

No. 25-1143

In the
Supreme Court of the United States

D.A., A MINOR, BY AND THROUGH HIS MOTHER, B.A., ET AL.,
Petitioners,

v.

TRI COUNTY AREA SCHOOLS, ET AL.,
Respondents.

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

**AMICUS CURIAE BRIEF OF
THE BUCKEYE INSTITUTE
IN SUPPORT OF PETITIONERS**

David C. Tryon
Counsel of Record
Alex M. Certo
J. Simon Peter Mizner
THE BUCKEYE INSTITUTE
88 East Broad Street, Suite 1300
Columbus, OH 43215
(614) 224-4422
D.Tryon@BuckeyeInstitute.org

QUESTION PRESENTED

Whether *Fraser* permits schools to censor nondisruptive political speech that is not plainly profane or lewd.

TABLE OF CONTENTS

QUESTION PRESENTED..... i

TABLE OF AUTHORITIES.....iii

INTEREST OF AMICUS CURIAE 1

SUMMARY OF THE ARGUMENT..... 1

ARGUMENT 4

 I. This is an ideal vehicle to provide guidance to school officials, parents, and students on how *Fraser* and *Tinker* handle nondisruptive speech that is not plainly profane or lewd 4

 II. Students cannot be punished for using profane language when their language is not profane.... 6

 III. *Lewd* substitutes for profanity are unacceptable under *Fraser*, but *non-lewd* substitutes for profanity are protected by the First Amendment 12

 IV. The First Amendment protects Petitioners’ political statements 14

 V. Petitioners’ conduct does not violate the *Tinker* standard because it did not create a disruption 18

CONCLUSION..... 20

TABLE OF AUTHORITIES

Cases

<i>Ambach v. Norwick</i> , 441 U.S. 68 (1979).....	13
<i>B.H. ex rel. Hawk v. Easton Area Sch. Dist.</i> , 725 F.3d 293 (3d Cir. 2013)	3, 5, 11
<i>Barr v. Lafon</i> , 538 F.3d 554 (6th Cir. 2008).....	11
<i>Bethel Sch. Dist. No. 403 v. Fraser</i> , 478 U.S. 675 (1986)	5, 10, 11, 12, 13, 19
<i>Connick v. Myers</i> , 461 U.S. 138 (1983)	4
<i>Defending Educ. v. Olentangy Loc. Sch. Dist. Bd. of Educ.</i> , 158 F.4th 732 (6th Cir. 2025)	4
<i>Defoe ex rel. Defoe v. Spiva</i> , 625 F.3d 324 (6th Cir. 2010).....	19
<i>Guiles ex rel. Guiles v. Marineau</i> , 461 F.3d 320 (2d Cir. 2006)	11
<i>Hazelwood Sch. Dist. v. Kuhlmeier</i> , 484 U.S. 260 (1988)	10
<i>Mahanoy Area Sch. Dist. v. B. L. by and through Levy</i> , 594 U.S. 180 (2021).....	3, 4, 10, 17
<i>Morse v. Frederick</i> , 551 U.S. 393 (2007)	10
<i>Saxe v. State Coll. Area Sch. Dist.</i> , 240 F.3d 200 (3d Cir. 2001)	18

