

No. 25-2608

IN THE
SUPREME COURT OF BUCKEYE

2026 TERM

LOOPED, INC.,

Petitioner,

v.

JORDAN ELLIS, *as Director*,

BUCKEYE DEPARTMENT

OF EDUCATION & WORKFORCE

Respondent.

ON WRIT OF CERTIORARI TO THE FOURTEENTH APPELLATE DISTRICT

COUNTY OF CARDINAL

Brief for Petitioner

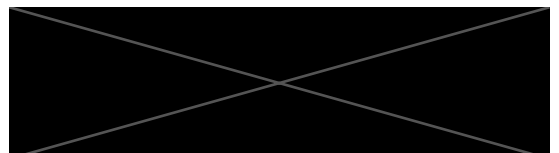


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CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides:

Congress shall make no law ... abridging the freedom of speech, or of the press ...

The Buckeye Constitution, Article I, Section XI provides:

Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press ...

QUESTION PRESENTED

Whether a government official crosses the line from permissible government persuasion to impermissible coercion in violation of the First Amendment when they use an official correspondence that implicitly threatens adverse consequences to pressure a private social-media platform to suppress protected speech?

STATEMENT OF THE CASE AND FACTS

The “Italian Brainrot Challenge” (“IBC”) is a recent entry in the historical tradition of adolescent prankery and viral media engagement. “Italian Brainrot” is defined by AI-generated characters—typically surreal combinations of food, animals, and mundane objects, each reflecting the individual creator’s imaginative choices and comedic sensibility. The challenge of “slapping” stickers featuring IBC characters onto surfaces spread primarily through Looped, Inc. (“Looped”), a short-form video platform. Looped operates as a private speech intermediary: it hosts user-created content subject to its own moderation and community standards, independent of any government direction.

Looped is blocked on Trillium High School’s servers and district-issued devices as a matter of longstanding educational policy. In February 2026, however, one of the school network’s recurring server glitches briefly rendered Looped content accessible on student devices. IBC videos quickly gained traction amongst students, including rising senior Jamie Notesine. As the trend—hashtagged “SeniorPrankIBC”—circulated through the student body, Jamie began coordinating Trillium’s participation in the challenge.

The following Monday, approximately thirty Trillium students slapped an estimated 250 character stickers onto school Hall of Fame showcases. No students were harmed. School officials responded swiftly and proportionately: Jamie received a three-game suspension from the basketball team and was asked to speak against the IBC on Trillium’s behalf.

School discipline alone did not satisfy state officials. Upon learning of the trend, Director Jordan Ellis (“the Director”) of the Buckeye Department of Education and Workforce (“BDEW”) sent a letter directly to Looped. No regulatory process governed the letter’s dispatch. The

Director nonetheless pressed Looped to subject all IBC videos to review under Looped's own Harmful Acts Policy, urging the platform to "flag, review, and remove similar content." *Facts of the Case* at 29. The letter implored Looped to reconsider whether it was circulating harmful content that potentially incited criminal mischief.

The Director carbon-copied the letter to the Buckeye Attorney General.

Looped filed suit against the Director, contending that the letter violated the First Amendment by coercing a private platform to suppress protected speech. The trial court agreed: it found that Looped had standing to seek a preliminary injunction and that the Director's letter was unconstitutionally coercive in nature, and it issued the injunction accordingly.

The Fourteenth District Court of Appeals reversed. While affirming that Looped had standing, the court held that the letter constituted permissible government speech serving a content-neutral purpose.

Looped now appeals to the Supreme Court of Buckeye. The sole question presented is whether the Director's letter violates the First Amendment by crossing the line from permissible government speech into unconstitutional coercion aimed at silencing protected expression.

ARGUMENT

I. THE BDEW'S LETTER CONSTITUTES IMPERMISSIBLE GOVERNMENT COERCION IN VIOLATION OF THE FIRST AMENDMENT.

The First Amendment prohibits the government from suppressing protected speech, including communications that imply adverse consequences, because coercion cannot be laundered through implication. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 66–68 (1963); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828–29 (1995); *Backpage.com, LLC v. Dart*, 807 F.3d 229, 230–31 (7th Cir. 2015). The same principles apply under Article I, Section XI of the Buckeye Constitution.

