

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

No. 24-6139 (D.C. No. 5:21-CV-01022-G) (W.D. Okla.)

BLACK EMERGENCY RESPONSE TEAM, et al.,
Plaintiffs–Appellants/Cross-Appellees,
and
OKLAHOMA STATE CONFERENCE OF THE NATIONAL ASSOCIATION
FOR THE ADVANCEMENT OF COLORED PEOPLE, et al.,
Plaintiffs–Appellants/Cross-Appellees,

v.

GENTNER DRUMMOND, in his official capacity as Oklahoma Attorney General, et al.
Defendants–Appellees/Cross-Appellants,
and
UNIVERSITY OF OKLAHOMA BOARD OF REGENTS, et al.,
Defendants.

No. 24-6140 (D.C. No. 5:21-CV-01022-G) (W.D. Okla.)

BLACK EMERGENCY RESPONSE TEAM, et al.,
Plaintiffs, and
OKLAHOMA STATE CONFERENCE OF THE NATIONAL ASSOCIATION
FOR THE ADVANCEMENT OF COLORED PEOPLE, et al.,
Plaintiffs–Appellees,

v.

JOHN R. BRAUGHT, et al.,
Defendants–Appellants, and
GENTNER DRUMMOND,
in his official capacity as Oklahoma Attorney General, et al.,
Defendants.

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in his official capacity as Oklahoma Attorney General, et al.,
Defendants-Appellants, and

JOHN R. BRAUGHT, et al.,
Defendants.

**BRIEF OF AMICI CURIAE NAACP LEGAL DEFENSE & EDUCATIONAL
FUND, INC. AND SOUTHERN POVERTY LAW CENTER
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

Avatara Smith-Carrington
Jin Hee Lee
Mide Odunsi*
NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.
700 14th Street NW
Suite 600
Washington, DC 20005
(202) 682-1300
acarrington@naacpldf.org
jlee@naacpldf.org
modunsi@naacpldf.org

**Admission Application forthcoming*

*Counsel for Amici Curiae NAACP Legal
Defense Fund & Educational Fund, Inc.
and Southern Poverty Law Center*

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, Amicus Curiae NAACP Legal Defense & Educational Fund, Inc. (“LDF”) submits the following statement of disclosure: LDF is a nonprofit 501(c)(3) corporation. It is not a publicly held corporation that issues stock, nor does it have any parent companies, subsidiaries or affiliates that have issued shares to the public.

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CONSENT OF PARTIES

All parties have consented to Amici Curiae NAACP Legal Defense & Educational Fund, Inc. and Southern Poverty Law Center.

STATEMENT OF AUTHORSHIP

No party or party’s counsel authored this brief in whole or in part, or contributed money intended to fund the preparation or submission of this brief. No person other than the amici and its counsel contributed money intended to fund the preparation or submission of this brief.

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INTEREST OF AMICI CURIAE¹

Founded in 1940 by Justice Thurgood Marshall, the NAACP Legal Defense & Educational Fund, Inc. (“LDF”) is the nation’s first and foremost civil rights legal organization. Through litigation, advocacy, public education, and outreach, LDF strives to secure equal justice under the law for all people, and to eliminate barriers that prevent Black people in America from realizing their basic civil and human rights. For more than eight decades, LDF has worked to dismantle racial segregation and ensure equal educational opportunity for all students, most prominently in the groundbreaking case, *Brown v. Bd. of Educ. of Ed. of Topeka* , 347 U.S. 483 (1954).

Consistent with its mission to secure educational access and opportunity for students, LDF has represented students and educators, as parties, in cases protecting the freedom of speech and the right to receive ideas and information secured by the First Amendment, including the right to receive ideas and information pertaining to race and racism in the United States. *See, e.g., Pernell v. Fla. Bd. of Governors of State Univ.*, No. 22-13992 (11th Cir. filed Apr. 17, 2023); (*Simon v. Ivey*, No. 25-00067 (N.D. Ala. filed Jan. 30, 2025); *S.C. State*

¹ No person or entity, other than amici, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief or authored this brief in whole or in part. *See* Fed. R. App. P. 29(a)(4)(E). Amici submit this brief with the consent of all parties. *See* Fed. R. App. P. 29(a)(2).

Conf. of the NAACP v. Weaver, No. 25-00487 (D.S.C. filed Jan. 27, 2025); and *Nat’l Ass’n for Advancement of Colored People v. U.S. Dep’t of Educ.*, No. 25-CV-1120 (D.D.C. filed Apr. 15, 2025).

