

No. _____

**In The
Supreme Court of the United States**

D.A., A MINOR, BY AND THROUGH HIS MOTHER, B.A.;
X.A., A MINOR, BY AND THROUGH HIS MOTHER, B.A.;
B.A., MOTHER OF MINORS D.A. AND X.A.,
Petitioners,

v.

TRI COUNTY AREA SCHOOLS;
ANDREW BUIKEMA, IN HIS INDIVIDUAL CAPACITY;
WENDY BRADFORD, IN HER INDIVIDUAL CAPACITY,
Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Students have a First Amendment right to wear political apparel to school unless it causes substantial disruption. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969). The Court later recognized a narrow exception by allowing schools to prohibit profane and sexually lewd speech. *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986).

This case concerns “Let’s Go Brandon,” a popular political slogan for expressing disdain for President Joe Biden. Members of Congress have used it during floor speeches, and it airs uncensored on broadcast TV and radio. But a divided Sixth Circuit panel applied *Fraser* to hold a Michigan school district can ban high school students from silently wearing apparel with the slogan because of its origin in a profane chant.

To reach its published holding, the majority split with the Third and Ninth Circuits, which confine the *Fraser* exception to “plainly” profane and lewd speech. The majority instead held *Fraser* permits censoring nondisruptive political speech that any single teacher or administrator “reasonably understands” as vulgar.

Judge Bush dissented that the test grants schools “unrestrained authority to suppress speech based on subjective interpretations” and, given nationwide confusion over its scope, “the Supreme Court ... must ultimately clarify, and ideally limit, *Fraser*’s reach.”

The question presented is whether *Fraser* permits schools to censor nondisruptive political speech that is not plainly profane or lewd.

PARTIES TO THE PROCEEDING

Petitioners were the plaintiffs-appellants in the court of appeals. They are high school students D.A. and X.A., proceeding through their mother, B.A., and B.A., as mother of minors D.A. and X.A.

Respondents were the defendants-appellees in the court of appeals. Respondents are the Tri County Area Schools school district, school administrator Andrew Buikema, and teacher Wendy Bradford.

RELATED PROCEEDINGS

This case arises from these proceedings:

- *B.A. v. Tri County Area Schools*, No. 24-1769, 6th Cir. (October 14, 2025) (affirming dismissal); and
- *D.A. ex rel. B.A. v. Tri County Area Schools*, No. 1:23-cv-423, W.D. Mich. (August 23, 2024) (granting defendants' motion for summary judgment).

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PETITION FOR WRIT OF CERTIORARI

The decision below poses a stark threat to the First Amendment rights of millions of public school students. It licenses individual teachers and administrators to banish nondisruptive political speech containing sanitized expressions if it clashes with their personal notion of “vulgarity.”

Judge Bush sounded the alarm in dissent that the decision sharply splits from other circuits and “essentially gives school administrators boundless discretion” to censor political speech, “akin to ‘I know it when I see it.’” App. 32a (quoting *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring)). Worse yet—and as the respondent school district concedes—the majority’s approach “will produce disparate outcomes across different schools” for identical *nondisruptive* political speech. Resp. to Pet. for Reh’g and Reh’g En Banc 16, *B.A. v. Tri Cnty. Area Schs.*, No. 24-1769, 2025 WL 3969583 (6th Cir. Dec. 26, 2025), Dkt. No. 94.

This Court has never approved, in any context, a subjective standard for restricting speech. America’s public schools, our “nurseries of democracy,” should not be the first. *Mahanoy Area Sch. Dist. v. B.L. ex rel. Levy*, 594 U.S. 180, 190 (2021).

Since October 2021, “Let’s Go Brandon” has been a popular conservative political slogan expressing disdain for President Joe Biden. Though it began as a misheard “F*** Joe Biden” chant at a NASCAR race, it quickly became part of the American cultural and political lexicon as a sanitized way to express

displeasure with the Biden administration. Multiple members of Congress have used the slogan during floor speeches opposing President Biden’s legislative initiatives, and the phrase has never been censored on broadcast television or radio. Given the slogan’s cleaned-up status, Petitioners D.A. and X.A. received “Let’s Go Brandon” sweatshirts from their mother as Christmas presents.

Yet when Petitioners wore the sweatshirts to school, an assistant principal and a teacher (Respondents Andrew Buikema and Wendy Bradford, respectively) deemed them in violation of the school’s prohibition on “profanity” and forced them to remove the apparel, even though it caused no disruption. In Respondents’ view, a sanitized expression “means” its profane corollary and is thus equally forbidden, even in nondisruptive political expression. App. 5a.

Respondents’ view, affirmed by a Sixth Circuit panel in a 2-1 decision, is incompatible with decades of First Amendment doctrine. In 1969, during the height of protests over the Vietnam War, this Court upheld students’ right to wear highly controversial black armbands expressing opposition to the war. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 512 (1969). It explained that America’s public schools must prepare the next generation for the “hazardous freedom” of living in a country where their neighbors and leaders may not think, talk, or pray the same way they do. *Id.* at 508. Under *Tinker*, the First Amendment protects students’ freedom of speech, unless their school demonstrates actual or reasonably forecasted substantial disruption. *Id.* at 509.