<i>Sheets v. Lipker</i> , No. 2:25-CV-493-KCD-DNF, 2026 WL 265715 (M.D. Fla. Feb. 2, 2026).....	1
<i>Tinker v. Des Moines Indep. Community Sch. Dist.</i> , 393 U.S. 503 (1969)	5, 6, 10, 18, 19
Statutes	
18 U.S.C. § 1464	7, 18
Other Authorities	
Colleen Long, <i>How ‘Let’s Go Brandon’ became code for insulting Joe Biden</i> , Associated Press (Oct. 30, 2021), https://tinyurl.com/3kp7wuer	16
Declan McCullagh, <i>FCC Reversal: Eminem Not Obscene</i> , Wired (Jan. 12, 2002), https://tinyurl.com/mthhhxmv	7
Eminem, <i>Without Me</i> , on The Eminem Show (CD, Aftermath Ent. May 26, 2002)	7
F***, <i>Cambridge Dictionary</i> , https://tinyurl.com/yk5h3bfu (last visited Apr. 2, 2026)	13
<i>Let’s go Brandon: NASCAR driver Brandon Brown caught in unwinnable culture war</i> , ESPN (Feb 19, 2022), https://tinyurl.com/aeuspb4a	2, 13
Marc A. Thiessen, <i>Three cheers for ‘Let’s Go Brandon’</i> , Wash. Post (Nov. 23, 2021), https://tinyurl.com/three-cheers-lets-go-brandon ...	3
Mark J. Perry, <i>English Has the Richest Vocabulary</i> , AEI (Oct. 18, 2006), https://tinyurl.com/23ahkkrw	2

Matthew S. Schwartz, <i>Man who said ‘Let’s go, Brandon’ to Biden on Christmas Eve says he was only joking</i> , NPR (Dec. 26, 2021), https://tinyurl.com/3zeywwuz	16
N.W.A., <i>Express Yourself</i> , on <i>Straight Outta Compton</i> (CD, Ruthless Records 1988)	15
<i>Obscene, Indecent and Profane Broadcasts</i> , Federal Communications Commission (Jan. 13, 2021), https://tinyurl.com/FCC-Broadcast-Guide	7
<i>Profanity</i> , <i>Black’s Law Dictionary</i> (12th ed. 2024) ..	11
Public Radio Exchange, <i>A guide to broadcast obscenities and issuing content advisories</i> , PRX, https://tinyurl.com/e2mjkw7x (last visited Apr. 2, 2026)	7

INTEREST OF AMICUS CURIAE¹

The Buckeye Institute was founded in 1989 as an independent research and educational institution—a think tank—to formulate and promote free-market policy in the states. The Buckeye Institute accomplishes its mission by performing timely and reliable research on key issues, compiling and synthesizing data, formulating free-market policies, and marketing those policy solutions for implementation in Ohio and replication across the country. The Buckeye Institute also files lawsuits and submits amicus briefs to fulfill its mission. The Buckeye Institute is a nonpartisan, nonprofit, tax-exempt organization, as defined by I.R.C. section 501(c)(3).

SUMMARY OF THE ARGUMENT

This case is about words. Respondents would have the courts believe that it is about a “four-letter expletive that has vexed legal authorities and amused teenagers for generations.” *Sheets v. Lipker*, No. 2:25-CV-493-KCD-DNF, 2026 WL 265715, at *1 (M.D. Fla. Feb. 2, 2026). In reality, it is about a non-profane phrase that infiltrated mainstream pop culture.

¹ Pursuant to Supreme Court Rule 37.6, no counsel for any party authored this brief in whole or in part and no entity or person, aside from amicus curiae made any monetary contribution toward the preparation or submission of this brief. Counsel timely provided the notice required by Rule 37.2.

The English language has a rich vocabulary, which continues to expand. Mark J. Perry, *English Has the Richest Vocabulary*, AEI (Oct. 18, 2006), <https://tinyurl.com/23ahkkw>. The words speakers choose convey emotion, tone, setting, and other details that characterize the communication and the message conveyed. Speakers can express similar concepts with different words taking into consideration the particular audience.

Some people express concepts with impolite—or even profane—words or phrases, while others express those same ideas through (more) polite words or phrases to avoid giving offense. Hence, while sailors and nuns may be equally regimented, their vocabulary . . . differs. In this case, the district court judged the words on a shirt as though the speakers said something besides what was actually “said.”