The Southern Poverty Law Center (“SPLC”) is a nonprofit 501(c)(3) civil rights organization and a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. SPLC’s Learning for Justice department advances that mission through a community education program that cultivates and nurtures dialogue, learning, reflection and action from those closest to and harmed most by injustices in the South. SPLC’s legal department has litigated multiple cases aimed at protecting the First Amendment rights of students and educators in public schools. *See, e.g., Wood v. Fla. Dep’t of Educ.*, 739 F. Supp. 3d 1023, 1024 (N.D. Fla. 2024); *Rinderle v. Cobb Cnty Sch. Dist.*, No. 24-cv-00656 (N.D. GA); *Cousins v. Sch. Dist. of Orange Cnty Fla.*, No. 22-1312 (M.D. Fla.).

SUMMARY OF THE ARGUMENT

“Truth. The truth. Our truth. When we seek it, claim it, and recount it, we are far less likely, in this the realm of our racial history, to repeat it.”

- Hannibal B. Johnson²

“A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both.”

- James Madison³

Public education is “the most important function of state and local governments” because “[i]t is the very foundation of good citizenship” and “a principal instrument in awakening the child to cultural values.” *Brown v. Bd. of Ed. of Topeka*, 347 U.S. 483, 493 (1954), *supplemented sub nom. Brown v. Bd. of Educ. of Topeka*, 349 U.S. 294 (1955). Accordingly, the Supreme Court has long recognized that “[s]tudents in . . . public schools do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988) (citation omitted). Foundational, however, to a student’s ability to gain the skills and information necessary to

² Hannibal B. Johnson, *Black Wall Street 100: An American City Grapples with its Historical Racial Trauma* 1, 5 (2020).

³ Letter from James Madison, to W. T. Barry (Aug. 4, 1822), https://www.loc.gov/resource/mjm.20_0155_0159/?sp=1&st=text (on file with the Library of Congress).

participate in our representative democracy is a student's right to receive information and ideas because it "is a necessary predicate to [a student's] meaningful exercise of [their] own rights of speech, press, and political freedom." *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 867 (1982).

The Supreme Court "ha[s] not failed to apply the First Amendment's mandate in our educational system where essential to safeguard the fundamental values of freedom of speech *and inquiry* and of belief." *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968) (emphasis added). Public officials, therefore, are prohibited from dictating curricula "in a narrowly partisan or political manner," and that discretion cannot be "motivated by racial animus" because "[o]ur Constitution does not permit the official suppression of *ideas*." *Pico*, 457 U.S. at 870–71.

Nevertheless, House Bill 1775, Okla. Stat. tit. 70, § 24-157 ("H.B. 1775"), does exactly what the Constitution explicitly proscribes by impermissibly restricting access to certain ideas regarding "race and sex" in Oklahoma's public schools simply because they are disfavored by legislators. This unconstitutional curricular ban has already encroached upon the teaching of the Tulsa Race Massacre, one of the most significant events in Oklahoma's history that, for generations, was erased unjustly from within the state's public school classrooms.

The District Court's failure to recognize students' First Amendment right to

receive information, as independent from educators’ right to freedom of expression, allows the state to engage in ideologically-motivated censorship of public school curricula without legitimate pedagogical justifications. This Court must correct this erroneous interpretation of the First Amendment and reverse the District Court’s ruling.

ARGUMENT

I. The District Court Erred in Its Analysis of the First Amendment Right to Receive Information.

A. The District Court Incorrectly Conditioned Students’ Right to Receive Information on Educators’ Free Speech Rights.

The District Court’s decision not to enjoin Section 24-157(B)(1)⁴ of H.B. 1775 rested, in part, on a flawed analysis of the K-12 Plaintiffs–Appellants’ First Amendment claim. The District Court first found that Section 24-157(B)(1) affected the curricular speech of teachers, which it did not consider to be protected by the First Amendment.⁵ Based on its ruling that K-12 educators had no First Amendment rights to their curricular speech, the District Court determined that the K-12

⁴ Okla. Stat. tit. 70, § 24-157(B)(1) (2021).

⁵ The District Court’s analysis rested on a misreading of *Garcetti v. Ceballos*, 547 U.S. 410 (2006). Notably, the *Garcetti* Court declined to extend its holding to “speech related to scholarship or teaching” because “[t]here is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court’s customary employee-speech jurisprudence.” *Id.* at 425.

Plaintiffs-Appellants had no plausible claim to a violation of the right to receive information. This analysis fundamentally misconstrues the First Amendment right to receive information because it focuses exclusively on the First Amendment rights of educators and fully ignores the separate and distinct First Amendment rights of students, which the Supreme Court recognized as “constitutional limits upon the power of the State to control even the curriculum and classroom.” *Pico*, 457 U.S. at 861 (citing *Meyer v. Nebraska*, 262 U.S. 390 (1923)) (declaring unconstitutional Nebraska’s ban on teaching school age children foreign languages in schools) and *Epperson*, 393 U.S. at 97 (invalidating Arkansas’ ban on teaching human evolution in public schools).

