

IN THE

Supreme Court of the State of Grace

KIT POLITTE and CORY TOWLES,
Petitioners,

v.

HORTON HOPKINS SCHOOL DISTRICT and KEENA SMALLS,
Respondents.

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

BRIEF FOR RESPONDENTS

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QUESTIONS PRESENTED

- I. Whether public school officials deprive students of their First Amendment rights when they regulate students' Internet speech created off-campus that materially disrupts the academic environment or is school sponsored.

- II. Whether public school officials deprive a student of his Fourth Amendment rights when they conduct a non-overly intrusive search under reasonable suspicion that the student possesses marijuana on school grounds.

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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 . . . and effects against unreasonable searches and seizures shall not be violated.

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

I. DRUG RELATED ISSUES PLAGUE HORTON HOPKINS HIGH SCHOOL'S RECENT HISTORY.

Principal Keena Smalls (“Principal Smalls”) has been the principal at Horton Hopkins High School (“Horton Hopkins”), a public high school in Hopkinsville, for the last twenty years. (R. at 1.) Over the past five years drug use has escalated in Hopkinsville, including on the Horton Hopkins campus. (R. at 1.) In the first two months of the fall semester alone, Principal Smalls and staff members caught fifteen students smoking marijuana on school grounds. (R. at 1.) Principal Smalls was forced to suspend twenty-five students last year for using illegal drugs on school grounds. (R. at 1.)

In January 2007, per Principal Small’s request, the school district enacted a strict, zero-tolerance drug policy. (R. at 1.) This policy reserves the right for school officials to search students suspected of drug use or possession. The policy states that officials will balance the likelihood of student possession against the risk of infringing on the student’s individual rights. (R. at 15.) The policy allows school officials to search school property as well as students and their personal property. (R. at 1.)

II. STUDENT RESPONDS TO PROMINENT DRUG USE IN THE SCHOOL COMMUNITY.

In September 2008, high school senior Kit Politte (“Politte”) started a school-sponsored club, Drug Use Damages Schools (“DUDS”), to support the quest to curb drug use among the student body. (R. at 2.) The group boasts approximately 130 Horton Hopkins student members. (R. at 2.) Club activities include posting flyers throughout the school promoting a drug-free life style as well as organizing school assemblies to discuss the dangers of drug use. (R. at 2.)

At the advice of a school assembly speaker, Politte created a network webpage on

Friendkepedia entitled Fighting All Dealers (“FAD”). (R. at 2.) Friendkepedia is a social networking website that allows users to create personal networking webpages. (R. at 2.) Politte directed FAD towards all residents of Hopkinsville who are members of Friendkepedia. (R. at 2.) Politte has 235 members in her network, 198 of which are Horton Hopkins students, including all 130 DUDS members. (R. at 2.) As the administrator of the FAD website, Politte collected information from community members about potential drug uses and posted the “strongest” tips. (R. at 2.)

III. DRUGS PRESENT AT PARTY ATTENDED BY HORTON HOPKINS STUDENTS.

Cory Towles (“Towles”), age sixteen, is a sophomore who transferred to Horton Hopkins for the 2008-09 school year. (R. at 2.) On October 3, 2008, Towles attended a house party hosted by Jeff Tweegs (“Tweegs”) who Principal Smalls suspended in September after she caught him smoking marijuana during lunch. (R. at 2.) It was a known rumor that students would bring marijuana to the party. (R. at 2.)

Towles attended the party from 9:00 p.m. until 11:00 p.m. (R. at 3.) Around 11:30 p.m. police broke up the party and cited five high school students for underage drinking and cited sophomore Frank Conrad (“Conrad”) for marijuana possession. (R. at 3.)

The following day, Politte received an email photo via FAD of Towles sitting outside Tweegs’s house during the party with two other students, Conrad and John Thomson (“Thomson”). (R. at 3.) Conrad was smoking in the picture. (R. at 3.) Politte posted the picture on the FAD webpage with the caption: “Police find drug use at local high school party. Are Horton Hopkins students becoming drug dealers?” (R. at 3.)

IV. PRINCIPAL SMALLS SUSPECTS STUDENTS OF DRUG POSSESSION.

The following morning, Principal Smalls received several calls from concerned parents who had seen the photograph on the FAD webpage. (R. at 3.) The Hopkinsville police also contacted Principal Smalls alerting her about the students they cited at the party. (R. at 3.) After viewing the photo on the FAD webpage, Principal Smalls called Towles, Conrad, Thomson and Tweegs into her office for questioning at which time each denied possession of drugs. (R. at 3.) Not being relieved of her suspicions, Principal Smalls conducted a search of each student's locker and backpack. (R. at 3.) Upon discovering marijuana in Conrad's locker, Principal Smalls asked each student to submit to a search of their persons individually and in private. (R. at 3.) Although each refused, Mr. Jim Waters ("Mr. Waters"), the gym teacher, conducted the searches in a private room. (R. at 3.) In order to avoid any physical contact, each student remained in his undergarments while Waters searched the pockets of their clothing. (R. at 3.) During the search, Waters found marijuana in Thomson's jeans pocket. (R. at 3.)

