

SPEAKING FREELY

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The Fifth Circuit ruled in favor of the Institute for Free Speech, deciding that the Institute has standing in its suit against the Texas Ethics Commission.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
JOHN MINOR WISDOM
APPEALS BUILDING

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Appeals Court Greenlights Challenge to Texas Ban on Pro Bono Legal Services

Institute for Free Speech lawsuit challenges Texas law prohibiting pro bono legal services for candidates and political committees by nonprofit corporations

By Tom Garrett

The Institute for Free Speech cleared a significant legal hurdle when the U.S. Court of Appeals for the Fifth Circuit ruled that IFS has standing to sue Texas officials over a ban on nonprofit corporations providing pro bono legal services to Texas candidates and political committees.

In July, a three-judge panel rendered a unanimous decision in *Institute for Free Speech v. Tinley, et al.* (formerly called *Institute for Free Speech v. J.R. Johnson, et al.*), reversing a lower court dismissal and allowing the Institute's First Amendment challenge to proceed.

The Fifth Circuit concluded that the Institute has suffered a concrete injury sufficient for pre-enforcement standing. The judges ruled that the Institute demonstrated a credible intent to provide pro bono legal representation that could subject it to criminal liability under Texas law.

The court also ruled that the Institute's claims are ripe for adjudication and that sovereign immunity

does not bar the lawsuit's pursuit of injunctive and declaratory relief against Texas Ethics Commission (TEC) officials in their official capacities.

IFS originally filed the lawsuit in August 2023, following the TEC's issuance of Advisory Opinion No. 580, which interpreted the state's corporate-contribution ban to prohibit nonprofits from providing free legal services to Texas candidates and political committees in legal challenges to the state's campaign-finance laws.

The lawsuit argues that Texas's interpretation of its corporate-contribution ban violates the Institute's First Amendment rights to associate, speak, and petition by preventing the organization from fulfilling its mission to vindicate political speech rights through strategic litigation.

The ban prevents IFS from representing Chris Woolsey, a Corsicana city councilman seeking reelection, and the Texas Anti-Communist League PAC in challenging a Texas law requiring political advertising signs to include a government-prescribed notice.

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FREE SPEECH

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ABOUT THIS PUBLICATION

Speaking Freely is a quarterly newsletter published by the Institute for Free Speech.

The Institute for Free Speech is a nonpartisan, non-profit 501(c)(3) organization that promotes and defends the political speech rights to freely speak, assemble, publish, and petition the government guaranteed by the First Amendment. Originally known as the Center for Competitive Politics, it was founded in 2005 by Bradley A. Smith, a former Chairman of the Federal Election Commission. The Institute is the nation's largest organization dedicated solely to protecting First Amendment political rights.

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From the President

The past year has offered a vivid reminder that the First Amendment's protections for free political speech depend on those willing to defend it. We at the Institute for Free Speech continue to secure critical victories.

On the research and policy front, we've released our 2025 Anti-SLAPP Report Card, revealing remarkable progress: nearly 63% of Americans now have good protection against abusive lawsuits designed to silence speech—up from just 35% in 2019. We'll continue to work to educate Americans about the importance of powerful defenses against SLAPP suits to their free speech rights.

In court, I'm pleased to note our significant Fifth Circuit victory in *Institute for Free Speech v. Tinley*. A unanimous three-judge panel ruled that we have standing to challenge Texas's ban on nonprofit corporations providing pro bono legal services to candidates and political committees. The decision establishes an important precedent for pre-enforcement challenges, recognizing that attorneys working for nonprofit corporations shouldn't have to risk criminal liability just to test a law's constitutionality. We can now move forward in defending our right—and the right of organizations like ours—to provide pro bono representation to candidates and committees challenging unconstitutional campaign finance laws.

We've also secured meaningful settlements protecting free speech at the grassroots level. In New Hampshire, Beth Scaer won her fight against the Kearsarge Regional School Board after officials silenced her for referring to a biologically male athlete competing on the girls' soccer team as a "tall boy." The settlement eliminates the board's vague "no derogatory comments" policy and requires viewpoint-neutral

treatment of all speakers. The board's insurer will pay \$33,000 in legal fees. Likewise, Brevard (FL) Public Schools agreed to pay over \$567,000 in attorneys' fees after losing our case on behalf of Moms for Liberty and parent plaintiffs. Combined with the Eleventh Circuit's precedent-setting decision, this sends an unmistakable message that government officials cannot use vague policies to silence criticism or discriminate based on viewpoint.