This case results from widespread confusion and disagreement in the lower courts over the scope of this Court's decision in *Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986), which established a narrow exception to *Tinker's* substantial disruption test, authorizing schools to prohibit profane and sexually lewd speech. Attempting to apply *Fraser*, lower courts have reached diametrically opposed results even when addressing identical nondisruptive student speech. While the Third and Ninth Circuits interpret *Fraser* to cover "plainly" profane and sexual speech, the Sixth Circuit majority below embraced a far more expansive reading, allowing censorship of nondisruptive political speech that any single teacher or administrator "reasonably understands" as vulgar.

As Judge Bush's dissent explains, the majority decision "creates at least two circuit splits" and makes every school (and classroom) a kingdom unto itself. App. 32a. A political shirt could have First Amendment protection in second-period algebra but not third-period biology. The dissent warns this approach "open[s] the door for viewpoint discrimination," because it "grants schools unrestrained authority to suppress speech based on subjective interpretations." App. 53a–54a.

The First Amendment is intended to shield Americans from inconsistent enforcement based on government officials' whims and political leanings. But "[i]f we allow schools the power to censor political speech by recharacterizing it as vulgarity, we risk turning disagreement with political speech into justification for its censorship—something the First Amendment flatly forbids." App. 32a (Bush, J.,

dissenting). The Constitution must provide the same protection for students' nondisruptive political apparel in Michigan as it does in Montana, no matter the idiosyncrasies of school staff.

Judge Bush stressed that given the confusion among the circuit courts over *Fraser's* meaning, "the Supreme Court itself must ultimately clarify, and ideally limit, *Fraser's* reach." App. 62a (quoting Recent Case, B.H. ex rel. Hawk v. Easton Area School District, 725 F.3d 293 (3d Cir. 2013) (*en banc*), 127 Harv. L. Rev. 1049, 1050 (2014)). This Court should grant certiorari to clarify *Fraser*.

OPINIONS BELOW

The district court's decision granting Respondents' motion for summary judgment is reported at 746 F. Supp. 3d 447 and reprinted at App. 64a–95a. The Sixth Circuit's decision affirming summary judgment is reported at 156 F.4th 782 and reprinted at App. 1a–63a. The Sixth Circuit's order denying rehearing is unreported but available at 2025 WL 3969583 and reprinted at App. 96a–97a.

JURISDICTION

The Sixth Circuit entered judgment on October 14, 2025. App. 1a. On December 26, 2025, the Sixth Circuit denied rehearing. App. 96a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment to the United States Constitution provides in part: “Congress shall make no law ... abridging the freedom of speech.”

STATEMENT OF THE CASE

At the heart of this case is the “Let’s Go Brandon” political slogan. In 2021, after Brandon Brown won a NASCAR race, members of the crowd began chanting “F*** Joe Biden” during Brown’s post-race interview. App. 3a–4a. A TV commentator remarked they were shouting “Let’s Go Brandon!” and a political slogan was born. App. 4a. It transformed overnight into a popular, cleaned-up slogan for expressing displeasure with President Biden’s administration. App. 4a.

“Let’s Go Brandon ... permeated American society ... appearing prominently on politically themed merchandise—including T-shirts, hats, flags, and bumper stickers—as well as at campaign rallies, political protests, and even on billboards across the country.” App. 33a (Bush, J, dissenting). The slogan was omnipresent on broadcast television, radio, and the news. App. 4a; App. 33a (Bush, J., dissenting). President Biden even repurposed the slogan for his own campaign, sharing “Dark Brandon” memes. App. 4a. In Congress, to convey strong disapproval of President Biden’s administration and initiatives, elected officials embraced “Let’s Go Brandon” in floor speeches without violating legislative decorum rules. *See* 168 Cong. Rec. H5240 (daily ed. June 7, 2022) (statement of Rep. Douglas L. LaMalfa); 167 Cong. Rec. H5880 (daily ed. Oct. 26, 2021) (statement of

Rep. Mary E. Miller); 167 Cong. Rec. H5776 (daily ed. Oct. 21, 2021) (statement of Rep. William J. Posey).

During the 2021–2022 school year when the relevant events occurred, Petitioners and brothers D.A. and X.A. were in sixth and eighth grade respectively in Respondent Tri County Area Schools (the “School District”). App. 5a. After receiving “Let’s Go Brandon” sweatshirts at Christmas from their mother, they wore them to school to silently express disapproval of President Biden. App. 5a–6a.

Respondent Andrew Buikema, the assistant principal, and Respondent Wendy Bradford, a teacher, instructed Petitioners to remove their sweatshirts or face discipline. App. 5a–6a. Buikema ordered removal of the apparel because he said the phrase “means the F-word” and has a “profane double meaning.” App. 5a–6a.

The School District concedes it never experienced disruption due to students using or wearing apparel with the “Let’s Go Brandon” slogan. App. 7a. The School District also never alleged that Petitioners were breaking any rule apart from the dress code’s prohibition on “profanity” or that the expression invaded the rights of others. *See* App. 6a–7a.