V. PRINCIPAL SMALLS REQUIRES TOWLES AND POLITTE TO REMOVE WEBPAGES.

In response to FAD's accusatory post and the school's search, Towles created his own Friendkepedia network page called Students Against Defamatory Statements ("SADS"). (R. at 3.) Towles created SADS on his home computer which called all students to speak out against Principal Smalls and "the rest of the Hopkins idiots." (R. at 4.) Horton Hopkins students accessed both FAD and SADS from the school computer lab and library during the school day. (R. at 4.) At this point, Principal Smalls realized the situation was getting out of control. (R. at 4.) In order to maintain discipline and order at school, Principal Smalls required that Towles and Politte both take down their respective webpages. (R. at 4.) When both students refused, Principal Smalls suspended both Politte and Towles until they agreed to take down the

webpages. (R. at 4.)

VI. THE STATE OF GRACE COURT OF APPEALS AFFIRMED THE DISTRICT COURT'S RULING THAT HORTON HOPKINS AND PRINCIPAL SMALLS DID NOT VIOLATE TOWLES'S AND POLITTE'S CONSTITUTIONAL RIGHTS.

Towles and Politte brought suit in the Badger County District Court challenging the constitutionality of Horton Hopkins School District's decision to demand the removal of their individual webpages. (R. at 1.) Towles further challenged the constitutionality of the school's search of his person and backpack. (R. at 1.)

The Badger County District Court found Horton Hopkins and Principal Smalls's actions did not violate Towles's and Politte's First Amendment rights because they could reasonably forecast that the continued existence of the webpages would create a substantial disruption on school grounds. (R. at 6.) Additionally, the Badger County District Court found that the search of Towles's person did not violate his Fourth Amendment rights because the search itself was constitutional. (R. at 8.)

The State of Grace Court of Appeals affirmed the District Court's ruling on both accounts. (R. at 9.) However, the Court of Appeals found the search of Towles unreasonable stating that it was not justified at its inception. (R. at 11.) The Court did not address whether the speech was reasonable in its scope. Despite this finding, the State of Grace Court of Appeals found that Horton Hopkins officials were entitled to qualified immunity because the law regarding school searches was not clearly established at the time. (R. at 11-12.)

SUMMARY OF THE ARGUMENT

This Court should affirm the decision of the State of Grace Court of Appeals because Horton Hopkins officials did not violate Towles's and Politte's First Amendment rights or Towles' Fourth Amendment rights. First, Horton Hopkins officials did not violate Towles's or

Politte's First Amendment rights when they censored their off-campus Internet speech because there was a reasonable chance the speech would materially disrupt the academic environment. Towles's Internet speech, induced by Politte's accusatory webpage, advocated for a substantial on-campus disruption, thus justifying the requirement for the removal of both webpages in order to maintain a functional educational environment. Furthermore, Towles's and Politte's webpages created an actual, material disruption at Horton Hopkins because students were accessing the webpages on school computers during school hours.

In addition, Horton Hopkins officials rightfully censored Politte's webpage because it was an extension of a school-sponsored organization and the censorship was reasonably related to the pedagogical concern of maintaining order in the educational environment. Also, people could reasonably assume that the speech bore the school's imprimatur because Politte created the webpage in furtherance of her school-sponsored organization.

Second, Horton Hopkins officials did not violate Towles's Fourth Amendment rights when they searched his person and backpack because of evidence that he possessed or was dealing marijuana on school grounds. The search of Towles was justified at its inception because Principal Smalls received a photographic tip and conducted an independent investigation to corroborate her suspicions that Towles possessed drugs on school premises. These suspicions justified the scope of the search because it was reasonably related to the objective of preventing possession and distribution of marijuana on campus.

However, even if the search is found unreasonable, Horton Hopkins officials are entitled to qualified immunity because the law regarding searches of students was not clearly defined to the extent that they should have known their conduct was impermissible. Therefore, this Court should affirm the decision of the State of Grace Court of Appeals.

ARGUMENT

I. HORTON HOPKINS OFFICIALS DID NOT VIOLATE TOWLES’S OR POLITTE’S FIRST AMENDMENT RIGHTS WHEN THEY CENSORED THEIR OFF-CAMPUS INTERNET SPEECH BECAUSE IT SUBSTANTIALLY DISRUPTED THE EDUCATIONAL ENVIRONMENT AND POLITTE’S SPEECH CONSTITUTED SCHOOL-SPONSORED SPEECH.

The State of Grace Court of Appeals correctly affirmed the District Court’s finding that Horton Hopkins did not violate Towles’s or Politte’s First Amendment rights when it required them to remove their respective webpages from the Internet. Horton Hopkins officials had the authority to regulate this speech not only because the speech had the potential to cause a material and substantial disruption of the educational environment, but also because the speech physically made its way onto campus. Furthermore, Horton Hopkins officials had additional authority to censor Politte’s speech because it constituted “school-sponsored” speech. For these reasons, this Court should affirm the decision of the State of Grace Court of Appeals.

This Court must review the appellate court’s judgment *de novo* because when dealing with First Amendment issues, an appellate court has an obligation to make an independent assessment of the entire record to ensure that the judgment does not intrude on a fundamental right. Rankin v. McPherson, 438 U.S. 378, 386 n.9 (1987) (quoting Bose Corp. v. Consumers Union of United States, Inc., 466 U.S. 485, 499 (1984)).

A. Horton Hopkins Officials Did Not Violate Towles’s or Politte’s First Amendment Rights Because Their Speech Materially Disrupted the Educational Environment.