We're also making significant progress in key higher education cases. The Ninth Circuit reversed a lower court dismissal in *Johnson v. Fliger* (formerly *Johnson v. Watkin*), ruling that Professor Daymon Johnson has standing to challenge California

regulations compelling faculty speech in support of DEIA ideology. The case returns to the district court, where Professor Johnson can pursue injunctive relief.

At the same time, our attorneys advanced new appellate arguments. Professor Richard Lowery's case against the Uni-

versity of Texas highlights the dangers of punishing scholars for dissenting from official orthodoxy, while our Colorado case challenges "respectful discourse" rules that legislators used to shut down disfavored viewpoints. These disputes differ in setting, but not in substance: in each, government officials seek to decide who may speak and what they may say.

These court victories demonstrate that strategic, persistent litigation creates real consequences for constitutional violations while establishing precedents that protect all Americans' speech rights. With your continued support, we'll keep fighting to ensure government officials uphold the First Amendment.

Thank you for standing with us in defense of free speech.



By David Keating



CHARITY NAVIGATOR

Four Star Charity

The Institute has earned
Charity Navigator's top
rating of four stars.



RECENTLY IN THE MEDIA

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Tallahassee Democrat.

PART OF THE USA TODAY NETWORK

By Stephany Matat

Florida earns poor grade for free speech lawsuit protections

8/24/25

Florida's protections against costly lawsuits designed to silence free speech earned a poor grade from a national watchdog group. In its Anti-SLAPP Report Card released Aug. 25, the Institute for Free Speech evaluated state laws shielding people from "SLAPP" suits—short for strategic lawsuits against public participation. Florida received a "C-" rating, placing it among the weaker states when it comes to defending free expression... Florida law protects statements that criticize governmental entities, but the free speech group says the "scope of protected speech" is too narrow. The anti-SLAPP law also doesn't require halting the discovery process when an anti-SLAPP motion is filed—even though discovery is often the costliest phase of a lawsuit, as both sides gather evidence.



THE WALL STREET JOURNAL.

Podcast with Kim Strassel

All Things with Kim Strassel: Untangling the Free-Speech Muddle

9/24/25

Recent threats by Attorney General Pam Bondi to prosecute "hate speech" and by Federal Communications Commissioner Brendan Carr to penalize ABC affiliates over Jimmy Kimmel's comments have thrust the nation into a muddled conversation over free speech. On this episode of All Things, Kim Strassel asks Institute for Free Speech Chairman Brad Smith to sort through the basics: What does the First Amendment actually cover? What are the limits to free speech?



News From The States

Part of States Newsroom

By Lindsey Toomer

Appeals court hears arguments in suit over 'respectful' speech rules at Colorado legislature

9/11/25

A federal appeals court heard oral arguments Wednesday in a case challenging the ability of Colorado legislators to require respectful speech during legislative hearings. The initial lawsuit, filed last year in the U.S. District Court of Colorado, claimed the state legislators named as defendants violated the plaintiffs' right to free speech by stopping them from misgendering and deadnaming transgender people during their testimony in a legislative committee hearing. The plaintiffs in the lawsuit, Rich Guggenheim and Christina Goeke, seek damages and for the court to block enforcement of decorum rules around respectful language in committee hearings at the Colorado General Assembly... Endel Kolde, attorney for the plaintiffs, said the state legislators discriminated against and censored the plaintiffs based on their viewpoints.



By Ashley Lopez

The Federal Election Commission is down to 2 members. So its work is at a standstill

10/4/25

But there is at least one cost to not having Republican representation, says Bradley Smith, who served as a Republican appointee on the commission from 2000 to 2005 and is now chair of the Institute for Free Speech. He said with Trainor's departure, the party has been left "without a spokesperson" at the FEC. "Oftentimes, people call the commission — reporters and so on — for comment on campaign finance matters," Smith said. "And the Republicans and Democratic commissioners often have somewhat different takes on the issues."



Appeals Court Greenlights Challenge to Texas Ban on Pro Bono Legal Services

Continued from Page 1

▶ The TEC's interpretation of the law makes it a crime for a corporation, such as the Institute for Free Speech, to represent Texas candidates or committees on a pro bono basis, because the TEC considers that to be an illegal in-kind contribution.

