

NO. 16-1234

In the,
SUPREME COURT OF THE UNITED STATES
March 2017

NERO UNIFIED SCHOOL DISTRICT,

Petitioner,

v.

MICHAEL NARANJO,

Respondent.

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

BRIEF FOR PETITIONER

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Questions Presented

I. Whether student speech outside the school setting is governed by *Tinker v. Des. Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) and its progeny.

II. If so, whether the application of the *Tinker* standard and its progeny allow Respondent's speech to be regulated by Petitioner, the Nero Unified School District.

LIST OF PARTIES TO THE PROCEEDING

Petitioner, Nero Unified School District, was the defendant before the United States District Court for the Southern District of Everystate and the appellee before the United States Court of Appeals for the Fifteenth Circuit.

Respondent, Michael Naranjo, was the plaintiff before the United States District Court for the Southern District of Everystate and the appellant before the United States Court of Appeals for the Fifteenth Circuit.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

LIST OF PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS..... iii

TABLE OF AUTHORITIESv

OPINIONS BELOW..... vii

STATEMENT OF JURISDICTION..... vii

STANDARD OF REVIEW vii

PROVISIONS INVOLVED vii

STATEMENT OF THE CASE..... 1

SUMMARY OF THE ARGUMENT3

ARGUMENT4

I. STUDENT SPEECH MADE OUTSIDE OF THE SCHOOL SETTING IS PROPERLY GOVERNED BY *TINKER* AND ITS PROGENY WHEN THE STUDENT SPEECH HAS A SUFFICIENT NEXUS TO THE SCHOOL.4

 A. The Public School System’s Mission.....4

 B. Permissible Restrictions of Student Speech6

 C. Changing Forums for Student Speech.....7

 D. Nexus Standard for Student Speech to Become School Speech.....8

E. Naranjo’s Civic Instruction	10
II. NERO CAN RESTRICT NARANJO’S SPEECH BECAUSE THE SPEECH HAS SUFFICIENT NEXUS TO THE SCHOOL, IT HAS BEEN TRANSMITTED TO THE CAMPUS, AND HAS CAUSED A SUBSTANTIAL DISRUPTION TO THE SCHOOL ENVIRONMENT.	11
A. Meaningful Transmission to the School	12
B. Substantial Disruption	13
C. Application of <i>Fraser</i> Based on Content	14
CONCLUSION.....	15
PRAYER.....	16
CERTIFICATE OF SERVICE	17

TABLE OF AUTHORITY

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. I vii, 4, 10

CASES

Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie Cty. v. Earls, 536 U.S. 822 (2002).5

Bell v. Itawamba Cty. Sch. Bd., 799 F.3d 379 (5th Cir. 2015) *cert denied*, 2016 U.S. LEXIS 1015 (2016).....7, 8, 9, 13

Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675 (1986).....5, 6, 12, 14, 15

Boucher v. Sch. Bd. of Sch. Dist. of Greenfield., 134 F.3d 821 (7th Cir. 1998)7, 12

Brown v. Bd. of Educ. of Topeka, Kan., 347 U.S. 483 (1954)11

C.R. v. Eugene Sch. Dist. 4J, 835 F. 3d 1142 (9th Cir. 2016)7, 9, 12, 14

Doninger v. Niehoff, 642 F.3d 334 (2d Cir. 2011).....8

Faragher v. City of Boca Raton, 524 U.S. 775 (1998)9

Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260 (1988)5, 6

J.S. ex rel. Snyder v. Blue Mountain. Sch. Dist., 650 F.3d 915 (3d Cir. 2011).....8, 10, 12, 13

Kowalski v. Berkeley Cty. Sch., 652 F.3d 565 (4th Cir. 2011)7, 8, 9, 14

Layshock v. Hermitage Sch. Dist., 650 F.3d 205 (3d Cir. 2011).8

Lowery v. Euverard, 497 F.3d 584 (6th Cir. 2007).....13

Morse v. Frederick, 551 U.S. 393 (2007).5, 6

S. J. W. ex rel. Wilson v. Lee's Summit R-7 Sch. Dist., 696 F.3d 771 (8th Cir. 2012)7

Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969).....2, 4, 5, 10, 12

U. S. Postal Serv. v. Council of Greenburgh Civic Ass'n, 453 U.S. 114 (1981).5

W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943).....4

Wisniewski v. Bd. of Educ., 494 F.3d 34 (2d Cir. 2007).....12, 13

Wynar v. Douglas Cty. Sch. Dist., 728 F.3d 1062 (9th Cir. 2013).7, 8, 9

OPINIONS BELOW

The United States District Court for the Southern District of Everystate’s Opinion and Order Denying Plaintiff’s Motion for Preliminary Injunction (R. at 15-18) is unpublished. The United States Court of Appeals for the Fifteenth Circuit’s Opinion and Order (R. at 21-22) is unpublished.