Like many phrases or political slogans, “Let’s go Brandon” has taken on a life of its own. The phrase originated when a sports broadcaster at a NASCAR race incorrectly reported on live television that the crowd chanting “F*** Joe Biden” was instead chanting “Let’s go Brandon.” *Let’s go Brandon: NASCAR driver Brandon Brown caught in unwinnable culture war*, ESPN (Feb 19, 2022), <https://tinyurl.com/aeuspb4a>. Since then, “Let’s go Brandon” has come to be universally understood as representing dissatisfaction with former President Biden and his administration’s policies. Marc Thiessen, a former chief speechwriter for President George W. Bush, has noted that the chant is tame compared to what has been said about other presidents. Marc A. Thiessen, *Three cheers for ‘Let’s Go Brandon’*, Wash. Post (Nov. 23, 2021),

<https://tinyurl.com/three-cheers-lets-go-brandon> (referencing phrases such as “Bush lied and people died,” “Jail the Chief,” “a drunken trowser-maker,” “pimp of the White House,” and “a hideous hermaphroditical character which has neither the force and firmness of a man, not the gentleness and sensibility of a woman”). But here, “[t]he only ones hurt by the chant are kids named Brandon whose parents can no longer cheer for them at sporting events. Otherwise, it [was] a perfectly harmless and humorous way for Americans to express their frustration at a flailing – and failing – presidency.” *Id.*

This case revolves around the intersection of the political phrase “Let’s go Brandon” and students’ speech rights in school. This Court has held that schools can regulate student speech that is indecent, lewd, or vulgar when said at a school assembly, promotes illegal drug use, or may appear to be the speech of the school itself. *Mahanoy Area Sch. Dist. v. B. L. by and through Levy*, 594 U.S. 180, 187–88 (2021). Schools may also discipline students who use “profane” language. See *B.H. ex rel. Hawk v. Easton Area School District*, 725 F.3d 293, 304 (3d Cir. 2013). But these are exceptions to the rule, and—even taking these exceptions to their maximum logical boundaries—“Let’s go Brandon” does not fall into any recognized prohibition. Nothing in the phrase itself is facially indecent, lewd, or vulgar. There is no reference to drug use. And no one would read a student’s shirt and assume he speaks for the school. Punishing speech for any reason that does not fall within one of the Court’s approved exceptions is unacceptable.

ARGUMENT

- I. **This is an ideal vehicle to provide guidance to school officials, parents, and students on how *Fraser* and *Tinker* handle nondisruptive speech that is not plainly profane or lewd.**

Speech on matters of public concern “ ‘occupies the highest rung of the hierarchy of First Amendment values’ and so receives ‘special protection’ from the courts.” *Defending Educ. v. Olentangy Loc. Sch. Dist. Bd. of Educ.*, 158 F.4th 732, 752 (6th Cir. 2025) (quoting *Connick v. Myers*, 461 U.S. 138, 145 (1983)). This case sits atop that highest rung. Its result impacts students’ First Amendment rights and determines when and where school administrators can set the limit on those rights.

This case is critically important to the millions of students throughout the country who are exploring the boundaries of permissible in-school political speech. The First Amendment’s importance for students cannot be overstated. Unfortunately, teachers, administrators, and school boards—not unreasonably—tend to prefer control over freedom out of “fear of a disturbance” in the classroom. See, e.g., *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 508 (1969). But that does not excuse illegal censorship. This is America, where “public schools are the nurseries of democracy. Our representative democracy only works if we protect the marketplace of ideas.” *Mahanoy Area Sch. Dist.*, 594 U.S. at 190.

The decision below creates a circuit split on this important issue with, at least, the First, Second, Third, and Tenth Circuits. See, *e.g.*, Pet. App. at 31a–32a, 43a–44a, 51a–52a, 56a (Bush, J., dissenting). The panel majority’s reasoning is largely based on *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986). But this case is more like *Tinker*. After all, “[f]or a young person, wearing apparel with a political message can be the first point of entry to civic engagement.” Pet. App. at 29a (Bush, J., dissenting). As Judge Bush’s dissent points out, the Third Circuit took a different approach that “reinforces why *Fraser* must be read narrowly, and why *Tinker* governs here.” Pet. App. at 56a (Bush, J., dissenting) (citing *B.H. ex rel. Hawk*, 725 F.3d 293 (en banc)).