H.B. 1775 should not be understood as simply a limitation on the curricular speech of K-12 teachers because that law severely restricts a full spectrum of information and ideas on specific topics that would otherwise be available to K-12 students in Oklahoma’s public schools, irrespective of what K-12 educators may want to express. In fact, the restriction on students’ access to information is evident from changes to classroom instruction on the Tulsa Race Massacre after H.B. 1775 went into effect. As explained in Section II, educators in Oklahoma have taken steps to cancel lessons on books discussing the Tulsa Race Massacre, and state officials have stated that discussions about the Tulsa Race Massacre are impacted by H.B. 1775 to the extent the “racism” underlying the massacre is discussed because the law

targets classroom discussions about “race.”

The Supreme Court held in *Pico* that state and local authorities violate the First Amendment when their curricular censorship is “exercised in a narrowly partisan or political manner” or “motivated by racial animus.” *Pico*, 457 U.S. at 870–71. Devoid of any legitimate pedagogical justifications, H.B. 1775 censors information and ideas regarding race and racism that are disfavored by politicians. H.B. 1775 is also a discriminatory law that “carr[ies] the danger of an official suppression of ideas,” *Pico*, 457 U.S. at 871, because the law aims to bowdlerize history about not just any race, but rather people of specific races—like the Black residents of Greenwood who were subject to racially-motivated violence during the Tulsa Race Massacre. Thus, H.B. 1775 directly threatens what the First Amendment right to receive aims to protect: “a comprehensive and dynamic marketplace of ideas, especially of opinions and information necessary to become an informed citizen”⁶ in our multiracial democracy.

B. A Student’s Right to Receive Information is Essential to the “Free Exchange of Ideas” that Undergirds a Functioning Democracy.

By conditioning students’ First Amendment right to receive claim upon the availability of First Amendment protections for teachers’ own curricular speech, the

⁶ Caroline Mala Corbin, *The Government Speech Doctrine Ate My Class: First Amendment Capture and Curriculum Bans*, 76 Stan. L. Rev. 1473, 1501 (2024).

District Court allows the State to shield its unconstitutional suppression of information and ideas behind limitations to the First Amendment rights of its own hired employees. Indeed, courts would impede the ability of recipients of information to vindicate their right under the First Amendment “if the addressees predicated their claim for relief upon the First Amendment rights of the senders. To succeed, the addressees would then have to establish their standing to vindicate the senders’ constitutional rights, *as well as First Amendment protection [for the speech].*” *Lamont v. Postmaster Gen.*, 381 U.S. at 307–08 (Brennan, J., concurring) (emphasis added) (recognizing addressees’ First Amendment right to receive publications through mail). In ruling that the right of students to receive information is a mere extension of the speakers’ right to express ideas, *Black Emergency Resp. Team v. Drummond*, 737 F. Supp. 3d 1158, 1177 n.16 (W.D. Okla. 2024), the District Court improperly constricts the right to receive to the point of nullification. Importantly, a student’s “*right to receive ideas is a necessary predicate to the [student’s] meaningful exercise of his own rights of speech, press, and political freedom.*” *Pico*, 457 U.S. at 867 (emphasis added). Similarly, at issue here is the ability of students to receive information and ideas that, in turn, enable them to fully develop their own expression.

The freedom of speech and press secured by the First Amendment must include, as an inherent corollary, the right to receive ideas and information. *See*

generally, *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965) (noting that “[t]he right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read and freedom of inquiry, freedom of thought, and freedom to teach”). It is the ability to participate in the free exchange of views and receive unfettered information that “preserve[s] an uninhibited marketplace of ideas in which truth will ultimately prevail.” *Red Lion Broad. Co. v. F.C.C.*, 395 U.S. 367, 390 (1969); see also *Saxbe*, 417 U.S. at 862 (“[P]ublic debate must not only be unfettered; it must also be informed.”); *Martin v. City of Struthers*, 319 U.S. 141, 143, (1943) (“[N]ovel and unconventional ideas might disturb the complacent, [the First Amendment authors] chose to encourage a freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance.”). For that reason, the First Amendment encompasses an individual’s right to receive information and ideas as well as the right of free expression. See *Stanley v. Georgia*, 394 U.S. 557, 564, 565 (1969) (collecting authorities).

The vigilant protection of the right to receive information and ideas “is nowhere more vital than in the community of American schools.” *Epperson*, 393 U.S. at 104. In the decades following *Brown*, the Supreme Court has repeatedly expressed the importance of public education as a tool that prepares young people “for life in our increasingly complex society and for the duties of citizenship in our

democratic Republic.” *Hazelwood Sch. Dist.*, 484 U.S. at 278 (Brennan, J., dissenting). Public schools serve a unique role as a space to cultivate democratic ideals in our multi-racial democracy because they “convey[] to our young the information and tools required not merely to survive in, but to contribute to, civilized society.” *Id.* The Supreme Court has cautioned that “students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate [and school] officials cannot suppress expressions of feeling with which they do not wish to contend.” *Pico*, 457 U.S. at 868 (cleaned up). And “students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.” *Sweezy v. State of N.H. by Wyman*, 354 U.S. 234, 250 (1957). Accordingly, the Supreme Court has long recognized the availability of First Amendment protections to students, even in a public school setting under state supervision. *See Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969) (cautioning that “state-operated schools may not be enclaves of totalitarianism”).