The July ruling, which set an important new First Amendment standing precedent in the Fifth Circuit, allows IFS's claims to proceed to a determination on the merits. The case has returned to the U.S. District Court for

the Western District of Texas – Austin Division.

"We are pleased with this opinion, as it clears the way for us to challenge Texas's unconstitutional ban on these vital pro bono legal services," said Institute President David Keating. "We can now proceed to sue to protect the right of organizations like ours to provide such representation without fear of criminal prosecution."

Institute Senior Attorney Del Kolde, who leads the litigation effort and argued the case before the Fifth Circuit, underscored the decision's significance: "This opinion establishes a good precedent for pre-enforcement challenges. It is important that the court recognized that attorneys working for nonprofit corporations shouldn't have to risk criminal liability just to test this law's constitu-

tionality."

Local counsel Tony McDonald also praised the decision: "The Fifth Circuit correctly found that we have standing to challenge this harmful restriction. We look forward to continuing to litigate this important right and demonstrating that Texas cannot criminalize pro bono legal services for political speech cases just because the provider is a nonprofit corporation." 🏠



Tom Garrett
Vice President and Chief
Communications Officer

The Thicket: A New Institute E-Publication Spotlighting Political Law

By Sarah Fisher

This summer, the Institute for Free Speech launched the inaugural issue of *The Thicket*, a new email publication sharing news about our campaign finance and other political law work.

The Thicket will publish several times a year with information concerning new litigation, amicus briefs, federal regulations, opinion pieces, and state legislation.

The publication is aimed at campaign finance and political law professionals to keep them informed about the Institute's work and identify potential opportunities for collaboration.



We call it *The Thicket* because political law is often a complex and confusing regulatory tangle that frequently creates serious obstacles to the exercise of First Amendment rights.

We're working to change that, and *The Thicket* will report our progress on this vital mission.

If you would like to subscribe and receive the forthcoming issues of *The Thicket*, please email Sarah Fisher at sfisher@ifs.org. 🏠



Sarah Fisher
Associate Director of
Communications

NH School Board Eliminates “No Derogatory Comments” Policy in Victory for Free Speech

Institute for Free Speech helps secure settlement after board censored Beth Scaer for referring to a biologically male athlete who plays on a girls’ soccer team as a “tall boy”

By Tom Garrett

After being silenced during a Kearsarge Regional School Board comment period, Beth Scaer has scored a victory for free speech rights during public comment time at school board meetings.

With representation by Institute for Free Speech attorneys, Scaer secured a settlement that requires the Kearsarge Regional School Board to eliminate its “no derogatory comments” policy and commit to viewpoint-neutral treatment of all speakers.

The board had used that policy to silence Scaer, barring her from speaking after she referred to a biologically male athlete who competes on a girls’ soccer team as a “tall boy” and drew attention to the student’s physique during an August 2024 comment period.

Under the settlement terms in *Scaer v. Mastin, et al.*, the board formally agreed to eliminate any policy prohibiting citizens from making “derogatory” comments during public meetings. It also agreed to refrain from discriminating against speakers based on their viewpoint and to apply meeting rules in a viewpoint-neutral manner.

Scaer’s comments came during a heated debate over New Hampshire’s Fairness in Women’s Sports Act (FWSA), a law reserving girls’ sports for biological females. At the time the board silenced her, Scaer was attempting to discuss biological differences in athletic competition. The settlement acknowledges that Board Chair Alison Mastin cut off



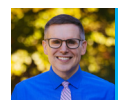
Plaintiff Beth Scaer won her fight against unconstitutional censorship

Scaer’s comments for violating the “no derogatory comments” policy. Other attendees, however, were permitted to display signs with the student-athlete’s name and to use harsh and arguably offensive language to express opposing viewpoints without interruption. The settlement provides new protections against the selective enforcement of vague speech policies. It also requires Kearsarge’s insurer to pay \$33,000 to compensate Scaer’s legal fees.

“Government by the people depends on the freedom of all citizens to dispute the most controversial issues of the day without censorship,” said Institute for Free Speech Attorney Nathan Ristuccia, the lead litigator in the case. “We are proud that we were able to help Beth Scaer protect the rights of all Americans to participate in political debate.”

