

No. _____

In the Supreme Court of the United States

JOHN DARIANO; DIANNA DARIANO, on behalf of their
minor child, M.D.; KURT FAGERSTROM; JULIE ANN
FAGERSTROM, on behalf of their minor child, D.M.;
KENDALL JONES; JOY JONES, on behalf of their minor
child, D.G.,

Petitioners,

v.

MORGAN HILL UNIFIED SCHOOL DISTRICT; NICK
BODEN, in his official capacity as Principal, Live Oak High
School; MIGUEL RODRIGUEZ, in his individual and official
capacity as Assistant Principal, Live Oak High School,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

On May 5, 2010, students at a California public high school were directed to remove their American flag shirts because school officials thought that other students who were celebrating Cinco de Mayo might react negatively to the pro-America message.

As Ninth Circuit Judge O’Scannlain observed in his dissent from the denial of rehearing en banc:

[I]t is a foundational tenet of First Amendment law that the government cannot silence a speaker because of how an audience might react to the speech. It is this bedrock principle—known as the heckler’s veto doctrine—that the panel overlooks, condoning the suppression of free speech by some students because *other students* might have reacted violently.

In doing so, the panel creates a split with the Seventh and Eleventh Circuits and permits the will of the mob to rule our schools.

App. 5 (dissent).

The question presented is whether the Ninth Circuit erred by allowing school officials to prevent students from engaging in a silent, passive expression of opinion by wearing American flag shirts because other students might react negatively to the pro-America message, thereby incorporating a heckler’s veto into the free speech rights of students contrary to *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), and the decisions of other United States courts of appeals.

PARTIES TO THE PROCEEDING

The Petitioners are John Dariano and Dianna Dariano, on behalf of their minor child, M.D.; Kurt Fagerstrom and Julie Ann Fagerstrom, on behalf of their minor child, D.M.; and Kendall Jones and Joy Jones, on behalf of their minor child, D.G. (the students at Live Oak High School, who were minors at the time, are collectively referred to as “Petitioners”).

The Respondents are Morgan Hill Unified School District; Nick Boden, in his official capacity as Principal, Live Oak High School; and Miguel Rodriguez, in his individual and official capacity as Assistant Principal, Live Oak High School (collectively referred to as “Respondents”).

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