

IN THE
Supreme Court of the State of Grace

Kit Politte and Cory Towles,
Petitioners,

v.

Horton Hopkins School District and Keena Smalls,
Respondent.

On Writ of Certiorari to the
Court of Appeals of the State of Grace

BRIEF FOR THE RESPONDENT

March 2, 2009

Team No. 2
Counsel for Respondent

QUESTIONS PRESENTED

- I. May school officials, under the First Amendment, permissibly regulate student internet speech created off-campus in order to maintain discipline on school grounds, control school-sponsored speech, or prevent student drug abuse?
- II. Did school officials reasonably conduct a strip search of a student for illegal drugs under the Fourth Amendment where the search was based on an anonymous, corroborated tip and it was conducted by a member of the same sex, in a private place, and the student was not touched?
- III. Does the doctrine of qualified immunity apply where the law regarding strip searches of students suspected of possessing illegal drugs was not clearly established?

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CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides in pertinent part that:

Congress shall make no law ... abridging the freedom of speech.

U.S. Const. amend. I.

The Fourth Amendment to the United States Constitution provides in pertinent part that:

The right of the people to be secure in their persons ... against unreasonable searches and seizure.

U.S. Const. amend. IV

The Fourteenth Amendment to the United States Constitution provides in pertinent part that:

No State shall ... deprive any person of life, liberty, or property, without due process of law.

U.S. Const. amend. XIV, §1.

STATEMENT OF THE CASE

Horton Hopkins High School (“Hopkins”) is a public school located in Hopkinsville within the State of Grace. (R. 1). Keena Smalls, principal of Hopkins for the past 20 years, has witnessed an increase in drug use at Hopkins over the past 5 years. (R. 1). In response, the school district enacted the Drug and Alcohol Use Policy (“Drug Policy”) in January 2007. (R. 1). Under the Drug Policy, school officials may “conduct personal searches of students, as well as searches of lockers, desks, other school property, and book bags and other personal containers.” (Appendix A, R. 15). When school officials perform searches of a student’s person, the search must be performed by a “faculty member of the same gender.” (Appendix A, R.15). The Drug Policy allows these intrusions in recognition of the significant threat that illegal drug use poses to school communities and society in general. (See Appendix A).

Under the Drug Policy, Principal Smalls suspended twenty-five students for illegal drugs use on school grounds. (R. 1). Tragically, Kelly Smith, a Hopkins student and captain of the volleyball team, died of a cocaine overdose at a party. (R. 1). Regrettably, neither her death nor the Drug Policy has deterred student drug use at Hopkins. In the first two months of the 2008 fall semester, Principal Smalls caught fifteen students smoking marijuana on campus. (R. 1).

To combat the increasing drug usage, Hopkins senior Kit Politte founded a school-sponsored club named Drug Use Damages Schools (“DUDS”) that met after school hours. (R. 2). Its 130 members posted flyers throughout the school that promoted a drug-free lifestyle and organized multiple assemblies to discuss the perils of drug use. (R. 2). Upon the advice of an assembly speaker, Politte created a website from home entitled Fighting All Dealers (“FAD”). (R. 2). The website sought tips from community members and only posted the “strongest” ones. (R. 2). After Politte promoted FAD at a DUDS meeting, all 130 members joined. (R. 2).

In October 2008, Jeff Tweegs, the captain of the baseball team, hosted a party at his home that Cory Towles attended. (R. 2). Tweegs had a history of smoking marijuana on school grounds. (R. 2). Towles was a junior varsity baseball player and honors student who had just transferred to Hopkins. (R. 2). Though rumors circulated around Hopkins that marijuana would be at the party, Towles attended anyways, hoping that meeting the baseball players would improve his chances of making the team. (R. 2). Towles spent most of his time outside Tweegs’s house tossing a football with other students. (R. 3). Towles said he saw a few students drinking beer and smoking cigarettes, but claimed he saw no illegal drug use. (R. 3).

The next day, Politte received an e-mail with a photograph showing Towles sitting with Hopkins students Frank Conrad and John Thomson outside Tweegs’s house during the party. (R. 3). The photograph, taken before police broke up the party, showed Conrad smoking. (R. 3).

Additionally, police later found Conrad “holding a marijuana joint” and cited him for marijuana possession. (R. 3). Politte posted the photograph as a tip on the FAD website and captioned it: “Police find drug use at local high school party. Are Horton Hopkins students becoming drug dealers?” (R. 3). Politte did not identify the students in the photograph by name, but, Towles’s “face was clearly visible in the photograph.” (R. 3).

The photograph posted on the FAD website prompted concern amongst parents. The day after the posting, several parents called Principal Smalls to express their concern about student drug use. (R. 3). The Hopkinsville police also “alert[ed] her about the students they cited at Tweegs’s party.” (R. 3). Principal Smalls then viewed the FAD website and photograph and individually called Towles, Conrad, Thomson, and Tweegs into her office to question them. (R. 3). Although the four students denied possessing drugs, Principal Smalls’s search of the students’ lockers and book bags recovered “a small baggy of marijuana in Conrad’s locker.” (R. 3). Principal Smalls then requested that each student consent to a “search of their persons individually and in private.” (R. 3). Mr. Jim Waters, Hopkins’s gym teacher, conducted a search of each student in a private room pursuant to the Drug Policy, even though the four students did not give their consent. (R. 3). Waters had each boy take off only their outer clothing, then searched all clothing pockets, recovering “a small amount of marijuana in Thomson’s jeans pocket.” (R. 3). Waters never touched any of the students. (R. 3).

In response to FAD and the search, Towles created Students Against Defamatory Statements (“SADS”) from his home computer. (R. 3). On the website, Towles wrote:

By taking unauthorized photographs of me during a Friday night out with my friends, and then posting inaccurate captions, DUDS, a school organization under the guise of its website FAD, committed a gross invasion of my privacy and defamed me in front of my friends and peers. What we do on our own time for fun is our business. Horton Hopkins school officials committed a far worse injustice when they subjected my friends and me not only to an unreasonable

search of our lockers, but also to strip searches. We need to fight this injustice. I call for all Horton Hopkins students to let our school administrators know that we will not tolerate this kind of treatment. Let's speak out against Smalls and the rest of these Hopkins idiots.

(R. 3-4). Upon hearing about Towles's website, Hopkins students accessed both Towles's and Politte's websites at school during and after school hours. (R. 4).

