DEFENDING THE FOUNDATION | ARTICLE 2 OF 8 | CONSTITUTIONAL DEEP DIVE

First Amendment — Free Speech in Virginia

You Have the Right to Speak. Until You Do.

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vachristian.org

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Section I: Thesis and Roadmap

Virginia's Constitution does not merely protect free speech. It declares that free speech *"can never be restrained except by despotic governments."* That is not a cautious legal standard. It is a moral indictment — written in advance — of any government that silences its citizens.

Today, that indictment applies to Virginia itself.

Parents are being silenced at school board meetings. A teacher was fired for refusing to speak words his conscience rejected. The Virginia General Assembly passed a law rationing how long citizens could speak online. A sitting school board member declared conservative student speech "hate speech" with "no place in our schools" — contradicting what Virginia's own flagship university told the Governor in writing.

This brief makes the constitutional case that what is happening in Virginia right now violates both the First Amendment and Virginia's own higher standard under Article I, Section 12 of the Virginia Constitution.

For Virginians, the Virginia Constitution is the first line of defense. The U.S. Constitution is the second. Virginia wrote the prototype. Virginia's standard is higher. And we hold Richmond to what Richmond itself adopted.

This brief proceeds in eight parts: (I) thesis, (II) constitutional standard and founding intent, (III) the Supreme Court framework, (IV) Virginia's statutory regime, (V) the steel-man opposition, (VI) the refutation, (VII) practical implications for Virginians, and (VIII) conclusion.

Section II: The Constitutional Standard and Founding Intent

The Federal Floor

The First Amendment to the United States Constitution provides:

> *"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or **abridging the freedom of speech, or of the press**; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."*
>
> — U.S. Constitution, First Amendment | constitution.congress.gov

The Fourteenth Amendment extends this prohibition to state governments. Virginia, like every other state, is bound by it. But Virginia did not stop there.

Virginia's Higher Standard

> *"That the freedoms of speech and of the press are among the **great bulwarks of liberty, and can never be restrained except by despotic governments**; that any citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; that the General Assembly shall not pass any law abridging the freedom of speech or of the press, nor the right of the people peaceably to assemble, and to petition the government for the redress of grievances."*
>
> — Virginia Constitution, Article I, Section 12 | law.lis.virginia.gov

Three differences from the federal standard are immediately apparent. First, Virginia names the enemy: only *despotic governments* restrain free speech. This is not neutral legal

language. It is a moral classification. Second, Virginia confers an affirmative right — every citizen *may freely* speak, write, and publish. Third, Virginia places the General Assembly itself on notice by name. The legislature is explicitly forbidden from abridging the right.

The Virginia Supreme Court confirmed this higher standard in *Vlaming v. West Point School Board* (2023), where Justice Kelsey wrote that Virginia's free speech protections have *"a vitality independent of the Federal Constitution"* and may *"offer more protection than the protections found in the Constitution of the United States."*

What the Founders Meant

James Madison, who drafted the First Amendment and championed Virginia's Declaration of Rights, wrote in his 1792 essay *"Property"* that *"every person has a property in his opinions and the free communication of them."* He connected free speech directly to the protection of conscience — which he called *"the most sacred of all property."* A government that controls what a citizen may say reaches into that sacred property and seizes it.

> *"In its larger and juster meaning, [property] embraces every thing to which a man may attach a value and have a right… every person has a property in his opinions and the free communication of them."*
>
> — James Madison, "Property," *National Gazette*, March 29, 1792

Thomas Jefferson, writing in the preamble to Virginia's Statute for Religious Freedom in 1786, made the same argument about expression:

> *"Truth is great and will prevail if left to herself… she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons,* ***free argument and debate****; errors ceasing to be dangerous when it is permitted freely to contradict them."*
>
> — Thomas Jefferson, Virginia Statute for Religious Freedom (1786) | Va. Code § 57-1

Alexander Hamilton, in *Federalist No. 84*, made the structural argument: press freedom was assumed precisely because no power had been granted to restrict it. The question he posed applies equally today: *"Why should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed?"*

The Biblical Foundation

The Founders' natural law framework was rooted in a Judeo-Christian understanding of conscience, truth, and the accountability of rulers. Scripture does not merely permit free speech — it commands it.