“I’m pleased that the school board has agreed to important changes that will protect every citizen’s right to speak at public meetings,” said Beth Scaer. “This settlement ensures that what happened to me won’t happen to others. Citizens can’t meaningfully participate in democracy when officials can silence them based on vague, unwritten rules.”

The agreement ensures that future speakers at Kearsarge board meetings can exercise their First Amendment rights and address controversial topics on meeting agendas without fear of censorship, retaliation, or removal solely based on their viewpoint, provided they follow consistent, clearly defined rules that apply equally to all speakers. [Read more](#)



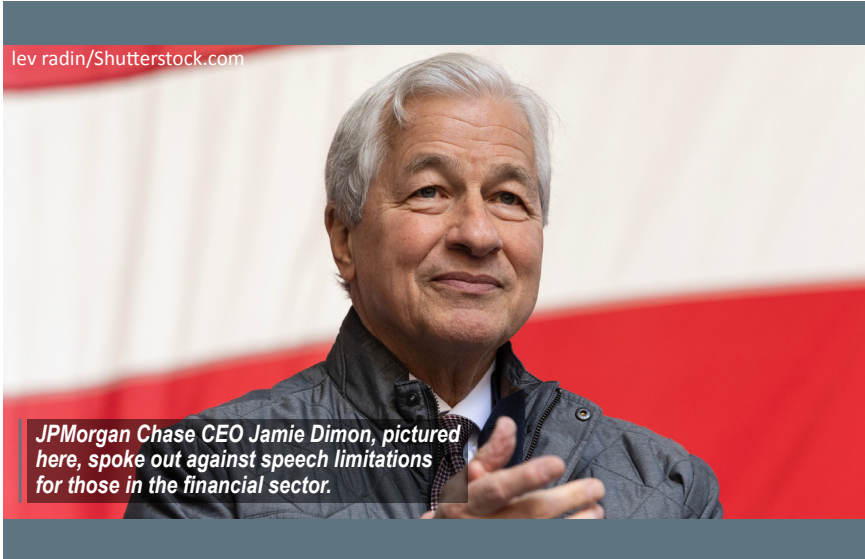
Tom Garrett
Vice President and Chief
Communications Officer

THE WALL STREET JOURNAL.

Free Jamie Dimon (and His Employees)

The SEC's 'pay to play' rule is an unconstitutional infringement on the right to participate in politics.

By Bradley A. Smith and Daniel Shuchman



Jamie Dimon, CEO of JPMorgan Chase, recently said out loud what many in his industry have believed privately for years but, concerned about retribution from regulators, have been unwilling to say in public. “I can’t speak up, and I can’t fight for what I believe” in local and state politics, Mr. Dimon said. “Doesn’t that violate my First Amendment rights?”

Mr. Dimon is referring to the Securities and Exchange Commission’s so-called pay-to-play rule. This regulation, promulgated in 2010, effectively prohibits many working in the financial sector from making contributions exceeding \$350—and in many cases as little as \$150—to any candidate for state or local office who “is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity.”

As a practical matter, that means almost any state or municipal elected official is off limits for donations from everyday workers in the financial-services industry, not only moguls like Mr. Dimon. If a “covered associate” at a financial institution—which includes middle managers and employees (along with their direct and indirect supervisors) who solicit government for investment advisory contracts—makes such a contribution, the entire firm is barred from receiving compensation from the government client for two years.

A contribution of \$151 by a single employee could disqualify an entire firm from being an investment adviser to a government pension fund, costing the firm millions in revenue and the government the services of its preferred adviser.

The SEC says the rule is an anticor-

ruption measure needed to ensure that government investment adviser contracts are awarded solely on merit, not the influence of campaign contributors. But this rule goes far beyond anything that might be needed to combat corruption. It violates the Supreme Court’s long-established precedents on the freedom of citizens to donate reasonable amounts to political candidates, and it restricts the liberty of thousands of employees in a particular disfavored industry.

Though the Supreme Court has upheld limits on the size of contributions, government doesn’t have carte blanche to stifle political donations. As Justice Stephen Breyer noted in *Randall v. Sorrell* (2006), a ruling that struck down a \$400 limit on individual contributions in Vermont’s statewide races, the government can’t “impose burdens upon First Amendment interests that (when viewed in light of the statute’s legitimate objectives) are disproportionately severe.”

