No. 15-9999

In the Supreme Court of the United States

Taylor Bell,
PETITIONER

v.

Itawamba County School Board,
RESPONDENTS

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

BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

May a school regulate student speech that threatens, intimidates, and harasses specific teachers where it is reasonably foreseeable that the speech will reach the school community?

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STATEMENT OF THE CASE

I. Factual Background

On January 5, 2011, high school senior Taylor Bell posted a publically available recording in which he, by his own admission, "intended to communicate the idea of shooting" two coaches at his school. R. at 46. Anyone could access the recording, which was posted on Bell's Facebook page under the name "T-Bizzle." App. at 5a. The recording identified the two coaches by name, and then described the violence that would befall them no fewer than four times:

(1) "betta watch your back / I'm a serve this nigga, like I serve the junkies with some crack";
(2) "Run up on T-Bizzle / I'm going to hit you with my rueger"[1];
(3) "you fucking with the wrong one / going to get a pistol down your mouth / Boww"; and
(4) "middle fingers up if you want to cap that nigga / middle fingers up / he get not mercy nigga."[2] App. at 3a-5a.

The lyrics also allege, in gratuitously offensive language, that the two coaches sexually harassed female students at the school. App. at 3a-5a. As just one example, the recording begins "Let me tell you a little story about these Itawamba coaches / dirty ass niggas like some fucking coacha roaches" and continues "the reason [the coach] fucking around cause his wife ain't got no tidies."[3] App. at 3a.

[1] A "rueger" [sic] is a firearm manufactured by Sturm, Ruger & Co. App. at 5a.
[2] To "cap" someone means to shoot them. App. at 5a.
[3] The remainder of the song is reproduced in Appendix 1. Though there are several versions of the lyrics, at the preliminary injunction hearing the school board stipulated to the accuracy of this version, which was provided by Taylor Bell. App. at 3a.

Though recorded off campus, Bell intended the song to reach his school, Itawamba Agricultural High School ("IAHS") in Itawamba County, Mississippi. R. at 48. Bell posted the song, featuring a coverage image that matched IAHS's school mascot, to "increase awareness" of his allegations against the coaches. App. at 3a, 9a. Because "students all have Facebook," Bell knew they would hear his song. R. at 9a.

And hear it they did. The day the song was posted, an IAHS student called Coach Rainey, one of the two named coaches, to inform him of the rap and its contents. R. at 53. Coach Wildmon, the second targeted coach, similarly learned of the recording from a third party. R. at 54, 59. Wildmon's wife told him about the rap after a family friend saw it on Bell's Facebook page the day after it was posted. R. at 59. Wildmon, who was at school at the time, asked three nearby seniors whether they were familiar with the recording. R. at 60. They were, and one played the song for Wildmon on his phone. R. at 60. Wildmon immediately informed the school's principal, Trae Wiygul, who reported the rap to the school-district superintendent, Teresa McNeece. R. at 47, 60.

The following day, January 7, 2011, Principal Wiygul, Superintendent McNeece, and the school-board attorney, Michele Floyd, met with Bell to discuss the rap and its allegations. R. at 48. At the meeting, Bell had the opportunity to share his concerns about the coaches. R. at 48. McNeece testified that her first priority was to investigate the assertions in Bell's song. R. at 48. When asked whether it was true, as he rapped, that the coaches were

"[f]ucking with the students," Bell responded no, that was "not what [he] meant." R. at 48. Instead, he "meant that they were messing with kids." R. at 48. In an effort to investigate further, McNeece asked Bell for the names of students who were allegedly being harassed, but Bell refused to disclose their identities. R. at 48. Bell was suspended for the remainder of the day while the school looked into the rap and the veracity of Bell's allegations. R. at 49.

Due to winter weather, the school was then closed through January 13, 2011. App. at 6a. Rather than give the school an opportunity to interrogate his claims, Bell used the time to finalize his recording, complete with commentary and a picture slideshow, and upload it to his publically accessible YouTube channel. App. at 6a. When Bell returned to school after it reopened on January 14, 2011, he was informed that he was suspended pending a disciplinary-committee hearing. App. at 6a. Superintendent McNeece advised Bell's mother that the hearing would consider whether disciplinary action was appropriate under the school's disciplinary policy, which prohibited "[h]arassment, intimidation, or threatening other students and/or teachers." R. at 25.

II. Itawamba County's Disciplinary Proceedings

A. Itawamba Agricultural High School Disciplinary Committee

The disciplinary committee met on January 26, 2011, after Bell's mother requested a continuance from the original date of January 19, 2011. App. at 169a. The purpose of the hearing was to determine whether Bell's actions violated the school policy prohibiting threatening, harassing, and/or intimidating school personnel. App. at 170a. The YouTube recording was

played for the hearing attendees, which included the school-board attorney, three disciplinary-committee members, the principal, Bell, his mother, and their attorney. App. at 169a.

During the hearing, Bell confirmed that he did not make any efforts to inform school personnel about his assertions prior to releasing the rap. App. at 171a. Instead, he made the recording because he knew people – and particularly students – were "gonna listen to it." App. at 171a. Bell argued, lyrics notwithstanding, that he did not personally intend to shoot anyone, but he conceded that his song suggested that someone else might attack Wildmon or Rainey. App. at 172a. As he stated, "I know how people are…I was just foreshadowing something that might happen." App. at 127a. Bell also noted that community members outside the school had told his mother that the lyrics were a "direct threat." App. at 172a.

The disciplinary committee concluded that the lyrics "constitute[d] harassment and intimidation" of the two named teachers, though it was "vague" whether they also qualified as threats. R. at 10. Based on these findings, the committee recommended that Bell's original suspension be upheld, and that Bell attend Itawamba County Alternative School for the remainder of the current nine-week grading period. R. at 10. Bell's enrollment in the Alternative School would in no way "prohibit him from graduating on track," and Bell could return to IAHS at the conclusion of the grading period. R. at 27.

B. Itawamba County School Board

Bell appealed the disciplinary-committee decision to the Itawamba County School Board ("the Board"). App. at 174a. At its February 7, 2011, meeting, the Board listened to Bell's recording and reviewed the lyrics, specifically the statements "going to get a pistol down your mouth" and "[m]idle fingers up, if you want to cap that nigga." App. at 175a. Based on its review of the evidence, the Board determined that Bell "did threaten, harass, and intimidate school employees," superseding the committee's earlier finding that it was "vague" whether Bell threatened the teachers. App. at 176a. The Board voted unanimously to uphold the committee's disciplinary recommendations. R. at 19.

