In the process, we have seen teachers, school officials, school board members, and their families subjected to threats and violence that were unimaginable just a few years ago.

I know this from personal experience. All three of my children received public education and I served for a decade as a school board member including as president of my local school board, just as my father and sister before me had. During that time, I had endless conversations with involved parents and constituents in grocery stores, at school concerts, on soccer fields, and at formal school board meetings about how our schools could best serve our children and our taxpayers. Sometimes the discussions were emotional, passionate, heated, and people didn’t always agree, but everyone always respected our democratic process and the boundaries of civility and protected speech as we sought to reach the best possible solutions for our community. Not once in that decade did I ever witness threats to the personal safety of board members, educators, or their families.

In recent years, we have seen the weaponization of school board comment periods as part of an operative fueled with dark money, sought to create chaos in our communities to promote their own political ambitions. Near my district in Southeastern PA, school board members received threats of invoking gas chambers and acts of physical violence. Other school boards had to suspend meetings and call the police when brawls erupted. In school districts across the country, school board members and their families were threatened with death and physical violence based on the positions they took in school board meetings. This kind of political violence is not normal. It is un-American and it must be remembered that these attacks were happening against the backdrop of rising political violence across the country, in part stoked by these extremist right-wing conspiracy theories that have endangered public officials from election workers to teachers to law makers to law enforcement in this very building.

When school authorities sought help from law enforcement to address this terrifying trend of threats against them and the people they serve, the Justice Department made clear in its memorandum on the subject that it was concerned not with the constitutional right to engage as Merrick Garland said “to engage in spirited debate about policy matters” but, was concerned with criminal conduct, specifically, threats that are not protected by the First Amendment.

The Supreme Court established long ago that the First Amendment does not protect threats and incitements to violence or intimidation, so when some parents alleged that their free speech rights had been impeded by the Department of Justice’s memo outlining its limited investigation of unprotected speech and potential criminal conduct, Federal court dismissed that case and held that the violence was not constitutionally protected free speech. These are deeply troubling developments.

I hope we can hear from our witnesses about the true dangers to First Amendment freedoms in our country, of teachers being censored and books being banned, and ways that are dangerous to
our children’s education, to our democracy, and to our social fabric, instead of hearing more about fake culture wars that are stoked by political actors.

I thank all our witnesses for participating in today’s hearing and I look forward to a fair, balanced, and substantive discussion of these issues.

Mr. Johnson of Louisiana. I thank the gentlelady. The Chair of the Full Committee, Mr. Jordan, is present, but I think he is waiving his opening statement in the interest of time. Thank you, Mr. Jordan.

I now recognized the Ranking Member of the Full Committee, Mr. Nadler, for his opening statement if he has one.

Mr. Nadler. Thank you, Mr. Chair. I would also like to thank the gentlewoman from Pennsylvania, Ms. Scanlon, and to congratulate her on becoming Ranking Member of the Subcommittee, the first woman to do so in the position I also held for many years.

Mr. Chair, our First Amendment protections are precious. There is a reason the Framers enshrined the freedoms of religion, speech, the press, and the right to peaceably assemble and petition the Government for redress as the First Amendment to the Constitution. These rights limit Government’s power over our individual lives, thereby helping enable us to effectively participate in democratic self-governance. Restrictions on these freedoms is certainly a topic worthy of examination in this Subcommittee.

It is unfortunate, therefore, that the new Republican majority would waste an opportunity for serious discussion of this issue and is instead using the first hearing of this Congress to advance the spurious assertion that the Biden Administration and the FBI are somehow chilling parents’ free speech rights. There is scant evidence to back up the bogus claim of a wide-ranging Federal government conspiracy to quell opposition to COVID-19 policies or so-called woke indoctrination by targeting parents who protested at school boards as our colleagues across the aisle would have us believe.

The Republican majority has wasted untold taxpayer dollars in a failed attempt to corroborate an elaborate conservative persecution fantasy built atop just two documents. The single September 2021 letter sent by the National School Boards Association, NSBA, to President Biden requesting Federal assistance in the face of real and credible threats of violence at school board meetings, and a brief, one-page memo issued by Attorney General Merrick Garland simply directing the FBI and Federal prosecutors to hold meetings with local law enforcement partners to discuss criminal threats against school personnel. Notably, neither the NSBA letter nor the Attorney General’s memo mentioned the word parent and the Attorney General’s memo did not use the term domestic terrorism. No amount of hysteria that we will hear from on the other side today will change those two facts.

Instead, this false Republican narrative, unsupported by the evidence, appears to have originated in messaging guidance designed by a documentary film maker associated with the Manhattan Institute, a conservative think tank. The majority has also relied on so-called whistleblower testimony to reinforce this manufactured nar-
rative, pointing to the FBI’s use of “threat tags” as they investigate potential criminal conduct.

In fact, the use of such threat tags is nothing nefarious. According to the FBI, it simply uses these tags to track information and to spot trends, but it does not necessarily signal a full investigation. Here, the tag was used to track threats directed against school officials, not parents who attended school board meetings, as has been claimed by the majority.

Moreover, as the Republicans’ own recent interim staff report acknowledges, the FBI has indicated that none of the school board related investigations have resulted in Federal arrests or charges. The majority would have the public believe that this all adds up to some murky, nefarious conspiracy orchestrated by the Biden Administration to chill parents of free speech rights. There is a simpler explanation.

The DOJ is doing its job. We are living during an epidemic of gun violence and mass shootings. Sadly, workplaces, grocery stores, places of worship, and perhaps worst of all, schools, have been targets. Political violence of all stripes has become an increasingly common occurrence. For those us who were in this House on January 6th know that all too well. In this environment, it is both reasonable and legal for the Department of Justice to ensure that State and local law enforcement have the resources they need to protect American citizens from violence and threats of violence.

Of course, the First Amendment protects the right to protest vigorously, even with offensive or acerbic language. The Supreme Court has also recognized that the First Amendment does not protect speech that is an incitement to imminent violence, a true threat of violence or other criminal conduct.

When a parent or any other person crosses the line from mere protest to credible threats of violence at school board meetings, this unprotected conduct undermines free speech values by intimidating other parents into silence. The DOJ memo explicitly acknowledges this very point, a fact my Republican colleagues always seem to ignore. Indeed, when a group of parents filed a lawsuit alleging a First Amendment violation based on the Department of Justice memo, a Trump-appointed District Court Judge dismissed the case concluding that the memo did not target First Amendment protected activities, but rather it targeted unprotected criminal conduct.

Bogus conspiracy theories aside, Americans are, in fact, currently facing a very real threat to their First Amendment rights in the education context. That threat, however, is coming from State and local governments. Republican-controlled State governments across the country have enacted or proposed book bans and restrictions on training and curriculum. Undoubtedly, my Republican colleagues will cherry pick out of context examples to justify this wave of legislation and other censorship measures, arguing that they are meant to protect children from age-inappropriate material of “divisive concepts.” These extremely, often vague, legislative mandates ultimately targeted particular groups and invariably focus on books by Black and LGBTQ authors and on the teaching of American history that includes an honest examination of race and bigotry.
Let me be clear. This State-mandated censorship does not protect students. Instead, these legislative efforts will likely harm students, teachers, and the quality of public education. We do not serve the interests of students when we shield them from the truth, as uncomfortable as the truth may be at times. Moreover, such ham-handed censorship statutes can lead to absurd results. For example, a Texas school administrator had to apologize after she advised faculty members to teach “opposing perspectives” about the Holocaust to comply with a State law aimed at curbing the discussion of critical race theory in the classroom.

An inclusive education is important for all children because it prepares students for participating in civil life in a pluralistic democracy. This State-imposed censorship will not protect our children or improve their education. To the contrary, it will harm them by promoting ignorance. Rather than chasing conspiracy theories and inventive scandals that advance the false narrative, we have plenty of true threats to free speech that we can examine. That would be a much better use of this Subcommittee’s valuable time and resources. I hope that we will chart a different course going forward. With that, I yield back the balance of my time.

Mr. JOHNSON of Louisiana. I thank the gentleman. Without objection, all other opening statements will be included in the record.

We will now introduce today’s witnesses.

Ms. Nicole Neily is the President and Founder of Parents Defending Education, a national membership organization that provides parents with resources and support to advocate for their children’s education. Parents Defending Education also advocates for and informs children and parents through investigative reporting and litigation and engagement with relevant local, State, and national educational bodies.

Mr. Tyson Langhofer is a Senior Counsel and Director for the Center for Academic Freedom at the Alliance Defending Freedom. Mr. Langhofer represents students and faculty at the public high school and college level in defending their First Amendment freedoms. ADF is the world’s largest organization committed to protecting free speech, religious freedom, and parental rights.

Ms. Tiffany Justice is a Co-founder of Moms for Liberty. She is a mother of four school-aged children of her own and has served on a school board for four years. Moms for Liberty is a national, nonprofit, nonpartisan organization that seeks to unify, educate, and empower parents to defend their parental rights at all levels of government.

Finally, Ms. Nadine Johnson is with us. She serves as Managing Director of PEN America Washington and Free Express Program. She spearheads PEN America’s engagement with the U.S. Government on free expression issues in the U.S. and around the globe, focusing on matters of foreign policy, tech policy, privacy, and educational censorship.

We welcome our witnesses and thank all of you for appearing today. We will begin by swearing you in. If you wouldn’t mind, please rise, and raise your right hand.

Do you solemnly swear or affirm under penalty of perjury that the testimony you are about the give is true and correct to the best
of your knowledge, information, and belief so help you God? Thank you.
Let the record reflect that the witnesses have answered in the affirmative.
Please know that your written testimony will be entered into the record in its entirety. Accordingly, we ask you to summarize your testimony in five minutes. The microphone in front of you has a clock and a series of lights. When the light turns yellow, you should begin to conclude your remarks. When the light turns red, your time has expired.
Ms. Neily, we will begin with you. Push that button and we can hear your voice. Thank you. Is that button lit up there? You have got to—there you go.

STATEMENT OF NICOLE NEILY

Ms. Neily, Chair Jordan, Chair Johnson, Ranking Members Scanlon and Nadler and distinguished Members of the Subcommittee, thank you for inviting me today.
My name is Nicole Neily, and I am the President and Founder of Parents Defending Education. I am also the Executive Director of PDE Action and founder of the free speech organization Speech First, so this hearing topic is one that is near to my heart.
On September 29, 2021, the president of the National School Boards Association sent a letter to President Biden requesting Federal intervention in school board issues, invoking, among other statutes, the U.S. PATRIOT Act to prove that Federal engagement was warranted. Her letter stated that the classification of these heinous actions could be the equivalence to a form of domestic terrorism and hate crimes. The NSBA sought assistance from the Department of Justice, FBI, Department of Homeland Security, Secret Service, and its National Threat Assessment Center. Although an early draft of the letter revealed that the NSBA also initially demanded that both the National Guard and military police be deployed against parents.
Families across the country were shocked by this letter and even more taken aback when five days later, lightning speed in Washington, DC, Attorney General Merrick Garland signed a memo on October 4, 2021, directing the Federal Bureau of Investigation, working with each United States Attorneys to convene meetings with Federal, State, local, Tribal, and territorial leaders in each Federal judicial district within 30 days of the issuance of this memorandum. Unsurprisingly, parents were frightened by this escalation. In the days following the release of DOJ’s memo, we fielded dozens of requests from concerned parents who worried whether they should continue their advocacy work or simply stay home fearing a knock at the door from Federal law enforcement.
Family fears turned out to be well founded. On October 14, 2021, the Acting U.S. Attorney for Montana sent a memo to the Montana Attorney General, all county attorneys, all sheriffs, the Montana Office of Public Instruction, and the Montana School Boards Association outlining a short summary of Federal statutes that may serve as a basis for prosecution of such threats and violent conduct in a move that calls to mind the law school game can you indict a ham sandwich?
Two days later, on October 16, 2021, the Deputy Assistant Director of the FBI’s Criminal Investigative Division, sent a joint message from his division and the FBI’s Counterterrorism Division enacting the creation of a threat tag EDUOFFICIALS to be applied to investigations and assessments of threats specifically directed against school board administrators, board members, teachers, and staff. This memo wasn’t revealed until a whistleblower provided it to this Committee in November 2021. In May 2022, Chair Jordan stated that the Committee on the Judiciary had evidence that this tag had been used against parents dozens of times.

The question remains, however, what was the genesis of such a memo? On October 11 and 12, 2021, I personally filed public records request in the home districts of all NSBA board members to learn about the letter’s creation. The FOIA results revealed that not only were the majority of the NSBA Board not told of the letter in advance, but that they were nearly all opposed to its contents and furthermore, that NSBA leadership had been [inaudible] to the White House over the letter’s content for “several weeks.”

In addition, I contacted each State affiliate of the NSBA to ask if their organization was involved in the creation of the letter, if they agreed with the substance and tone, and if they planned to report individuals in their State to DOJ. At last count, 26 States have either withdrawn their membership, participation, or dues from the NSBA.

Attorney General Garland asserted in sworn testimony before both the House and Senate Judiciary Committees in October 2021 that his memo was written solely in response to the NSBA’s letter. The NSBA apologized for its letter on October 22, 2021. Yet, curiously, the Attorney General has yet to rescind DOJ’s memo. Accordingly, it appears to remain in effect to this day, hanging over parents like the sword of Damocles.

To be clear, my colleagues and I of Parents Defending Education have always opposed violence and we continue to do so. Yet, school boards seem to forget parents have a constitutional right to assemble, to speak, to petition their government for a redress of grievances. Sadly, the airing of these concerns is now viewed by elected officials as violence, offensive, or hateful, in many cases, based solely on the speaker’s viewpoint.

American families have many concerns about education which merits discussion and open debate, but there is no question that people have been chilled from speaking out against children’s education. PDE has a tip line and approximately 99 percent of the tips that we receive people check a box because they want to be anonymous. They credibly fear retaliation, both against themselves as well as their children. It is lamentable that American parents no longer trust their local school officials. It is tragic that they now fear the Federal government.

Thank you for your time and I look forward to your questions.

[The prepared statement of Ms. Neily follows:]
Testimony of Nicole Neily  
President, Parents Defending Education  
Before the House Committee on Judiciary  
Subcommittee on the Constitution and Limited Government  
March 23, 2023  

“Free Speech: The Biden Administration’s Chilling of Parents’ Fundamental Rights”

Chairman Johnson, Ranking Member Scanlon, and distinguished members of the subcommittee, thank you for inviting me to appear today.

My name is Nicole Neily, and I am the president and founder of Parents Defending Education – a national membership association that gives parents the knowledge and tools they need to be more effective advocates for their children’s education – and the executive director of PDE Action. In addition, I am the founder of Speech First, a national campus free speech organization, so this hearing topic is one that is near and dear to my heart.

On September 29, 2021, Viola Garcia, the president of the National School Boards Association, sent a letter\(^1\) to President Biden requesting federal intervention in school board issues – invoking, among other statutes, the U.S. Patriot Act, as proof that federal intervention in school board issues was warranted. Her letter stated that “the classification of these heinous actions could be the equivalent to a form of domestic terrorism and hate crimes.”

The NSBA sought assistance from “the U.S. Department of Justice, Federal Bureau of Investigation (FBI), U.S. Department of Homeland Security, U.S. Secret Service, and its National Threat Assessment Center” – although it is worth noting that an early draft of the letter revealed\(^2\) that the NSBA’s initial ask also reportedly included that the National Guard and Military Police be deployed against parents.

Parents across the country were shocked by this letter, and even more taken aback when a mere five days later – lightning speed in Washington DC – a memo, signed by the Attorney General of the United States, was issued\(^3\) on October 4, 2021, “directing the Federal Bureau of Investigation, working with each United States Attorney, to convene meetings with federal,

state, local, Tribal, and territorial leaders in each federal judicial district within 30 days of the issuance of this memorandum.”

Unsurprisingly, parents were frightened by this escalation; in the days following the release of the Attorney General’s memo, my colleagues and I fielded dozens of requests from concerned parents who worried whether they should continue their advocacy work or simply stay home, fearing a knock at the door from federal law enforcement.

While we worked to reassure parents that they have a fundamental right⁴ – guaranteed by the First Amendment of the U.S. Constitution – to petition their government for a redress of grievances, we partnered with 21 other organizations on behalf of more than 427,000 Americans to contact⁵ the NSBA regarding its outlandish memo, alerting them that we vehemently disagreed with the association’s characterization of this grassroots activism. PDE also launched a comment portal to help Americans communicate their displeasure directly to the Department of Justice regarding its memo; over 7,500 people sent letters to DOJ about this overreach.

Families’ fears, however, turned out to be well-founded; on October 14, 2021, Acting U.S. Attorney Leif Johnson sent a memo⁶ to the Montana Attorney General, all county attorneys, all sheriffs, the Montana Office of Public Instruction, and the Montana School Boards Association outlining “a short summary of federal statutes that may serve as a basis for a prosecution of such threats and violent conduct.”

Two days later, on October 16, 2021, Carlton Peeples, Deputy Assistant Director of the FBI’s Criminal Investigative Division, sent a joint message from the FBI’s Counterterrorism Division and Criminal Investigative Division noting the creation of a threat tag, EDUOFFICIALS, to be applied to “investigations and assessments of threats specifically directed against school board administrators, board members, teachers, and staff.” This memo was not revealed until a whistleblower provided it to the House Judiciary Committee in mid-November 2021⁷; in May 2022, Chairman Jordan stated⁸ that the Committee on the Judiciary had evidence that this had been used against parents dozens of times.

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⁵ https://defendingorganizedpresssecretaries/state-school-board-associations-responses-to-the-nsba-letter/


⁷ https://twitter.com/JudiciaryGOP/status/1466702256601444352

⁸ https://mynpost.com/2022/05/12/fbi-tracked-parents-opposed-to-covid-policies-republicans-say/
The question remained however: what was the genesis of such an outlandish memo by an otherwise irrelevant Beltway organization – albeit one with a $15 million budget,9 largely funded by public tax dollars at the district level, paid to state school board associations, and then funneled to a national headquarters? On October 11 and 12, 2021, I personally filed public records requests in the home districts of all NSBA board members to see whether they were involved in the creation of the letter, and how they felt about it. Those FOIA results revealed that not only was the majority of the NSBA board not apprised of the letter in advance, but that they were nearly all opposed to its contents – and furthermore, that NSBA leadership had been in talks with the White House over the letter’s content for “several weeks.”10 11 12 13 14

In addition, I contacted each state affiliate of the NSBA to ask whether their organization was involved in the creation of the letter, whether they agreed with its substance and tone, and whether they planned to report individuals in their state to the U.S. Department of Justice – or rather, that concerns could be adequately managed by local and state law enforcement. At last count,15 26 states have either withdrawn their membership, participation, or dues from the NSBA.

