FIRE
Foundation for Individual Rights and Expression

November 10, 2025

Mike Morath
Commissioner of Education
Texas Education Agency
1701 N. Congress Avenue
Austin, Texas 78701

Sent via U.S. Mail and Electronic Mail (commissioner@tea.texas.gov)

Dear Commissioner Morath:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech, writes to express serious concern that the Texas Education Agency (TEA) is investigating and threatening to suspend the licenses of teachers for comments they made on personal social media accounts regarding the assassination of political activist Charlie Kirk. While some of these comments may have caused offense or controversy, the First Amendment does not permit the government to revoke a citizen's eligibility for employment based on disapproval of the views they express outside the scope of their official duties. Any attempt to revoke or suspend an educator's license for such expression amounts to unconstitutional viewpoint discrimination and exceeds the permissible exercise of the TEA's licensing authority.

FIRE was horrified by Charlie Kirk's fatal shooting as he spoke at a Turning Point USA event at Utah Valley University on September 10—above all for the devastating loss suffered by his family and friends but also given our mission to defend free speech and open debate on campus and beyond, to which violence is never an acceptable response. Consistent with that mission, FIRE is also deeply concerned by government reactions to public discussion of the shooting, including the actual or threatened punishment of public employees for off-duty comments about this matter of significant public interest.

It is well-established that Americans do not surrender their First Amendment rights when they take up government employment.[1] That principle applies with even greater force when the government acts not as workplace manager, but—like the TEA—as a regulator that decides who may participate in a licensed profession.

[1] *Lane v. Franks*, 573 U.S. 228, 236 (2014).

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Unlike a school district evaluating an employee's fitness to continue teaching at a particular school based on the extent to which their speech might have disrupted the educational environment—including their relationships with coworkers, students, and parents[2]—the TEA is threatening to suspend teachers' licenses, precluding their future employment at *any* public school and potentially private ones as well.[3] The TEA is thus acting as a regulator, wielding its licensing power to investigate and punish citizens for the views they express in their private lives. In this context, general First Amendment principles apply, sharply limiting the TEA's authority.

The Supreme Court has squarely rejected the notion that a state can "reduce a group's First Amendment rights by simply imposing a licensing requirement," recognizing that "regulating the content of professionals' speech poses the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information."[4] Such speech is not "exempt from ordinary First Amendment principles."[5]

Under those principles, any restriction of speech based on its content is presumptively unconstitutional.[6] Viewpoint-based restrictions are even more disfavored. The Supreme Court has called viewpoint discrimination an "egregious" form of censorship, declaring 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."[7] But that is exactly what the TEA is doing by investigating teachers for the views they expressed outside of school about a public figure. However objectionable some may find those comments, they are core political speech protected by the First Amendment.[8] Even speech perceived to hope for,

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[2] Even when the government acts in its capacity as direct supervisor, it has limited authority to discipline employees for what they say as private citizens on matters of public concern. In *Pickering v. Board of Education*, the Supreme Court held that a government employer may discipline its staff for such speech only if it proves that its interest "in promoting the efficiency of the public services it performs through its employees" outweighs that of the employee "as a citizen, in commenting upon matters of public concern." 391 U.S. 563, 567 (1968) (First Amendment protected a public-school teacher from discipline for his letter to a local newspaper criticizing his school board, even considering the board's concern the criticism would "foment controversy"). The *Pickering* test demands a concrete, fact-specific showing of how the employee's speech affected the operation of the workplace where they are employed. Even when the government satisfies the test, its authority extends only to discipline within that specific employment relationship—not to broader punishment or censorship beyond that context. *Pickering* is not the proper framework for determining the constitutionality of a state's potential disqualification of a citizen's ability to pursue a licensed profession.

[3] Texas requires accredited private schools to "uphold standards comparable to state standards." *FAQ*, TEXAS PRIVATE SCHOOL ACCREDITATION COMMISSION, https://www.tepsac.org/#/faq.

[4] *Nat'l Inst. of Family & Life Advocates v. Becerra*, 585 U.S. 755, 771, 773 (2018).

[5] *Id.* at 773. The Court stated the First Amendment affords less protection for professional speech in two circumstances: (1) requirements that professionals disclose factual, noncontroversial information in commercial speech, and (2) regulations of professional *conduct* that incidentally burden speech. *Id.* at 768. Neither of those exceptions applies here, as the TEA is directly targeting off-duty, non-commercial speech.

[6] *Id.* at 766.

[7] *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

[8] *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (It is a "bedrock principle underlying the First Amendment" that officials cannot restrict speech simply because some find it "offensive or disagreeable."); *Connick v. Myers*,

celebrate, or express indifference to a public figure's death does not fall into any First Amendment exception.[9]

The TEA cannot justify its actions through appeals to codes of ethics or subjective standards of professionalism. All state laws and policies are subordinate to the Constitution and must be construed consistent with the First Amendment. In *Keyishian v. Board of Regents*, the Supreme Court invalidated a New York law banning employment in the state educational system of any person who made "seditious" utterances or advocated the violent overthrow of government, holding the law was "plainly susceptible of sweeping and improper application," including "prohibit[ing] the employment of one who merely advocates the doctrine in the abstract."[10] And in *Serafine v. Branaman*, the U.S. Court of Appeals for the Fifth Circuit—whose decisions also bind the TEA—held that Texas could not constitutionally exercise its licensing authority over the practice of psychology to restrict political speech that occurred outside that professional context.[11]

Likewise, the TEA has no power to wield professional regulations to disqualify a teacher from educational employment over constitutionally protected speech. Whatever authority Texas possesses to ensure professional competence in the practice of teaching, it does not extend to controlling teachers' speech or beliefs as private citizens, particularly on topics unrelated to a teacher's job duties.

Importantly, an investigation of constitutionally protected speech can itself violate the First Amendment, even if it concludes in favor of the speaker. The question is not whether the government metes out formal punishment, but whether its actions in response to the speech "would chill a person of ordinary firmness from continuing in the protected activity."[12] Investigations into protected expression can meet this standard.[13] The TEA's investigation and potential disqualification of teachers who commented negatively about Charlie Kirk carry a threat of discipline that is likely to deter teachers and other public employees throughout the state from expressing any view in their personal lives that might meet the disapproval of state officials.

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461 U. S. 138, 145 (1983) ("[S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection").

[9] *See, e.g.*, *Rankin v. McPherson*, 483 U.S. 378, 381 (1987) (holding unconstitutional a police department's termination of an employee who, after hearing that President Ronald Reagan had been shot, expressed contempt for his welfare policies and stated: "If they go for him again, I hope they get him.")

[10] 385 U.S. 589, 599 (1967).

[11] 810 F.3d 354 (5th Cir. 2016). FIRE successfully litigated a similar issue in *Diei v. Boyd*, 116 F.4th 637, 646 (6th Cir. 2024) (pharmacy student at a public university was protected from discipline for social media posts about sexuality and other topics unrelated to the pharmacy profession, despite the university's argument that the discipline served a legitimate interest of training students to "comport with the norms" of the profession).

[12] *Williams v. City of Carl Junction*, 480 F.3d 871, 878 (8th Cir. 2007).

[13] *See, e.g.*, *White v. Lee*, 227 F.3d 1214, 1228–29 (9th Cir. 2000); *Levin v. Harleston*, 966 F.2d 85, 89–90 (2d Cir. 1992).

FIRE calls on the TEA to immediately cease all investigations of public-school teachers over comments they made in their personal capacity on matters of public concern. We respectfully request a substantive response by November 24, 2025.

Sincerely,

Aaron Terr
Director of Public Advocacy