STATEMENT OF JURISDICTION

The court of appeals entered judgement on March 16, 2016. (R. at 21-22). Petitioner filed a Petition for Writ of Certiorari on April 15, 2016. (R. at 23). This Court granted the Petition on January 6, 2017. (R. at 24). The Court’s jurisdiction rests on 28 U.S.C. § 1254 (1) (2012).

STANDARD OF REVIEW

A district court’s fact findings and the reasonable inferences to be drawn from them are reviewed for clear error. Its legal conclusions are reviewed de novo.

PROVISIONS INVOLVED

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. Const. amend. I.

STATEMENT OF THE CASE

Nero Unified School District (“District”), the petitioner, is a public school district charged with maintaining an educational environment and facilitating the instruction of socially appropriate behavior in Everystate. (R. at 12). Nero High School (“Nero”) is a senior high campus within the District. (R. at 12). It is at the high school level that civic instruction becomes more contentious, nonetheless, this is part of the stated mission of the public school system. Nero is not unlike any other high school similarly situated in this regard.

In the early days of September 2015, Nero began experiencing minor disruptions when students and parents brought to the administration’s attention the existence of a Facebook group entitled “Nero is Anti-Gay.” (R. at 2). Although there is no affiliation recognized by the District for this group, its membership is almost exclusively made up of Nero’s student body. (R. at 4). The respondent, Michael Naranjo (“Naranjo”), is the creator of the group and a member of Nero’s student body. (R. at 3). Although Naranjo formed the group initially as a forum to speak out about the hiring practices of the District, the content of the group reached well beyond the District’s policies and practices. (R. at 6, 15). Naranjo’s posts consistently single out members of the Nero faculty and administration and depict these professionals in a sexually explicit manner. (R. at 15). Initially, Nero was concerned about the content displayed by the group. However, no actions were taken at that time even though parents were adamant in their voiced concerns because of the increasingly offensive and sexually explicit themes of the posts. (R. at 2).

On September 14, 2015, some of Naranjo’s drawings were found in paper format in a classroom at Nero. (R. at 12). Although Naranjo did not bring the drawings to school, they were his creation. (R. at 7). At this point, the drawings and Facebook group’s content had already

substantially impacted Nero's teaching staff's ability to control their classrooms. (R. at 12). These drawings were being circulated, student conversations were overtaking instructional time, and the website was accessed from both the school computers and students' personal devices. (R. at 2, 10, 12). It was at this time Nero counseled Naranjo about his drawings and the group's content and requested the offensive material be deleted from the group. (R. at 16). Naranjo refused to delete the inappropriate material, and Nero suspended him from all school activities. (R. at 16).

Nero and the District came to a decision on September 28, 2015, that suspension was the only option available to reinstitute authority over the campus. (R. at 14). Since the events of the Fall, the District has been forced to invest in software products to try to control the internet activity on campus, the effectiveness of this measure has not yet been seen. (R. at 10). The District felt this was necessary because Naranjo has created new forums within the Facebook community with more aggressive tactics, although the new group has not garnered a student-based following at this time. (R. at 2).

Naranjo filed suit in the District Court for the Southern District of Everystate on First Amendment grounds on October 7, 2015. (R. at 4). On October 17, 2015, Naranjo moved for a preliminary injunction to enjoin the District from continuing the suspension, which the district court denied. (R. at 6, 17). Naranjo appealed the denial to the United States Court of Appeals for the Fifteenth Circuit, where the decision was reversed. (R. at 22). The Supreme Court granted certiorari to review whether student speech made outside of the school setting is subject to *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) and its progeny, and if so, whether the application of the *Tinker* standards allows the District to regulate the speech of Naranjo. (R. at 24).

