

Team F

IN THE SUPREME COURT OF THE BUCKEYE STATES

No. 25-2608

LOOPED, INC.,

Petitioner

v.

JORDAN ELLIS, BDEW,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF BUCKEYE FOURTEENTH
APPELLATE DISTRICT

BRIEF FOR THE RESPONDENT

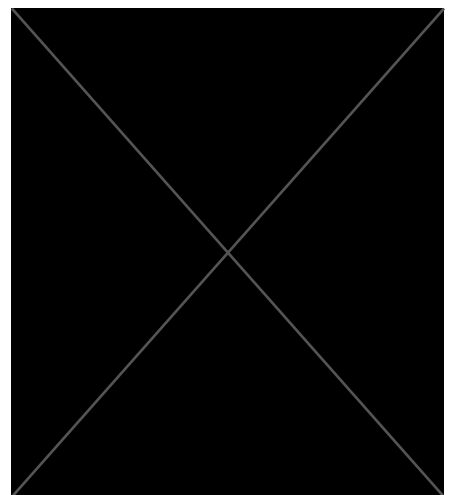


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Okwedy v. Molinari, 333 F.3d 339 (2d Cir. 2003)
Rosenberger v. Rector & Visitors of Univ. of Va., 515 U.S. 819 (1995)

OTHER AUTHORITIES

Brief of Petitioner, *Looped, Inc. v. Jordan Ellis, BDEW*, No. 25-2608 (Buckeye 2026).
Letter from Jordan Ellis, Dir., BDEW, to Liora Vensett, public policy lead, Loped, Inc. (Mar. 10, 2025).

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. I passim

CONSTITUTIONAL PROVISION INVOLVED

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.

QUESTION PRESENTED

1. Does the letter from the Buckeye Department of Education and Workforce violate the First Amendment Free Speech Clause by engaging in coercive behaviors, attempting to suppress certain speech on the platform?

STATEMENT OF THE CASE AND FACTS

This case is about the ability of the State to maintain a safe environment conducive to learning and to protect students from injury while in their care. This case comes from a viral social media challenge—one that caused extensive property damage and injured students across multiple school districts in the State of Buckeye. At the center of these events is Jamie Notestine, a rising senior who was recently selected as class president. Jamie organized a coordinated prank throughout her school. She was inspired by content viewed on Looped, a short-form media platform.

This content was called the “Italian Brainrot Challenge,” and it spread to Jamie’s school, Trillium High School, in February of 2025. Jamie's friend, Liam Marco, watched, via Looped, students run up and down halls at their respective schools, slapping stickers on walls. Liam then showed it to Jamie, and, upon seeing the content, she proposed that Trillium take the challenge further. Bigger and better stickers, stickier glue, and more outrageous placements. She endorsed the challenge as “senior class president approved,” and the next Monday, 250 stickers were slapped in a matter of five minutes, damaging showcases, and requiring 15 extra hours of staff cleaning.

The Trillium incident was one of several statewide. The incidents resulted in a student hospitalization, irreparably damaged plaques, a concussion, and injuries from shattered glass at four other Buckeye schools. In response, Director Jordan Ellis of the Buckeye Department of Education and Workforce sent a letter to Looped's public policy lead on March 10, 2025, requesting that Looped review the challenge videos under its existing Harmful Acts/Vandalism policy. At the end of the letter, Ellis carbon copied the Buckeye State Attorney General.

Looped filed suit, alleging the letter constituted coercive suppression of protected speech in violation of the First Amendment Free Speech Clause, and sought a preliminary injunction. The Cardinal County Court of Common Pleas sided with Looped, ruling that the request violated the company's First Amendment right to free speech. BDEW appealed to the Court of Appeals of Buckeye, Fourteenth Appellate District, which affirmed the standing but reversed on the common pleas court's decision. The Fourteenth District concludes that the letter constituted permissible, content-neutral government speech.

Looped now appeals to the Supreme Court of Buckeye on the sole question: Does the BDEW letter violate the First Amendment by engaging in coercive behaviors attempting to suppress speech on the platform?