Principal Smalls then found out about Towles's website from the students' viewing of both FAD and SADS. (R. 4). Concerned with "keeping discipline and order at school," she asked Politte and Towles to shut down their websites. (R. 4). Upon their refusal, Politte and Towles were given the choice between taking down their websites or school suspension. (R. 4). Principal Smalls was "angry about Towles' [sic] criticism of the school's actions," but acted to prevent "what she saw as a potential for student protest." (R. 4).

The Badger County District Court granted Respondents' motion for summary judgment because Respondents' demand that Petitioners shut down the websites did not violate Petitioners' First Amendment rights, and Respondents' search of Towles was not unreasonable under the Fourth Amendment. (R. 8). On the First Amendment claim, the court applied the Tinker standard and found that Towles's call to action allowed Principal Smalls to reasonably forecast a future substantial disruption. (R. 6). On the Fourth Amendment claim, the court found that the search was justified at its inception because the school had evidence that Towles possibly possessed drugs, and the scope of the search was permissible given the strong government interest and the absence of excessively intrusive methods. (R. 7).

The State of Grace Court of Appeals subsequently affirmed the District Court's judgment. (R. 12). On the First Amendment claim, the court agreed with the District Court's findings. (R. 10). However, on the Fourth Amendment claim, the Circuit Court found the search

of Towles to be unreasonable, but found that school officials were entitled to qualified immunity. (R. 11-12).

SUMMARY OF THE ARGUMENT

First, the Court of Appeals properly affirmed the District Court's grant of summary judgment for Respondents because Respondents' actions did not infringe Petitioners' First Amendment rights. Respondents agree with the Circuit Court that Petitioners' off-campus internet speech reached campus and created a risk of substantial disruption, thus not qualifying for First Amendment protection. The websites entered campus because FAD was endorsed on campus and school officials became aware of SADS when students began accessing both websites at school during school hours. In a school environment already tense from student drug abuse, students were further excited by Politte's provocative tip and caption and Towles's corresponding denunciation of Hopkins and call to action. Principal Smalls reasonably forecast that a substantial disruption would ensue if the speech continued. Additionally, FAD was so closely associated with DUDS and school activity that the public could reasonably believe the website was school-sponsored, giving the school editorial power over FAD. SADS, in controverting school attempts to prevent illegal drug use on campus, reasonably led school officials to believe that it promoted drug use, allowing school officials to demand its closure.

Second, the Court of Appeals erred in finding that Towles's Fourth Amendment rights were violated because the search of his person was reasonable. A search is reasonable and in accord with the Fourth Amendment when it is justified at its inception and reasonable in scope. The anonymous student tip, photograph of Towles partying, police verification of drugs at the party, Towles's choice to attend the rumored drug party, Towles's association with known drug users, and the rampant drug problem at Hopkins collectively provided reasonable grounds to find that the search was justified at its inception. The search was reasonable in scope because drugs

present a special danger on school campuses and can easily be concealed on one's person. Here, a male teacher appropriately conducted the search of Towles's person in an enclosed room.

Third, even if this Court finds the search violated Towles's Fourth Amendment rights; the Court of Appeal's application of qualified immunity should be affirmed. Under the current jurisprudence, reasonable school officials would not have known they were violating Towles's rights in the circumstances present here. Neither the Supreme Court nor Circuit Courts have offered sufficient guidance to put Hopkins school officials on notice that could be violating Towles's rights. Furthermore, holding Hopkins school officials liable here would serve as a deterrent from performing their duties in good faith, which is the evil qualified immunity is intended to prevent.

ARGUMENT

I. UNDER THE FIRST AMENDMENT, SCHOOL OFFICIALS MAY PERMISSIBLY REGULATE STUDENT INTERNET SPEECH CREATED OFF-CAMPUS IN ORDER TO MAINTAIN DISCIPLINE ON SCHOOL GROUNDS, CONTROL SCHOOL-SPONSORED SPEECH, OR PREVENT STUDENT DRUG ABUSE.

In the context of the school environment, a delicate balance between First Amendment rights and the authority of school officials must be carefully maintained. Courts have consistently held that “[neither] students [nor] teachers 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). However, First Amendment rights of students in public schools “are not automatically coextensive with the rights of adults in other settings.” Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 682 (1986).

The current First Amendment standard governing student speech is, “[s]tudent expression may not be suppressed unless school officials reasonably conclude that it will ‘materially and substantially disrupt the work and discipline of the school.’” Morse v. Frederick, 127 S. Ct.

2618, 2626 (2007) (quoting Tinker, 393 U.S. at 513). Additionally, the Supreme Court has created limited exceptions to First Amendment freedom concerning students where speech encourages illegal drug use or is considered school-sponsored expressive activity. See Morse, 127 S. Ct. at 262; Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 273 (1988).

- A. Principal Smalls had the authority to shut down the Politte’s and Towles’s websites under the Tinker standard because they created a foreseeable risk of substantial disruption to school work and discipline.

The Badger County District Court and the State of Grace Court of Appeals properly applied the Tinker standard and held that Respondent, under the First Amendment, permissibly regulated Petitioners’ websites in order to prevent disruption during school hours. The Tinker standard for student speech is well established. However, Tinker does not directly address off-campus student speech. Here, the lower court explicitly adopted the standard of other courts, stating “this is a clear example of off-campus expression reaching campus.” (R. 10). This case presents an opportunity for this Court to clearly delineate the required nexus between off-campus internet speech and school authority. A grant of a motion for summary judgment is reviewed *de novo*. See e.g., Pluet v. Frazier, 355 F.3d 381, 383 (5th Cir. 2004).

1. It was foreseeable that the off-campus speech would reach school because the websites pertained to school matters, called for action, and had an extensive distribution.

School officials have the authority to regulate what students post online from home if the student websites could reasonably reach school property. Thomas v. Bd. of Educ., Granville Cent. Sch. Dist., 607 F.2d 1043, 1050 (2d Cir. 1979). Politte advertised her website at a school-sponsored club meeting and Towles called for students to respond to the school administration. (R. 3-4). Additionally, the websites were accessed at school and came to the attention of school

officials. (R. 4). Therefore, they reached school property. Therefore, school officials had the authority to regulate the student websites.