III. Procedural History

A. The District Court Decision

Bell and his mother filed the present action on February 24, 2011, claiming that the school board, superintendent, and principal had violated Bell's rights under the First Amendment. App. at 176a. Bell moved for a preliminary injunction, seeking the reinstatement of all school privileges and the expungement of the disciplinary action from his school record. App. at 176a.

At the preliminary injunction hearing on March 10, 2011, Superintendent McNeece testified that it was foreseeable that Bell's recording would create a substantial disruption at IAHS. R. at 50. As a result, the school

decided it was necessary to restrict Bell's speech to "avoid disruption or danger." R. at 50.

Coaches Rainey and Wildmon further testified that the recording disrupted their work at IAHS. R. at 177a. Rainey stated that he incorrectly assumed the rap would "just die down." R. at 54. Instead, the recording impacted the way he spoke to students and restricted his ability to build relationships with his players. R. at 56. The song also limited his ability to work with female sprinters as the coach of the track team, and he resorted to asking male students to work with them in his place. R. at 56. Overall, the song "changed the way that [he] coach[ed]." R. at 56. Wildmon similarly testified that the song affected his ability to work with students. R. at 62. In addition, Wildmon felt threatened by the song, and he took Bell's lyrics "literally." R. at 62. After basketball games, he requested that students wait with him until he was in his vehicle. R. at 62. As he explained, "you never know in today's society, you know, what somebody means, how they mean it. And I mean, I was scared." R. at 62-63.

The district court ultimately denied the motion as moot after learning that Bell's final day of alternative school was scheduled for March 11, 2011, the day after the hearing. App. at 177a. The parties then filed cross motions for summary judgment. App. at 115a.

The district court granted summary judgment in favor of the School Board and its officials. App. at 115a. The court found that "Bell's song caused a…substantial disruption and it was reasonably foreseeable that such a

disruption would occur." App. at 214a. As a result, Bell's speech was not protected under the First Amendment, and "the school did not err in punishing Bell for publishing it to the public." App. at 214a. The Bells appealed to the Fifth Circuit. App. at 115a.

B. The Fifth Circuit Court of Appeals Decision

On appeal, a divided panel of the Fifth Circuit initially held that the disciplinary action taken by the school violated Bell's rights under the First Amendment. App. at 14a. Dissenting, Judge Barksdale argued that to "hold, as the majority does," that Bell's "threatening, harassing, and intimidating statements" were protected under the First Amendment "is beyond comprehension." App. at 167a. After a painstaking review of the substantial evidence supporting the Board's decision, she concluded that "there is no genuine dispute for whether the school board acted reasonably; it did." App. at 201a. The Court then granted en banc review. App. at 219a.

The en banc majority reversed the panel decision. App. at 2a. Now writing for the majority, Judge Barksdale emphasized that "the First Amendment does not provide students absolute rights" to freedom of expression. App. at 16a. Schools must balance students' right to free speech against the school's duty to both "'teach[] students the boundaries of socially appropriate behavior'" and "'protect those entrusted to their care." App. at 16a (quoting *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 681 (1986); *Morse v. Frederick*, 551 U.S. 393, 408 (2007)). Balancing these competing interests, and taking into account the deference owed to the school board's decision, the

majority affirmed the district court's grant of summary judgment in favor of Itawamba County. App. at 19a.

SUMMARY OF THE ARGUMENT

The First Amendment does not protect graphic threats leveled by a student against identified teachers and broadcast to the world. When Taylor Bell chose to post a publically available recording in which he threatened specific coaches with death or bodily injury no fewer than four times, he abdicated the protections the First Amendment affords him as a student. In response, the Itawamba County School Board was well within its authority to issue measured, temporary sanctions to preserve the school environment. Thus, this Court should affirm the Fifth Circuit's grant of summary judgment in favor of Itawamba County.

This Court has repeatedly confirmed that "the constitutional rights of students in public schools are not automatically coextensive with the rights of adults." *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 682 (1986). In the First Amendment setting, the Court balances students' interest in free speech against the school's interest in educating students free from danger and material disruption. This balancing has yielded several categories of student speech that schools may properly regulate. Here, two separate bases support Itawamba County's authority to restrict Bell's conduct.

First, under the foundational decision *Tinker v. Des Moines Independent Community School District*, Itawamba County had the authority

to regulate Bell's speech because school officials reasonably forecast that the rap might substantially disrupt school activities. 393 U.S. 503, 508 (1969). Bell's threats of violence and bodily harm, standing alone, created a reasonable risk of substantial disruption. Moreover, Bell's rap had already interfered with teachers' ability to instruct students, further supporting the possibility of substantial disruption.

Second, Bell's rap was not protected by the First Amendment because it promoted and celebrated gun violence. In *Morse v. Frederick*, this Court held that schools may regulate speech promoting illegal drug use. 551 U.S. 393 (2007). Because the school's authority in *Morse* sprung from its compelling interest in protecting student safety, this holding similarly supports the school's ability to restrict student speech celebrating gun violence. Further bolstering the school's interest, schools may also regulate student speech that is vulgar and offensive. *Fraser*, 478 U.S. at 683. Thus, Bell's repeated use of obscenities and graphic sexual descriptions expanded Itawamba County's interest in restricting his recording.

Though Bell recorded his rap off campus, Itawamba County was well within its authority to restrict his expression. The school maintains its regulatory interest in student speech that targets the school and will foreseeably reach the school community. Bell cannot credibly seek refuge under the umbrella of off-campus speech after he posted a rap targeting the school and its employees on a publically available website with the intent of distributing it to the student body.

Absent this narrow authority to regulate student speech, schools will be powerless to control the school environment and regulate online harassment of students and teachers alike. A student might not be permitted to savagely disparage a fellow classmate in the cafeteria, but with the click of a button he can accomplish the same result – with a far bigger megaphone. If schools are restricted from regulating student speech when posted from an off-campus location, they will be forced to tolerate threatening or harassing speech that they could plainly regulate within the school environment. The First Amendment does not require such a dangerous distinction.

ARGUMENT

I. Courts Routinely Defer to School Board Decisions.

School board decisions are accorded deference by the courts. *Wood v. Strickland*, 420 U.S. 308, 326 (1975), *overruled in part on other grounds, Harlow v. Fitzgerald*, 457 U.S. 800 (1982). The public education system "relies necessarily upon the discretion and judgment of school administrators," and the federal courts do not exist to relitigate school decisions that have a sufficient evidentiary basis. *Id. See also Shanley v. Ne. Indep. Sch. Dist., Bexar Cnty., Tex.*, 462 F.2d 974, 975 (5th Cir. 1972) (holding that "the balancing of expression and discipline is an exercise in judgment for school administrations and school boards, subject only to the constitutional requirement of reasonableness under the circumstances"). Thus, in reviewing the record this Court should evaluate whether there is sufficient evidence to support the reasonableness of Itawamba County's decision.