In *Pico*, the Supreme Court held that the First Amendment right to receive information bars school boards from removing certain materials from school libraries because they disagree with the materials’ ideas or want to impose a particular “political orthodoxy” upon students. 457 U.S. at 875. The *Pico* Court cautioned that school officials cannot exercise their discretion in a manner that is

“narrowly partisan or political,” “motivated by racial animus,” or at risk of “carry[ing] the danger of an official suppression of ideas.” *Id.* at 871. In his concurrence, Justice Blackmun expressed “that state-operated schools may not be enclaves of totalitarianism.” *Id.* at 876–77 (Blackmun, J., concurring) (cleaned up). More importantly, Justice Blackmun elucidated that “the State may not suppress exposure to ideas—for the sole purpose of suppressing exposure to those ideas—absent sufficiently compelling reasons.” *Id.* at 876 (Blackmun, J., concurring). In *Hazelwood School District v. Kuhlmeier*, the Supreme Court further articulated the bounds of a student’s right to receive information within a state-controlled, public school system by announcing that public officials do not offend the First Amendment in exercising their discretion over activities that “bear the imprimatur of the school, . . . so long as their actions are reasonably related to *legitimate pedagogical concerns*.” 484 U.S. 260, 271, 273 (1988) (emphasis added).

Read together, *Pico* and *Hazelwood* provide clear and practical parameters for courts to deploy in assessing whether the actions of state and local officials violate a student’s First Amendment right to receive information. As stewards of our public educational system, state and local governmental officials are given deference in their curricular decisions, as long as they are “reasonably related to legitimate pedagogical concerns.” *Id.* The bounds of that discretion, however, ends when decisions are based on “narrow[] partisan or political” considerations, “motivated by

racial animus,” or “an official suppression of ideas,” *see Pico*, 457 U.S. at 875, because they not only offend the First Amendment but are also never “reasonably related to legitimate pedagogical concerns.” Thus, the key question that the District Court failed to address—and that this Court must resolve—is whether H.B. 1775 is “reasonably related to legitimate pedagogical concerns.”

The answer to that question is unequivocally “no.” Nothing in the record indicates that H.B. 1775’s censorship of certain discussions about racism and racial oppression is, in any way, grounded in legitimate pedagogy. Rather, legislators seek to suppress certain ideas about race and racism, including important aspects of the Tulsa Race Massacre, simply because they disfavor them. Put simply, the purpose of H.B. 1775 is to deny students the ability to receive certain information and ideas regarding race and racism that the state wishes to suppress. This, in turn, restricts students’ ability to express themselves and meaningfully engage in unencumbered discussions about the role that race plays in this country. But “[c]ompulsory unification of opinion achieves only the unanimity of the graveyard.” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 641 (1943). As research demonstrates, racially inclusive curriculum improves academic outcomes for students of all races and especially students—including Black students—who did not previously see themselves represented in their schools’ curriculum.⁷ Students who receive a racially

⁷ *See, e.g.*, Thomas S. Dee & Emily K. Penner, *The Causal Effects of Cultural*

inclusive curricula have greater classroom engagement and higher graduation rates.⁸ And instruction on race, and student awareness of racism, reduce the likelihood that students will engage in racial harassment and that students of color will experience school-based discrimination.⁹ That is why it is pedagogically important to teach public school students the truth about the history of racism in Oklahoma and throughout the United States, including historically pivotal events like the Tulsa

Relevance: Evidence from an Ethnic Studies Curriculum (Nat'l Bureau of Econ. Rsch., Working Paper No. 21865, 2016), <https://www.nber.org/papers/w21865> (finding students enrolled in multiple culturally-responsive ethnic studies courses showed improved test scores in math, reading, and writing and are more likely to attend class and attain credits, and Black students, Latinx students, and male students especially are less likely to drop out of high school and are more likely to graduate and attend college); see also Tabbye M. Chavous et al., *Racial Identity and Academic Attainment Among African American Adolescents*, 74 Child Dev. 1076 (2003); Nolan L. Cabrera et al., *Missing the (Student Achievement) Forest for All the (Political) Trees: Empiricism and the Mexican American Studies Controversy in Tucson*, 51 Am. Educ. Rsch. J. 1084, 1102 (2014); Tyrone Howard & Clarence L. Terry, *Culturally Responsive Pedagogy for African American Students: Promising Programs and Practices for Enhanced Academic Performance*, 22 Teaching Educ. 345 (2011).