SUMMARY OF THE ARGUMENTS

I. *Tinker* and its progeny do apply to the off-campus speech of students when the speech is school speech. School speech is defined as any speech that has a genuine nexus to the campus. Once student speech has transitioned to school speech, it becomes necessary for the school to restrict certain aspects of the speech that would fall within the confines of *Tinker* and its progeny. Naranjo's postings on the Facebook page have sufficient nexus to the school because the sexually explicit drawings are of Nero's administration and staff, the audience is made up of a substantial amount of Nero's student body, and the forum itself was an attempt to influence the policies of the District. A nexus has established the authority of the District over Naranjo's speech and has made *Tinker* applicable, and therefore, within the school's mission to restrict.

II. Naranjo's drawings and Facebook page have created a substantial disruption to the daily activities of Nero. Students have continued the circulation of these drawings on campus causing multiple teachers to have to stop instruction time to deal with these disruptions. The school has had to implement a new software to try to cut down on the number of students accessing Naranjo's Facebook page during school hours, the effectiveness of this software is still not apparent. The disruptions caused by Naranjo's drawings and Facebook page have seriously compromised the functionality of the school. Additionally the content of Naranjo's drawing is sexually explicit and unsuitable for the school setting. This level of disruption is why *Tinker* and its progeny was established. Therefore, Nero was well within the standards of *Tinker* and the progeny case *Fraser* when it suspended Naranjo for his inappropriate drawings and Facebook page.

ARUGMENTS

I. STUDENT SPEECH MADE OUTSIDE OF THE SCHOOL SETTING IS PROPERLY GOVERNED BY *TINKER* AND ITS PROGENY WHEN THE STUDENT SPEECH HAS A SUFFICIENT NEXUS TO THE SCHOOL.

Tinker and its progeny properly governs off-campus student speech when that speech has a nexus to the school making it school speech rather than student speech. Although, it is well established that students in the public school systems have First Amendment protections, these protections are not as extensive as those of an adult. *Tinker*, 393 U.S. at 506. The school has been authorized to restrict student speech that disrupts, either materially or substantially, the school's ability to facilitate normal operations or when there has been an interference with the rights of others. *Id.* at 513. This restriction of student speech is permissible because of the unique composition of the school environment. *Id.* at 506. It is important to the mission of the public school system in general that students and staff alike feel protected in their personal expressions of public policy issues. *Id.* at 511. However, it is vital that these expressions do not overtake the foundational operations of the school itself, which is why the Court has affixed boundaries for the permissible exercise of restrictions on student speech. *Id.* at 512.

A. The Public School System's Mission

The public education system is about much more than the teaching of reading, writing, mathematics, science, and history. *Tinker*, 393 U.S. at 506. Public education is also about teaching the youth how to fit into the web work of society. These civic instructions are not at all veiled. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943). At the primary level, children are being taught to stand in line, to speak when spoken to, and to work on a schedule. Middle school children are coached in extracurricular activities that can directly translate to

workforce ready skills such collaboration and accountability. This unique set of characteristics of the school environment affords the schools some latitude in restricting certain aspects of student speech. *Tinker* 393 U.S. at 506.

It is the public school system's last opportunity to mentor children in appropriate responses to real world situations without the real world consequences when students are enrolled at the secondary levels, junior high and high school. All too often, these duties place the school *in loco parentis* with enrolled students and this position carries with it the necessary evils of discipline when appropriate. See *Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie Cty. v. Earls*, 536 U.S. 822, 840 (2002) (holding that the drug testing of students within the district was an effective way of controlling the increasing use of illegal drugs in the community).

Tinker was an exercise in regulating the school's authority over student. *Tinker*, 393 U.S. at 508. However, the progeny cases of *Tinker* demonstrate when it is permissible for the school to regulate the student. This precedent chain is the limits on where and when the school can maintain a bright line for the mission of coaching students on the appropriate levels of their speech. See *Morse v. Frederick*, 551 U.S. 393, 410 (2007); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 686 (1986). These exceptions presented in the progeny cases of *Tinker* do not represent a chilling effect on the speech of students. They are a guided lesson for students on understanding the consequences and implications of their speech as well as a tool for schools to implement its mission. Student speech restrictions implicate the content of and the means and manner in which student speech is presented. Even as a fully functioning adult in society, citizens have to conform to the means and manner restrictions depending on the forum. *U. S. Postal Serv. v. Council of Greenburgh Civic*

Ass'n, 453 U.S. 114, 133 (1981). It is within the mission of the public school system to make their students aware of these societal norms.