> *"For I am not ashamed of the gospel, for it is the power of God for salvation to everyone who believes."*
>
> **— Romans 1:16 (ESV)**

Paul wrote those words to the church in Rome — the capital of a government that would eventually kill him for speaking. He spoke anyway. Not because the law permitted it. Because God commanded it. The freedom to speak truth is not a government grant. It is a divine mandate.

> *"Open your mouth for the mute, for the rights of all who are destitute. Open your mouth, judge righteously, defend the rights of the poor and needy."*
>
> **— Proverbs 31:8-9 (ESV)**

Silence is not neutral. When government silences the citizen who speaks for the vulnerable — the parent at the school board microphone, the teacher who cannot betray his conscience — it does not merely restrict speech. It prevents the fulfillment of a biblical calling.

> *"Whether it is right in the sight of God to listen to you rather than to God, you must judge, for we cannot but speak of what we have seen and heard."*
>
> **— Acts 4:19-20 (ESV)**

Peter and John spoke those words to the Sanhedrin — the governing authority of their day — after being ordered to stop speaking in Jesus's name. The constitutional principle Virginia wrote in 1776 and the apostolic principle written two thousand years earlier arrive at the same place: the government does not own the citizen's voice.

Section III: The Supreme Court Framework

West Virginia State Board of Education v. Barnette (1943)

The foundational compelled speech case. West Virginia required students to salute the flag and recite the Pledge of Allegiance. Jehovah's Witness students refused on religious grounds. The Supreme Court struck down the requirement in language that has never been superseded.

> *"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."*
>
> — Justice Jackson, 319 U.S. 624, 642 (1943) | supreme.justia.com

Justice Jackson went further, naming what compelled speech produces:

> *"Compulsory unification of opinion achieves only the unanimity of the graveyard."*
>
> — 319 U.S. at 641

Barnette establishes three principles directly applicable to Virginia today. First, no government official — from the President to a school board chair — may prescribe what citizens must believe or say. Second, compelled speech is constitutionally indistinguishable from prohibited speech — both are forbidden. Third, the test for legislation that collides with the First Amendment is significantly more severe than ordinary scrutiny.

Tinker v. Des Moines Independent Community School District (1969)

Students wore black armbands to school to protest the Vietnam War. The school suspended them. The Supreme Court reversed, establishing that student constitutional rights do not disappear at the schoolhouse gate.

> *"In our system, state-operated schools may not be enclaves of totalitarianism. Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect."*
>
> — Justice Fortas, 393 U.S. 503, 511 (1969) | supreme.justia.com

The Court established that school officials may restrict student speech only when they can demonstrate that it would "materially and substantially interfere with the requirements of appropriate discipline." Mere discomfort with a viewpoint is not sufficient. The school must show actual, not speculative, disruption.

Rosenberger v. Rector and Visitors of the University of Virginia (1995)

The University of Virginia denied student activity funds to *Wide Awake*, a Christian student publication, because of its religious editorial viewpoint. The Supreme Court struck down the denial as unconstitutional viewpoint discrimination. This is a Virginia case — decided about a Virginia public university — making it directly controlling authority for every public institution in this Commonwealth.

> *"Discrimination against speech because of its message is presumed to be unconstitutional. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction."*
>
> — Justice Kennedy, 515 U.S. 819, 828-829 (1995) | supreme.justia.com

> *"Having created a limited public forum, the University may not discriminate against speech on the basis of its viewpoint."*
>
> — 515 U.S. at 829-830

Rosenberger establishes that when a government entity creates a forum for expression — a funding program, a public comment period, a student activity — it cannot then exclude speakers because of their viewpoint. Conservative speech, religious speech, and unpopular speech are not subcategories that forfeit their protection. They are the very speech the First Amendment was designed to protect.

