No. 25-906

IN THE

Supreme Court of the United States

E. D., a Minor, By Her Parent and Next Friend, LISA DUELL, et al.,

Petitioners,

v.

NOBLESVILLE SCHOOL DISTRICT, et al.,

Respondents.

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

BRIEF OF *AMICI CURIAE* THE STATES OF KANSAS, ALABAMA, ALASKA, FLORIDA, GEORGIA, INDIANA, LOUISIANA, MISSOURI, MONTANA, NEBRASKA, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, AND WEST VIRGINIA AND THE ARIZONA LEGISLATURE IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae the States of Kansas, Alabama, Alaska, Florida, Georgia, Indiana, Louisiana, Missouri, Montana, Nebraska, Oklahoma, South Carolina, South Dakota, and West Virginia and the Arizona Legislature operate and oversee schools, colleges, and universities full of students with differing viewpoints. *Amici* have a strong interest in ensuring student speech—especially non-disruptive speech by age-appropriate, student-led organizations—is not silenced by disagreement or arbitrary decision-making. *See, e.g.*, S. Con. Res. 1615, 2026 Leg. Sess. (Kan. 2026) (recognizing Charlie Kirk Free Speech Day and noting "the importance of free speech, the values of the First Amendment and our nation's commitment to civil debate").

Because educational institutions have historically served as pathways to new ideas and prepared students to embrace active citizenship through debate, discussion, critical thinking, and resiliency, schools today *should* welcome engaged students who are eager to respectfully share their interests and ideas. Reality, however, stands in stark contrast with this ideal, as administrators, instructors, students, and even outsiders routinely minimize or outright silence unpopular speech. Thus, it too often falls to the judiciary to ensure schools comply with constitutional and statutory guarantees

[1] *Amici* provided timely notice to the parties of their intent to file this brief. *See* Rule 37.2.

of free speech—and to hold accountable those who silence students.

Instead of forcefully rejecting viewpoint discrimination, the Seventh Circuit tacitly blessed it, allowing school administrators to hide behind a broad speech policy, so long as the policy furthers even broader goals. The court justified this censorship because it deemed the speech at issue—a noncurricular, pro-life student group's flyers—to be the school's speech, and so subject to the school's near-complete editorial control.

The student behind the flyers, E.D., did not attempt to promote her group and views by co-opting an unrelated classroom session or trying to publish an inflammatory article in the school newspaper. Instead, she sought to do what countless students before her have done to advertise their own student-led groups: hang flyers. Yet the Seventh Circuit, defying both *Hazelwood*'s core reasoning and common sense, effectively equated a *noncurricular* student group's flyer with classroom instruction and organized activity.

As this Court has continually affirmed, America's public schools play a critical role in preparing students for life and instilling in them the fundamental traits necessary to become the active citizens on whom our system of government depends. In addition to teaching the three Rs, schools can—and should—help students prepare for citizenship. This occurs, in part, when students have appropriate opportunities to debate and discuss issues. And

student-led noncurricular groups play an important role: They provide a forum outside classrooms and structured activities for students to discuss ideas with their peers and to take charge of an organization. More than many classes, these groups provide students with the practical skills and experience necessary for productive citizenship.

The Seventh Circuit weakened student speech by effectively turning all student-led noncurricular groups into curricular activities, converting student speech into school speech and empowering broad speech policies. The court undermined the ability of students to prepare for active citizenship. And it deepened a circuit split that impacts public schools nationwide. This Court's intervention is necessary. Accordingly, the Court should grant the petition for a writ of certiorari and reverse the Seventh Circuit.

SUMMARY OF THE ARGUMENT

By turning the meeting flyer of a noncurricular, student-led group into school speech and blessing a broad and arbitrary speech policy, the Seventh Circuit undermined the ability of high school students to meaningfully prepare to contribute to civil society.

This Court has long considered America's public schools to be the nurseries of democracy for good reason: These are communities where students debate and discuss new ideas and learn from their peers. And noncurricular student groups—*i.e.*, groups or clubs based purely on student interest that are not tethered to a school's curriculum or a structured activity—are critical to preparing students for active

citizenship. Through these groups, students develop the critical thinking and leadership skills necessary to help them with any manner of important civic decision, whether that be weighing the platforms of competing candidates or deciding how to be active community leaders.