An underreported aspect of this ugly episode is that the NSBA did not act in a vacuum. Two weeks before the NSBA’s letter was sent to President Biden, the National Association of Secondary School Principals (NASSP) put out a statement16 on September 16, 2021 “calling on federal officials to protect school leaders from rampant hostility and violence that disrupts our schools and threatens the safety of our educators and students.” In addition, the NSBA and the School Superintendents Association (AASA) also partnered on joint statements regarding school issues, although AASA declined to request federal intervention.17

To be clear: my colleagues and I at Parents Defending Education have always opposed violence, and we continue to do so. With that being said, however, my experience working on campus free speech issues have taught me a valuable – albeit tragic – lesson: the definition of “violence” has metastasized over the past five years in popular culture – perhaps driven in part by the poor civics education that students receive in America’s K-12 schools these days.

9 https://projects.propublica.org/nonprofits/organizations/362230015
When I launched Speech First in 2017, the phrase “speech is violence” was used on college campuses on the premise that hurtful words cause a stress reaction in the body – which was then used as justification for physically attacking speakers to prevent the speech in question. The definition of “violence” expanded further during the summer of 2021, when protesters demanded that diners in Washington DC repeat their mantras upon – yet again – the threat of actual violence, asserting “silence is violence.” Compelled speech is illiberal, and activists are not entitled to the real estate in the heads or mouths of their fellow citizens. Yet much of this behavior was not only tolerated but celebrated by politicians and pundits – setting a bad example from the top down.

Hateful and offensive speech is protected by the First Amendment, however hurtful said speech may be. Unfortunately, far too many elected and appointed officials do not possess an understanding of the power of free speech in America, despite the fact that ample case law exists on this very topic.

Justice Kennedy noted in Citizens United v. FEC that “The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it.” Indeed, “[t]he First Amendment reflects a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.”

As Chief Justice Rehnquist stressed in the 1988 decision for Hustler Magazine, Inc. v. Falwell, “[i]f it is the speaker’s opinion that gives offense, that consequence is a reason for according it constitutional protection.”

Or as Justice Kagan put it for a unanimous Supreme Court in 2019: “a core postulate of free speech law” is that “[t]he government may not discriminate against speech based on the ideas or opinions it conveys.”

Yet therein lies the rub: although parents have a Constitutional right to assemble, to speak, to petition their government for a redress of grievances, the airing of those grievances was viewed

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18 https://www.nationalreview.com/2017/10/college-students-speech-can-be-violence/
20 Cf., e.g., Janus v. Am. Fed’n of State, Cty., & Mun. Empls., Council 31, 138 S. Ct. 2448, 2463 (2018) (“[i]f 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. Compelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command, and in most contexts, any such effort would be universally condemned.” (emphasis, quotation marks, and citation omitted)).
by school board members – in many cases, solely based upon the speaker’s viewpoint and tone – as “violent,” “offensive,” or “hateful.”

Through our work with parents, my colleagues and I hear many of the concerns of average American families. They are upset about lessons on race and gender that teach our children to view each other through the lens of identity – and to treat each other accordingly; about the elimination of gifted and talented programs in the name of equity; about districts spending finite budget dollars to bring in diversity consultants that sow division, rather than addressing learning loss; about schools facilitating their children’s gender transitions behind their backs; and they are mad that when they try and raise these concerns with their schools, they are mocked by the media and shut down by their elected officials, who have begun to take drastic steps to restrict public comments.

These are valid concerns, and worth discussing and debating in the public square. But sadly, many families have, indeed, been chilled from speaking out about their children’s education.

Attorney General Garland asserted in sworn testimony before both the House and Senate Judiciary Committees in October 2021 that his October 4, 2021 memo was written solely in response to the NSBA’s letter; the NSBA issued an apology26 for its letter on October 22, 2021. Curiously, however, Attorney General Garland has yet to rescind DOJ’s memo. Accordingly, it appears to remain in effect to this day, and hangs over parents like the Sword of Damocles.

As the saying goes, “a fish rots from the head” – and sadly, the federal government’s haughty condescension has emboldened state and local officials to treat citizens with similar disregard.

Parents Defending Education has a tip line, and for approximately 99 percent of the tips that are submitted, people check a box that they want to be anonymous – because they fear retaliation both against themselves as well as their children. In Michigan, Rochester Community Schools was forced to pay a parent after contacting her employer and getting her fired from her job;27 a Florida district attempted the same with a local firefighter;28 in Arizona, one superintendent created a secret dossier on families in the district that was allegedly aimed at intimidating them into silence.29

For many parents, this is their first rodeo. They’re not professional advocates. They simply want the best education for their children, and they see that this is not being provided. These “accidental activists” are vulnerable, and they’re scared.
It is lamentable that American parents no longer trust their local school officials – but it is tragic that they fear their federal government. On behalf of our thousands of members across the country, we thank you for your dogged pursuit of the details behind the NSBA scandal, your commitment to holding the bad actors accountable, and your defense of citizens’ First Amendment rights.
Mr. JOHNSON of Louisiana. Thank you, Ms. Neily.
Mr. Langhofer, you may begin.

STATEMENT OF TYSON C. LANGHOFER

Mr. LANGHOFER. Thank you, Chair Johnson, Ranking Member Scanlon and Members of the Subcommittee. My name is Tyson Langhofer. I’m the Director of Alliance Defending Freedom’s Center of Academic Freedom.

Alliance Defending Freedom is the world’s largest legal organization committed to protecting religious freedom, free speech, sanctity of life, marriage and family, and parental rights.

My team works to protect the constitutional rights of students and faculty at America’s schools and universities. I also work closely with ADF’s Center for Parental Rights so it’s my pleasure to testify today on these two important subjects.

The Supreme Court has recognized that parental rights are perhaps the oldest fundamental liberty interest protected by our constitution. A fundamental distinction between a free society and a totalitarian one is whether the State exists to serve the people or whether the people exist to serve the State. This is often determined by a separate question: Who has primary authority over children, parents, or the government? Our constitutional tradition answers this question unambiguously. The child is not the mere creature of the State.

It should hardly need saying how central free speech is in distinguishing a free society from a tyrannical one, but today many Americans are questioning the value of free speech, especially speech they may find offensive. So, it bears repeating that the kind of free speech that actually distinguishes a free society is the kind that permits its people to speak their mind even on the most contentious issues.

As the Supreme Court said,

"... freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order."

Given the centrality of these two rights they’re all the more important when exercised in tandem as when parents address their elected representatives about matters affecting their children’s well-being and education. Unfortunately, the Biden Administration has acted to curtail these rights. This action has come in many forms, but I’d like to direct this Subcommittee’s attention to two: Attorney General Merrick Garland’s 2021 memorandum and the proposed rulemaking redefining sex in Title IX.

With the wave of remote learning brought on by COVID–19 parents garnered a new perspective in their child’s education. Many didn’t like what they saw, especially when it came to curricular materials promoting radical unscientific views about sex and gender. So, they did what every citizen has a right to do: They went to their school boards. The school boards were not very receptive. Loudoun County was infamously hostile.

One elementary school teacher, Tanner Cross, spoke in a public comment period about his opposition to a proposed policy that would require him to engage in social transition of his students. Within 48 hours he was suspended. ADF represented him in a law-
suit against the board and secured his reinstatement, which was affirmed by the Virginia Supreme Court. The school board subsequently enacted the policy and continued silencing people.

Here’s where the administration comes in: The Biden Administration admitted that it worked with the National School Boards Association in producing a letter from the NSBA to the administration. The letter cited the events in Loudoun County and generalized parental opposition as, quote, “acts of malice,” that were, quote, “equivalent to a form of domestic terrorism.” The NSBA later apologized, but the Biden Administration had already gotten what it wanted: A pretext to target parents.

A few days after the NSBA letter AG Garland issued his memorandum mobilizing Federal law enforcement officials. AG Garland claimed that this was focused exclusively on violent acts, but his own memorandum sweeps much broader and it unquestionably chilled parents in exercising their rights. Even though the public outcry was severe, the administration would not rescind the memorandum.

After intimidating parents into silence then the administration moved to codify the very policies, they were objecting to by proposing to redefine sex in Title IX to include sexual orientation and gender identity and it expressly blesses policies that would require schools to engage in social transitions for students even while hiding this from parents.

ADF successfully represented a teacher in Kansas challenging such a policy and ADF is currently representing parents in Wisconsin. In that case the school wasn’t just keeping social transition secret; they were insisting on doing it over the objection of the parents.

The Title IX changes also dramatically impact free speech. ADF is representing a student, parent, and teachers, all of whom were punished for expressing a view about gender identity that was different from the view the school requires. In all these cases the school cites to Title IX as a basis for their coercive actions.

The Biden Administration’s actions are both chilling and outright curtailing parents’ most fundamental constitutional rights. I urge this Subcommittee to use all means at its disposal to counter this Executive overreach and I welcome any questions.

[The prepared statement of Mr. Langhofer follows:]
Testimony Before the House Judiciary Subcommittee on the Constitution and Limited Government

On

Free Speech: The Biden Administration’s Chilling of Parents’ Fundamental Rights

By

Tyson C. Langhofer

Senior Counsel

Alliance Defending Freedom

March 23, 2023
Dear Chairman Johnson, Ranking Member Scanlon, and Members of the Committee:

The family is a pre-political institution. Protecting the lives and liberties of people—who come into being through families—is the purpose of our political system. Speech, in turn, is the primary way we participate in our political system. Our founders “believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truths that without free speech and assembly discussion would be futile.” Thus, when parents speak to their elected officials about matters affecting their children, they engage in perhaps the highest form of political expression. The present administration has acted to suppress this expression and, in doing so, struck at “[the] fundamental theory of liberty upon which all governments in this Union repose.”

In the spring of 2020, nationwide school closures led to widespread remote learning. This, in turn, gave parents a new, direct perspective on school practices, curricula, and exercises. Many parents learned that schools were acting and teaching in ways that were counter to their child’s best interest or undermined the values they sought to transmit. So, exercising their constitutional rights, they went to their local school board meetings to express their views. Some of the most vocal opposition centered on Covid-19 policy, curriculum infused with Critical Race Theory, and policies implementing radical gender ideology, especially as it related to social transition of children and access to sex-separated spaces like locker rooms and restrooms.

While some school boards were receptive to parents’ concerns, others ignored them, refused them the opportunity to peacefully speak, or even lashed out against parents simply pleading for a return to normalcy for their child. The hostility toward caring parents began to grow, organize, and nationalize. The National School Boards Association coordinated with Biden Administration officials to send a letter to President Biden describing parental objections as “acts of malice” that “could be the equivalent to a form of domestic terrorism.” Days later, Attorney General Merrick Garland issued a memorandum casting parents’ speech as “efforts to intimidate individuals based on their views” and mobilizing federal law enforcement officials to “discourage” and “identify” such activity and coordinate with local authorities in “addressing threats against school administrators” and “board

members.” In addition, President Biden has used his executive authority to legally and financially support (or even require) the very policies and classroom instruction that parents objected to, especially through the proposed revision of Title IX and reinterpretation of Title VI of the Civil Rights Act of 1964. These actions have broad implications for parents’ rights to speak and to raise their children consistent with their values and beliefs. This Subcommittee should resist the Administration’s assault on parents’ rights.

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**The Legal Rights of Parents**

**Parental Rights**

The Constitution protects “the liberty of parents and guardians to direct the upbringing and education of children under their control.” This right extends to all matters implicating a parent or guardian’s “care, custody, and control of their children.” It is “perhaps the oldest of the fundamental liberty interests recognized” by the Supreme Court. Indeed, parental rights precede our political institutions themselves: “[t]he fundamental theory of liberty upon which all governments in this Union repose” presumes that parents are responsible for the education and upbringing of their children and “excludes any general power of the State to standardize its children.” “The child is not the mere creature of the State,” rather, the child is part of the natural order that precedes the state and whose content gives shape to all other rights.

While the Supreme Court has consistently described parental rights as “fundamental,” its reasoning in its most recent parental rights decision has left the applicable legal standard open to some question and, as a result, presents an opportunity for congressional action to guarantee parental rights.

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5 *Perez*, 268 U.S. at 534–35.


7 Id.

8 *Perez*, 268 U.S. at 535.

9 Id.

10 See *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (“The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.”). See also *Breed v. New York*, 143 U.S. 517, 550 (1892) (Brewer, J., dissenting) (“Men are endowed by their Creator with certain undeniable rights . . . and to ‘secure,’ not grant or create, these rights governments are instituted.”) (emphasis added).

11 See *Tweed*, 530 U.S. at 65 (plurality opinion); *Yoder*, 406 U.S. at 232.
In general, state action that burdens a fundamental right is unconstitutional unless it passes the familiar “strict scrutiny standard”—that is, the action is unconstitutional unless it is “narrowly tailored to serve a compelling state interest.”12 Despite the repeated affirmation that parental rights are “fundamental,” the Court’s most recent decision in \textit{Taouel v. Granville} in 2000 did not apply this test.13 As Justice Thomas remarked in his concurring opinion in that case, “curiously none of [the opinions] articulates the appropriate standard of review.”14 This has resulted in both federal and state courts applying different tests to ascertain whether a particular government action infringes the parents’ fundamental right to direct the care and upbringing of their child. Thus, the level of protection given parental rights can vary dramatically from state to state and circuit to circuit. The importance of parental rights, combined with the judicial uncertainty surrounding their protection, calls for special attention wherever Congress acts in this area.

\textit{Freedom of Speech}

Parents, like all citizens, enjoy freedom of speech. This liberty is “valued . . . both as an end” in itself and “as a means” for carrying out our free system of government.15 When directed toward elected representatives on matters of public concern, speech serves both functions, “[i]f for speech concerning public affairs is more than self-expression; it is the essence of self-government.”16 “Accordingly, the Court has frequently reaffirmed that speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.”17 Speech, especially speech on matters of public concern, does not lose its protection because it is expressed in offensive terms or tones. “Such speech cannot be restricted simply because it is upsetting or arouses contempt.”18 Indeed, “[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”19

The government must remain “viewpoint neutral” toward speech, no matter the forum in

\begin{footnotes}
\item[13] 530 U.S. at 72–74.
\item[14] \textit{Taouel}, 530 U.S. at 80 (Thomas, J., concurring).
\end{footnotes}
which the speech occurs. Just as much as the government cannot directly prohibit protected speech, it also cannot take any action that has a concrete “deterrent, or ‘chilling’ effect” on speech. The Supreme Court has rejected, for example, a wide array of governmental attempts to root out subversive ideologies by direct or indirect retaliation for the exercise of First Amendment rights of speech or association. The Constitution also protects against efforts to suppress or intimidate individuals or groups from engaging in constitutionally protected speech.\footnote{Corridus v. N.AACP Legal Defense & Ed. Fund, Inc., 473 U.S. 788, 806 (1985) (observing that, even in a nonpublic forum, the government must remain “viewpoint neutral”).}

\textbf{The Biden Administration’s Hostility Toward Parents’ Rights}

Over the past several years, the Biden Administration has repeatedly and consistently abused its power to both chill and directly curtail parents’ rights.

\textit{The Garland Memorandum: Painting Parents as Threats}

During the spring and summer of 2021, many parents exercised their constitutional rights to express their displeasure about Covid-19 policies, curricular materials and exercises infused with racially discriminatory tenets of Critical Race Theory, and policies advancing and implementing radical views of sex and gender in local schools. In Loudoun County, Virginia, the school superintendent attempted to cover up a young woman’s sexual assault by a male student in the women’s restroom as the school board moved to advance a policy that would permit students to access whichever restroom accords with their subjective (or even fluid) “gender identity.”\footnote{See, e.g., Board v. State Bar of Ariz., 401 U.S. 1, 11 (1972); Kegler v. Bd. of Regents of the Univ. of N.Y., 385 U.S. 589 (1967); Baggett v. Bullitt, 377 U.S. 360 (1964).} This deception, compounded with the board’s decision to shut down a comment period and to impose new, illegal restrictions on public participation, rightfully frustrated parents who felt their legitimate questions and concerns were being ignored by their elected representatives.\footnote{See N.AACP v. Alabama, 357 U.S. 449, 462 (1958); Am. for Prosperity Found. v. Bonta, 141 S. Ct. 2373, 2588 (2021).} No one was more distraught by the Board’s indifference than the parents of the sexual assault victim who were at the meeting trying to get answers. Yet when one attendee began shouting at the victim’s father—Scott Smith—and even threatened to ruin his...
business, it was Scott who ended up being dogpiled and arrested by local police.\textsuperscript{24} Was Scott passionate about the wrong done to his daughter under the Board’s watch? Of course, as any parent would be. But Scott never threatened violence against the Board or anyone else at the meeting, and the obstruction of justice charge was rightly thrown out by a judge.\textsuperscript{27}

Yet this caring father become the “villain” of the national campaign against parents. Using this incident to paint objecting parents with a broad brush, the National School Boards Association coordinated with Biden Administration officials to draft a letter to President Biden petitioning for a federal response.\textsuperscript{29} The letter deceitfully equated a handful of instances unlawful behavior at public meetings—all of which were appropriately handled by local law enforcement—with protected passionate expression by concerned parents. It encouraged the government to regard the pleas of outspoken parents as “acts of malice” that are “the equivalent to a form of domestic terrorism” and to take a “proactive approach” to these “extremist hate organizations”—the NSBA’s label that it callously applied to organized parents merely advocating for the children.\textsuperscript{30}

Attorney General Merrick Garland acknowledged that Department of Justice officials were also involved in these discussions.\textsuperscript{30} A few days later, A.G. Garland issued a memorandum citing “efforts to intimidate individuals based on their views” and mobilizing federal law enforcement officials to “discourage” and “identify” such activity by coordinating with local authorities in “addressing threats against school administrators” and “board members.”\textsuperscript{31} Substantial outcry followed, as the public widely recognized that this was a mobilization of federal power against primarily peaceful, constitutionally-protected expression because of the political viewpoints that were being expressed.\textsuperscript{32} Less than a month after sending the letter, the NSBA published a memorandum saying, “we regret and apologize for the letter” and acknowledging that “there was no justification for

\begin{footnotesize}
\begin{itemize}
\item[24] See supra note 24.
\item[30] See supra note 3 at 2–3.
\item[31] See supra note 4 at 1.
\item[33] The NSBA itself admitted, “there has been extensive media and other attention recently around our letter to President Biden regarding threats and acts of violence against school board members.” Kyle Morris & David Spunt, \textit{National School Boards Association sorry for ‘language’ in letter that likened parents to domestic terrorists} (Oct. 23, 2021), \url{https://fox.ws/3JNy1Lg} (accessed March 18, 2023).
\end{itemize}
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some of the language we included in the letter.” A.G. Garland, however, did not retract the memorandum.  