Whether government speech crosses from permissible persuasion into coercion depends on how a reasonable recipient would perceive it in context. *Bantam* at 66-68; *Okwedy v. Molinari*, 333 F.3d 339, 341–42 (2d Cir. 2003); *O’Handley v. Weber*, 62 F.4th 1145, 1163–64 (9th Cir. 2023). Courts consider: (1) word choice and tone; (2) scope of regulatory authority; (3) whether the recipient perceives a threat; and (4) whether the communication implies consequences for noncompliance. *O’Handley* at 1163-64.

The ultimate question in coercion analysis is whether a reasonable recipient would have felt they had no realistic option but to comply. This inquiry turns on two distinct but related prongs: first, whether the context and authority behind the communication would cause a reasonable recipient to perceive an implied threat of adverse consequences; and second, whether the tone and language of the communication go beyond mere persuasion into compulsion. Both prongs are satisfied here.

Applying these factors, the Director’s letter to Looped constitutes coercion. The official letterhead, signature in an authoritative capacity, and circulation to other state officials signal that adverse consequences could reasonably be perceived for noncompliance, rendering the letter an impermissible attempt to suppress protected speech.

A. The context of the letter would cause a reasonable recipient to perceive an implied threat of adverse consequences.

Courts distinguish permissible persuasion from coercion by asking whether a reasonable recipient would feel free to disregard the government’s directive or instead feel compelled to comply due to an implicit or explicit threat of adverse consequences. *Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175, 180 (2024). In *Vullo*, the Supreme Court emphasized that even subtle pressure from regulators can be coercive because regulated parties are aware of the power the government has over them. *Id.* at 180. Thus, the government need not issue an explicit threat; coercion may be inferred from the totality of the circumstances surrounding the communication. *Id.* at 190.

Three features of the Director’s letter to Looped signal that the stakes of noncompliance extended beyond mere disagreement: official agency letterhead, the Director’s signature in an authoritative capacity, and visibly copying to the Buckeye State Attorney General. A reasonable recipient would not feel free to disregard the letter—the key distinction between permissible government persuasion and impermissible coercion.

Government requests for censorship are more likely to implicitly threaten when sent on official letterhead. *Okwedy* at 344. In *Okwedy*, the Second Circuit held that a municipal official’s use of official letterhead significantly supported the inference that the recipient could

“reasonably have believed” the official intended to use government power to retaliate if the request was ignored. Because that coercive inference may arise from letterhead alone, a court need not find an explicit threat to establish a First Amendment violation. *Id.*

The same inference applies here. The Director's letter was sent under bold letterhead bearing the Buckeye Department of Education and Workforce, with Ellis identified by title as “Director.” *Letter from Jordan Ellis to Liora Vensett*, Mar. 10, 2025, at 29. Furthermore, a government official who invokes state power to suppress disfavored expression crosses into unconstitutional coercion, even without direct regulatory authority over the recipient. *Okwedy* at 341–42.

In *Okwedy*, the court reasoned that instead of asking whether an official could directly penalize noncompliance, the relevant question was whether a reasonable recipient would perceive a threat of official retaliation. *Id.* at 342. The Supreme Court applied the same reasoning in *Vullo*, finding communications coercive because their force derived from the authority of the Superintendent’s office rather than the merit of the arguments. *Id.* at 188. Similarly, *Backpage* distinguished between private citizen advocacy and government action under color of office, finding the latter sufficient to raise First Amendment concerns. *Id.* at 231–32.

Like the official in *Vullo* and sheriff in *Backpage*, the Director relied on the authority of office, signing as the Director of the Buckeye Department of Education and Workforce. The letter’s tone, presentation, and content all reflect that authoritative posturing. To the extent that Respondent argues that the Director lacks direct regulatory authority over Looped, *Okwedy* clearly affirms that such authority is unnecessary where the communication reasonably conveys the threat of state power. *Id.* at 344. A company in Looped’s position, receiving a formal letter

from a state Director on agency letterhead, would understand that the force behind the communication derived from the authority of the office behind them.

