

No. 25-831

In the Supreme Court of the United States

C.S., by her next friend, ADAM STROUB,
Petitioner,

v.

CRAIG MCCRUMB, in his official capacity; AMY
LEFFEL, in her official capacity; MICHAEL PAPANEK,
in his official capacity,
Respondents.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

On February 17, 2022, Robert Kerr Elementary School Officials asked third-grader C.S. to remove her hat depicting an Armalite rifle and the words “Come and Take It.” C.S. had worn the hat to school as part of the school’s Great Kindness Challenge, a week intended to teach students compassion and encourage acts of kindness. The court of appeals correctly held in a narrow, fact-bound opinion that the school did not violate C.S.’s constitutional rights in asking her to remove the hat.

The questions presented are:

1. Whether school officials are constitutionally required to contemporaneously convey all justifications for restricting the petitioner’s speech.
2. Whether, as the court of appeals suggested, qualified immunity bars petitioner’s claims.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	i
TABLE OF AUTHORITIES.....	iii
INTRODUCTION	1
STATEMENT OF THE CASE.....	4
A. Relevant Facts.....	4
B. Procedural History	6
REASONS FOR DENYING THE PETITION.....	8
I. The Sixth Circuit’s Decision Does Not Involve an Unsettled Question of Federal Law or Conflict with Supreme Court Precedent.....	8
II. This Case Is a Poor Vehicle for Resolving the Question Presented.....	12
III. The Sixth Circuit’s Decision Is Correct	15
IV. The Sixth Circuit Did Not Create a New “Emotional Harm” Exception to <i>Tinker</i>	19
CONCLUSION.....	21

TABLE OF AUTHORITIES

Cases:	Page
<i>Barr v. Lafon</i> , 538 F.3d 554 (6th Cir. 2008)..	16
<i>Bethel Sch. Dist. No. 403 v. Fraser</i> , 478 U.S. 675 (1986).....	3
<i>Chandler v. McMinnville School District</i> , 978 F.2d 524 (9th Cir. 1992).....	9
<i>Hazelwood Sch. Dist. v. Kuhlmeier</i> , 484 U.S. 260 (1988).....	3, 7, 14, 18, 19
<i>Kennedy v. Bremerton School District</i> , 597 U.S. 507 (2022).....	16
<i>Mahanoy Area Sch. Dist. v. B.L.</i> , 594 U.S. 180 (2021).....	11, 14, 17, 20
<i>Morse v. Frederick</i> , 551 U.S. 393 (2007).....	19
<i>N.J. v. Sonnabend</i> , 37 F.4th 412 (7th Cir. 2022)	9
<i>Newsom ex rel. Newsom v. Albermarle Cnty.</i> <i>Sch. Bd.</i> , 354 F.3d 249 (4th Cir. 2003).9, 10	9, 10
<i>Saxe v. State Coll. Area Sch. Dist.</i> , 240 F.3d 200 (3d Cir. 2001)	8, 9
<i>Tinker v. Des Moines Indep. Cmty. Sch. Dist.</i> , 393 U.S. 503 (1969)	2, 3, 7-9, 11, 13-21
 Constitution, Statutes, and Rule:	
U.S. Const.	
amend. I	2, 3, 6-8, 10, 12, 13, 16
amend. II.....	5, 10, 13, 19
amend. IV.....	6
20 U.S.C. § 1232g <i>et. seq.</i>	18
42 U.S.C. § 1983.....	6
Sup. Ct. R. 10	8, 11

	Page
Other Authority:	
Deposition of Amy Leffel, <i>C.S. v. McCrumb</i> , No. 2:22-cv-10993 (E.D. Mich. Apr. 24, 2023), Dkt. 17-4	15

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INTRODUCTION

On November 30, 2021, a school shooting occurred in Oxford Community School District, resulting in the death of four students. Oxford is located one (1) county west of Shiawassee County, home to Durand Area Schools, including Robert Kerr Elementary School. In the wake of this tragedy, some students from the Oxford School District transferred to Durand Area Schools. App. 3a-4a.

