

No. 25-831

IN THE
Supreme Court of the United States

C.S., BY HER NEXT FRIEND, ADAM STROUB,
Petitioner,

v.

CRAIG MCCRUMB, *ET AL.*,
Respondents.

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

PETITIONER'S REPLY

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STATEMENT OF THE CASE

Despite not once being mentioned when C.S.'s constitutionally protected speech was curtailed by Respondents, the Oxford tragedy continues its upward trajectory in significance for this case, with Respondents opening both their Introduction and Statement of the Case with it. BIO 1, 4. Indeed, in their haste to continue to avoid responsibility for their actions using that *post hoc* justification, Respondents relocate Oxford: It is not “one (1) county west of Shiawassee County,” nor is it “nearby” the Durand school district—it is two counties and a 50-mile drive *east*.

Using that creative geography, Respondents weld themselves to the notion that *Kerr Elementary* students “were receiving counseling and social work support to deal with the trauma” from Oxford High. *Id.*, quoting App. 5a. But Amy Leffel, the principal who belatedly raised the Oxford shooting as somehow related to the present case, acknowledged that she was unable to forecast a substantial disruption based on it. When asked how she thought allowing C.S. to wear the hat would cause a disruption, she said, “I can’t speak for what might have happened.” Dkt. No. 17-4, at 7; PageID 344.

This Oxford two-step is significant because it shows that both Respondents and the Sixth Circuit need Oxford to be spatially close to Kerr Elementary to justify their position. But it is not.

In truth, acting based on their own opposition to firearms, school officials squelched a third-grader’s

constitutionally protected free speech. Viewing this case against a factually accurate background shows the Sixth Circuit failed to apply the bedrock First Amendment jurisprudence of *Tinker* and *Kennedy* and created a roadmap for other courts to subvert student rights. This Court should grant certiorari.

REPLY ARGUMENT

I. The Sixth Circuit disregarded *Tinker* and *Kennedy* and widened a circuit split.

Respondents argue both that the Sixth Circuit contravened neither *Tinker v. Des Moines Independent Comm. Sch. Dist.*, 393 U.S. 503 (1969), nor *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022), and that neither case applies in any event. BIO 13–14 (questioning “whether the *Tinker* standard even applies here”); *id.* at 18 (“[I]t is doubtful *Tinker* was the proper standard here.”); *see also id.* at 17 (“[T]his case is not a clean vehicle for extending or applying *Kennedy* because the dispute is not doctrinal.”). To the contrary, this case presents a textbook disregard of both decisions: school officials not only acted based on an “undifferentiated fear or apprehension of disturbance,” *Tinker*, 393 U.S. 508, they did so with a justification that was “hypothesized or invented *post hoc* in response to litigation.” *Kennedy*, 597 U.S. at 543 n.8.

Respondents can engage in that attempted evasion only by relitigating a settled, central factual question: that C.S. intended to convey a message through her wearing of the hat. BIO 13–14. The lower courts properly credited C.S.’s unchallenged

testimony that she chose the hat to show her “support for the right of people to have guns.” App. 8a & n.3; *see also* App. 38a. Indeed, Respondents only amplify the impropriety of summary judgment when they cite the district court’s description of a “poorly developed” record, BIO 14 (quoting App. 57a). Such records are simply inappropriate for summary judgment, especially one that evades this Court’s settled precedents to strip a student of her free speech rights without ever reaching a jury.

Surprisingly, respondents even challenge the requirement that they cite actual evidence of disruption before squelching student speech. BIO 16 (citing *Barr v. Lafon*, 538 F.3d 554, 565 (6th Cir. 2008) (“[R]equiring evidence of disruption caused by the banned speech would place ‘school officials . . . between the proverbial rock and hard place’”). *Kennedy* squarely forecloses that argument, since “government justifications for interfering with First Amendment rights must be genuine, not hypothesized or invented *post hoc* in response to litigation.” 597 U.S. at 543 (cleaned up) (citing *United States v. Virginia*, 518 U.S. 515, 533 (1996)). The record must demonstrate “facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities.” *Tinker*, 393 U.S. at 514. “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.” *Id.* at 511. No such facts exist here, and no such showing was made.

Respondents fare no better in attempting to downplay the circuit split the Sixth Circuit ruling

creates. BIO 9–12. The thin record here, resting solely on the conjured presence of Oxford High-traumatized students at Kerr Elementary, simply cannot constitute “reasonably forecasted disruptions to the school environment”; the Sixth Circuit’s willingness to infer such a reasonable forecast is in stark contrast to the analyses in *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 211 (3d Cir. 2001), *Chandler v. McMinnville Sch. Dist.*, 978 F.2d 524, 531 (9th Cir. 1992), *Newsom v. Albermarle Cty. Sch. Bd.*, 354 F.3d 249, 259–60 (4th Cir. 2004), and *N.J. v. Sonnabend*, 37 F.4th 412, 416 (7th Cir. 2022). The school officials here jumped to their desired conclusion (weapon imagery is not permitted) and then tried to backfill a supposedly disruptive effect.

Finally, qualified immunity stands as no barrier here. As the petition notes, pp. 24–25, the landmark *Tinker* decision since 1969 has made clear to school officials such conduct is beyond the pale.

This Court has long recognized the importance of not providing a roadmap for government officials to circumvent its decisions. *Haywood v. Drown*, 556 U.S. 729, 742 n.8 (2009) (citing *Howlett v. Rose*, 496 U.S. 356, 383 (1990)); *see also Nat’l Insts. of Health v. Am. Pub. Health Ass’n*, 145 S. Ct. 2658, 2663 (2025) (Gorsuch, J., concurring in part and dissenting in part) (“Lower court judges may sometimes disagree with this Court’s decisions, but they are never free to defy them.”); *Murthy v. Missouri*, 603 U.S. 43, 76 (2024) (rejecting respondent-States’ third-party standing argument as “a thinly veiled attempt to circumvent the limits on *parens patriae* standing”) (citing *Haaland v. Brackeen*, 559 U.S. 255, 295 n.11

(2023)). But the Sixth Circuit has done just that. This Court should review that ruling.

CONCLUSION

Respondents have done the very thing *Tinker* forbids, in the precise manner *Kennedy* prohibits. The petition for a writ of certiorari should be granted.

Respectfully submitted,

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