B. Permissible Restrictions of Student Speech

The *Tinker* standard has had to evolve in the last forty-eight years to accommodate the concept of appropriateness related to speech made by students. The first exception to the substantial disruption cornerstone is when the student speech is distinctly vulgar or lewd, which is offensive by nature. *Fraser*, 478 U.S. at 686. In *Fraser*, the Court found that a student's speech addressed to the student body was within the discretion of the school administration to censor because it referred to overtly sexual situations, which were found to have no educational value in this setting. *Id.* The second exception to the *Tinker* standard is found when there are concerns that the speech could be construed as coming from the school itself. *Kuhlmeier*, 484 U.S. at 273. In *Kuhlmeier*, it was found that the school did have pedagogical concerns with running an article in the school newspaper on teen pregnancy when it could be viewed as the school's position on the subject. *Id.* Therefore, the school was allowed to restrict the that student's speech. *Id.* at 274. The third exception to the *Tinker* standard comes from the advocacy of illegal drug use. *Morse*, 551 U.S. at 410. In *Morse*, the Court found that the student banner with the phrase "BONG-HITS 4 JESUS" was within the school's authority to censor because public schools are congressionally charged with actively educating students on the dangers of illegal drug use. *Id.* at 408. These three areas of student speech restrictions have provided the public schools with much-needed tools for balancing the fragile educational environment and the school's mission of developing students to transition into adulthood.

C. Changing Forums for Student Speech

Tinker and its progeny give schools bright lines rules when student speech occurs on campus. What is not clear is how to handle speech that is made away from school. The extension of *Tinker* to student speech originating away from campus is necessary when the school is presented with speech containing all the hallmarks of a substantial disruption. *Bell v. Itawamba Cnty. Sch. Bd.*, 799 F.3d 379, 391 (5th Cir. 2015). This extension applies because of the potential disruption to the school's environment when forums such as Myspace, Facebook, Instagram, Twitter, and now Snapchat are open to students. *Kowalski v. Berkeley Cty. Sch.*, 652 F.3d. 565, 567 (4th Cir. 2011). These forums are present on campus. They are contained within the smartphones, tablets, and devices inside the backpacks of the overwhelming majority of school-aged children in America. The schools have tried and failed at keeping these items off campus. Now, districts are forced to draft policies for technology because of its importance to society in general. *Boucher v. School Bd. of Sch. Dist. of Greenfield*, 134 F.3d 821 (7th Cir. 1998). The school must have some options available in restricting content that is targeted at its campus or its student body. Student speech made off campus does not stay off campus. Nor do the effects of off-campus student speech.

Tinker and its progeny are prepared to deal with the problems that these forums have presented to the school. The only barrier within *Tinker* is a geographical constraint. Even this has not presented a barrier at all for some courts when applied to cyber communications of students. *See C. R. v. Eugene Sch. Dist. 4J*, 835 F.3d 1142, 1152 (9th Cir. 2016) (holding the harassment of other students off campus is within the authority of the school); *Bell*, 799 F.3d at 391 (5th Cir. 2015) (holding the student's off-campus speech in the form of a rap song was within the school's authority to regulate because of its threatening nature); *Wynar v. Douglas*

Cty. Sch. Dist., 728 F.3d 1062, 1069 (9th Cir. 2013) (holding off-campus speech identifiable as a threat to the school is within the scope of the school's authority); *S. J. W. ex rel. Wilson v. Lee's Summit R-7 Sch. Dist.*, 696 F.3d 771, 777-78 (8th Cir. 2012) (holding the off campus creation of a website that made racist comments about fellow students was subject to regulation); *Kowalski*, 652 F.3d. at 567 (holding the creation of a Myspace page off campus encouraging the vulgar and lewd harassment of another student was within the authority of the school to regulate); *Doninger v. Niehoff*, 642 F.3d 334, 351 (2d Cir. 2011) (holding the student's off-campus speech was within the school's authority to regulate and restrict that student's ability to participate in certain school functions after causing a disruption). *But see J. S. ex rel. Snyder v. Blue Mountain. Sch. Dist.*, 650 F.3d 915, 929 (3d Cir. 2011) (holding *Tinker* could not apply to the student's off-campus speech and there was not substantial disruption for regulation to apply even if it did).