The SEC rule presumes that thousands of workers in this single industry must be motivated by a corrupt intent in their political giving, and that even small contributions will swing government contracts. Those employees therefore lose their freedom to support nearly any municipal or statewide candidates on issues ranging from abortion and gerrymandering to taxation, no matter how attenuated those elected offices may be from doling out investment-advisory largess. In New York



Employees of financial institutions are burdened by the SEC's inappropriate "pay-to-play" rules.

this year, it means that many participants in a vital city industry can't support the candidate of their choice for mayor.

Large firms such as JPMorgan aren't the only ones that compete for government advisory business—smaller banks, investment partnerships and family-owned businesses are also covered. As Mr. Dimon pointed out, there are no such pay-to-play federal rules affecting unions or people in real estate and other industries that provide services to the government. In an era when selective application of law has been of heightened concern across the political spectrum, this regulation illustrates the danger: Another federal agency could target a different disfavored industry or union to keep its workers from giving to the candidates of their choice.

The SEC's rule is an unconstitutional intrusion on free speech. It also allows the SEC bureaucracy to usurp the judgments of Congress and state legislatures on campaign contributions. The Federal Election Campaign Act allows contributions from an individual of up to \$7,000 per candidate cycle (adding up the limits from the primary and general elec-

tion) for federal officials, and most states allow contributions far greater than \$350 for state and local races. In New York, for example, limits range from \$6,000 for state Assembly to \$18,000 for statewide office.

The SEC rule skews our political discussion by disqualifying many workers in an important economic sector from a core element of political debate. That should trouble all Americans whether or not they're affected directly.

It's time for the SEC to revoke this inappropriate and overwrought rule. If it won't, Mr. Dimon should sue, and the courts should order the SEC to do so.

This article was published in the *Wall Street Journal* on October 24, 2025.



Bradley A. Smith
Founder and Chairman of the Board



Daniel Shuchman
Board Member

Appeals Court Hears Challenge to Legislative Censorship of Public Testimony

Institute for Free Speech Senior Attorney Del Kolde recently argued at the U.S. Court of Appeals for the Tenth Circuit on behalf of clients censored by Colorado legislators. The plaintiffs filed suit after Colorado legislators censored and banned their speech during public comment time on HB24-1071. The measure, dubbed "Tiara's Law," makes it easier for felons to change their names. The plaintiffs, who are members of Gays Against Groomers and Rocky Mountain Women's Network, were prevented from speaking due to "respectful discourse" requirements that mandated speakers to refrain from "misgendering" or "deadnaming" anyone or mentioning "Tiara's" criminal history.

The court, which heard the arguments on September 10, will now determine whether the Colorado legislators sued in their official capacities enjoy legislative immunity for engaging in viewpoint-discriminatory censorship. Plaintiffs allege that enforcing a censorship rule is not legislating and also that legislative immunity is a personal defense that does not apply to official-capacity claims for equitable relief.

The oral argument audio can be found on the Free Speech Arguments podcast page at www.ifs.org/podcast or by scanning the QR code below. 📱



Sarah Fisher
Associate Director of Communications

THE WALL STREET JOURNAL

IRS Scandal Makes It to Court

A Biden appointee holds the agency's nonprofit rules to be unconstitutional.

By Bradley A. Smith and Eric Wang



Heidi Besen/Shutterstock.com

Remember the Internal Revenue Service scandal of 2013, when it came out that the IRS under the Obama administration had targeted conservative nonprofits for harassment? In a little-noticed but immensely consequential First Amendment decision Sept. 30, a federal judge ruled that the IRS regulations on nonprofits' political activity are unconstitutional.

It's a major free-speech victory nearly 15 years in the making. In the case, *Freedom Path v. IRS*, Judge Jia M. Cobb, a Biden appointee, concluded what the nonprofit community has long known: The IRS rules concerning whether certain nonprofit organizations have engaged in too much political activity are unworkable and unconstitutionally vague.

At the heart of the case is Section 501(c)(4) of the tax code, which

mainly addresses social-welfare organizations and advocacy groups. Under IRS rules, a 501(c)(4) organization must be "primarily engaged" in promoting the "common good and general welfare" of society, but not "political campaign" activity.

The problem *Freedom Path* and other 501(c)(4)s face is simple: They can't tell what's legal. The IRS has never defined how much political activity is too much. And even if a group knew the amount of political activity allowed as a percentage of total activities, it still wouldn't know what qualifies as political. The agency uses an open-ended 11-factor test to determine what counts as "political activity," without explaining how these factors are weighted or applied.