The decision to copy a government official with broad enforcement authority amplifies the coercive force of a directive by signaling that noncompliance may trigger consequences beyond the sender's reach. In *Bantam*, the Supreme Court found coercion where a commission notified law enforcement of noncompliant distributors, implicitly signaling that enforcement stood ready to act on the commission's disapproval. *Id.* at 66–67. *Vullo* reaffirmed that coercion may operate implicitly through the strategic invocation of officials whose authority to penalize is well understood. *Id.* at 198.

That signal is unmistakable here. The letter was copied to three parties: the BDEW Digital Safety Coordinator, the Buckeye Association of School Districts Technology Council, and the Buckeye State Attorney General. *Letter* at 30. Unlike the other recipients, the Attorney General possesses broad investigative and enforcement authority over companies operating in the state; indeed, the appeals court's standing analysis noted the Attorney General's inclusion as a basis for particularized harm. *Looped, Inc. v. Ellis*, No. 25-2608, Doc. 08261961, 14th App. Dist. Ct. App. of Buckeye, 34 (Cardinal Cnty. Sept. 17, 2025). That established influence is reinforced by the letter's quasi-legal framing, which characterized the challenged content as “inciting individuals to criminal mischief” involving property damage. *Letter* at 29. The letter further states that the Director “intend[s] to keep [their] colleagues across state government and law enforcement apprised” of how platforms respond, a line that, read alongside the Attorney General's presence on the CC line, would lead a reasonable recipient to understand that the state's enforcement capacity was already directed toward this matter. *Id.* at 30. A reasonable

recipient would understand that the inclusion of the Attorney General on official correspondence signals potential consequences for noncompliance.

Because the BDEW's letter was sent on official letterhead, signed by a government official, and copied to a broad enforcement authority, a reasonable recipient would have perceived an implied threat of adverse consequences.

B. The tone and language of the letter crossed the line from permissible persuasion to coercion.

Even when the government does not directly mandate action, the wording of a communication can render it coercive. Courts evaluate whether a reasonable recipient would perceive the communication as compelling rather than mere guidance. *Bantam* at 59-60; *Backpage* at 230-31. Factors include whether the language implies legal consequences, singles out the recipient in a manner that leverages governmental authority, threatens reputational harm, and emphasizes urgency. *Id.*

In *Backpage*, the letter sent could reasonably be interpreted as conveying an implicit threat of legal consequences through the reference of the Sheriff stating that card companies “promote illegal products or services,” which would be punishable by law. *Id.* at 64. Similarly, the Director's letter to Looped pointedly speculates citizens within the state have viewed the platform's flagged “Italian Brainrot Challenge” as “inciting individuals to criminal mischief.” *Letter* at 29. The Director also enclosed incident summaries documenting specific instances of student injuries, broken glass, and repair costs incurred by school districts. *Selected District Incident Summaries*, Mar. 10, 2025, at 28.

In *Bantam*, the Supreme Court held that notices sent by a state commission, though never accompanied by direct seizure or formal prohibition, were nonetheless unconstitutional because they carried an implicit threat of legal consequences for noncompliance. *Id.* at 60–61, 70–71. The Commission reinforced the coercive effect by requesting follow-up responses on whether Bantam had complied. *Id.* at 66–67. Similarly, in the letter sent to Looped, the Director informs the company in bold print that BDEW has the intent to **“keep...colleagues across the state government and law enforcement apprised of how platforms are addressing these concerns.”** *Letter* at 29.

The court in *Backpage* also found that singling out the recipient by name amplified the letter’s coercive force; Sheriff Dart’s use of “your institution” made the implied threat feel direct and personal. *Id.* at 231. Here, the Director’s repeated use of “your platform” functions identically. *Letter* at 29.