After the School District refused to lift the prohibition,¹ Petitioners filed this lawsuit. App. 7a. The district court had federal question jurisdiction under 28 U.S.C. § 1331 and civil rights jurisdiction

1. The School District’s prohibition of “Let’s Go Brandon” apparel extends to Tri County High School, which the brothers now attend.

under 28 U.S.C. § 1343. The district court held “Let’s Go Brandon” constitutes “profanity” sanctionable by public schools and granted summary judgment for the School District and its employees. App. 83a–87a. A divided Sixth Circuit panel affirmed because “the school reasonably understood the slogan ‘Let’s Go Brandon’ to be vulgar.” App. 3a. Petitioners sought rehearing en banc, urging the full Sixth Circuit to instead align itself with the Third and Ninth Circuits’ approach. But the Sixth Circuit denied rehearing en banc on December 26, 2025. App. 96a.

REASONS FOR GRANTING THE PETITION

The Sixth Circuit’s decision deepens confusion and disagreement in the lower courts on an issue affecting tens of millions of public school students: What political apparel does the First Amendment protect at school? *Tinker*’s baseline test is clear: Schools may not censor political speech absent actual or reasonably forecasted substantial disruption or an invasion of the rights of others.

But the contours of *Fraser*, an exception to *Tinker*, are anything but. And after 40 years of percolation in the lower courts, the exception now threatens to swallow the rule, with even nondisruptive, fully sanitized political speech facing censorship. Because disruptive speech is already regulable under *Tinker*, the Third and Ninth Circuits sensibly interpret *Fraser* narrowly, bypassing *Tinker*’s substantial disruption test only for “plainly” profane or sexual expression. The Sixth Circuit reads it far more broadly, interpreting *Fraser* as permitting censorship of a wide range of materials, from T-shirts for the

band Marilyn Manson, *Boroff v. Van Wert City Bd. of Educ.*, 220 F.3d 465, 471 (6th Cir. 2000) (reasoning the school appropriately found the shirt “contrary to [its] educational mission” because the “rock group promotes disruptive and demoralizing values”), to the “Let’s Go Brandon” political slogan here, App. 10a–14a (holding an administrator could “reasonably understand” the sanitized slogan as “vulgar” because of its genesis in a profane chant).

This divergence in authority makes public school students’ First Amendment right to nondisruptive political speech inconsistent across the circuits. And in the Sixth Circuit, it makes the right inconsistent not only between schools but also between *classes*, with individual teachers authorized to enforce their own subjective notion of “vulgarity.”

Students’ First Amendment rights do not and must not depend on the sensitivities of individual teachers. As Judge Bush explained in dissent, subjective standards are a petri dish for viewpoint discrimination and thus anathema to the First Amendment. App. 53a–54a. This Court should grant certiorari, clarify *Fraser*, and provide predictability for the nation’s teachers, parents, and students.

I. There Is a Recognized Split over Whether *Fraser* Permits Schools to Censor Nondisruptive Political Speech That Is Not Plainly Profane or Lewd.

This Court said it best: “The mode of analysis employed in *Fraser* is not entirely clear.” *Morse v. Frederick*, 551 U.S. 393, 404 (2007). The lower courts

agree, with nationwide lamentations that *Fraser's* analysis, deciding factors, and ultimate holding are ambiguous and thus difficult to apply with consistency. Those differences have resulted in multiple federal courts reaching opposing views on whether, for example, *Fraser* permits a school to prohibit the *same bracelet*. Compare *B.H. ex rel. Hawk v. Easton Area Sch. Dist.*, 725 F.3d 293, 297–98 (3d Cir. 2013) (en banc) (holding *Fraser* did not authorize middle school to prohibit “I ♥ boobies!” breast cancer awareness bracelets if students remain nondisruptive), with *J.A. v. Fort Wayne Cmty. Schs.*, No. 1:12-cv-155, 2013 WL 4479229, at *8 (N.D. Ind. Aug. 20, 2013) (holding *Fraser* authorized prohibiting the bracelets in a high school), and *K.J. ex rel. Braun v. Sauk Prairie Sch. Dist.*, No. 11-cv-622, 2012 WL 13055058, at *1 (W.D. Wisc. Feb. 6, 2012) (holding *Fraser* authorized prohibiting the bracelets in a middle school).

After 40 years of good faith disagreement and inconsistent application in the lower courts and America’s schools, it is time, as Judge Bush urged in dissent, for “the Supreme Court itself” to “ultimately clarify, and ideally limit, *Fraser's* reach.” App. 62a (quoting Recent Case, *supra*); see also Frederick Schauer, *Abandoning the Guidance Function: Morse v Frederick*, 2007 Sup. Ct. Rev. 205, 219, 227 (arguing “*Fraser* muddied the [*Tinker*] waters considerably” and urging the Court to provide additional clarity to students and teachers on in-school First Amendment rights).

