

No. 25-819

In the Supreme Court of the United States

JEANNE HEDGEPEETH,
Petitioner,

v.

JAMES A. BRITTON, ET AL.,
Respondents.

*On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit*

**BRIEF AMICUS CURIAE OF PACIFIC
LEGAL FOUNDATION, FOUNDATION FOR
INDIVIDUAL RIGHTS AND EXPRESSION,
AND THE UPPER MIDWEST LAW CENTER
IN SUPPORT OF PETITIONER**

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IDENTITY AND INTEREST OF AMICI CURIAE¹

Pacific Legal Foundation (PLF) is a nonprofit, non-partisan public-interest law firm that has defended individual liberty and limited government since 1973, including in numerous cases before this Court. PLF's work focuses on enforcing constitutional limits on government power and preserving clear, principled rules that allow individuals to speak and act without fear of arbitrary punishment.

PLF has a particular interest in the proper application of the First Amendment and in ensuring that public employees do not forfeit constitutional protections when they speak as private citizens.

The Foundation for Individual Rights and Expression (FIRE) is a nonpartisan nonprofit that defends the individual rights of all Americans to free speech and free thought—the essential qualities of liberty. Since 1999, FIRE has successfully defended individual rights nationwide through public advocacy, strategic litigation, and amicus curiae filings without regard to speakers' political views, including in numerous cases in this Court. *See, e.g.*, Brief of FIRE as Amicus Curiae in Supp. of Pet'rs, *E.D. ex rel. Duell v. Noblesville Sch. Dist.*, No. 25-906 (U.S. Mar. 4, 2026); Petition for Writ of Certiorari, *Villarreal v. Alaniz*, No.

¹ Pursuant to Rule 37.2, counsel for all parties received notice of intent to file this brief at least ten days prior to the due date. Pursuant to Rule 37.6, Amici Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amici Curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

25-29 (U.S. July 7, 2025); Brief of FIRE as Amicus Curiae, *Moody v. NetChoice, LLC*, No. 22-277 (Dec. 6, 2023).

FIRE similarly has a particular interest in this case because it frequently advocates on behalf of public employees who suffer retaliation by government officials for exercising their First Amendment rights. *See, e.g., Reges v. Cauce*, 162 F.4th 979 (9th Cir. 2025); *Jensen v. Brown*, 131 F.4th 677 (9th Cir. 2025); Brief of FIRE as Amicus Curiae in Supp. of Pls.-Appellants and Reversal, *Damiano v. Grants Pass Sch. Dist.* No. 7, 140 F.4th 1117 (9th Cir. Sep. 13, 2023); Brief of FIRE, et al., as Amici Curiae in Supp. of Pl.-Appellant, *Tempel v. Sch. Dist. of Waukesha*, No. 25-2959 (7th Cir. Jan. 15, 2026); Compl., *Meeks v. Lawrence*, No. 3:25-cv-01431 (M.D. Tenn. Dec. 10, 2025).

The Upper Midwest Law Center (“UMLC”) is a nonpartisan public-interest law firm headquartered in Minnetonka, Minnesota, which litigates for individual liberty and religious freedom against governmental and special interest overreach. UMLC regularly represents litigants in cases challenging the constitutionality of government action such as in this case.

Unclear boundaries regarding off-campus speech and elastic definitions of “disruption” invite arbitrary enforcement, chill lawful expression, and allow public hostility to shape constitutional outcomes.

This case presents an important opportunity for the Court to clarify the scope of off-campus speech protections and to reaffirm that public hostility and administrative inconvenience cannot substitute for genuine disruption under the First Amendment. Amici, therefore, have a strong interest in the resolution of

the question presented and respectfully submits this brief to assist the Court.

INTRODUCTION AND SUMMARY OF ARGUMENT

The First Amendment does not stop at the school-house gate. In our increasingly polarized world, teachers, no less than students, deserve the protection of the First Amendment. This case presents an opportunity for the Court to explore at least two unsettled and recurring questions about the constitutional limits of public-school authority over teachers' off-campus speech. First, whether *Mahanoy Area School District v. B.L. ex rel. Levy*, 594 U.S. 180 (2021), should inform the analysis when teachers speak on social media outside the scope of their professional duties. Second, whether a school district violates the First Amendment by terminating a teacher for off-campus political speech based primarily on community complaints deemed "disruption" under *Pickering v. Board of Education*, 391 U.S. 563 (1968), and thereby imposing a heckler's veto.