Current jurisprudence distinguishes between speech occurring inside and outside the schoolhouse gate. See Tinker, 393 U.S. at 506; Thomas, 607 F.2d at 1050. However, the advent of the internet has blurred the boundaries of school authority. The Second Circuit has put forward a reasonably foreseeable standard regarding when speech may be considered to be on campus. Doninger v. Niehoff, 527 F.3d 41, 50 (2d Cir. 2008). There, Petitioner posted a message on her blog protesting a school decision and encouraging readers to contact the administration. Id. The court found that the blog reached school because “it was reasonably foreseeable that other...students would view the blog and that school administrators would become aware of it.” Id., (quoting Doninger v. Niehoff, 514 F. Supp.2d 199, 217 (D. Conn. 2007)).

Other courts have followed a similar standard. In Donovan v. Ritchie, Petitioners created a list crudely demeaning other students, and then made copies of the list available for delivery to the school. 68 F.3d 14, 16 (1st Cir. 1995). The First Circuit was satisfied that Petitioners’ “off-premises conduct led to the distribution of the list on school premises” and allowed the school to suspend the Petitioners. Id. at 19. In Pennsylvania, when a student created a website from his home computer on his own time that contained derogatory comments about teachers, officials had authority to act when they learned of the website through an anonymous e-mail. J.S. v. Bethlehem Area Sch. Dist., 757 A.2d 412, 415 (Pa. Commw. Ct. 2000).

A case on point is Wisniewski v. Bd. of Educ. of Weedsport Cent. Sch. Dist., 494 F.3d 34 (2d Cir. 2007). There, an eighth-grade student shared an icon over the internet depicting the killing of a teacher. Id. at 36. Petitioner shared the icon with fifteen individuals, one of whom

shared the icon with the depicted teacher, who forwarded it to school principals. Id. The court found a “reasonably foreseeable risk that the icon would come to the attention of school authorities” because of the icon’s potentially threatening content, its extensive distribution, and its three-week circulation period. Id. at 39-40.

Here, Politte and Towles’s conduct made it reasonably foreseeable that their websites would reach school. As in Doninger, Towles posting complained about an incident that occurred at school. (R. 4). Towles similarly called for action against school administrators saying “Let’s speak out against Smalls and the rest of these Hopkins idiots.” (R. 4). Not only was it reasonably foreseeable that students would view the site and officials would become aware of it, these events actually occurred. Concerned parents brought Principal Smalls’s attention to Politte’s website, evincing that Politte’s website had more exposure than the ones in J.S. or Wisniewski, where an anonymous e-mail or a privileged student brought the website to the attention of school officials, respectively. Similar to Wisniewski, Towles’s website threatened action against school officials. Further, distribution of the websites here was widespread enough to garner student and school attention. Accordingly, the student websites did reach campus and fell under the authority of school officials.

In some circumstances, the school has no authority over student speech because the speech was found to be off school grounds. When students labored to ensure their lewd magazine was distributed outside school grounds, the Second Circuit found that the school had no authority to punish the students involved. Thomas, 607 F.2d at 1050. The publication was conceived, executed and distributed outside the school, no copies were sold on school grounds, and publication-related activity at school was minimal. Id. While Thomas serves to affirm that First Amendment protections are upheld, it is readily distinguishable from the present facts.

Neither Petitioner actively sought to prevent their websites from entering school grounds. On the contrary, Politte’s website was addressed to individuals in the school community and Towles called for a response from students. (R. 2, 4). Since Thomas does not apply, the Doninger standard holds, and school officials have authority over Petitioners’ websites.

2. The judicial inquiry regarding whether off-campus speech would reach school may not be necessary.

Some cases do not inquire whether internet speech reached campus, but immediately analyze whether the student websites created a substantial disruption at school. If a substantial disruption was created at school, logically, the speech reached school. This streamlined reasoning subsumes the location of speech inquiry in the substantial disruption analysis.

A recent West District Court of Pennsylvania opinion identified four categorical sources of school authority: timing, function, context, and interference with school operations. Layshock v. Hermitage Sch. Dist., 496 F. Supp. 2d 587, 599 (W.D. Pa. 2007). “Timing” gives schools authority during school hours. Id. “Function” gives schools authority over students in the school’s charge at the time of the incident. Id. Both the “context” and “interference” categories were discerned from Tinker. Id. “Context” gives authority to schools for on-campus activities beyond school hours. Id. The “interference” category ignores the location of the speech and engages in the substantial disruption inquiry of Tinker. Id. Unfortunately, the court did not elucidate which category was applicable, but implicitly made its decision using the interference category. Id. at 600. Other cases have similarly ignored the internet speech inquiry and made decisions based off the Tinker standard alone. See Emmett v. Kent Sch. Dist., 92 F. Supp. 2d 1088, 1090 (W.D. Wash. 2000) (finding there was no evidence that mock obituaries on student’s website caused disruption at school); Beussink v. Woodland R-IV Sch. Dist., 30 F. Supp. 2d 1175, 1180 (E.D. Mo. 1998) (finding principal’s upset reaction upon viewing student website

that was highly critical of the school administration was an insufficient basis for restricting student speech).

Courts have considered the question of whether the “reasonably foreseeable” standard is necessary when a substantial disruption was found. The Second Circuit examined, but did not decide “whether the undisputed fact that [off-campus internet speech] did reach the school pretermits any inquiry as to this aspect of reasonable foreseeability.” Wisniewski, 494 F.3d at 39. Instead, the court agreed that the school had authority to act even under the reasonable foreseeability standard. Id.

Under the interference category, the Court’s analysis would immediately shift to the Tinker analysis. Respondent makes no statement regarding which analysis is preferable, but submits that under either analysis, Petitioners’ conduct proceeds to Tinker analysis.

3. In the context of a drug-beset school environment where Petitioners’ websites provoked the student population by calling for action, Principal Smalls justifiably foresaw a risk of substantial disruption.

The First Amendment protects on-campus student speech, unless the speech could reasonably interfere with school activities. Tinker, 393 U.S. at 513. There, a school’s interest in maintaining discipline intervenes, and school officials have authority to regulate student speech. In a drug-beset Hopkins High, Politte’s website posted provocative tips and Towles’s website brazenly called for students to speak out against the school. Under these circumstances, the websites could reasonably have distracted students from their education. Accordingly, Principal Smalls had authority to shut down Petitioners’ websites to maintain school discipline.