⁸ Nat'l Educ. Assoc. & Law Firm Antiracism All., *The Very Foundation of Good Citizenship: The Legal and Pedagogical Case for Culturally Responsive and Racially Inclusive Public Education for All Students* 12–14 (2022), <https://www.nea.org/sites/default/files/2022-09/lfaa-nea-white-paper.pdf>.

⁹ Christy M. Byrd, *Does Culturally Relevant Teaching Work? An Examination from Student Perspectives*, 6 SAGE Open 1, 7 (July-Sept. 2016), <https://journals.sagepub.com/doi/pdf/10.1177/2158244016660744>.

Race Massacre.

II. The District Court’s Erroneous Analysis of the Right to Receive Information Permits Harmful Censorship of the Tulsa Race Massacre in Public Education.

The dangers of H.B. 1775 are demonstrated by the censorship of public school curriculum pertaining to the 1921 Tulsa Race Massacre, which is “[b]elieved to be the single worst incident of racial violence in American history.”¹⁰ According to the District Court, state officials are able to modify and even erase the teaching of this historically prominent event for reasons that have nothing to do with improving students’ academic achievement. Such a flawed understanding of the First Amendment not only contradicts Supreme Court precedent, but also subjects the education of Oklahoma schoolchildren to the political whims of elected politicians—the precise circumstance that the First Amendment right to receive information seeks to avoid.

In the early nineteenth century, the Greenwood District in Tulsa, Oklahoma served as an enclave for Tulsa’s more than 10,000 Black residents.¹¹ Called the

¹⁰ Scott Ellsworth, *Tulsa Race Massacre*, Okla. Hist. Soc’y, The Encyclopedia of Okla. Hist. & Culture, <https://www.okhistory.org/publications/enc/entry?entry=TU013> (last updated July 29, 2024).

¹¹ *Id.* (“By early 1921 Tulsa was a modern city with a population of more than one hundred thousand. Most of the city’s ten thousand African American residents lived in the Greenwood District.”).

“Black Wall Street,” the Greenwood District “was one of the most prominent and prosperous African American communities in the United States.”¹² On the morning of May 30, 1921, however, an interaction—falsely reported as a sexual assault—between a 19-year-old Black man, Dick Rowland, and a 17-year-old white elevator operator, Sarah Page, led to “a violent attack by as many as 10,000 white Tulsans [that] destroyed the thriving Black community of Greenwood.”¹³ In less than 18 hours, Greenwood was decimated, and its Black residents were either murdered, injured, interned, or forced to flee: “[thirty-five] blocks burned to the ground; as many as 300 dead; hundreds injured; 8,000 to 10,000 left homeless; more than 1,470

¹² *Remembering Tulsa, Before the Massacre*, Nat’l Museum of African Am. Hist. & Culture, Smithsonian Inst., <https://nmaahc.si.edu/explore/stories/remembering-tulsa-before-massacre> (last visited Aug. 24, 2025).

¹³ While there is no confirmed account of what occurred in the elevator, “[t]he trigger for the violence of the Tulsa Race Massacre was the kind of unfounded condemnation that, at the time, commonly justified unspeakable treatment of Black men.” With no supporting evidence, multiple newspapers sensationalized and falsely reported that Rowland attempted to sexually assault Page. One local newspaper going as far as to urge the community to “Nab Negro for Attacking Girl in Elevator,” and the Tulsa Tribune “expressly encouraging white Tulsans to lynch Rowland.” U.S. Dep’t of Just., Civ. Rts. Div., *Review and Evaluation Tulsa Race Massacre*, File No. 144-59N-731 at 1–2, 14 (Jan. 2025) (“DOJ Report”) <https://www.justice.gov/crt/media/1383756/dl>; see also Press Release, U.S. Dep’t of Just., Civ. Rts. Div., Justice Department Announces Results of Review and Evaluation of the Tulsa Race Massacre (Jan. 10, 2025), <https://www.justice.gov/archives/opa/pr/justice-department-announces-results-review-and-evaluation-tulsa-race-massacre>.

homes burned or looted; and eventually, 6,000 detained in internment camps.”¹⁴ As many as 10,000 white Tulsans participated in the race massacre, which included shootings, arson, looting, and aerial bombings.¹⁵ The vast majority of Greenwood’s residents were rendered homeless, stripped of their businesses and jobs, left without redress, and blamed for what insurance companies designated as a “riot” to deny claims.¹⁶ Despite the convening of a state grand jury and a federal investigation for a massacre that “was so systematic and coordinated that it transcended mere mob violence,”¹⁷ no one was ever held accountable.

“The final insult of the massacre came in the silence.”¹⁸ State and local officials suppressed information about the race massacre, including confiscation and destruction of photographic evidence and records that documented the massacre,¹⁹

¹⁴ Yuliya Parshina-Kottas, et al., *What the Tulsa Race Massacre Destroyed*, N.Y. Times (May 24, 2021), <https://www.nytimes.com/interactive/2021/05/24/us/tulsa-race-massacre.html>.