Rewriting Title IX: Erasing Sex and Elevating Radical Gender Ideology

The Administration did not stop with intimidating parents for their speech. Instead, it moved to directly codify in law many of the very policies that motivated parents to speak out in the first place. One of the most destructive moves has been the proposed redefinition of the word “sex” in Title IX of the Civil Rights Act of 1964 to include “sexual orientation” and “gender identity.” This sweeping reinterpretation burdens parental rights, free speech, and bodily privacy and inflict real harm on students.

ADF has canvassed these harms and submitted comments to the Department of Education describing them in full. But one particularly egregious harm that warrants special attention is the compelled facilitation of “social transition” of students. The Biden Administration interprets the rule against discrimination “on the basis of sex” to include “gender identity.” In turn, the Administration claims that, to avoid discrimination on the basis of “gender identity,” schools need to facilitate the “social transition” of students at school by addressing the students with the names and pronouns the students adopt to communicate their transition and by making facilities and activities available on the basis of the student’s subjective identity rather than the student’s objective sex. Shockingly, the Administration’s proposed rule would even require school staff to keep all of this secret from parents.

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56 See supra note 28.
57 See Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 87 Fed. Reg. 41,290 (Jul. 12, 2022).
59 Supra note 35.
60 For example, the Administration cites a policy from Washoe County School District (Nevada) as examples of policies that are consistent with the proposed rule. See supra note 35, 87 Fed. Reg. at 41561. That policy (available here: http://bit.ly/3mlY3kE) prohibits staff from “questioning” whether a “student’s asserted gender identity is genuinely held” and requires (1) use of preferred names and pronouns, (2) access to bathrooms consistent with identity sex, (3) access to sports (in most cases) consistent with identity rather than sex and (4) requires staff to keep all of this confidential from parents.
61 See id.
As medical practitioners recognize, social transition is “not a neutral act,” it is “an active intervention because it may have significant effects on the child or young person in terms of their psychological functioning.” Under the Biden Administration’s proposed reinterpretation of Title IX, schools are undertaking dramatic psychiatric interventions in a student’s life—changing everything about the way the student is treated at school to validate and reinforce a new gender identity inconsistent with the student’s sex—without informing the parents, let alone obtaining their consent. This, all by itself, is an unprecedented assault on parental rights.

But this is only the beginning. These policies include presentation of radical, unscientific, and harmful gender ideology to even the youngest children, telling first graders things like, “You might feel like you’re a boy even if you have body parts that some people might tell you are ‘girl’ parts.” Under the Biden Administration’s view of Title IX, school children would be subjected to deprivations of physical privacy, disciplinary threats for using the wrong name or pronoun when addressing a classmate, risk of physical harm in sports competitions, lost opportunities to compete for athletic awards and scholarships, and more.

Just as “social transition” is not “neutral” with respect to the psychological functioning of the student, it is also not neutral with respect to the free speech rights of everyone required to perform the “social transition.” As the Sixth Circuit Court of Appeals recently recognized, “[p]ronouns can and do convey a powerful message implicating a sensitive topic of public concern.” The reason schools seek to require use of names and pronouns as a part of a social transition is the same reason that many seek to avoid using those terms: because of “their power to validate—or invalidate—someone’s perceived sex or gender identity.” The Biden Administration has sought to purge all views

41 This sentence comes from sample lesson plans offered as examples to comply with New Jersey Department of Education standards and generated substantial public protest. The Department has removed the standards from its website, but the archived document is available here: http://bit.ly/3Y9k5G2. The sample lesson plan is available here: http://bit.ly/3R9oJ6C.
42 See B.P.J. v. West Virginia State Bd. of Educ., No. 2:21-cv-00316, 2023 WL 111875, at *8 (S.D.W. Va. Jan. 5, 2023) (granting motion for summary judgment for state law separating sports programs on the basis of sex); Adams v. Sch. Bd. of St. Johns Cnty., 57 F.4th 791, 804 (11th Cir. 2022) (en banc) (upholding school policy separating bathrooms on the basis of sex and recognizing that “protection of students’ privacy interests in using the bathroom away from the opposite sex and in shielding their bodies from the opposite sex is obviously an important governmental objective”). See also supra note 24.
44 Id. at 509.
about sex and “gender identity” other than its own viewpoint—the idea that what makes a person male or female is exclusively that person’s declaration of identity rather than the person’s sex—from public schools. These questions about what it means to be male or female (or whether those categories have any meaning at all) are the questions “that touch the heart of the existing order” over which the Constitution protects the “freedom to differ,” including in America’s public schools. The Biden Administration is claiming to “wield alarming power to compel ideological conformity” and harming teachers, students, and parents in the process.

Neutering Title VI: Promoting Racism in the Guise of “Diversity, Equity, and Inclusion”

On his first day in office, President Biden issued an executive order heralding an “ambitious, whole-of-government equity agenda.” Verbally, the Administration’s ubiquitous efforts to replace “equality” with “equity” in the American lexicon represents a small change—just the deletion of two letters. In fact, the Administration is trying to accomplish a monumental shift in law, education, economics, and culture by changing the fundamental terms of the American social contract. Where once we saw treatment of each person as an individual as an essential component of liberty consistent with law and order, the Administration seeks to empower the state to focus on group membership and comparative power dynamics as the basis for state action.

Policies implementing the shift from “equality” to “equity” commonly style themselves as promoting “diversity, equity, and inclusion.” In practice, they introduce racial discrimination, neo-segregation, and racially hostile environments. Students are taught that membership in some social or racial groups renders them “oppressed,” while membership in other groups makes them “oppressive.” Schools do not stop at teaching these ideas in the abstract. Rather, they force specific students to apply these labels to themselves in front of their peers, create patronizingly-titled “safe spaces” for “students of color,” or tell children that their race determines what kind of success they

44 Moriwake, 992 F.3d at 506.
48 Id. at ¶¶ 32-33.
49 Id. at ¶ 35.
can aspire to in life.\textsuperscript{53}

Despite these blatant threats to students’ rights to free speech and an educational environment free of racism, the Biden Administration has issued guidance directly supporting these types of programs and opining that they do not violate Title VI of the Civil Rights Act of 1964.\textsuperscript{24} As part of the justification for this interpretation, the Administration cited President Biden’s executive orders announcing the “whole-of-government” pursuit of “equity.”\textsuperscript{25}

\textbf{ADF Cases Dealing with the Biden Administration’s Legal Fallout}

Alliance Defending Freedom is actively countering the Biden Administration’s infringement of parents’ freedom throughout the country in state and federal court.

\textit{The Garland Memorandum and Speech to School Boards}

A few weeks before Scott Smith was unjustly arrested in Loudoun County for passionately pleading for answers to his daughter’s tragic sexual assault, local officials engaged in another act that generated nationwide coverage: the retaliatory suspension of elementary school teacher Tanner Cross after he spoke at a school board meeting. Cross expressed his opposition to a proposed policy—the same proposed policy for which the superintendent tried to offer political cover by concealing the facts about the sexual assault in the girl’s restroom—because his own faith and his love for his students would keep him from following that proposed policy.\textsuperscript{54} Less than 48 hours later, Cross was suspended.\textsuperscript{55} ADF filed a lawsuit on Cross’s behalf, securing an order of reinstatement from the trial court that was upheld by the Virginia Supreme Court and an eventual settlement of his retaliation claim.\textsuperscript{56} The school board eventually adopted the policy to which Cross objected, and litigation over the validity of that policy is ongoing.

Once the NSBA sent their letter (referencing the Loudoun County events) and A.G. Garland responded with his memorandum, ADF saw firsthand how these actions chilled parents from

\textsuperscript{53} See supra note 52 at ¶ 198.
\textsuperscript{54} See supra note 48.
\textsuperscript{55} See supra note 48 at note 6 (quoting E.O. 13985, supra note 47).
\textsuperscript{57} Id. at ¶ 7.
\textsuperscript{58} The letter opinion of the Loudoun County Circuit Court is available here: http://bit.ly/3TxcK5P. The letter opinion from the Supreme Court of Virginia is available here: http://bit.ly/3ITEb6C.
exercising their constitutional rights. Our organization received many calls relaying concerns about the ability to continue to speak at school board meetings without incurring some adverse action by federal law enforcement officials. ADF wrote a letter to A.G. Garland notifying him of the fear his action created in parents and explaining why his directive should be rescinded.90

**Parental Rights**

ADF has filed multiple cases seeking relief for the harm caused by actions or policies supported by the Biden Administration. Two cases address the egregious practice of implementing the “social transition” of a student at school without the parents’ knowledge or consent. In *Riordan v. USD 475 Geary County School Board*, ADF represented a teacher who objected on religious grounds to complying with a policy that forced her to deceive parents by addressing students by preferred first names and pronouns at school but with their legal names in her communications to parents.91 In explaining why the school had no legitimate interest in burdening the teacher’s free exercise rights, the court observed that the practice likely ran counter to parents’ rights, which the government is also obliged to respect. The court said, “[i]t is difficult to envision . . . how a school could establish[] a generalized interest in withholding or concealing from the parents of minor children, information fundamental to a child’s identity, personhood, and mental and emotional well-being such as their preferred name and pronouns.”92 And, in *B.T.F. v. Kettle Moraine School District*, ADF represented parents challenging a school’s policy of facilitating a student’s “social transition” at school even over the direct objection of the parents.93 In *Kettle Moraine*, a 12-year-old girl began suffering from significant anxiety and depression along with questions about her gender.94 The school district immediately treated this young girl as a boy and encouraged her to “transition” to living as a male.95 The parents took care to seek mental health support for their daughter, who eventually embraced her girlhood and said, “affirmative care really messed me up.”96 But the school admitted that this “affirmative care” was their policy, and it would continue to immediately use new names and pronouns associated with a “social

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92 See id. at ¶ 8.


94 See id. at ¶ 28.

95 See id. at ¶ 30.

96 See id. at ¶¶ 30–40.
transition” at school if the student requested it, even over the direct objection of the parents. That case is awaiting a decision on a pending motion for summary judgment.

The Biden Administration has sought to indirectly induce private schools to adopt similar policies on “gender identity” to the ones that it is pushing in public schools. For example, ADF represented a private Christian school in *Grant Park Christian Academy v. Fried*, challenging officials’ decision to exclude the school from participation in the National School Lunch Program because of the school’s inability (on account of its religious beliefs) to comply with the Biden Administration’s reinterpretation of Title IX. That case concluded with the United States Department of Agriculture acknowledging that Title IX’s religious exemption permits “an institution to be exempt on religious grounds if there is a conflict between Title IX and a school’s governing religious tenets.”

ADF has also worked to counter discriminatory practices and the racially hostile environment created by the sorts of policies encouraged by the Biden Administration’s interpretation of Title VI. For example, in *Bueno v. Allegharie County School Board*, school officials began implementing a pilot program implementing so-called “anti-racist” curricular materials and, in the process, planned to segregate participating students on the basis of race. The school presented as true a wide range of discriminatory stereotypes, including a video lesson that taught minority status is such an impediment to success in America that a young Latina child could not attain enough success to live in a large house. This case is on appeal to the Virginia Court of Appeals.

**Free Speech**

The Biden Administration’s actions, especially its proposed changes to Title IX’s implementing regulations, have dramatic free speech implications. In one ADF case, a 14-year-old female student was suspended from her school and her father was suspended from his coaching

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66 See supra note 62 at ¶ 35.
70 See supra note 52 at ¶¶ 30, 86, 164.
71 See supra note 52 at ¶ 198.
position at the same school because they expressed opposition to the school’s policy allowing male students to use the women’s locker room.  

Litigation over names and pronouns abounds. In addition to Gross and Riard, ADF litigated Mann v. Harrison, in which the Sixth Circuit Court of Appeals issued a resounding opinion condemning the attempt “to compel ideological conformity” by requiring use of titles and pronouns inconsistent with a student’s sex in the higher education setting. However, the rules delineating the speech rights of students and teachers, in particular the right to be free from compelled speech, are not as clear or consistent in the K-12 context as they are in the university context. ADF is currently representing another Virginia teacher who was terminated for his religious objection to using pronouns inconsistent with his students’ sex. That case has been argued before the Virginia Supreme Court and awaits a decision. In federal court, ADF is representing an Ohio teacher who was forced to resign within two hours of informing school officials that her faith rendered her unable to facilitate her students’ “social transition.” In both cases, the school defendants argue that Title IX requires them to implement the policies at issue.

Conclusion

The Biden Administration has repeatedly and aggressively encroached on the rights of parents, both when it comes to directing the education and upbringing of their children and to expressing their views on matters of public concern. Our Constitution’s protections for speech and parental rights are robust in general, but some unanswered questions—especially the standard of review for parental rights after Trnek and about the right to be free from compelled speech in the school context—provide an important opportunity for Congress to counter the Administration’s overreach.

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76 Martin v. Tetreault, 992 F.3d at 506.
Mr. JOHNSON of Louisiana. Thank you, Mr. Langhofer.
Ms. Justice, you may begin.

STATEMENT OF TIFFANY JUSTICE

Ms. JUSTICE. Good afternoon, distinguished Members of the Constitution and Limited Government Subcommittee. My name is Tiffany Justice, Co-founder of Moms for Liberty. Founded in 2021, Moms for Liberty has 275 chapters in 44 States and is growing every month.

I want to begin by thanking you for taking up this important topic. Free speech has been chilled for too long by our own government. I applaud you for bringing attention to the intimidation and harassment of law-abiding citizens.

Parents have the fundamental right to direct the upbringing of their children. That includes their education, medical care, morality, and religion. I want to be clear: These are inherent natural rights. Parental rights do not stop at the classroom door. We do not co-parent with the government.

In March 2020 public schools across the country were closed without parental input. Tina Descovich and I, Co-founders of Moms for Liberty, were serving on school boards in Florida. School districts shifted to virtual learning, but accountability for teaching and learning was lacking. Despite documented low student engagement and graduation rates remained steady and federally-mandated services were not being provided despite continued funding.

Parents watched in horror as teachers' unions fought to keep schools closed. We watched as our children struggled with depression and anxiety, the development regressing at every turn. Nationally parents were asking when and how had we become a Nation that was more concerned with protecting adults than protecting children. Parents desperately wanted to help their children and they turned to their school boards to try to understand why it was OK for people to gather and riot in the streets and not for children to gather and learn in classrooms.

In the U.S. the right to petition the government to correct a wrong or achieve a goal is fundamental to the workings of our constitutional republic. Parents who took up this right were silenced. Then the premier law enforcement agency of the United States of America, the FBI, was used as a weapon by the DOJ against parents who dared to voice their concerns at the most local level, their school board.

Thanks to the whistleblower we now have evidence that Attorney General Garland instructed the FBI to take action against parents and that a threat tag was created for parents who spoke up in public meetings. How dare they?

One of your moms was one of those parents targeted. One minute you're making peanut butter and jelly and the next minute the FBI is calling you. You answer the phone, and they want to talk to you about your comments at a school board meeting last week. Do you have any guns in your home? Do you have a history of mental health illness? Oh, and by the way, don't tell anyone we called.

When this mother called me, I was numb; I was shocked; I did not know what to say. Can the FBI ask you to be confidential about
their inquiry to you? I immediately worked to make the Judiciary Committee Members aware of the situation.

Did the actions of the Biden Administration chill the free speech of parents? Yes. There is no doubt. It sent shockwaves across this country that we still feel today. What did this mom do wrong? She disagreed with her school board. That is not illegal in this country. We not allowed to have differing views?

A hundred and 15 thousand members strong, we attended school board meetings often facing unjust treatment. Parents were expelled, their mics were cutoff, and many were prevented from speaking. We are moms, dads, uncles, aunts, grandparents, and concerned citizens. We are not domestic terrorists, and we will not be silenced to protect a failing system. The DOJ betrayed the trust of the American people. There must be accountability.

While the FBI made phone calls to parents who spoke out at meetings and wrote memos calling concerned parents domestic terrorists, I submit to you what the Federal government was not doing was paying attention to educating our children. America’s public education system is failing. Perhaps the silencing of parents was meant to hide these facts, but we see. Our eyes are opened to a distressing truth that our children are being taught to distrust the sanctity of their own homes and to view the Nation as broken and unjust. We witness schools and States fueling this fire, encouraging such beliefs to take hold.

I ask you to hold accountable those that violated their oath to the constitution, who trampled on our right to be heard, and who sought to use their position of power to subvert we the parents. The No. 1 indicator of student success is parental involvement. Any action by the government that undermines that jeopardizes the very future of this Nation.

We are joyful warriors. We are going to fight like hell for the future of this country with a smile on our face because our children are watching. Our members build relationships, spread truth to educate their communities and empower parents to do the same. That is the power of parents.

[The prepared statement of Ms. Justice follows:]
Monday, March 20, 2023

Constitution and Limited Government Subcommittee

“Free Speech: The Biden Administration’s Chilling of Parents ’Fundamental Rights.”

1. Good afternoon, distinguished members of the Constitution and Limited Government Subcommittee. My name is Tiffany Justice, co-founder of Moms for Liberty, a nonpartisan nonprofit organization that unites, educates and empowers parents to defend their parental rights. Founded in 2021, Moms for Liberty has 275 chapters in 44 states, and growing every month.

2. I want to begin by thanking you for taking up this important topic. Free speech has been chilled for too long by our own government and your attention to this issue is a patriotic act of bravery. I applaud you for bringing attention to the intimidation and harassment of law-abiding citizens.

3. Parents have the fundamental right to direct the upbringing of their children. This includes their education, medical care, morality and religion. I want to be clear,- these are inherent, natural rights. These are not rights bestowed by government. Parental rights do not stop at the classroom door. We do not coparent with the government.

4. In March 2020, public schools across the country were closed without parental input. Tina Descovich and I, co-founders of Moms for Liberty, were serving on school boards in Florida. We got to see this situation both through the eyes of parents with children in public schools, and as school board members.