The well-established Tinker standards states, “[s]tudent expression may not be suppressed unless school officials reasonably conclude that it will ‘materially and substantially disrupt the work and discipline of the school.’” Morse, 127 S. Ct. at 2626 (quoting Tinker, 393

U.S. at 513). Specifically, school officials need only “forecast substantial disruption of or material interference with school activities” to regulate student speech. Tinker, 393 U.S. at 514. The Ninth Circuit explained, “Tinker does not require certainty that disruption will occur, “but rather the existence of facts which might reasonably lead school officials to forecast substantial disruption.” LaVine v. Blaine Sch. Dist., 257 F.3d 981 (9th Cir. 2001) (quoting Karp v. Becken, 477 F.2d 171 (9th Cir. 1973)). The state must show that its action “was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.” Id. at 509. In Tinker, students wore black armbands to silently and passively protest the war in Vietnam. Tinker, 393 U.S. at 504. School officials preemptively banned the armbands to avoid controversy, without evidence that the armbands would substantially interfere with the school’s work. Id. at 509. Therefore, the court held that the school’s actions were unconstitutional. Id. at 514.

Courts following Tinker have used fact-intensive inquiries to determine whether a substantial disruption was foreseeable. In Doninger, where the status of an annual concert was uncertain, a student council member posted on her website that school officials were “douchebags,” encouraged students to contact the principal “to piss her off more,” and incorrectly stated that the concert was cancelled. 527 F.3d at 45. The court found a foreseeable substantial disruption based on three factors: 1. Petitioner used offensive language 2. Petitioner’s website contained misleading or false information; and 3. Petitioner was a student leader. Id. at 50-52. As a result, the school’s was justified in disciplining petitioner. Id. at 53.

The Sixth Circuit found that graffiti on campus, parental concern, and student absenteeism arising out of an environment of racial tension allowed school officials to reasonably forecast disruption and ban clothing displaying the confederate flag. Barr v. Lafon,

538 F.3d 554, 566-67 (6th Cir. 2008). At a school with an extended history of racial tension, the Tenth Circuit found that a seventh grade student's drawing of a confederate flag in math class created a foreseeable risk of future substantial disruptions. West v. Derby Unified Sch. Dist. No. 260, 206 F.3d 1358, 1366 (10th Cir. 2000). Additionally, a petition signed by members of a high school football team stating, "I hate Coach Euvard and I don't want to play for him," was enough for school officials to foresee a substantial disruption and to discipline the players. Lowery v. Euverard, 497 F.3d 584 (6th Cir 2007).

Here, the facts are distinguishable from the facts of Tinker, and instead indicate that a substantial disruption was foreseeable. Unlike in Tinker, neither Politte's nor Towles's websites were passive instances of speech or political in nature. Both elicited responses from their readership and secured the attention of students. (R. 4). Principal Smalls acted in response to the disturbance caused when students accessed both Petitioners' websites at school during school hours. (R. 4). Principal Smalls's main concern was with keeping discipline and preventing a student protest. (R. 4).

The facts here can best be analogized to Doninger, a parallel internet student speech case. Towles disrespectfully referred to Principal Smalls and Hopkins administrators as "idiots." (R. 4). In a call for student action, he stated that students needed to "fight this injustice" and "speak out" against school officials. (R. 4). Towles also misleadingly accused the school of defamation. (R. 4). Cumulatively, these facts reasonably led Principal Smalls to forecast a substantial disruption.

Courts have also looked to the larger context in anticipating causes of disruption. Hopkins drug-beset environment is akin to schools with histories of racial tension. Indeed, deterring drug use by schoolchildren is a compelling state concern. Vernonia Sch. Dist. v.

Acton, 515 U.S. 646, 661 (1995). In the previous year, a Hopkins student died from a cocaine overdose. (R. 1). In the two months leading up to the present events, school officials caught fifteen students smoking marijuana on campus. (R. 1). Also on campus were 130 DUDS members who were outspoken about student drug use. (R. 2). Concerned parents and police had already contacted school officials concerning drugs. (R. 3). Towles then introduced his website into this setting, further agitating the student population. Student interest in accessing the opposing websites is merely indicative of the underlying unrest on school grounds. Here, Petitioners' websites provided more of a basis to forecast substantial disruption than the confederate flag in West and the petition in Lowery. Accordingly, Principal Smalls permissibly shut down Petitioners' websites.

The Court's reticence to substitute its judgment for that of school officials is well known. See, e.g., Kuhlmeier, 484 U.S. at 273. Rather than of overruling school officials in a student speech case that applied Tinker, the Second Circuit stated, "[w]e believe that the school authorities are sufficiently experienced and knowledgeable concerning these matters... a federal court ought not to impose its own views in such matters where there is a rational basis for the decisions and actions of the school authorities." Trachtman v. Anker, 563 F.2d 512, 519 (2d Cir. 1977). Since Principal Smalls had a rational basis for deciding that Petitioners' websites created a foreseeable risk of substantial disruption at school, she was justified in demanding that Petitioners' websites be shut down.

B. Politte's and Towles's websites should be examined under exceptions the Supreme Court developed after Tinker.

Following Tinker, three cases created exceptions to the Tinker standard, given specific circumstances. Morse gave school officials expansive discretion to suppress student speech reasonably perceived as promoting student drug use. Morse, 127 S. Ct. 2618 at 2629.

Kuhlmeier allows school officials editorial control over school-sponsored student speech. Kuhlmeier, 484 U.S. at 271. And Fraser provides for school regulation of indecent student speech. Fraser, 478 U.S. at 685. The exceptions from Morse and Kuhlmeier apply here.

1. School officials had editorial control over the website and permissibly shut down Politte’s website because it was school-sponsored speech.

If the public could reasonably perceive that certain speech is sponsored by the school, the school may permissibly edit that speech. Kuhlmeier, 484 U.S. at 271. Politte’s website, FAD, was an outgrowth of a school-sponsored club’s activities. Therefore, the public could believe that FAD speech was school speech and the school rightly exercised editorial control over the website.

In Kuhlmeier, the court disassociated itself from the Tinker standard. Kuhlmeier, 484 U.S. at 272-273. Instead, it held that “educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.” Id. at 273. Courts give school officials such authority to assure the educational content of the activity for students. Id. at 271. The court defined “school-sponsored” as “publications... and other expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school.” Id. The speech at issue in Kuhlmeier was two articles in a school newspaper. Id. at 263.