¹⁵ DOJ Report at 26–31, 44.

¹⁶ *Id.* at 51–52, 54–55.

¹⁷ *Id.* at 1.

¹⁸ Parshina-Kottas, et al., *supra* note 14.

¹⁹ Amelia Faircloth, *Breaking the Silence on Tulsa’s Violent Past*, UC Santa Barbara, Humanities & Fine Arts, <https://www.hfa.ucsb.edu/news-entries/2022/5/17/3fe6h1ohwozjn4lx6y5xgy9gw2b16e#:~:text=Silence%20regarding%20the%20massacre%20continued,America's%20historical%20past%20is%20counterproductive> (last visited Aug. 25, 2025).

the burial of victims in unmarked graves, and the removal of “inflammatory Tulsa Tribune articles” by cutting them “before the newspapers were transferred to microfilm.”²⁰ “City officials cleansed the history books so thoroughly that when Nancy Feldman, a lawyer from Illinois, started teaching her students at the University of Tulsa about the massacre in the late 1940s, *they didn’t believe her.*”²¹ This “conspiracy of silence” led to multiple generations of Oklahoma students never learning about the Tulsa Race Massacre and its impact on Oklahoma.²²

In 1997, the Oklahoma state legislature passed House Joint Resolution No. 1035, which created “The 1921 Tulsa Race Riot Commission;” and, in 2001, the Commission released a 200-page report collecting historical documentation of the Tulsa Race Massacre and its ongoing harm to Oklahoma’s Black residents, including the survivors of the massacre and their descendants.²³ Not until 2002 was the race

²⁰ Maggie Astor, *What to Know About the Tulsa Greenwood Massacre*, N.Y. Times (May 28, 2021), <https://www.nytimes.com/2020/06/20/us/tulsa-greenwood-massacre.html>.

²¹ *Id.*

²² Nuria Martinez-Keel, ‘*A Conspiracy of Silence*’: *Tulsa Race Massacre Was Absent From Schools for Generations*, Educ. Week (May 26, 2021), <https://www.edweek.org/teaching-learning/a-conspiracy-of-silence-tulsa-race-massacre-was-absent-from-schools-for-generations/2021/05>.

²³ Okla. Comm’n to Study the Tulsa Race Riot of 1921, *Tulsa Race Riot: A Report by the Oklahoma Commission to Study the Tulsa Race Riot of 1921* (2001), <https://www.okhistory.org/research/forms/freport.pdf>.

massacre added to state academic standards, but it was offered as an optional example of possible classroom discussions on “the evolution of race relations in Oklahoma” and “rising racial tensions,” thus enabling schools in Oklahoma to avoid it entirely.²⁴ Almost a decade later, when Oklahoma updated its academic standards to include the Tulsa Race Massacre in the State’s “Priority Academic Student Skill” Standards, many students in Oklahoma still graduated from public schools without learning about pertinent details of the Tulsa Race Massacre.²⁵ Finally, in 2019, Oklahoma’s academic standards were expanded to include a more thorough and intentional discussion on the Tulsa Race Massacre in public schools.²⁶ In 2021, the Tulsa Race Massacre Centennial Commission (the “Centennial Commission”), which was created to educate the public about and commemorate the 100th anniversary of the massacre,²⁷ collaborated with the Oklahoma History Center to develop resources, such as recorded survivor interviews and primary source documents, for educators to incorporate into their curriculum.²⁸

²⁴ Martinez-Keel, *supra* note 22.

²⁵ *Id.*

²⁶ Ken Miller & Michael Melia, *How black history is taught in schools faces new scrutiny*, AP News (June 18, 2020), <https://apnews.com/article/ap-top-news-oklahoma-racial-injustice-tulsa-us-news-f71e9e3da209d2ff09bbaad5b574b2d3>.

²⁷ See *Frequently Asked Questions*, Greenwood Rising <https://www.greenwoodrising.org/faqs/#faqs-question-2> (last visited Sept. 2, 2025).

²⁸ *The 1921 Tulsa Race Massacre*, Okla. Hist. Soc’y,

Efforts to include the Tulsa Race Massacre in Oklahoma’s education standards were part of a growing consensus among educators that a racially inclusive education benefits students of all races.²⁹ *See generally supra* Section I.B. Yet, H.B. 1775 undermines those efforts. Following the passage of H.B. 1775, the Centennial Commission sent a letter to Oklahoma Governor Kevin Stitt noting that “[t]elling the story of 1921 requires confronting and sharing the facts about this horrific period in Oklahoma’s and Tulsa’s history” and expressing concern that H.B. 1775 “chills the ability of educators to teach students” and “will only serve to intimidate educators who seek to reveal and process our hidden history.”³⁰ As the Centennial Commission feared, despite progress in teaching about the Tulsa Race Massacre in Oklahoma public schools, H.B. 1775 has caused educators to modify lessons about the Tulsa Race Massacre to avoid potential discipline. For example, in Bixby, Oklahoma, teachers cancelled a lesson on *Dreamland Burning*, a young adult

<https://www.okhistory.org/learn/tulsaracemassacre> (last visited Sep. 3, 2025).

