



April 8, 2026

Honorable Scott S. Harris  
Clerk of the Court  
Supreme Court of the United States  
One First Street, NE  
Washington, DC 20543-0001

Re: *E.D., et al. v. Noblesville School District, et al.*  
Case No. 25-906

Dear Mr. Harris,

Petitioners submit this notice to inform the Court of a new court-of-appeals decision that deepens the 3–1–2 circuit split Petitioners raised in their petition, making it a 3–1–3 split.

In *Penguin Random House, LLC v. Robbins*, No. 25-1819, 2026 WL 924132 (8th Cir. Apr. 6, 2026), the Eighth Circuit Court of Appeals joined the Sixth and Eleventh Circuits in holding that the analysis in *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988), controls expression that (1) bears a school’s imprimatur, *and* (2) occurs in a curricular activity. See Pet.22–23; Pet.Reply.2–5. More specifically, the Eighth Circuit held that, under *Hazelwood*, a school library “bears the imprimatur of the school *and* is properly characterized as part of the school’s curriculum.” *Penguin Random House*, 2026 WL 924132, at \*3 (emphasis added). Accordingly, *Hazelwood*’s less exacting standard applied instead of *Tinker v. Des Moines Independent Community Schools District*, 393 U.S. 503 (1969). *Id.* at \*1, \*3.

That holding distinguishes the Eighth Circuit’s approach from the approach taken by the Fifth, Tenth, and Seventh Circuits, none of which expressly require a showing that the speech occurred within a curricular activity for *Hazelwood* to apply. Pet.18–20. Indeed, the Tenth Circuit expressly *rejected* that view as being “too narrow.” Pet.Reply.2 (quoting *Fleming v. Jefferson Cnty. Sch. Dist. R-1*, 298 F.3d 918, 924 (10th Cir. 2002)). And the Seventh Circuit below applied *Hazelwood* even though no one contested the “extracurricular” nature of the student-club flyers that Respondents censored in this case. App.21a; Doc. 101 ¶ 347; Doc. 158-30 at 1–3. The Eighth Circuit’s approach also differs from that taken by the Third Circuit, which applies *Hazelwood* to any “student speech within an organized and structured *educational activity*.” *Walz v. Egg Harbor Twp. Bd. of Educ.*, 342 F.3d 271, 278 (3d Cir. 2003) (emphasis added); Pet.3, 21; Opp.15–16.

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In the Eighth Circuit, by contrast, *Tinker*—not *Hazelwood*—would have controlled this case because, at least in the circuits on the right side of the split, the “*Hazelwood* standard applies [only] to school activities that ‘may fairly be characterized as part of the school curriculum.’” *Penguin Random House*, 2026 WL 924132, at \*1 (quoting *Hazelwood*, 484 U.S. at 270–71). A school library qualifies as “such an activity.” *Ibid.* But Petitioners’ flyers as “student speech occurring on school premises” do not. See *id.* at \*3.

In sum, the Eighth Circuit’s decision deepens the already existing circuit split over the question presented in this case about the proper reading of *Hazelwood*. The Court should grant the petition to resolve that conflict.

Respectfully Submitted,

s/John J. Bursch

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