The Court should grant the petition for all the reasons articulated in the petition, and because the Seventh Circuit ignored *Mahanoy* and upheld discipline largely on the ground that the speech sparked public outrage and an administrative burden in responding to complaints. *Hedgepeth v. Britton*, 152 F.4th 789, 795-97 (7th Cir. 2025). This reasoning saddles government employees with an ever-present risk of discipline for speech off the clock. *See Mahanoy*, 594 U.S. at 181 ("[A] school's efforts to regulate off-campus speech . . . may mean the student cannot engage in that kind of speech at all.")

First, *Mahanoy*'s off-campus speech principles should apply to teachers. In *Mahanoy*, the Court emphasized that schools have diminished authority over off-campus speech and warned against the power to regulate student speech covering "the full 24-hour day." 594 U.S. at 188-90. Those concerns apply with even greater force to school employees since they are adult citizens and are not subject to a school's custodial authority. See *Pickering*, 391 U.S. at 568. See also *Mahanoy*, 594 U.S. at 191–92 (discussing school's interest in standing *in loco parentis*). Further, restrictions on off-duty public-employee speech warrant heightened skepticism because of their chilling effect. See *United States v. Nat'l Treasury Emps. Union*, 513 U.S. 454, 468 (1995). Here, the absence of clear limits allowed the school to discipline a teacher for off-campus political speech in circumstances *Mahanoy* warned against. Justice Alito reasoned that off-campus speech not directed at the school is "almost always beyond the regulatory authority of a public school." *Mahanoy*, 594 U.S. at 205 (Alito, J., concurring). Clarifying that these protections extend to teachers is necessary to prevent unconstitutional expansion of school authority.

Second, even if *Mahanoy* is inapplicable, review is warranted because the decision below misapplies *Pickering* by treating public hostility as "disruption" and embedding a heckler's veto in *Pickering* balancing. *Pickering* requires evidence that speech undermines governmental efficiency, not merely that it provokes controversy. 391 U.S. at 568. This Court has generally rejected restrictions on speech purportedly justified by hostile audience reaction, see *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 134-35 (1992); *Terminiello v. City of Chicago*, 337 U.S. 1, 4-5

(1949), yet the Seventh Circuit allowed community backlash and complaint-response burdens to decide the balance. *Hedgepeth*, 152 F.4th at 795-97. That reasoning undermines *Pickering* by conditioning protection on listener reaction. See *Connick v. Myers*, 461 U.S. 138, 145 (1983); *Rankin v. McPherson*, 483 U.S. 378, 387 (1987). Courts have therefore suggested that the only disruption that should “count” under *Pickering* is “direct disruption, by the speech itself, of the public employer’s internal operations.” *Berger v. Battaglia*, 779 F.2d 992, 1001-02 (4th Cir. 1985); see also *Flanagan v. Munger*, 890 F.2d 1557, 1566-67 (10th Cir. 1989). Review is necessary to confirm that *Pickering* does not permit public schools to delegate censorship authority to hostile audiences.

ARGUMENT

I. Factual and Procedural Background

Petitioner Jeanne Hedgepeth was a longtime public high school social studies teacher who engaged in political speech on a private social-media account while off duty, off campus, and on vacation, at a time when school was not in session. *Hedgepeth*, 152 F.4th at 792-94. Her comments had a limited audience that excluded current students, and without identifying herself as a teacher or referencing her school, colleagues, or students. *Ibid.*

The ensuing controversy consisted largely of complaints from members of the general public, organized email campaigns, media attention, and political backlash. *Id.* at 793-96. There was no evidence that Hedgepeth’s speech disrupted classroom instruction, impaired student learning, interfered with working

relationships, or otherwise undermined school operations. *Id.* at 795-97.

Nevertheless, the school district terminated Hedgepeth, citing public reaction and the administrative burden of responding to complaints. *Id.* at 794. The district court upheld the termination, and the Seventh Circuit affirmed, holding that the volume of public complaints and anticipated backlash constituted sufficient “actual disruption” under *Pickering*. *Id.* at 795–97. In doing so, the court didn’t mention *Mahanoy*’s off-campus speech principles and treated public hostility as dispositive in the constitutional balance.