Consistent with this Court’s precedent, under the Third Circuit’s approach,

- (1) schools may categorically restrict plainly lewd speech, regardless of message;
- (2) they may restrict ambiguously lewd speech unless it plausibly comments on political or social issues; but
- (3) schools may not categorically restrict speech that is not plainly lewd and that could be seen as political or social commentary.

Pet. App. at 57a (Bush, J., dissenting) (citing *B.H. ex rel. Hawk*, 725 F.3d at 301). Unlike the approach taken by the Sixth Circuit below, the Third Circuit draws a clearer line between what the First Amendment protects and what it does not.

Schools are *supposed* to teach students how to be responsible, civically engaged citizens. Stifling speech—especially political speech—curbs human growth and flourishing. And doing so on the grounds of any particular administrator’s subjective and wrong interpretation is all the worse. Under the panel’s opinion, any principal, teacher, or other administrator would have near *carte blanche* authority to sanction speech they do not like and “reasonably interpret” to violate school rules. But “[i]n our system, state-operated schools may not be enclaves of totalitarianism.” *Tinker*, 393 U.S. at 511. Like a class clown who cannot read the room, the panel’s grant of authority takes this Court’s precedent a bridge too far.

Thus, the Court should grant the petition to clarify that where actual profanity is absent, the disruption test laid out in *Tinker* is the standard.

II. Students cannot be punished for using profane language when their language is not profane.

Regulating speech under the First Amendment should constitute a rare exception. Still, certain words or phrases are so profane, lewd, or vulgar that the government does not allow them in school, or in radio or TV broadcasts for that matter. But schools cannot prohibit non-profane words conveying the same message. Polite society avoids, and schools can prohibit, certain words, but generally not the message behind those words.

The government has long recognized that certain words are unacceptable for certain audiences. The federal government has prohibited broadcasting “obscene, indecent, or profane language.” 18 U.S.C. § 1464. The FCC explains that “[i]ndecent content portrays sexual or excretory organs or activities in a way that is patently offensive but does not meet the three-prong test for obscenity.” *Obscene, Indecent and Profane Broadcasts*, Federal Communications Commission (Jan. 13, 2021), <https://tinyurl.com/FCC-Broadcast-Guide>. “Profane content includes ‘grossly offensive’ language that is considered a public nuisance.” *Id.* But while the FCC may not let Eminem be, and may have tried to shut him down on MTV, Eminem, *Without Me*, on The Eminem Show (CD, Aftermath Ent. May 26, 2002), it nevertheless interprets these restrictions narrowly, cf. Declan McCullagh, *FCC Reversal: Eminem Not Obscene*, *Wired* (Jan. 12, 2002), <https://tinyurl.com/mthhhxmv>. Indeed, although it does not publish a list of prohibited words, the Public Radio Exchange has noted specific words that “must always be bleeped/dropped”—and there are not many. Public Radio Exchange, *A guide to broadcast obscenities and issuing content advisories*, PRX, <https://tinyurl.com/e2mjkw7x> (last visited Apr. 2, 2026). By contrast, substitute words for the “bleeped” words are acceptable. *Id.*

In the education context, consider the following scenarios:

1. Principal Rooney comes upon a group of freshmen and hears:

Ferris: "That was a great movie!"

Cameron: Bulls***! It was awful. I hated it.

Garth: No f***ing way! It was lousy.

Sloane: Shut the front door!

Jeanie: Bullcrap, Ferris, are you out of your mind?

Now who should get in trouble? Four of the students expressed the same sentiment disagreeing with Ferris. But schools can—and should—distinguish between the boys' profanity and the girls' non-profanity, punishing the former incidents and not the latter.

