

No. 24-1769

IN THE
United States Court of Appeals
FOR THE SIXTH CIRCUIT

B.A., MOTHER OF MINORS D.A. AND X.A., ET AL.

Plaintiffs-Appellants,

– v. –

TRI COUNTY AREA SCHOOLS, ET AL.

Defendants-Appellees.

On Appeal from the United States District Court for the Western District of Michigan, Hon. Paul L. Maloney, District Judge, Civil Action No. 1:23-cv-423

BRIEF OF LINGUISTIC SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF APPELLANTS AND REVERSAL

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: 24-1769

Case Name: B.A., et al. v. Tri County Area Schools,

Name of counsel: Derek L. Shaffer, John F. Bash, Marc L. Greenwald, Roey Goldstein

Dr. Melissa Mohr, Dr. Rebecca Roache, Professor Timothy Jay,

Pursuant to 6th Cir. R. 26.1, Professor John H. McWhorter, and Professor Steven Pinker

Name of Party

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

CERTIFICATE OF SERVICE

I certify that on December 11, 2024 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Derek L. Shaffer

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

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INTEREST OF *AMICI CURIAE**

Amici Dr. Melissa Mohr, Dr. Rebecca Roache, Professor Timothy Jay, Professor John H. McWhorter, and Professor Steven Pinker are internationally recognized linguistic scholars whose works focus on the linguistics, psychology, and sociology of swearing. Dr. Melissa Mohr is the author of *Holy Sh*t: A Brief History of Swearing* (2013) and has written articles for major publications about swearing, history, and culture. Dr. Rebecca Roache is a Senior Lecturer in Philosophy at Royal Holloway, University of London, whose work includes the philosophy, ethics, and psychology of swearing. Professor Timothy Jay is Professor Emeritus in psychology at the Massachusetts College of Liberal Arts who is a world-renowned expert on swearing and has published multiple books, chapters, and articles on the subject. Professor John H. McWhorter is an associate professor of English and Comparative Literature at Columbia University who has published multiple books on language and how it changes over time and across cultures. Professor Steven Pinker is the Johnstone Family Professor in the Department of Psychology at Harvard University whose award-winning work focuses on language, cognition, and social relations.

* Pursuant to FED. R. APP. P. 29(a)(4)(E), *amici* state that no counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amici* or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

Consistent with their academic work, *amici* have an interest in helping local, state, and federal governments, as well as the general public, understand how language works and the role that swearing plays in society. In particular, the district court in this case relied on its understanding of “how language works” with respect to “messages with profane meanings.” Opinion & Order, RE 58, Page ID # 965. *Amici* have devoted their professional lives to studying “how language works” and hope to inform this Court’s understanding with the fruits of their study and research.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case is not about swearing; it is about *not* swearing. Swearing conveys certain messages in a different way than not swearing precisely because it uses taboo language to express an emotional state to the listener. While some form of swearing is ubiquitous across cultures, the words and their effects vary depending on what the culture considers taboo. Just as there are many reasons to swear, there are many reasons not to swear. Accordingly, methods of self-editing enable one to convey the message of swearing without swearing. In this case, three methods of not swearing are particularly relevant: euphemisms, minced oaths, and sanitized expressions.

Swearing is also ubiquitous across time. From ancient Rome to today, swearing has been an important aspect of language and society that shines valuable light on, *e.g.*, what was considered important and who was in control at a particular place and time.¹ Social, economic, and political changes during the 16th through 19th centuries shifted swearing away from the religiously oriented oaths of the Middle Ages towards obscenities involving the human body, bodily functions, and sex. Euphemisms became a widely used tool to convey that which was socially taboo or politically unpopular at a given time, without risking serious legal consequences that might otherwise loom.

¹ Because this case concerns the English language, this brief focuses on the history in England and later the United States.

Although times and taboos have changed since the 19th century, the basic role of euphemisms has not; euphemisms today remain a potent, indispensable linguistic tool for appropriate expression. By masking their referent, euphemisms have the power to convey a recognized meaning while comporting with evolving social attitudes. This phenomenon is both healthy and natural in a free and open society, and has been enhanced by modern technology and the online “meme” culture.

Let's Go Brandon, the subject of this case, well illustrates how swearing, euphemism, politics, and culture interact in modern America. It originates from a random, spontaneous reference to a profane political phrase—*Fuck Joe Biden*—but has since evolved to a more expansive political expression of disagreement with the Biden Administration. *Let's Go Brandon* not only evolved, but also was redirected by supporters of President Biden, reflecting a healthy back-and-forth over the meaning of political messages.

The district court, however, concluded that *Let's Go Brandon* necessarily means *Fuck Joe Biden*, and as a result could be flatly prohibited at school (without any demonstration of disruption) as a profane and “plainly offensive” expression. Not only is the district court’s approach at odds with the First Amendment and precedents protecting students’ political expression, but it relies on misplaced comparators that differ in important ways from the euphemism at issue here. Properly understood, *Let's Go Brandon* is a euphemism that does not carry with it

its profane origins, and therefore is not of the category of profane speech that can be categorically prohibited in a school setting.

