No. 13-672

Supreme Court of the United States

Petitioner

Respondents.

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

AMICI CURIAE BRIEF OF NATIONAL SCHOOL BOARDS ASSOCIATION, AASA THE SCHOOL SUPERINTENDENTS ASSOCIATION, NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS AND PENNSYLVANIA SCHOOL BOARDS ASSOCIATION IN SUPPORT OF PETITIONER

Counsel of Record 3 H Q Q V \ O Y D Q L D 6 F K % G V $ V V · Q

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Attorneys for Amici Curiae

THE THIRD CIRCUIT'S NEW STANDARD

,

“Let’s Play Army (Army Insignia) I’ll lie down and you can blow the hell out of me,”

AMICI CURIAE[1]

District v. Fraser

"plainly lewd." The Third Circuit's test misreads *Fraser*

. *Amici* *certiorari* clarify that a school administrator's role under *Fraser*

messages like "I Boobies" a

FRASER
MORSE

Fraser

Fraser

Fraser

raser"s nomination speech for

—

—was "vulgar," "lewd," or "offensive," as described by Chief Justice Burger.

, from "sexually explicit, indecent or lewd speech," the

deferred to the school principal"s

Morse

Morse
there is a limitation to school officials" discretion to

on school officials" disagreement with the

Third Circuit"s invocation of Alito"s concurrence in *Morse* *Fraser*

Id

certiorari
has interpreted Justice Alito"s concurrence as the controlling *Morse* *Morgan v. Swanson*
Ponce v. Socorro Indep. Sch. Dist.,

other hand, has expressly disavowed the Fifth Circuit"s conclusion that Alito"s concurrence is controlling. *Nuxoll ex rel. Nuxoll v. Indian Prairie Sch. Dist. # 204*

Fraser that a school official"s decision in any given

The Third Circuit"s

---

whether Justice Alito"s concurrence is controlling, it is clear

NSBA"s Council of School Attorney

boards interpreting this Court"s student speech

Alito"s concurrence in *Morse* *See* *Waving the "Bong Hits" Banner: Student Speech Rights After Morse v. Frederick* *available at*

noting that Justice Alito"s concurring opinion in *Morse* " *Morse* *Tinker* " and highlighting Justice Alito"s "special features" of the school environment afford school

Student Press Rights: Fact Or Fiction? *available at*

Morse proposition that "a principal may,

").
Fraser

REGULATION OF "AMBIGUOUSLY LEWD" STUDENT SPEECH THAT IS

The Third Circuit"s

unless

"school

" "s finding that

"ambiguously lewd"

school"s care is irrelevant. Concern for the well

comment”—

h slogans like, “Save
ing,” and “Squeeze a boob, save a life.”

Fraser

a student"s free speech

"inculcat[ing] the habits and

the nation."

Fraser "The fundamental values of „habits ivility" ... must also take into account

ibilities of fellow students.") *Tinker*
"[t]here is here no evidence whatever of petitioners" l or nascent, with the schools" work or of

"

Fraser

"[P]ublic

t"s ruling comes at a time
a school"s responsibility to create a safe

See

are "ambiguously lewd" will subject students to

environment. The Third Circuit"s decision significantly limits a school"s ability

THE THIRD CIRCUIT'S NEW

"fully understand the intricacies of [this Court"s] First Amendment jurisprudence,"

result of the Third Circuit"s ruling. Until school

determine which student speech is "ambiguously lewd" and "plausibly" related to political or social

"ambiguously lewd"

, school officials"

---

women and inappropriate for school wear" after a male student

Morse

principal"s authority will be undermined, student dress. With the principal"s loss of significant

als" authority to determine what

Tinker

he Third Circuit"s misguided

Morse *Fraser*

Counsel of Record