Judge Cobb ruled that these twin deficiencies "exhibit signs of impermissible vagueness. Taken together,

they cross the line into unconstitutionality." The judge also found a record of "selective enforcement" that "solidifies this vagueness finding," pointing to the IRS's targeting of tea-party-aligned 501(c)(4)s during the early 2010s.

While Judge Cobb's decision dealt a blow to the IRS, it also left the rules in limbo. Because of appropriations riders—provisions attached to spending bills that dictate what an agency can and can't do with the funds it receives—the IRS can't conform to the court's decision by writing a new, constitutional rule on nonprofit political activity.

These riders are a response to the IRS's tea-party targeting scandal. After the scandal broke, the IRS proposed a new set of rules to clarify what political activities are permissible for 501(c)(4)s, but the proposed rules were overly broad and would have labeled too many activities as political. Congress understandably stopped the IRS from going down that road.

Congress has an important role to play. Lawmakers would be wise to remove the IRS rider from the next spending bill so that the agency can comply with the *Freedom Path* court ruling and the First Amendment.

Meanwhile, the IRS needs to stop policing speech. As a tax-collection agency, it lacks expertise and has demonstrated incompetence at this function. Myriad federal and state campaign-finance laws already reg-

The IRS's rules for nonprofit political activity are deemed unworkable and vague.

An official website of the United States Gov



File Pay Refunds Cre

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ulate political activity, and separate specialized agencies, including the Federal Election Commission, administer those laws.

The IRS could defer to those laws and agencies in determining what counts as political campaign intervention by nonprofits. While some of those campaign laws are also too vague and broad, they are generally better than the IRS rules. If the agency does this, nonprofits would no longer have to comply with two different standards—one from the IRS and one from the campaign-finance laws.

Congress could consider going even further by eliminating the tax code's restrictions on political activity by nonprofits, other than perhaps for (c)(3) charities and educational institutions, which uniquely receive a tax subsidy in the form of deductible donations.

Congress thrust the IRS into regulating political speech by distinguishing 501(c) entities such as the American Civil Liberties Union or National Taxpayers Union, which have polit-

ical-activity limits, from purely political entities such as the Republican National Committee or Biden for President, which operate under Section 527 of the tax code. All of these nonprofits generally pay no taxes unless they engage in profit-making activities. Insofar as they should be regulated for their political activity, that should be the exclusive function of campaign-finance regulators.

The *Freedom Path* decision presents Congress with an opportunity to stop the IRS from using the tax code to police political debate.

This article was published in the *Wall Street Journal* on October 9, 2025.



Bradley A. Smith
Founder and Chairman of the Board



Eric Wang
Senior Fellow

Fifth Circuit Hears Oral Arguments in University Speech Case

The Institute for Free Speech represents Professor Richard Lowery, an Associate Professor of Finance at the University of Texas at Austin (UT). Professor Lowery sued UT officials who initiated a campaign to silence Lowery for criticizing the role of DEI in op-eds and on social media and saying that UT's president was "good at lying to Republicans" on a podcast. The officials threatened to punish him by jeopardizing his job, reducing his pay, and ending his affiliation with UT's Salem Center.

On August 4, 2025, Institute Senior Attorney Del Kolde argued on behalf of Prof. Lowery before the U.S. Court of Appeals for the Fifth Circuit, asserting that UT violated Prof. Lowery's right to criticize government officials and chilled his constitutionally protected speech.

The Fifth Circuit will determine whether the district court erred in dismissing Lowery's claims and, potentially, also whether further discovery should have been allowed into nepotism allegations and the president's text messages to subordinates.

The oral argument audio can be found on the Free Speech Arguments podcast at www.ifs.org/podcast or by scanning the QR code below. 



Sarah Fisher
Associate Director of Communications

Brevard, FL Public Schools to Pay Over \$567,000 in Fees after Losing Free Speech Case

By Tom Garrett

Following a decisive legal victory affirming parents' First Amendment rights to speak at school board meetings, Moms for Liberty – Brevard County and individual parents have secured a settlement requiring Brevard Public Schools to pay \$567,990.19 in attorneys' fees, costs, and expenses.