Simply stated, the court misunderstood “how language works.” Opinion & Order, RE 58, Page ID # 965. As *amici* demonstrate below, the district specifically erred in considering the unique and essential role euphemisms play. This Court should correct these legal and linguistic errors by reversing.

ARGUMENT

I. SWEARING, ITS HISTORY, AND METHODS OF SELF-EDITING PROVIDE NECESSARY CONTEXT FOR THIS CASE

This case requires understanding swearing and, relatedly, not swearing. In turn, understanding the history of swearing crystalizes how and why swearing and euphemisms function as they do today. It is especially important to appreciate how euphemisms have formed and evolved, and how modern internet culture hastens how euphemisms change meanings. Euphemisms embrace the concepts, but not the language, of their origins and have always been used to appropriately communicate messages in particular settings.

A. Swearing Is A Means Of Taboo Expression And People Self-Edit To Avoid Swearing Where It Is Culturally Or Legally Forbidden

Broadly defined, swearing is “the use of taboo language with the purpose of expressing the speaker’s emotional state and communicating that information to listeners.” Timothy Jay & Kristin Janschewitz, *The Pragmatics of Swearing*, 4 J. OF POLITENESS RSCH. 267, 268 (2008). Consistent with this broad definition, swearing

can be remarkably varied; equally varied are the situations in which people swear or avoid swearing, and how they choose to do so.

1. Swearing occurs in many forms and for many reasons. *Obscenity* is one form of swearing, which today means “material regarded as prurient or sexually corrupting,” although that was not always true. GEOFFREY HUGHES, AN ENCYCLOPEDIA OF SWEARING 331-33 (Taylor & Francis Grp. ed., 2006); *see also Roth v. United States*, 354 U.S. 476, 487 (1957) (“Obscene material is material which deals with sex in a manner appealing to prurient interest.”). *Profanity* is another form and currently means “vulgar or irreverent action, speech, etc.” HUGHES at 362. Unlike *obscenity* and *profanity*, *blasphemy* has kept its religious roots and continues to mean “the contemptuous use of religious symbols or name, either by swearing or abuse.” *Id.* at 31.

Despite their modern differences, obscenity, profanity and blasphemy each exhibit features that are considered inappropriate or taboo within the culture. As such, culture helps determine how people swear. In the United States, swearing tends to focus on obscenities and socially offensive words. Timothy Jay, *American Women: Their Cursing Habits and Religiosity*, in GENDER AND THE LANGUAGE OF RELIGION 63, 66 (Allyson Jule ed., 2005). Socially conservative or religious cultures tend to focus their swearing on anatomy or divinity, while cultures emphasizing ancestral veneration tend to focus on familial relationships. *Id.* at 66-69. Gender

differences also exist—men tend to swear more, deploying a larger, more offensive vocabulary as compared to women—and gender-related insults highlight deviations from expected or idealized gender-related behavior. *Id.* at 76-79.

Similar variation is apparent in *why* people swear. At a neurological level, swearing can be an automatic response to certain stimuli and an expression of an emotional state, such as anger, fear, dread, etc. TIMOTHY JAY, *WHY WE CURSE* 49-52, 55-60 (1999). Swearing is also psychological, it can convey the speaker’s intensity and elicit an intended emotion—be it offense, praise, denouncement, exhortation, humor, or sexual desire—better than a non-swearword ever could. *Id.* at 81-82, 84-87, 135-37. People also swear for sociocultural reasons, whether it is to assimilate into or distinguish from a collective identity (race, class, politics, etc.), to emphasize a perceived danger or prohibition (the “good” versus the “bad”), or to discuss what is considered taboo, inappropriate, or disgusting. *Id.* at 158-63, 166-68, 186-87, 190-97, 200-03.

2. Just as there are many reasons to swear, there are corresponding reasons *not* to swear. Sociocultural norms, and sometimes legal obligations, instruct when it is appropriate to swear and not to swear. *See id.* at 206-12; REBECCA ROACHE, *FOR F*CK’S SAKE* 62-63 (2023). Obeying social norms (*i.e.*, etiquette) signifies mutual respect and facilitates constructive interactions in polite society. ROACHE at 61-64, 66-67. For those in power or positions of public trust, such as teachers and

judges, swearing is often inappropriate because it betrays a lack of decorum among people whom society expects to be paragons of decorum. *Id.* at 106-07. Likewise, it would be considered inappropriate to swear in front of such people, especially in a formal setting. *Id.* at 62-63. Expectations of when etiquette should be followed, and when it can be relaxed, help inform the appropriateness of swearing. *Id.* at 61-63.