D. Nexus Standard for Student Speech to Become School Speech

Courts must consider what constitutes school speech as opposed to student speech, with student speech being constitutionally protected and school speech being within the school's authority to regulate. Many courts that have decided the issue have concluded that a nexus test presents the most uniform standard for transforming off-campus speech to that of school speech. *Kowalski*, 652 F.3d at 573 (holding that where a sufficient nexus exists with the school, off campus student speech that is sexually offensive presents a genuine pedagogical concern): *see also Bell*, 799 F.3d at 396 (holding that nexus to the school was justified when applied to off-campus student speech).

Nexus is rigid in that it does not allow for mere illusory connection to the campus to be sufficient. *See Layshock v. Hamitage Sch. Dist.*, 650 F.3d 205, 214 (3d Cir. 2011). Nexus implies a genuine showing of the following elements: intent or knowledge of reaching a school

audience; directed activity at the campus, its student body or its staff; direct reference to the educational environment; or appropriation of the school's identity. *See Kowalski*, 652 F.3d at 573; *Wynar*, 728 F.3d at 1069; *Eugene*, 835 F.3d at 1150-5; *see also Bell*, 799 F.3d at 435-36. Although none of the elements may be dispositive in and of themselves, absent a showing of any of the elements render disciplinary measures highly suspect. Nexus provides for much more than just content or context to the school to constitute school speech, and it places the burden of proof on the school where it belongs.

Nero has shown that the postings of Naranjo have met this burden to show a nexus to the school sufficient to invoke *Tinker*. When the transition from student speech to school speech has occurred, it makes the restriction of that school speech permissible under the strict guidelines of *Tinker* and its progeny. Naranjo's overall premise for his website was to articulate his displeasure with the hiring practices of Nero and the particular views of a recent hire. Although Naranjo insists that his drawings were not intended to be viewed on campus, it can be seen by the overall premise of the Facebook page that Naranjo was reasonably certain that the contents of the page would reach the school. It is also clear that Naranjo purposely targeted Nero's student body as his intended audience because the composition of the membership of the page is made up of Naranjo's entire grade level and some of the lower grade levels as well. The subjects of the sexually explicit drawings are paid employees of Nero showing again that Naranjo targeted the school setting. It is important to note that the Nero also has a duty to these employees, to provide them with a work environment free from discriminatory practices and displays. *Faragher v. City of Boca Raton*, 524 U.S. 775, 780 (1998) (holding an employer can be strictly liable for actionable discrimination of others based on the reasonableness of the employer's response). Naranjo's allegations of Nero being "anti-gay" are a direct attack on the educational

environment because it undermines the credentials of the professional working in the District by insinuating that there is error or favoritism in the hiring practices. While Naranjo has not appropriated the identity of the District to make these highly inappropriate allegations, he has appropriated the likenesses of Nero's employees to make them the subject of his drawings. All of these elements establish that there is a justifiable nexus to the school to transform Naranjo's off-campus student speech to school speech, which is then within the scope of *Tinker* and its progeny.

E. Naranjo's Civic Instruction

It is very relevant to note that Naranjo established this nexus through his actions and expressions. It would have been outside of the scope of school speech if Naranjo had chosen to confront the blog-writer (Nero employee) in the forum where that blog existed without enlisting Nero as his means of taking aim. *See Blue Mountain*, 650 F.3d at 933. Initially, there was merit to the exercise of protest that Naranjo set out to accomplish. However, the way he went about seeking redress of his issues is where he ran into problems. The original target of Naranjo's protest writes under a pseudonym to express his constitutionally protected opinion. U.S. Const. amend. I. Presumably, the teacher writes under this pseudonym to protect his professional identity and environment because the topic of LGBT issues are those that run to personally held beliefs. While Nero does not take a stance on the topic, it is important to place this current political and social topic in proper perspective. *Cf. Tinker*, 393 U.S. at 510-511. Naranjo discovered the identity of the blog-writer, and he has misconstrued the writer's employment status to mean that the blog-writer speaks for all those under the District's banner. This is not the case here and not generally the case when political and social issues take on a meaningful dialog in the real world. *Id.* at 512.