2. Mr. Gillen comes into his classroom and hears the kids complaining about the lack of heat in the room:

Alice: Shucks, it's cold in here!

Lisa: Shoot, I know, I'm absolutely freezing.

John: S***, I am so cold I can't stand it.

Are all these statements legally "equivalent"? See Pet. App. at 93a. The principal in this case and the district court judge might say so. But, in fact, they are not.

3. Bob is angry about his grade on a math test that he just received back. He can express his anger and displeasure in several ways. Which of the following expressions is/are unacceptable?

- a. Shoot!
- b. Shucks!
- c. Crap!
- d. S***!
- e. F***!
- f. Frick!

Answer: It depends. If he attends Tri County Area Schools, all of the above—because the words express the same sentiment, and the principal in Tri County cannot distinguish between the actual words. If Michael attends a more sensible school district, the answer is only d and e.

4. Student A and Student B get into an argument. Student A is overheard saying “F*** you!” Student B retorts: “That is not nice. No freakin’ way am I going to put up with your profanity. I wish misfortune and suffering on you and your heirs for generations to come!”

Did Student B say anything warranting discipline versus Student A’s exclamation?

Analyzing this case requires not only familiarity with the law but also common sense—and a sense of humor. The school district in this case seems to lack a bit of both.

Of course, student speech cases can be challenging because the situations often deal with sensitive topics. Some involve socially uncomfortable issues like sex, see *Fraser*, 478 U.S. at 685, others—including this case—involve politics, see *Tinker*, 393 U.S. at 504. But “[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker*, 393 U.S. at 506. And the political speech in this case is free of profanity.

Recently, the Court explicitly set out the “categories of student speech that schools may regulate in certain circumstances.” *Mahanoy Area Sch. Dist.*, 594 U.S. at 187. Those categories are:

(1) “indecent,” “lewd,” or “vulgar” speech uttered during a school assembly on school grounds; (2) speech, uttered during a class trip, that promotes “illegal drug use,”; and (3) speech that others may reasonably perceive as “bear[ing] the imprimatur of the school,” such as that appearing in a school-sponsored newspaper. Finally, in *Tinker*, we said schools have a special interest in regulating speech that “materially disrupts classwork or involves substantial disorder or invasion of the rights of others.”

Id. at 187–88 (citing *Fraser*, 478 U.S. at 685; *Morse v. Frederick*, 551 U.S. 393, 409 (2007); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271 (1988); and *Tinker*, 393 U.S. at 513). Further, *Fraser* upheld a school’s discipline of a student for violating the school’s

policy prohibiting “[c]onduct which materially and substantially interferes with the educational process . . . , including the use of *obscene, profane language* or gestures.” *Fraser*, 478 U.S. at 678 (emphasis added). Several circuit courts have followed *Fraser*, explaining that “[u]nder *Fraser*, a school may categorically prohibit lewd, vulgar or profane² language.” *B.H. ex rel. Hawk*, 725 F.3d at 304; *Guiles ex rel. Guiles v. Marineau*, 461 F.3d 320, 326 (2d Cir. 2006) (same); cf. *Barr v. Lafon*, 538 F.3d 554, 563–64 (6th Cir. 2008) (“[U]nder *Fraser*, a school may categorically prohibit vulgar, lewd, indecent, or plainly offensive student speech.”).