Matal v. Tam (2017)

The government refused to register a trademark because it found the name offensive. The Supreme Court struck down the "disparagement clause" unanimously, articulating one of the clearest statements of viewpoint neutrality in First Amendment jurisprudence.

> *"It offends a bedrock First Amendment principle: Speech may not be banned on the ground that it expresses ideas that offend."*

> — Justice Alito, 582 U.S. 218, 223 (2017) | supreme.justia.com

There is no constitutional category called "offensive speech." There is no constitutional category called "hate speech." Speech that offends is still speech. The government may not use offense as a basis for restriction.

National Institute of Family and Life Advocates v. Becerra (2018)

California required pro-life pregnancy centers to post notices directing clients to state abortion services. The Supreme Court struck down the requirement, rejecting California's argument that "professional speech" occupies a diminished constitutional category.

> *"This Court has never recognized 'professional speech' as a separate category of speech subject to different rules. Speech is not unprotected merely because it is uttered by 'professionals.'"*
>
> — Justice Thomas, 585 U.S. ___, 138 S. Ct. 2361, 2371-72 (2018) | law.cornell.edu

This ruling directly undermines Virginia's attempt to regulate the speech of licensed counselors. When Virginia prohibits a licensed counselor from offering biblical counsel on sexual orientation to a willing client, it is regulating professional speech. *NIFLA* says the Constitution does not permit that merely because a license is involved.

Mahanoy Area School District v. B.L. (2021)

A high school student posted profane social media content off campus and on her own time. The school suspended her from cheerleading. The Supreme Court reversed 8-1, establishing that off-campus speech — especially political and religious expression — carries heightened First Amendment protection.

> *"When it comes to political or religious speech that occurs outside school or a school program or activity, the school will have a heavy burden to justify intervention."*
>
> — Justice Breyer, 594 U.S. 180, 197 (2021) | 594 U.S. 180

> *"America's public schools are the nurseries of democracy. Our representative democracy only works if we protect the 'marketplace of ideas.'"*
>
> — Justice Breyer, 594 U.S. at 196

Virginia's SB 854 — a law imposing a one-hour daily limit on minor social media use — imposes a heavier burden on off-campus speech than any school disciplinary policy the Court has ever reviewed. *Mahanoy* demanded a heavy burden of justification for a single student's suspension. Virginia imposed that burden on every minor in the Commonwealth simultaneously.

Section IV: Virginia's Statutory Regime

What Virginia's Law Actually Requires

Virginia has enacted affirmative protections for free speech at public universities. Virginia Code § 23.1-401 prohibits public institutions of higher education from restricting outdoor student speech unless the restriction is content-neutral, narrowly tailored, serves a significant government interest, and leaves open alternative channels of communication. Virginia Code § 23.1-401.1 goes further, providing that:

> *"Except as otherwise permitted by the First Amendment to the United States Constitution, no public institution of higher education shall abridge the constitutional freedom of any individual, including enrolled students, faculty and other employees, and invited guests, to speak on campus."*
>
> — Va. Code § 23.1-401.1 | Quoted in UVA Report to Governor and General Assembly, November 2025

Every public university in Virginia — UVA, Virginia Tech, GMU, VCU, ODU, JMU, William and Mary — is bound by this statute. Faculty, students, and invited guests all have the right to speak on campus without abridgment.

What UVA Told Richmond

In November 2025, the University of Virginia submitted its annual free speech compliance report to the Governor and General Assembly, as required by § 23.1-401.1. In that report, UVA certified compliance with Virginia's campus speech law and stated explicitly in its training materials for student judiciary officers:

> *"There is no 'hate speech' exception to the First Amendment unless it also falls within well-recognized exceptions to free speech (e.g., obscenity, perjury, child pornography, incitement, true threats, etc.)."*

> — University of Virginia, Report to the Governor and General Assembly, November 21, 2025

UVA also affirmed: *"UJC must not interfere with Constitutionally protected speech."* Virginia's flagship public university, in its own official report to Richmond, acknowledged that no hate speech exception exists and that its student judiciary is forbidden from interfering with protected speech.