The way that Naranjo has depicted the object of his ire is not the appropriate way to initiate a meaningful dialog on a political or social issue. If anything, creating cartoon characters in sexually explicit drawings with negative connotations furthers the stereotypes that are harmful to members of the LGBT community. It is deeply rooted in the school's mission to delegitimize harmful stereotypes of members of society. *Brown v. Bd. of Educ. of Topeka, Kan.*, 347 U.S. 483, 494 (1954). Naranjo's conduct has shown his maturity level for handling adult topics that have serious implications. He has failed to consider what those implications are and what they mean. He has also failed to see that his discriminatory actions have made it all the more difficult for those within his peer group to have a chance at a meaningful dialog on the topic because of his general lack of sensitivity in approaching the subject.

Nero counseled Naranjo on his school speech and requested that the page be removed in order for him to continue his activities within the school. This is a substantially mitigated consequence of his conduct in relation to what he could expect outside of the school environment as a fully participating adult. As an adult in the workplace setting, he would not be given the chance to recant discriminatory speech and then resume full participation. The school restricting Naranjo from school activities is an important civic instruction on what he can expect as a consequence of his conduct when he is no longer a student.

II. NERO CAN RESTRICT NARANJO'S SPEECH BECAUSE THE SPEECH HAS SUFFICIENT NEXUS TO THE SCHOOL, IT HAS BEEN TRANSMITTED TO THE CAMPUS, AND HAS CAUSED A SUBSTANTIAL DISRUPTION TO THE SCHOOL ENVIRONMENT.

Nero has sufficient justification for restricting Naranjo's school speech because, under the off campus application of *Tinker*, Naranjo's drawings have a nexus to the school making them school speech. Additionally, these drawings fall into the progeny case *Fraser* because they

contain sexually explicit material, which has no educational purpose in the school and therefore can be restricted. 478 U.S. at 685. Furthermore, these drawings did not stay off campus.

Naranjo's offensively obscene drawings are now present on the campus. The drawings presence on campus has resulted in a substantial disruption to the daily activities of Nero. To protect the school environment, Nero suspended Naranjo for his sexually explicit drawings found in classrooms and among Naranjo's peers. Under these circumstances, *Tinker's* progeny case *Fraser* is applicable.

A. Meaningful Transmission to the School

When there has been a transmission of student speech to the campus that falls into the categories of *Tinker* and its progeny, it becomes necessary for the school to restrict that speech. *Compare Eugene* 835 F.3d at 1151-52; *with Blue Mountain* 650 F.3d at 932. Although it is Naranjo's position that he is not responsible for the transmission of his drawings to the campus, their presences on campus was a reasonably certain result of Naranjo's placement of his drawings in the Facebook page. This is so because a substantial number of his school peers have access to these drawings and other comments and it is within the nature of this audience to bring topic originating off campus to campus. *See Wisniewski v. Bd. of Educ.*, 494 F.3d 34, 40 (2d Cir. 2007). It is no surprise that these drawings were then printed off to continue the conversation on campus. Nero is a natural progression given the membership and nexus to the school. Even if it is the position of Narjano that it was not his intent for the drawings to be viewed or commented on at school, there were no steps taken by Naranjo to limit what he knew was a reasonably certain result of his actions. *See Boucher*, 134 F.3d at 829.

B. Substantial Disruption

Nero has experienced and is continuing to experience a substantial disruption to the normal activities of the school day because of Naranjo's drawings and Facebook page. Material disruptions under *Tinker* must be more than discomfort or unpleasantness that is associated with the expression of ideas that are counter to the status quo. 393 U.S. at 738. Disruptions must also demonstrate a significant impediment to the instruction of educational curriculum and the administration's ability to protect the school setting. *Compare Bell* 799 F.3d at 393 (threats of violence made by a student to the campus making substantial disruption forecastable); *with Lowery v. Euverard*, 497 F.3d 584, 596 (6th Cir. 2007) (hold professional criticisms of coach made by students constituted a substantial disruption).