A. *Fraser's* lack of guidance leaves the lower courts guessing.

“The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” *Tinker*, 393 U.S. at 512 (quoting *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967)). That is because “[t]he classroom is peculiarly the ‘marketplace of ideas.’ The Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth ‘out of a multitude of tongues, (rather) than through any kind of authoritative selection.’” *Id.* (quoting *Keyishian*, 385 U.S. at 603). Students therefore do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Id.* at 506. Instead, *Tinker* requires that if a school wishes to censor nondisruptive student expression, it bears the burden of demonstrating actual or reasonably forecasted substantial disruption or an invasion of the rights of others. *Id.* at 509.

In 1986, *Fraser* carved out a narrow exception to *Tinker's* test. *Fraser* involved a student delivering a speech laden from beginning to end with sexual innuendo at a school assembly. 478 U.S. at 677–78. The student used “an elaborate, graphic, and explicit sexual metaphor” to endorse a student council candidate, *id.* at 678, proclaiming him “a man who is firm—he’s firm in his pants,” and promising he would “take[] his point and pound[] it in” and “go to the very end—even the climax, for each and every one of you,” *id.* at 687 (Brennan, J., concurring in the judgment). During the speech, “[s]ome students hooted and yelled,” while others “by gestures graphically

simulated the sexual activities pointedly alluded to in [the student's] speech." *Id.* at 678 (majority opinion). The Court held the First Amendment did not shield the student from punishment and distinguished his remarks from *Tinker* in four key respects.

First, this Court emphasized the "marked distinction" between the raucous, nonpolitical student council assembly speech in *Fraser* and the silent political message of the anti-war armbands in *Tinker*. *Id.* at 680. Second, the Court noted that unlike Mary Beth and John Tinker, who passively wore controversial anti-war armbands during the school day, Matthew Fraser directed his expression at a captive student audience during a school assembly. *Id.* at 677. Contrasting *Tinker* with *Fraser*, this Court in *Hazelwood School District v. Kuhlmeier* distinguished between suppression of "a student's personal expression that happens to occur on the school premises" and "educators' authority over school-sponsored ... activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school." 484 U.S. 260, 271 (1988). Third, Fraser's assembly speech, unlike the Tinkers' armbands, used "graphic" and "explicit" sexual language. *Fraser*, 478 U.S. at 678. Fourth and finally, *Fraser* noted the student's assembly speech would have violated the decorum rules of the U.S. Senate and House of Representatives. *Id.* at 681–82.

But unlike *Tinker*, which provided the workable and objective substantial disruption test, the "mode of analysis employed in *Fraser* is not entirely clear." *Morse*, 551 U.S. at 404. Likewise for *Fraser*'s scope. Though the lower courts agree *Fraser* is an exception

to *Tinker*, *i.e.*, an allowance for schools to regulate certain speech absent substantial disruption, they have sharply diverged over the content necessary to trigger it.

There is broad agreement among lower courts, however, that *Fraser* is difficult to interpret and apply. The Second Circuit lamented that “[t]he law governing restrictions on student speech can be difficult and confusing, even for lawyers, law professors, and judges.” *Doninger v. Niehoff*, 642 F.3d 334, 353 (2d Cir. 2011); *see also* *Guiles ex rel. Guiles v. Marineau*, 461 F.3d 320, 326 (2d Cir. 2006) (citing *Fraser* in “acknowledg[ing] some lack of clarity in the Supreme Court’s student-speech cases”).

So as “a result of the numerous applications of *Fraser*, the extent of students’ free speech in public schools is more than a bit tangled.” Cindy Lavorato & John Saunders, *Public High School Students, T-Shirts and Free Speech: Untangling the Knots*, 209 West’s Educ. L. Rep. 1, 1 (2006); *see also* Martha McCarthy, *Student Expression Rights: Is A New Standard on the Horizon?*, 216 West’s Educ. L. Rep. 15, 19 (2007) (“The *Fraser* decision has generated a greater range of interpretations than has the *Hazelwood* ruling.”).

In short: “Reconciling *Tinker* and *Fraser* is no easy task.” *Harper ex rel. Harper v. Poway Unified Sch. Dist.*, 445 F.3d 1166, 1193 n.1 (9th Cir. 2006) (Kozinski, J., dissenting), *vacated as moot*, 549 U.S. 1262 (2007).

Relying on this Court's discussion of *Fraser* in *Hazelwood*, the Eleventh Circuit and some district courts have reasoned that a logical reading of *Hazelwood* limits *Fraser*'s reach "to situations in which the speech involved is likely to be perceived as bearing the imprimatur of the school." *Denno v. Sch. Bd. of Volusia Cnty.*, 218 F.3d 1267, 1274 n.5 (11th Cir. 2000) (citing *Hazelwood*, 484 U.S. at 270–73); see also *McIntire v. Bethel Sch., Indep. Sch. Dist. No. 3*, 804 F. Supp. 1415, 1426 (W.D. Okla. 1992) (observing that, while "the Supreme Court's opinion in *Fraser* is oblique at best and certainly less than clear," it is inapplicable if the speech does not "bear[] the imprimatur of the school").

Most courts, however, interpret *Fraser* as applying to all on-campus student speech. But they sharply split over what constitutes sufficiently "offensive," "profane," "vulgar," or "lewd" speech to trigger the exception, particularly with respect to political speech.