II. Taylor Bell's Recording Is Not Entitled to Protection Under the First Amendment Because the School's Interest in Educating Students Outweighs Bell's Right to Distribute a Recording that Was Reasonably Forecast to Disrupt the School and Promoted Gun Violence.

"Any student of history who has been reprimanded for talking about the World Series during a class discussion of the First Amendment" recognizes that students do not enjoy the same panoply of constitutional rights as adults. *See Consol. Edison Co. v. Pub. Serv. Comm'n*, 447 U.S. 530, 545 (1980) (Stevens, J., concurring and discussing time, place, and manner restrictions).

In keeping with this principle, the rights of public school students under the First Amendment "are not automatically coextensive with the rights of adults." *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 682 (1986). Instead, this Court has consistently balanced students' rights under the First Amendment against the school's interest in educating students free from material disruption or danger. In so doing, the Court has developed a series of standards to determine when a school may properly regulate student speech.

Tinker v. Des Moines Independent Community School District provides the foundational rule. 393 U.S. 503 (1969). Under *Tinker*, the First Amendment does not protect student speech where the evidence "might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities." *Id.* at 514. Subsequent to *Tinker*, this Court has recognized several additional scenarios where schools may restrict student speech. Two are relevant here: schools may regulate student speech that promotes danger to student safety, and schools need not tolerate speech that is lewd, vulgar, or plainly offensive. *Morse v. Frederick*, 551 U.S. 393, 408 (2007); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 682 (1986).

Under the standards provided by these decisions, the Itawamba County School Board properly balanced its interest in educating students against Taylor Bell's rights under the First Amendment. First, it was reasonable for the Board to forecast that Bell's lyrics would create a substantial disruption at school. Second, the Board could regulate Bell's recording because it promoted and celebrated gun violence in terms plainly offensive. These tests provide

independent bases for the school's decision to restrict Bell's speech. Taken together, they demonstrate the Board's overwhelming interest in regulating speech that threatens and harasses identified members of the school community.

A. It Was Reasonably Foreseeable that Bell's Threatening, Intimidating, and Harassing Recording Would Create a Substantial Disruption at Itawamba Agricultural High School.

Under this Court's seminal decision in *Tinker v. Des Moines Independent Community School District*, schools may regulate student speech, regardless of content, where it causes a substantial disruption or reasonably leads school authorities to predict a substantial disruption of school activities. 393 U.S. 503, 514 (1969). To evaluate a school's disciplinary action, the Court balances the students' First Amendment rights against the school's interest in educating students free from material disruption. *Id.* at 513. In striking this balance, schools may regulate student speech where administrators reasonably predict that student conduct might "for any reason…materially disrupt[] classwork or involve[] substantial disorder or invasion of the rights of others." *Id.*

In *Tinker*, the Court held that a school could not suspend students who wore black armbands to protest the Vietnam War because there was no evidence their display would interrupt school functions. *Id.* Because the students' actions were a "silent, passive, expression of opinion, unaccompanied by any disorder or disturbance," school officials had improperly interfered with the students' rights under the First Amendment. *Id.* at 508. Notably, even

though the speech concerned a critical issue of public concern, the school could have restricted the expression had it been reasonably foreseeable that the armbands would create a substantial disruption. *See id.*

Schools are not required to wait for a disruption to materialize prior to taking action. *Id.* at 514. Instead, schools need only show that the record "demonstrate[s] any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities." *Id.* Here, Taylor Bell's lyrics could reasonably have created two potential disruptions. First, in Bell's own words the lyrics "foreshadow[ed]" the possibility of violence on campus. Second, it was foreseeable that Bell's speech would materially interfere with teachers' instruction.

i. Bell created a substantial risk of disruption by threatening identified teachers with death and bodily harm.

It is reasonably foreseeable that threats of violence will create a substantial disruption when made by a student against another member of the school community. It perhaps goes without saying that school violence has the potential to irreparably disrupt campus, by both materially interfering with school functions and invading the rights of others. Given the "special characteristics" of the school setting, attending school "can expose students to threats to their physical safety that they would not otherwise face." *Morse*, 551 U.S. at 425 (Alito, J., concurring). Students and teachers alike must keep "close quarters with other students who may do them harm," with minimal control over where they spend their time during the school day. *Id.* at 424.

As a result, the "substantial disruption" test established in *Tinker* allows school officials to act "before actual violence erupts." *Id.* at 425. Schools would otherwise be forced to "wait and see" when addressing threats of violence, with potentially devastating consequences. Because they "have greater authority to intervene before speech leads to violence," schools can act on a student's description of the death or injury of a teacher– particularly where, as here, the student has specified both the future targets and the way in which they will be killed. *See id.* at 425.

Courts have consistently upheld schools' assessments that targeted threats against teachers create a substantial risk of future disruption. In *Wisniewski v. Board of Education*, the Second Circuit held that it was reasonably foreseeable that a student's online drawing depicting the shooting of his English teacher would substantially disrupt the school. 494 F.3d 34, 40 (2d Cir. 2007). Given the "potentially threatening content" of the drawing, "there [was] no doubt" that it "would foreseeably create a risk of substantial disruption within the school environment." *Id.* at 40.

Similarly, in *Boim v. Fulton County School District*, the Eleventh Circuit upheld a student's suspension after a story she penned about shooting her math teacher came into the possession of another teacher at the school. 494 F.3d 978, 985 (11th Cir. 2007). Though the student described her story as a dream, it was still reasonably likely to materially disrupt the school. *Id.* Emphasizing the "climate of increasing school violence," the court held that the school had an "undisputably compelling interest in acting quickly to prevent

violence on school property." *Id.* at 984. *See also D.J.M. ex rel. D.M. v. Hannibal Pub. Sch. Dist. No. 60*, 647 F.3d 754, 767 (8th Cir. 2011) (holding that it was reasonably foreseeable that a student's online conversation describing shooting other students would "create a risk of substantial disruption within the school environment").

Here, Bell's lyrics created a foreseeable risk of substantial disruption. In his recording, Bell suggested that the two identified coaches might be beaten or killed no fewer than four times. App. at 3a-5a. Thus, as in both *Boim* and *Wisniewski*, Bell identified particular teachers as the targets of future violence. *See Boim*, 494 F.3d at 985; *Wisniewski*, 494 F.3d at 40. While the student speech in both cases specified how the teachers would be killed, Bell went one step further by including his firearm of choice. App. at 4a.

The schools in both *Boim* and *Wisniewski* were reasonably concerned by credible descriptions of violence against the backdrop of the "special characteristics of the school environment." *See Boim*, 494 F.3d at 985; *Wisniewski*, 494 F.3d at 40. So too here. Considering the detailed and violent nature of Bell's lyrics, Itawamba County properly forecast substantial disruption.