Neither the school nor the district court have explained how Petitioners, by wearing sweatshirts saying “Let’s go Brandon,” fall into any of the Court’s categories. There is no sexual over or under-tone, no reference to drugs, and no appearance that Petitioners were speaking for the school—leaving available only the Court’s profanity exception—which does not apply either. Rather, the opinions below mischaracterize the profanity exception and allow the school to ban language that has a “profane meaning.” See, e.g., Pet. App. at 53a (Bush, J., dissenting). The district court reasoned that Respondents’ “reasonably interpreted Let’s Go Brandon as *having a profane meaning*. In a middle school, the phrase enjoys no more First Amendment protection [than] Matt Fraser’s nominating speech—none at all.” Pet. App. at 87a (emphasis added). But that expansion of “profanity” would include virtually all “clean” substitutes for

² Profanity includes “obscene, vulgar, or insulting language.” *Profanity*, *Black’s Law Dictionary* (12th ed. 2024).

profanity. Under the district court's theory, the school could ban all substitutes for notorious curse words like the F-bomb, H***, S***, D***, B****, A**, etc. Further, under this theory, a school could ban nearly every exclamatory word or phrase—which is well beyond the limited First Amendment exception permitted by precedent.

III. *Lewd* substitutes for profanity are unacceptable under *Fraser*, but *non-lewd* substitutes for profanity are protected by the First Amendment.

Schools may restrict speech only if it falls within the Court's directives. In the case of the F-word, the word itself is profane and therefore always inappropriate. The school should also be able to regulate plainly lewd language, whether that language is a substitute for the F-bomb or a student's attempt to pull one over on school administrators. For example, in *Fraser*, Matt Fraser delivered a speech filled with sexual innuendos to a high school assembly. *Fraser*, 478 U.S. at 678. The Court agreed that punishing Fraser was permissible because his conduct "undermine[d] the school's basic educational mission. A high school assembly or classroom is no place for a sexually explicit monologue directed towards an unsuspecting audience of teenage students." *Id.* at 685. The overall speech was "offensively lewd and indecent." *Id.* That is not the case here. Rather, Petitioners' use of euphemism was to convey a political opinion. Although it is highly unlikely that public schools' educational missions would include "unprovoked sexually explicit monologues such as Mr. Fraser's," see *id.* at 686, their educational missions

certainly should include the “inculcat[ion of] fundamental values necessary to the maintenance of a democratic political system,” see, *e.g.*, *id.* at 681 (quoting *Ambach v. Norwick*, 441 U.S. 68, 76–77 (1979)).

As previously mentioned, “Let’s go Brandon” was derived from a “F*** Joe Biden” chant. ESPN, *supra*. The F-word has two distinct dictionary definitions. The first: “a rude word meaning to have sex with someone,” and the second: “a rude word used when expressing extreme anger, or to add force to what is being said.” F***, *Cambridge Dictionary*, <https://tinyurl.com/yk5h3bfu> (last visited Apr. 2, 2026). Surely when Petitioners wore sweatshirts to school that said “Let’s go Brandon,” they were expressing the latter. Cf. Pet. App. at 48a (Bush, J., dissenting) (“The crowd did not chant the word at Talladega to advocate having sex with the former President.”). The F-word is considered taboo and socially inappropriate, no matter the underlying meaning. To illustrate, consider alternative phrases for “F*** Joe Biden.” If a student wore a shirt that said, “I want to have sex with Joe Biden,” that would be lewd (not to mention bizarre), and the school could ban that speech accordingly. Conversely, a shirt that read “I hate Joe Biden,” could not be banned under *Fraser* because it is neither lewd nor vulgar; it is political. Petitioners’ shirts were indisputably political in nature, not sexual.

IV. The First Amendment protects Petitioners' political statements.

Petitioners' speech did not include any words that were vulgar, and their speech was not innuendo for a lewd or indecent message. Instead, the speech expressed a political message—displeasure with the Biden Administration.

In the context of a then-upcoming presidential election and with many politicians and pundits repeating the phrase, “Let’s go Brandon” was, and is, understood as a political statement. Petitioners could have worn shirts that said “F*** Joe Biden” to express their displeasure with the President, but they chose instead to convey a similar message using language that is a clean, school-friendly alternative. Saying “Let’s go Brandon” is *not* the same as “F*** Joe Biden.” Hence, we do not even write out the f*** word but freely type “let’s go.”