B. The Third and Ninth Circuits apply *Fraser* only to plainly profane or lewd speech.

The Third and Ninth Circuits read *Fraser* narrowly, providing the strongest protection to nondisruptive political speech. In the en banc Third Circuit's view, "*Fraser* addressed only a school's power over speech that was plainly lewd—not speech that a reasonable observer could interpret as either lewd or non-lewd." *Hawk*, 725 F.3d at 306.

Likewise, the Ninth Circuit interprets *Fraser* as permitting restriction of only “per se vulgar, lewd, obscene, or plainly offensive” speech. *Chandler v. McMinnville Sch. Dist.*, 978 F.2d 524, 530 (9th Cir. 1992) (rejecting school’s position that pro-union “scab” buttons could be regulated under *Fraser*, explaining, “these buttons cannot be considered per se vulgar, lewd, obscene, or plainly offensive within the meaning of *Fraser*”). And though the Second Circuit has not explicitly cabined *Fraser* to “plainly” and “per se” profane and sexual expression, it has limited *Fraser*’s holding to the type of “vulgar, lewd, and sexually explicit language that was at issue in that case.” *Doninger ex rel. Doninger v. Niehoff*, 527 F.3d 41, 49 (2d Cir. 2008) (upholding punishment of high schooler for calling school administrators “douchebags”).

Of note, the Third Circuit uniquely interprets *Fraser* and *Morse* to treat “ambiguously” profane and lewd speech differently depending on whether it is political—placing *political* speech in a preferred position to nonpolitical speech of the same variety. *Hawk*, 725 F.3d at 308–15. In support, the court pointed to *Fraser*’s commentary on the “marked distinction” between the political anti-war armbands in *Tinker* and the sexually lewd student council speech of Matthew Fraser, reasoning that “the *Fraser* exception does not permit” schools to restrict “ambiguously lewd, vulgar, or profane” student speech if it is “plausibly interpreted as political or social commentary.” *Id.* at 307, 309–10, 315.

These largely similar frameworks on one side of the circuit split present a commonsense, workable approach: Students retain their First Amendment

right to nondisruptive political speech unless they express themselves in plainly sexual or profane terms. In short, kids can't use swearwords or be lewd at school. For close calls on the margins, *Tinker* stands ready as a circuit breaker, immediately available to teachers and administrators if expression causes, or is reasonably forecasted to cause, disruption, or invades the rights of others.

C. The Sixth Circuit applies *Fraser* broadly to any speech a single administrator or teacher subjectively deems “vulgar.”

The Sixth Circuit expressly rejects the Third and Ninth Circuit's approach and instead interprets *Fraser* to justify sweeping censorship far beyond swearing and sexual speech. It took its first step towards that split in *Boroff*, 220 F.3d 465. There, the Sixth Circuit relied on *Fraser* to uphold a school's decision to ban T-shirts for the band Marilyn Manson not because the shirts used profanity or sexual language or imagery, but because the artist's lyrics—none of which were on the shirt—were “contrary to the school's educational mission.” *Id.* at 470; *see also id.* at 471 (“Rather, the record demonstrates that the School prohibited Boroff's Marilyn Manson T-shirts generally because this particular rock group promotes disruptive and demoralizing values which are inconsistent with and counter-productive to education.”).

The Sixth Circuit supercharged that expansive view of *Fraser* in this case. It explicitly rejected the Third Circuit's speech-protective approach in *Hawk*, which called *Boroff's* “sweeping and total deference to

school officials ... incompatible with the Supreme Court's teachings." *Hawk*, 725 F.3d at 316. Instead, the Sixth Circuit reaffirmed its *Boroff* approach, allowing individual school administrators and teachers to subjectively decide what speech is inappropriate for school. App. 25a–29a; *see also* App. 15a (explaining “although we are mindful of what the en banc Third Circuit said, to our knowledge, no panel of the Sixth Circuit has recognized *Boroff*'s abrogation”).

Under the Sixth Circuit's approach, so long as the administrator or teacher's determination that speech is “vulgar” is “reasonable,” they not only avoid monetary liability, but they also dictate whether the student's political expression is *constitutionally protected*. As Judge Bush warned in dissent, no other circuit follows this path. *See* App. 46a (“The majority's reading of *Fraser* conflicts with what that case said, and ignores how this court and our sister circuits have interpreted *Fraser*.”).