When evaluating student speech, courts do not rely on the student's intentions, but instead consider how the speech was perceived by the broader community. Though a psychologist and a police investigator both found that the student in *Wisniewski* intended his drawing as a joke, the court held that it nevertheless created a risk of substantial disruption given that it could be

"reasonably understood as urging violent conduct." *Wisniewski*, 494 F.3d at 38. The court in *Boim* similarly chose not to credit the student's argument that her story should be taken as creative fiction. *Boim*, 494 F.3d at 985. As the court noted, "[w]e can only imagine what would have happened if the school officials did nothing...and the next day" she shot her math teacher. *Id.* at 984.

Similarly here, Bell's effort to articulate his sentiments through song in no way alters their underlying import. Though Bell argued that he did not intend to harm the coaches, his lyrics in fact say the opposite. R. at 5a. Bell told the two coaches that "[r]un up on T-Bizzle / I'm going to hit you with my rueger" and "betta watch your back / I'm a serve this nigga." App. at 5a. These are not ambiguous statements. The plain reading of each is that someone, potentially Bell, was going to beat or kill the two teachers specifically named in the song. Moreover, Coach Wildmon testified that he took the lyrics "literally." R. at 62. The song "scared" him because "you never know in today's society…what somebody means, how they mean it." R. at 62-63. As a result, he asked his basketball players to stay with him until he was safely in his car after games. R. at 62.

Indeed, Bell does not dispute this interpretation of the song. During the preliminary injunction hearing, he agreed that he "intended to communicate" both "the idea of shooting someone" and that Coach Rainey was "going to get a pistol down [his] mouth." R. at 46. Even if Bell himself did not plan to harm the coaches, he conceded that his song reflected the possibility that someone else might attack them. App. at 127a. As he stated, "I know how people are…I

was just foreshadowing something that might happen." App. at 127a. Thus, even if Bell himself was not planning to act, it was reasonable for the school to consider the possibility that someone else might be spurred to act.

Bell argues that his speech should be afforded special protection because it involves a matter of public concern. This assertion misunderstands *Tinker*. The underlying motives for Bell's rap are entirely separate from the issue of whether he threatened school employees, thereby creating a risk of substantial disruption. Moreover, *Tinker*, which involved perhaps the matter of public concern of its time, does not support separate standards based on the content of the speech involved. Schools may restrict speech that creates a risk of substantial disruption, regardless of the content. *See, e.g.*, *Pinard v. Clatskanie Sch. Dist. 6J*, 467 F.3d 755, 765 (9th Cir. 2006) (holding that the "public concern" test from the public employment context is not relevant to framework set forth in *Tinker*).

ii. It was reasonably foreseeable that Bell's intimidating and harassing lyrics would materially interfere with teachers' instruction.

A substantial disruption need not involve violence; it might instead "interfere[] with schoolwork or discipline" or "interrupt[] school activities." *Tinker*, 393 U.S. at 514. Thus, speech that materially interferes with the ability to learn, for students, or instruct, for teachers, qualifies as a substantial disruption. Here, it was reasonably foreseeable that Bell's speech would substantially interfere with the ability of two teachers to carry out the fundamental work of any school – namely, to teach.

When assessing the possibility of disruption in *Tinker*, the Court considered whether there was any indication that "the work of the schools or any class was disrupted." *Id.* at 508. The school's disciplinary actions were unjustified because there was "no evidence whatever of petitioners' interference, actual or nascent, with the schools' work." *Id.* *See also Grayned v. City of Rockford*, 408 U.S. 104, 119 (1972) (upholding an antinoise ordinance outside schools where it was restricted to conduct which would substantially disrupt "normal school activities," including studying and classroom conversation).

It is reasonably foreseeable that intimidating or harassing language directed at specific members of the school community will significantly interfere with the work of that school. In *Kowalski v. Berkeley County Schools*, the Fourth Circuit held that a school could restrict a student-created website, which served as a "platform" to harass a fellow student, under the *Tinker* substantial disruption test. 652 F.3d 565, 572 (2011). "[T]he targeted, defamatory nature" of the speech, which was directed at a specific classmate, "created 'actual or nascent' substantial disorder and disruption in the school." *Id.* at 574 (quoting *Tinker*, 393 U.S. at 508). In addition to forcing the bullied student to miss school, the behavior created "the potential for continuing and more serious harassment" of students, leading to additional disruption of school activities. *Id.*

Similarly, in *Lowery v. Euverard*, the Sixth Circuit held that a school had the authority to discipline students who circulated an online petition for

the replacement of their football coach, despite student concerns regarding the coach's abusive teaching methods. 497 F.3d 584, 585 (2007). The case rested on whether the school's "forecast of substantial disruption [was] reasonable," and not on "dueling sets of self-serving statements regarding the existence of disruption." *Id.* at 593. Because it was reasonable for the school to decide that the petition would "undermine" the Coach's authority and "sow disunity on the football team," the school could properly dismiss students from the team. *Id.* at 600. The court emphasized that "*Tinker* does not require teachers to surrender control of the classroom to students." *Id.* at 601.

Given the threatening and harassing character of Bell's lyrics, it was reasonable for Itawamba County to determine that his speech might substantially disrupt normal classroom operations. Superintendent McNeece testified that Bell's recording had "a disruptive effect" on the coaches' ability to perform their jobs, and that a substantial disruption was foreseeable based on the nature of the song. R. at 50. As in *Kowalski*, the "targeted, defamatory" nature of Bell's lyrics was likely to impact teachers' ability to carry out their typical school functions. *See Kowalski*, 652 F.3d at 574. It was also foreseeable that any initial disruption would "snowball" into more extensive disruption. *See id.* This is particularly true because Bell's lyrics were driven by allegations regarding the teachers' conduct in schools, and were thus likely to "undermine" their classroom authority. *See Lowery*, 497 F.3d at 601.

Beyond any prediction of interference, Bell's lyrics had already proven to be disruptive when the school made its disciplinary decision. Both coaches

testified that Bell's conduct had already constrained their ability to instruct students. Neither account is disputed. Rainey initially believed the impact of the rap would "die down," but it continued to hamper his ability to effectively support students. R. at 56. He further testified that Bell's recording altered the way he interacted with athletes on the track team. R. at 56. Rather than coach female students directly, he sometimes requested that male students work with them instead, thereby restricting their opportunity to work with a coach. R. at 56. Wildmon similarly testified that the lyrics were "constantly in the back of [his] mind" when working with students. R. at 61-62. As with the targeted student in *Kowalski* who had already been forced to miss school, the nascent disruption was clear. *See Kowalski*, 652 F.3d at 574.