Against this backdrop, on February 17, 2022, Kerr Elementary School encouraged its students to participate in “Wear a Hat Day,” as part of a week-long event called the Great Kindness Challenge. App. 31a. Petitioner C.S., a third grader and eight-year-old, wore her father’s black baseball cap depicting an Armalite-style rifle and the words “COME AND TAKE IT.” App. 4a, 30a. Upon viewing the hat, school staff concluded the depictions and provocative nature of the hat would disrupt the learning environment and asked C.S. to place the hat in her locker. App. 36a-37a. Months later, C.S.’s father filed this First Amendment lawsuit on behalf of C.S.

The Court should deny the petition for multiple reasons. To begin with, this case does not implicate any circuit split. Although petitioner purports to identify three distinct circuit splits, all hinge on petitioner’s mischaracterization of the Sixth Circuit’s decision below. The Sixth Circuit never held that there is a “hurt feelings” exception to the analysis set out in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), nor that the “remote apprehension of disturbance” sufficed to justify restriction of student speech. *Contra* Pet. 20-22; *see* App. 21a. Any differences between the outcomes here and in other decisions simply reflect that the *Tinker* analysis is fact-specific, rather than reflecting differences in legal standards.

Moreover, this case is an exceptionally poor vehicle. Judge Readler, in his statement respecting the denial of en banc review, called the decision below a “good for one-ride only’ ticket.” App. 78a (Readler, J.). He explained that the decision below hinges on “a rare confluence of events,” making it “exceedingly unlikely that a future First Amendment challenge will weave

together a similar factual tapestry.” *Id.* In addition, as both the panel and Judge Readler agree, petitioner’s claim easily fails prong two of the qualified-immunity inquiry, meaning the question presented here is not outcome determinative. Antecedent questions over whether the hat counts as pure speech and the applicable standard further muddy the waters.

Finally, the decision below was correct. The First Amendment rights of public-school students must be “applied in light of the special characteristics of the school environment.” *Tinker*, 393 U.S. at 506. Time and again, this Court has explained that “the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings.” *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 682 (1986). *Tinker* allows school officials to restrict student speech when there is a “forecast [of] substantial disruption of or material interference with school activities.” 393 U.S. at 514. *Tinker* further considers the special characteristics of the school environment when analyzing the restriction of speech. *See id.* at 506. And *Hazelwood School District v. Kuhlmeier* gives schools even more latitude to restrict student speech “in school-sponsored expressive activities,” such as the Kindness Challenge that permitted C.S. to wear her hat at all. 484 U.S. 260, 273 (1988).

Petitioner asks this Court to rewrite *Tinker* to require school officials to disclose all justifications for restricting student speech at some unknown point pre-lawsuit. In so doing, petitioner argues that any later reasoning is merely an attempt to circumvent *Tinker* and restrict speech-based hurt feelings or unpleasantness that accompany an undesirable viewpoint. This notion ignores the deference given to

school officials given their unique understanding of the school environment to forecast and prevent substantial disruptions. The petition should be denied.

STATEMENT OF THE CASE

A. Relevant Facts

In November 2021, a fifteen-year-old student “opened fire on his classmates at Oxford High School,” killing four students and severely injuring “seven others, including a teacher.” App. 2a (citation omitted). The shooting—the deadliest in Michigan’s history—“inflicted ‘lasting scars’ on Michigan schools.” App. 3a. Indeed, some families decided to switch school districts to the nearby Durand County School district, which is home to Robert Kerr Elementary School. App. 3a-4a. Several of the students who transferred to Robert Kerr Elementary School “were receiving counseling and social work support to deal with the trauma” associated with the school shooting. App. 5a (citation omitted).

Three months later, on February 17, 2022, Robert Kerr Elementary School offered a “dress-up day[]” allowing students to wear a (school appropriate) hat as part of the school’s “Great Kindness Challenge.” App. 31a-32a. The Great Kindness Challenge included school sponsored activities encouraging students to dress up and complete a Great Kindness check list. *Id.* Normally, students are only allowed to wear hats during recess time and Hat Day was a special occasion. App. 31a.