II. The Sixth Circuit's Approach Contradicts *Tinker*, Misapplies *Fraser*, and Flouts First Amendment Principles.

A. The decision below relies on a 19th-century view of student rights that *Tinker* plainly ended in public schools.

The Sixth Circuit justifies its break from its sister circuits by insisting its “deferential approach” of allowing individual teachers and administrators to decide what speech students may utter is “consistent with the history of how free speech rights were

understood at the time of the Fourteenth Amendment’s ratification.” App. 17a. But this Court has already rejected such a “historical” approach to constitutional rights in public schools—because public schools as we know them today *did not exist* at the framing. *Brown v. Bd. of Educ.*, 347 U.S. 483, 490 (1954). As the Court explained, “Education of white children was largely in the hands of private groups,” and for black children “was almost non-existent.” *Id.* Therefore, there is “little in the history of the Fourteenth Amendment relating to its intended effect on public education.” *Id.*

Until the late 19th century, schools exercised total control over students because parents willingly (and contractually) delegated their parental authority to another, usually a private school or tutor. See *Mahanoy*, 594 U.S. at 198–200 (Alito, J., concurring) (discussing the evolution of school authority over students from the Blackstone era to the present). “Today, of course, the educational picture is quite different” because school attendance is mandatory and “parents and public schools do not enter into a contractual relationship.” *Id.* at 199–200. Critically, “when a public school regulates student speech,” it does so as an “arm of the State.” *Id.* at 196. As this Court recently explained, “the government’s operation of the public schools ... implicates direct, coercive interactions between the State and its young residents.” *Mahmoud v. Taylor*, 606 U.S. 522, 557 (2025).

Importing the *in loco parentis* principles from 19th-century private schools would permit “even blatant viewpoint discrimination in schools,” where

“[s]tudents could be disciplined for taking any even quiet position that diverges from the political orthodoxy of school officials.” Vikram David Amar, Morse, *School Speech, and Originalism*, 42 U.C. Davis L. Rev. 637, 649 (2009). That is precisely the approach *Tinker* rejected. *Id.*

In *Tinker*, the Des Moines school district insisted wearing anti-war armbands was inappropriate for a school setting. *See Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 258 F. Supp. 971, 972 (S.D. Iowa 1966). Under a historical approach, that determination would have been final. But this Court in *Tinker* held otherwise. “In our system, students ... may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.” *Tinker*, 393 U.S. at 511.

America regards its public schools as “nurseries of democracy” where the “marketplace of ideas” is free to flourish unless expression substantially disrupts the school day. *Mahanoy*, 594 U.S. at 190. The decision below attempts to resuscitate the ironfisted authority over student speech that private school headmasters enjoyed in the 19th century. That era is over. *Tinker* governs and protects Petitioners’ freedom to engage in nondisruptive political speech.

B. The First Amendment and *Tinker* are designed to protect political speech like the “Let’s Go Brandon” slogan.

The Sixth Circuit majority rightly acknowledged that “Let’s Go Brandon” is “firmly established in the national lexicon” as an anti-Biden political slogan. App. 5a. That is unsurprising. “It is a prized American privilege to speak one’s mind” about our national leaders. *Bridges v. California*, 314 U.S. 252, 270 (1941). And “[w]hatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs.” *Mills v. Alabama*, 384 U.S. 214, 218 (1966).

Political slogans about our leaders have a rich history in America’s robust political discourse. The Whig Party’s 1840 slogan “Tippecanoe and Tyler Too” highlighted William Henry Harrison’s heroism in the Battle of Tippecanoe. Slogans can sting, too. In 1884, Republicans used “Ma. Ma. Where’s My Pa?” to remind voters that Democrat Grover Cleveland fathered a child out of wedlock. Democrats countered with “Blaine, Blaine, James G. Blaine, the Continental Liar from the State of Maine!” trying to tie Republican candidate James Blaine to a corruption scandal. Barack Obama’s “Yes We Can” and Donald Trump’s “Make America Great Again” leave little doubt that the rhetorical power of pithy slogans remains strong in American discourse.

The sanitized “Let’s Go Brandon” political slogan—used everywhere from campaign rallies to

the floor of Congress to convey disapproval of President Biden and his administration—fits squarely within our nation’s deeply rooted tradition of peaceful dissent under the First Amendment.

The First Amendment protects public school students’ right to participate in that American tradition if they remain nondisruptive. *Tinker* stressed that students experiencing and interacting with different viewpoints “is not only an inevitable part of the process of attending school; it is also an important part of the educational process.” 393 U.S. at 512. And this Court recently explained that “schools have a strong interest in ensuring that future generations understand the workings in practice of the well-known aphorism, ‘I disapprove of what you say, but I will defend to the death your right to say it.’” *Mahanoy*, 594 U.S. at 190.

Yet the Sixth Circuit majority, relying on *Fraser*, blessed Respondents’ censorship of “Let’s Go Brandon” apparel. Though it acknowledged Petitioners are “correct on the fact that a euphemism” like “Let’s Go Brandon” is “not the same as the explicitly vulgar or profane word it replaces,” it held administrators could “reasonably ... determine that the euphemism still conveyed the vulgar message” of the uncensored “F*** Joe Biden” chant. App. 13a (cleaned up).

The Sixth Circuit’s approach defies common sense. English speakers throughout history have turned to sanitized expressions to avoid the social taboo of profanity. Sanitizing socially taboo words and expressions for general audiences is why radio edits

of songs and Kidz Bop exist. And it is how PG-13- and R-rated movies air on broadcast television. See generally Carrie A. Beyer, *Fighting for Control: Movie Studios and the Battle over Third-Party Revisions*, 2004 U. Ill. L. Rev. 967, 985–86.