This case is thus distinct from decisions where the court has held that a substantial disruption was not reasonably foreseeable after the school district conceded that there was no evidence of disruption. *See, e.g.*, *Layshock v. Hermitage Sch. Dist.*, 650 F.3d 205, 215 (3d Cir. 2005) (school district conceded that it was "not arguing" that student's online speech "created any substantial disruption in the school"); *J.S. ex rel. Snyder v. Blue Mountain Sch. Dist.*, 650 F.3d 915, 928 (3d Cir. 2011) (school district conceded that student's speech "did not cause a substantial disruption in the school").

Finally, *Tinker* asks not whether this Court would have forecast a disruption, but whether the school's determination is reasonable based on the evidence. *Tinker*, 393 U.S. at 514. Thus, Bell's position requires finding that no reasonable school official could have predicted that Bell's lyrics – which

threaten to kill teachers, among a host of other obscenities – would have disrupted the school environment. This simply blinks reality. The nation's public education system "relies necessarily upon the discretion and judgment of school administrations and school board members." *Wood v. Strickland*, 420 U.S. 308, 326 (1975). This Court has repeatedly recognized that "it is not the role of the federal courts to set aside decisions of school administrators" where properly supported by evidence. *Id.* Given the disruptions that had already occurred, and the reasonable foreseeability of future disruptions, Itawamba County could properly regulate Bell's speech.

B. Itawamba County School Board Could Properly Regulate Bell's Speech Because the School's Interest in Protecting Student Safety Strongly Outweighed Bell's Right to Distribute a Lewd and Plainly Offensive Recording.

Itawamba County had the authority to regulate Bell's conduct independent of its disruptive effect. This Court has established several alternative standards for regulating student expression distinct from the substantial-disruption test established in *Tinker. Morse v. Frederick*, 551 U.S. 393, 406 (2007). Two are relevant here. First, in *Bethel School District No. 403 v. Fraser*, the Court upheld the school's authority to restrict "offensively lewd and indecent speech." 478 U.S. 675, 685 (1986). Subsequently, in *Morse v. Frederick*, the Court held that schools need not tolerate speech that promotes illegal drug use because of the danger it poses to students. *Morse*, 551 U.S. at 408.

Based on this Court's decision in *Morse*, the First Amendment does not protect student expression that promotes or celebrates gun violence. While

schools have a powerful interest in preventing illegal drug use, their interest in protecting student safety is undoubtedly stronger. The school's interest is bolstered further where students use offensive language to express themselves, because schools may properly regulate lewd or vulgar communication. Taken together, these cases demonstrate that schools may regulate student speech that promotes gun violence, particularly where that speech is "plainly offensive." Here, Bell's lyrics implicate both the increased school interest in protecting student safety and the diminished student interest in using vulgar and offensive language. The First Amendment cannot extend to this expression.

i. Bell's Recording Was Not Entitled to Protection Under the First Amendment Because It Promoted Gun Violence.

This Court has previously established that a school may restrict student speech that it reasonably views as advocating illegal drug use. *Morse*, 551 U.S. at 408. In *Morse v. Frederick*, the Court held that the First Amendment does not protect student speech that schools "reasonably regard as promoting illegal drug use" because of the danger such use poses to the school community. *Id.* As a result, the Court upheld the school's discipline of a student who unfurled a 14-foot banner reading "BONG HiTS 4 JESUS" at an event he attended with his school. *Id.* at 397, 409.

The Court agreed with the school principal that the sign would be understood as advocating illegal drug use, and thus implicated the school's "important – indeed, perhaps compelling" interest in deterring drug use by students. *Id.* at 407. Noting that "the rights of students must be applied in

light of the special characteristics of the school environment," the Court reiterated that the nature of students' rights "is what is appropriate for children in school." *Id.* at 406 (quoting *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 655-56 (1995)). The "serious and palpable" danger of student drug abuse was thus sufficient to support the school's disciplinary actions. *Id.* at 408.

If schools can regulate student speech based on the dangers of illegal drug use, surely they can also regulate speech that advocates gun violence. In any First Amendment analysis, courts must consider the "special characteristics of the school setting," including "the threat to the physical safety of students." *Id.* at 424 (Alito, J., concurring). Illegal drug use presents one potential threat to student safety, but it is "not…as immediately obvious" as other sources of "actual violence." *See id.* at 425 (Alito, J., concurring). Indeed, even the dissent in *Morse*, though disagreeing with the majority's reading of "BONG HiTS 4 JESUS," confirmed that the First Amendment does not protect student speech if it "expressly advocates conduct that is illegal and harmful to students." *Id.* at 435 (Stevens, J., dissenting).

Preventing illegal drug use and gun violence are commonsense roles for schools to fill, but they have also been tasked with the job by Congress. As the Court noted in *Morse*, schools that receive federal funds under the Safe and Drug-Free Schools and Communities Act of 1994 must prepare drug-prevention programs to communicate the harms of illegal drug use. *Id.* Congress has similarly mandated the implementation of specific school policies

to avoid gun violence. Under the Gun-Free School Zones Act, schools must adopt a strict zero-tolerance position surrounding students and guns. 20 U.S.C. § 7961(b)(1) (2015). Thus, just as "Congress has declared that part of a school's job is educating students about the dangers of illegal drug use," it has adopted an analogous stance with respect to gun violence.

Several courts have already applied the reasoning from *Morse* to student expression promoting gun violence. In *Boim v. Fulton County School District*, discussed above, the court evaluated a student's written description of shooting her math teacher under both *Tinker* and *Morse*. 494 F.3d 978, 982-83 (11th Cir. 2007). The court held that the school's authority to regulate speech promoting illegal drug use further supported the school's ability to restrict student descriptions of gun violence. See *also Cuff ex rel. B.C. v. Valley Cent. Sch. Dist.*, 677 F.3d 109, 114 (2d Cir. 2012) (noting that "Courts have allowed wide leeway to school administrators disciplining students for writings…threatening violence").

Itawamba County had the authority to regulate Bell's rap because it could be "reasonably regard[ed] as promoting" gun violence – indeed, that is the only way to read it. *See Morse*, 551 U.S. at 408. Bell threatened to shoot the identified coaches no fewer than three times: (1) "Run up on T-Bizzle / I'm going to hit you with my rueger"; (2) "you fucking with the wrong one / going to get a pistol down your mouth / Boww"; and (3) "middle fingers up if you want to cap that nigga / middle fingers up / he get no mercy nigga." App. at 5a. These references could not be more explicit, particularly when paired with the

comparatively "cryptic" message of BONG HiTS 4 JESUS. *Morse*, 551 U.S. at 401. Even more than the student's description of shooting her teacher in *Boim*, here Bell practically revels in the possibility. *See Boim*, 494 F.3d at 980. If the danger of student drug use was sufficient to support the school's disciplinary actions in *Morse*, the more urgent and potentially catastrophic risk of gun violence must support Itawamba County's actions here.

