

No. 25-819

In the
Supreme Court of the United States

JEANNE HEDGEPEETH,
Petitioner,

v.

JAMES A. BRITTON, et al.,
Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit**

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF

The district's opposition confirms that this case presents an excellent opportunity to "make clear that public employers cannot use *Pickering-Garcetti* balancing generally or unsupported claims of disruption in particular to target employees who express disfavored political views." *MacRae v. Mattos*, 145 S.Ct. 2617, 2621 (2025) (Thomas, J., respecting the denial of certiorari). The district all but concedes that it fired Hedgepeth because some people took offense to viewpoints she expressed in core political speech on her private Facebook page while on summer vacation. Yet rather than admonish the district for that blatant viewpoint discrimination, the Seventh Circuit sanctioned it, insisting that vague notions of preventing "disruption" empower school boards to remove teachers who express views that differ from the prescribed orthodoxy. That decision is profoundly wrong, profoundly important, and at odds with decisions from multiple circuits to boot.

The district's efforts to defend the Seventh Circuit's decision only reinforce the need for review. The district's attempts to show "disruption" confirm that the only "disruption" here was complaints from people offended by Hedgepeth's speech. Its efforts to deny a circuit split by reframing the question at an exceedingly high level of generality—i.e., all circuits apply *Pickering* balancing—cannot change the reality that courts disagree about what facts matter and how to strike the balance in similar contexts. And to the extent *Pickering* really is so fact-dependent that a clear circuit split is impossible because no one can predict how any two courts applying the test will

strike the balance, that just underscores the need for intervention. When it comes to exercising first freedoms, the lines should not be fuzzy. The Court should grant certiorari and confirm that public employees do not shed their free speech rights a thousand miles from the schoolhouse gates just because some people back home have a different viewpoint.

I. The Decision Below Undermines Core First Amendment Values.

The decision below violates the First Amendment several times over. It contravenes the principle that “public employers [can]not use authority over employees to silence discourse ... simply because superiors disagree with the content of employees’ speech.” *Rankin v. McPherson*, 483 U.S. 378, 384 (1987). It ignores the slew of cases holding (including in the public-school setting) that hecklers’ vetoes cannot override public employees’ speech rights. See *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543 n.8 (2022). It brushes aside this Court’s repeated admonition that schools must be especially careful when “the fact of employment is only tangentially and insubstantially involved in the subject matter of the public communication made by a teacher.” *Pickering v. Bd. of Educ.*, 391 U.S. 563, 574 (1968). And it loses sight of the “fixed star in our constitutional constellation” that “no official, high or petty, can prescribe what shall be orthodox in politics.” *W.V. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

The district insists that the decision below rests on “the disruption of the District’s ordinary activities”

purportedly caused by Hedgepeth's Facebook posts, not the viewpoints they expressed. BIO.30. But the only "disruption" the court identified was complaints expressing disagreement with Hedgepeth's views. Pet.19-22. It is bedrock law that speech cannot be "punished or banned ... simply because it might offend a hostile mob." *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 134-35 (1992). And it is impossible to believe that expressing solidarity with the Black-Lives-Matters protesters, even in colorful terms, would have been a firing offense.

The district claims that there is a difference between "censor[ing] speech in a public setting 'simply because it is upsetting'" and considering "reasonable reactions of parents and students in a school environment." BIO.35. But this Court has squarely rejected the notion that a public employee's speech must "give way to a 'heckler's veto'"—even in the high school setting. *Kennedy*, 597 U.S. at 543 n.8. If anything, there is more justification stopping discomfiting speech "in a public setting," than firing a teacher because people became upset after passing around her Facebook posts. School districts must identify "something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." *Tinker v. Des Moines*, 393 U.S. 503, 509 (1969). The district does not come close. The core theme expressed in its evidence is that students should not be "exposed to [Hedgepeth's] beliefs." D.Ct.Dkt.54-3 at 73. That could certainly justify asking her to keep those beliefs out of the classroom. But it cannot begin to justify firing her just because some took offense to what she