Legal reasons for self-editing exist as well. Broadcasters may censor swearwords during certain hours under pressure from the Federal Communication Commission. *See* Christopher M. Fairman, *Fuck*, 28 CARDOZO L. REV. 1711, 1736-52 (2007). Co-workers may limit obscenities in the office to avoid a Title VII sexual harassment or hostile work environment lawsuit. *Id.* at 1752-61. Anti-profanity laws punish people for swearing in public (even as their constitutionality and utility are highly contestable). *See* David L. Hudson, Jr., *Anti-Profanity Laws and the First Amendment*, 42 T. MARSHALL L. REV. 203 (2017); HUGHES at 168-69.

3. Consistent with the multitude of reasons not to swear, societies have developed numerous tools to self-edit and self-censor. In this context, self-censor means communicating the message of swearing without swearing—or at least doing it in a polite, socially acceptable way. ROACHE at 181-82. Three tools of self-editing are relevant to this discussion.

Euphemisms. The self-editing mechanism of euphemism is most relevant here. A euphemism is an expansive tool broadly defined as “the use of deliberately indirect, conventionally imprecise, or socially ‘comfortable’ ways of referring to taboo, embarrassing, or unpleasant topics.” HUGHES at 151. The “four-letter word,” for example, is a euphemism for *fuck*. *Id.* There are many reasons to use euphemisms, and there are many ways to create them. *See* Kate Burridge, *Euphemism and Language Exchange: The Sixth and Seventh Ages*, 2012 LEXIS, no.7, at 65. Metaphors are a common mode of euphemisms, which can vary based on the purpose of using alternative language, *e.g.*, to shield, mystify, or uplift. *Id.* at 67-71, 73. Thus, *sleep with*, *go to bed with*, and *make love* are euphemisms for *sex*. HUGHES at 152.

Euphemism differs from innuendo. An innuendo is “[a]n oblique remark or indirect suggestion, usu[ally] of a derogatory nature.” *Innuendo*, BLACK’S LAW DICTIONARY (12th ed. 2024). Innuendo hints at offending terms while relying on the reader to “read between the lines” to infer the intended message. Steven Pinker, *The Doors of Perception*, 154 RSA J. 48 (2008). While both euphemism and innuendo share a reliance on indirect language to convey the desired meaning, innuendo relies on hazy implications rather than precise substitutions to convey the message. *Id.* For this very reason, use of euphemism is typically considered polite behavior because it recognizes the disfavored term’s offensiveness and carefully

tailors the expression for the sake of avoiding offense. See Keith Allan, *A Benchmark for Politeness*, in INTERDISCIPLINARY STUDIES IN PRAGMATICS, CULTURE AND SOCIETY 397, 406-07 (A. Capone & J.L. Mey eds., 2015). Conversely, use of innuendo is generally considered impolite because it conveys the taboo message while shielding the user with plausible deniability in the absence of any fixed, verifiable meaning. See JONATHAN CULPEPER, IMPOLITENESS: USING LANGUAGE TO CAUSE OFFENCE 157 (2011). Rather than shield from offense, innuendo, and particularly sexual innuendo, is meant generally to disparage, Allan at 403-04, and therefore may qualify as “plainly offensive,” *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683 (1986), or even defamatory, see, e.g., RESTATEMENT (SECOND) OF TORTS § 563 cmt. f (1977).

Minced Oaths. Minced oaths are a specific type of euphemism “whereby an offending term or taboo phrase is distorted or ‘minced’ so that it no longer offends.” HUGHES at 316. Although they are not commonly referenced today, minced oaths were widely used during the Middle Ages and Renaissance, when swearing primarily consisted of religiously contemptuous statements. *Id.* at 317; MELISSA MOHR, HOLY SH*T: A BRIEF HISTORY OF SWEARING 4-5 (2013). Thus, *God’s wounds* becomes *zounds*, and *hell* becomes *heck*. HUGHES at 317. Today, non-religious phrases may still be considered minced oaths, such as *shoot* for *shit*, or *effing* for *fucking*. *Id.* Shortening and initialism (acronyms) are also forms of

mincing; *bullshit* is shortened to *bull*, and *son of a bitch* is initialized to *S.O.B.* Burrige at 75. The purpose of minced oaths is to distort the offending word just enough to avoid offense while otherwise maintaining the identity of the original word. *See id.*

Sanitized Expressions. Like minced oaths, sanitized expressions partially or wholly distort the offensive word, but do so by replacing some or all of its letters with asterisks, dashes, or symbols (or sounds like *bleep*). ROACHE at 182. Thus, *fucking* becomes *f*king*, *f***ing*, *f******, or *******. *Id.* at 183. The problem with sanitization, and to an extent minced oaths, is that it does little to shield the reader or listener from the offensive word. *Id.* at 197-200. Sometimes, that is the point: the author wants the reader to know what word is being used because the word is the topic of discussion; ****** does little to communicate the author's message. *Id.* at 200-02. Nevertheless, sanitization is useful because it signals the author's recognition that the word may offend, thereby communicating respect to the reader. *Id.* at 203-05.²

² Though this brief strictly delineates each self-editing tool for clarity, *amici* note that they may be used more interchangeably in other contexts (*e.g.*, referring to a euphemism as a “sanitized” version of its referent). What is important, however, is not the label, but rather how the word operates to convey the intended message.