In *Vullo*, the court ruled that Maria Vullo, then-superintendent of New York Department of Financial Services (DFS), violated the First Amendment by pressuring insurance companies to limit their relationships with firearm-related organizations such as the National Rifle Association (NRA). The DFS guidance letter warned of potential reputational harm, urging their regulated entities to reassess associations with firearm companies by invoking their “obligation” to consider “reputational risks,” and coupling that “obligation” with a call for “prompt action to manage these risks.” *Id.* at 190. In the letters, Vullo further emphasized “social backlash” against the NRA and similar groups that “promote guns that lead to senseless violence” in the wake of “several recent horrific shootings.” *Id.* at 246, 249.

Like the letter in *Vullo*, the Director’s letter ties the spectre of reputational harm to implied pressure to take specific actions, demonstrating that the communication is coercive rather than mere suggestion or guidance.

In *Backpage*, the court found that a short, specified timeframe heightened the coercive effect of the letter by leaving the recipient little opportunity to resist the demand. *Id.* at 231.

Here, the Director’s letter similarly conveys commands through bolded, urgent language. Sections such as “**promptly review this content under your existing Harmful Acts/Vandalism policy,**” “**keep our colleagues across state government and law enforcement apprised of how platforms are addressing these concerns,**” and “**brief confirmation of your review within 24 hours,**” signify urgency and authority. *Letter* at 29–30. These bolded passages signal that Looped was expected to act within a strict timeline, leaving little room to exercise independent judgment.

Because the BDEW’s letter purposefully employs legal language, direct addressals, and urgent commands to invoke state authority, it crosses into unconstitutional coercion and confirms that the letter as a whole left Looped no realistic option but to comply.

II. The BDEW’s conduct threatens to chill protected speech without public knowledge.

As the Supreme Court reaffirmed in *Vullo*, government officials cannot coerce private parties to punish or suppress disfavored speech. *Id.* at 188. Government coercion directed at private speech intermediaries like Looped is especially likely to produce chilling effects because social media platforms face regulatory risk and may opt to remove user speech rather than face government retaliation. As recognized in *Bantam*, the government is forbidden from achieving indirectly what it cannot do directly. *Bantam*, as cited in *Vullo* at 190. Here, the government is

attempting to circumvent the First Amendment without public knowledge by outsourcing censorship to a private intermediary. This indirect suppression is dangerous as it operates without transparency and accountability. By directing its request privately to Looped, urging the platform to “flag, remove, or limit” speech the government disfavors, the BDEW ensures that any future moderation will obscure the government’s role and leave speakers unaware that their expression is being suppressed by the state rather than the private platform. *Letter* at 29. This hidden, coercive pressure on a private intermediary creates a constitutionally impermissible chilling effect on protected speech particularly when the government targets speech based on its content.

A. Because the government cannot show sufficient evidence that the speech targeted is content neutral.

The BDEW’s letter constitutes a content-based restriction on speech. A government action is content-based when it singles out specific subject matter for differential treatment, even absent viewpoint discrimination. *Rosenberger* at 829–30. Content-based restrictions are presumptively unconstitutional, and a facially legitimate justification does not alleviate the government’s burden where the practical effect of its conduct reveals a content-based purpose. *Bantam* at 69; *Vullo* at 195.

The Court of Appeals held the letter content-neutral on two grounds: that the government expressed no objection to Italian Brainrot humor specifically, and that its concern was directed at the “secondary effects” of vandalism and injury rather than the speech’s message. *Looped* at 39. Both conclusions are incorrect.

First, the absence of viewpoint discrimination does not establish content neutrality. *Rosenberger* draws a clear distinction: singling out subject matter for differential treatment is

content-based regardless of whether the government takes sides within that subject matter. *Rosenberger* at 829-30. The BDEW did not direct Looped to flag all videos depicting property damage or dangerous student conduct. It instructed Looped to “flag, remove, or limit” content specifically related to “student challenge videos” that encourage “a coordinated sticker-and-glass prank on school property.” *Letter* at 29. Compliance from Looped requires examining the substance of each video to determine if it promotes that particular challenge. That is content-based regulation.