Third grader C.S. decided to participate by wearing a black baseball hat with “a white star, a white image of an AR-15-style rifle, and the capitalized phrase, ‘COME AND TAKE IT.’” App. 4a. C.S.’s

mother testified that C.S. picked the hat from a pile of hats at their home. She believed it was because C.S. had given the hat to her father, Adam Stroub, as a birthday present. App. 29a. Similarly, C.S. testified that she picked the hat because it made her feel safe, and because it was her dad's hat. App. 4a. (Later, in response to defendants' motion for summary judgment, C.S. appended a declaration to her response brief claiming that she wore the hat to show her support for Second Amendment rights. App. 37a-38a.)

When she arrived at school, the school "On Track Coach," respondent Michael Papanek, saw C.S. wearing a hat with a gun on it. App. 4a. Mr. Papanek informed respondent Principal Amy Leffel about the hat, and they discussed what, if anything, should be done. *Id.* Respondent Craig McCrumb, the superintendent of Durand Area Schools, was also present during the conversation. App. 5a. Ms. Leffel believed that the depiction of a weapon with the phrase "COME AND TAKE IT" was provocative, threatening, and may incite an altercation or disruption to the educational environment. She also believed that the depictions on the hat were against the dress code, which prohibited the display of violent themes. App. 32a-33a. Ms. Leffel also believed that the hat might cause fear and disruption among the students and their rights to a free and appropriate public education. App. 4a-5a.

Mr. Papanek called C.S.'s father, explained that the hat was inappropriate for school, and asked if Mr. Stroub could bring another hat for C.S. to wear. Mr. Stroub declined and said, "no one better lay a hand on her hat." App. 35a. Mr. Papanek and Ms. Leffel went to C.S.'s classroom and asked her to put the hat in her locker; "C.S. complied without issue." App. 5a & n.2.

Ms. Leffel also left a voicemail with Mr. Stroub to discuss the matter. App. 35a-36a.

After C.S. returned home, Mr. Stroub emailed Ms. Leffel about the matter, and Ms. Leffel responded by stating that the hat depicted a weapon, which was inappropriate for students to wear in a school setting and violated the student handbook. App. 36a-37a. Thereafter, C.S.'s parents did not communicate further with the school regarding the incident. App. 37a. C.S. did not receive any discipline because of the incident. App. 36a.

B. Procedural History

C.S., by her father, as next friend, filed her Complaint on May 9, 2022, against respondents Mr. McCrumb, Ms. Leffel, and Mr. Papanek under 42 U.S.C. § 1983, alleging violations of the First Amendment and the Fourth Amendment. App. 6a.

The case proceeded to discovery. At her deposition, C.S. testified that she only wore the hat because the hat made her feel safe and because she loved her father. App. 37a-38a. Thereafter, the parties filed cross-motions for summary judgment. Respondents argued that the hat was not “pure speech,” and, even if it was, the school has the right to impose reasonable restrictions on student speech. *See* App. 41a. Respondents also argued that they were entitled to qualified immunity. In rebuttal, petitioner’s counsel submitted a declaration of C.S. stating that she wore that hat to show her support of people’s right to have guns. App. 52a. The District Court granted summary judgment for respondents. App. 63a.

C.S. appealed, and on May 2, 2025, the Sixth Circuit affirmed the District Court’s decision holding

that the school’s restriction of student speech was reasonable in light of the “special characteristics’ and circumstances, such as [the School’s] absorption of students from the Oxford School District and the especially young age of Plaintiff and her classmates, combined with the hat’s provocative message.” App. 27a. In so reasoning, the Sixth Circuit held that school officials could reasonably forecast a “substantial disruption to the school’s educational environment, *Tinker*, 393 U.S. at 514,” and respondents did not violate C.S.’s First Amendment rights by asking her to remove the hat. App. 27a. Although the court applied *Tinker* rather than the more school-friendly *Kuhlmeier* standard, it acknowledged that “[t]here is at least a colorable argument” that the latter standard applied. App. 11a n.4.

On May 30, 2025, petitioner filed her petition for rehearing en banc, which was denied. The Sixth Circuit’s denial contained a concurrence from Judge Clay, a concurrence and statement from Judge Gibbons, and a statement from Judge Readler. App. 65a-66a.