5. School districts shifted to virtual learning, but accountability for teaching and learning was lacking. Despite documented low student engagement, graduation rates remained steady, and federally mandated services were not being provided despite continued funding.
6. Parents watched in horror as teachers unions fought to keep schools closed. We watched as our children struggled with depression and anxiety, their development regressing at every turn. Nationally, parents were asking when and how we had become a nation more concerned with protecting adults than children?

7. Parents desperately wanted to help their children and they turned to their school boards to try to understand why it was okay for people to gather for riots in the streets but not for students to gather to learn in the classroom.

8. In the U.S., the right to petition the government to correct a wrong or achieve a goal is fundamental to the workings of our constitutional republic.

9. Parents who took up this right were silenced, then the premier law enforcement agency of the United States of America, the FBI, was used as a weapon by the DOJ against parents who dared to voice their concerns at the most local level—their school board.

10. Thanks to a whistle-blower, we now have evidence that Attorney General Garland instructed the FBI to take action against parents, and the FBI created a "threat tag" for parents who spoke up in a public meeting for their children. How dare you?

11. One of our Moms was ONE of those parents targeted.

12. One minute you are making lunches and packing backpacks, then the phone rang. It's the FBI, asking questions about your remarks at last weeks school board meeting. Do you have a history of mental health illness? Do you have any guns in your home? Oh, and by the way, don't tell anyone we called.

13. When this mother called me, I was numb. It was shocking. What was I to say? Can the FBI demand confidentiality? I honestly didn't know. I immediately worked to make members of the Judiciary Committee aware of this situation.

14. Did the actions of the Biden Administration chill the free speech of parents? Yes. There is no doubt. It sent shockwaves across the country that we still feel today.
15. And what did this mom do wrong? She disagreed with her school board? That is not illegal. In this country, are we not free to have differing views?

16. 115k members strong, we attended school board meetings, often facing unjust treatment. Parents were expelled, their mics were cut off, and many were prevented from speaking. Americans peacefully exercising their constitutional rights were labeled as enemies of the state.

17. We are moms, dads, aunts, uncles, grandparents, and concerned citizens. We are not “domestic terrorists.” We will not be silenced to protect a failing system.

18. The DOJ BETRAYED THE TRUST of the American people. There must be accountability. Thank you again for bringing this to light.

19. While the FBI made phone calls to parents who spoke out at meetings and wrote memos calling concerned parents “domestic terrorists” – I submit to you what the federal government was NOT doing was paying attention to the duty of schools to EDUCATE our children.

20. America's public education system is failing. These are the facts: In 2022, the National Center for Education Statistics conducted a study of the long-term trends in reading and math assessments for 9 year olds to examine student achievement during the pandemic. Average scores declined 5 points in reading and 7 points in mathematics compared to 2020. This is the largest average score decline in reading since 1990, and the first ever score decline in mathematics. 
https://www.nationsreportcard.gov/highlights/ttr/2022/

21. Perhaps, the silencing of parents was meant to hide these facts. But we see. Our eyes are opened to a distressing truth that our children are being taught to distrust the sanctity of their own homes and to view the nation as broken and unjust. We witness schools and states fueling this fire. Encouraging such beliefs to take hold.

22. I ask you to hold accountable those that violated their oath to the Constitution, who trampled on our right to be heard, and who sought to use their position of power to subvert “we the parents”.
23. The number one indicator of student success is parental involvement. Any action by government that undermines that, jeopardizes the very future of our nation.

24. We are Joyful Warriors. We are going to fight like hell for the future of this country with a smile on our face because our kids are watching. Our members build relationships, spread truth to educate their communities and empower others to do the same.

25. The DOJ and the FBI made a mistake when they tried to get between us parents and our children. There is no power that supersedes a parent’s love for a child, and we will not be pushed out of the way in decisions about our children’s education or their future. That is the power of parents.
Mr. JOHNSON of Louisiana. Thank you, Ms. Justice.
Ms. Johnson, now you may begin.

STATEMENT OF NADINE FARID JOHNSON

Ms. JOHNSON. Thank you, Chair Johnson and Chair Jordan, Ranking Member Scanlon, and Members of the Subcommittee. My name is Nadine Farid Johnson and I am the Managing Director for Washington and Free Expression Programs at PEN America. It is an honor to testify here today.

I am a daughter of immigrants, a mother of two young school-age children, an attorney by training, and a proud American who had the privilege of serving her country under both the Obama and Trump Administrations.

PEN American, my employer, is a no-profit, nonpartisan organization that stands at the intersection of literature and human rights to protect free expression in the U.S. and around the globe. We view free speech as an underpinning of democracy and a cause above politics and we are unwavering in our commitment to up-holding this foundational right.

Today, we are in the midst of the broadest attack on First Amendment rights in schools and universities this country has seen in generations. Throughout our Nation’s history we have seen waves of efforts to curtail access to books, but at every turn these censorious efforts have ultimately failed and the rights protected by the First Amendment have been preserved.

In this new era of censorship, we have tracked 303 bills which we term educational gag orders in 44 States. These government restrictions forbid the teaching of specific curricula or ban certain concepts from the classroom. We have already seen the chilling effects that this kind of legislation on educators around the country. Book banning is a compounding trend. We documented more than 2,500 instances of individual books being banned in the last school year alone affecting four million children in 32 states.

National and local groups purporting to represent the wishes of all parents are overwhelmingly targeting books with LGBTQ+ characters or themes, or primary characters who are people of color.

We must not confuse access to books and ideas with endorsement of their content. Books such as Mein Kampf, The Communist Manifesto, Uncle Tom’s Cabin, and Gone With the Wind are on public and school library shelves as they should be. The right approach to such materials is to contextualize them and to read and teach them with sensitivity and a critical eye, not to deny access. The right answer when it comes to different ideas about books cannot be to cull the ones to which anyone objects. That would too easily leave nothing on the shelf.

Parents have a right and a responsibility to be aware of, involved in, and express concerns about their children’s education. That’s why we have parent teacher associations. Sign up for a parent teach conferences, attend school board meetings, and see school districts across the country publish their curricula. For many of us, myself included, it’s why we check our children’s homework, read to them or encourage them to read each night, and advocate for them when the need arises.
Yet, much of what we are seeing now is not just parents being involved in their children’s classrooms. It is instead an effort to impose the wishes of a few onto entire communities by enlisting the government to act as a proxy and engage in censorship on their behalf.

Supreme Court jurisprudence has repeatedly made clear that the First Amendment, including the right to receive ideas and information, applies in public schools. School boards may not contract the spectrum of available knowledge. We can certainly disagree about and debate training materials, classroom discussion topics, and more. At times materials in use in American schools may be tendentious or heavy-handed, but the right approach to handling this is to raise concerns and work together to address them. The answer is not legislated bans.

Given our work all over the world to fight threats to free speech we at PEN America are particularly attuned to the fact that educational censorship laws and book bans are a long-standing tactic of repressive regimes. Apartheid South Africa banned 12,000 books. The Nazi Party burned un-German ones. More recently Iran banned the study of English in primary school. Hungary banned all curriculum referencing homosexuality from schools. Russian laws ban so-called LGBT propaganda as well as criticisms of the State.

Right now, in the U.S. measures aimed at silencing the exchange of ideas and open inquiry in schools are creating a climate of intimidation and fear that detracts from teaching and learning. We risk giving students only a sanitized narrow education that will constrain their ability to understand and engage with the multiplicity of ideas, perspectives, people, and stories that make up our world. An erosion of trust in our educational institutions, our education professionals and one another risks undermining fundamental elements of our democracy.

I want to end with the words of a speaker at a meeting of the Martin County, Florida School Board earlier this week. A 100-year-old woman named Grace Lynn stepped up to speak indicating she had attended to share her shock and dismay at the recent book bans in her county. She noted that her husband had died young fighting in the Second World War to defend our democracy, our constitution, and our freedoms. She said, “Banned books and burning books are the same. Both are done for the same reason: Fear of knowledge.”

Fear is not freedom. Fear is not liberty. Fear is control. Let us choose courage instead. Thank you.

[The prepared statement of Ms. Johnson follows:]
Good morning. Thank you Chairman Johnson, Ranking Member Scanlon, and members of the Subcommittee and Committee for convening today’s hearing. My name is Nadine Farid Johnson, and I am the Managing Director, Washington and Free Expression Programs at PEN America. It is an honor and a privilege to present testimony today.

Free speech is the bedrock principle of our system of government, the lifeblood of our democracy, and an enabler and guarantor of other freedoms we cherish and enjoy. Before turning to the bulk of my remarks, I will offer a bit about my own background and an overview of PEN America, our mission and work.

First, a brief introduction. I am a daughter of immigrants, a mother of two young, school-aged children, an attorney by training, and a proud American who had the privilege of serving her country as a foreign service officer under both the Obama and Trump administrations. Through stints in the legal, nonprofit, academic, and public sectors, I have consistently and proudly worked alongside individuals of different political stripes whose interests lay not in partisanship but in ensuring the promises of the Constitution would be realized by all. At PEN America, I have the privilege of continuing that effort, working to protect the foundational right to freedom of expression for everyone.

ABOUT PEN AMERICA
PEN America stands at the intersection of literature and human rights to protect free expression in the United States and around the globe. We are proud to be entering our 101st year. Our staying power as an organization is rooted in our nationwide membership and our solidarity with PEN writers’ organizations worldwide, but above all in our mission, which centers on the freedom to write. The PEN Charter, adopted in 1948, calls us to uphold “the principle of unhampered transmission of thought within each nation and between all nations.” Alongside steadfast devotion to free expression, the Charter commits us to do our “utmost to dispel all hatreds and to champion the ideal of one humanity living in peace and equality in one world.” Like the framers of the United States Constitution, the authors of the PEN Charter were prescient about the threats to freedom when speech and expression are curtailed by government action.
We are a nonprofit, nonpartisan organization with an unwavering commitment to free speech, a principle that we view as an underpinning of democracy and a cause above politics. Over its century of history, PEN America has united to protect imperiled Jewish writers in Germany, championed authors imprisoned in Stalin’s gulags, and rallied behind Salman Rushdie when he was targeted by a fatwa by the Ayatollah of Iran and again after the unthinkable, brutal attack on U.S. soil that nearly took his life just last year. We championed Liu Xiaobo and launched the campaign that led to his receiving the 2010 Nobel Peace Prize. In 2015 we gave an award to the surviving staff of the satirical French magazine Charlie Hebdo and, as a result, faced a boycott from a group of our own members who believed the publication was racist and therefore undeserving of such recognition. We have defended the right of figures on both the right and the left, such as Dorian Abbot, Angela Davis, Ilya Shapiro, and Milo Yiannopoulos, to speak and be heard on college campuses. We are accustomed to controversy, and to taking on powerful foes. We remain steadfast in our commitment to the principles of free expression, and to ensuring their defense across ideological divides.

The wide gamut of free expression issues we tackle demonstrates the depth of our commitment to these principles. We have addressed situations as varied as the impact of China’s restrictions on free speech in the mainland and Hong Kong and its rising global influence, including in Hollywood; threats to dissent in Turkey, Russia, and Myanmar; the crisis in local journalism across the United States, a culture of hostility to free expression at colleges and universities; online harassment; disinformation; attacks on press freedom; and digital transnational repression of writers, artists, journalists, and dissidents.

THE CURRENT CRISIS

Today, we are in the midst of the broadest attack on First Amendment rights in schools and universities this country has seen in generations. From book bans to curriculum restrictions, state and local officials across the country are engaging in government-mandated censorship. They are undermining students’ right to receive information, and impairing their freedom to learn. They are putting obstacle after obstacle in front of teachers and librarians to make it difficult for them to carry out their duties as educators.

Time and again in our nation’s history, we have seen waves of efforts to curtail access to books – from the 1637 banning of Thomas Morton’s New English Canaan, which was deemed a “harsh and heretical critique” of the Puritans and saw Morton shunned and exiled; to the Comstock laws restricting the possession or dissemination of material deemed “obscene, lewd or lascivious,” “immoral,” or “indecent”; to the McCarthy and Jim Crow eras, defined by efforts to purge “controversial” books on Communism or race; to the widespread efforts to ban books in the late 1970s and early 1980s. In that most recent period, less than fifty years ago, TIME Magazine recorded censorious efforts in public schools and libraries doubling in five years, affecting “every region in the country, and nearly every state,” and resulting in at least two
notorious book burnings. The storm of book bans swept up such titles as Fahrenheit 451, The Wizard of Oz, and Huckleberry Finn. Even The American Heritage Dictionary was banned, “for the words it contain[ed].”

At every turn these efforts to censor, hide, and deny access to books, ideas, or information have ultimately failed. In every episode, the constitutional rights protected by the First Amendment have been preserved, and the jurisprudence supporting these rights has been strengthened.

About seven years ago, we at PEN America began to be alarmed by what we saw as a rising pattern of censoriousness on college campuses. Specifically, we saw a rise in incidents at institutions such as Yale, Middlebury, and the University of Missouri that alerted us to a trend wherein students seemed to diminish the importance of free speech norms and were increasingly willing to shut down speech when disagreement, discomfort, or offense was likely to occur. We became concerned that students—and some university leaders—were coming to believe that robust protections for free speech and academic freedom were not compatible with the drive to make campuses more diverse and inclusive.

We began a series of reports—And Campus for All: Diversity, Inclusion, and Freedom of Speech at U.S. Universities and Chasm in the Classroom: Campus Free Speech in a Divided America—spelling out in detail our belief in firm, uncompromising protections for free speech and academic freedom. We convened an ideological cross-section of students, faculty and administrators at several campuses to seek common ground on the imperative of reconciling the values of equal education and freedom of speech. We published the PEN America Principles on Campus Free Speech, giving practical guidance on how to deal with threats to free speech, including calls for so-called safe spaces, trigger warnings, and demands for speaker disinvolutions.

When we began our campus free speech work, our concerns in that area emanated in part from a rising awareness that many on the left had become disaffected with free speech as a value, and that many students had never been educated on the essential role of free speech protections in enabling social progress. As a result, students and some faculty did not view free speech as related to the battles they were fighting—whether for racial justice, gender justice, immigrants’ rights, or other issues. They did not prioritize the need to stand up for free speech protections as part and parcel of the quest for social change. We believe that young people must understand the value of free speech, believe in it, and ensure its place firmly in the foundation of the future that they will create.

But attacks on free speech are not limited to college campuses, nor do they come solely from one side of the political spectrum. In the past two years, PEN America has documented an explosion of restrictions affecting free speech in education. These are in several veins: proposed and enacted legislation limiting what can be taught in high school and college
curricula; bans on books in school libraries and classrooms; the introduction of newly punitive measures, including fines and even criminal provisions, aimed at educators; the cancellation of school plays and field trips; the rejection of textbooks on spurious grounds. And, reminiscent of 40 years ago, even efforts to donate dictionaries to some schools have been prevented.

The authority to set curricula and determine school operations vests with the government. But we must distinguish between well-developed, widely accepted methods of interplay between political bodies, educational systems, parents, and citizens and the current state of deliberate methods to exert ideological control over what can be read, learned, or thought about in schools. Teachers are already expected to teach to state standards. There are already channels for dealing with malpractice or misconduct. Parents have opportunities to address concerns with teachers and school leaders. Managing these issues with the imposition of bans, content restrictions, and vague laws is both unwise and undemocratic.

And these proposals are becoming more extreme.

Since January of 2021, PEN America has tracked the introduction of 303 bills, which we categorize as “educational gag orders” in 44 states. Of these, 20 have become law in 15 states, and four more states have enacted such restrictions without legislation. Laws and policies in seven states currently apply to colleges, restricting the education of adults. We estimate that about 118 million Americans, over one-third of the US population, live in the 18 states where these government restrictions on teaching are now in force.

As our August 2022 report America’s Censored Classrooms documented, some bills have been explicit in their targets—forbidding the teaching of specific curricula or squarely banning certain concepts from the classroom. Others do not explicitly target the classroom, but impose broad prohibitions that implicate all public institutions and employees, including public school teachers and college professors. Still others prohibit the introduction of specific concepts within trainings, workshops, seminars, or orientations ranging beyond curricula and classroom discussions. In Tennessee, for example, teachers are currently banned from discussing 14 distinct ideas; the prohibitions include mentioning anything that “promotes resentment” of any current or historical “class of people.” As we noted in the report, “This provision could be construed to mean that a historian of the US civil rights era or of the Holocaust cannot include in a course historical sources that might inspire ‘resentment’ of the Ku Klux Klan or the Nazis, each of whom might be considered a ‘class of people,’ a term that is not defined.”

A new wave of higher education-focused bills this year would go further, effectively eliminating public universities as independent sites of intellectual freedom. A bill in Florida would empower politicians and political appointees to ban entire majors in gender and ethnic studies, rewrite university mission statements, and ban core curricula based on “experimental” or “theoretical” ideas. That could, in theory, include all science classes. Another bill in Texas would create a
statewide McCarthy-style blacklist for faculty and staff deemed to have violated vague prohibitions on ideas promoting diversity, equity, and inclusion. Faculty and students in these states would exist in a state of perpetual fear, knowing that politicians could act against them with impunity if they disagreed with their views or ideas. And at New College of Florida and North Idaho College, politically-motivated trustees have set out to dismantle respected educational institutions, firing presidents and provosts at will and seeking to remake environments of intellectual openness into environments of intellectual conformity.

Legislators who support these bills appear determined to use state power to deny students the freedom to read masterworks by some of our nation’s greatest writers; to learn our history in its full complexity; to see themselves, their families, and their communities represented in their curricula and libraries; and to learn the basic skills of understanding differences and exercising empathy. It must also be recognized that the movement behind these bills has brought a single-minded focus to bear on suppressing content and narratives by and about LGBTQ+ individuals and people of color. As a result, these bills will have tangible consequences for both American education and democracy, undermining the hallmarks of liberal education that set the U.S. system apart from those of authoritarian countries.

In a very short time, we have already seen the chilling effects of this kind of legislation, which has been used to justify suspending sociology courses on race and ethnicity in Oklahoma and Florida, to provide professors at Iowa State University written guidance for how to avoid “drawing scrutiny” for their teaching under their state’s law, and led a trainer to propose to teachers in Texas that they needed to balance having books on the Holocaust with those with “opposing” views. An Iowa high schooler described how a lecture on the Three-Fifths Compromise in the Constitution left most of the class confused because the teacher was unable to explain its purpose while complying with the state’s educational gag order: “Some faculty are revising their courses to sanitize them,” reported one Iowa State University professor. “Fear of what the punishment may be is also motivating people to restrict their speech.” In North Dakota, K-12 teachers are now prohibited from even discussing the ways in which widespread racism has infected American society and the legal system.