The Brevard County School Board approved the settlement in October, ending a case that began in November 2021, when Moms for Liberty – Brevard County and four parent plaintiffs sued after the school board repeatedly silenced them at public meetings for criticizing board members and policies. With representation from the Institute for Free

Speech, the parents challenged the board's vague and viewpoint-discriminatory speech restrictions.

The case highlighted discriminatory enforcement at board meetings. The board interrupted, warned, and silenced parents criticizing controversial issues such as mask mandates or sexually explicit books in the school library. Meanwhile, speakers who praised board members violated the same rules without consequence.

The settlement resolves all remaining disputes over attorneys' fees and expenses in the case. Brevard Public Schools will pay \$541,810.19 to the Institute for Free Speech and \$26,180.00 to local counsel Gold-

stein Law Partners, separate from the nominal damages previously awarded to the plaintiffs.

The Eleventh Circuit's precedent-creating decision in the case and the substantial fee settlement send a clear message that government officials cannot use vague speech policies to silence criticism or discriminate based on viewpoint. [🔗](#)



Tom Garrett
Vice President and Chief
Communications Officer

Ninth Circuit Victory Advances First Amendment Challenge to DEIA Mandates

By Tom Garrett

In July, the Ninth Circuit Court of Appeals delivered a significant victory in the Institute for Free Speech case *Johnson v. Fliger* (formerly known as *Johnson v. Watkin*), largely reversing the district court's dismissal of the case. The court ruled that Institute client Professor Daymon Johnson has standing to challenge California Community College regulations that require faculty to adhere to diversity, equity, inclusion, and accessibility (DEIA) principles, including "anti-racism," and to compel them to teach in accordance with that ideology.

The court found that California Code

of Regulations sections 53602(b) and 53605(a) and (c) "arguably proscribe" Johnson's intended conduct and create a "credible threat" of enforcement. Johnson, a Bakersfield College history professor, refuses to express support for state-mandated DEIA ideology and faces potential discipline under regulations requiring faculty to "employ teaching, learning, and professional practices that reflect DEIA and anti-racist principles."

While the Ninth Circuit affirmed dismissal of claims against the California Community Colleges Chancellor and certain other provisions,

the core constitutional challenge remains viable. The court remanded the case for consideration of Johnson's preliminary injunction motion, which seeks to block enforcement of the speech-compelling rules.

This victory represents a crucial step forward in protecting faculty members' First Amendment rights against ideological compulsion in higher education. The case now returns to the district court, where Johnson can pursue immediate relief. [🔗](#)



Tom Garrett
Vice President and Chief
Communications Officer

News in Brief

Highlights of some of the Institute's latest contributions to free speech advocacy

By Sarah Fisher

NRSC



The Supreme Court heard oral arguments in *NRSC v. FEC* on December 9. A ruling is expected before July.

New Amicus Briefs Filed in Key Free Speech Cases Across the Nation

This summer, the Institute for Free Speech submitted amicus briefs in several pivotal free speech cases across the country, including two before the Supreme Court of the United States.

Procedural Gamesmanship in New Jersey Lawsuit Violates the First Amendment

The Institute filed an amicus brief at the U.S. Supreme Court identifying unfortunate similarities between *First Choice Women's Resource Centers v. Platkin* and *NAACP v. Alabama ex rel. Patterson* (1958). The people are different, but the tactics used by government officials to silence citizens remain the same.

Here, the Attorney General of New Jersey has singled out the First Choice Women's Resource Centers organization for intrusive investigations due to its religious beliefs and pro-life stance. The brief notes that

both cases feature a "rogue attorney general [who] wields its broad power to punish an ideological enemy and try to drive it out of the state. And in both cases, the First Amendment violation on associational privacy is clear." The Court will hear oral arguments in its current term and issue a ruling by the end of June.

Brief Urges the Supreme Court to Strike Down Coordinated Party Expenditure Limits

One of the most important recent campaign finance cases, *National Republican Senatorial Committee v. FEC (NRSC v. FEC)*, challenges the federal limit on coordinated party expenditures. The Institute's brief argues that election campaigns are political speech, making limits on spending unconstitutional under the First Amendment.

By conflating election campaign speech with the mechanics of running elections in a previous ruling, the Supreme Court has allowed the

government to trample the First Amendment through campaign finance laws. The brief urges the Court to "start untangling that mess by returning to first principles and reexamining Congress's authority to regulate political speech in the first place."

