

**IN THE
SUPREME COURT OF VIRGINIA**

Record No. 211061

PETER VLAMING,

Plaintiff-Petitioner,

v.

WEST POINT SCHOOL BOARD; LAURA ABEL, in her official
capacity as Division Superintendent; JONATHAN HOCHMAN, in
his official capacity as Principal of West Point High School; and
SUZANNE AUNSPACH, or her successor in office, in her official
capacity as Assistant Principal of West Point High School,

Defendants-Respondents.

**AMICUS BRIEF OF THE NATIONAL ASSOCIATION OF
SCHOLARS IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

The National Association of Scholars is a non-profit organization that seeks to uphold the standards of a liberal arts education that fosters intellectual freedom, searches for the truth, and promotes virtuous citizenship. Founded in 1982 as Campus Coalition for Democracy and known since 1987 as the National Association of Scholars, it is a leading advocate for academic freedom, disinterested scholarship, and excellence in American higher education. *Amicus* files this brief to lend its expertise as to the importance of academic freedom and freedom of speech in educational settings.

STATEMENT OF THE CASE

Amicus defers to the Statement of the Case as articulated in Petitioner's Brief to the Supreme Court of Virginia.

¹ No counsel for a party authored this brief in whole or in part, and no party, party's counsel, or any person other than *amicus curiae* or their counsel contributed money intended to fund preparation or submission of this brief.

ASSIGNMENTS OF ERROR

Amicus defers to the Assignments of Error as articulated in Petitioner's Brief to the Supreme Court of Virginia.

AUTHORITIES AND ARGUMENT

The government may not condition employment upon giving up rights of expression, and teachers do not lose their freedom of speech simply by engaging in public employment. See *Garcetti v. Ceballos*, 547 U.S. 410 (2006). If Petitioner Peter Vlaming's dismissal of employment is allowed to stand, important speech protections such as academic freedom and freedom from compelled speech will be lost.

In declining to use a masculine pronoun to refer to a biologically female student, Peter Vlaming sought to avoid using language that misrepresented his beliefs about biology and human sexuality. By compelling Vlaming's speech, Respondents force him to lend support to one side of the gender identity debate. When they conditioned his employment on his use of a masculine pronoun, they demanded that Vlaming assert a proposition which was contrary to his academic judgment.

The issues surrounding gender identity and language are matters of ongoing debate in this country. Individuals hold a range of differing views on this controversy, and there are legitimate, compelling intellectual grounds for honest and respectful disagreement. Causing Vlaming to espouse a view that he disagrees with in an academic setting curtails his ability to participate honestly in an important cultural debate.

The ability to express dissent is what separates a free society from dystopia, and bureaucratic fiat must not be used to impose submission in matters of intellectual disagreement. When it comes to the specifics of word choice and language usage, there are solid historical, ideological, and practical grounds for Vlaming to use pronouns in keeping with his beliefs about gender and biological sex. In doing so, Vlaming is not engaging in harmful conduct or invidious discrimination; he seeks to partake of an essential feature of a free society—to let his best judgment be the guide of his speech.

I. Pronouns have been hijacked by political movements to influence culture through language.

Pronouns are important and have cultural significance, although they often go unnoticed until co-opted to serve ideological

ends. In recent decades, for example, pronouns have become a point of contention in sexual politics, as shown by the ideological reaction against the unmarked use of the masculine pronoun *he*.

Throughout the history of English, the word *he* has fulfilled a double role, serving as the third person masculine singular pronoun as well as the unmarked third person singular. Because English possesses no sex-neutral third person singular pronoun, the unmarked form was used for both males and females when the sex of the referent was undetermined.² Then, in the 1970s, some feminists began to assert that this use of the masculine pronoun encoded a sexist bias in English. Attempts to steer clear of offense resulted in an array of experimental solutions, such as replacing the masculine pronoun with the phrase *he or she*, substituting *she* or *it* for the masculine, toggling between the masculine and feminine at random, substituting the plural *they*, and splicing two pronouns together to form the orthographic chimera *s/he*.

² Randolph Quirk, et al., A COMPREHENSIVE GRAMMAR OF THE ENGLISH LANGUAGE 342-3, 770 (Longman, 1985).