In a compounding trend, over the last 18 months we have seen an unprecedented surge of books being banned by school administrators and board members. As PEN America documented in our September 2022 report Banned in the USA, there were more than 2,500 book bans in the 2021-22 school year, in 138 school districts in 32 states.

This school year, the trend has continued apace, with longer lists of books being challenged and removed from student access. National and local groups purporting to represent the wishes of all parents are waging a misleading campaign to brand books with any sexual content as “pornographic” or “indecent.” They overwhelmingly target books with LGBTQ+ characters or themes, forcing these books from library shelves, in many cases without anyone having to read
or evaluate them. This is all now being aided by new state laws that pressure school districts to immediately remove any books about which anyone complains, without regard for pedagogical value, the reason or manner in which a book was selected for inclusion on a school shelf, or the context of the work, let alone adherence to an established review process for such challenges.

Just this month, 92 books were banned in Martin County, Florida, and 99% of the challenges resulting in those bans were filed by a single parent. One book was banned ostensibly because it mentions the Black Lives Matter movement; another, because the challenger said the author was controversial. The lone challenger also said John Green’s *Looking for Alaska* should be banned because it is “depressing,” while simultaneously indicating she had not read it. The book was banned.

In the United States, public and school libraries have available books such as *Mein Kampf* and *The Communist Manifesto* so that patrons can study them as historical texts. Books with dated, racist language, themes, and stereotypes such as *Uncle Tom’s Cabin* or *Gone With the Wind* are also on library shelves, as they should be. We must not confuse access to books and ideas with endorsement of or indoctrination in their content. And we must not view the existence of a mandated official curriculum as a limitation on the liberty to engage in independent reading. The right approach to such materials is to contextualize them and to read and teach them with sensitivity and a critical eye, not to deny access. And the right answer when it comes to different ideas about the availability of books cannot be to cull the ones to which anyone objects. That would too easily leave nothing on the shelf.

What began with a concern over how issues of racial justice and American history were being taught in schools has snowballed into a full scale campaign to ban, excise, and punish the discussion of a wide swath of ideas in education and to put politicians and government bureaucrats in control of all aspects of teachers’ and librarians’ work. Of course there must be room for debate and the presentation of varied perspectives on important subjects in American history. No theory should be presented as dogma, or put above question. Students should be introduced to varied interpretive lenses through which writers and thinkers understand our past and present, and taught to render their own judgments about what is most credible and persuasive. It is also true that, at times, classroom content or training materials in use in American schools may be tendentious or heavy-handed. That happens on occasion in all large systems. The right approach to handling it is for students and parents to raise their concerns with teachers and administrators and work together to address them. The answer is not legislated bans.

We are witnessing a concerted campaign to try to halt and roll back the implications of our evolving, pluralistic society. These measures violate bedrock, constitutional principles that undergird our public educational system: a commitment to the free exchange of ideas, open access to knowledge, and robust academic inquiry.
RISKS AND CONSEQUENCES

While there are enormous and consequential societal and educational risks engendered by this effort, as a free speech advocate I wish to focus primarily on the constitutional ramifications. But first, I want to emphasize a point that is critical not only in terms of how PEN America approaches these issues, but to me as a parent as well.

Parents have a right and a responsibility to be aware of, involved in, and express concerns about their children’s education. That’s why we have Parent Teacher Associations. It is why we sign up for parent-teacher conferences and attend school board meetings. It is why we work with parent liaisons, have the option of family engagement plans, and see school districts across the country publish their curricula. And for many of us, myself included, it is why we check our children’s homework, keep up on their assignments, read to them or encourage them to read each night, and advocate for them when the need arises.

We at PEN America recognize the essential role of parents in guiding and supporting their children’s education. We also understand that some calls for censorship come from parents seeking what they genuinely believe is best for their children, in a time of rapidly changing demographics, expectations, and norms in our evolving and pluralistic society.

Yet much of what we are seeing now is not a natural extension of parents being involved in their children’s classrooms. It is instead an effort to impose the wishes of a few onto entire communities, by enlisting the government to act as a proxy and engage in censorship on their behalf.

Supreme Court jurisprudence has repeatedly made clear that the First Amendment applies in public schools, where young people are taught to understand and appreciate democratic citizenship. Though there is discretion granted to state and local school boards in matters of education, these responsibilities must comport with the First Amendment and the Constitution. As Justice William J. Brennan wrote in Keyishian v. Board of Regents, the state cannot “cast a pall of orthodoxy over the classroom.”

First Amendment protections include the right to receive ideas and information. This extends to schools as well. The Supreme Court has made clear that students have the right, under the First Amendment, to access ideas and information in public school libraries, and that school boards may not “contract the spectrum of available knowledge,” as Justice Brennan noted in the 1982 plurality opinion in Board of Education, Island Trees Union Free School District v. Pico. Thus, there are First Amendment limits on the grounds on which schools may legitimately remove books from their libraries. Under the Pico framework, school officials may not remove books from school libraries for political or ideological reasons. And school boards do not have
discretion to remove and ban books based on an effort to restrict their content. If there are challenges to books, school districts should follow regular, established processes for the review of such materials rather than summarily whisking them from shelves. To do otherwise would be to violate students’ rights to access ideas and information, and as Brennan said, “Our constitution does not permit the official suppression of ideas.”

Courts insist on tightly delimited restrictions on expression out of a recognition that speech prohibitions wield chilling effects, often silencing not only what is expressly prohibited, but a wider band of speech that might be considered close to the line. A prime concern of PEN America’s about the measures that we have termed “educational gag orders” is their vagueness. As Justice Stevens wrote for a unanimous Court in *Reno v. ACLU*, a vague law “raises special First Amendment concerns because of its obvious chilling effect on free speech.” Though courts have specified that even permissible restrictions on speech must be narrowly tailored to meet a legitimate government end, the current slate of bills targeting speech in educational settings mostly lacks definitions or guidance. Many bills of this ilk include bans on vague or contradictory “divisive concepts,” or bar “race and sex stereotyping” and “race and sex scapegoating,” with little explanation of what is meant by these sometimes novel terms. This vagueness casts a wide shadow, leaving educators uncertain about how lessons may be interpreted by students, parents, or government officials.

The imposition of vaguely worded prohibitions governing classroom speech risks rendering entire subject areas and topics off limits as teachers fear anything they say on contested issues—for example, the fugitive slave clause in the Constitution, the *Plessy v. Ferguson* decision legalizing racial segregation, or the Civil War—may run afoul of these restrictions. This effect on pedagogy and intellectual freedom places limits on the professional autonomy of school librarians and teachers.

As a big-tent, free speech advocacy organization, we are mindful that not all threats to open discourse are created equal. The framers of the Constitution most feared viewpoint-specific, politically or ideologically motivated prohibitions on speech enacted by the government with the force of law. That is because restrictions on speech that are backed by the authority of government are more absolute and silencing than other forms of censoriousness. We can certainly disagree about training materials, classroom discussion fodder, and more—and we can and should discuss these issues. But addressing these concerns or disagreements with official, government-sanctioned bans not only removes the opportunity for discourse that is a hallmark of a free society; it also constitutes a far more potent and permanent incursion on speech, and that sets a worrying precedent of government control over discourse.

The broader societal risks the current climate is engendering must also be noted. Controlling and limiting materials undermines the role of teachers, librarians, professors. These bills and the rhetoric behind them are politicizing our classrooms and sowing distrust in educational
professionals on whom we depend to educate rising generations. Book bans pit teachers and parents against each other, and parents against other parents.

The ramifications extend to students’ matriculation as well. The College Board has warned that students in schools that ban materials covered in Advanced Placement curricula could lose certification for their AP courses—a problem dramatically worsened by Florida’s decision to ban the new AP African American Studies course statewide and to threaten bans for other AP courses. Concurrent enrollment courses in history and literature that offer early college credit for high school students are likewise endangered. In K-12 schools, these restrictions are also compounding a nationwide teacher shortage as teachers withdraw from the profession, in some cases motivated by the hostility and pressures generated by these divisive measures.

The repercussions extend to the well-being of the students affected by these bans and bills. Children deserve to see themselves in books. They deserve access to a diversity of stories and perspectives that help them understand and navigate the world around them. Public schools that ban books reflecting diverse identities risk creating an environment in which students feel excluded, with potentially profound effects on how students learn and become informed citizens. As our Supreme Court has noted, allowing students access to ideas prepares them for “active and effective participation in the pluralistic, often contentious society in which they will soon be adult members”—something we should all wish for and strive toward, irrespective of political views.

LOOKING AHEAD

As I noted at the outset of these remarks, freedom of speech is a bedrock of our democratic society, foundational to other rights and freedoms. It is the foundation of a thriving culture of literature, film, art, theater, television, and myriad other creative forms. But it is under grave threat due to an unprecedented about-face in our legislatures, communities and school boards. We are turning our backs on free speech for fear of certain ideas and narratives, and seeking to sacrifice the Constitution and betray the First Amendment in our haste to suppress them.

Given our work all over the world to fight threats to free speech, we at PEN America are particularly attuned to the danger in the trends of the past two years. Educational censorship laws and book bans, particularly those aimed at silencing certain peoples, religions, or viewpoints, are a longstanding tactic of oppressive regimes. In apartheid South Africa, the Publications Act of 1974 permitted the banning of any “undesirable” material. The apartheid state banned 12,000 books, at one point commandeering a steel factory furnace in order to burn reviled texts. In the 1930s, the Nazi Party rallied against “un-German books,” staging book burnings of Jewish, Marxist, pacifist, and sexually explicit literature.
More recently, in 2018, Iran banned the study of English in primary school to ward off “cultural invasion.” As of 2019, the Turkish government had removed and destroyed more than 300,000 books from Turkish schools and libraries since the attempted coup of 2016. Legislation adopted in Hungary in 2021 banned all curriculum referencing homosexuality from schools in the name of “protection of children,” an effort that followed the Hungarian government’s removal of gender studies master’s and PhD programs from the list of accredited subjects in the country.

In Russia, laws ban LGBTQ+ content (via a law titled “For the Purpose of Protecting Children from Information Advocating for a Denial of Traditional Family Values”), offenses to traditional values, and criticisms of the state. A 2014 law banning Nazi propaganda led booksellers in Russia, fearful of running afoul of the ban, to remove Art Spiegelman’s Pulitzer Prize-winning graphic novel Maus from their stores because of the swastika on the book’s cover, despite its potent anti-fascist message. At the time, PEN America issued a forceful statement about the perverse result of Moscow’s censorship. Moscow’s censorship efforts now include a 2022 law banning “L.G.B.T. propaganda” not just for children but in society as a whole, a sweeping provision that essentially criminalizes the depiction of homosexuality in public, online, in advertising, and in books and film.

The United States has long been a global standard-bearer for free speech. As we whittle away at the rights of our own people, so too do we imperil those freedoms for others.

The tactics we are seeing now call to mind disturbing eras in American history, when neighbors were suspicious of one another, rumors threatened to destroy careers and reputations, and fear ruled over our communities. When we have turned our backs on the ideals that underpin our society, we have failed ourselves.

Right now, measures aimed at silencing the exchange of ideas and open inquiry in schools are creating a climate of intimidation and fear that detracts from teaching and learning. We risk giving students only a sanitized, narrow education that will constrain their ability to understand and engage with the multiplicity of ideas, perspectives, people, and stories that make up our world. We risk hobbling our ability to contend with social change; to consider, discuss, and address contentious issues; and to move forward together as a nation. An erosion of trust in our educational institutions, our education professionals, and one another, risks undermining fundamental elements of our democracy.

I want to end with the words of a speaker at a meeting of the Martin County, Florida, school board earlier this week. A 100-year-old woman stepped up to speak, indicating she attended to share her shock and dismay at the recent book bans in her county. She noted that her husband had died young, fighting in the Second World War, to defend our democracy, our Constitution, and our freedoms. And she said: “Banned books and burning books are the same. Both are done for the same reason: Fear of knowledge. Fear is not freedom; fear is not liberty. Fear is control.”

Let us choose courage instead.

Thank you.
Mr. JOHNSON of Louisiana. Thank you.

Thank all our witnesses. You all kept it under five minutes. That is beautiful.

We will now proceed under the five-minute rule that we hold our members to as well. Those questions will begin by myself as the Chair recognizing the gentlewoman from Wyoming for her five minutes.

Ms. HAGEMAN. Thank you. Thank you to the witnesses for being here today.

Parents have every right to know what their children are being taught, what information is being given to them, and how schools are spending our tax dollars. Parents have every right to engage with their local school district and to make their concerns known and to demand accountability for the education of their children. They also have every right to demand that their children not be indoctrinated, but again be educated instead.

Even though there are now multiple ways for information to be provided to parents today, it seems that educational institutions are more opaque than ever. We must ask why is that? Could it be that if parents actually got to see what their sons and daughters are being taught that maybe the far-left agenda of critical race theory, gender confusion, and environmental alarmism might be in danger of elimination? I think that is exactly right.

Ms. Justice, in the NSBA letter that has been discussed calling on parent—that called parents domestic terrorists and asking for the Federal government to crack down on them, the NSBA claimed, quote,

This propaganda continues despite the fact that critical race theory is not taught in public schools and remains a complex law school and graduate school subject well beyond the scope of a K–12 class.

Moms for Liberty has done a great deal of work all over the country, including in Wyoming. Have you found examples of CRT and other concerning political ideology in classrooms?

Ms. JUSTICE. Sorry, first time here. Yes, ma’am, we have. It’s been really unfortunate, and Nicki can speak to this as well, the incidents of propaganda, of ideology in the classrooms.

Many people will say, well, CRT isn’t being taught. No, it’s not being taught, and they’re not teaching a graduate level course in schools. What they are doing is teaching through the lens of critical race theory and critical theory in general.

It’s demoralizing our children, and it’s having an affect that’s causing division among the children. We’re seeing increases of violence across the country that we’re very concerned about.

Ms. HAGEMAN. Well, and I think that is exactly right. So, I am going to be very blunt in my next question. Is it fair to say that the NSBA lied to the Biden Administration and DOJ about the teaching of CRT in our lower grades?

Ms. JUSTICE. Yes, I absolutely think they did. What we saw—the National Center for Education Statistics conducted a study of long-term trends and reading and math assessments for nine-year-olds to examine student achievement during the pandemic. Average scores declined five points in reading and seven points in mathematics compared to 2020.
My question continues to be, why so we continue—you're talking about books here. No one wants to talk about reading proficiency. American parents are very concerned about what's happening in our schools, and I think it was a real effort to silence us when we came to the school boards. The school board members did not want to answer questions and they wanted to protect the system.

Ms. HAGEMAN. I think that is exactly correct. There is one other point that I think is important to make and that is that we have a Committee report that cites numerous instances which the National Threat Operations Center routinely received tips based on everything related to parents and their involvement and attendance at school boards, except they are engaging in unlawful action.

Through the Full Committee and our Select Subcommittee on the Weaponization of the Federal Government, we have routinely exposed that the DOJ has not been going after violent acts or unlawful acts. They have been going after people with whom the left disagrees. Would you agree?

Ms. JUSTICE. Yes, ma'am, I would.

Ms. HAGEMAN. Ms. Johnson, I just have a real quick question for you. Do you believe it is censorship to prohibit teachers from exposing first graders to Penthouse magazine?

Ms. JOHNSON. Do I believe it is—I'm sorry, ma'am. Do I believe it's censorship to—

Ms. HAGEMAN. Do you believe it is censorship to prohibit teachers from exposing first graders to Penthouse magazine?

Ms. JOHNSON. I don't know of any instances in which a—

Ms. HAGEMAN. That isn't my question. My question is, do you believe that it is censorship to prohibit teachers from exposing first graders to Penthouse magazine?

Ms. JOHNSON. I believe that it is important that we have parents, teachers, and educators who are involved—

Ms. HAGEMAN. You are not going to answer my question then. Is that right?

Ms. JOHNSON. I believe it is important to have parents, teachers, and educators involved and understanding what is being presented to students and that there is—

Ms. HAGEMAN. Do you believe that it is appropriate to present Penthouse to first graders?

Ms. JOHNSON. Of course not.

Ms. HAGEMAN. Thank you. I yield back.

Mr. JOHNSON of Louisiana. I thank the gentlelady. I now recognize the Ranking Member, Ms. Scanlon, for five minutes.

Ms. SCANLON. Thank you. As I noted in my opening statement, we have seen a troubling rise in violence, threats, and intimidation against school officials in recent years. I would note that most of these school officials are, in fact, parents, grandparents, mom, and dads in their own right, furthermore, overwhelmingly unpaid public servants, unlike those who are seeking to weaponize the school board proceedings for their own attention getting or political purposes.

Yes, parents have a right to protest vigorously at school board meetings under the First Amendment. Intimidation and threats are not protected by the First Amendment when they go too far. That is certainly what we saw.
It wasn’t people offering peanut butter sandwiches to school board members. It was people saying to school board members, we are going to kill you, or contacting the children of school board members and saying, we are going to kill you and your parents. So, we are not talking about idle policy discussions here.

We are talking about threats against individuals based on their political positions. Political violence is un-American. Ms. Farid Johnson, can you speak to the difference between protected speech under the First Amendment and threats of violence?

Ms. Johnson. Yes, thank you for the question. You are correct that there are certain narrowly defined types of expression that do not receive First Amendment protection. These do include incitement and true threats.

The key with incitement is that the imminence of the reaction, will there be an immediate unlawful reaction as a result of speech advocating illegal conduct? Will there be an immediate violent reaction as a result of the communication? These are quite different from protected speech, even passionate or zealous speech that is certainly protected.

PEN America, we want people to show up at school board meetings. We want people in the community to be able to engage. It’s critically important that we have that discourse. What we also understand is that there are limitations. Those do include, as I mentioned, incitement and true threats.

Ms. Scanlon. Sure. Certainly, we have seen situations where there is a disruption to a public proceeding. In fact, there was one across the Capitol this afternoon as the Republican Chair of a Subcommittee had a father of a child murdered at Parkland removed from a hearing and arrested. So, perhaps the protected speech is in the eye of the beholder at certain times.