What the Virginia General Assembly Did Anyway

In 2025, the Virginia General Assembly passed SB 854, signed by Governor Youngkin on May 2, 2025, and effective January 1, 2026. The law added Va. Code § 59.1-577.1, requiring social media platforms to:

> *"Use commercially reasonable methods… to determine whether a user is a minor and… limit a minor's use of such social media platform to one hour per day, per service or application, and allow a parent to give verifiable parental consent to increase or decrease the daily time limit."*
>
> — Va. Code § 59.1-577.1 | law.lis.virginia.gov

On February 27, 2026, in *NetChoice v. Miyares*, No. 1:25-cv-02067 (E.D. Va.), U.S. District Judge Patricia Tolliver Giles issued a preliminary injunction halting enforcement of SB 854. She found the law was not content neutral, was not narrowly tailored, and burdened far more speech than necessary — including the speech of adults who must verify their age before accessing protected content. Virginia has appealed. The injunction remains in place.

What Happened in Loudoun County

In October 2024, parents appeared at a Loudoun County School Board meeting to raise safety concerns about a student with documented gang ties and prior firearm offenses who had been re-enrolled at their children's school. The school board chair abruptly ended public comment. The school district later accused the parents of spreading "misinformation" and using "talking points" to advance a "political agenda."

In January 2025, Virginia Attorney General Jason Miyares filed an amicus brief in the Fourth Circuit calling the board's action what it was. In his official statement, he wrote:

> *"The remedy for speech the government dislikes is more speech, not enforced silence."*
>
> — Attorney General Jason Miyares, January 22, 2025

In December 2025, the Fourth Circuit ruled against the parents, holding that school boards may restrict speech in a limited public forum when it targets specific students. The court found the restriction viewpoint-neutral as applied. America First Legal, representing the families, announced it was evaluating next steps including possible appeal to the Supreme Court. But the ruling itself proves the series thesis: the federal First Amendment floor is not enough. When a federal court permits a school board to silence parents raising safety concerns about their own children, Virginia's Article I, Section 12 — which declares that free speech *"can never be restrained except by despotic governments"* — demands a higher answer. The fight is not over. It has simply moved to the right battlefield.

What Happened in West Point — and What It Cost

Peter Vlaming was a high school French teacher in West Point, Virginia. He was fired for refusing to use male pronouns for a biologically female student. His case went to the Virginia Supreme Court, which ruled in December 2023 that the school board violated his rights under multiple provisions of the Virginia Constitution, including Article I, Section 12. Justice Kelsey was explicit:

> *"The School Board attempted to compel him to make [certain statements] in violation of his right of free expression under Article I, Section 12 of the Constitution of Virginia."*
>
> — Justice Kelsey, *Vlaming v. West Point School Board,* Record No. 211061 (Va. Dec. 14, 2023)

In 2024, the West Point School Board paid Vlaming $575,000 in damages and attorney's fees. A teacher lost five years of his career. The state lost in the highest court in Virginia. And the compelled speech pressure on Virginia's educators continues.

What Happened in Albemarle County

In October 2025, the Turning Point USA chapter at Western Albemarle High School requested to host a speaker on the topic of gender identity during a student lunch period. School board member Allison Spillman responded by publicly comparing the event to a KKK speaker and writing: *"In my opinion this is not a matter of free speech, it's hate speech and has no place in our schools."*

Recall what UVA told the Governor of Virginia eleven months later: there is no hate speech exception to the First Amendment. A sitting school board member — an elected official with authority over students and schools — publicly declared conservative speech to be outside

constitutional protection. She was wrong. And her error was not merely a misstatement. It reflects a pattern of viewpoint discrimination that *Rosenberger* directly forbids.

Section V: The Steel-Man — The Opposing Argument

Intellectual honesty requires taking the opposing argument seriously. Here it is, stated at its strongest.

On School Board Speech Restrictions

School board meetings are limited public forums. In a limited public forum, the government may impose reasonable, content-neutral, viewpoint-neutral restrictions on time, place, and manner of speech. A board may limit speakers to three minutes. A board may require speakers to identify themselves. A board may restrict comment to agenda items. Courts — including courts in the Fourth Circuit — have upheld these restrictions as constitutional because they apply equally to all viewpoints and serve the legitimate interest of maintaining order in public proceedings.