The Tenth Circuit has elaborated on the meanings of “imprimatur of the school” and “pedagogical interests” in relation to the definition of “school-sponsored.” Fleming v. Jefferson County Sch. Dist. R-1, 298 F.3d 918, 924 (10th Cir. 2002). Speech that bears the school’s imprimatur “cover[s] speech that is so closely connected to the school that it appears the school is somehow sponsoring the speech.” Id. at 925. Pedagogical interests are interpreted broadly to

mean activities that affect learning. Id. When the imprimatur prong is satisfied, courts have held that avoidance of controversy is a valid pedagogical purpose. See Brody v. Spang, 957 F.2d 1108, 1122 (3d Cir. 1992); Planned Parenthood of S. Nev., Inc. v. Clark County Sch. Dist., 941 F.2d 817, 828 (9th Cir. 1991); Crosby v. Holsinger, 852 F.2d 801, 802 (4th Cir. 1988). In Fleming, the court held that the art project at Columbine High School that enabled students to participate in reconstructing the school was school-sponsored. Fleming, 298 F.3d at 920-21.

Here, DUDS was a school-sponsored club that met after school hours. (R. 2). Importantly, DUDS organized school assemblies to discuss the perils of drug use with students and posted flyers promoting a drug-free lifestyle. (R. 2). Later, Politte, in response to a DUDS-organized assembly, created FAD. (R. 2). Upon promotion of FAD at a DUDS meeting, all DUDS members joined the website. (R. 2). DUDS and FAD activity was closely connected with the school and, therefore, rightly bears the school's imprimatur. Principal Smalls had a valid pedagogical purpose because she wanted to avoid further disturbance at school. (R. 4). Additionally, Towles, on his SADS website, spoke out collectively against DUDS, FAD and Hopkins, indicating students perceive DUDS and FAD as school-sponsored entities. (R. 3-4). Therefore, Principal Smalls permissibly exercised editorial control in shutting down FAD since FAD was closely aligned with DUDS and could reasonably be perceived as school-sponsored.

2. School officials permissibly shut down Towles's website because they reasonably believed that it promoted illegal drug use.

Courts are particularly concerned with preventing student drug abuse. As a result, when student speech is interpreted as promoting illegal drug use, courts have given school officials broad power to proscribe such speech. Towles undermined school authority with his internet post when school officials were attempting to enforce the school's Drug Policy. Accordingly, school officials were justified in shutting down Towles's website.

In Morse, the Supreme Court noted, “Tinker is not the only basis for restricting student speech.” Morse, 127 S. Ct. at 2627. Expanding on the Tinker analysis, the Court allowed schools “to restrict student expression that they reasonably regard as promoting illegal drug use.” Id. at 2629. The Court found that “school officials must have greater authority to intervene before speech leads to violence” and “illegal drug use presents a grave and... unique threat to the physical safety of students.” Id. at 2638 (Alito, J., concurring). No risk of substantial disruption is required. The forbidden speech in Morse was a banner bearing the phrase “BONG HiTS 4 JESUS.” Id. at 2622. Although the meaning of the phrase was ambiguous, the principal thought the public would interpret the banner as promoting illegal drug use. Id. at 2624. Significantly, “failing to act would send a powerful message... about how serious the school was about the dangers of illegal drug use.” Id. at 2629. The Court held that the principal’s interpretation was reasonable and that the immediate confiscation of the sign was permissible under the First Amendment. Id. at 2629.

Here, Hopkins school officials were making concerted efforts to curb the prevalent drug abuse on campus. (R. 1). After fifteen incidents of marijuana use on campus in the past two months, Principal Smalls found marijuana on two students in the search before this Court. (R. 3). Students were highly interested in the polarized positions of Politte and Towles. (R. 4). Reacting to the tip on FAD and the search, Towles posted on his website, “[w]hat we do on our own time for fun is our business” and proceeded to disparage school officials and their actions in combating school drug use. (R.4). Given Towles’s opposition to both the FAD tip and the school search, Principal Smalls could reasonably have interpreted Towles’s rebellious statements as disregarding school authority and promoting illegal drug use. Principal Smalls could not fail

to act regarding such a grave issue. Accordingly, she permissibly demanded that Towles shut down his website.

II. UNDER THE FOURTH AMENDMENT SCHOOL OFFICIALS REASONABLY CONDUCTED A STRIP SEARCH OF TOWLES FOR ILLEGAL DRUGS WHERE THE SEARCH WAS BASED ON AN ANONYMOUS, CORROBORATED TIP AND IT WAS CONDUCTED BY A MEMBER OF THE SAME SEX, IN A PRIVATE PLACE, AND HE WAS NOT TOUCHED.

The Fourth Amendment entitles a person to be free from “unreasonable governmental intrusion” where he has a reasonable expectation of privacy. Terry v. Ohio, 392 U.S. 1, 9 (1968). However, what is “reasonable” under the Fourth Amendment “depends on the context within which [a] search takes place.” New Jersey v. T.L.O., 469 U.S. 325, 337 (1985). In T.L.O., the Supreme Court held that the Fourth Amendment applies to public school officials as state agents through the Fourteenth Amendment. Id. However, the Court found that the customary requirements of a warrant or probable cause to conduct a search were “unsuitable” for the school context due to the special need of school officials to maintain discipline in the wake of growing social problems like violence and drug use in public schools. Id. at 333. Therefore, school officials are held to the lower standard of reasonable suspicion because of the special needs inherent in the school environment. Id. at 339.

“[R]easonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence.” Illinois v. Wardlow, 528 U.S. 119, 123 (2000). The legality of a search based on reasonable suspicion is determined by looking at the “totality of the circumstances.” E.g., United States v. Cortez, 449 U.S. 411, 417 (1981). T.L.O. established a two-part inquiry that looks first at whether the search was “justified at its inception” and then whether the search was “reasonably related in scope to the circumstances which justified the interference in the first place.” T.L.O., 469 U.S. at 341

(quoting Terry, U.S. 325 at 20). A grant of a motion for summary judgment is reviewed *de novo*. See e.g., Pluet, 355 F.3d at 383.

- A. The search was “justified at its inception” because the anonymous tip was corroborated by independent information, giving school officials reasonable grounds to believe that performing a search of Towles’s person would uncover evidence of illicit drugs in violation of the law and Drug Policy.

Under the first prong of T.L.O. the search of Towles person was “justified at its inception.” 469 U.S. at 341-42. For a search to be “justified at its inception” school officials need only have “reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.” Id. at 342. The relevant totality of the circumstances analysis “includes an informant’s veracity, reliability and basis of knowledge, as well as whether the information an informant has provided is corroborated.” E.g., Phaneuf v. Fraikin, 448 F.3d 591, 597 (2d Cir. 2006). Here, school officials not only had a tip and photograph directly linking Towles to drugs, they also had knowledge that Towles chose to attend a rumored drug party, police verification that there were drugs at the party, knowledge that Towles was associating with other students known to be involved with drugs, all amidst a growing drug problem at the school. (R. 1-3).