Naranjo's pictures have interfered with the school's ability to facilitate the educational environment because the students have been circulating the offensive drawings causing the teachers to halt their lessons to deal with the issue. While the occasional halting of lessons to deal with social issues of students is not unusual or considered a substantial interruption on its own, Nero is experiencing more than the threshold analysis employed under *Blue Mountain*. 799 F.3d at 923. Here, multiple teachers have complained of the same repetitive topic having to be dealt with on multiple occasions. Naranjo's drawings and his Facebook page are not just a problem for the teacher and administrators he targeted, they have effected the whole campus. The disruption has moved into several classrooms on campus and requires the repetitive attention of teachers. These teachers have made reports to the administration that students are overtaking their pedagogical instruction time with references and direct comments about Naranjo's page and postings. These disruptions are a direct result of Naranjo's drawings and Facebook page.

The effects of Naranjo's Facebook page and drawings have substantially altered the means and manner in which Nero can facilitate the use of technology for educational purposes resulting in a substantial interruption to the District as a whole. While Naranjo was counseled on the topic of his postings after the first sexually explicit drawing was found in a classroom, there have been multiple copies of his drawings confiscated beyond this incident making the Facebook page the true issue. Students are also accessing the Facebook page on their personal devices during school hours and are overtaking the topics of discussion within the individual classrooms feeding this substantial disruption. *See Wisniewski*, 494 F.3d at 35. Student posts to Naranjo's page have been timed stamped within the operating hours of classes and school activity. This in-school activity has lead Nero to try a new software program to block internet activity from personal devices and school computers; the effects are too speculative to draw conclusions about its effectiveness at this time. It is necessary at this point to restrict the content of the group itself because students can access Naranjo's Facebook page to continue to source these drawings found on campus and perpetuate the disruption during operating hours.

C. Application of *Fraser* Based on Content

Naranjo's substantial disruptions to the daily activities of Nero present *Tinker* and its progeny case *Fraser* no new developments. Part of protecting the school setting is that of sheltering a young population from patently adult content. *Fraser*, 478 U.S. at 558-59. It is a matter of public policy that the sexually explicit messages be censored for young audiences. *Id.*; *see also Kowalski*, 652 F.3d at 573; *Eugene*, 835 F.3d at 1152. Naranjo's drawings are offensive and demeaning in nature because they depict professionals in sexual contexts under the guise of LGBT discriminatory practices. The sexual connotations and the sensitive topic of the LGBT community coupled in the manner Naranjo has coupled them is distinctly adult content. This

content has such an impact on the school environment that it renders what little educational value this topic has as too volatile to be allowable. Under the rule of *Fraser*, Naranjo's speech is properly restricted because of its nature. 478 U.S. at 685. Furthermore, these pictures have made their way from Nero to the homes of other students, which has prompted many parents to threaten to pull their children from Nero, with just cause. These parental concerns speak to the fact that the content of Naranjo's drawings and Facebook page is considered unsuitable for young audiences and that this is felt by the community as a whole. Therefore, Nero justifiably suspended Naranjo for his sexually explicit drawings and Facebook page that have resulted in a substantial disruption on multiple fronts for the District.

CONCLUSION

Tinker and its progeny is applicable to student speech that constitutes school speech when the nexus standard is used. This nexus to the school makes it within the authority of the school to restrict certain aspects of the speech in order to maintain the fragile school setting. *Tinker* allows for the restriction of Naranjo's drawings and Facebook page because it has caused a substantial disruption to Nero's daily activities and educational instruction. Additionally, it is within the mission of the school to instruct students on the levels of appropriateness about setting and means and manner of speech presentation. *Fraser* applies based on the sexual content of Naranjo's drawings and its inappropriateness for the school setting. It is for these reasons that Nero is justified in its disciplinary actions concerning Michael Naranjo.

PRAYER

For these reasons, Petitioner prays the Court will reverse the court of appeals judgment and find that Nero Unified School District properly exercised its authority in suspending Michael Naranjo for his disruptive and inappropriate school speech.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

Counsel for Petitioner certifies that this brief has been prepared and served on all opposing counsel in compliance with the Rules of the Freshman Moot Court Competition.

A handwritten signature in cursive script, reading "Mary Kathryn Brown", is written over a horizontal line.

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