Sanitized expressions enable the speaker to convey a sense of urgency, indicate outrage, or otherwise discuss sensitive topics while staying inside cultural norms for polite conversation. Two hundred years ago, Victorians referred to trousers as “unmentionables” because “their shape revealed a man’s legs, and a man’s having legs implied that he very likely had other body parts up there.” Melissa Mohr, *Holy Sh*t: A Brief History of Swearing* 191 (2013). In modern times, we use (or try to use) sanitized words and phrases like “fudge,” “gosh darn,” and “Let’s Go Brandon” to express ourselves without using profanities.

Allowing schools to equate sanitized euphemisms with their uncensored corollaries leads to absurd results. Words like “shoot” and “frick” would be sanctionable in America’s high schools because they “mean” something else. The Sixth Circuit majority *acknowledges* this result, reasoning, “‘Heck’ is not literally the same word as ‘Hell.’ But the word’s communicative content is the same even if the speaker takes some steps to obscure the offensive word.” App. 13a. Yet the majority points to nothing—no cases, scholars, agency opinions, nor anything else categorizing intentionally sanitized speech as profanity—to support this result. As Judge Bush correctly put it, “Nothing in *Fraser* or any subsequent Supreme Court decision suggests that this exception

should be extended to encompass political or euphemistic expression that is not overtly profane.” App. 58a.

This Court explained that “the First Amendment gives a high school student the classroom right to wear Tinker’s armband, but not Cohen’s [‘F*** the Draft’] jacket.” *Fraser*, 478 U.S. at 682 (quotation marks omitted) (discussing *Cohen v. California*, 403 U.S. 15 (1971)). This makes good sense. Kids can’t say “f***” at school. But under the Sixth Circuit’s holding, a school administrator could even prohibit a student from wearing an anti-draft jacket emblazoned with the words “Cohen’s Jacket” on the asserted ground that it “means” “F*** the Draft.” That is simply not how profanity—or language—works. And nothing in *Tinker* or *Fraser* gives school officials such broad censorial powers over nondisruptive political speech.

Notably, “Let’s Go Brandon” meets all four benchmarks this Court used in *Fraser* to differentiate Matthew Fraser’s lewd assembly speech from the anti-war armbands in *Tinker*. First, “Let’s Go Brandon” is core political expression, a “marked distinction” from Fraser’s expression. *Fraser*, 478 U.S. at 680. Second, like the Tinkers, Petitioners passively wore their apparel, making it expression that “happen[ed] to occur on the school premises” rather than speech at a “school-sponsored” activity that “members of the public might reasonably perceive to bear the imprimatur of the school.” *Hazelwood*, 484 U.S. at 271. Third, “Let’s Go Brandon” lacks the “graphic” and “explicit” sexual language of Fraser’s speech. *Fraser*, 478 U.S. at 678. And fourth, unlike Fraser’s address, *id.* at 681–82,

“Let’s Go Brandon” does not violate congressional decorum rules and members of Congress have repeatedly used the popular slogan in policy speeches. *See supra* pp. 5–6.

American teenagers can handle sanitized expression at school. Writing for the Court in *Brown v. Entertainment Merchants Ass’n*, Justice Scalia noted that “high-school reading lists are full” of intense imagery. 564 U.S. 786, 796 (2011). “Homer’s Odysseus blinds Polyphemus the Cyclops by grinding out his eye with a heated stake,” and “[i]n the *Inferno*, Dante and Virgil watch corrupt politicians struggle to stay submerged beneath a lake of boiling pitch.” *Id.* (citing Homer’s *Odyssey* and then Dante’s *Inferno*). And in John Steinbeck’s magnum opus *East of Eden*, Cathy Trask shoots her husband Adam and flees her children to become the madam of a brothel catering to sexual sadism. John Steinbeck, *East of Eden* 202, 314–22 (Penguin Books 1992) (1952). It defies belief that teenagers could navigate Dante’s *Inferno* and Cathy Trask’s brothel in the classroom but have their education disturbed by seeing a “Let’s Go Brandon” hoodie in the hallway.

Judge Bush put it best: “Let’s Go Brandon!”—regardless its origin—has evolved into a widely recognized political slogan used to express opposition to a now-former president. It is not vulgar on its face, nor so socially deviant that it must be sanitized from student expression. It has become a political hallmark entitled to the First Amendment protection described in *Tinker*.” App. 46a. Yet the majority below insisted that no matter how careful students are to express their political views in a school-appropriate, sanitized

way, schools may censor their expression if it might cause a classmate to *think* about the uncensored original. America's students are not so fragile, and the First Amendment is not so brittle.

C. The Sixth Circuit's interpretation of *Fraser* as licensing unbounded subjective enforcement is anathema to the First Amendment.

The Sixth Circuit's approach deputizes teachers and administrators with censorship authority to enforce each of their subjective notions of what constitutes "vulgarity." This is untenable for the nearly five million K-12 public school students in the circuit.