Moreover, school boards have a compelling interest in protecting students from harassment and in maintaining an environment where students can learn without fear. When parents make accusations against specific students by name in a public forum, the board has a legitimate interest in protecting those students' privacy and safety.

On Social Media Restrictions for Minors

SB 854 was passed unanimously by both chambers of the Virginia General Assembly and signed into law. Its supporters argue that excessive social media use causes documented harm to the mental health of adolescents — harm that is not merely speculative but supported by peer-reviewed research, including a landmark study by the University of North Carolina. Government has long regulated minors' access to certain categories of content and activity. The one-hour limit gives parents a baseline they can adjust, preserving parental authority while setting a protective default. The law is not censoring viewpoints — it is regulating time spent, not content consumed.

On University Speech Policies

Universities have a compelling interest in maintaining an educational environment where all students can learn without feeling targeted, threatened, or excluded. When speech makes students from marginalized groups feel unsafe, their ability to access education is impaired. True First Amendment scholarship has always recognized narrow categories of unprotected speech — true threats, harassment, incitement. Universities are not silencing viewpoints;

they are distinguishing protected speech from conduct that rises to the level of harassment under Title VI and Title IX. The hate speech label, critics argue, is simply shorthand for speech that creates a hostile educational environment.

Taken on its own terms, this argument reflects a genuine tension at the heart of the First Amendment. The desire for inclusion and the protection of vulnerable students are not illegitimate interests. They deserve serious consideration.

Section VI: The Refutation

Point One: Viewpoint Discrimination Cannot Be Repackaged as Decorum

The school board's restriction in Loudoun County was not a time, place, and manner rule. It was not applied neutrally. It was applied selectively — to parents raising safety concerns the board found politically inconvenient, after the board had already publicly accused those parents of spreading "misinformation" and pursuing a "political agenda." That is the definition of viewpoint discrimination. *Rosenberger* is unambiguous: the government may not discriminate against speech based on viewpoint, even in a limited public forum.

The Albemarle school board member's public declaration that conservative speech is "hate speech" with "no place in our schools" is not a neutral decorum policy. It is a viewpoint-based judgment rendered by a state official about the acceptability of particular ideas. *Matal v. Tam* forecloses it: *"Speech may not be banned on the ground that it expresses ideas that offend."* An elected official's personal declaration does not change the constitutional analysis.

Point Two: Protecting Minors Does Not Override the First Amendment

Judge Giles addressed the SB 854 argument directly in her February 2026 opinion. The court acknowledged that protecting minors from addictive social media is a legitimate government interest. It then applied the constitutional test: is the law narrowly tailored to achieve that interest? It is not. By requiring all users — including adults — to verify their age before accessing protected speech, the law burdens far more than it targets. By imposing a one-hour limit across all content regardless of type, it rations access to political speech, religious speech, educational content, and news, not merely addictive entertainment. *Mahanoy* demanded a heavy burden for disciplining one student's off-campus speech. SB 854 imposes that burden on every minor in Virginia simultaneously — and does so without the individualized justification the Constitution requires.

Point Three: Virginia's Own Law Refutes the Hate Speech Argument

The hate speech argument collapses on contact with Virginia's own primary documents. UVA told the Governor in writing: *"There is no 'hate speech' exception to the First Amendment."* Virginia Code § 23.1-401.1 prohibits any public institution of higher education from abridging the constitutional freedom of any individual to speak on campus. The General Assembly enacted that protection. Public school officials — including school board members — are state actors bound by the same First Amendment that prohibits viewpoint discrimination.

When a school board member declares that conservative speech about gender identity is hate speech with no place in schools, she is not interpreting the law. She is contradicting it. *Barnette*'s warning applies directly: *"No official, high or petty, can prescribe what shall be orthodox."* Gender ideology is a contested political and social question. Officials do not get to declare one side of that debate to be outside constitutional protection.