said on her private Facebook page over summer break.¹

The Seventh Circuit’s decision is particularly egregious because the bulk of the complaints stemmed not from current students and parents, but from members of the public. Pet.8-10. The district does not dispute that point. BIO.5, 19, 34-35. It just insists that the “distinction between ‘insiders’ and ‘outsiders’” is “illusory.” BIO.34. Wrong again. Whatever leeway school officials have under *Pickering* stems from the unique interests that students and parents have in ensuring that the educational mission is not sidetracked. When outside agitators are handed a heckler’s veto and deemed to have equities indistinguishable from students and teachers, the district has lost the thread. Empowering hecklers to impose their own version of political orthodoxy by orchestrating complaints and then pointing to the complaints as evidence of disruption would provide a roadmap for evading the First Amendment. Manhattan.Institute.Br.11-14. This is a case in point: As the district does not dispute, the bulk of the complaints were part of an “orchestrated” scheme by “a community activist” to oust Hedgepeth because of her views. Pet.App.139.²

¹ The district tries to shift the focus to in-class incidents years earlier. But that effort only underscores the difference between an in-class outburst, where school officials have substantial discretion, and speech a thousand miles away during summer vacation, where the teacher’s rights are at their zenith.

² In a slippery slope argument only a censor could love, the district claims that Hedgepeth’s position would render a school powerless to fire pedophiles. BIO.19-20. There is an obvious difference between punishing a teacher for core political speech

The Seventh Circuit also erred by discounting Hedgepeth’s speech interests because she purportedly used “vulgar language.” The district insists that the court “considered [Hedgepeth’s] tone only when assessing the District’s showing of substantial disruption.” BIO.30. But the Seventh Circuit could not have been clearer that it impermissibly used vulgarity on the other side of the balancing: “Hedgepeth’s ‘use of vulgar language’—i.e., jokes about excrement—*weakens her speech interests*.” Pet.App.14 (emphasis added). The district’s refusal to acknowledge as much leaves the Seventh Circuit’s error undefended and indefensible. This Court has made clear there is no “vulgarity” exception to the prohibition on viewpoint discrimination. *See Iancu v. Brunetti*, 588 U.S. 388, 393 (2019).

The district insists that government officials must be able to “protect[] minors from exposure to vulgar and offensive spoken language.” BIO.31. That may be true *on campus*, but “the strength of [its] anti-vulgarity interest is weakened considerably by the fact that [Hedgepeth] spoke outside the school on her own time.” *Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 192 (2021). The district claims that should not matter because Hedgepeth posted her thoughts on social media, “a medium defined by its ability to reach a mass audience.” BIO.24. But the student in *Mahanoy* likewise posted her thoughts on social media—including to other students and during the school

on matters of public concern and terminating a teacher who “candidly acknowledged that it would be difficult for him to decide whether to report an incident of child molestation at the school.” *Melzer v. Bd. of Educ.*, 336 F.3d 185, 199 (2d Cir. 2003).

year—yet this Court nevertheless held that “the school will have a heavy burden to justify intervention” when it “comes to political ... speech that occurs outside school.” 594 U.S. at 190. While that case involved student speech, the point applies equally to teachers. See *Pacific Legal Br.* 6-9. Moreover, the further removed speech is from the classroom, the easier it is to yield to the temptation of viewpoint discrimination, since “transgressions of tone tend to ring loudest when we disagree with the speaker’s views.” *Porter v. Bd. of Trs.*, 72 F.4th 573, 597 (4th Cir. 2023) (Richardson, J., dissenting). Again, this is a case in point: While the district had no qualms about dismissing Hedgepeth because of her supposedly “vulgar” Facebook posts, it took no action when one of the defendants in this very case tweeted vulgar reactions to a speech by Justice Alito. Pet.10-11.³

II. The Decision Below Entrenches Multiple Circuit Splits.

The district claims that all circuits “apply the same, well-established test” of asking “[w]hether the speech disrupted, or posed a real risk of disrupting, the government entity’s ability to provide effective and efficient services.” BIO.13. But reframing the question at the level that all circuits purport to apply

³ The district spills significant ink attacking a strawman, insisting that Hedgepeth is seeking “‘categorical protection’ for ‘off-campus speech.’” BIO.24. That is wrong. Hedgepeth’s argument is that the Seventh Circuit incorrectly discounted the off-campus nature of the speech. Some off-campus speech may be disqualifying, but it would certainly demand a greater showing than loose concerns about “disruption,” even if such concerns carry more weight with in-classroom conduct.

Pickering balancing does not change the reality that courts are deeply divided over what matters under *Pickering* and how to strike the balance.