The vigilance of the proponents of policing the English language in this way has resulted in the popularization of some of these alternatives. Yet in spite of efforts to mandate what some consider to be inclusive language, none of these efforts has completely succeeded in abolishing the unmarked use of the pronoun *he*. For example, when the editors of the journal of the National Association of Scholars receive a manuscript containing a nonstandard pronoun, they correct it. This editorial policy is a political as well as a linguistic statement: it rejects the misguided notion that unmarked *he* is offensive or obsolete, since *he* has traditionally served two separate purposes. More recently, in another attempt at linguistic prescriptivism, the transgender and gender queer movements have advocated for the concoction of completely new pronouns, such as *nem*, *xyrs*, and *zir*, to name just a few.³ These movements, aiming to change cultural attitudes through the way we use language, reject the standard English practice of linking pronouns to biological sex.

³ The Transgender Training Institute, “A Guide to Understanding & Using Affirming Pronouns”
<https://www.transgendertraininginstitute.com/pronouns/>.

It is true that languages are constantly changing and that other languages handle pronouns and grammatical gender in a variety of ways. Our focus, however, must be the English language, a language which does maintain a link between personal pronouns and the biological sex of adult human referents. This use of masculine and feminine pronouns is grounded in the *recognition*, not the imposition, of objective biological reality. It is therefore not unreasonable for a contemporary speaker to adhere to this standard of usage.

Whatever their individual choices about pronoun use, advocates for standard English are capable of tolerating the coexistence of a variety of approaches. Proponents of the transgender movement, however, have made it clear that they will accept nothing less than total conformity. The strategy they have adopted is coercive by nature, insisting on an atmosphere of compulsory affirmation by prescribing the exact words that others must speak. This is because their ultimate goal is to impose their views on the culture. For those who disagree with the transgender movement's notions of gender, rejecting this attempt to control

language is one way of refuting their implied argument. It is an exercise of conscience and intellectual freedom, and as such, it must be protected.

II. Pronouns convey ideology and communicate statements about relationships and identity.

Words have the power to convey ideology through both direct and subtle means. Our founders recognized this power and knew that the words we use to address each other are important for expressing what we hold to be true. This is why, in keeping with the American Revolution's emphasis on social equality, our founders forbade Congress from granting titles of nobility. Other nations and movements have also used terms of address to promote and inculcate their worldview. One need only consider the semantic associations of a word such as *comrade* within the context of Communism, or *citizen* as used in the French Revolution.

The history of English pronouns is similarly bound up in political ideology. By the 17th century, along with many other European languages, English had developed a stratified system of second person pronouns. The singular (*thou/thee/thy/thine*) carried associations of familiarity and intimacy, while the plural

pronoun (*you/your/yours*) connotated elevation and distance. It was also used in the singular as a sign of respect when addressing superiors, strangers, and others of social standing (cf. German *du/Sie*, French *tu/vous*, Spanish *tú/usted*, Italian *tu/Lei*, Modern Greek *σύ/εσείς*).

Eventually, this respectful use of *you* lost all trace of its plural meaning, and today it has completely replaced *thou* as the standard second person pronoun.⁴ *Thou* and its related forms have fallen into disuse, surviving only in archaisms and specialized contexts. Because of *thou's* historical connotations (as well as the fact that contemporary speakers tend to encounter it in works of literature), many modern speakers of English erroneously associate *thou* with elevated usage. This mistaken impression has been reinforced by the historical practice of employing intimate pronouns for addressing the deity, a practice that survives to this day in hymns, liturgical texts, as well as other modern languages (cf. *Ich und Du*,

⁴ Quirk, *supra*, at 344-5.

Martin Buber's theological treatise on the relation of Man and God).⁵

In the 17th century, these connotations of familiarity and respect were not simply matters of courtesy; they represented a speaker's assent and conformity to the social hierarchy of the day. This distinction was such an important feature of pronominal usage that misuse of *thou* could be interpreted as signifying contempt. The offensive use of *thou*, wielded deliberately and for rhetorical effect, is shown by the transcript of Sir Walter Raleigh's trial for treason on 17th November, 1603. Note the way the prosecuting attorney transitions from *you* at the end to *thou*:

Raleigh—I will wash my hands of the indictment, and die a true man to the king.

Attorney—You are the absolutist traitor that ever was.

Raleigh—Your phrases will not prove it.

Attorney—Cobham writeth a letter to my lord Cecil [...].

Lord Cecil—You mean a letter intended to me; I never had it.