It is common practice for people in polite society, and professional, academic, and social settings, to refer to the word “N*****” as “the N-word.” Virtually everyone knows what the “N” stands for. Speaking the N-word in full is universally considered profane—and highly inflammatory. Anyone using that word is likely to be socially ostracized. When people hear someone substitute “the N-Word,” in place of saying the actual N-word, no listener wonders whether the speaker meant nincompoop, numbskull, or Narnia.

So what does the speaker mean by saying the phrase “the N-word”? For one, the speaker conveys that he or she is uncomfortable using the actual word. Second, saying “the N-word” can signal the weight of

the actual word without also carrying the profanity. Indeed, the use of euphemisms such as “the N-word” in classrooms and polite society furthers pedagogical interests while avoiding offense. If teachers and students cannot use euphemisms rather than actual profanity, schools will be hard-pressed to effectively discuss divisive topics such as race relations. In many instances, using a euphemism in place of the actual word invokes the seriousness of a particular lesson. Stripping the message of any reference to the actual word would leave the lesson incomplete. For example, when students in English class discuss the classic book *Huckleberry Finn*—which uses the actual N-word as part of a larger condemnation of racism—we expect students to use the phrase “the N-word” rather than the actual word. The word is problematic, but the substitute is not. And without any reference to the original word students blunder past Huck Finn’s lesson.

Or consider an example from this century—a student wearing a shirt that portrays a promotional poster for the movie *Straight Outta Compton*, the title of an album and biographical film about the music group “N.W.A.” The shirt does not include the full name of the music group. The “N” in N.W.A. stands for the N-word, which is profane. Because the shirt does not include the full written-out N-word, the First Amendment would not permit banning that shirt. However, the district court’s reasoning would allow the school to punish a student for “‘expressin’ with full capabilities,” N.W.A., *Express Yourself, on Straight Outta Compton* (CD, Ruthless Records 1988). Even though there is nothing vulgar or otherwise disruptive about the shirt, under the lower court’s logic, if “school

officials reasonably interpreted the [picture] as having a profane meaning,” the school could require the student to change. Pet. App. at 87a. Such a standard is unworkable and unconstitutional. Students should not be punished as though they have used profane language *when they have not, in fact, used profane language*.

Many lawmakers have posted the phrase “Let’s go Brandon” on social media or recited it verbally,³ including on the House floor. Colleen Long, *How ‘Let’s Go Brandon’ became code for insulting Joe Biden*, Associated Press (Oct. 30, 2021), <https://tinyurl.com/3kp7wuer>. Petitioners and politicians alike have used the phrase to express anger, dissatisfaction, or even humor—never a sexual act. This phrase became so popular precisely because it expresses the speaker’s political views in a humorous, socially palatable, and non-profane manner. It conveys a shorthand message of political dissatisfaction and also serves as a much more effective, light-hearted critique of the Biden Administration. Plus, it’s catchy. In other words, “let’s go” is not in danger of becoming the new “F-word.”

³ Oddly, even President Biden repeated the phrase to a young child during a Christmas Eve phone call. Matthew S. Schwartz, *Man who said ‘Let’s go, Brandon’ to Biden on Christmas Eve says he was only joking*, NPR (Dec. 26, 2021), <https://tinyurl.com/3zeywwuz>.

Petitioners expressed their political message in a manner appropriate for a school setting. Indeed,

there is a category of speech that is almost always beyond the regulatory authority of a public school. This is student speech that is not expressly and specifically directed at the school, school administrators, teachers, or fellow students and that addresses matters of public concern, including sensitive subjects like politics, religion, and social relations. Speech on such matters lies at the heart of the First Amendment's protection.

Mahanoy Area Sch. Dist., 594 U.S. at 205.