The First Amendment provides, “Congress shall make no law . . . abridging the freedom of speech.” U.S. Const. amend. I. The United States Supreme Court has continuously found that students in public schools do not “shed their constitutional freedom of speech or expression at the schoolhouse gate.” Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 266 (1988) (quoting

Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1969)). However, it is equally clear that students' rights to free speech are not without limitations. J.S. v. Bethlehem Area Sch. Dist., 757 A.2d 412, 421 (Pa. Commw. Ct. 2000). Public school students' constitutional rights are not co-extensive with those same rights of adults in other settings. Kuhlmeier, 484 U.S. at 266 (citing Bethel Sch. Dist. No. 403 v Fraser, 478 U.S. 675, 682 (1986)). It remains true that the Constitution does not compel school officials to surrender control of public schools to public school students. Fraser, 478 U.S. at 686 (citing Tinker, 393 U.S. at 526 (Black, J., dissenting)). The United States Supreme Court opines there is a necessity for public schools to establish a comprehensive authority to control student conduct that is consistent with constitutional safeguards. Healy v. James, 408 U.S. 169, 180 (1972) (citing Tinker, 393 U.S. at 507). Those cases involving student speech must be resolved in light of those special characteristics of a school setting. Tinker, 393 U.S. at 506. Although students are free to advocate unpopular and controversial political issues on school grounds, this freedom is balanced against society's interest in demonstrating the boundaries of socially acceptable behavior. Fraser, 478 U.S. at 681.

1. Horton Hopkins officials had the authority to regulate off-campus student speech because the speech could significantly disrupt the educational environment.

School officials may censor student speech when it "might reasonably lead school authorities to forecast substantial interference with schoolwork or discipline." Tinker, 393 U.S. at 514. However, school officials must show that this censorship was induced by more than a mere desire to avoid controversy or the discomfort of an unpopular, subversive viewpoint. Id. at 509. A school's censorship authority will even extend beyond the school's gates if that speech disrupts school operations. Wisniewski ex. rel. Wisniewski v. Bd. of Educ., 494 F.3d 34, 36 (2d Cir. 2007). The off-campus character of the speech does not automatically insulate it from school

regulation. Wisniewski, 494 F.3d at 39. See, e.g., Boucher v. Sch. Bd. of the Sch. Dist. of Greenfield, 134 F.3d 821, 829 (7th Cir. 1998) (finding that Tinker governs off-campus student speech that advocates on-campus activity); J.S., 757 A.2d at 421 (holding that school officials could censor off-campus Internet speech because its negative effects materially affected the educational environment). Ultimately, the First Amendment does not immunize student expression, in class or out, if it materially disrupts the academic agenda. Tinker, 393 U.S. at 513.

American schools are the marketplace of ideas and a student may express his opinion as long as it does not “materially and substantially interfer[e] with the operation of the school.” Tinker, 393 U.S. at 513. School officials must demonstrate that they could reasonably forecast a disruption as a result of the student’s speech. Id. at 514. In Tinker, the school administrators suspended students for wearing black armbands to school in protest of the Vietnam War. Id. at 504. In this landmark case regarding student speech, the United States Supreme Court found that the school officials violated the students’ First Amendment rights because the wearing of armbands was “entirely divorced from actually or potentially disruptive conduct by those participating in it.” Id. at 505. Furthermore, it was unconstitutional to ban one particular political opinion in order to avoid material and substantial interference with the academic agenda without evidence that it would in fact do so. Id. at 511. Although the simple fear of disturbance is not enough to overcome the right to freedom of expression, conduct that materially disrupts class work is not protected under the guarantee of freedom of speech. Id. at 513.

Judicial precedent analyzes student speech, whether created on or off-campus, under the Tinker doctrine. Killion v. Franklin Reg’l. Sch. Dist., 136 F. Supp. 2d 446, 454-55 (W.D. PA 2001). Unlike the speech in Tinker, the student speech in the case at bar already created a material and substantial disturbance amongst the student body and had the potential to create a

further disruption at Horton Hopkins. Students accessed both FAD and SADS from the school computer labs throughout the school day, taking valuable time away from their studies. (R. at 4.) Furthermore, the speech on Towles's webpage, SADS, called for his fellow students to "speak out against Smalls and the rest of th[e] Hopkins idiots," inciting a potential on-campus protest (R. at 4.) Principal Smalls stated her main concern regarding censorship of the webpages was maintaining discipline at school because she feared a potential student protest. (R. at 4.) Unlike the peaceful armbands at issue in Tinker, the speech featured on the FAD and SADS webpages had the potential to inflame the student body and create a material and substantial interference at Horton Hopkins. Because school officials need only *reasonably* forecast a material disruption, Horton Hopkins was justified in censoring this student speech.

As a safeguard for First Amendment rights, school officials may only limit speech that substantially interferes with school discipline, not student speech that is merely unpopular. Beussink v. Woodland R-IV Sch. Dist., 30 F.Supp. 2d 1175, 1182 (E.D. Mo. 1998). See, Tinker, 393 U.S. at 511. In Beussink, the appellant created a webpage on his home computer that was extremely critical of the school administration. 30 F. Supp. 2d at 1180. The principal immediately disciplined the appellant after viewing his Internet speech simply because the content of the webpage upset him. Id. The court found the principal violated appellant's First Amendment rights because school officials cannot limit student speech on the sole basis that they are upset or dislike the content of the speech. Id.

Dissimilarly, Principal Smalls did not censor Towles's off-campus speech solely because the content upset her. This was evinced when Principal Smalls demanded *both* Towles and Politte take down their respective webpages. (R. at 4.) This content-neutral censorship exemplifies that Principal Smalls did not censor Towles's speech for the mere desire to avoid

controversy or the discomfort of an unpopular, subversive viewpoint. Furthermore, unlike the principal in Beussink, Principal Smalls did not immediately demand the speech be removed. She waited until the situation was on the cusp of a significant disruption before censoring the speech. Even though Towles voiced a strong disdain for the school administration that did in fact upset Principal Smalls, it is evident that Principal Smalls did not impetuously act to stifle a subversive view, but instead acted sensibly to prevent a material and substantial disruption.