Judge Clay, who authored the panel opinion for the court, explained that the panel’s decision was based on a “unique interplay of factors,” including the young age of the students, the recent school shooting, and the absorption of traumatized students into Robert Kerr Elementary School. App. 67a-74a (Clay, J., concurring in denial of rehearing en banc). Likewise, Judge Gibbons, who had joined in the panel opinion, opined that the decision “was entirely correct.” App. 77a (Gibbons, J., concurring in the denial of panel rehearing). For his part, Judge Readler expressed concern with aspects of the panel opinion but thought the case was “a poor candidate for en banc review”

given the “narrow, ‘novel,’ fact-specific grounds” on which the decision rested and the fact that “defendants were likely to prevail on the qualified immunity prong of the analysis.” App. 78a (Readler, J., statement respecting denial of rehearing en banc). He concluded that the Sixth Circuit “need not commit [its] limited en banc resources to further review.” *Id.*

REASONS FOR DENYING THE PETITION

I. The Sixth Circuit’s Decision Does Not Involve an Unsettled Question of Federal Law or Conflict with Supreme Court Precedent

Rule 10 makes clear that certiorari is not a mechanism for routine error correction, but an extraordinary form of review generally reserved for cases involving an acknowledged conflict among lower courts on an important federal question, a decision by a court of appeals that conflicts with this Court’s precedent, or some other pressing need for national clarification. Petitioner tries to cast this case as all three at once, but the record and the Sixth Circuit’s own treatment of the case show the opposite: This is a highly unique, fact-intensive application of settled First Amendment doctrine applied to an unusual school setting that implicates no circuit split.

Petitioner’s claimed 4-1, 3-1, and 1-1 circuit splits fundamentally misread the Sixth Circuit’s decision below and merely reflect the application of *Tinker*’s standard to different factual contexts.

Petitioner claims that the Sixth Circuit’s decision created a 4-1 circuit split because “at least four other circuits” require evidence of “a specific and significant fear of disruption, not just some remote apprehension of disturbance.” Pet. 20 (quoting *Saxe v. State Coll.*

Area Sch. Dist., 240 F.3d 200, 211 (3d Cir. 2001)). But the Sixth Circuit never established a contrary rule permitting “some remote apprehension of disturbance” to satisfy *Tinker*. Rather, the court held that school officials may only restrict speech when the facts “reasonably lead them ‘to forecast substantial disruption of or material interference with school activities.’” App. 10a (quoting *Tinker*, 393 U.S. at 514). Here, the Sixth Circuit held that the school officials’ “prediction was well-founded.” App. 11a. *See also* App. 21a-22a.

Furthermore, the facts of the cases on the other side of this supposed split, unlike the record here, simply did not give rise to reasonably forecasted disruptions to the school environment. In *Saxe v. State College Area School District*, the Third Circuit analyzed a school policy that “fail[ed] to provide any particularized reason as to why it anticipate[d] substantial disruption from the broad swath of student speech prohibited.” 240 F.3d at 217. Similarly, in *Chandler v. McMinnville School District*, “nothing in the complaint or the analysis of the district court substantiate[d]” the district court’s conclusion that the at-issue speech threatened disruption in the school environment. 978 F.2d 524, 530 (9th Cir. 1992). The same was true in *Newsom ex rel. Newsom v. Albermarle County School Board*, 354 F.3d 249 (4th Cir. 2003), where there was “no evidence” that clothing with weapons-related messages “ever substantially disrupted school operations” or “ever caused a commotion or was going to cause one.” *Id.* at 259. And in the Seventh Circuit decision cited by petitioner (at 21), the court simply remanded for analysis where the district court failed to apply *Tinker* at all. *See N.J. v. Sonnabend*, 37 F.4th 412, 426-27 (7th Cir. 2022).

Far from identifying a circuit split, petitioner has simply identified four decisions that, like the Sixth Circuit, required a “reasonable forecast of a substantial disruption,” App. 16a, and examined the records to determine if that standard was satisfied.