Because the Seventh Circuit did not identify any materially significant link between the school and the speech at issue, the court erased any distinction between curricular activities and noncurricular groups, meaning that students will have fewer opportunities to meaningfully use these groups to debate and discuss new and important ideas. By weakening student speech and the role of noncurricular groups while vindicating an extraordinarily broad speech policy, the decision will inevitably weaken our Nation.

ARGUMENT

American public schools play a critical role in the continued prosperity of our Nation. Certainly, they instruct students in the fundamental skills necessary for college and the workforce. More importantly, public schools "prepare pupils for citizenship in the Republic." *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 681 (1986) (quotation marks omitted). Schools do so by instilling in students the "fundamental values of habits and manners of civility essential to a democratic society," which, "of course, include tolerance of divergent political and religious views, even when the views expressed may be unpopular." *Id.* (quotation marks omitted). Schools, naturally, are not forums for every manner of

expression and idea. *See id.* And what is appropriate in a high school may not be appropriate in an elementary school. *See Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271 (1988) (recognizing the ability of schools to ensure that students "are not exposed to material that may be inappropriate for their level of maturity"); *see also, e.g.*, *S.G. ex rel. A.G. v. Sayreville Bd. of Educ.*, 333 F.3d 417, 423 (3d Cir. 2003) (recognizing "that a school's authority to control student speech in an elementary school setting is undoubtedly greater than in a high school setting").

It also matters whether the speech at issue is, or would fairly be considered, the school's speech, as opposed to speech by its students. This distinction boils down to whether or not the speech would be facilitated through formal curriculum, instruction, or similar structured activity. *See Hazelwood*, 484 U.S. at 271. It is important for schools to control what is unquestionably their own speech. But school administrators should not be permitted to unnecessarily sweep broadly, turning student speech into school speech. Such a course of action limits the ability of students to meaningfully hear about new ideas, engage in appropriate debate and discourse, and ultimately develop the critical thinking and resiliency skills that will contribute to the future success of both the students and our Nation.

This case presents an extraordinarily mundane example of "controversial" student speech: a proposed flyer from a high school noncurricular student group contained a photo of people peacefully holding signs

that conveyed pro-life messages. *See* App. 4a–5a. And the flyer would be displayed where flyers have appeared since the advent of student groups—in hallways and common areas. *See* App. 11a–12a. In other words, nothing separated what E.D. sought to do from what the vast majority of high school students do in trying to promote their own student-led clubs.

The Seventh Circuit found the school's censorship to be constitutional because, the court believed, the flyer "could reasonably be perceived as bearing the school's imprimatur." *See* App. 11a. In reaching this conclusion, the court turned an administrator's ministerial sign-off and the flyer's would-be placement in a hallway as hallmarks of school speech. *See* App. 12a. The Seventh Circuit effectively determined that any statement by a noncurricular student group should be treated like a formal statement from the school. Under such expansive reasoning, it is difficult to imagine a student group whose flyer would *not* qualify as the school's speech. *Cf.* App. 11a–12a. And that is what is so concerning—there was nothing particularly special or controversial about the flyers and their relationship with the school.

Schools—especially high schools—help expose students to new ideas and opportunities, and they enable students to debate and discuss ideas and issues with peers. In facilitating these occurrences, schools prepare students for active citizenship, where they will also have to debate, discuss, and consider myriad important issues and viewpoints. Certainly, student

debate and discussion cannot dominate classroom instruction, nor must schools cede control of curricular activities. But the Seventh Circuit's heavy-handed approach to determining school speech effectively erased any daylight between formal curriculum and student-interest groups.

E.D.'s desired flyer was a tried-and-true method of furthering her student group, which sought to provide new ideas for high school students. It was not disruptive or inappropriate by any measure, and it should not be deemed speech by the school itself. It is imperative that this Court intervene to protect the constitutional rights of student and the health of our Nation.

I. Readily turning student speech into school speech silences students and weakens our civic health.

Schools are environments ripe for exposure to new and different ideas. Students interact with peers from various backgrounds, learn (hopefully) new information from teachers, and participate in a variety of activities that help them mature and grow. Like the States, which are the laboratories of democracy, *see New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting), public schools play a foundational civic role as "the nurseries of democracy," *Mahanoy Area Sch. Dist. v. B. L. by & through Levy*, 594 U.S. 180, 190 (2021).