School officials' authoritative hand can extend beyond the schoolyard gates and censor off-campus student speech if there is sufficient evidence to demonstrate that the student's online speech hinders the educational process. J.S., 757 A.2d at 421. In J.S., a student created a website off-campus entitled "Teacher Sux" that made derogatory comments about several teachers and the school principal. Id. at 415. As a result of this webpage, students acquired negative perceptions towards school officials and a teacher was unable to perform her educational duties. Id. at 421. The court found this provided sufficient evidence to establish a material and substantial disruption of the educational environment that would justify censorship. Id. Similarly, the Second Circuit Court of Appeals found it reasonably foreseeable that an Internet depiction of a teacher being shot would cause a material and significant disruption within the school environment because it required special attention from school officials, replacement of the affected teacher, and interruption of class time in order to interview students. Wisniewski, 494 F.3d at 35. Regardless of the student's intent for the message to reach school grounds, its creation of a potential disruption is grounds for censorship. Id. at 40. The court concluded that school officials can regulate student speech in the form of Internet blogs or webpages created off-campus if the speech would materially and substantially disrupt the work and discipline of the school. Id. at 36.

Similar to J.S. and Wisniewski, it was reasonably foreseeable that both Towles's and Politte's off-campus web communications would cause a material and significant disruption within the school environment. Towles's Internet speech, in response to FAD, directly called Horton Hopkins students to fight against the school administration. (R. at 4.) It was reasonable for Principal Smalls to anticipate a potential disruption of the academic agenda. Principal Smalls asserts that she acted to prevent what she foresaw as an imminent student protest. (R. at 4.) She worried that Towles's and Politte's webpages could cause a material and significant disruption of other students' educations. Furthermore, Towles and Politte's off-campus speech had already materially affected the academic environment when students accessed both FAD and SADS on-campus. (R. at 4.) This diversion from the regular curriculum took away from the academic agenda, interfering with the substantial government interest in maintaining order and civility in a public school.

2. Horton Hopkins officials maintained the authority to censor Towles's and Politte's Internet speech because although created off-campus, the speech physically appeared on-campus.

Horton Hopkins officials had the discretion to censor Towles's and Politte's Internet speech because the speech physically made its way onto the campus. Many courts have applied the Tinker analysis when analyzing off-campus speech brought onto school grounds, Porter v. Ascension Parish Sch. Bd., 393 F.3d 608, 615 (5th Cir. 2004), specifically when that student speech advocates on-campus activity. Boucher, 134 F.3d at 829. School officials may censor students' off-campus speech if it is reasonably foreseeable that the student speech will reach the school campus, was purposely designed to come on campus, or was created to encourage fellow students to read and respond. Doninger v. Niehoff, 527 F.3d 41, 50 (2d Cir. 2008). See e.g., Porter, 393 F.3d at 602 (finding that school officials violated students' First Amendment rights

because his speech was composed off-campus, shown only to his family, stored off-campus and not publicized in a way that would result in an appearance on campus).

Even when students play a minor role in bringing the speech to campus, they are still subject to punishment of that speech. Donovan v. Richie, 68 F.3d 14, 19 (1st Cir. 1995). In Donovan, the students admitted to photocopying a “shit list” off-campus and placing it in a trash bin on-campus intended for pick-up by another student. Id. at 16. The court found that the stipulated off-premise conduct led to the distribution of the list on school premises, thus justifying punishment. Id. at 19. In contrast, courts will cabin a school’s authority to censor student speech created and distributed *entirely* off-campus. Thomas v. Bd. of Educ., Granville Cent. Sch. Dist., 607 F.2d 1043, 1045 (2d Cir. 1979) (emphasis added). In Thomas, the court found that First Amendment protections safeguarded appellant’s freedom to conceive and produce a satirical publication addressed to the school community because he created and sold the publication completely off-campus. Id. Where the student speech is conceived, executed, and distributed outside the school gates, it is guaranteed First Amendment protection. Id. at 1050.

Unlike Thomas and similar to the speech at issue in Donovan, Towles’s and Politte’s webpages, although created off-campus, led to the viewing of their webpages on school grounds. After Horton Hopkins students heard about Towles’s webpage they began accessing both FAD and SADS from school computers throughout the school day. (R. at 4.). Although Towles and Politte did not personally bring the speech onto school grounds, the speech made its way onto campus, thus causing a substantial diversion from the academic agenda.

Furthermore, school officials possess justifiable censorship over student speech created off-campus which advocates disruptive on-campus activity and is distributed on campus. Boucher, 134 F.3d at 829. In Boucher, the plaintiff created an underground newspaper off-

campus that contained an article called “So You Want to Be a Hacker” which encouraged and instructed other students how to hack into the school computers. 134 F.3d at 822. Although created off campus, appellant distributed the newspaper in bathrooms, lockers, and in the cafeteria at the high school. Id. Because the article was in fact distributed on campus *and* advocated on-campus activity, punishment was justified. Id. at 829 (emphasis added).