1. The circuits are divided over whether a public employer may punish an employee if enough people find her speech offensive. The district purports to find that claim “baffling” because this Court has made clear that viewpoint discrimination is impermissible under *Pickering*. BIO.13-14. But courts cannot agree on what constitutes viewpoint discrimination. In the First and Seventh Circuits, public employers may punish off-duty speech so long as enough people in the workplace or community take offense. The Third, Sixth, and Ninth Circuits, by contrast, require employers to identify evidence “beyond the disruption that necessarily accompanies controversial speech.” *Dodge v. Evergreen Sch. Dist.*, 56 F.4th 767, 782 (9th Cir. 2022).

The district claims that the decision below does not implicate that split because the Seventh Circuit “explicitly stated that the viewpoint of Petitioner’s speech was ‘irrelevant to [its] decision.’” BIO.14 (citing Pet.App.16). But all the court deemed “irrelevant” was whether Hedgepeth’s speech was “racist.” Pet.App.16. The viewpoint she expressed and the disruption caused by those offended were the lynchpin of the district’s actions and the Seventh Circuit’s reasoning. The district’s efforts to rewrite *MacRae v. Mattos*, 106 F.4th 122 (1st Cir. 2024), likewise fall flat. There, the First Circuit credited concerns that the posts might “disrupt the learning environment” because the school feared students might “perceive some of [the teacher’s] posts as

transphobic, homophobic, or racist.” *Id.* at 140. That sort of heckler’s veto based on viewpoint would not fly in the Third, Sixth, and Ninth Circuits, which forbid public employers from punishing employees just because “some may not like the political message being conveyed.” *Dodge*, 56 F.4th at 783; *see Reges v. Cauce*, 162 F.4th 979, 1001 (9th Cir. 2025); *Meriwether v. Hartop*, 992 F.3d 492, 510 (6th Cir. 2021); *Jorjani v. N.J. Inst. of Tech.*, 151 F.4th 135, 138 (3d Cir. 2025).

The district tries to distinguish *Dodge*, claiming that the Ninth Circuit found “no evidence of actual or tangible disruption to school operations.” BIO.16. But much like here, the district there tried to justify its decision based on evidence that other teachers and staff felt “shocked, upset, angry, scared, frustrated,” and unsafe “after learning about Dodge’s MAGA hat.” 56 F.4th at 782. Unlike the Seventh Circuit, the Ninth Circuit rejected that effort. *Id.* at 783. The district notes that the Third and Sixth Circuit decisions arose in the “context of the college classroom.” BIO.16. But the Sixth Circuit has applied the same principles in the K-12 setting, *see Scarbrough v. Morgan Cnty. Bd. of Educ.*, 470 F.3d 250, 258 (2006), and the Third Circuit has explained more generally that “public employers do not have a free hand to engage in viewpoint discrimination toward their employees,” *Amalgamated Transit Union v. Port Auth.*, 39 F.4th 95, 109 (3d Cir. 2022).

2. Courts are likewise divided over whether and to what extent disapproval by outsiders can justify viewpoint discrimination. Pet.28-30. The district protests that Hedgepeth points only to cases “concern[ing] police and fire departments.” BIO.20.

But it does not explain why that matters. Regardless, the Tenth Circuit has squarely rejected the notion that disapproval by outsiders can justify viewpoint discrimination in the K-12 context. *See Pryor v. Sch. Dist.*, 99 F.4th 1243, 1252 (10th Cir. 2024). And the Ninth Circuit has expressed skepticism that “complaints from individuals who have no connection to [a school district] and live outside its service area should be given much, if any, weight in the *Pickering* analysis.” *Damiano v. Grants Pass Sch. Dist.*, 140 F.4th 1117, 1146 (9th Cir. 2025).

3. Finally, the “circuits” have plainly “diverged” on how to “approach” the “vulgar character of contested speech.” *Hussey v. City of Cambridge*, 149 F.4th 57, 76 n.11 (1st Cir. 2025) (Howard, J., dissenting). Like the Seventh Circuit, the First and Third Circuits have held that “vulgar” speech is entitled to less weight in *Pickering* balancing. The Sixth and Tenth Circuits have held that it is not. Pet.30-32.