Next, the petition (at 21) identifies a supposed 3-1 split between the Sixth Circuit’s decision and “at least three others that refuse to recognize a ‘hurt feelings’ exception to the First Amendment.” But again, the Sixth Circuit does not disagree with those circuits. As the panel explained, “we nowhere suggest that the generalized potential for students’ discomfort, offense, or other psychological distress, *without more*, is enough for schools to ban speech on topics such as the Second Amendment.” App. 21a. *See also infra* pp.19-20.

Finally, the petition claims that the Sixth Circuit’s decision created a split with the Fourth Circuit’s *Newsom* decision over “whether student attire depicting weapons may be suppressed ... in the absence of evidence of actual disruption.” Pet. 22. But the record in *Newsom*, unlike the record here, contained no evidence that the firearm-related apparel “ever caused a commotion or was going to cause one.” 354 F.3d at 259. *Newsom* involved a middle-school student whose shirt, school officials feared, might generally remind his peers of “the events at Columbine High School and other incidents of school-related violence.” *Id.* at 252. That is a far cry from the specific record evidence below showing that the Kerr Elementary principal believed petitioner’s hat would cause disruption to the school environment due the recent Oxford school shooting, particularly in light of petitioner’s young age. *See infra* pp.15-17. Indeed, the Sixth Circuit specifically distinguished a district

court decision that declined to restrict gun-related speech when the school identified only “students’ generalized fear of gun violence,” noting that the recent Oxford shooting and the transfer of students to Kerr Elementary created “very *particularized* fears in the instant case.” App. 14a-16a.

At bottom, petitioner’s “split” arguments depend on stripping away the very facts that made this case unusual. Indeed, the Circuit Court indicated the outcome “might have been different” absent the Oxford tragedy, absent the transfer of Oxford students, or had C.S. been in high school rather than third grade. App. 22a. *Tinker* itself asks whether the record permits school officials to reasonably to forecast “substantial disruption of or material interference with school activities.” *Tinker*, 393 U.S. at 514. The Sixth Circuit expressly relied on that standard, rejecting any new categorical exception. Contrary to the petitioner’s assertions, the students’ young age, the elementary-school setting, and the recent local shooting, all supported a reasonable forecast of disruption. Even petitioner’s favored separate statement from Judge Readler does not describe the panel as having created a broadly applicable doctrinal rule that will destabilize student-speech law nationwide. Instead, it emphasizes the limited precedential value of the decision, which is precisely the circumstance in which this Court ordinarily denies review. *See* App. 78a (Readler, J.).

Markedly, the full Sixth Circuit denied rehearing en banc, and no judge requested a vote. In short, petitioner asks this Court to correct what it regards as a misapplication of *Tinker* to one unusual record. However, Rule 10 does not exist for that purpose. *See* Sup. Ct. R. 10; *see also Mahanoy Area Sch. Dist. v.*

B.L., 594 U.S. 180, 187 (2021) (reaffirming the contextual nature of student-speech analysis). Because this case is perhaps “good for one-ride only,” App. 78a (Readler, J.), and devoid of a clean, consequential circuit split, the petition should be denied.

II. This Case Is a Poor Vehicle for Resolving the Question Presented

Even if the Court is inclined to review the question presented absent a circuit split, this case is not a suitable vehicle for the Court’s review.

To start, this case turns on a single “Hat Day” incident involving a third-grade, Kerr Elementary student, C.S. More explicitly, Judge Clay described the outcome as driven by a “unique interplay of factors,” including the proximity of the Oxford shooting, the transfer of students from the Oxford district, the age of the children, and the provocative message of the hat. App. 68a (Clay, J.). Even Judge Readler—though critical of aspects of the panel’s reasoning—nonetheless viewed the case as a “poor candidate” for *en banc* review because it was resolved on “narrow,” “novel,” and “fact-specific grounds,” making it “exceedingly unlikely” that future First Amendment challenges would present a “similar factual tapestry.” App. 78a (Readler, J.). This observation weighs heavily against certiorari. A narrow, fact-specific decision is typically not reviewed by this Court.