Towles’s speech is synonymous with the plaintiff’s in Boucher because Towles in effect distributed his speech on-campus when students viewed SADS during school hours. Towles must have known that his webpage would be viewed from school computers because the communication vehicle of the Internet allows for on-campus access with minimal effort. SADS also advocated on-campus activity. The language featured on SADS actively encouraged the students to speak out against the administration. (R. at 4.) Principal Smalls reasonably inferred this advocacy of an on-campus student protest would create substantial disruption of the academic environment.

A school official may discipline expressive off-campus speech, when this speech would “foreseeably create a risk of substantial disruption within the school environment.” Doninger, 527 F.3d at 48. In Doninger, the appellant was disciplined for posting critical remarks regarding the administration. Id. at 50. Specifically, the appellant encouraged her fellow students to read and respond to her negative web postings. Id. Off-campus speech of this kind creates a foreseeable risk of substantial disruption within a school, and the off-campus nature of the speech itself does not insulate it from school discipline and censorship. Id.

In parallel circumstances, Towles’s speech publicly criticized the Horton Hopkins administration. Furthermore, SADS called for all Horton Hopkins students to “rise up” against the administration. (R. at 4.) Towles’s online call to “speak out against Smalls and the rest of

these Hopkins idiots” could reasonably be interpreted as attempting to create a future disruption at the high school. Even though Towles created SADS off-campus, the school administration still has the authority to regulate that speech since it created a foreseeable risk of disruption on campus. Because Horton Hopkins had the authority to censor student speech that would foreseeably create a significant and material disruption on campus, this court should affirm the lower court’s judgment.

B. Horton Hopkins Officials Had the Authority to Censor Politte’s School-Sponsored Speech Because Their Actions Were Reasonably Related to Pedagogical Concerns.

Principal Smalls had justifiable authority to specifically censor Politte’s webpage because it was an extension of school-sponsored speech. School officials are not required to allow speech that could be conceived as bearing their imprimatur. Kuhlmeier, 484 U.S. at 271. School administrators may exercise editorial control over student speech in “school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns” and further a valid educational purpose. Id. at 273.

1. Horton Hopkins officials had the authority to censor Politte’s Internet speech because it was an extension of school-sponsored speech that people could reasonably conceive bore the school’s imprimatur.

Horton Hopkins had the authority to censor FAD because it was an extension of a school-sponsored organization. The First Amendment does not force school officials to affirmatively promote specific student speech that is sponsored by the school. Id. at 270-71. School-sponsored speech is characterized as speech that members of the public might reasonably perceive to bear the imprimatur of the school. Id. at 271. In other words, speech that a reasonable person would view as the school’s own speech. Saxe v. State Coll. Area Sch. Dist., 240 F.3d at 214 (3d Cir. 2001).

Educators may exercise greater control over student speech that may be erroneously attributed to the school. Kuhlmeier, 484 U.S. at 271. In Kuhlmeier, student staff members of a high school newspaper challenged the school's authority not to publish two of their articles in the high school newspaper. Id. at 264. The United States Supreme Court held that the student newspaper was a school-sponsored activity and that the school justifiably censored the article as school-sponsored speech because a faculty member supervised the paper and it was part of the school's journalism curriculum. Kuhlmeier, 484 U.S. at 262-63. School officials do not offend the First Amendment by exercising editorial control over the content of student speech in school-sponsored expressive activities as long as they are linked to legitimate pedagogical concerns. Id. at 273.

Similarly, Horton Hopkins officials had a greater authority to control and censor Politte's webpage because her speech stemmed from a school-sponsored organization. DUDS is a school-sponsored organization boasting approximately 130 student members who actively promote a drug-free lifestyle and organize school assemblies to discuss the dangers of drug use. (R. at 2.) Politte created FAD as an extension of DUDS upon the advice received from a school-sponsored guest speaker. (R. at 2.) Additionally, Politte chose to promote her webpage during a school-sponsored organizational meeting, actively tying FAD to the school-sponsored organization. (R. at 2.) Because FAD is an extension of the school-sponsored DUDS, Horton Hopkins officials had the authority to regulate the website.

Furthermore, schools have a greater censorship authority over expressive activities that other students, parents, or members of the community might reasonably perceive to bear the imprimatur of the school or might be erroneously attributed to the school. Id. at 271. In Kuhlmeier, the school newspaper had to be approved by the journalism teacher and the principal

before going to print to approve the speech published under the school's name. Kuhlmeier, 484 U.S. at 269. There are activities and expressions of speech that may fairly be characterized as bearing the school imprimatur, regardless of whether or not they take place in a traditional classroom setting such as the Kuhlmeier newspaper. Kuhlmeier, 484 U.S. at 271. A school must reserve the right to "disassociate" itself from speech that appears biased or prejudiced. Id. at 277. This is especially important in light of the current educational backdrop when students, both on and off campus, participate in school affairs and other expressive activities unrelated to the school community through Internet postings, instant messaging, and other types of electronic communication. Doninger, 527 F.3d at 49.

Although not factually identical to Kuhlmeier, Horton Hopkins officials have a greater authority to censor FAD because Politte's speech portrayed an assumption of school approval. It is axiomatic that schools are allowed to represent neutrality on all political issues. Brown v. Bd. of Educ., 347 U.S. 483, 493 (1954). Horton Hopkins officials had a reasonable fear that those exposed to Politte's speech would associate the school's imprimatur with the speech because FAD is generally inline with the Horton Hopkin's zero-tolerance drug policy. Furthermore, Towles himself highlights the fact that Politte's website maintained the school's imprimatur when he posted, "DUDS, a school organization, under the guise of its website FAD..." (R. at 3.) Because the school has the ability to disassociate itself from school-sponsored speech that they do not endorse, Horton Hopkins officials are free to exercise control over Politte's off-campus Internet speech.