Of course, "anything goes" is not—and should not be—the rule. Parental rights must be respected, classroom instruction should not be interrupted, and

schools cannot permit any and all messages. *See Fraser*, 478 U.S. at 681. And it is necessary to consider the age and maturity of the students who might hear the speech at issue. *See Hazelwood*, 484 U.S. at 271; *Fraser*, 478 U.S. at 681. Yet these important limitations do not vest school administrators with unfettered authority to "censor a student's speech merely because it is controversial." *See L. M. by & through Morrison v. Town of Middleborough*, 145 S. Ct. 1489, 1494 (2025) (Alito, J., dissenting from the denial of certiorari). It is vital for our Nation's continued success that students do not have their non-disruptive speech arbitrarily and needlessly silenced. As this Court has "consistent[ly]" affirmed, "student speech is not a constitutional afterthought, but a protected and essential component of democratic discourse." *B. A. v. Tri Cnty. Area Schs.*, 156 F.4th 782, 811 (6th Cir. 2025) (Bush, J., dissenting) (citing *Mahanoy*, 594 U.S. at 190); *see also, e.g.*, *Shelton v. Tucker*, 364 U.S. 479, 487 (1960) ("The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.").

"In order to maintain a thriving democracy, students cannot be unreasonably encumbered in their freedom to express moral, political, and social ideals and beliefs." *J.S. ex rel. Snyder v. Blue Mountain Sch. Dist.*, 650 F.3d 915, 944 (3d Cir. 2011) (*en banc*) (Fisher, J., dissenting). Excessive restrictions needlessly stifle student speech and undercut the "free exchange" of ideas that is necessary for our system of government. *See B.L.*, 594 U.S. at 190; *see also Keyishian v. Bd. of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 603 (1967) (recognizing that "[t]he Nation's future depends upon leaders trained through

wide exposure to that robust exchange of ideas"). In turning a noncurricular student group into a spokesman of the school, the Seventh Circuit weakened the ability of high school students to contribute to the marketplace of ideas.

E.D. sought to provide a forum in her school community for pro-life ideas and interests. Her group was not attached to classroom instruction, nor was it part of a structured activity. It was a club led by students and based on student interests. And E.D. naturally tried to advertise her group, utilizing template flyers from a national pro-life student organization. Through her group and proposed flyers, E.D. wanted to contribute to the free exchange of ideas in her high school in a non-disruptive and age-appropriate manner. "This free exchange facilitates an informed public opinion, which, when transmitted to lawmakers, helps produce laws that reflect the People's will." *B.L.*, 594 U.S. at 190.

Pro-life views necessarily come with controversy. Under the Seventh Circuit's decision and the school "policy" at issue here, these views could never come into the schoolhouse, even if conveyed by students in a non-disruptive and age-appropriate manner outside the classroom. That outcome is untethered to the Constitution. *Cf. Defending Educ. v. Olentangy Loc. Sch. Dist. Bd. of Educ.*, 158 F.4th 732, 759–60 (6th Cir. 2025) (*en banc*) ("When a political debate has fractured our society in such a significant way, the originalist case for giving schools greater power to regulate a student's personal speech loses its force."). Indeed, the "mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint" is not a

legitimate pedagogical interest for schools. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969). To the contrary, "the school itself has an interest in protecting a student's unpopular expression." *B.L.*, 594 U.S. at 190.

High school students should not—and as a practical matter, cannot—be shielded from important issues like those E.D.'s group sought to highlight in a respectful and non-disruptive manner. After all, some students will be eligible to vote while still in school, and others will turn eighteen sooner rather than later. *See Rivera v. E. Otero Sch. Dist. R-1*, 721 F. Supp. 1189, 1194 (D. Colo. 1989) ("High school students, who . . . include persons of voting age, must develop the ability to understand and comment on the society in which they live and to develop their own sets of values and beliefs."). "The ability to engage in civil discourse with those with whom we disagree is an essential feature of a liberal education. Teaching students that they can and should be sheltered from speech that offends them is not." *Leroy v. Livingston Manor Cent. Sch. Dist.*, 158 F.4th 414, 427 (2d Cir. 2025). As this Court has previously noted, "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.'" *B.L.*, 594 U.S. at 190.

"Allowing for the expression of beliefs and opinions in a robust *but respectful* environment encourages engagement, promotes self-improvement, and furthers the search for truth." *J.S.*, 650 F.3d at 944 (Fisher, J., dissenting) (emphasis added). E.D. sought to respectfully further pro-life views through a

noncurricular group for high school students. Her flyers were part and parcel of this effort. The pictures on the flyer gave insight into the likely views of members in the group in a mundane and respectful manner. E.D.'s efforts and flyers were the ideal means to inject new ideas and discussions into a high school.