²⁹ Daniella Silva, *Once Overlooked in Classrooms, Tulsa Race Massacre Now Seen As ‘Important’ Lesson in Oklahoma Schools*, NBC News (May 27, 2021, 4:31 AM), <https://www.nbcnews.com/news/us-news/once-overlooked-classrooms-tulsa-race-massacre-now-seen-important-lesson-n1268684>.

³⁰ Letter from Phil Armstrong, Proj. Dir., 1921 Tulsa Race Massacre Centennial Comm’n, to Kevin Stitt, Okla. Governor (May 11, 2021), <https://htv-prod-media.s3.amazonaws.com/files/governor-letter-051121-1259-onepage-1620768081.pdf>.

historical fiction novel based on the events of the massacre, due to concerns about a possible HB 1775 violation.³¹ In Tulsa, “Black History Saturdays” was created as a community education program to educate young people about Black History, including the Tulsa Race Massacre, because H.B. 1775 had impacted the way race is taught in Oklahoma’s public schools.³²

Moreover, comments from state officials indicate their own understanding and intent that H.B. 1775 would impact discussions of the Tulsa Race Massacre in public school classrooms: former state representative and author of H.B. 1775, Sherrie Conley, questioned whether there was “a historical consensus that the Tulsa Race Massacre was caused by racism” when discussing the law and its impact on discussions regarding race.³³ Similarly, Ryan Walters, state superintendent of public

³¹ Jillian Taylor & Ari Fife, *After a state law banning some lessons on race, Oklahoma teachers tread lightly on the Tulsa Race Massacre*, The Frontier (Aug. 3, 2023), <https://www.readfrontier.org/stories/after-a-state-law-banning-some-lessons-on-race-oklahoma-teachers-tread-lightly-on-the-tulsa-race-massacre/>.

³² Adrian Florido, *Oklahoma restricted how race can be taught. So these Black teachers stepped up.*, KUOW (Nov. 22, 2023), <https://www.kuow.org/stories/oklahoma-restricted-how-race-can-be-taught-so-these-black-teachers-stepped-up>.

³³ In a conversation with The Frontier, former Representative Conley stated: “[i]t’s just a terrible tragedy in our state, and whether or not it was actually racism that caused the thoughts of the people that started it — we can try to speculate but to know for sure, I don’t think that we can.” Taylor & Fife, *supra* note 31. Representative Conley later released a statement clarifying her comments, noting that they “were in no way meant to downplay the horror of this event nor to say that

instruction, expressed a preference not to connect the massacre to systemic racism: “[L]et’s not tie [the massacre] to the skin color and say that the skin color determined it.”³⁴ Additionally, Oklahoma Lieutenant Governor Matt Pinnell acknowledged the validity of certain educators’ concerns that teaching the Tulsa Race Massacre could “offend or make a certain segment of that classroom feel like they are being targeted” in violation of H.B. 1775.³⁵

In addition to the Tulsa Race Massacre, H.B. 1775 severely restricts the right of students in Oklahoma’s public schools to receive information about other significant events in the state’s history that touch upon problems with racism,

it did not have anything to do with race.” Brianna Bailey, *Rep. Sherrie Conley Apologizes for Her Remarks on the Tulsa Race Massacre*, *The Frontier* (Aug. 4, 2023), <https://www.readfrontier.org/stories/rep-sherrie-conley-apologizes-for-her-remarks-on-the-tulsa-race-massacre/>.

³⁴ Adam Gabbatt, *Outrage as Republican says 1921 Tulsa massacre not motivated by race*, *The Guardian* (July 8, 2023), <https://www.theguardian.com/us-news/2023/jul/08/oklahoma-republican-tulsa-race-massacre>.

