No. 24-655

In the Supreme Court of the United States

VIEWPOINT NEUTRALITY NOW!;
EVAN SMITH; ISAAC SMITH,
Petitioners,

v.

BOARD OF REGENTS
OF THE UNIVERSITY OF MINNESOTA, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY BRIEF OF THE PETITIONERS

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For their Reply Brief, the Petitioners Viewpoint Neutrality Now!, Evan Smith, and Isaac Smith, take exception to the Respondent University of Minnesota's legal analysis regarding status discrimination under *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 49 (1983) specifically stating that the Eighth Circuit's opinion "is silent as to the existence of a claim for status discrimination." Opp. Br. at 1. Quite to the contrary, the opinion specifically relied upon *Perry,* through the Circuit's 2020 decision in *Turning Point USA at Arkansas State U. v. Rhodes,* 973 F.3d 868, 876 (8th Cir. 2020) to support the University, to distinguish between "status-based discrimination" and "viewpoint-based discrimination" claims:

> By establishing a limited public forum, the University has "the right to make distinctions in access on the basis of subject matter and speaker identity." *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 49, 103 S.Ct. 948 (1983). Distinctions based on identity are status-based distinctions which are "'inherent and inescapable' in limited public forums." *Turning Point*, 973 F.3d at 876 (quoting *Perry*, 460 U.S. at 49, 103 S.Ct. 948) (explaining that a school policy allowing tabling only by recognized student groups necessarily favors those groups' viewpoints over unrecognized groups but noting that "such favoritism [is] status-based discrimination, rather than viewpoint-based discrimination"). Here, the University has limited the forum to the cultural centers—RSOs which both parties agree represent cultural minorities. This is a

> status-based distinction rather than a viewpoint-based distinction.

Viewpoint Neutrality Now! v. Board of Regents of University of Minnesota, 109 F.4th 1033, 1041 (C.A.8 (Minn.), 2024). A-12. By distinguishing "status-based" and "viewpoint-based" claims, the Eighth Circuit transformed the dicta of the *Perry* decision into the law of the Eighth Circuit.

The real problem, in this case, lies within the historical evidence revealing the University considered the length of time the nine student groups, the nine "student cultural centers," existed that affected the University's space allocation decisions in their favor. Opp. Br. at 3; A-3 (nine cultural centers assigned space since 2013 as a permanent solution to space allocation issues). The corresponding legal issue presented pertains to the Eighth Circuit's creation of two different types of discrimination attributed to limited public forums which this Court has not yet accepted as a legal principle that would adversely affect First Amendment free speech rights.

To be sure, the Court's dicta in *Perry* may have hinted at "status-based" claims being different than "viewpoint-based" claims. But, the Eighth Circuit's decision makes this distinction the law of the land. So, as argued in the petition, the Eighth Circuit has decided "an important question of federal law that has not been, but should be, settled by this Court." Sup. Ct. Rule 10

It is VNN!'s contention that status discrimination is inherent to viewpoint discrimination. They are not two different claims. While this may apply to nonpublic forums, the same principle cannot apply to limited public forums

whether status or viewpoint discrimination.

Here, the University's present annual decisions and policies to retain the *same* nine student cultural centers—without consideration of other similar student groups representing other or opposing cultures—are still based on a discriminatory policy decision made in 2013. The University's discriminatory policy violates the principles expounded in *Bd. of Regents of U. of Wisconsin System v. Southworth*, 529 U.S. 217 (2000) and its progeny. *See e.g., Southworth v. Bd. of Regents of U. of Wisconsin System*, 307 F.3d 566 (7th Cir. 2002); *Southworth v. Bd. of Regents of U. of Wisconsin System*, 221 F.3d 1339 (7th Cir. 2000).

As explained in the petition, the University's renewal application process for the coveted student office space at issue and within a centralized gathering place for University students (Coffman Memorial Hall) was exclusive to the existing nine student cultural centers and no one else. Pet. at 9–10. Notably, the University granted those nine student cultural centers office space for free. All other student groups had to seek other office space incurring costs, derived from the same source of University student fees, to exercise their First Amendment activities and away from a central gathering place within University boundaries.

In short, the University policies are viewpoint discriminatory because of its previous decision starting no later than 2013 and continuing to allow only the nine student cultural centers to remain rent-free at Coffman Memorial Hall. The criteria relied upon, as supposedly reflecting the diversity of the student population in 2013, is discrimination against less traditional viewpoints in favor of the University's established and favored student cultural centers over

the *present* diversity of the student population. *See, Southworth*, 376 F.3d at 769 (7th Cir. 2004).

CONCLUSION

For the reasons stated in the petition and herein, the petition for a writ of certiorari should be granted.

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