Attorney—No, my lord, you had it not. You, my masters of the jury, respect not the wickedness and hatred of the man, respect his cause: if he be guilty, I know you will have care of it [...].

⁵ Martin Buber, ICH UND DU (Insel-Verlag, 1923).

Raleigh—I do not hear yet, that you have spoken one word against me; here is no Treason of mine done: If my lord Cobham be a Traitor, what is that to me?

Attorney—All that he did was by thy instigation, thou viper; for I 'thou' thee, thou Traitor.

Raleigh—It becometh not a man of quality and virtue to call me so: But I take comfort in it, it is all you can do.

Attorney—Have I angered you?

Raleigh—I am in no case to be angry.

Chief-Justice Popham—Sir Walter Raleigh, Mr. Attorney speaketh out of the zeal of his duty, for the service of the king, and you for your life; be valiant on both sides.⁶

It was in this same linguistic context that the Quakers, known for their commitment to equality, chose to use English pronouns to demonstrate their beliefs. They refused to use *you* to address persons of rank, rejecting the prevailing ideology of their day. Instead, they insisted on employing *thou* for everyone, regardless of social standing. Many of their contemporaries deemed this practice offensive, but the Quakers understood that even the smallest word involves a statement about reality. They believed in the principle

⁶ STATE TRIALS: POLITICAL AND SOCIAL 22-23 (H. L. Stephen, ed., The Macmillan Company, 1899).

that all men were equal, and they chose to use words that affirmed this conviction.

Of course, for language to be in any way meaningful, it must be subject to public standards and criteria of correctness. Words that exist only in reference to private definitions are not in fact language at all. Ferdinand de Saussure, one of the founders of modern linguistic theory, spoke of the word's capacity to express ideas, what he termed its *value*: "A community is necessary in order to establish values. Values have no other rationale than usage and general agreement. An individual, acting alone, is incapable of establishing a value."⁷ Violation of this principal degenerates into what philosopher Ludwig Wittgenstein described as an impossible, private language.⁸ A private language, in this sense, is one in which a speaker creates his own personal definitions for words, private meanings that are accessible only to him—ones that he, and only

⁷ Ferdinand de Saussure, COURSE IN GENERAL LINGUISTICS 112 (Charles Bally & Albert Sechehaye, eds., Roy Harris, trans., Open Court, 1983).

⁸ Ludwig Wittgenstein, PHILOSOPHISCHE UNTERSUCHUNGEN (P.M.S. Hacker et al., eds., G.E.M. Anscombe, et al., trans., Wiley-Blackwell, 4th ed. 2009).

he, knows. The result is a language that cannot be understood by anyone except the user, and possibly not even by him.

But pronouns cannot constitute such a “private language.” Their meanings must be public, widely recognized and understood; otherwise, they cease to be useful. A speaker of such “words” may demand that others learn the rules to his own idiosyncratic code, but this is tyranny, not language, and a free society resists these assaults. When some feminists attacked the generic use of *he* as the unmarked third person singular, they were making claims of bias, not breaking down the pronoun’s link to the biological sex of the referent when used as the third person masculine singular pronoun. However, the transgender and gender queer movements do repudiate this connection. They claim that an individual’s subjective sense of gender identity justifies the use of a pronoun different from his biological sex. This assertion contains a metaphysical claim, the idea that a person’s “real” identity arises from a subjective inward conviction and not from empirical biology.

Furthermore, the transgender and gender queer movements are not satisfied with making metaphysical claims or asserting

personal inward convictions. These movements have a second key feature: they demand that everyone else affirm their metaphysics. It is not enough that a man, born male and chromosomally male in every cell in his body, may believe that he is actually female. He also demands that others accommodate and affirm his personal belief. Some may choose to do so, but others may decline.

When it comes to pronouns, gender identity theory is simply an attempt to rationalize one person's private language. But there is no academic or societal warrant to force others to affirm every individual's self-perceived gender by requiring the use of his preferred private language. In the United States, we are free to name ourselves, to define ourselves, and even if we wish, to select our own pronouns, but there is a vast difference between expressing a personal choice and compelling others to affirm it.

III. Throughout centuries of language change, English pronouns have maintained the distinction between biological males and females.

Of course, pronouns do change over time. Very few Americans continue to use the older pronouns mentioned above, although we certainly recognize them and know what they mean. Yet despite

centuries of morphological change, these words continue to preserve an inherent distinction in the way we refer to the sexes. Our use of pronouns is squarely grounded in the biological fact of being either male or female.