I would ask unanimous consent to enter into the record a Reuters report documenting over 200 threats to school officials made during the relevant time period. It is a special report on USA education threats.

Mr. Johnson of Louisiana. Without objection.

Ms. Scanlon. Thank you. I would also enter into the record an article from Chapelboro. Proud Boys Presence Leads to Metal Detectors and Deputies at School Board Meetings.

Mr. Johnson of Louisiana. Without objection.

Ms. Scanlon. Thank you. Ms. Farid Johnson, American democracy relies on an informed and engaged citizenry. How do attacks on the First Amendment in terms of what books students have access to and what subjects teachers are allowed to teach, how does that impact our democracy and hinder student’s ability to participate in real world experiences?

Ms. Johnson. It is critically important that we allow a diverse perspective of viewpoints and information to be taught in our schools. I want to be really clear here that generations of children have read stories about experiences and lives that are different from their own. Reading about the Holocaust does not make one a Nazi.

Understanding what happened during the Jim Crow era does not make on anti-civil rights or otherwise. What we need to be able to do is to ensure that people are informed because as the Supreme
Court has said, when we allow free expression in the classroom because we know that First Amendment rights do not stop at the schoolhouse door, when we allow that type of expression, what we are doing is preparing these students for life in a democracy, a participatory democracy, one that does require us to debate, to understand, and to discuss. The more that we shield people from understanding the world around them, the worse off we will be.

To also say this is a global issue as well. At PEN America, we work on issues all around the world, and we see what happens when authoritarian types of decisionmaking can affect what happens to a populous. It is critically important that we have an informed population that understands how to debate civilly, that understands discourse, and that works together so we can move forward as a Nation.

Ms. SCANLON. I think that is one of the big fears here that it undermines our communities to allow a very noisy minority to dictate what everybody gets to hear. So, it is not that a particular voice is being silenced. It is that we need to work together, parents and teachers, to develop our community standards. So, thank you. I yield back.

Mr. JOHNSON of Louisiana. The gentlelady’s time has expired. I will enter without objection into the record a copy of the Interim Staff Report on the Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government dated March 21, 2023 and entitled, “A Manufactured Issue and Misapplied Priorities: Subpoenaed Documents Show No Legitimate Basis for the Attorney General’s Anti-Parent Memo,” with a conclusion that the overwhelming majority of judicial districts supporting not having heard of any instances or threats of violence being leveled at school board officials. I will now recognize the gentleman from South Carolina for his five minutes.

Mr. FRÉ. Thank you, Mr. Chair, for holding this hearing today and thank you to our witnesses for being here. Families stand at the center of our society and every family has a personal stake in promoting excellence in education. Excellence does not begin in Washington.

This is straight from Ronald Reagan’s 1984 State of the Union speech. Mr. Chair, I think that quote is as true today and even more so than it was 40 years ago. Due to liberals pushing their woke agenda on our kids, school boards have become ground zero for some of America’s most contested issues, mask mandates, critical race theory, pronoun insanity, and rewriting U.S. history just to name a few.

Thankfully, the Fourteenth Amendment of the Constitution reiterates that fundamental right of parents to make decisions as to the care, custody, and control of their children. So, it is only natural for parents to advocate on their child’s behalf. It is interesting that President Biden as a proud father himself fails to relate to parents in this way because as a result of parents speaking out as you have experienced, the Biden Administration and the National School Boards Association colluded to issue a memo to bring in law enforcement to these school board meetings and effectively silence parents.
In November 2021, the NSBA’s letter to the Biden Administration referred to those parents advocating for their children as domestic terrorism and hate crimes. Are you kidding me at this point? When I was a member of the South Carolina legislature, I along with 36 other Republicans called on the South Carolina School Board Association to pull out of the NSBA. Within a week, South Carolina joined the long list of States that were no longer a part of that national association.

These parents are not domestic terrorists. They are simply parents who want the best for their kids. In fact, I would offer that it is important for parents to work with school board members and not to have that divide between them that is arbitrarily put up by this administration. Mr. Langhofer, can you describe an instance where you represented a parent or teaching who was being retaliated against for speaking at a school board meeting?

Mr. Langhofer. Sure, absolutely. We represent and currently still do represent Tanner Cross. Tanner is a teacher in Loudoun County for many years. He went to an open school board meeting to object to a proposed policy which was going to force him as a teacher and all students to participate in the social transition of students.

He spoke his one minute, left, went the next day to school and taught his PE class. He got a call that night, you need to come to H.R. tomorrow. The next day, he was suspended for simply exercising his constitutional right to speak about a proposed policy that was going to adversely affect every student in his class.

We had to file a lawsuit, get an injunction, and get him reinstated. They fought that, even after they lost to the Circuit Court, to the Virginia Supreme Court. We are still down there now fighting that policy that they enacted over the objections of the teachers and parents later that year.

Mr. Fry. Thank you. Do you think the Attorney General’s October 4th memo, did that result in hostility toward parents that were advocating against some of the liberal agenda items that were coming in front of school boards?

Mr. Langhofer. It absolutely did. We had calls from parents and teachers across the country who indicated they were really worried about whether they still had the right to go speak at these school board meetings. When you’ve got the power of the Department of Justice and the FBI telling you that if you go to these school board meetings, you may be labeled by the NSBA and DOJ may target you, it absolutely affected them. It took away their right to advocate for their kids which is their constitutional right.

Mr. Fry. Right, on the one hand it would seem to indicate that parents were not welcome at a school board meeting to talk freely with their elected representatives. Is that fair to say?

Mr. Langhofer. That’s absolutely what’s fair to say because the DOJ issued their letter solely based on the NSBA. The NSBA has now retracted that letter and apologized for it.

Mr. Fry. Right. On the other hand, instead of kind of setting up a collaborative approach where parents are working with school boards, you kind of have that divided line with this memo that makes it a very adversarial process when a parent comes before a school board. Would you agree with that?
Mr. LANGHOFER. Absolutely. I created a much more hostile environment for parents to be able to collaborate in the political process.

Mr. FRY. In your experience, what are some of the topics that parents bring up at these school board meetings? Do you think that these parents have valid concerns in bringing them up at a school board meeting?

Mr. LANGHOFER. Our experience with the parents and teachers that we represent, they were advocating against policies which would force every teacher at a school to participate in the social transition of students as young as kindergarten and first grade without the permission of their parents and hiding that information from the parents. They also were objecting to curriculum and materials and presentation which classified students based on their race or their religion and sex and classified them into oppressors or oppressed. Labeled them and then created this divide at the school that wasn’t there prior to those curricular materials.

Mr. FRY. Thank you, Mr. Chair. With that, I yield back.

Mr. JOHNSON of Louisiana. Thank you. The gentleman’s time is expired. The Chair recognizes the gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chair. Mr. Farid Johnson, you wrote in your testimony that we must distinguish between well-developed, widely accepted methods of interplay between political bodies, educational systems, parents, and citizens and the current State of deliberate methods to exert ideological control over what can be read, learned, or thought about in schools. Can you explain how current book bans and other forms of censorship are ways you describe to exert ideological control of what can be read, learned, or thought about in schools?

Ms. JOHNSON. Yes, sir. Thank you for the question. The issue that we are seeing here is that there is—in our research we have found that there is this sweeping movement to ban all these books in schools, sometimes hundreds of books at a time. What we’re seeing here is a particular direction toward the books that are being banned.

We are seeing books that have topics of LGBTQ+ issues or identities, books that talk about race or racism. What is happening then is that students do not have access to this information. When a book is taken out of circulation, when it is banned from use by a student, that is censorship and its government censorship.

That is denying students the right and the ability to access this information. What that does in a bigger picture is that, again, it points us in a direction whereby we have a narrowing of the understanding of students. We’re doing two things that I think are critical to understand.

The first is that we are risking creating an environment in which students feel excluded. Students deserve to have access to information and to see themselves reflected in books. Not only that but to understand others. We’re also missing the opportunity or we’re throwing away the opportunity really to allow students to develop empathy and to exercise that empathy. Then finally, we are also not preparing our students then for active and effective participa-
tion in our pluralistic society in a way that will make them the engaged adults we hope they will be.

Mr. Nadler. Thank you. Ms. Farid Johnson, the Supreme Court, its plurality opinion in Board of Education v. Pico rejected a school board’s claim of absolute discretion to remove books from a school library. In reaching its opinion, the Court observed that, quote,

... access to ideas makes it possible for citizens generally to exercise their right to free speech and press in a meaningful manner and that such access prepares students for active and effective participation in a pluralistic, often contentious society in which they will soon be adult members.

What effect does censorious legislation have on student’s preparation for adulthood?

Ms. Johnson. If we do not have students who understand the world around them, they will be less prepared to engage in that world. We need students to understand not only different types of people, different types of families, different types of communities. We need them also to understand what has come before.

So much of what we’re seeing in the bans actually has to do with U.S. history and world history. That, again, contracts the amount of knowledge that these students have and allows them—and does not prepare them well to engage. Also, it doesn’t allow them to learn from what came before.

When we’re talking about these situations that have come, sometimes we have many dark periods in history. What we need to be able to do, though, is understand from those periods of history, to learn from them, and to do better. If we don’t give students information, then they won’t be equipped to do better.

Mr. Nadler. Thank you, Ms. Farid Johnson. Did the NSBA letter call parents domestic terrorists? If not, what did it, in fact, say?

Ms. Johnson. I actually don’t have the letter before me. My understanding is that it did not refer to them—refer to parents as domestic terrorists. I’m a parent. I’m a parent who gets involved in her children’s education.

Some might use the term, helicopter, to describe me. I wear that badge with pride. It is something that is really important for parents to be engaged.

PEN America, we consistently stand up against the chilling of speech. We believe that people have a right and frankly a duty to speak up and be heard at school board meetings and other public fora. We would oppose efforts to restrict that.

We also understand that true threats, whether they be against school members, Supreme Court justices, Members of Congress, these must be taken seriously. We believe that we can achieve both. We can ensure that you have a right to speak and without infringing on or chilling speech.

Mr. Nadler. Thank you. Finally, Ms. Farid Johnson, what are you currently hearing from parents, students, librarians, and teachers? What challenges are they facing and what are they most concerned about?

Ms. Johnson. So, we’re hearing quite a bit? I will say—again, I mention I’m a parent. Most parents, we’re tired. It’s making breakfast and seeing what’s coming up in homework and what’s on the schedule and who has what sport.
We are also wanting to ensure that our school systems are really working for everyone. That means that we don’t have the viewpoints of one or two or a handful of parents then twisted and used by the government to censure. That’s really what we’re worried about, from teachers, from librarians.

There’s an incredible study by RAND recently that talked about over a quarter of teachers who have in these 20 different States where these ego bans have passed. They are worrying about they’re examining their curricula. They’re concerned about potentially offending someone.

That’s the situation in which I’m not actually allowed because of their jobs, the jobs they were trained to do. Same thing with librarians, and we see the empty shelves, pictures of empty shelves. They’re not allowed—they’re not being able to do their jobs, and they’re being asked—

Mr. JOHNSON of Louisiana. The gentlelady—

Ms. JOHNSON. —to take on something that is really beyond the scope of their role in a way that ultimate chills their speech in terms of their ability to do their job, I should say.

Mr. JOHNSON of Louisiana. OK.

Mr. NADLER. Thank you. I yield back.

Mr. JOHNSON of Louisiana. Thank you. Time has expired. Chair recognizes the gentleman from Texas for his five minutes.

Mr. HUNT. Thank you, Mr. Chair. I want to thank the witnesses for being here. I really appreciate your time. Really appreciate it. Thank you.

When parents begin exercising their right to question their local school boards during the height of COVID amid mask mandates, woke curricula, and harassment in schools, how did the DOJ respond? The Department of Justice responded under Merrick Garland with directing the public to report threats of violence to school board members, officials, and workers in our national public schools to a national hotline. One particular case, a mom was reported to the hotline as a threat because she was (a) a conservative, and (b) she was a lawful gun owner like myself.

The complainant alleged that the mom was a threat because she belonged to a right-wing group known as Moms for Liberty. I have a real problem with identifying people like this because it is your right to belong to wherever you want to belong to. That is your freedom.

Another investigation opened because a tip to the hotline, a dad was investigated because according to the complainant the dad fit the profile of an insurrectionist. I don’t really know what that means, but that is interesting. He had a lot of guns and threatened to use them.

When the FBI asked the complainant about these threats from the dad, the complainant admitted that no specific information or observations or any crimes of threats. According to the FBI, not one of these school board-related investigations resulted in Federal arrest or charges, not a single one. Recently, the DOJ announced that they were going to continue to prosecute people from January 6th to the tune of around 1,000 more people to be charged in a not so distant future.
Now, January 6th was over two years ago, and the DOJ is still looking to charge more people. Yet, when there is a true domestic terrorist threat like Antifa, the DOJ did not direct the people to a national hotline. Where do they report these threats to our communities?

Now, my colleagues on the left will tell you that Antifa doesn’t exist. It is an idea. My question is, where is the intellectual curiosity to determine how Antifa, a highly coordinated domestic terrorist organization, is funded and organized.

The DOJ did not set up a hotline for Antifa. They set up a hotline for you. No Federal resources were set aside to investigate the violence that we saw unleash across this country during the summer of love in 2020. Please note some of these photos.

That is not January 6th. That is May 31, 2020. That is right in front of the White House. That is where the President lives. At the time, President Trump was ushered to a bunker because his life was being threatened. Where was the hotline? Next photo.

That is not January 6th either. That is July 27th. That is in Portland, and that is Antifa rioting and pillaging our country. Where was the hotline? Next slide.

Well, hot damn. That is not January 6th either. Those are more rioters that are destroying and rioting in Salt Lake City. Next slide. I believe—is that it? Wait, there is more.

That is not January 6th either. That is June 1, 2020, and that is the streets of D.C. They are being riot and pillaged by rioters. Where is the outrage? Where is the hotline?

This is what domestic terror looks like. This is not a school board meeting. There is no hotline for any of these riots. We are going to have a hotline that is going to report parents for caring about their children’s education.

Even further, the DOJ would rather investigate 1,000 more people from January 6th than any single person in these photos. What a shame. That is why this is no longer the Department of Justice. It is the Department of Subjective Justice. With that, I yield back.

Mr. JOHNSON of Louisiana. Thank you, gentleman. Chair recognizes next the gentleman from Georgia, Mr. Johnson.

Mr. JOHNSON of Georgia. Thank you, Mr. Chair. My friends on the other side of the aisle, the MAGA Republicans want you to believe that ex-President Trump won the election and is still the President. They want you to believe that the insurrection of January 6th was not an insurrection. It was just a tourist visit.

They want you to believe that the tooth fairy is woke and anti-Christian. They also want you to believe that they will find something incriminating in Hunter Biden’s laptop. They also want you to believe that there are some chilling of parents’ fundamental rights by the Biden Administration.

There is absolutely no evidence to support the MAGA conspiracy theories about far ranging Federal government effort to chill parents’ speech. If the MAGA Republicans were truly concerned with protecting free speech, they would focus on the efforts of some Republican controlled State legislatures to ban books, censor our history, and limit what can be discussed in schools. According to research by PEN America, State lawmakers have introduced 303
educational gag order bills since January 2021 and have instituted more than 2,500 book bans in the 2021–2022 school year.

Now, if MAGA Republicans were interested really in protecting free speech, they would not throw out grieving parents from a congressional hearing like they did today for voicing their opinions about their children being killed by gun violence. Schools are where children learn how to be engaged and thoughtful citizens in a democracy. These educational gag orders that are being promoted by some of these witnesses today are such that they prevent children from learning their full history about what really happened in America and learning basic skills to understand and analyze different viewpoints.

How can we have a healthy democracy if we put blinders on our children’s education and act like an authoritarian regime? Beyond that, these educational gag orders erase the experiences of our Black children and our LGBTQ children. Kids deserve to know and see themselves in books. They deserve to be able to express their true selves. Children of all races deserve to learn their history so that they understand the present. How can we expect adults of the future to consider and address contentious issues if they are taught as children that they should shut down discussion of an opposing idea, deny uncomfortable truths, and erase the existence of people who are different from them?

We should all be able to agree that State-imposed censorship and book bans violate our cherished right to free expression and send the wrong message to children about core principles of democracy. Now, Neily, you are president of Parents Defending Education which takes money from the Koch brothers. Isn't that true? Well, you take money from the Koch brothers. That is my question. Isn't that correct?

Ms. Neily. We believe in donor privacy, and I do not discuss where our money comes from. However—

Mr. Johnson of Georgia. All right. Let me—

Ms. Neily. —I do actually—no, I'd like to—I'd like—

Mr. Johnson of Georgia. Reclaiming my time. Ms. Justice, your group is a dark money group, and you got your start opposing mask mandates to protect children and school workers from COVID. Isn't that true? Thank you, ma'am. Mr. Langhofer—

Mr. Johnson of Louisiana. If you speak, make sure you push the button. Hold on. Mr. Johnson, hang on just a second. I want to remind everybody to push the button so we can hear your voice when you respond.

Ms. Justice. May I answer now?

Mr. Johnson of Georgia. Mr.—

Mr. Johnson of Louisiana. Yes, you can answer.

Ms. Justice. Oh, thank you. Sir—

Mr. Johnson of Georgia. Reclaiming my time.

Ms. Justice. I didn't have my mike on.

Mr. Johnson of Georgia. Mr. Langhofer, the Southern Poverty Law Center has designated the Alliance Defending Freedom as an LGBTQ hate group. Isn't that correct?