The true danger of Bell's speech is its promotion of gun violence, not a specific finding that Bell planned to engage in violence himself. The Court's analysis in *Morse* did not require evidence that the student intended to engage in illegal drug use. Instead, it was sufficient that the student's language celebrated and promoted a danger that schools have been forced to confront. *See Morse*, 551 U.S. at 410. Here, too, it was sufficient that Bell's message advocated gun violence; requiring evidence that Bell himself planned to harm the coaches elides the communicative power of his expression. The First Amendment does not require schools to tolerate student speech that celebrates the very thing they are trying desperately to avoid.

ii. Itawamba County Had a Greater Interest in Regulating Bell's Recording Due to its Vulgar and Offensive Language.

Schools also have an interest in regulating speech that is "plainly offensive." *Fraser*, 478 U.S. at 682. In *Fraser*, this Court upheld the school's decision to discipline a high school senior after he delivered an "offensively lewd and indecent speech" during a school assembly. *Id.* at 677. The school could regulate the student's speech because of its "pervasive sexual innuendo" and the "elaborate, graphic, and explicit sexual metaphor" it employed. *Id.* at

678, 683. This was particularly true because the audience for the speech included students as young as 14. *Id.* at 677.

While courts may confirm that a school acts "within its permissible authority," the decision of what speech is inappropriate "properly rests with the school board." *Id.* at 683. In their effort to teach students the "fundamental values" of civility and effective discourse, schools may regulate students' "use of terms of debate highly offensive or highly threatening to others." *Id.* In this context, the school must balance students' right to free speech against "society's countervailing interest in teaching students the boundaries of socially appropriate behavior." *Id.* at 681.

Though the government may not generally prohibit adults from using offensive language, students do not enjoy the same latitude. *Id.* at 682. Moreover, the government may restrict lewd or indecent language used by adults in certain contexts, particularly those involving minors. In *F.C.C. v. Pacifica Foundation*, the Court relied on broadcasting as "uniquely accessible to children" in part to "justify special treatment of indecent broadcasting." 438 U.S. 726, 750 (1978). While still falling within the bounds of the First Amendment, shocking and offensive language was "not entitled to absolute constitutional protection under all circumstances," and instead had to be analyzed in context. *Id.* at 748-49. *See also Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 875 (1997) (noting that "[i]t is true that we have repeatedly recognized the governmental interest in protecting children from harmful materials").

Here, Itawamba County's interest in regulating Bell's speech was further bolstered by the offensive and vulgar nature of his lyrics. His song uses obscenity after obscenity to viciously disparage the named teachers, from "[t]hat pussy ass nigga Wildmon got me / turned up the fucking max" to "[t]he reason he fucking around cause his wife ain't got no titties." App. at 119a – 120a. Bell's language was both "highly offensive" and "highly threatening." *Fraser*, 478 U.S. at 683. As in *Fraser*, Bell's rap is pervaded by graphic sexual description – although Bell's tact was less innuendo and metaphor, more blatant description. *See id.* at 678.

To the extent Bell desired to raise concerns about the coaches, it was "highly appropriate" for the school to determine that his chosen "mode[] of expression [was] inappropriate and subject to sanctions." *Id.* at 683. Schools have a strong interest in teaching students both effective communication and "the boundaries of socially appropriate behavior." *Id.* at 681. As this Court has recognized time and again, students' constitutional rights are not "automatically coextensive with the rights of adults," and Bell's lyrics were outside the bounds of what the school was required to tolerate under the First Amendment. *See id.* at 682. Even were Bell not a student, posting a patently offensive recording targeting students of various ages and experiences might have posed problems of its own. *See Pacifica Found.*, 438 U.S. at 750 (Powell, J., concurring) (justifying restrictions on adult expression where children "were likely to be in the audience"). Overall, then, the lewd and vulgar nature of the lyrics further supports the school's interest in regulating Bell's speech.

III. Itawamba County Had the Authority to Regulate Bell's Online Speech Because It Targeted the School and Was Reasonably Foreseeable That It Would Reach the School Community.

Neither the text nor the reasoning of this Court's decisions restricts the school's regulatory interest to speech that takes place on school grounds. The Court's First Amendment analysis centers on the impact of student speech, not its geographic origin. And speech that is created off-campus may – and often does – have a significant effect on a school community.

When addressing off-campus speech, courts consider whether the school maintains an interest in regulating student conduct. If yes, then courts may proceed to balance that interest against a student's rights under the First Amendment. Whether a school retains an interest in regulating student speech is driven by two factors, one based on the manner of communication and one based on the content of the speech. First, in order for the school to maintain an interest, it must be reasonably foreseeable that the student's speech will reach members of the school community. Second, the content of the speech must target the school, meaning it must discuss the school and/or identified members of the school community. Where both factors are present, the school has an interest in the speech which may be weighed against the student's interest in free expression.

Here, both factors are met. Though Bell recorded his song off campus, it was reasonably foreseeable that the rap would reach the school community. In addition, the content of the speech targeted the school and specific members of

the school community. Thus, the Board maintained an interest in regulating Bell's conduct, despite its off-campus origination.

A. This Court Has Repeatedly Recognized That Schools May Regulate Student Speech Based on Effect, Not Geographic Origin.

When evaluating whether a school may regulate student speech, courts consider the impact of the speech, not where it took place. Thus, schools may not restrict unpopular speech simply because it was spoken on school grounds. *See Tinker*, 393 U.S. at 509. Under the Court's effects-based jurisprudence, though, schools can regulate speech that originates off campus provided the speech fulfills the standards set forth in *Tinker*, *Morse*, or *Fraser*.

The principle underlying the Court's analysis in *Tinker* is not where student speech happened to take place, but rather whether it materially impacted the school. The decision starts from the premise that though student speech is protected by the First Amendment, it may be restricted where it substantially disrupts the school. *Id.* at 513. Thus, a school may regulate student speech "in class or out of it, which for any reason – whether it stems from time, place, or type of behavior" substantially disrupts the work of the school. *Id.* Students may not immunize the impact of their conduct by simply stepping outside the school's geographic perimeter.

The Court highlights components of the school campus, such as the cafeteria and playing field, to affirm that students retain their First Amendment rights in those locations subject to the school's "reasonable regulation…in carefully restricted circumstances." *Id.* at 513. The Court defines those "restricted circumstances" to embrace any context where student

conduct substantially disrupts school activities. *Id.* at 514. Thus, off campus – to the extent that off campus is a meaningful distinction in the age of the internet – students similarly retain their First Amendment rights subject to the substantial disruption analysis.