The Supreme Court has held that anonymous tips that are independently corroborated in significant respects are sufficiently reliable to justify a search based on reasonable suspicion. Alabama v. White, 496 U.S. 325, 330 (1990) (anonymous informant’s tip provided reasonable suspicion where it gave the suspect’s name, point of departure, vehicle, destination, and that suspect was carrying a satchel of cocaine even though officers could not verify the suspect’s name or which apartment she left from). Independent corroboration provides reliability because if “an informant is shown to be right about some things, he is probably right about other facts he has alleged.” Id. at 331 (citing Illinois v. Gates, 462 U.S. 213, 244 (1983)). Moreover, where

the standard is reasonable suspicion, a lesser showing of reliability is required than under the probable cause standard. Id. at 330.

In the school context, the Sixth and Eleventh Circuits have held that student tips can provide a reliable basis for reasonable suspicion. C.B. ex rel. Breeding v. Driscoll, 82 F.3d 383, 388 (11th Cir. 1996); Williams ex rel. Williams v. Ellington, 936 F.2d 881, 889 (6th Cir. 1991). In C.B., the Eleventh Circuit held that a tip from a fellow student could provide “sufficient probability” under the “reasonable grounds” standard to justify a search. 82 F.3d at 388. There, a fellow student relayed information from an anonymous student to school officials that C.B. was carrying drugs he intended to sell in a “big coat” he was wearing. Id. Although the “identity of the student who observed the contraband first-hand” remained anonymous, the court noted that under White an anonymous tip can help provide reasonable suspicion. Id. In addition, because the tip was given in person, it was deemed reliable because “the student informant faced the possibility of disciplinary repercussions if the information was misleading.” Id.

Similarly, the Sixth Circuit held in Williams that “some tips, though unverified are reliable” when given in-person by a student who school officials are satisfied has no “improper motive.” 936 F.2d at 889. There, a student informed school officials that Williams and another student were using drugs. Officials also had a letter that teachers found referring to drugs and were aware of Williams’s parents’ concern that Williams was using drugs. Id. at 887. In addition, the court found that Williams’s handing over of a vial of drugs to school officials lent credibility to the student informant’s tip and justified a further strip search. Id. 889. Thus, taking into account all of the circumstances, the court found that the strip search was reasonable. Id.

However, the Ninth and Second Circuits have found student tips unreliable where the informant was not verified as credible or where the informant was trying to shift blame. Redding

v. Unified Sch. Dist. No. 1, 531 F.3d 1071, 1077 (9th Cir. 2008), cert. granted, 77 U.S.L.W. 3243 (U.S. Jan. 16, 2009) (No. 08-479); Phaneuf, 448 F.3d at 598-99. In Phaneuf, the court found that a tip from a fellow student that Phaneuf concealed marijuana in her pants was unreliable because school officials made no attempt to verify that the student was reliable or to corroborate the information. Id. At 598. Therefore, the strip search was unreasonable. Id.

In Redding, the court held that a tip that Redding possessed ibuprofen from a student whom officials were reprimanding was unreliable because she was trying to shift blame from her own infraction. 531 F.3d at 1077. There, the school also had information that Redding may have provided alcohol before a school dance six weeks prior to the incident and that she had lent the informant her binder. Id. at 1076. Another student also tipped officials that the informant had ibuprofen but said nothing about Redding. Id. The court found these additional facts did not form a sufficient nexus with the corroborating tip indicating Redding had ibuprofen. Id. at 1084. Therefore, the strip search was found to be unreasonable. Id. at 1089.

Here, the chain of information through which the tip reached Hopkins school officials was similar to that in C.B. Principal Smalls received the tip implicating Towles's from a known student's webpage, which originated from an anonymous student source. (R. 3). Although the tip was not given in person by Politte, the webpage was directly traceable to Politte such that she could suffer "repercussions if the information was misleading," thus giving the source greater reliability. C.B., 82 F.3d at 388. In addition, Politte was a reliable source because she was a student leader involved in drug prevention activities at school, was actively involved in raising awareness about drug dealers, and posted only the "strongest" tips on her webpage. (R. 2). Therefore, unlike Phaneuf, school officials here had knowledge that the student relaying the

information was reliable. Furthermore, unlike Redding, there was no element of blame shifting here that would discredit the tip.

The photograph attached to the tip also provided further indicia of reliability because it demonstrated the informant had first-hand knowledge that directly linked Towles to a drug party and showed him associating with students known to be involved with drugs. (R. 3). Unlike in Redding, the photograph and tip here were not an unfounded statement, but clearly placed Towles in the presence of drugs. Therefore, the tip was more than “mere rumor or gossip.” Greenleaf v. Cote, 77 F.Supp.2d 168, 170 (D. ME 1999) (the fact that a student directly overheard other students admit to drinking alcohol on school grounds showed that the tip was not rumor or gossip because the informant was reporting direct admissions). Furthermore, the photograph showed Conrad smoking an unidentified substance in the photograph that could have been marijuana, thereby further linking Towles to drugs and corroborating the tip. (R. 3).

Like the tip in Williams, and unlike those in Redding and Phaneuf, the tip here was also independently corroborated, giving it further indicia of reliability. First, Principal Smalls received verification from the Hopkinsville police that drugs and alcohol were found at the party, and that Towles’s associate Conrad from the photograph had been cited for possession of marijuana. (R. 2). Similar to Williams, the discovery of drugs in Conrad’s locker lent further credibility to the tip that indicated Towles, Conrad, and Thomson were involved with drugs, justifying a more intrusive search. Third, school officials were aware that Towles personally chose to attend a party where it had been rumored for a week that marijuana would be present, and he associated with students who were known to be drug users. (R. 1-3). Lastly, school officials were keenly aware of the growing drug problem at Hopkins and had cited fifteen students for smoking marijuana on school grounds in the two months prior to this incident. See

Cote, 77 F.Supp.2d at 169 (concerns about drug use on campus taken into account when assessing reliability of a student tip). (R. 1). Unlike Redding, these facts occurred during a short time frame and formed a tight nexus with the student tip that imbued it with sufficient reliability to support a reasonable suspicion that Towles was involved with illicit drugs.