³⁵ Allison Herrera, *Oklahoma Lt. Gov. Matt Pinnell: HB 1775 Needs To Be ‘Clarified’ As Spotlight Shines On State’s History*, *NPR* (June 20, 2023), <https://www.kosu.org/race-culture/2023-06-20/oklahoma-lt-gov-matt-pinnell-hb-1775-needs-to-be-clarified-as-spotlight-shines-on-states-history>.

including the Trail of Tears,³⁶ the Osage Murders,³⁷ and the Oklahoma City

³⁶ The 1830 Indian Removal Act authorized the displacement of thousands of Native Americans to Indian Territory in modern-day Oklahoma to allow American settlers to expand westward. *Stories of the Trail of Tears*, Nat'l Park Serv., <https://www.nps.gov/fosm/learn/historyculture/storiestrailoftears.htm> (last updated May 16, 2024). During this forced relocation, known as the “Trail of Tears,” Native Americans were separated from their families, put into chains, and suffered drought, disease, and death. What *Happened on the Trail of Tears*, National Park Service, <https://www.nps.gov/trte/learn/historyculture/what-happened-on-the-trail-of-tears.htm#:~:text=%22Long%20time%20we%20travel%20on,fifth%20of%20the%20Cherokee%20population.> Over 10,000 Native Americans died on the Trail of Tears. *Stories of the Trail of Tears*, Nat'l Park Serv., <https://www.nps.gov/fosm/learn/historyculture/storiestrailoftears.htm> (last updated May 16, 2024). See Mot. for Prelim. Inj., AIM Decl. ¶ 26 (explaining the importance of students receiving Indigenous leaders’ perspectives on the forced relocation of Native Americans).

³⁷ In the early 1920s, approximately twenty-four Osage Indians residing in or near Fairfax, Oklahoma were killed or died under suspicious circumstances. Jon D. May, *Osage Murders*, Okla. Hist. Soc’y, Encyclopedia of Okla. Hist. & Culture, <https://www.okhistory.org/publications/enc/entry?entry=OS005> (last updated May 2, 2018). Local authorities failed to meaningfully investigate their deaths, and the Osage Tribal Council requested federal intervention to investigate the murders. *Id.* After the murders gained national attention, several perpetrators were convicted of killing Osage Nation members in order to gain control of wealth that was passed down through Osage oil and mineral leases. *Id.* Because of H.B. 1775, copies of the book “Killers of the Flower Moon” sit unopened at a high school in Oklahoma because as one teacher stated regarding the incorporation of the book in her lessons, “[a]s soon as that passed, I realized I would be setting myself up for House Bill 1775 to take away my license.” Nuria Martinez-Keel, *Oklahoma teachers on notice after ‘watershed’ vote on Tulsa, Mustang HB 1775 violations*, The Oklahoman (Aug. 10, 2022), <https://www.oklahoman.com/story/news/education/2022/08/10/tulsa-mustang-race-gender-curriculum-violation-vote-oklahoma-teachers/65393793007/>.

bombing.³⁸ Ultimately, the main function of H.B. 1775 has nothing to do with pedagogical concerns, but is instead a blunt instrument used to suppress exposure to ideas and information regarding race and racism that certain legislators personally disfavor—limiting the wealth of knowledge available to students in Oklahoma’s public schools and impacting the “meaningful exercise of [the students’] own rights of speech, press, and political freedom.” *Pico*, 457 U.S. at 867.

CONCLUSION

H.B. 1775 unconstitutionally limits the right of students in Oklahoma to receive information and ideas regarding race and racism, including Oklahoma’s own tragic history on that topic, simply because the state legislators dislike the subject matter. Such legislation does not comport with the First Amendment’s mandate. This Court must, therefore, reverse the District Court’s ruling below.

³⁸ On April 19, 1995, Timothy McVeigh detonated a truck bomb in front of the Alfred P. Murrah federal building in Oklahoma City, Oklahoma. Edward Tabor Linenthal, *Oklahoma City Bombing*, Okla. Hist. Soc’y, Encyclopedia of Okla. Hist. & Culture (Jan. 15, 2010), <https://www.okhistory.org/publications/enc/entry?entry=OK026>. The bombing killed 168 people and remains the largest domestic terrorism attack in United States history. *Id.* Investigators later discovered that the bombing was motivated by the perpetrators’ white supremacist ideologies. Emily Mae Czachor, *Remembering the Oklahoma City Bombing Victims, 30 Years After the Terror Attack*, CBS News (Apr. 19, 2025), <https://www.cbsnews.com/news/oklahoma-city-bombing-1995-victims-30-years/>.

September 3, 2025

Respectfully Submitted,

s/Avatara Smith-Carrington

Avatara Smith-Carrington

Jin Hee Lee

Mide Odunsi*

NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.

700 14th Street NW

Suite 600

Washington, DC 20005

(202) 682-1300

acarrington@naacpldf.org

jlee@naacpldf.org

modunsi@naacpldf.org

**Admission Application forthcoming*

Counsel for Amici Curiae

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September 3, 2025

s/Avatara Smith-Carrington

Avatara Smith-Carrington
NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.
700 14th Street NW
Suite 600
Washington, DC 20005
(202) 682-1300
acarrington@naacpldf.org

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2025, I electronically filed the foregoing using the court's CM/ECF system which will send notification of such filing to all counsel of record by cooperation of the CM/ECF system.

September 3, 2025

s/Avatara Smith-Carrington

Avatara Smith-Carrington

Counsel for Amici Curiae