Moreover, the question presented is not outcome-determinative. As both the decision below and Judge Readler’s statement recognized, petitioner’s claim undeniably fails at the second prong of the qualified-immunity inquiry. The decision below noted it did not need to proceed to the clearly established prong of the qualified-immunity inquiry. But the court added that

“[e]ven assuming, for argument’s sake, that a constitutional violation occurred, school officials would still be shielded from trial because it was not clearly established in 2022” that students had a constitutional right to wear “gun or weapon-themed clothing to school” in the wake of a nearby school shooting. App. 23a. The court recognized the lack of First Amendment precedent in that regard, making it impossible for petitioner’s First Amendment claim to proceed even if there had been a constitutional violation.

Judge Readler’s separate statement agreed that the unusual facts at play would make it “difficult” for petitioner to overcome qualified immunity even if her constitutional claim had survived summary judgment. App. 79a (Readler, J.). Just as “en banc review would likely have resulted in the same outcome for the parties, albeit on different grounds,” *id.*, the same can be said for this Court’s review.

Petitioner provides no argument to disturb that reasoning other than C.S.’s generally recognized First Amendment rights. The Sixth Circuit’s decision properly applied this Court’s precedent without violating or diminishing those precedents. Qualified immunity thus provides an independent and dispositive reason to deny review.

Moreover, the question presented hinges on two antecedent questions that do not implicate the petitioner’s purported circuit splits: (1) whether C.S.’s hat was pure speech; and (2) whether the *Tinker* standard even applies here.

As to the pure-speech issue, the District Court expressed skepticism that C.S. had intended to convey any message by wearing the hat at all. The District Court pointed out that, on the day of the incident and

in her deposition, C.S. “made no mention of her interest in expressing an opinion about the Second Amendment.” App. 52a. It was only when respondents moved for summary judgment that C.S. supplied a declaration stating that she wore the hat to express support for Second Amendment rights. *Id.* But, as the District Court explained, “courts generally do not permit litigants to use later-arriving declarations conflicting with earlier sworn testimony to manufacture fact disputes defeating summary judgment.” *Id.* The District Court found the record to be “poorly-developed” on this issue and ultimately assumed without deciding that C.S. had “*intended* to wear the hat to convey a protected message.” App. 57a.

Even if this Court concludes that C.S. intended her hat to convey a message, this Court’s school-speech cases establish different standards depending on the speech at issue. If a student’s speech “bear[s] the imprimatur of the school,” then the school may regulate that speech. *Kuhlmeier*, 484 U.S. at 271. But if the speech does not bear the imprimatur of the school—and if the speech is not indecent, vulgar, lewd, or promoting illegal drug use—then *Tinker*’s more onerous substantial-disruption standard applies. *Mahanoy*, 594 U.S. at 187-88.

Here, the Sixth Circuit found there to be a “colorable argument that C.S.’s speech ‘was made as part of school activities’ and thus, ... *Kuhlmeier*’s more school-friendly standard should apply.” App. 11a n.4. Indeed, C.S. was wearing the “COME AND TAKE IT” hat as part of the school’s Great Kindness Challenge, which granted an exception to the usual dress-code policy that prohibited hats except during recess. App. 3a-4a. Although the decision below ultimately applied *Tinker*, the lack of clarity on the appropriate

standard further confirms that this case is a poor vehicle for addressing petitioner's question presented.

III. The Sixth Circuit's Decision Is Correct

Petitioner argues that the school's reverence for the Oxford shooting and transferred students is a fabricated, "post hoc" rationale only raised after C.S.'s father filed suit. At most, petitioner raises a record-specific dispute over how courts should appraise the evidence supporting a school's judgment. The *Tinker* standard asks whether school officials had a specific reason beyond general fear or concern when they asked C.S. to take off her hat. *Tinker*, 393 U.S. at 508.