Here's how it will unfold in practice: Two Michigan public high school students in the same district arrive at different schools quietly wearing a T-shirt with Governor Gretchen Whitmer's "Fix the Damn Roads" slogan. One school is untroubled by the apparel. The other finds the slogan "vulgar" and orders the student to remove the shirt or face suspension. In the Sixth Circuit's view, the First Amendment protects the shirt in one school, but the *same shirt* is unprotected in the other, based purely on the sensitivity of administrators.

The First Amendment rejects speech restrictions turning on "ad hoc and subjective" determinations by government officials, because of the acute "dangers of arbitrary and discriminatory application." *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972). The "opportunity for abuse" of a prohibition with "open-

ended interpretation[] is self-evident.” *Bd. of Airport Comm’rs v. Jews for Jesus, Inc.*, 482 U.S. 569, 576 (1987) (quotation marks omitted). This basic principle of objectivity—that the Constitution protects the same nondisruptive political speech in East High School as in West High School—is irreconcilable with the Sixth Circuit’s deputization of individual administrators to determine what speech is sanctionable.² Students’ First Amendment rights do not and must not depend on their school district’s zoning map.

Teachers and administrators are already well-shielded from financial liability for gray-area judgment calls because “educators are rarely denied immunity from liability arising out of First-Amendment disputes.” *Morgan v. Swanson*, 755 F.3d 757, 760 (5th Cir. 2014); *see also Abbott v. Pastides*, 900 F.3d 160, 174 (4th Cir. 2018) (citing *Morgan* and noting same). But there is no legal basis, and no workable reality, under which the First Amendment’s *protection* for nondisruptive political speech changes from school to school. As Judge Bush put it, “What’s left of *Tinker*’s First Amendment protections in schools when we now must defer to school administrators in these decisions without any

2. Constitutional objectivity is not confined to the First Amendment. *See, e.g., United States v. Ray*, 803 F.3d 244, 266 n.12 (6th Cir. 2015) (“Whether a suspect is ‘in custody,’” such that Fifth Amendment rights attach, “is an objective determination.”); *Ashcroft v. al-Kidd*, 563 U.S. 731, 736 (2011) (holding likewise for the Fourth Amendment); *Graham v. Florida*, 560 U.S. 48, 61–62 (2010) (holding likewise for analyzing violations of the Eighth Amendment’s prohibition on “cruel and unusual punishment”).

showing of disruption of school operations? The answer: less than what the Constitution requires.” App. 52a.

What is more, “uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.” *Grayned*, 408 U.S. at 109 (cleaned up). “Better safe than sorry” self-censorship of political speech is the wrong lesson to teach the next generation of Americans.

So, if *Fraser*’s reach remains muddled and the Sixth Circuit’s decision is left undisturbed, civic participation will suffer. If teenagers must now fear suspension (or, even worse, their parents arriving at school with a change of clothes) for wearing apparel with a political message any teacher or administrator deems “vulgar,” few will risk exercising the right to nondisruptive expression that *Tinker* guarantees.

Justice Brennan stressed in his *Fraser* concurrence that “school officials do not have limitless discretion to apply their own notions of indecency. Courts have a First Amendment responsibility to ensure that robust rhetoric is not suppressed by prudish failures to distinguish the vigorous from the vulgar.” 478 U.S. at 689–90 (Brennan J., concurring) (cleaned up). But the Sixth Circuit abandons its responsibility to stand guard over the next generation’s First Amendment rights, delegating it to the government officials who Justice Brennan warned need supervision. Government officials must not get to decide when they have violated the First Amendment.

III. The Question Presented Is Exceptionally Important, and This Case Is an Ideal Vehicle to Address It.

This case provides the perfect opportunity to clarify *Fraser* because it is uncontested that Petitioners' speech was political and did not disrupt the school day. As Judge Bush explained, "The school district has never argued that the sweatshirts led to a material disruption or that the clothing interfered in any fashion with the operation of the school." App. 32a. There is likewise agreement between the majority and dissent that "Let's Go Brandon" constitutes political speech. App. 21a (noting "this slogan's political valence"); App. 31a (Bush, J., dissenting) (noting "the phrase is purely political speech"). The Court should take this opportunity, with the benefit of a clean record and an undisputed invocation of *Fraser* to censor nondisruptive political speech, to clarify its reach for the nation's 50 million K-12 public school students.

For these students, school is their "community." *Mahanoy*, 594 U.S. at 190. It is where they spend most of their time, meet their friends, and prepare for adulthood. Communication between students about life inside and outside the schoolhouse gate is "not only an inevitable part of the process of attending school; it is also an important part of the educational process." *Tinker*, 393 U.S. at 512.

Censoring sanitized political expression leaves students unprepared for life as an American adult, where every belief, no matter how sacred, will be fair game for disagreement and even ridicule (often with

real swearwords). And it teaches the next generation that the way to fight disagreeable speech is by silencing the speaker. “Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example.” *Olmstead v. United States*, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting), *overruled by Katz v. United States*, 389 U.S. 347 (1967). This is particularly true of our public schools. “That [schools] are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943).

Public schools “have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights.” *Id.* If a student’s political expression is not disruptive, the government must meet a high bar to justify censorship. America’s commitment to freedom of speech demands no less.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for certiorari.

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