✉ Is Your Legislator Defending Your Rights?

Virginia's senators and delegates wrote these laws. They answer to you. Contact your Senator and delegate today.

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Section VII: Practical Implications for Virginians

For Parents

If a Virginia school board silences your speech at a public meeting based on your viewpoint, you have legal recourse. The First Amendment's viewpoint discrimination prohibition applies directly to school board proceedings as limited public forums. You may bring a claim under 42 U.S.C. § 1983 for violation of your First Amendment rights. Virginia's Attorney General has now publicly confirmed in a filed brief that viewpoint-based silencing of parents violates the Constitution. Document everything: record the meeting if permitted, note the exact point at which you were silenced, and preserve any written communications from the board. Contact Alliance Defending Freedom or the Foundation for Individual Rights and Expression for legal assistance, and consult a licensed attorney for advice on your specific situation.

For Students

If you are a student at a Virginia public university and your speech rights are violated, Virginia Code § 23.1-401 and § 23.1-401.1 provide affirmative statutory protections that go beyond the federal First Amendment baseline. These statutes create clear obligations for your institution. They are enforceable through § 1983 First Amendment claims and through the state law obligations themselves. UVA's own compliance report confirms that institutions must certify adherence to these standards to the Governor and General Assembly. If your institution denies funding, recognition, or access to a student organization based on viewpoint — as UVA once did with *Wide Awake* before losing in the Supreme Court — *Rosenberger* controls. File a complaint with FIRE's Stand Up For Speech litigation project.

For Educators and Licensed Professionals

The Vlaming case established that Virginia's Article I, Section 12 protects educators from being compelled to speak words that violate their conscience. The $575,000 settlement is not merely a financial figure — it is a constitutional precedent. If you are a Virginia teacher, counselor, or licensed professional facing compelled speech demands from an employer, you have claims under both the federal First Amendment and Virginia's stronger state constitutional protections. The *NIFLA* decision forecloses the argument that professional licensing eliminates speech rights. Document the compelled speech demand in writing. Contact ADF or First Liberty Institute.

For Pastors and Churches

Virginia's Constitution and the First Amendment protect the preaching and teaching of Scripture on all subjects, including subjects the government finds controversial. A pastor who preaches a biblical view of marriage, gender, or sexuality is exercising both free speech and free exercise rights. The government may not use licensing, funding, zoning, or any other lever to penalize that speech. The pattern of declaring biblical speech "hate speech" — visible in Albemarle County and on university campuses — is the mechanism by which government pressure migrates from the public square into the pew. It must be resisted at every stage. The time to resist it is before the pressure reaches the church — not after.

Section VIII: Conclusion

Virginia's Constitution declares that free speech can never be restrained except by despotic governments. That declaration is not poetry. It is law. It is the highest standard in Virginia's constitutional order — higher than the federal floor, more explicit than the First Amendment,

and directly binding on every school board, university, and legislative body in this Commonwealth.

What is happening in Virginia today — parents silenced for expressing viewpoints officials dislike, a teacher fired for refusing to speak state-mandated words, a general assembly rationing online speech by the hour, a school board member declaring conservative ideas to be outside constitutional protection — does not merely raise legal questions. It violates the explicit text of Virginia's own founding document.

The Founders understood that truth does not need the government's protection to survive. It needs only the freedom to speak. Jefferson said it plainly: *"Truth is great and will prevail if left to herself… errors ceasing to be dangerous when it is permitted freely to contradict them."*

The Christian citizen's responsibility is not merely to observe this erosion. It is to speak — clearly, factually, and loudly — into it. Acts 5:29 is not a verse for comfortable times. It is a verse for exactly this moment:

> *"We must obey God rather than men."*
>
> **— Acts 5:29 (ESV)**

You were given this right. Not by Virginia. Not by the federal government. By your Creator. The Constitution recognizes it. Virginia's Declaration of Rights protects it. And no school board chair, no state senator, and no university administrator can legitimately take it away.

Speak. Write. Publish. And hold Richmond to what Richmond itself adopted.

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