The Sixth Circuit answered, "yes," considering the local Oxford shooting and its effect on the Kerr Elementary student body, that some transferred students were receiving counseling and social-work support, and that the school's principal knew of these circumstances. Petitioner argues that no evidence was presented on Oxford's effect on the Kerr Elementary student body, but the same ignores Principal Leffel's testimony entirely. Principal Leffel explained that (1) Oxford students had recently transferred to Kerr Elementary and were "receiving counseling and social work support to deal with the trauma," and the hat "could disrupt the educational environment," Dep. of Amy Leffel at 24-26, *C.S. v. McCrumb*, No. 2:22-cv-10993 (E.D. Mich. Apr. 24, 2023), Dkt. 17-4, and (2) she believed the phrase "Come and Take It" might incite disruptions in the elementary-school context, where "young kids can be very impetuous and could perceive that as a dare to try and take the hat off her," *id.* at 25.

In an elementary school, with young children still processing the reality of a school shooting, such imagery is a visible, charged symbol that draws attention to violence and death, making it unrealistic to expect students to concentrate on ordinary classroom instruction.

Nothing in *Tinker* or its progeny requires school officials to provide a fully elaborated contemporaneous verbal or written justification to restrict speech as long as the record altogether shows that school officials acted with more than an “undifferentiated fear or apprehension of disturbance.” *Tinker*, 393 U.S. at 508.

That is a straightforward evidentiary point, not a radical doctrinal innovation. School administrators make real-time decisions that courts later examine. The reality is that requiring evidence of disruption caused by the banned speech would place “school officials ... between the proverbial rock and hard place: either they allow disruption to occur, or they are guilty of a constitutional violation.” *Barr v. Lafon*, 538 F.3d 554, 565 (6th Cir. 2008) (citation omitted). For this reason, courts consider the whole record to determine whether those decisions were reasonably grounded in facts known at the time. Nothing in *Tinker* holds that a school loses its ability to rely on existing circumstances that were actually known merely because an initial email or oral statement did not spell out every detail. *See Tinker*, 393 U.S. at 514 (focus is on whether facts allow a reasonable forecast of substantial disruption).

Petitioner invokes *Kennedy v. Bremerton School District*, 597 U.S. 507, 543 n.8 (2022), for the principle that governmental justifications for burdening First

Amendment rights must be genuine rather than hypothesized after the fact. That principle is uncontroversial. But this case is not a clean vehicle for extending or applying *Kennedy* because the dispute is not doctrinal.

Rather, the question is not whether sham justifications are impermissible; everyone agrees they are. The question is whether the Oxford-related concerns were genuinely part of the principal's reasoning and whether the record supports that conclusion. The decision below concluded they were, relying on Principal Leffel's testimony that she knew some transferred students were receiving counseling and that these concerns informed her view that the hat was not appropriate in the elementary-school setting. This was further echoed by Principal Klont who succeeded Principal Leffel the following year. Judge Readler was more skeptical and thought a factfinder could view the explanation as litigation-driven. That kind of disagreement over the inferences to be drawn from a particular record does not present a question worthy of this Court's review. Rather, it highlights *Tinker's* application to the particular school environment as intended. *See* 393 U.S. at 506. Likewise, this Court has continually and recently emphasized a school's special interest in regulating speech that involves "substantial disorder or invasion of the rights of others." *Mahanoy*, 594 U.S. at 188 (citation omitted).

On that point, the school's rationale was not disconnected from the contemporaneous record as petitioner suggests. Ms. Leffel's Hat Day email quoted the handbook's mission of guarding against distractions from the learning environment. Ms. Leffel was not compelled at that time to disclose all

justifications for her decision and there is no authority for that premise. Petitioner and Judge Readler criticize the lack of information regarding specific students and their trials during this time. However, that criticism ignores the fact that school officials may not air personal student information without consent from the student's parents. *See, e.g.*, 20 U.S.C. § 1232g *et. seq.* Yet, upon appropriate inquiry and protective order, this information, at least in part, was obtainable. Petitioner had this information and never inquired further.

Most importantly, the “post hoc” red herring created by petitioner is not a reason to grant certiorari. Even if one thought the Oxford rationale weaker than the panel did, this case would remain a dispute over whether the school officials’ unrebutted evidence to forecast a material disruption met *Tinker*’s high bar for restricting speech—that is, if *Tinker* is the appropriate standard at all. Notably, the Sixth Circuit determined this to be a poor candidate for *en banc* review because of its narrow and novel character making it even less suited for this Court’s discretionary docket.