ARGUMENTS

I. THE BDEW LETTER IS PERMISSIBLE GOVERNMENT SPEECH, NOT COERCIVE SUPPRESSION OF PROTECTED EXPRESSION.

The First Amendment does not silence the government. The government is entitled to “say what it wishes” and to advocate for its own policies. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 833 (1995); *Johanns v. Livestock Marketing Ass’n*, 544 U.S. 550, 553 (2005). Director Ellis, as the head of the agency charged with overseeing Buckeye’s education system, had the right and the obligation to respond to a statewide crisis endangering students and destroying public property.

The constitutional boundary is the line between permissible persuasion and impermissible coercion. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963). Courts examining that line apply a four-factor inquiry: (1) the official’s word choice and tone; (2) the official’s regulatory authority; (3) whether the speech was perceived as a threat; and (4) whether the speech alludes to adverse consequences. *Looped, Inc v. Jordan Ellis, BDEW*, No. 25-2608, slip op. at [31] (14th Dist. Sept. 17, 2025), citing: *Backpage.com, LLC v. Dart*, 807 F.3d 229 (7th Cir. 2015); *Okwedy v. Molinari*, 333 F.3d 339 (2d Cir. 2003); *O’Handley v. Weber*, 62 F.4th 1145 (9th Cir. 2003). No single factor is dispositive. *NRA of Am. v. Vullo*, 602 U.S. 175, 190 (2024). Analyzed here, all four factors favor a finding that Director Ellis’s letter was permissible government speech.

II. THE BDEW LETTER IS NOT COERCIVE UNDER THE APPLICABLE FOUR-FACTOR FRAMEWORK

A. Director Ellis Lacked Regulatory Authority Over Looped

A government official's power over the recipient is the critical backdrop against which all other factors are measured. *NRA of Am. v. Vullo*, 602 U.S. at 191. There is a blatant contrast with the coercive conduct found unconstitutional in *NRA of AM. v. Vullo*. *NRA of AM. v. Vullo*, 144 F.4th 376 (2d Cir. 2025). There, the Superintendent of the New York Department of Financial Services—the very agency with licensing and enforcement power over the insurance companies she pressured—privately threatened to impose regulatory penalties if those companies did not sever ties with the NRA. *NRA of AM. v. Vullo*, 144 F.4th 376. She had the direct power to investigate, fine, and enter consent decrees against those entities. *Id.* That demand—“disassociate from the NRA or face regulatory action”—exemplifies the coercion the First Amendment forbids.

Director Ellis occupies no position of authority over Looped. BDEW is an educational agency with no authority to revoke Looped's operating license, impose fines, initiate regulatory proceedings against the platform, or otherwise subject Looped to any legal consequence. As the Second Circuit has recognized in *Okwedy v. Molinari*, the absence of direct regulatory authority, while not absolutely dispositive, is a meaningful factor that weighs against coercion. 333F.3d at 343. Here, the complete absence of any enforcement power over Looped makes the coercion theory implausible on its face.

The Ninth Circuit's decision in *O'Handley v. Weber* is directly on point. There, the California Secretary of State's office flagged tweets to Twitter for potential policy violations through a voluntary reporting portal, and the court found no coercion because the agency had no enforcement authority over Twitter and communicated through a channel itself had voluntarily created. 62 F.4th at 1164. Similarly, BDEW here flagged content to Looped's public policy lead

and asked Looped to apply its own existing Harmful Acts and Vandalism Policy—the very policy Looped had voluntarily adopted. This is a request, not a command.

B. The Tone and Language of the Letter Reflect Cooperation, Not Command.

The language of Director Ellis’s letter stands in sharp contrast to communications courts have found coercive. In *Backpage.com v. Dart*, the sheriff’s letter opened with a “cease and desist” demand, accused the credit care companies of “willfully play[ing] a central role” in criminal exploitation of women and girls, cited the federal money-laundering statute to imply criminal liability, and demanded personal contact with company executives. 807 F.3d at 231-32. The court found this language was “designed to compel” action, not merely request it. *Id.* at 232.

Director Ellis’s letter contains none of these hallmarks of coercion. It “asks” Looped to review content. It states BDEW “would appreciate” a response. Most critically, it expressly disclaims any directive: “To be clear, we respect your independent policies and editorial discretion.” Letter from Jordan Ellis, Dir., BDEW, to Liora Vensett, public policy lead, Looped, Inc. (Mar. 10, 2025). A government communication that explicitly acknowledges the recipient’s autonomy cannot, under any fair reading, constitute a coercive threat.