Mr. Langhofer. Alliance Defending Freedom is one of the world’s most respected Supreme Court advocates. We've won 14 Su-
preme Court cases in the last 12 years. We advocate for the rights—
Mr. JOHNSON of Georgia. You are a hate group, are you not?
Mr. LANGHOFER. —of all people, all walks of life.
Mr. JOHNSON of Georgia. You have been designated as a hate group, correct?
Mr. LANGHOFER. We are an experienced Supreme Court advocacy organization—
Mr. JOHNSON of Georgia. I will yield back my time.
Mr. LANGHOFER. —that advocates for everybody’s rights.
Mr. JOHNSON of Louisian. Yes, you yield back. SPLC has zero credibility. They have made a habit over the last four years of labeling all conservative groups as hate groups. So, you need to expand your sources.
Mr. NADLER. They labeled all hate groups as hate groups.
Mr. JOHNSON of Louisiana. OK. All right. The gentleman’s time has expired, and the Chair now recognizes the gentleman from Texas, Mr. Roy.
Mr. ROY. I thank the gentleman from Louisiana.
Ms. Neily, I know you wanted to comment just a minute ago. I just wanted to see if I can get you to within maybe two or three minutes so I can go to another subject explain a little bit of the great work that your organization has been doing.
I think you’re one of the true experts here and one of the heroes in exposing what has been going on in this administration to target parents.
On September 29, 2021, the National School Board Association sends a letter to President Biden equating parents to domestic terrorism. Scott Smith was one of those people. I invited him to be my guest at the State of the Union.
He was trying to defend his daughter to a school board and then he suddenly becomes the poster father for, quote, “domestic terrorism.” The superintendent at Loudoun County has been fired. The Commonwealth attorney on the case has been removed.
On October 4th after that September 29th memo the Attorney General put out a memo, and I know that the gentlelady is familiar with it, on October 20th and the FBI Assistant Director of Counter-terrorism, sent an email referencing the October 4th Garland directive and then established the threat tag domestic terrorism which the Judiciary Committee Ranking Member just blithely just sweeps aside. It would be not concerning at all for an American to be—have a threat tag associated with them as a domestic terrorist.
This year on January 11, 2022, you told officers—he was writing a letter to provide information to the White House from a request from Secretary Cardona. I want you to explain that, and on February 14, 2022, NSBA leadership knew a DOJ memo before its release.
Can you walk through all your great work through the Freedom of Information Act to establish these facts that we are now relying on to understand the dangers of this administration?
Ms. Neily. Through the Freedom of Information Act requests that we received back from the NSBA board members and their districts, two of the board members, Kristi Swett from the Salt Lake City School District, was corresponding with Marnie
Maldonado from, I believe, Washington State, and she speculated that Secretary Cardona had been the impetus for that letter.

I know that this Chair and this Committee has requested documents from the Department of Education and Department of Justice, which have not yet been turned over to them by either department and so we are unable to prove the veracity of that.

That is something that, again, an Executive Committee Member of the NSBA asserted and I think it’s something that the American people deserve answers on. The fact that Mary C. Wall, who is a Senior Advisor in the Domestic Policy Council at the White House, was intimately involved in this, maintains her job to this day, and is, I believe, a leader in the COVID–19 Response Team, has not yet been held accountable for this.

No one who was involved in the genesis of this memo has ever been called to account for this and so we demand answers on that. I think we deserve to know answers that how our tax dollars were weaponized against us as American citizens. This is a betrayal of us as Americans.

Mr. ROY. Is there any doubt in your mind that there was collusion between the National School Board Association and the White House and the Department of Justice to target parents and coordinate the threat tag of domestic terrorism in light of the engagement and parents and school boards like Scott Smith?

Ms. NEILY. There’s no question in my mind whatsoever. This had been in the works for several weeks before. There was also evidence at the National Association of Secondary School Principals they released a statement on September 16, 2021, calling for Federal intervention.

The American Association of School Superintendents also put out a statement, although they in NSBA documents that were later released in May 2022, declined to request Federal intervention. It feels very much like there was an effort afoot by a number of outside organizations to gin up support for a pretextual investigation by the Federal government.

Mr. ROY. Moving on to another subject in my minute and a half that I have left, I’ve heard a lot of colleagues on the other side of the aisle talking about book bans and accusing people in Florida, particularly Governor DeSantis and the people of Duval County, Florida, saying they want to ban books.

Well, let me just say this. I hope they’re successful in banning a number of books. The question is which are those books? Are those books, for example, “Gender Queer: A Memoir”—that book or “This Book is Gay.”

In that book, there are all sorts of depictions, depictions with body parts, the male body parts. I can’t even put on the screen the stuff that is in this book “Gender Queer” where there’s two men engaged in a sexual position, another page where I can flip to where there’s two men engaged in oral sex. Another picture here in which there are any number of ridiculous graphic pictures that are being put in front of our kids in schools.

Now, my question for this entire panel is do you believe that parents have a right to know whether this stuff is in their schools, in the libraries, or being pushed or promoted by teachers in their
schools. I would like a yes or no answer from each member of the panel. Start with you, Ms. Neily, and work down.

Ms. Neily. Yes, absolutely.

Mr. Langhofer. Absolutely.


Mr. Roy. Ms. Johnson?

Ms. Johnson. Yes. Parents have a right to know.

Mr. Roy. Parents have a right to know. Well, that’s good to know. I would like to submit these for the record without objection of the Chair.

Mr. Johnson of Louisiana. Without objection.

Mr. Roy. I would also like to submit for the record an article called, “Facts about Library Books in the Duval County Public Schools,” which makes very clear that there are no books being banned about Rosa Parks or Roberto Clemente, that in fact there was a process for reviewing the books, that these books have been put on the shelves, left on the shelves.

There are 13 books about Rosa Parks on average in every elementary school in Duval County. Our colleagues on the other side of the aisle are lying about it. The facts are here, and I’ll submit this to the record, and I yield back.

Mr. Johnson of Louisiana. Very good. Without objection.

Mr. Johnson of Louisiana. I thank the gentleman. The Chair now recognizes the gentleman from California, Mr. Kiley, for five minutes.

Mr. Kiley. Thank you, Mr. Chair, and thank you for organizing this hearing on such an important topic, which the committee has very carefully laid out what happened.

We had the powers of the Federal government—counterterrorism powers, criminal powers, law enforcement powers—mobilized for the purpose of restricting and chilling the most core protected form of speech. That is the right to petition your government and to try to seek changes and on the most important of topics, the education of one’s children.

I had hoped this would have been a bipartisan effort toward accountability. After all, the National School Board Association, which laid out the predicate for this whole thing with its letter, has apologized for it.

Yet, instead of a bipartisan inquiry into what happened here and what reforms we can make, the other side of the dais has engaged in an exercise of what aboutism, saying, well, we’re not going to even address this but what about this whole other issue? As we have learned in the course of this discussion this other issue is really a red herring.

So, Ms. Johnson, language really matters, and you throw around terms like book bans and censorship and gag orders. So, I guess I’ll just ask you what, in your view, is the difference between banning books and selecting age-appropriate materials for classrooms?

Ms. Johnson. Thank you for the question.

What we’re seeing now in terms of banning books—I’ll back up a minute. PEN America defines a book ban as the removal of material that have been previously available for students, whether that material is being removed for, as a permanent matter or for a re-
view, that sometimes turns into a long form review and ultimately ends in or it results in, excuse me, the access to the book being removed.

When we're talking about a book ban, what is happening is the government—the heavy hand of government coming in and saying that this book may no longer be accessed by children.

Age appropriateness is a different matter. When we're talking about age appropriateness there are actually a number of frameworks that exist for this. There's a Lexile framework that talks about what books should be—how books should be categorized and what ages.

There are publishers who talk about this book is for young adults, this book is children—

Mr. KILEY. Sure. So, let's just take an example. You said earlier that you think "Mein Kampf" be available in classrooms.

Ms. JOHNSON. What I said is that "Mein Kampf: the Communist Manifesto" and other such books are available in public and school libraries and should be so we can learn about them in a historical—

Mr. KILEY. And should be. So, did you mean for high school or elementary school?

Ms. JOHNSON. That is not for me to say, sir. I am not an expert in terms of the age appropriateness.

Mr. KILEY. That's fair. So, if "Mein Kampf" were not or were in elementary school and they decided we're not going to have it there anymore would that be a book ban?

Ms. JOHNSON. If it had been in an elementary school and was removed and placed in the high school, that's a good question. I mean, look, it depends on the actual situation, and you're talking to someone who's going to—

Mr. KILEY. You're right. It does depend—

Ms. JOHNSON. I know. I mean, I'm not trying to be—

Mr. KILEY. It does depend on the situation.

Ms. JOHNSON. It depends on the situation.

Mr. KILEY. So, clearly, you agree that there are some books that shouldn't be available to some grade levels?

Ms. JOHNSON. I think that from my perspective as a parent there are some books that I would not want my children to read. You might have a different perspective than I do. You might say those books are fine for parents.

Mr. KILEY. That's right.

Ms. JOHNSON. I completely respect that.

What my concern is, sir, is that when—it was my decision and I say, I want you to ban all these books and the school board says great because she said so. That's what I don't want to happen because it is not up to me. It is not up to me as one parent to—

Mr. KILEY. That's right, and you have school boards who are making these decisions with input from the community. So, I just want you to be careful about the language that you use because you as well think it's appropriate to limit access to certain types of materials in classrooms.

You just go ahead and say that anyone who disagrees with you on the particular limitations that are put in place is guilty of ban-
ning books or violating the First Amendment when that just isn't the case.

Now, on a related topic, are you aware that right now schools are shut down in the Los Angeles Unified School District?

Ms. JOHNSON. I am aware of that, yes.

Mr. KILEY. Because of yet another school shutdown and strike. Are you aware that in that school district kids were out of class for up to a year and a half?

Ms. JOHNSON. I was not aware. You mean during COVID?

Mr. KILEY. During COVID. In many districts across the country, of course, schools were shut down for extended periods.

How many books did kids have access to inside of classrooms, inside of school libraries, in those schools when they were shut down?

Ms. JOHNSON. That I don't know if there are ways to bring—if there were some students who had access to books that were brought to them. That I can't tell you.

Mr. KILEY. Certainly, not very many, I would think. Is that right?

Ms. JOHNSON. There's a difference, sir—I'm sorry?

Mr. KILEY. Certainly, not very many books were available. Is that right?

Ms. JOHNSON. Ostensibly, that would be correct. There's a difference here between—

Mr. KILEY. OK. I'm sorry. I'm out of time. I'm sorry to cut you off. I just want to say as you might be aware Ms. Justice and parents like her tried to get schools open, and we know at this point it was a catastrophic mistake to keep them closed, and that enabled students to have access to all the books that were there.

You've been fighting—your whole testimony has been getting access to a few, but she got them access. They fought to get students access to all the books. So, I just—would you like to take the opportunity to thank Ms. Justice and the other parent leaders for their efforts?

Ms. JOHNSON. I add that Ms. Justice was a member of a school board, which I really appreciate. I think the public service is incredibly important. Look, what we're talking—

Mr. JOHNSON of Louisiana. OK, wait. Hold on. The gentleman's time has expired. I've got to move on.

The Chair recognizes the gentlelady from Texas, Ms. Escobar.

Ms. ESCOBAR. Thank you, Mr. Chair. This has been a surreal hearing—a surreal experience. I am so fortunate. I'm the mother of two children. They're adults now—26 years old. My son is 26 years old. He's in law school. My daughter is 24 and she's working on her license to be a social worker.

I am so proud of them, so proud of the role that their father, my husband, and I played in their education and our goal always was to ensure that our kids had a robust education, that there were great debates that they participated in so that they could be part of a country that honors and uplifts important debates and discussions.

I wanted them to be prepared as prepared as possible for the workforce and I am so grateful that they are not young people in school today.
When I talk to constituents of mine who are parents, with school-aged children who share with me what their number-one concern is, their number-one concern is that their kids will not come home because we are a country awash in guns, and that their kids have to go through horrific drills to—that mimic school shootings.

That is the real crisis in our schools today. That is the real crisis for young people in America, and instead of talking about that and confronting that crisis and talking about how we can create places that are safe for kids so that they can survive yet another day without fear of gun violence, this is what we're talking about.

There's not been any evidence whatsoever of anyone being arrested or prosecuted and instead now we have this extremist agenda that seeks to create the most limiting experience possible for children by limiting their access to important books about slavery, about the Holocaust, about aspects of human history that are important for us to learn from.

Ms. Johnson, can you talk a little bit about the real chilling effect that laws such as the educational gag order can have on parents, students, and teachers?

Ms. JOHNSON. Yes, thank you for the question. What we are seeing with these laws is, as you know, it's essentially a threefold issue. The first is that educators now do not know what they are permitted to say based on what a political official has told them they can or cannot say in the classroom.

The second is that there are now parents who are having less and less of being able to have input into what's happening in the schools, and as mentioned before we do believe that parents have an essential role to play alongside teachers, alongside other educators, in what happens in schools.

The third is that the students are not getting information. The entire point here is that we are talking about access. We want students have access to information. As I've noted previously, the Supreme Court has held—it held long ago that the First Amendment rights are not stopped at schoolhouse gate.

That also that also extends to students and it extends to the receipt of information. When we are not allowing students to have access to information, when we are not teaching them about the very basics of our history, we are doing them a disservice.

I completely understand we might have disagreements in this room. We might agree—maybe we'd be surprised by with whom we agree about what actually should be taught in the classroom, to what age and what manner. I completely get that.

What we don't want to see is a legislative ban saying it must be silenced. What we need to be doing is talking about it. Let's converse. Let's discuss. Let's debate. Let's figure out what's the best. Let's not silence.

Ms. ESCOBAR. Thank you so much, Ms. Johnson. One last thing that I'd like to say. I've had the privilege of meeting with many teachers in my district and teachers have a really tough job.

They have to balance a lot of needs that the kids have and the last thing that we should be doing with professionals who we are lucky to have in the workplace like the great teachers that teach across this Nation is inserting politics into their job.
So, it is my hope that this Committee can and the Subcommittee can get back to focusing on real issues that American families face so that we can create the best kind of environment for our kids so that they can then go on and become as competitive and brilliant as they can be as part of our workforce future.

Thank you so much. I yield back.

Mr. JOHNSON of Louisiana. Thank you. The gentlelady yields back. The Chair recognizes the Chair of the Full Committee, Mr. Jordan, for five minutes.

Mr. JORDAN. Thank you. Ms. Johnson, in your written remarks you said that the PEN Center has a steadfast devotion to free expression. In fact, I counted 16 times in your written testimony you used the terms free expression or free speech.

I just want to know two weeks ago when Senator Schumer stood on the Senate floor and said to a major American news outlet that they should not play video footage from January 6th was that consistent with a steadfast devotion to free expression?

Ms. JOHNSON. I'm sorry, sir. When Senator Schumer—

Mr. JORDAN. Told Fox News don't play video footage from January 6th. Was that a commitment to steadfast devotion to free expression?

Ms. JOHNSON. Senator, I cannot speak to Senator Schumer or what he intended.

Mr. JORDAN. I'm not asking you to speak for him. I'm asking you to comment on what he said.

Ms. JOHNSON. If there is an issue of national security, sir, I'm not going to comment on what—

Mr. JORDAN. How about the very next day when this Committee released a report where the Federal Trade Commission sent a letter to a private company Twitter and asked them who were the journalists you were talking with and named four journalists by name? Would that be consistent with a steadfast devotion to free expression?

Ms. JOHNSON. Sir, PEN America consistently works to defend the rights of journalists, including their ability to do their job. That's all I will say about that.

Mr. JORDAN. The next day two of those four journalists mentioned in the FTC’s letter to Twitter testified in front of this Committee, and Democrat Members of Congress asked those two journalists who their sources were. Is that consistent with a steadfast devotion to free expression?

Ms. JOHNSON. Sir, PEN America consistently works to ensure that journalists can do their job and that means allowing for anonymous sources as appropriate.

Mr. JORDAN. Good for you. How about this? Two days into the Biden Administration, literally two days, January 23, 2021, Clark Humphrey, Executive Office of the Presidency, White House office, sends an email to Twitter where he says this: “Wanted to flag the below tweet and am wondering if we can get moving on the process for having it removed ASAP.”

Would that be consistent with a steadfast devotion to free expression?
Ms. JOHNSON. Sir, I don’t know the content of the tweets. I can’t speak to that.

Mr. JORDAN. I’ll give you the content. They cited a tweet from Robert F. Kennedy, that conservative Republican Robert F. Kennedy, Jr., where he was raising some concerns about vaccines and the White House two days into this administration said they wanted that tweet taken down. Would that be consistent with free expression?

Ms. JOHNSON. I will say two things about that. One is that not having seen this—and I appreciate your reading it to me—one is that we would like to err on the side of permitting content, because I think it’s important to have content—

Mr. JORDAN. I’m with you. I’m with you. That’s why—

Ms. JOHNSON. OK. I think the other, sir, is that we would also want to ensure that if there is misinformation or disinformation being promulgated that we’re able to address it and so—

Mr. JORDAN. Well, that’s when it gets scary. That’s when it gets really scary. I’m surprised you said that after mentioning free expression 16 times in your written statement that suddenly now unless it’s misinformation as defined by you. That is entirely contrary to what the First Amendment is about.

How about this? The National School Boards Association letter that was the catalyst for most of this, frankly, all this was sent on September 29, 2021. I just want to read the first sentence. “America’s public schools and education leaders are under immediate threat.” The letter then goes on to say, “the NSBA requests a joint expedited review by the Department of Justice. Such review should examine the use of the PATRIOT Acts in regard to domestic terrorism.”

Do you agree with the NSBA letter sent on September 29, 2021?

Ms. JOHNSON. Sir, we are not—PEN America has not [inaudible] on that letter. I will just say I understand—

Mr. JORDAN. No, I’m just asking do you—you—well, how about those two sentences I just read? Do you agree with the tone of that in that letter? Do you agree with that?

Ms. JOHNSON. I’ll say this that—sorry.

It is really important that any member of a community is able to stand up before a school board and voice their opinion. It is equally important that a school board member is able to carry out this critical important public service, sir, in a way that keeps their safety. That’s really what I’ll—

Mr. JORDAN. Well, you know who disagrees with it?

Ms. JOHNSON. Who disagrees with me, sir?

Mr. JORDAN. All kinds of people. The most important entity who disagrees with it is the School Boards Association themselves because 23 days later they rescinded it. Twenty-three days later they said this, “we regret and apologize for the letter.”

There was no justification for the language included in the letter. So, the idea that the Attorney General still continues to defend his memorandum based solely on this, as Ms. Neily pointed out in her opening statement, I find alarming.

To our three witnesses, Ms. Justice, Mr. Langhofer, Ms. Neily, thank you so much again, to your point earlier, Ms. Neily, we are
going to talk to these people. We talked to Ms. Garcia today. We had a transcribed interview with her.

Mr. Slaven is coming in next week. We’re trying to talk with Ms. Wall and a host of other folks who concocted this whole thing as our report that we released two days ago points out—concocted this whole thing and the key line in that report, not from Republicans, not from Mr. Johnson, not from Republicans on the Committee, but from a U.S. Attorney—Democrat U.S. Attorney in the Biden Administration when he said this appeared to be a manufacturing crisis. It was all put together for politics and that’s what we all know.

With that I yield back.