The Court's decision in *Morse* underscores that the school's authority extends beyond the schoolhouse gate. To begin, the student's conduct in *Morse* took place off campus. *Morse*, 551 U.S. at 400. Though the student was at a school-approved event when he unveiled his "BONG HiTS FOR JESUS" banner, the event did not have a school function; rather, students were given the option to observe the Olympic Torch Relay as it proceeded in front of their high school. *Id.* at 397. The Court held that the student's speech was not protected by the First Amendment even where the banner was unveiled outside the school's geographic perimeter. *Id.* at 400. The Court further recognized that the boundaries "as to when courts should apply school speech precedents" are not necessarily coextensive with the boundaries of the school. *Id.* at 401.

More critically, though, the Court's analysis again centered on the impact of the speech, rather than where it happened to take place. *Id.* at 402. The school's authority was based on the banner's potential effect of promoting illegal drug use. *Id.* Thus, the student's conduct fell outside the protection of the First Amendment because of the impact the speech would have on students, even where the banner was displayed off campus. *See id.*

In *Fraser*, the Court similarly focused on the impact of offensive language on the student body. 478 U.S. at 683. In holding that the school could properly regulate a student's assembly speech, the Court emphasized that the speech was "insulting to teenage girls" and might have been "seriously damaging to [the school's] less mature audience." *Id.* Students were further described as "bewildered and embarrassed" by the language. *Id.* at 678. Again, then, the school's authority derived not from the speech's delivery on campus, but from the impact it had on students in the school. Though the Court noted in a subsequent decision that the student's speech would have been protected "in a public forum *outside the school context*," it did not define the scope of the school context. *Morse*, 551 U.S. at 405 (emphasis added). Moreover, "speech originating outside of the schoolhouse gate but directed at persons in school" may qualify as on-campus speech such that "its regulation would be permissible…under *Fraser*." *Kowalski*, 652 F.3d 565, 573 (4th Cir. 2011).

Taken together, this Court's precedents are built on the impact of student speech, not the location where it originated. Of course, this does not mean that any student expression, regardless of location, falls into the school's ambit. Rather, schools have an interest in regulating student speech only where it might impact the school. To delineate when a school may properly claim an interest in student speech, courts consider (1) whether it is reasonably foreseeable that the speech will reach the school community, and (2) whether the speech specifically targets the school or identified members of the school community.

B. It Was Reasonably Foreseeable That Bell's Rap Would Reach the School Community Because Bell Posted His Recording on a Publically Accessible Website and Intended it to Reach the Student Body.

Convenient though it may be, "territoriality is not necessarily a useful concept in determining the limit" of school authority. *Thomas v. Bd. of Ed., Granville Cent. Sch. Dist.*, 607 F.2d 1043, 1058 n.13 (2d Cir. 1979) (Newman, J., concurring). After the advent of the internet, the school perimeter no longer encompasses the universe of situations where speech might reach, and thus impact, the school. Looking solely to where speech originated "would fail to accommodate the somewhat 'everywhere at once' nature of the internet." *J.S. ex rel. Snyder v. Blue Mountain Sch. Dist.*, 650 F.3d 915, 940 (3d Cir. 2011) (Smith, J., concurring). A video may have been created off campus, but when it can be seen by anyone, anytime, and anywhere – including in school – it is no longer truly off-campus speech. As a result, geography no longer operates as an accurate proxy for assessing the potential impact of student communication.

Instead, schools maintain an interest in student speech where it is reasonably foreseeable that the speech will reach the school community. To assess foreseeability, courts consider two primary factors: (1) the method of communication and (2) the student's intent.

i. It was reasonably foreseeable that Bell's recording would reach the IAHS community where it was posted on two publically accessible websites.

The method of communication is critical to determining whether it is reasonably foreseeable that student speech will reach the school community. In *Tinker*, the Court recognized that "personal intercommunication among the students" is both "an inevitable part of the process of attending school" and "an important part of the educational process." *Tinker*, 393 U.S. at 739-40. Which intercommunications are likely to reach the school community, though, has shifted over time. When *Tinker* was decided, only student communication that took place at school was likely to substantially impact the school. In *Morse*, it was foreseeable that the student's message would reach the school community because he held up a giant banner facing his school while surrounded by classmates. *Morse*, 551 U.S. at 401. Now, however, there might be minimal distinction between a student making an impromptu speech in the cafeteria and sharing his thoughts on Facebook. In fact, the student's post on Facebook may reach more students than the cafeteria oratory.

Where student speech is publically available on the internet, it is reasonably foreseeable that it will reach the school community. It is available for anyone to view at any time. Indeed, the question of where online speech occurs is more "metaphysical" than practical. *Kowalski v. Berkeley Cty. Sch.*, 652 F.3d 565, 573 (4th Cir. 2011). Courts have repeatedly recognized that internet speech does not occur on-campus or off-campus as much as it occurs everywhere. Thus, in *Kowalski*, the Fourth Circuit held that a school could

discipline a student for a website she created at home. *Id.* Though the student may have "pushed her computer's keys in her home," the "electronic response…was, published beyond her home and could reasonably be expected to reach the school or impact the school environment." *Id. See also Doninger v. Niehoff*, 527 F.3d 41, 49 (2d Cir. 2008) (emphasizing that "students…off campus routinely participate in school affairs…via blog postings, instant messaging, and other forms of electronic communication").

Here, Bell's recording was posted not once, but twice, on publically accessible platforms available for anyone to view. News travels fast on the internet, and the video quickly spread through the community – from the family friend who notified Wildmon to the football player who contacted Rainey and the basketball players who were already familiar with the video in school the following day. There was no way to cabin the spread of information. Because Bell made the video available to everyone, it was reasonably foreseeable that it would reach the school community.

Though Bell recorded his rap off campus, the question of where the song was created is not a useful metric for assessing the school's interest. Indeed, both the armband in *Tinker* and the banner in *Morse* were created off campus. They impinged on the school's interest only when they were communicated to other students, either by being worn to school or displayed at a school-sponsored event. Bell had every right to record his rap off-campus. But he did not have the right to post it on the internet for anyone and everyone to hear.

ii. It was reasonably foreseeable that Bell's recording would reach the school community because he intended to communicate it to his fellow students.