2. Horton Hopkins officials lawfully censored Politte's school-sponsored speech because their actions were reasonably related to legitimate pedagogical concerns.

Horton Hopkins has the authority to regulate school-sponsored speech as long as the

restrictions on student expression are “reasonably related to pedagogical concerns.” Kuhlmeier, 484 U.S. at 273. Judicial intervention is only allowed to protect students’ constitutional rights when the censorship has no valid educational purpose and the First Amendment would be “directly and sharply implicated.” Kuhlmeier, 484 U.S. at 273. “[T]he universe of legitimate pedagogical concerns is by no means confined to the academic....” Poling v. Murphy, 872 F.2d 757, 762 (6th Cir. 1989). Pedagogical concerns not only refer to transferring knowledge in an orderly environment, but also to the inculcation of civility and traditional moral, social, and political norms. See, e.g., Mueller by Mueller v. Jefferson Lighthouse Sch., 98 F.3d 1530, 1539 (7th Cir. 1996) (permitting the school board to prioritize maintaining order in public schools over student expression).

The role and purpose of the American public school system is to prepare its students for citizenship in the Republic, which includes teaching them the habits and manners of civility. Fraser, 478 U.S. at 681. In Kuhlemeier, the United States Supreme Court found the school’s regulations of the newspaper constitutional because they were related to the reasonable pedagogical concern that the articles contained sensitive material inappropriate for some of the younger students. 484 U.S. at 273-77. Similarly in Poling, the court found that the school district was able to punish the appellant for distasteful speech at a school assembly because discipline and respect of authority can rank high on the list of legitimate pedagogical concerns. Poling, 872 F.2d at 762.

Similarly, Principal Smalls was faced with the enormous pedagogical concern of maintaining order in a public high school. FAD incited Towles to create his own website which in turn encouraged a student protest. The combination of FAD and SADS created a sufficient backdrop for a potential on-campus protest. Principal Smalls had the authority to censor Politte’s

school-sponsored speech in order to maintain social order in the public high school as well as teach civility to the students. It is Principal Small's vested pedagogical concern to maintain order and civility in the school, which justifies censoring this school-sponsored speech.

Horton Hopkins officials' regulation of Politte's speech were reasonable because they were applied to maintain civility and order in the public school. There was reasonable fear that the heated Internet accusations could create an imminent and substantial disruption of the academic environment. Horton Hopkins officials took reasonable steps to equally and neutrally silence *both* sides of the political speech. Accordingly, this court should affirm the lower court's decision that both Towles's and Politte's First Amendment rights were not violated.

II. HORTON HOPKINS OFFICIALS DID NOT VIOLATE TOWLES'S FOURTH AMENDMENT RIGHTS BECAUSE THE SEARCH OF TOWLES WAS JUSTIFIED IN ITS INCEPTION AND REASONABLE IN ITS SCOPE, AND EVEN IF THE SEARCH WAS UNREASONABLE, SCHOOL OFFICIALS ARE ENTITLED TO QUALIFIED IMMUNITY.

The State of Grace Court of Appeals correctly affirmed the District Court's grant of summary judgment, yet it erred when it determined that Horton Hopkins officials' search of Towles was not justified at its inception. The search of Towles was reasonable as the search was justified at its inception and permissible in its scope. However, The State of Grace Court of Appeals correctly held that school officials were entitled to qualified immunity because the constitutionality of a strip search was not clearly established at the time school officials searched Towles.

The Fourth Amendment provides "the right of the people to be secure in their persons... and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The United States Supreme Court extended the protections provided by the Fourth Amendment to public school students by stating "the Federal Constitution, by virtue of the Fourteenth Amendment,

prohibits unreasonable searches and seizures” of students by public school officials. New Jersey v. T.L.O., 469 U.S. 325, 334 (1985). Consequently, the United States Supreme Court established that for a search conducted by school officials to be reasonable it must be justified at its inception and reasonably related in scope to the circumstances which justified the interference in the first place. Id. (citing Terry v. Ohio, 392 U.S. 1, 20 (1968)). Thus, if this Court finds both prongs to be satisfied then the search was constitutional.

However, even if a search is deemed to be unreasonable, school officials may be entitled to qualified immunity. Qualified immunity protects government officials from liability when their conduct does not violate a clearly established constitutional right. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The United States Supreme Court set forth a mandatory two-step test for determining whether officials were entitled to qualified immunity: first, whether the facts alleged make out a constitutional violation, and second, whether the right at issue was clearly established at the time of the alleged misconduct. Saucier v. Katz, 533 U.S. 194, 201 (2001). The United States Supreme Court recently receded from Saucier holding that courts are permitted to “exercise their sound discretion in deciding which of the two prongs...should be addressed first in light of the circumstances in the particular case. Pearson v. Callahan, 129 S.Ct. 808, 818 (2009). Thus, if the court finds that either prong may be answered in the negative, then officials are entitled to qualified immunity.

Therefore, in the case at hand, this Court should affirm the decision of the State of Grace Court of Appeals because they find Horton Hopkins officials’ search was justified at its inception and permissible in its scope. However, even if this Court finds that the search of Towles was unreasonable, it should affirm the decision of the State of Grace Court of Appeals because Horton Hopkins officials are entitled to qualified immunity. For either of the foregoing reasons,

this Court should affirm the decision of the State of Grace Court of Appeals.