B. Swearing And Self-Editing Have Historically Evolved In Response To Changing Social Norms And Laws

The history of swearing across cultures and eras reveals what was important in society. MOHR at 14. The Romans' concept of what was taboo seems remarkably modern, focusing on body parts, bodily functions, and sex. *Id.* at 18-45. Ironically, some of the Romans' swearwords are now accepted as part of polite expressions in English, such as *vulva*, *fellatio*, and *cunnilingus*. *Id.* at 52-54. During the Middle Ages in England, when the Catholic church dominated English life, swearing meant swearing an oath to God; the apex of obscenity, therefore, was to swear in vain by trivializing God's name, swearing falsely, or swearing on God's body. *Id.* at 112-13. That is why Chaucer in *The Canterbury Tales* could use *shitten* and *arse* but often minced *by God's bones* to *by cokkes bones*. *Id.* at 96-97; HUGHES at 317.

In 16th and 17th centuries England, the supremacy of the Catholic church receded, as the power of the Church of England and the Crown rose. MOHR at 140. This, along with the fall of feudalism, the rise of capitalism, the Enlightenment, and the Protestant Reformation, together shifted English taboos. *Id.* at 140-42. Swearing became somewhat more focused on obscenities and less focused on oaths, though the latter still dominated and the line blurred between what was obscene and what

was acceptable.³ *Id.* at 143-44, 165-66. The merger of the Crown and Church resulted in more state-sponsored (as opposed to purely ecclesiastical) censorship and punishment, such as the 1606 Act to Restrain Abuses of Players, which made it illegal to “jestingly or profanely” use God’s name onstage. *Id.* at 168; HUGHES at 62. That is why Shakespeare shrouded obscenities with euphemisms and innuendos, while still mincing oaths with *zounds* and *‘sblood* (though these were purged from later plays when they became too obscene). MOHR at 167-69; *see also* HUGHES at 166.

In the 18th and 19th centuries, social and political forces further prioritized obscenities over oaths in the English swearing lexicon. The 18th century’s developing middle class focused on “civilizing” both society and language, often as a way to distinguish themselves from the lower classes. MOHR at 176. Romantic era and Victorian era attitudes towards gender roles and the human body further elevated obscenities as taboo. *Id.* at 176-77. As a result, use of euphemisms exploded during this period, particularly in the United States. *Id.* at 191-95. Their popularity was directly linked to their function—“[e]uphemisms exist to cover up . . . taboos, to disguise or erase the things that prompt such strong feelings.” *Id.*

³ Interestingly, this is when use of *fuck* became more widespread, although its origins continue to be debated. MOHR at 151-56; Fairman at 1716-19.

at 197-98. In other words, euphemisms served to dress up taboo subject matter in terms that would be appropriate for polite conversation. *Id.*

Latinization and employing French were popular ways of creating euphemisms that hid their referents. *Id.* To *shit* became *defecate* and to *sweat* became *perspire*. *Id.* at 198. Even saying *trousers* was considered impolite because they were the last line of defense from nudity so they became *inexpressibles*. *Id.* at 191. *Legs* were close to other not-to-be-named body parts, so they became *limbs* and later *lower extremities*. *Id.* at 191-92. The number of euphemisms for *bathroom* (itself a euphemism) and related objects (*toilet, lavatory, latrine, urinal, etc.*) were endless. *Id.* at 199-203.

The popularity of euphemisms also responded to legal and political changes. In response to satirists who mocked English politicians and the Crown, Parliament passed the Stage Licensing Act of 1737. HUGHES at 64, 298. For over 200 years, the act required plays to be licensed prior to performance at the nearly unlimited discretion of the Lord Chamberlain, effectively silencing noted satirists and playwrights, like Jonathan Swift, Alexander Pope, and Henry Fielding, out of political revenge. *Id.*; see also *Shurtleff v. City of Boston*, 596 U.S. 243, 263-64 (2022) (Alito, J., concurring in the judgment) (discussing the Lord Chamberlain’s “extensive ‘control over the nature and content’ of covered performances” (citation

omitted)). Like most censorship, the act engendered feats of linguistic ingenuity to circumvent the Lord Chamberlain's rulings. *See* HUGHES at 63-64, 298-99.

Despite the First Amendment, numerous U.S. states had theater-licensing laws that banned obscenities in plays or banned plays altogether. *See* John Wertheimer, *Mutual Film Reviewed: The Movies, Censorship, and Free Speech in Progressive America*, 37 AM. J. LEGAL HIST. 158, 161-66 (1993). Indeed, at the Founding, nearly every state had laws against blasphemy or profanity, although the difference between the two was nowhere near as well marked as it is today. *Roth*, 354 U.S. at 482-83 & n.12 (collecting statutes); Note, *Blasphemy*, 70 COLUM. L. REV. 694 (1970). These laws provided additional reasons for early Americans *not* to swear, and to use euphemisms instead.