Furthermore, Principal Smalls had worked at Hopkins for twenty years and was entitled to “draw on [her] own experience and specialized training to make inferences from and deductions about the cumulative information available.” United States v. Arvizu, 534 U.S. 266, 273 (2002). Moreover, facts that might appear innocent on their own may provide reasonable suspicion when looked at in their totality. United States v. Sokolow, 490 U.S. 1, 9 (1989). Therefore, based on all of the aforementioned facts it was reasonable for Principal Smalls to infer that Towles was involved with illicit drugs and that a search of his person would uncover evidence of a violation of the law and school Drug Policy. Accordingly, this court should find that the search of Towles’s person was reasonable at its inception.

- B. The search of Towles’s person was reasonable in scope because he was suspected of possessing illegal drugs that he could have easily concealed on his person, and the search was conducted in an appropriate manner.

Under the second prong of the T.L.O. standard, a search must be “reasonably related in scope to the circumstances which justified the interference in the first place.” 469 U.S. at 342 (quoting Terry, 392 U.S. at 20). The Court further specified that within the school context, this requires that the “measures adopted are reasonably related to the objectives of the search and [are] not excessively intrusive in light of the age and sex of the student and the nature of the infraction.” Id. However, the “Court has repeatedly held that reasonableness under the Fourth Amendment does not require the least intrusive means.” Bd. of Ed. Indep. Sch. Dist. No. 92 of Pottawatomie County v. Earls, 536 U.S. 822, 837 (2002).

1. It was reasonable for school officials to perform a strip search because Towles was suspected of possessing illicit drugs, which pose a special threat to the school environment.

The “nature of the infraction” here was suspected possession of illicit drugs in violation of the law and school policy. T.L.O. 469 U.S. at 342. Therefore, the intrusive nature of the search of Towles’s person was reasonable in light of the serious nature of the infraction. The Supreme Court has found that where drugs are suspected in the school environment “the necessity for the State to act is magnified by the fact that this evil is being visited not just upon individuals at large, but upon children for whom it has undertaken a special responsibility of care and direction.” Acton, 515 U.S. at 653. Furthermore, “[a] student’s privacy interest is limited in a public school environment where the State is responsible for maintaining discipline health, and safety.” Earls, 536 U.S. at 830.

Circuit Courts have upheld the use of strip searches where school officials were looking for illegal drugs. Cornfield v. Consol. High Sch. Dist., 991 F.2d 1316, 1323 (7th Cir. 1993); Williams, 936 F.2d at 887. In Cornfield, the Seventh Circuit upheld a student strip search for suspected marijuana and in Williams the Sixth Circuit upheld a student strip search for suspected cocaine. Cornfield, 991 F.2d at 1323; Williams, 936 F.2d 881, at 887. However, strip searches have been found unreasonable where less weighty interests like suspected over-the-counter drugs or money are involved. Redding, 531 F.3d at 887; Beard v. Whitmore Lake Sch. Dist., 402 F.3d 598, 606 (6th Cir. 2005) (strip search without suspicion of a group of high school students for money was unreasonable). In Redding, the court found it was unreasonable to strip search a student for suspected possession of “substances regularly available over the counter at any convenience store” like ibuprofen that were not as weighty an interest as illicit drugs. 531 F.3d at 1087.

Here, as in Cornfield and Williams, Hopkins school officials searched Towles for suspected illicit drugs. Moreover, school officials not only searched for drugs, but also faced a rampant drug problem that required immediate attention, making drug detection a strong governmental concern that outweighed Towles's reduced privacy interests at school. Earls, 536 U.S. at 830; Acton, 515 U.S. at 653. School officials had experienced a drastic rise in illegal drug use among students over the past five years that resulted in the tragic "death of 17-year-old Kelly Smith, the captain of the volleyball team, who overdosed on cocaine at a party" in 2007. (R. 1). Furthermore, fifteen students had already been caught using marijuana on school grounds during the first two months of the semester prior to this incident. (R. 1). These circumstances created a government interest that was both weighty and immediate. Acton, 515 U.S. at 657. Therefore, the search of Towles's person was clearly reasonable in relation to the "nature of the infraction." T.L.O., 469 U.S. at 342.

2. School officials were justified in performing a strip search because they were searching for drugs that Towles could conceal on his person.

The search of Towles's person was "reasonably related to the objectives of the search" because in light of the item sought, in this case, marijuana, it was reasonable to suspect that Towles was concealing illegal drugs on his person. T.L.O., 469 U.S. at 342. In T.L.O., the court held that it was reasonable for school officials to further search a student's bag where the initial search for cigarettes also produced rolling papers, because the papers indicated that a further search would likely produce marijuana. Id. In Williams, the Sixth Circuit held that school officials were reasonable in conducting a strip search where the item sought was a "small vial containing suspected narcotics." 936 F.2d at 887. There, Williams gave school officials a vial containing drugs, and the officials then searched her locker and purse finding nothing more

before performing a strip search. Id. The court found, “it was reasonable... [for officials] to suspect the girl may be concealing contraband on her person” and to expand to a strip search. Id.

Like T.L.O. and Williams, the fact that officials found a small baggy of marijuana in Conrad’s locker justified the expanded search of Towles’s and the other boys’ persons because it created a suspicion that more drugs could be in their possession. In addition, like in Williams, because a small baggy was found it was reasonable for officials to suspect that Towles and the three other boys were carrying drugs they could conceal on their persons. Therefore, “[i]n light of the item sought” officials were justified “in conducting a search so personally intrusive in nature.” Williams, 936 F.2d at 887. Furthermore, the fact that nothing was found on Towles’s person does not make the search unreasonable in retrospect. See Cornfield, 991 F.2d at 1323.

3. The search was not overly intrusive because it was conducted in a private room, by an official of the same sex, and Towles was not touched.

The search conducted here was “not excessively intrusive in light of the age and sex of the student.” T.L.O., 469 U.S. at 342. In Cornfield, the Seventh Circuit held that a strip search of a male high school student conducted by two male administrators in the boys’ locker room where officials were looking for drugs, stood a distance away, and allowed the student to put on gym clothes while they searched the student’s clothing was reasonable in scope. 991 F.2d at 1323. In contrast, in Beard, the Sixth Circuit held that a search where a group of high school boys were required to remove their clothes and underwear, exposing their unclothed bodies, was overly intrusive and thus unreasonable. 402 F.3d at 605. The Ninth Circuit reached the same conclusion in Redding where a female student was forced to expose her breasts and pelvic area during a strip search. 531 F.3d at 1075.