Mr. JOHNSON of Louisiana. I thank the gentleman.

The Chair recognizes gentlelady from Texas, Ms. Jackson Lee, for five minutes.

Ms. JACKSON LEE. When I think of education—I thank the gentleman for yielding—I think of children, and I just left the floor in the midst of the discussion of legislation, H.R. 5, that is labeled Parental Bill of Rights.

Even in that debate I refuse to engage in who was more for parents than who was not for parents, who had the upper hand, friends on the other side of the aisle or Democrats?

I did speak for myself and what I believe is the view of Democrats who happen to be parents as well that the rights of parents are paramount with the rights of children and teachers, and even support staff, all who contribute to the education of our number-one priority, our precious priority, and that is our children.

So, I think as I look at this particular hearing, back of my mind I’m wondering what cause are we here for? Are we trying to enhance a greater opportunity for our children to be educated, to be safe and secure?

When I think of where we are in this hearing, I would wonder whether or not the vast majority of everyday Americans would think that they could not be heard. Their parents cannot be heard before school boards, and we know that they have the right to debate vigorously all aspects of any disagreement that they may have with a school board.

I’m not sure why the letter that was sent was then withdrawn. May have been some form of intimidation. Who knows? It is hypocritical to complain about the Federal government chilling parents’ free speech while cheering on book bans.

If the majority is truly concerned with protecting free expression, then it should focus on the efforts of some Republican State legislators to ban books. I was just on the floor with a book about Professor deGrasse. That book—he is an astrologist, banned book. Looks like a lovely book to me with pictures.

A story about Nelson Mandela that brought together South Africa peacefully after a tumultuous civil war—banned book. Diversity, equity, and the inclusivity banned by the Governor of the State of Texas.

We should all be free to speak with free expression, but at the same time as we do so, I think we have to recognize, again, the importance of being fair and balanced. Banned books, intimidating language, which I think is important to note.
The Supreme Court, for example, though we do have a question. What is obscenity, obscenity as it relates to a Supreme Court justice, but obscenity, defamation, fraud, incitement, truthers, speech integral to criminal conduct and child pornography?

So, White supremacy bias may result in someone's death. Should that not be questioned? Not eliminated. If it results in someone's death or assault, it is destructive.

Ms. Johnson, in acknowledging the other witnesses, and I appreciate your presence here today, I do want to hear your answer that you have probably repeated before.

This is in the backdrop of board members being viciously attacked by words by very angry parents in the midst of the pandemic. Most of that was there. How do you frame the value of free speech juxtaposed against the safety of individuals who are in responsible positions who likewise have rights?

Ms. Johnson. Thank you for the question.

I think it's important to have both. I think that we can achieve a safe environment, a safe public forum in which public servants such as school board members and others can receive commentary, feedback, information, and share it as well, and have a situation in which community members from parents, teachers, and other others in the community can also engage.

I want to be really clear here that parents are free. Community members, broadly, are free under the First Amendment to criticize their schools, their administrators, and governments. That's part of what makes America “America,” and they can do so even in offensive and vitriolic ways.

There is a limit, as we know, and that is when we are talking about incitement or a true threat. So, I do believe that we can have both and we should have both. I think it's critically important that we do.

Mr. Johnson of Louisiana. The gentlelady's time has expired.

The Chair—

Ms. Jackson Lee. I yield back.

Mr. Johnson of Louisiana. Thank you.

The Chair recognizes the gentleman from North Carolina, Mr. Bishop.

Mr. Bishop. Thank you, Mr. Chair. Ms. Johnson, I'm interested in pursuing that little bit. The Chair titled this hearing “Free Speech: The Biden Administration's Chilling of Parents' Fundamental Rights,” and, of course, they're talking about the Attorney General's memo.

Folks on the other side of the aisle have been interested in talking about what you've described as book bans and educational gag orders.

I just wondered and, of course, you're free to put anything you want to in your testimony. Did you consider that the subject the Attorney General's memo—well, let me ask it this way. Did PEN America condemn the Attorney General's memo?

Ms. Johnson. We did not put a statement during the time that I know, sir.

Mr. Bishop. So, and you have said you were very carefully—and you are a lawyer, a First Amendment lawyer and you know this
stuff. You laid out earlier what the First Amendment doesn’t pro-
tect if there is actual incitement of imminent violence.

Ms. JOHNSON. Yes, sir.

Mr. BISHOP. So, does it matter of concern to you whether the At-
torney General of the United States, the highest law enforcement
officer, issued a memorandum for action in every judicial district
in the concerning activism relating to school boards? It matters a
great deal, doesn’t it, whether there was a sufficient factual predi-
cate of actual threats or incitement of violence as opposed to that
even rambunctious advocacy that you made reference to?

Ms. JOHNSON. I think it’s critically important that people have
a right to speak out and I do believe that. We would oppose efforts
to restrict protected speech, absolutely.

Mr. BISHOP. So, why do you deem that subject unworthy of com-
ment?

Ms. JOHNSON. I can’t speak to what—

[Simultaneous speaking.]

Mr. BISHOP. Did you engage in a wide gamut of free expression
issues, is what your testimony says.

Ms. JOHNSON. That’s true. Yes.

Mr. BISHOP. That is what you do.

Ms. JOHNSON. That’s what we do.

Mr. BISHOP. Here the highest law enforcement officer in the
country did something that can only be described as chilling. What
it appeared to me when I went through every footnote in that
NSAB letter that the Attorney General relied on. I couldn’t find—
there is maybe two across the country acts involving busting a door
in one case. I didn’t find—and a lot of these responses coming back
from the United States attorneys and all these meetings that they
summoned said there weren’t any—then local officers, when they
got in touch with them, said you guys are doing something you
have no business doing. Is that not a matter of concern to you as
an advocate for free expression?

Ms. JOHNSON. I appreciate that question, sir, and I’m happy to
go back and look at it. I cannot tell you at this moment why—

[Simultaneous speaking.]

Mr. BISHOP. So, for whatever reason it didn’t arise to a level of
significance for you?

Ms. JOHNSON. I wouldn’t—

Mr. BISHOP. Not enough to talk about in your testimony anyway,
right?

Ms. JOHNSON. No, sir, I wouldn’t put it that way. I would put in
the way that we are really focused on ensuring that people do have
the right to access. We have been focused, as you know and my tes-
timony reflects, about this wave of censorship that’s happening at
the State and local level.

Mr. BISHOP. OK.

Ms. JOHNSON. That does not mean we don’t care, sir—

Mr. BISHOP. All right.

Ms. JOHNSON. —but, I appreciate the question.

Mr. BISHOP. How about this? Have you read the Twitter files?

Ms. JOHNSON. I’m sorry?
Mr. BISHOP. Have you read the Twitter files? Not familiar with that? You know about Matt Taibbi, Michael Shellenberger, and the others?

Ms. JOHNSON. Oh, yes. Yes. OK. I'm sorry.

Mr. BISHOP. They have issued 19—they describe the use of the FBI, the Department of Homeland Security, the Cyber Infrastructure and Security Agency, the Global Engagement Center of the State Department, the ODNI, the CIA to act directly with social media platforms and through private so-called disinformation researchers. I noticed on PEN America's website you guys talk a lot about reacting to disinformation. On the pretext of reacting to disinformation they got with social media companies. They took down millions of social media posts and they really—and then they used things like Hamilton 68 that purported to tie them to Russia. It was all BS. Is that not a matter of concern to you?

Ms. JOHNSON. Sir, I can go back and take a look at what we've actually—

[Simultaneous speaking.]

Mr. BISHOP. I mean that is extraordinary. That is what I am saying. I think what is interesting where we are in this—the weapon—the Subcommittee on Weaponization, which is not this Subcommittee, is that you took pains to say that your organization—it doesn't care about which side of the aisle it is on, that free expression ought to be of concern to everybody. We are talking about, as one witness called it, the largest censorship exercise in the history of the U.S. Government. That wasn't a subject that you chose to talk about either. Are you a partisan or are you just interested in free expression across the political spectrum?

Ms. JOHNSON. Sir, we are a nonpartisan organization and we have engaged in a lot of defenses of people from both sides of the aisle from our Campus Free Speech to looking at protest rights. We are definitely engaged on this from a nonpartisan perspective. I do appreciate the question. I am more than happy to take a look and respond for the record, but at this point I just don't have the response on those particular Twitter files right now.

Mr. BISHOP. I hope we can all get together because I think they are really important issues, and they don't matter what your party is. I hope we will cover a lot of ground on those subjects.

Mr. Chair, my time is expired.

Mr. JOHNSON of Louisiana. Thank you.

The Chair recognizes the gentleman from California, Mr. McClintock for five minutes.

Mr. McCINTOCK. I agree with Mr. Bishop. I think we are arguing past each other on a lot of the points that have been made today. This hearing specifically calls into question the use of government authority to intimate parents who petition their elected school boards.

Now, surely the Democrats are not arguing in favor of this practice. I think what they are questioning is whether this is actually happening, and yet, we are hearing not only from parents who are in the receiving end of this practice, but also whistleblowers within the FBI who are telling us this is exactly what is happening.

The Ranking Member assures us, well, it is no problem; nobody has actually been prosecuted let alone convicted. Well, wait a sec-
ond. If no one has been prosecuted, that tells me that the allegations of inciting violence are completely false. Not a single allegation is true. The insidious thing about the Ranking Member’s comment is that intimidation doesn’t require prosecution; only the threat of it.

How terrifying to come to your local school board meeting, strongly express your opinions over matters that fundamentally affect the upbringing of your kids, only to get a call from the FBI the next day asking about everything you said, your political and religious views, and whether you own a gun. These facts speak for themselves. Every person regardless of their political viewpoint can understand how intimidating and terrifying and chilling such an experience could be.

Now, I know Tea Party activists who were singled out for intimidation by the IRS under the Obama Administration years ago who still won’t go near politics out of fear. If the Democrats are actually defending such a practice, then they have completely removed themselves from the fundamental principles of a free society that define Americans as a people. I can’t believe that is true of anyone but a lunatic fringe in their party.

Now, the Democrats shift to a question’s more complex elements, and that is who has the right to direct the education of their children? Well, I think that should be pretty clear. Parents have that right and responsibility to determine how their children are raised and what ideas they are exposed to and what ideas they are not exposed to.

The conflict arises when parents in a school system have different views on that subject. A Marxist family may want their children schooled in their viewpoints. A conservative family may want something very different. Full school choice, of course, would resolve that conflict completely. When parents don’t have that choice their wishes have to be expressed through and elected school board.

A liberal enclave may have different views on curriculum than a conservative one. That is why we have local school boards and why we ought to hold sacred the right of parents to petition those school boards.

I thought Ms. Johnson put it beautifully in response to Mr. Kiley. She says, quote, “As a parent there are some books I would not want my children to read.” Well, parent to parent I will defend your right to make that decision for your children and hope that you would defend to make it for mine. That is not book banning. That is just raising our kids according to our own best lights.

Now, once those children reach the age of majority, well, then that is a whole different matter. Then the right of parents to control their child’s upbringing passes to their offspring. Institutions of higher education have the right to choose what to include, what not to include in their curricula and college students can choose among them.

Let me just pause right there. Is there any disagreement across the spectrum on these principles?

Well, good. Then I think we have reached agreement on everything except maybe a few Members in the minority.

I think censorship over any idea that grownups choose to pursue and express are antithetical to a free society. At that point Jeffer-
son’s maxim takes hold that I’ve sworn eternal hostility to every from of tyranny over the mind of man, and I think that all the panelists here would agree with that.

I have got two grown children. They are very independent, very different in their viewpoints, and I am very proud of both of them. I want them to live in a country where they feel entirely free to express their views without censorship or fear of official retribution or a knock on the door from the FBI because they expressed a viewpoint that upset some elected potentate and without anyone telling them what they can or cannot read or think or speak.

So, if we are all in agreement on that, Mr. Chair, I think this has been a successful hearing.

Mr. JOHNSON of Louisiana. Thank you to the gentleman for yielding back.

The Chair recognizes myself for five minutes.

I am playing cleanup here. Let me address a couple of things. First, in response to the question and answer provided earlier, the NSBA letter, the National School Boards Association letter dated September 29, 2021, does indeed specifically equate the actions of concerned parents at school board meetings with domestic terrorism. Here is the quote from page 2 of that letter:

These actions could be the equivalent to a form of domestic terrorism and hate crimes.

I am going to read you one other excerpt, and this is also from page 2 of another document. This has been entered into the record. This is the Interim Staff Report,

Committee on the Judiciary on a manufactured issue and misapplied priorities subpoenaed documents show no legitimate basis for the Attorney General’s anti-parent memo.

The excerpt I am about to read you explains why, because a lot of people have wondered why. Why would the Biden Administration and the Department of Justice act when it did on that infamous now school board memo? Quote, page 2,

The documents received pursuant to this Committee’s subpoena show the absence of a legitimate nationwide basis for the Attorney General’s directive to insert Federal law enforcement into local school board matters.

The documents also shed light onto how the administration worked with education special interests to generate the predicate for the Attorney General’s directive.

It appears from these documents and the information received that the administration’s actions were a political offensive meant to quell swelling discord over controversial education curricula and unpopular school board decisions. The Attorney General’s directive …

Here it is,

… came just weeks before a pivotal gubernatorial election in Virginia in which education policies were hotly debated and a local school board’s actions were under intense scrutiny. The inference from the initial tranche of subpoenaed documents is that the Justice Department’s actions were a reaction to these political circumstances rather than a legitimate law enforcement response to any serious nationwide threat.

The administration’s goal seems to have been silencing the critics of its radical education policies and neutralizing an issue that was
threatening Democrat Party prospects in the close gubernatorial race in Virginia. This weaponization of law enforcement powers against American parents exercising their First Amendment rights is dangerous.

The Justice Department subjected moms and dads to the opening of an FBI investigation about them, the establishment of an FBI case file that includes their political views and the American people of a threat tag to their names as a direct result of their exercise of their fundamental constitutional right to speak and advocate for their children.

I have got 2½ minutes left. I want to ask each of our gracious witnesses: Mrs. Neily, Mr. Langhofer, Ms. Justice—I would ask each of you to answer quickly one or both these questions:

(1) What would you like to say to those who don’t see parental rights as something that needs to be fought for?
(2) What do you think are the next big challenges your groups and all of us may face in the battle to protect parental rights?

Ms. Neily, I start with you.

Ms. NEILY. The chilling of parental rights is absolutely clear. Mr. Langhofer and I used to sue over campus free speech issues and what we found through biased response teams that it wasn’t just the prosecution of one student; it was telling one student—getting one student in trouble for something that they may have said, often constitutionally protected speech. That then sent a message to every single other student on campus, or in this case K–12 schools, who holds the same people you say that thing out loud, we’ll come for you, too.

There is a reason there are not as many protests on college campuses these days, because students are not inviting controversial speakers whatsoever. We saw what happened to Judge Duncan two weeks ago at Stanford Law. I doubt that there will be very many Fifth Circuit judges invited to speak at law schools in the future, and that will be to the detriment of America’s children.

Mr. JOHNSON of Louisiana. I interviewed Judge Duncan, my former colleague, on my podcast and he has a lot to say about that.

Mr. Langhofer?

Mr. LANGHOFER. I think the most important threat to parental rights is the belief that government officials think that they know better about raising these children than their parents. I’ve had hearings where school officials indicate that they think they have the right and the knowledge to make important decisions about the transition of these young children without telling the parents, without having any kind of medical diagnosis, without having any kind of medical intervention, and then indicating that they’re doing this across the board. There’s no threat of any kind of parental problems here.

So, this notion that government officials know better than parents are the biggest threat to the parental rights and it’s something that every citizen, no matter your political beliefs, should absolutely be concerned about.

Mr. JOHNSON of Louisiana. Well said.

Ms. Justice?
Ms. JUSTICE. I want to be clear that there are private conversations happening between teachers and counselors and children behind the backs of parents without their consent or knowledge. I think that’s one of the most dangerous things that’s happening right now.

The Department of Justice and the FBI made a fatal mistake when they decided to go against parents and to try to divide parents and their children. There is no power that supersedes the love of a parent for their child, and we will not be pushed out of the way in decisions about your children’s education or their future.

Mr. JOHNSON of Louisiana. Very well said.

Ms. SCANLON. Yes. Thank you. Since we are discussing the memo, the Attorney General’s October 4, 2021, memo, which does not mention parents, domestic terrorists, or the PATRIOT Act, I thought it was important that we put that in the record particularly the part that says it is focused not on protected speech, but threats.

I also wanted to have unanimous consent to introduce a Politifact article entitled, “FBI DOJ Tagged Threats Against School Officials, Not Parents for Attending School Board Meetings.”

Mr. JOHNSON of Louisiana. Without objection.

Ms. SCANLON. Thank you.

Mr. JOHNSON of Louisiana. I have got a couple of them myself. I see, Ms. Justice, you have some letters that I wanted to enter into the record. Can you just say briefly for the record what that is in your file there?

Ms. JUSTICE. Yes, sir. Representative Jackson Lee said at an Education Committee meeting recently that we couldn’t bring 100 parents here to say they were dissatisfied with the education their children are receiving in public schools. This is a couple 100 letters that have been handwritten by members that I’ve brought. We will make very good use of the impact statement from that the Ed. Committee has set up for us to give input.

Mr. JOHNSON of Louisiana. Thank you for doing that. Without objection we enter that into the record.

Also, enter into the record for Mr. Langhofer and my own benefit—this is an article from Bloomberg dated September 7, 2017, entitled, “Southern Poverty Law Center Gets Creative to Label, ‘Hate Groups,’” subtitled, “Principled Conservatives are Lumped Together With Bigots.” Here is an excerpt:

Unfortunately, it also has an incentive to apply their term broadly when people see that the PLC lists over 900 hate groups. Nine hundred. This seems like good reason to panic and maybe write a check to the SBLC.

Mr. JOHNSON of Louisiana. This concludes today’s hearing. We want to thank our witnesses for appearing before the Committee today.

I also want to thank the Ranking Member Ms. Scanlon and congratulate her formally for her appointment to this position and for making history as the first woman in Congress to serve in this important post.

So, congratulations to you.
Without objection, all Members will have five legislative days to submit additional written questions for the witnesses or additional materials for the record.
Without objection, the hearing is adjourned.
[Whereupon, at 4:38 p.m., the Subcommittee was adjourned.]

All materials submitted for the record by Members of the Subcommittee on the Constitution and Limited Government can be found at: https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=115531.