Every day, people choose to express themselves using clean(er) language in certain contexts instead of resorting to full swear words. In an ideal world, Lincoln-Douglas debates would occupy politics more than memes and gifs, but the First Amendment requires no such thing. Petitioners' shirt choice, fashionable or not, conveyed a political message without using profanity and fits squarely within the Supreme Court's "category of speech that is almost always beyond the regulatory authority of a public school." *Id.* These students expressed their opinions through G-rated language rather than wearing the F-word on their chests. The law should not punish kids who are complying with societal norms while expressing their political viewpoints in a non-profane and humorous manner. The students' comparatively civil speech should be encouraged because, otherwise,

students learn that polite society does not value self-censorship to avoid profane language.

The reporter's original gaffe or misdirection resulted in a cultural phenomenon—not a new profanity. Most telling is that the reporter's use of the statement, "Let's go Brandon" did not violate FCC decency regulations because it is not "obscene, indecent, or profane language," 18 U.S.C. § 1464, while the word the crowd was actually chanting would have elicited a bleep in order to comply with FCC rules. Schools should have at least as much common sense and respect for the First Amendment as the FCC—it's not a high bar. Whether it is "Let's go Brandon," "Orange man bad," "Lock him/her up," "He is a fascist," or "Trump too small," the First Amendment protects expressing various insulting political phrases.

V. Petitioners' conduct does not violate the *Tinker* standard because it did not create a disruption.

Speech falling outside of the Court's limited categories of lewd, vulgar, or profane language "is subject to *Tinker's* general rule: it may be regulated only if it would substantially disrupt school operations or interfere with the right of others." *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 214 (3d Cir. 2001). The students in *Tinker* were punished for wearing black armbands to protest the Vietnam War. *Tinker*, 393 U.S. at 514. But that punishment was unconstitutional and violated the students' First Amendment rights. *Id.* Although the lower courts liken this case to *Fraser*, *Tinker* is a more accurate comparison. Like the armbands in *Tinker*, Petitioners'

“Let’s go Brandon” apparel expressed a political opinion and “neither interrupted school activities nor sought to intrude in the school affairs or the lives of others.” *Id.* “In [these] circumstances, our Constitution does not permit officials of the State to deny their form of expression.” *Id.*

Even the *Fraser* Court acknowledged the “marked distinction between the political ‘message’ of the armbands in *Tinker* and the sexual content of [Fraser’s] speech.” *Fraser*, 478 U.S. at 680. Central to *Tinker* is whether the student conduct disrupts school activities. *Tinker*, 393 U.S. at 514. Here, the school offers no evidence that Petitioners’ conduct disrupted any school activities or learning. Even the district court avers that

the general rule is that school administrators can limit speech in a reasonable fashion to further important policies at the heart of public education. *Tinker* provides the exception—*schools cannot go so far as to limit nondisruptive discussion of political or social issues that the administration finds distasteful or wrong*. Drawing such a line may be difficult, but it must be left as a practical matter first to school administrators, with resort to the courts always available for cases like *Tinker* where the school goes too far.

Pet. App. at 81a (emphasis added) (quoting *Defoe ex rel. Defoe v. Spiva*, 625 F.3d 324, 342 (6th Cir. 2010)).

Here, the school went too far. The school has no “important policy” that it is advancing by punishing Petitioners—it is simply suppressing speech. The “disruptive conduct” that is vital to the *Tinker* analysis is missing here, and without it, the school has no justification for punishing Petitioners’ non-profane speech.

CONCLUSION

Amicus—calling upon the richness of the English language—respectfully asks, “What in tarnation was the lower court thinking?”—a non-profane way of saying, “Amicus respectfully requests that this Court grant the petition and reverse the lower court’s decision.”

Respectfully submitted,

David C. Tryon

Counsel of Record

Alex M. Certo

J. Simon Peter Mizner

THE BUCKEYE INSTITUTE

88 East Broad Street, Suite 1300

Columbus, OH 43215

(614) 224-4422

D.Tryon@BuckeyeInstitute.org

April 30, 2026