II. *Mahanoy*’s Off-Campus Speech Principles Should Apply to Teachers, and Leaving the Question Unresolved Has Created a Doctrinal Gap

The protections for off-campus speech recognized in *Mahanoy* should extend to teachers who speak as private citizens outside the scope of their professional duties. The alternative is the serious curtailing of speech on matters of public concern for teachers in our nations’ schools—in effect, making much speech off limits for those most responsible for protecting “academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned.” *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967).

In *Mahanoy*, the Court emphasized three features of off-campus speech that diminish a school’s regulatory interest: the absence of *in loco parentis* authority, the risk of granting schools the threat of regulating the “full 24-hour day,” and the danger that such au-

thority would chill a broad range of protected expression, especially unpopular expression. 594 U.S. at 188-90. Applying those principles, the Court held that a student's vulgar and critical social-media posts, made off campus and outside school activities, were protected because they did not cause substantial disruption or invade the rights of others. *Id.* at 191-93. The Court made clear that these principles were not confined to the facts before it, expressly reserving how they would apply in future cases involving different contexts. *Id.* at 190.

These principles apply at least as much when the speaker is a teacher. Teachers are adult citizens, not minors subject to parental-substitute authority. Schools do not stand *in loco parentis* to their employees, nor do they possess authority to supervise or discipline teachers' political speech outside work hours. *See Pickering*, 391 U.S. at 568. When public employees speak off duty and outside the scope of their professional responsibilities, restrictions on such speech warrant heightened constitutional skepticism because of the substantial risk of chilling protected expression. *See Nat'l Treasury Emps. Union*, 513 U.S. at 468.

Hedgepeth's speech falls within the principles raised in *Mahanoy*. Like the speech at issue there, it occurred outside school hours, away from campus, using a personal device, to a private and limited audience, without invoking school authority, without students present, and while school was not in session. *Hedgepeth*, 152 F.4th at 792-94. Indeed, in some ways, this case separates the speaker from the school environment even more than in *Mahanoy*. Hedgepeth was not participating in any school-sponsored activity; she did not reference colleagues, students, or

school programs; her account excluded current students; and her speech occurred while she was physically out of state on vacation. Under *Mahanoy*, such facts “diminish the school’s interest” in regulating the speech. 594 U.S. at 189.

In this case, the record underscores just how far removed Hedgepeth’s speech was from the school’s regulatory sphere, much like B.L.’s. The posts at issue were made during the summer, while Hedgepeth was on vacation in Florida. Her social media account did not identify her as a teacher, did not reference the school or its students, and excluded current students from her audience. *Hedgepeth*, 152 F.4th at 792-94. No classroom instruction was ongoing, no school activities were underway, and no supervisory authority was being exercised. These facts place the case beyond the outer boundary of school control and make it an ideal vehicle for confirming that *Mahanoy*’s off-campus principles apply to teachers.

Justice Alito’s concurrence in *Mahanoy*, joined by Justice Gorsuch, underscores why extending off-campus regulatory authority requires clear limits. Justice Alito argues that off-campus speech, not directed at the school, addressing matters of public concern, “almost always” should be protected; such speech “lies at the heart” of the First Amendment. 594 U.S. at 205 (Alito, J., concurring). Those concerns are magnified when the speaker is an adult employee speaking as a citizen on controversial matters of public concern. If *Pickering* covers anything, it must cover this.

Furthermore, Hedgepeth does not work at the post office; she is a teacher at a public school. Protecting her speech accords with the First Amendment’s foun-

dational role in preserving democratic self-government. When teachers may be punished for off-campus political speech based on its content or perceived offensiveness, the chilling effect extends far beyond the individual speaker, discouraging civic participation by those uniquely positioned to contribute to public discourse. These interests are no less important because the balancing test at issue is *Pickering* rather than *Tinker*.

Clarifying that the principles articulated in *Mahanoy* regarding off-campus speech on matters of public concern apply to teachers would restore coherence to the doctrine and prevent the expansion of public school authority beyond its constitutional bounds.