Furthermore, it is doubtful that *Tinker* was the proper standard here. As the Sixth Circuit noted, the “Great Kindness Challenge was a school-organized activity,” App. 11a n.4, “designed to encourage students ‘to complete as many acts of kindness as possible,’” App. 3a (citation omitted). The Challenge therefore falls within the category of “school-sponsored ... expressive activities” that “may fairly be characterized as part of the school curriculum ... so long as they are supervised by faculty members and designed to impart particular knowledge or skills to student participants.” *Kuhlmeier*, 484 U.S. at 271. In

that context, the school's control over the content of student speech need only be "reasonably related to legitimate pedagogical concerns." *Id.* at 273. The Kerr Elementary officials' request that C.S. remove her hat, which was "unsuitable for immature audience," easily satisfies that standard. *Id.* at 271.

IV. The Sixth Circuit Did Not Create a New "Emotional Harm" Exception to *Tinker*

Petitioner also argues (at 11-19) that the decision below created a novel "emotional harm" or "hurt feelings" exception to *Tinker*. That characterization overstates and misconstrues the Sixth Circuit's holding. The panel did not announce a fourth categorical exception to student speech, nor did it hold that schools may silence speech whenever someone might feel offended, upset, or emotionally uncomfortable. To the contrary, the panel expressly disavowed such rule, writing that "we nowhere suggest that the generalized potential for students' discomfort, offense, or other psychological distress, *without more*, is enough for schools to ban speech on topics such as the Second Amendment." App. 21a. And the panel reaffirmed the governing rule from *Tinker*: the record must show facts allowing school officials reasonably to forecast a substantial disruption of school activities or invasion of the rights of others. 393 U.S. at 509, 513-14. That is a contextual application of *Tinker*, not a departure from it.

Tinker itself did not limit substantial disruption to noise, violence, or disciplinary chaos; it used broader language focused on whether schoolwork and school order would be materially interfered with. *Id.* at 514. Later cases also recognize that the educational environment includes more than the absence of

fists and shouting. In *Kuhlmeier*, 484 U.S. at 272, this Court acknowledged schools' special concern with sensitive topics and age-appropriate judgments. In *Morse v. Frederick*, 551 U.S. 393, 408 (2007), the Court recognized substantial school authority to act preventively in matters touching student welfare. And *Mahanoy* reaffirmed that on-campus speech remains subject to the special characteristics of the school environment even as it rejected overreach into off-campus expression. 594 U.S. at 187-88. The Sixth Circuit's conclusion fits comfortably within that framework where very young students, some traumatized by a recent nearby school shooting, confront a hat displaying a semiautomatic-style rifle and the slogan "Come and Take It." *Tinker* does not prescribe the manner in which the learning environment is or will be disrupted, only that the same has or is reasonably forecasted to occur.

Again, the Circuit Court made clear that its decision was based on the "unique interplay" of several factors: the Oxford shooting's close timing and location, the school's intake of young transfer students from that district, the third-grade age group, and the provocative nature of the hat's message. *See* App. 68a (Clay, J.). The decision below did not treat mere offense or discomfort as sufficient; rather, it viewed the emotional impact of the speech as evidence relevant to whether disruption was reasonably foreseeable in this context. The panel emphasized that schools must maintain an environment "conducive to learning for all of its students," especially when young children are grappling with sensitive topics and recent trauma. App. 22a.

Petitioner's argument blurs important distinctions between ordinary political controversy and the

specific facts here. In *Tinker*, the Court found “no evidence whatever” of disruption beyond a few hostile remarks. 393 U.S. at 508. Here, the Sixth Circuit identified facts supporting a reasonable forecast of disruption: the community’s recent experience with Michigan’s deadliest high-school shooting, incoming transfer students (some receiving counseling), the display of a rifle linked to school violence, the impetuous phrase on the hat, and the age of the students—eight and nine years old. Disagreement over the panel’s application of *Tinker* does not transform its reasoning into an “emotional harm exception.”

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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