Giving Churches More Political Speech Freedom

Spiritual leaders should be allowed to connect the dictates of their faith to the political issues of the day in the course of an ordinary service. That's why the Institute filed an amicus brief urging a federal judge to approve a proposed consent judgment between the IRS and two churches, which would allow endorsements from the pulpit.

If the judge approves the proposed settlement, it would provide some much-needed clarification to the vague "Johnson Amendment" in the tax code. That amendment bars charities, including churches, from not only endorsing candidates but from the "publishing or distributing of statements ... on behalf of (or in opposition to) any candidate for public office." IRS rules further complicate this already vague language.

The case, *National Religious Broadcasters v. IRS*, is before the United States District Court for the Eastern District of Texas, Tyler Division. 🏠



Sarah Fisher
Associate Director of
Communications

Institute's New 50-State Report Card

Laws Now Protect Free Speech Rights of a Record Number of Americans from Frivolous Lawsuits

By Helen Knowles-Gardner

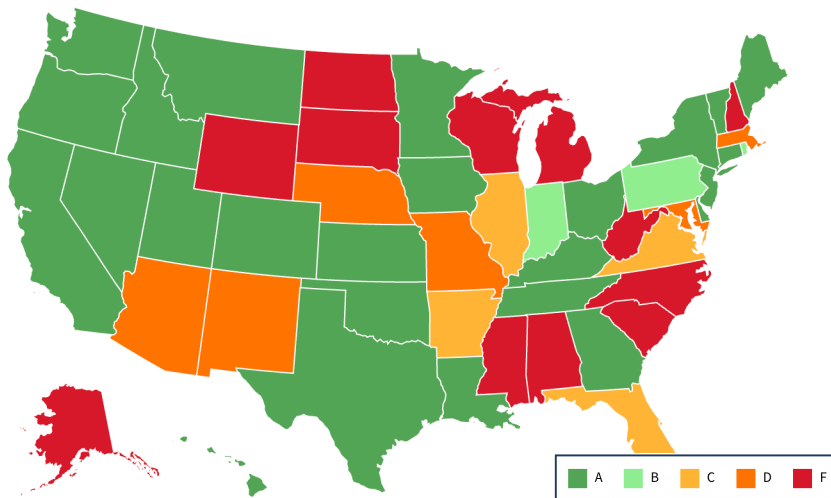


In just seven years, the number of Americans protected by strong laws against abusive litigation designed to censor soared by 83%—yet 12 states still offer their residents no protection at all. Those are some of the top-line findings in the 2025 Institute for Free Speech Anti-SLAPP Report Card, released in August. “SLAPP” stands for “strategic lawsuit against public participation.”

The report reveals that state laws protecting against these costly, meritless, speech-suppressing lawsuits are growing and improving nationwide. These laws now cover 38 states plus the District of Columbia. Although the strength of anti-SLAPP protections varies widely from state to state, the new report shows a trend toward more and stronger anti-SLAPP laws.

Indeed, for the first time, nearly 63% of Americans have good anti-SLAPP protection in state courts, meaning a grade of “B” or better on the Institute’s scale. Also for the first time, a majority of the country’s population (56%) now enjoys the protection of a law with an “A” grade.

In 2018, only 12 states had laws receiving a B grade or better. Today, there are 29 such states. Notably, since the 2023 report, ten states have raised their anti-SLAPP scores by adopting or improving laws, in-



cluding Ohio, Minnesota, Pennsylvania, and, most recently, Delaware. These new speech-protective laws usually pass with overwhelming bipartisan support.

These excellent results are part of a remarkable positive trend over the past several years. Since 2019 alone, the percentage of Americans protected by an “A” law has climbed from less than 35% to the majority we see today. As recently as 2012, less than half the population had any anti-SLAPP protection whatsoever. By contrast, more than five in six Americans now enjoy the benefits of at least some form of anti-SLAPP law, though six states earned “D” grades for failing to provide decent protection.

Despite these successes, there is

still work to be done. “There are far too many states in which wealthy plaintiffs can silence critics with the threat of financial ruin,” said Institute for Free Speech President (and report co-author) David Keating. “States can easily fix this problem by enacting strong anti-SLAPP laws. These laws are one of the most effective tools available to protect free speech, and every state should adopt one that covers all speech about matters of public concern.”

Read the full report and learn more about your state’s law at www.ifs.org/anti-slapp-report/ or by scanning the QR code above. 📱



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