To be sure, some students would not have agreed with the views expressed on the flyers or held by members of the group. And even after doing more research and interacting with group members, some still would not have agreed. Yet they would have had the experience of considering and discussing these important issues in a respectful manner. The flyers would have helped students to evaluate issues, have important discussions, and develop resiliency by encountering other students with different views. In other words, the flyers would have helped prepare the students for active and informed citizenship.

If America's public schools are to retain their role as the nurseries of democracy, then school administrators cannot be allowed to broadly sweep student speech into school speech. Yet the Seventh Circuit blessed just such an effort.

II. Noncurricular student groups help students develop civic engagement and leadership skills.

Age-appropriate, student-led noncurricular groups are a critical means through which students can help infuse different views into the school community. While schools certainly possess greater control over classroom instruction and "formal" or "structured" extracurricular activities, the same

cannot, and should not, be said for pure *student* interest groups. *See Hazelwood*, 484 U.S. at 271. These groups help develop engaged and informed citizens, and they are important forums that should not be needlessly watered down.

The Seventh Circuit, like the school district, justified the restriction on E.D.'s speech because the flyer could have been perceived as being the school's speech. *See* App. 11a–13a. Such a conclusion is more than a stretch. After all, surely not every flyer in a school can qualify as school-sponsored speech. Under that reasoning, just about any message displayed or conveyed in a school would similarly qualify. Yet the Seventh Circuit's opinion tacitly endorses such a near-categorical rule. *Cf.* App. 11a–13a. This is particularly troubling because student groups ensure forums for different voices and perspectives in schools.

"The process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class." *Fraser*, 478 U.S. at 683. Attending class, though unquestionably important, is not the only means through which students gain important lessons and skills. *See Albach v. Odle*, 531 F.2d 983, 985 (10th Cir. 1976). Activities like "membership in school clubs and social groups" help to "provide an atmosphere of intellectual and moral advancement" for students. *Id.*

As this Court has continually recognized when speech in school is at issue, there is a meaningful distinction between "when schools shape the bounds of their curriculum" and "when schools try to shape the bounds of private speech that occurs during non-instructional time between classes, during recess, in

the cafeteria, on the playing field, or other designated free time during the school day." *Westfield High Sch. L.I.F.E. Club v. City of Westfield*, 249 F. Supp. 2d 98, 119 (D. Mass. 2003) (internal citations and quotation marks omitted) (collecting cases, including *Tinker*, *Fraser*, and *Hazelwood*). This principle is rooted in this Court's common-sense recognition of the varying relationships that schools have with the activities that occur within their walls. *Cf. Board of Education of Westside Community Schools v. Mergens By & Through Mergens*, 496 U.S. 226, 240 (1990). While it may be appropriate to find "school speech" when it comes to the school newspaper or the National Honor Society chapter, such a finding (and accompanying deference) is inappropriate for student-led organizations that bring students together over a shared, noncurricular interest.

Simply because a student-led club is part of the school community does not necessarily mean that the club's speech becomes the school's speech. This principle holds true even if the club is, to some extent, facilitated by the school. Activities vary widely in their ties to the school; if some "activities may fairly be characterized as part of the school curriculum," then others certainly fall outside this realm. *Cf. Hazelwood*, 484 U.S. at 271. Such an important distinction is firmly rooted in this Court's jurisprudence.

As this Court recognized in *Hazelwood* and *Mergens* (an Equal Access Act case that is helpful here), school activities are on a spectrum when it comes to the degree of control exercised over them by a school. On one end are those activities that are part of the school curriculum or wholly overseen and

organized by the school, such as the school newspaper or marching band. *See Mergens*, 496 U.S. at 240. On the other end are pure student interest groups, like "a chess club" or "a stamp collecting club." *Id.* Often, these groups will have limited ties to the school, such as official recognition and the attendant benefits (*e.g.*, being able to reserve rooms for meetings and table at activity fairs). To the extent administrators or teachers are involved, they generally occupy a ministerial role, such as serving as a sponsor and handling administrative matters for students. E.D.'s group falls on this end of the spectrum: the group was not tied to any class or formal activity and it was based around a shared student interest (pro-life ideas). And as with other facets of education, the more mature the students in the group (here, high school students), the less need for teacher or administrator involvement. *Cf. Hazelwood*, 484 U.S. at 271.