A. Horton Hopkins Officials' Search of Towles Was Justified at Inception Because There Were Reasonable Grounds for Suspecting that Towles Possessed Marijuana on School Premises.

A search will be “justified at its inception when there are 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.” T.L.O., 469 U.S. at 342. The requirement of reasonable suspicion is not a requirement of absolute certainty but only of sufficient probability. Id. at 346. Thus, reasonable suspicion is a less demanding standard than probable cause as it can arise from information that is less reliable than that required to show probable cause. Ala. v. White, 496 U.S. 325, 330 (1990) (holding anonymous telephone tip, corroborated by independent police work, provided reasonable suspicion to make stop of defendant’s vehicle). However, some circuit courts have stated that as the intrusiveness of the search escalates so too does the level of suspicion required to justify the search. See, e.g., Cornfield v. Consolidated High School District, 991 F.2d 1316 (7th Cir. 1992); Phaneuf v. Fraikin, 448 F.3d 591, 596 (2d Cir. 2006); Redding v. Safford Uni. Sch. Dist. No. 1, 531 F.3d 1071 (9th Cir. 2008), cert. granted, 129 S.Ct. 987 (2009). Therefore, to create reasonable suspicion when presented with evidence such as an anonymous tip there must be some independent investigation by officials to verify the reliability of the tip. White, 496 U.S. at 330. However, The United States Supreme Court acknowledged that school officials are not police officers skilled in probable cause, and requiring them to create leads would create an over-burdensome task on that official. Bd. of Educ. of Ind. Sch. Dist. No. 92 of Pottawatomie County v. Earls, 536 U.S. 822, 837 (2002). Thus, school officials should view evidence in the totality of the circumstances in order to determine whether they have reasonable suspicion to justify a search. White, 496 U.S. at 329.

School officials must have evidence sufficient to create reasonable suspicion, however great deference should be given to school officials' judgment in their attempts to maintain order in their schools. T.L.O. 469 U.S. at 342-343 (1985). In T.L.O., the United States Supreme Court held that a vice-principal actually conducted two searches of a student's purse and both were reasonable. Id. at 347. The student was caught smoking cigarettes in the lavatory which was a violation of school rules. Id. at 328. After questioning the student and not believing her denials, the vice-principal then searched her purse and found cigarettes. Id. During that search the vice-principal noticed rolling papers which, through his experience, signified the use of marijuana. Id. As a result, he proceeded to search the purse more thoroughly and found marijuana and several items indicating that the student was dealing drugs. Id. The United States Supreme Court emphasized that reasonable suspicion may be derived from a "sort of common-sense conclusion about human behavior upon which practical people - including government officials are entitled to rely". Id. at 346 (quoting United States v. Cortez, 449 U.S. 411, 418 (1981)). Furthermore, Justice Blackmun noted that demanding further investigation would have been extraordinarily disruptive to the educational environment. T.L.O., 469 U.S. at 353 (Blackmun, J., dissenting). The United States Supreme Court found, in light of his experience, the discovery of rolling papers by the vice-principal gave rise to a reasonable suspicion that the student was carrying marijuana. Id. at 347. This reasonable suspicion provided the justification for the search. Id.

However, in Cornfield, the court held that it was the cumulative effect of several factors that created a sufficient, reasonable suspicion that a student possessed drugs. 991 F.2d at 1324. School officials believed that a student was hiding drugs in his pants. Id. at 1322. Believing a pat down to be both extremely intrusive and ineffective, the school officials accompanied the student into the boys' locker room to conduct a strip search. Id. They physically inspected his naked

body, but found no evidence of drugs. Cornfield, 991 F.2d at 1322. The court held the search was justified as school officials considered a tip from another student, reports from teachers, and a report from a police officer that the student might be distributing drugs. Id.

In contrast, courts have held searches were not justified when school officials had minimal evidence, yet subjected students to excessively intrusive searches. See, e.g., Phaneuf, 448 F.3d at 600; Redding, 531 F.3d at 1085. In Phaneuf, the court held that an uncorroborated tip from a fellow student, the erroneous discovery of cigarettes, unrelated past disciplinary problems, and a suspicious denial were not sufficient justification for requiring the girl to expose her nude body to school officials. 448 F.3d at 598-600. Similarly in Redding, the court held that there was not reasonable justification to conduct a strip search which required a thirteen-year-old girl to show her private areas in an attempt to find over-the-counter pills and prescription ibuprofen. 531 F.3d at 1085. The search in Redding was based solely on an unsubstantiated tip from a student who had been caught with pills and was trying to get out of trouble. Id. In both Phaneuf and Redding, the searches were extremely intrusive, and in neither case did school officials conduct further investigation after receiving the tip.

In the case at hand, Principal Smalls used twenty years of experience to judge that the information presented to her created a reasonable suspicion that Towles possessed drugs on school campus. She had a photograph of three students, one smoking. (R. at 3.) The caption accompanying the picture insinuated that the students in the picture were drug users and may be drug dealers. (R. at 3.) The photographic tip was posted on an Internet website used to fight drug dealing in the community. (R. at 3.) The photographic tip generated her suspicion that these three students may be dealing drugs and may bring marijuana on to campus. (R. at 3.) The fact that the initial suspicion of Towles originated because of his appearance in the photographic tip does not

invalidate the justification of the search. In T.L.O., the United States Supreme Court stated that although “some quantum of individualized suspicion is usually a prerequisite to a constitutional search or seizure . . . the Fourth Amendment imposes no irreducible requirement of such suspicion.” 469 U.S. at 342 (quoting United States v. Martinez-Fuerte, 428 U.S. 543, 560-561 (1976)). Principal Smalls’s suspicions are similar to the suspicions of the vice-principal in T.L.O. when he located the rolling papers. Principal Smalls, when confronted with a picture of the students at a known drug party with a caption insinuating they were drug dealers, used her twenty years of experience and a practical form of common sense to suspect these three students of possessing and possibly dealing drugs.