Consider these lines from Geoffrey Chaucer's *The Knight's Tale*, composed around 1369-1372:

Whilom, as olde stories tellen us
Ther was a duc that highte Theseus;
Of Atthenes he was lord and governour,
And in his tyme swich a conquerour
That gretter was ther noon under the sonne.
Ful many a riche contree hadde he wonne;
What with his wysdom and his chivalrie,
He conquered al the regne of Femenye,
That whilom was ycleped Scithia,
And weddede the queene Ypolita,
And broghte hire hoom with hym in his contree.⁹

Although the modern reader can still understand and appreciate Middle English, the language has undergone significant changes since Chaucer wrote these lines in the 14th century. Our syntax and semantic ranges have shifted, and yet this only highlights the remarkable continuity of the smallest words: he, his, him (*hym*),

⁹ Harvard University, *Geoffrey Chaucer Website*,
<https://chaucer.fas.harvard.edu/pages/knights-tale-0>.

and her (*hire*). There is no doubt in our minds as to the biological sex of the people they refer to, because their meaning has remained the same. These pronouns stand like boulders in an ever-changing stream of language, testifying to the distinction that English speakers have always drawn between biological males and females. They reflect the truth that there is a difference between the sexes, a distinction recognized by generations of language users and witnessed by the facts of biology.

For this reason, pronouns also build a bridge of shared assumptions between speaker and listener. But when individuals insist that others conform to their private choice of pronoun, not only do they deprive those around them of the freedom to speak in accordance with their judgment and conscience, but they thwart the purpose of language and invite confusion.

Some advocates for social change actually welcome this confusion: they seek “to queer” the language, by force if necessary. Others simply want to replace one set of underlying premises with a different set of their own. Some will disagree with these agendas

and seek to hold the line against them. That is the essence of freedom.

Education is—or it should be—open to debate, and those who wish to dispute the fact that humanity consists of two biological sexes are welcome to present their case. A school can hold the door open to those who declare such beliefs, but it must also uphold the rights of others who adhere to biological facts and standard English usage. Nor does a willingness to entertain new theories of gender dispose of the obligation to protect a teacher's intellectual and academic freedom. Indeed, the same freedom that gives individual students the right to advocate for linguistic inventions also gives teachers who dispute the validity, utility, or rationality of these innovations the right to speak consistently with their understanding and ethics. They too must be permitted to speak in their own voice and according to their own understanding of biological realities.

Languages are malleable, and English is no exception. But it should be shaped by the free exchange of ideas, not by edicts handed down by authorities. From the Puristic *Katherevousa* Greek of the

18th century to the modern *Académie Française*, institutional attempts to control language through diktat have achieved spectacular results in failure. Calling males *females* and vice versa and twisting pronouns to fit trends of sexual identity may signal institutional allegiance to a woke sensibility of gender fluidity, but in the end we will have the same sexual binaries we have had all along. This is because, despite centuries of language change, there is a permanence to the underlying truths these pronouns convey: the two sexes differ, and that difference is essential. The English pronouns reflect a timeless reality.

Ultimately, West Point School Board's actions against Mr. Vlaming will prove futile when it comes to changing the underlying linguistic and biological realities, but along the way they cause a great deal of collateral harm. Compelled speech undermines the marketplace of ideas that defines the educational system and the forum of a healthy society. Peter Vlaming's actions do not evidence wrongful, invidious discrimination—they typify the best of modern education: student and teacher confronting challenging ideas and

testing the truth. Neither should be ordered to affirm what they cannot in good conscience hold to be true.

CONCLUSION

For the reasons stated above, *Amicus* requests the Court to review this matter and to vindicate the speech rights of Petitioner.

Dated: May 23, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that this 23rd day of May 2022, the foregoing was filed electronically and served on the other parties via the Virginia Appellate Courts eBriefs System.

/s/ Joshua Hetzler
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RULE 5:17A CERTIFICATE

Pursuant to Virginia Supreme Court Rule 5:17A(c)(iii)(3), I hereby certify that the foregoing brief complies with the type-volume limitation set forth in Virginia Supreme Court Rule 5:17A(c)(i). Exclusive of the exempted portions of the brief, the brief contains 3,141 words.

/s/ Joshua Hetzler
Joshua Hetzler (VSB #89247)

Dated: May 23, 2022