It is reasonably foreseeable that speech will reach the school community where the student speaker intends for it to do so. In *Morse*, for example, the student chose to unveil his 14-foot "BONG HiTS 4 JESUS" banner while surrounded by students. *Morse*, 551 U.S. at 397. He specifically "directed his banner toward the school, making it plainly visible to most students." *Id.* at 401. Though he may also have been angling for a spot on national television, by unveiling the banner while facing the school he intended that it be visible to students as well. *Id.* Similarly, in *Doninger v. Niehoff*, the Second Circuit held that it was reasonably foreseeable that a student's online posting would reach the school community where the student's intent was "to encourage her fellow students" to respond. 527 F.3d 41, 45 (2d Cir. 2008). Though created off-campus, it was "purposely designed…to come onto the campus." *Id.* at 50. *Id. Compare with J.S. ex rel. Snyder v. Blue Mountain Sch. Dist.*, 650 F.3d 915, 921 (3d Cir. 2011) (holding that school could not regulate off-campus speech where student made online profile disparaging principal "private" in order to restrict access to the webpage).

Here, Bell posted the recording online specifically so that other students would hear it. One of Bell's goals was to disseminate information about the coaches' alleged misconduct to the student body. App. at 28a. Bell admitted he posted the recording on Facebook and YouTube so that fellow students, who "all have Facebook," would listen to it. App. at 28a. As in *Doninger*, Bell's

speech was thus "purposely designed" to reach the student body. *See Doninger*, 527 F.3d at 45. While Bell may have had a secondary purpose in pursuing his rap career, as in *Morse* the school community was the primary receptacle for his recording. *See Morse*, 551 U.S. at 401; App. at 100a. Thus, where Bell posted his recording on two publically accessible sites with the intent of distributing the rap to the student body, it was reasonably foreseeable that the recording would in fact makes it way to the school community.

C. Itawamba County Had an Interest in Regulating Bell's Online Speech Because He Specifically Targeted the School by Identifying Members of the School Community in his Recording.

Schools have an interest in regulating off-campus student speech where the speech targets the school or otherwise identifies members of the school community. On-campus speech has an inherent connection with the school by virtue of its presence within the school building. In *Tinker*, for example, the students' black armbands "caused discussion outside of the classrooms," even though the content of the expression was itself unrelated to the school. 393 U.S. at 514. Because of their presence in the school environment, the school could properly consider whether the armbands, though purely political, would create a substantial disruption. *Id.*

Where the speech's message instead targets the school community, that same connection can be formed by off-campus speech. Thus, in *Kowalski*, discussed previously, the Fourth Circuit considered whether a student's off-campus speech had formed a "nexus" with the school's interests sufficient to support the school's disciplinary action. *Kowalski*, 652 F.3d at 573. There the

court held that the connection was sufficiently strong because the website at issue "functioned as a platform" for students "to direct verbal attacks" toward specific targeted classmates. *Id.; see also S.J.W. ex rel. Wilson v. Lee's Summit R-7 Sch. Dist.*, 696 F.3d 771, 778 (8th Cir. 2012) (holding that *Tinker* applied to a student's blog, which disparaged fellow students with racist and sexist comments, because it was "targeted at" the school).

Here, Bell's recording identified not just his school, but two members of the teaching staff as well. Indeed, the entire focus of the song was IAHS. The "targeted, defamatory nature" of Bell's rap, "aimed at" several teachers, fully implicated the school's interest in maintaining its educational environment. *See Kowalski*, 652 F.3d at 573. Regardless of where speech was originally created, the school must have an interest in student expression that targets the school and is broadcast to the entire school community. The outer boundaries of the school's authority may be unclear, but this certainly is not.

Bell argues that this standard gives schools broad authority to restrict off-campus speech that is unrelated to the school. Not so. Because schools are limited to speech that specifically targets the school, they have the authority to regulate student speech in only a narrow band of circumstances. As the Fifth Circuit noted below, "nothing in the majority opinion" gives schools free range to regulate "a broad swatch of off-campus student expression." App. at 42a.

CONCLUSION

Taylor Bell's rap was not protected by the First Amendment because it created a substantial risk of disrupting Itawamba Agricultural High School and promoted gun violence in plainly offensive language. Though created off-campus, it was reasonably foreseeable that the recording would reach the school, particularly since the student body was Bell's intended audience. In this narrow set of circumstances, the school's interest in preserving the educational environment must outweigh the student's right to free expression. For the foregoing reasons, we respectfully request that this Court affirm the judgment of the U.S. Court of Appeals for the Fifth Circuit and uphold the school's reasoned disciplinary action.

Dated: February 8, 2017

Respectfully Submitted,

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JORDAN FRASER BOCK

Counsel for Respondent

APPENDIX 1

Let me tell you a little story about these Itawamba coaches / dirty ass niggas like some fucking coacha roaches / started fucking with the white and know they fucking with the blacks / that pussy ass nigga W[.] got me turned up the fucking max /

Fucking with the students and he just had a baby / ever since I met that cracker I knew that he was crazy / always talking shit cause he know I'm from daw-city / the reason he fucking around cause his wife ain't got no tidies/

This niggha telling students that they sexy, betta watch your back / I'm a serve this nigga, like I serve the junkies with some crack / Quit the damn basketball team / the coach a pervert / can't stand the truth so to you these lyrics going to hurt

What the hell was they thinking when they hired Mr. R[.] / dreadlock Bobby Hill the second / He the same see / Talking about you could have went pro to the NFL / Now you just another pervert coach, fat as hell / Talking about you gangsta / drive your mama's PT Cruiser / Run up on T-Bizzle / I'm going to hit you with my rueger

Think you got some game / cuz you fucking with some juveniles / you know this shit the truth so don't you try to hide it now / Rubbing on the black girls ears in the

gym / white hoes, change your voice when you talk to them / I'm a dope runner, spot a junkie a mile away / came to football practice high / remember that day / I do / to me you a fool /30 years old fucking with students at the school

Hahahah / You's a lame / and it's a dam shame / instead you was lame / eat shit, the whole school got a ring mutherfucker

Heard you textin number 25 / you want to get it on / white dude, guess you got a thing for them yellow bones / looking down girls shirts

/ drool running down your mouth / you fucking with the wrong one / going to get a pistol down your mouth / Boww

OMG / Took some girls in the locker room in PE / Cut off the lights / you motherfucking freak / Fucking with the youngins / because your pimpin game weak / How he get the head

coach / I don't really fucking know / But I still got a lot of love for my nigga Joe / And my nigga Makaveli / and my nigga codie / W[.] talk shit bitch don't even know me

Middle fingers up if you hate that nigga / Middle fingers up if you can't stand that nigga
/ middle fingers up if you want to cap that nigga / middle fingers up / he get no mercy nigga

HONOR CODE STATEMENT

I certify that I have complied with all ethical rules for this competition in the preparation of this document.

Date: February 8, 2017 Signed