Appellant points to the Director’s remark that providing a platform to content encouraging property damage “feels an awful lot like inciting individuals to criminal mischief.” Brief of Petitioner at 10, *Looped, Inc. v. Jordan Ellis, BDEW*, No. 25-2608 (Buckeye 2026). Ellis Letter. But government officials are permitted to express their views forcefully without crossing into unconstitutional coercion. *NRA of Am. v. Vullo*, 602 U.S. at 188 (“A government official can share her views freely and criticize particular beliefs, and she can do so forcefully in the hopes of persuading others”). No regulatory sanction was threatened, no pending investigation disclosed,

and no “cease and desist” language employed. The Director expressed his concern. That is permissible government speech, not impermissible coercion.

C. The Letter Cannot Reasonably Be Perceived as a Threat

The letters found coercive in *Bantam Books*, *Backpage*, and *Vullo* all prompted immediate, fear-driven compliance—distributors pulled books from shelves, credit card companies served ties, insurance companies cut business relationships. The recipients in those cases acted out of demonstrated fear of regulatory or legal retaliation. *Bantam Books*, 372 U.S. at 63, 68.

The circumstances here differ fundamentally. Rather than issuing a mandate, Director Ellis merely requested that Looped review the content in the light of Looped’s own Harmful Acts/Vandalism policy. Ellis Letter. This appeal to the company’s internal standards underscores the non-coercive, collaborative nature of the communication. Furthermore, Looped did not act upon the Director’s request. Instead it filed a lawsuit. A company that responds to a government letter by seeking judicial relief is not a company that reasonably perceived itself to be under coercive threat. Looped’s litigation posture is itself evidence that the letter was not reasonably understood as a command demanding compliance.

The 24-hour response window does not transform the letter into a threat. This brief window was not a deadline for compelled action, but a practical necessity to ensure that BDEW could consider Looped’s input before finalizing time-sensitized school safety policies. By requesting a prompt confirmation, the Director sought to facilitate a real-time exchange of information regarding potential policy impacts—an essential component of effective interagency and public-private coordination during a developing situation. Moreover, the letter explicitly

invited Looped to connect live with BDEW’s office to discuss the matter—this is the language of dialogue, not ultimatum. The Director’s request for a brief confirmation “if applicable” reinforces this lack of coercion, as it explicitly signaled that Looped could choose to take no action at all. Ellis Letter. The *Backpage* court focused on Sheriff Dart’s demand that a company executive be made personally available to him for ongoing contact, backed by threats of criminal liability. 807 F.3d at 232. Director Ellis’s request for a confirmation of review, with an open invitation to discuss further, simply does not rise to that level.

D. The Letter References No Adverse Consequences Against Looped

In *Bantam Books*, the commission’s notices expressly referenced the duty to recommend criminal prosecution and were followed up with police visits. 372 U.S. at 62-63. In *Backpage*, the sheriff cited the federal money-laundering statute, implying criminal liability. 807 F.3d at 232. In *Vullo*, the superintendent privately promised regulatory leniency on unrelated violations in exchange for compliance—an explicit quid pro quo. 602 U.S. at 192-193. No such consequences were threatened here in the letter.

The letter mentioned that BDEW was compiling an advisory for district technology leaders about “practical steps” to limit the spread of similar content on the school Wi-Fi networks and school devices. Appellant may misconstrue this as a threat. Schools have always had the unquestioned authority to filter content on their own educational infrastructure and devices. A school’s independent decision to block a website on its own network is an exercise of the school’s authority—not a regulatory sanction imposed upon Looped by BDEW. The threat of a school blocking content on its own server is categorically different from the threats of criminal prosecution or regulatory enforcement found unconstitutional in *Backpage* and *Vullo*.