During the 19th century, where swearwords appeared and where they were masked by euphemisms reveals much about American society. Even the Bible was not spared; Noah Webster “castrated” the Bible in 1833 by inserting “euphemisms, words and phrases which are not very offensive to delicacy.” MOHR at 195. Because swearing was seen as a lower-class, uneducated practice, those trying to climb the social ladder used euphemisms to distinguish themselves. *Id.* at 206-09. Portraying the “others” as swearers could also be a political tool. Webster, for example, sought to distance the United States from Great Britain by “fixing” the English language to

“promote America’s distinct national character and, as he saw it, cultural superiority.” *Id.* at 223.

The use of euphemisms also flourished in America’s greatest political pastime: cartoons. Thomas Nast, a fiercely Republican 19th century cartoonist, is often credited with cementing the donkey (*i.e.*, *jackass*) as the symbol of the Democratic Party that is still used today. *See* Jay Monaghan, *Origin of Political Symbols*, 37 J. ILL. STATE HIST. SOC’Y 205 (1944); *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 53-55 (1988) (discussing Nast). The truth, however, is that Nast was not the first to associate the donkey with the Democratic Party. Monaghan at 210. Democratic President Andrew Jackson, known as the “poor man’s friend,” was often depicted riding a donkey in part because the donkey was “known for generations as the poor man’s friend.” *Id.* Although he was not a Democrat, George Washington was also portrayed as an *ass*. *Hustler*, 485 U.S. at 54. Nast can be credited for fixing the elephant as the symbol of the Republican Party, but that too has earlier origins. Monaghan at 206-10. Regardless, Nast’s cartoons were so popular and politically effective because of the “emotional impact” and “passion” they communicated. *Hustler*, 485 U.S. at 54.

That both parties now proudly display their respective symbols confirms the power of euphemisms—because they disguise their referent, their meaning can change over time such that denigration can transform into pride. As the Supreme

Court stated regarding political cartoons, “[f]rom the viewpoint of history it is clear that our political discourse would have been considerably poorer without them.” *Id.* at 55. So too for euphemisms.

C. The “Euphemism Treadmill” And Modern Meme Culture

The process whereby a euphemism’s meaning changes over time has been termed by one of the *amici* as the “euphemism treadmill.” Steven Pinker, *The Game of the Name*, N.Y. TIMES, Apr. 5, 1994, at A21. Words, especially euphemisms, are distinct from the concepts or objects to which they refer; they are mainly arbitrary associations that people memorize, without being bound to the logic of their derivation. *Id.* “[C]oncepts, not words, are in charge: give a concept a new name, and the name becomes colored by the concept; the concept does not become freshened by the name.” *Id.* Thus, “[p]eople invent new ‘polite’ words to refer to emotionally laden or distasteful things, but the euphemism becomes tainted by association and the new one that must be found acquires its own negative connotations.” *Id.*

Examples of the “euphemism treadmill” abound in the English language. For example, when *crippled* became pejorative, *handicapped* was used, but when that became impolite it was replaced by *disabled*, which was eventually replaced with *differently abled*. John H. McWhorter, *Why Is Colored Person Hurtful and Person of Color OK? A Theory of Racial Euphemisms*, SLATE (Aug. 24, 2016),

<https://tinyurl.com/msj63paf>. Similarly, *colored* became *Negro*, which became *black* and then *African American*, but the preferred term now is *Black*. See *id.*; see also John H. McWhorter, *Why I'm Black, Not African American*, L.A. TIMES (Sept. 8, 2004), <https://tinyurl.com/y5m5vxmh>. This latter example demonstrates how the “euphemism treadmill” responds to changing social attitudes; terms that were once pejorative can be reclaimed and redefined to become points of pride and signals of social identity. See, e.g., Gregory Coles, *The Exorcism of Language: Reclaimed Derogatory Terms and Their Limits*, 78 COLL. ENG. 424 (2016). The Democratic Donkey reflects this very phenomenon.

It is healthy and inevitable that free and open societies will traverse this “euphemism treadmill.” John H. McWhorter, *Euphemise This*, AEON (July 27, 2016), <https://tinyurl.com/yzb77afw> [hereinafter McWhorter, *Euphemise This*]. Because words obtain meaning by association, words may incorporate personal biases over time and may eventually become associated with biases themselves, such that a once polite phrase can turn ugly. *Id.* Given how euphemisms purposefully disguise their referents, however, they are more mutable than opinions. *Id.* Therefore, to keep a euphemism “polite,” it is best to “change our terms just like we change our underwear,” frequently. *Id.*