The Seventh Circuit improperly departed from *Hazelwood*, this Court's recognition of materially significant differences among student groups, and any consideration of the relevant students' age and maturity in favor of a near-categorical rule. The decision does not come with a limiting principle, and the rationale could be used to justify restrictions on student speech untethered to a club so long as someone *could* perceive the speech to reflect the school's views. *But see Mergens*, 496 U.S. at 244 (rejecting argument "that 'curriculum related' means anything remotely related to abstract educational goals").

Student groups are an integral part of a robust and fulfilling educational environment. *See Albach*, 531 F.2d at 985. They provide meaningful leadership

opportunities for students, enable students to discuss and debate new ideas, and provide students with a means to bring something of value to the school community. *See Burch v. Barker*, 861 F.2d 1149, 1159 (9th Cir. 1988) ("Interstudent communication does not interfere with what the school teaches; it enriches the school environment for the students."). Here, E.D. sought to respectfully provide a new perspective in her school community through a voluntary, student-run club. The flyers were intertwined with her effort. If a noncurricular student group always "speaks" for the school, then these groups will always be subject to significant school control. Students will be disincentivized to start age-appropriate clubs, like E.D.'s, that touch on important issues. Nothing would stop the school from cracking down on discussion among members at club meetings; after all, the club would be treated just like a formal class. The end result is that students will consider fewer new ideas and lose out on the ability to meaningfully develop citizenship and leadership skills.

In finding the flyers to be the school's speech, the Seventh Circuit weakened the important role of student-led, student-interest clubs.

III. The Seventh Circuit's sweeping approach to school speech empowers vague speech policies.

An overly generous approach to turning student speech into the school's speech, like the Seventh Circuit employed here, is particularly dangerous because it will inevitably be easier for schools to deploy speech policies with full force within their walls. *See Hazelwood*, 484 U.S. at 271. Yet these

policies, to the extent they actually exist, often sweep broadly and so pose myriad dangers to non-disruptive free expression.

A broad, ambiguous speech policy like the one employed against E.D. is readily susceptible to abuse and uneven application, and it will inevitably result in viewpoint discrimination. *See Turning Point USA at Ark. State Univ. v. Rhodes*, 973 F.3d 868, 881 (8th Cir. 2020) (Loken, J., concurring) ("[I]t is all too common for petits fonctionnaires, arbitrarily enforcing broad rules and policies, to take action that may be politically correct but is not viewpoint neutral."). And the Seventh Circuit has now blessed it, vesting administrators with wide discretion in deeming speech "political" and liable to being silenced. *See* App. 15a.

This case exemplifies the dangers of arbitrary enforcement. It is difficult for anyone, let alone school administrators dealing with myriad differing opinions of students, to determine what qualifies as political speech in the first place. Some will inevitably take the easy way out and conflate "popular" with "apolitical," and "unpopular" with "political." Opinions will vary widely from person to person. One administrator may view a poster with raised fists as an expression of human rights and therefore not political. Another might find it political, and therefore impermissible. And innocuous, student-led religious activities could be caught up as "political." For example, a flyer advertising a student group's special before-school prayer session or Bible study in honor of Respect Life

Month may wind up banned solely because the flyer appears on a school wall and thus is subject to an administrator's near-unfettered discretion.[2]

Under the Seventh Circuit's near-categorical rule, the First Amendment rights of students are at the mercy of individual administrators arbitrarily applying broad policies. *See Rhodes*, 973 F.3d at 881 (Loken, J., concurring). The opinion blesses this situation because a policy that blindly prohibits "political" speech is a powerful tool that can, intentionally or not, capture just about any remotely controversial topic. Politics is front and center in many aspects of life, readily extending into just about every facet of society, including how schools are run. A policy against "political" speech is tantamount to a policy against "controversial" or "unpopular" speech, or even "speech that an administrator does not want to deal with."

When student speech gets twisted into the school's speech, it becomes easier to regulate. This Court should not permit school administrators to broadly suppress non-disruptive student speech.

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[2] *See* U.S. Conf. of Cath. Bishops, *2025 Respect Life Month Resources*, https://www.respectlife.org/respect-life-month (last accessed Feb. 2, 2026) [https://perma.cc/NDJ8-934U].

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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