Further, the secondary effects doctrine is not applicable here. This doctrine applies where harm arises from the presence of speech independent of its communicative impact, not where audiences are directly persuaded by and act on a message. The BDEW’s own submissions foreclose this characterization. Documented harm is the result of a speech’s persuasive effect: students watched videos, received their message, and imitated the depicted conduct. Indeed, taking the BDEW’s own factual account of damages as true—as a court must—it is implausible to characterize harm caused by audiences acting in response to a message as anything other than primary effects of that speech. *Bell Atl. Corp. v. Twombly*, 550 U.S., 544, 555–56 (2007).

Third, the BDEW’s decision to target one named challenge while ignoring the vast universe of comparably dangerous online content reveals that its action was not genuinely neutral. *Backpage* at 232. That selection required a content-based judgment about the message of a specific genre of speech. The government’s simultaneous pursuit of less restrictive alternatives—including outreach to schools—only underscores that the letter was a targeted intervention defined by the content it sought to suppress.

Finally, the Court of Appeals' reliance on *Johanns* is misplaced. *Looped* at 34, 39–40. *Johanns* concerned the government speaking in its own voice, accountable to the electorate for its views. *Johanns v. Livestock Mktg. Ass'n*, 544 U.S. 550 (2005). It did not sanction coercing a private intermediary to suppress someone else's speech. When the government acts not as a speaker but as a coercive force directing a platform to moderate specific expressive content, *Johanns* is inapposite.

Because the BDEW's directive was content-based on its face, the harms it invoked were primary effects of the speech's persuasive content, and its selective targeting betrays a content-based purpose, the Court of Appeals erred and its judgment should be reversed.

B. Because government coercion on a private social media platform suppresses the editorial discretion of the platform.

Coercion is established by the practical effects a government actor's communications have on the recipient's independent decision making *Okwedy* at 341–42. A private intermediary's editorial discretion is suppressed when the government's involvement so shapes the platform's moderation decisions that the platform is no longer acting as a genuinely independent editor. *O'Handley* at 1163–64.

In *O'Handley*, the Ninth Circuit found no First Amendment violation in part because Twitter retained genuine final authority over content moderation. *Id* at 1164. The court emphasized that the government was merely one voice among many in a partner-input system that Twitter itself had created and controlled. *Id*. The editorial discretion remained with the platform. By contrast, in *Bantam*, informal government communications directed at a private distributor were sufficient to constitute unconstitutional coercion because the practical effect was

to eliminate the distributor’s independent judgment about what to carry. *Bantam* at 66–67. In *Vullo*, the Supreme Court confirmed that coercion analysis looks to the totality of the government’s conduct, including whether the government exploited a position of regulatory authority to make its preferences felt without issuing a formal command. *Vullo* at 191.

The Court of Appeals erred in analogizing this case to *O’Handley*. *Looped* at 38. In *O’Handley*, the government operated within a pre-existing partner portal that Twitter built for that precise purpose. *O’Handley* at 1163–64. Here, the BDEW composed and transmitted an external, unsolicited letter directly to Looped, specifically urging the platform to “flag, remove, or limit” identified content. *Letter* at 29. That distinction is constitutionally significant, as the *O’Handley* framework depends on the government functioning as one input into a platform-controlled process. *O’Handley* at 1163. Such a structural safeguard was absent when the BDEW sent a targeted, government-authored letter to Looped for the implicit purpose of substituting its own editorial judgment for the company’s.

Because the BDEW’s private letter to Looped aimed to indirectly shape the platform’s content moderation, the communication was unconstitutional under the First Amendment.

CONCLUSION

Because the BDEW’s letter to Looped exerted impermissible coercive pressure through official authority, commanding language, and implied threats of adverse consequences, we ask that this court find that the letter constitutes a violation of the First Amendment and enjoin the BDEW from using such communications to influence Looped’s moderation of protected speech.

Respectfully submitted,

Counsel for Petitioner