In recent years, the “euphemism treadmill” has accelerated thanks to changes in technology and methods of communication. “Memes”⁴ are powerful forms of speech that can have significant political meanings and consequences. See Amy Adler & Jeanne C. Fromer, *Memes on Memes and the New Creativity*, 97 N.Y.U. L. REV. 453, 477-78 (2022). Memes “spread like viruses” and operate like euphemisms. Atiba R. Ellis, *The Meme of Voter Fraud*, 63 CATH. U. L. REV. 879, 889 (2014). They communicate “ideas, beliefs, concepts, or behaviors that are held in the mind” and evolve through sharing and replication, which, with the Internet, can reach millions of people in an instant. *Id.* at 884-85, 887. Memes can be created randomly and can transform in meaning quickly and repeatedly. *Id.* at 889; Lantagne at 391-92. Memes not only operate like euphemisms by continuously changing meanings to communicate ideas associated with them, they also have euphemistic power to foster shared identities and ideologies. Adler & Fromer at 483-84, 490. And, with the Internet, they do so at a speed far exceeding anything ever dreamed of by Chaucer, Shakespeare, Swift, or Nast.

⁴ Memes can be narrowly defined as visual images with posted captions that are used and re-used in online culture, or they can be defined expansively as “synonymous with internet phenomenon or viral sensation.” Stacey M. Lantagne, *Famous on the Internet: The Spectrum of Internet Memes and the Legal Challenge of Evolving Methods of Communication*, 52 U. RICH. L. REV. 387, 389 (2018). This brief uses the latter definition.

Just as running on the “euphemism treadmill” is healthy for a free and open society, stopping the treadmill can do harm. To be sure, that is no easy feat; a euphemism’s meaning is unlikely to ossify absent the heavy hand of government coercion. *See* Pinker at A21. But when government is able to dictate the meaning of words and punish on those grounds, language can be swiftly and perversely twisted.

When viewed in light of these concepts and history, it becomes clear the district court’s treatment of *Let’s Go Brandon* was in error.

II. THE DISTRICT COURT FAILED TO CONTEXTUALIZE *LET’S GO BRANDON* AND ITS USE AS AN APPROPRIATE POLITICAL EXPRESSION

Let’s Go Brandon is a euphemism that completely disguises its referent and has rapidly become a political expression—one critical of the Biden Administration. In concluding that *Let’s Go Brandon* means *Fuck Joe Biden* and therefore is profane and subject to prohibition, the district court failed to consider the phrase in light of its political context and how its use as a euphemism enabled it to evolve beyond its origins. Allowing the State to punish based on its own narrow interpretation of the phrase without demonstrating any resulting disruption offends the First Amendment, even in a school setting. Further, the district court analogized *Let’s Go Brandon* to phrases that disguise their offensiveness in ways fundamentally different from how

euphemisms operate. Properly understood, the cases on which the district court relied are inapposite here.

A. *Let's Go Brandon* Is A Euphemism Of Political Expression And Is Not Subject To Prohibition Absent A Demonstration Of Disruption

The district court determined the Appellants “have not established that *Let's Go Brandon* does not mean F*** Joe Biden,” and the school’s interpretation that the two are synonymous was reasonable. Opinion & Order, RE 58, Page ID # 963. Only on this basis did it conclude that the phrase is profane and can be banned in school, despite the uncontroverted evidence that it caused no disruption. Opinion & Order, RE 58, Page ID ## 959-962. Thus, the district court categorized *Let's Go Brandon* as “vulgar, lewd, indecent, or plainly offensive student speech” that can be banned without evidence of disruption under *Fraser*. *Id.* This was error.

All parties recognize that “the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings.” *Fraser*, 478 U.S. at 682. The free expression of students “must be balanced against the society’s countervailing interest in teaching students the boundaries of socially appropriate behavior.” *Id.* at 681. As explained above, society expects teachers, as models of decorum, not to swear, and expects students to reciprocate. *See supra* Section I.A.2. Nevertheless, students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). Political speech, moreover, “is

‘at the core of what the First Amendment is designed to protect.’” *Morse v. Frederick*, 551 U.S. 393, 403 (2007) (quoting *Virginia v. Black*, 538 U.S. 343, 365 (2003)).

Under these principles, society expects teachers and students to “demonstrate the appropriate form of civil discourse and political expression by their conduct and deportment in . . . class.” *Fraser*, 478 U.S. at 683. Thus, “plainly ‘offensive’” speech may be proscribed in a school setting, but that term “should not be read to encompass any speech that could fit under some definition of ‘offensive’” because “much political and religious speech might be perceived as offensive to some.” *Morse*, 551 U.S. at 409; accord *Barr v. Lafon*, 538 F.3d 554, 563-64 (6th Cir. 2008).