The district notes that the First Circuit recently granted rehearing *en banc* to reconsider that issue. BIO.20. But the court’s felt-need to take that highly unusual (especially in the First Circuit) step underscores both the split and the importance of the question. And nothing the First Circuit does *en banc* will eliminate the multi-circuit split. The Ninth Circuit for its part recently issued two decisions taking opposite sides of the split. *Compare Reges*, 162 F.4th at 999 (“The parodic manner of Reges’s speech does not detract from its First Amendment value.”), *with Thompson v. Cent. Valley Sch. Dist.*, 163 F.4th 654, 664 (9th Cir. 2025) (“[T]he protection afforded to

government employee’s speech may be lessened where the speech is derogatory in nature.”).

The district notes that the Sixth, Ninth, and Tenth Circuit decisions “specifically identify and discuss the particular tone of the speech at issue.” BIO.22. But they did so only to explain that tone does not matter. *See Reges*, 162 F.4th at 999; *Pryor*, 99 F.4th at 1253. In *Noble v. Cincinnati & Hamilton County Public Library*, 112 F.4th 373 (6th Cir. 2024), for example, the Sixth Circuit stated in no uncertain terms that the “distasteful” nature of the employee’s speech did not matter since “the First Amendment protects abhorrent speech.” *Id.* at 383; *see also id.* at 384 n.3. Thus, in the Sixth Circuit, even abhorrent speech—there, a meme of a car running over protesters in the aftermath of George Floyd’s death with the caption “All Lives Splatter”—is entitled to “the full scope of First Amendment protection.” *Id.* at 384 n.3. But in the Seventh Circuit, the supposedly “vulgar” nature of Hedgepeth’s speech “weakens her speech interests.” Pet.App.14. Splits do not get much clearer than that.

* * *

In short, lower courts are divided over whether and how certain facts should matter under *Pickering*. The district chalks that up to “the fact-specific nature of the legal inquiry.” BIO.13. But that ignores that circuits are applying different legal principles in conducting the balancing. But if *Pickering* balancing really is so indeterminate and so “in the eye of the beholder,” *Bennett v. Metro. Gov’t*, 977 F.3d 530, 554 (6th Cir. 2020) (Murphy, J., concurring in judgment), that it is split-proof, that only underscores the need for

this Court's intervention. Indeterminacy and unpredictability are hardly virtues in any context, least of all when it comes to our first freedoms. Pet.34-35.

III. The Question Presented Is Important, And This Is An Excellent Vehicle To Resolve It.

The district tries to recast the decision below as a fact-bound case with little broader implication. The slew of amici urging review are powerful evidence to the contrary—as is the flood of litigation involving controversial public employee speech on everything from George Floyd to Charlie Kirk to transgender and immigration policy. In fact, public employers in the Seventh Circuit have already relied on this case to justify efforts to fire employees for controversial political speech on social media. Ball State University recently fired an employee for posts about Charlie Kirk on her private Facebook page after another user screenshotted her post, attached her biography from the university directory, and shared the image on public-facing social media. Press Release, *ACLU of Indiana Files Suit Against Ball State University for Violating Former Employee's First Amendment Rights* (Sept. 22, 2025). The university explicitly relied on the decision below in firing her. See Landon Jones, *President Geoffrey Mearns Addresses Senate on Swierc Lawsuit*, Ball State Daily News (Oct. 3, 2025). That is just the tip of the iceberg. See *Tempel v. Sch. Dist. of Waukesha*, 2025 WL 2758001, at *9 (E.D. Wis. Sept. 29, 2025); Chris Nesi, *Chicago Teacher Loses Job Over Two-Word Pro-ICE Post*, N.Y. Post (Feb. 15, 2026).

This is an excellent vehicle to address these exceedingly important issues. The district claims that

Hedgepeth's dismissal was "inextricably connected to [her] disciplinary history, which included multiple *on-campus incidents*." BIO.28. But it concedes that her off-the-job Facebook posts were a "motivating factor" in her termination, Pet.App.35, so her past disciplinary history is no obstacle to review. Nor is collateral estoppel. The Seventh Circuit did not reach that defense, and this Court routinely reviews important constitutional issues on which courts are divided even when other defenses remain pending. At any rate, the district's estoppel argument lacks merit. Even assuming preclusion applied under Illinois law, it could not apply under federal law given the Board's bias. Pet.33 n.3. Hedgepeth made that argument in her petition; the district offers no response. BIO.28-29.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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