Appellant also argues that copying the Attorney General constitutes an implicit threat of prosecution. Pet’r’s Br. at 11. But the letter plainly states BDEW intended to keep “colleagues across state government and law enforcement apprised of how platforms are addressing these concerns.” Ellis Letter. Informing the State’s chief legal officer of widespread property damage and student injury on school grounds is routine interagency communication—categorically different from the private, sanction-backed threats found unconstitutional in *Vullo*. While Petitioner suggests that copying the Attorney General implies a threat of prosecution, this ignores the Attorney General’s role as an independent constitutional officer. Pet’r’s Br. at 11. The Director’s inclusion of the Attorney General serves merely to keep the state’s chief legal officer informed of potential public safety issues—a routine administrative courtesy that does not, and cannot, strip the Attorney General of their independent discretion or transform a request for cooperation into a joint enforcement action.

III. THE BDEW LETTER SERVES A LEGITIMATE, CONTENT-NEUTRAL PURPOSE.

The BDEW letter serves a legitimate, content-neutral government purpose. BDEW’s concern was not with the Italian Brainrot memes, student humor, or short-form video content as such. BDEW was concerned with the dangerous, real-world conduct the challenge videos demonstrably encouraged: students racing through hallways, shattering glass showcases, falling from ladders, and being transported to hospitals. The government’s interest in preventing physical injury to students and destruction of public school property is not only legitimate but compelling, and it requires no viewpoint discrimination.

As the Supreme Court recognized in *Johanns*, the government may support valid programs and policies through its own speech. 544 U.S. at 557. Ensuring that students return home from school uninjured and that public educational facilities remain intact is among the valid interests a state can pursue. Asking a private platform—once, voluntarily, without threat—to consider whether its own existing vandalism policy applies to content causing documented harm across the state is a proportionate, measured response to a genuine public safety crisis.

Appellant contends that BDEW’s reference to a specific Content ID number demonstrates content-based targeting. Pet’r’s Br. at 14. This misunderstands content-neutrality. Identifying a specific video as an example of the harmful conduct at issue is basic specificity in government communication, not viewpoint discussion. BDEW was not asking Looped to remove Italian Brainrot content generally. It was asking Looped to review one specific video that appeared to violate Looped’s own policies against content encouraging vandalism and harmful acts. The government objects to conduct, not viewpoint, and that distinction is dispositive.

IV. AN ADVERSE RULING WOULD SET A DANGEROUS PRECEDENT FOR PUBLIC ADMINISTRATION.

If this Court were to affirm a First Amendment violation on these facts—a single letter, from an education agency with no regulatory authority over the recipient, explicitly acknowledging editorial independence, requesting voluntary review under existing platform policies—the consequences for effective public administration would be severe and far-reaching. Government officials at every level routinely communicate with private companies about matters of public concern: health departments contact food service companies about safety standards,

transportation agencies communicate with ride-share platforms about driver compliance, and school officials reach out to technology platforms about content affecting students. To rule that any such communication constitutes presumptive coercion whenever the platform disagrees would be to effectively prohibit the government from speaking about matters of public concern at all.

The constitutional standard the First Amendment actually sets is the one articulated in *Bantam Books*, *Backpage*, and *Vullo*: coercion requires the use of threat of coercive state power—regulatory sanctions, license revocations, criminal referrals—to compel compliance with the government’s demands. That standard distinguishes genuine constitutional violation from the normal give-and-take between government agencies and private actors. The BDEW letter meets none of these criteria. It is a letter from an educational official, not a regulator. It requests, not demands. It acknowledges editorial independence explicitly, identifies no regulatory consequences, and threatens no legal action.

A society in which a school official is legally barred from requesting that a platform review content causing students to be hospitalized is not the society the First Amendment was designed to create. The “marketplace of ideas” is not threatened by a request to enforce existing rules against vandalism. It is served when government and private actors can communicate openly about the real-world consequences of online conduct.

CONCLUSION

For the foregoing reasons, this Court should affirm the Court of Appeals of Buckeye, Fourteenth Appellate District, and hold that the BDEW letter does not violate the First Amendment. Director Ellis’s letter was a lawful exercise of government speech: it lacked regulatory authority,

employed cooperative and deferential language, contained no threats explicit or implicit, and referenced no adverse consequences against Looped. It served a legitimate, content-neutral purpose in advocating for student safety and the preservation of public property.

Permitting the preliminary injunction to stand would silence public officials in the face of genuine documented harm and would set a precedent incompatible with the ordinary functioning of democratic governance. This Court should affirm the Court of Appeals and deny injunctive relief.

Respectfully Submitted,