In this case, like Cornfield, the search of Towles’s person was conducted in a private place, by a member of the same sex, and his person was never touched. Furthermore, although

Towles was not given clothing to change into, he was not forced to completely disrobe and expose his naked body, making this case distinguishable from Beard and Redding. Therefore, the search of Towles's person was reasonable in light of his age and sex.

The search of Towles's was both "justified at its inception" and "reasonably related in scope to the circumstances which justified the interference." T.L.O., 469 U.S. at 342. Therefore, this court should reverse the lower court's finding that the search was unreasonable.

III. EVEN IF TOWLES'S FOURTH AMENDMENT RIGHTS WERE VIOLATED, THE DOCTRINE OF QUALIFIED IMMUNITY SHOULD APPLY BECAUSE THE LAW REGARDING STRIP SEARCHES BY SCHOOL OFFICIALS WAS NOT CLEARLY ESTABLISHED AT THE TIME OF THE SEARCH.

A reasonable school official could have believed that performing a strip search of a student suspected of being involved in drugs was lawful "in light of clearly established law and the information...possessed." Wilson v. Layne, 526 U.S. 603, 615 (1999). The doctrine of qualified immunity shields "government officials performing discretionary functions ... from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The doctrine arose out of the "necessity of permitting officials to perform their official functions free from the threat of suits for personal liability." Scheuer v. Rhodes, 416 U.S. 232, 239 (1974). The doctrine rests on "two mutually dependent rationales." Id. First, the doctrine is meant to protect officials from liability who act in good faith in positions where they are legally required to exercise discretion. Id. Second, it is meant to allow officials to do their job with the "decisiveness and the judgment required by the public good" without being deterred by the threat of liability. Id.

In determining whether qualified immunity applies, the proper inquiry is whether the right alleged to have been violated was "clearly established" at the time. Saucier v. Katz, 533

U.S. 194, 202 (2001). For a right to be clearly established, “the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.” Anderson v. Creighton, 483 U.S. 635, 639 (1987). Furthermore, this inquiry should be “undertaken in light of the specific context of the case.” Saucier, 533 U.S. at 201. In this analysis, the decisions of the Supreme Court are looked to first, then the decisions of the Circuit Courts. McBride v. Vill. of Michiana, 100 F.3d 457, 460 (6th Cir. 1996).

The Supreme Court has not “clearly established” when a strip search by school officials is unconstitutional. See e.g., Beard, 402 F.3d at 607; Jenkins v. Talladega City Bd. of Educ., 115 F.3d 821, 825 (11th Cir. 1997). The Sixth and Eleventh Circuits have both held that T.L.O. provided a multi-factor test for determining reasonableness, but did not explain its application. Beard, 402 F.3d at 607; Jenkins, 115 F.3d at 825. In T.L.O., the Court did not directly apply the standard to the facts of the case, thus giving “no illustration, indication, or hint as to how the enumerated factors might come into play when other concrete circumstances are faced by school personnel.” Jenkins, 115 F.3d at 825. Furthermore, in Beard, the court further concluded that Acton only “clarified the situation to the extent that some searches undertaken without individualized suspicion are reasonable.” 402 F.3d at 607.

Thus, the Supreme Court has only generally established that a search of a student violates the Fourth Amendment without reasonable suspicion, but it has not clearly established under exactly what circumstances a strip search is unreasonable. See Brosseau v. Hagen, 543 U.S. 194, 199-98 (2004) (per curiam); see also Anderson, 483 U.S. at 639. Anderson dictates that the law must be “clearly established in a more particularized, and hence more relevant, sense” for an official to know his actions will violate the right in his particular situation. 438 U.S. at 640. While the T.L.O. standard might apply in many different circumstances because of its generality,

it was not specific enough to establish unlawfulness in this case because T.L.O. involved a very narrow search of a student's purse for suspected drug use and did not involve a tip. Here, there was a strip search based on an anonymous student tip for suspected drug use. Since the material facts are distinguishable from T.L.O., Hopkins school officials were not on notice from the Supreme Court that their actions violated a clearly established right.

The lower court found that the law regarding strip searches is also not "clearly established" in the Circuit Courts. (R. 12). In Cornfield and Williams, the Seventh and Eleventh Circuits, respectively, found strip searches to detect drugs reasonable. Cornfield, 991 F.2d at 1319; Williams, 936 F.2d at 882-83. However, in Phaneuf, the Second Circuit found a similar strip search to be unreasonable. Phaneuf, 448 F.3d at 593. The Circuit Courts have also taken incongruous approaches in evaluating tips from student informants in relation to searches. In C.B., the Eleventh Circuit gave considerable deference to student tips to justify a pat down. 82 F.3d at 388. Similarly, in Williams, the Seventh Circuit easily found a student tip reliable enough to justify a strip search for drugs. 936 F.2d at 883. However, in Phaneuf and Redding, the Second and Ninth Circuits, respectively, found that student tips were unreliable and the ensuing searches were unreasonable. Redding, 531 F.3d at 1077; Phaneuf, 448 F.3d at 593. Furthermore, in Redding and Phaneuf the courts used a sliding scale approach, weighing the level of individualized suspicion against the intrusiveness of the search to determine reasonableness, which is absent from the analysis in Williams. Redding, 531 F.3d at 1081; Phaneuf, 448 F.3d at 596-97. Due to the inconsistent holdings amongst Circuit Courts, Hopkins school officials could not have known that their actions violated a Fourth Amendment right.

Lastly, imposing liability for school officials acting in good faith would be antithetical to the doctrine of qualified immunity. In T.L.O. the Court adopted the reasonable suspicion

standard to enable teachers to act according to “the dictates of reason and common sense.” T.L.O., 469 U.S. at 343. Here, Hopkins school officials did just that when they reacted swiftly and in good faith upon reliable information that Towles was involved with drugs when they searched him. Through their actions they sought to “[maintain] discipline in the classroom and on school grounds” in the face of a growing drug problem that had already claimed the life of one Hopkins student. Id. at 339. Had school officials not acted, they would have been derelict in their “custodial duty and tutelary responsibility for children” under their supervision. Acton, 515 U.S. at 656. Therefore, holding school officials liable in this situation would only serve to deter school officials from acting in good faith and using proper judgment when performing their duties, which is exactly what the doctrine of qualified immunity is intended to prevent. Scheuer, 416 U.S. at 239. Accordingly, this court should affirm the lower court’s holding that the doctrine of qualified immunity applies here.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm the judgment of the State of Grace Court of Appeals.

Respectfully submitted,

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March 2, 2009
New York, NY