III. Even If *Mahanoy* Does Not Apply, the Seventh Circuit Misapplied *Pickering* by Imposing a De Facto Heckler’s Veto

Even if the Court declines to extend the principles articulated in *Mahanoy* to teachers, this case still warrants review to prevent intrusion of a heckler’s veto into *Pickering*. This Court has repeatedly held that speech on matters of public concern occupies the “highest rung” of First Amendment protection and may not be discounted based on tone or listener reaction. *Connick*, 461 U.S. at 145; *Rankin*, 483 U.S. at 387. Nor may the government suppress speech to avoid “discomfort and unpleasantness” or public hostility. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969). Reliance on anticipated audience reaction to justify suppression amounts to an impermissible heckler’s veto. *Forsyth Cnty.*, 505 U.S. at 134-35; *Terminiello*, 337 U.S. at 4-5.

The Seventh Circuit treated complaints from the general public, organized email campaigns, media attention, and political backlash as evidence of actual and future disruption, notwithstanding the absence of any interference with classroom instruction, working relationships, or school operations. *Hedgepeth*, 152 F.4th at 795-97. School was not in session at the time of the posts. That reasoning inverts *Pickering*: protection decreases as controversy increases, irrespective of governmental efficiency being undermined. This produces a result at odds with the core First Amendment “principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate.” *United States v. Schwimmer*, 279 U.S. 644, 654-55 (1929) (Holmes, J., dissenting), *overruled by, Girouard v. United States*, 328 U.S. 61 (1946).

Allowing listener reaction to define disruption also invites viewpoint discrimination as a structural matter. Speech that aligns with prevailing political norms will provoke little backlash and appear nondisruptive, while speech that challenges dominant views will generate outrage and be deemed disruptive. *See Iancu v. Brunetti*, 588 U.S. 388, 394 (2019) (holding that the Lanham Act discriminated based on viewpoint because it favored trademarks that “champion society’s sense of rectitude and morality, but not marks that denigrate those concepts”). The First Amendment does not permit a regime in which protection turns on whether speech offends. *Rankin*, 483 U.S. at 384-87.

Nor can the decision below be justified on the theory that public schools may discipline teachers whenever controversy diverts administrative resources. If the administrative burden of addressing

public criticism were enough, *Pickering* would offer no protection at all—any unpopular speech which generated a response could involve at least some administrative burden. Consistent with that principle, at least some lower courts applying *Pickering* have rejected reliance on community outrage or reputational discomfort as a substitute for operational interference. In *Berger*, the Fourth Circuit held that threatened disruption caused by offended listeners “simply may not be allowed to serve as justification” for disciplining a public employee. 779 F.2d at 1001. Similarly, the Tenth Circuit in *Flanagan* rejected reliance on public backlash, emphasizing that *Pickering* requires evidence of interference with governmental functions, not controversy or offense. 890 F.2d at 1566-67.

This problem was exacerbated by the Seventh Circuit’s elastic definition of the district’s “community.” The Seventh Circuit referenced a small number of complaints from current students, but it treated those reactions interchangeably with alumni, parents, and broader public backlash, without identifying any concrete disruption to classroom instruction or school operations caused by the speech itself. *Hedgepeth*, 152 F.4th at 795-97. By treating former students and members of the general public as relevant listeners whose offense could justify discipline, *id.* at 794-99, the court adopted a conception of disruption without any limiting principle. In an era of social media amplification, that rule permits coordinated outrage campaigns to manufacture disruption and silence protected speech. In practical effect, the Seventh Circuit’s rule installs a heckler’s veto within *Pickering* itself, rewarding organized outrage.

The implications of the Seventh Circuit’s rule are sweeping. If public hostility and administrative inconvenience suffice to outweigh a teacher’s First Amendment interests, educators will be forced to self-censor vast swaths of off-campus political speech. Any statement on contentious public issues may be circulated, condemned, and leveraged into grounds for termination, regardless of its connection to the workplace. That result is irreconcilable with this Court’s repeated insistence that public employees do not “relinquish . . . First Amendment rights” as a condition of entering government service. *Pickering*, 391 U.S. at 568.

Clarifying that public hostility cannot substitute for disruption under *Pickering* is therefore worthy of Supreme Court review, even apart from the whether *Mahanoy*’s off-campus principles extend to teachers.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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