Heeding the Supreme Court’s admonition, this Court has refused to treat speech that conveys a political message, though offensive to some, as “vulgar” or “plainly offensive.” *Barr*, 538 F.3d at 567-68, 569 n.7 (disagreeing “that a display of the Confederate flag constitutes vulgar or ‘plainly offensive’ speech under *Fraser*” but rather “constitutes political speech”). When speech is freighted with a political message, it “is protected under the First Amendment and may only be regulated if a school meets the *Tinker* standard.” *Id.* at 569 n.7. Under that standard, school officials must demonstrate actual or reasonably forecast “substantial disruption of or material interference with school activities.” *Tinker*, 393 U.S. at 514. It is uncontested that standard has not been met here. Pls. Mot. for Summ. J.,

RE 39, Page ID # 545; Defs. Resp. to Pls. Mot. for Summ. J., RE 46, Page ID # 844. By letting the State impose its own preferred translation of *Let's Go Brandon* as an obscenity, the district court departed from this binding precedent. In short, this is not a *Fraser* case; it is a *Tinker* case and should be reviewed under that standard.

Let's Go Brandon is a political expression that well reflects how euphemisms transform from their original meaning through today's online meme culture. It is true that *Let's Go Brandon* originates from an on-camera reporter's improvised attempt to turn chants of "*Fuck Joe Biden*" into an appropriate phrase for a broadcast. See John H. McWhorter, *The Serendipity of 'Let's Go Brandon'*, ATLANTIC (Nov. 9, 2021), <https://tinyurl.com/2pudvzfc> [hereinafter McWhorter, *Serendipity*]. In the context of interviewing the winner of a NASCAR race (Brandon Brown), "[t]his improvisation made no sense"—the race was already done. *Id.* Thus, *Let's Go Brandon* was a euphemism from the start because it was a "deliberately indirect, conventionally imprecise, or socially 'comfortable' way[]" of referring to what the crowd was chanting. HUGHES at 151. As such, it is linguistically and legally distinct from the sexual innuendos used in *Fraser*. See *supra* Section I.A.3.

As a meme, *Let's Go Brandon* quickly caught on. See Anthony Dion Mitzel, *An Unlimited Memeiosis of the "Let's Go Fuck Joe Brandon" Meme: Sociocultural Ramification of Taboo Humor in Strategic Political Discourse*, 43 MEDIAZIONI A195, A197 (2024). The phrase won widespread adoption because, in part, it serves

as a euphemism specifically for *Fuck Joe Biden*—thereby affording a tongue-in-cheek way of pushing social and political norms and defying political leadership while staying on the appropriate side of acceptable expression. *Id.* at A197, A199. In this regard, *Let's Go Brandon* continues the historical tradition of using euphemisms to satirize or critique political figures in a manner appropriate for the times. *See id.* at A199; *Supra* Section I.B.

Within weeks of the broadcast, the wheels of the “euphemism treadmill” were spinning, accelerated by the way memes can communicate political ideas and identity across the Internet with millions of clicks. Because *Let's Go Brandon* went viral even as it remained linguistically malleable, “[p]eople seized on the meme as a euphemism for expressing anti-Biden sentiment and general discontent with the administration, thus creating a subversive and humorous way to critique the president.” Mitzel at A199. What started as an inside joke among the relative few who were “in the know” metastasized into a shared expression of common identity and discontent through repetition and persuasion. *See* Ellis at 891-92; Adler & Fromer at 483-84. The communal nature of *Let's Go Brandon* as a political expression became visible when critics of the Biden Administration began sporting the phrase on clothing, like D.A. and X.A. Mitzel at A207; Pls. Mot. for Summ. J., RE 39, Page ID # 542. *Let's Go Brandon* is another example of how “concepts, not words, are in charge”: the phrase has come to represent the concept behind *Fuck Joe*

Biden (discontent and criticism), different from the words themselves. Pinker at A21.

In the same way the “euphemism treadmill” enabled *Let’s Go Brandon’s* meaning to move beyond its origins, it also enabled supporters of the Biden Administration to coopt it for themselves. Numerous Biden supporters responded with embrace rather than outrage. *Let’s Go Brandon* “sparked a new wave of memes from liberals” such as the *Dark Brandon* meme that “flips the script” by “portray[ing] Biden as a powerful, almost superhero figure.” Mitzel at A204; Pls. Mot. for Summ. J., RE 39, Page ID # 541. The aesthetic of this meme mocks the “serious, gloomy disposition and general outlook Biden’s opponents often have towards him.” Mitzel at A204. Supporters further sought to harness the phrase by declaring “Thank you, Brandon” to praise the President’s accomplishments. McWhorter, *Serendipity*.

This memetic exchange competing for the meaning of *Let’s Go Brandon* between rival political factions is healthy and expected in a free and open society. McWhorter, *Euphemise This*; Adler & Fromer at 477-79, 481. It helps form the marketplace of ideas in our times, following the great tradition in which Justice Holmes lived and wrote. *See Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). And it further confirms Justice Harlan’s timeless

observation that “it is . . . often true that one man’s vulgarity is another’s lyric.” *Cohen v. California*, 403 U.S. 15, 25 (1971).

By concluding *Let’s Go Brandon* may be regulated without meeting *Tinker*’s standard merely because a profane meaning was a “reasonable” interpretation, the district court disregarded “how language works.” Opinion & Order, RE 58, Page ID ## 962-963, 965-966. The court ignored that euphemisms are both the “socially appropriate” manner to communicate taboos, and also “the appropriate form of civil discourse and political expression,” subject to fluid change and differing understandings. *Fraser*, 478 U.S. at 681, 683; *Supra* Section I.A, C. The First Amendment does not permit government at once to assign a singular, profane meaning to an evolving euphemism and, on that basis, to ban it from schools. *Morse*, 551 U.S. at 403.

B. The District Court’s Comparators Use Different Methods Of Self-Editing And Are Distinguishable

To justify its decision, the district court analogized *Let’s Go Brandon* to other phrases that schools and courts have recognized as profane even though they are not explicitly so. Opinion & Order, RE 58, Page ID # 961-962. Specifically, the court discussed *F#%* Joe Biden*, “*Somebody Went to HOOVER DAM And All I Got Was This ‘DAM’ Shirt*,” *Fet’s Luck*, *Uranus Liquor*, *LMFAO (Laughing My Fucking Ass Off)*, *AITA? (Am I The Asshole?)*, and *See You Next Tuesday*. *Id.* Yet the court’s

reliance on these phrases misunderstands “how language works.” Opinion & Order, RE 58, Page ID # 965.

All of these phrases employ methods of self-editing that differ from those animating *Let’s Go Brandon* inasmuch as they do not fully disguise their profane roots. *F#%* Joe Biden* uses sanitization, just like the district court’s general use of *F*** Joe Biden* throughout its opinion. Opinion & Order, RE 58, Page ID # 961; ROACHE at 182-83. *Fet’s Luck* and *Uranus Liquor* are minced oaths because they distort the offending phrases to the minimum possible extent so as to avoid outright offense while still ensuring literal translation into obscenity. HUGHES at 316-17. *‘DAM’ Shirt* is also a minced oath that utilizes shortening by dropping the “n.” See Burridge at 75. *LMFAO* and *AITA?* are initialized minced oaths, while *See You Next Tuesday* is a variation on initialism that uses other words to sound out the letters of the offending word. *Id.* As explained above, these uses of mincing and sanitization stop short of masking their referent because the identity of the offending word is designedly maintained. *Supra* Section I.A.3. Indeed, that is typically the point: the district court’s decision would be far more cryptic and fodder for divergent understandings if it used ***** Joe Biden* instead of *F*** Joe Biden*. *Id.*⁵

⁵ Moreover, with the exception of *F#%* Joe Biden*, none of these phrases are political messages. As just explained, *Let’s Go Brandon* is a political expression, thereby warranting heightened First Amendment protection that these other phrases do not. See *Morse*, 551 U.S. at 403.

Let's Go Brandon stands apart. It is a pure euphemism that completely masks its original referent—which remains obscure and unknown to many—and does so in a particularly imprecise way. HUGHES at 151; McWhorter, *Serendipity*. It was born from a “random, spontaneous act[]” of improvisation that, looking back, lacks “any rhyme or reason,” yet imprinted itself in the collective consciousness of the Internet, from which it evolved and morphed at a fevered pace. Mitzel at A199. Notably, the district court’s opinion itself recognizes the inherent distinction between *Let's Go Brandon* and *Fuck Joe Biden*: all instances of the latter are sanitized while no instances of the former are. *See generally* Opinion & Order, RE 58, Page ID ## 943-969. The only thing that *Let's Go Brandon* and *Fuck Joe Biden* share is the number of syllables; but so do many chants one hears at a sporting event (e.g., *Let's Go Bengals*).

Thus, to the extent *F#%* Joe Biden* and the other comparators may be treated as synonymous with their “plainly offensive” referents and banned without needing to show disruption under *Fraser*, *Let's Go Brandon* cannot be treated the same. Instead, school officials were required to demonstrate actual or reasonably forecast “substantial disruption of or material interference with school activities.” *Tinker*, 393 U.S. at 514. And it is uncontested that they failed to do so here. Pls. Mot. for Summ. J., RE 39, Page ID # 545; Defs. Resp. to Pls. Mot. for Summ. J., RE 46, Page ID # 844.

For these reasons, the district court's comparators differ in important ways from *Let's Go Brandon*, and the district court erred by relying on them.

CONCLUSION

The district court's order should be reversed.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and Sixth Circuit Local Rule 32 because it contains 6,442 words (based on the Microsoft Word word-count function) excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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Dated: December 11, 2024

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CERTIFICATE OF SERVICE

I, Derek L. Shaffer, a member of the Bar of this Court, hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: December 11, 2024

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DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Pursuant to Sixth Circuit Rules 28(b)(1)(A)(i) and 30(g)(1), *amici curiae* additionally designates the below document from the district court's electronic record.

Record Entry #	Description of Document	Page ID Range
39	Plaintiffs Motion for Summary Judgment	541-542
46	Defendants Response to Plaintiffs Motion for Summary Judgment	844
58	Opinion & Order	943-969