Furthering her suspicions, police called to alert Principal Smalls that they cited one of the students in the picture, Conrad, for marijuana possession the previous night. (R. at 3.) Next, instead of rashly deciding to immediately conduct searches, she called the three students she identified in the picture into her office along with the student that hosted the party. (R. at 3.) Similar to school official’s actions in T.L.O., she took time to question each student. (R. at 3.) Even after their denials she still believed they were in possession of drugs. (R. at 3.) She then conducted searches of each of the students’ lockers, which Towles has stipulated she had the right to do, and their backpack. (R. at 3.) She found marijuana in Conrad’s locker which provided further corroboration of the tip and reasonable suspicion that each of the students possessed marijuana. (R. at 3.)

Similar to Cornfield, Principal Smalls now had multiple pieces of evidence coming together to create reasonable suspicion. Also, had there been any reasonable leads that could have definitively proven that the students did not possess drugs she might have been required to follow up on them before searching the students. Earls, 536 U.S. at 837. But, she did not have

any such leads. She had a photographic tip that students might be possessing marijuana and she had independent corroboration of that tip. (R. at 3.) She did not have individualized suspicion only pertaining to Towles, however she was not conducting a mass search because she only suspected four students. The photographic tip identified three students as potential drug dealers, and she had just caught one of them with marijuana. (R. at 3.) To justify reasonable suspicion, her factual determinations were not required to be correct, but only reasonable given the facts known to her. Phaneuf, 448 F.3d at 597. She used her vast experience in determining that this information provided a high probability that these students possessed marijuana on school grounds, and a search was necessary. As such, Horton Hopkins officials search of Towles was justified at its inception.

B. Horton Hopkins Officials' Search of Towles's Backpack and Person was Reasonably Related to the Objectives of Preventing Possession and Distribution of Drugs on School Premises.

A search is “permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.” T.L.O., 469 U.S. at 342. The United States Supreme Court has repeatedly held that there is not a “least intrusive” requirement under the Fourth Amendment. See, e.g., Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 661; Earls, 536 U.S. 822 (2001); Martinez-Fuerte, 428 U.S. at 556-557 (1976). As such, a reasonable search requires “balancing the need to search against the invasion which the search entails.” Id. at 337 (quoting Camara v. Municipal Court, 387 U.S. 523, 536-537 (1967)).

Here, Horton Hopkins officials had a commanding interest in protecting the school community from the harms of illicit drugs. (R. at 15.) To further this interest, they conducted searches on students suspected of possessing drugs on school premises. And, they did so in a

reasonable manner by not excessively intruding on the students' diminished privacy interests. Hence, Horton Hopkins officials' search was permissible in its scope.

1. Horton Hopkins officials took reasonable measures to find marijuana possessed by students.

Horton Hopkins officials' actions were reasonable in executing their objective of protecting the school community from drug possession and distribution. The United States Supreme Court recognized that students have a legitimate privacy interest, but that privacy interest is diminished and must be balanced against "the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds" especially with the rise in drug use and violence in schools. T.L.O., 469 U.S. at 339. Furthermore, the United States Supreme Court stated that schools have an important, if not compelling, interest in deterring drug use because school years are the time when the physical, psychological, and addictive effects of drugs are most severe. Acton, 515 U.S. at 661 (holding that public school district's policy requiring all student athletes to submit to drug testing did not violate student's constitutional right to be free from unreasonable searches).

In the case at hand, Horton Hopkins officials recognized that the illegal use of drugs poses a significant threat to students, teachers, the school community, and society in general. (R. at 15.) Horton Hopkins officials' objective was to take "steps to maintain a drug-free school-system." (R. at 15.) In order to prevent drugs from infiltrating the educational environment, Horton Hopkins officials searched the four students they reasonably believed were in possession of drugs on school premises. Horton Hopkins officials searched the students in a manner which rationally could and did confirm their fear of students possessing drugs on-campus. While they did not find drugs on Towles, two of the four boys searched were in possession of marijuana. (R. at 3.) Furthermore, it was reasonable to believe that if a student possessed drugs on school

grounds he would keep the drugs either on his person or in his backpack. Thus, once school officials were justified in believing that the students possessed drugs they were reasonable in believing that searching the students' persons and their backpacks would produce drugs.

2. Horton Hopkins officials' search of Towles's backpack and person to find marijuana was not excessively intrusive.

Horton Hopkins officials, in an attempt to find marijuana, properly minimized the intrusiveness of the search of Towles and his backpack. A highly intrusive search in response to a minor infraction would not be held reasonable under the standard set forth in T.L.O. Cornfield, 991 F.2d at 1320. However, when school officials "reasonably believe that a student is carrying a weapon or harmful drugs, it will rarely be unreasonable for them to do what they can to neutralize the danger." Redding, 531 F.3d at 1105 (Hawkins J., dissenting).

In Cornfield, the court found a search aimed at finding marijuana was permissible in its scope even though a sixteen-year-old male was forced to strip to the nude and the search did not produce any drugs. 991 F.2d at 1323. The court acknowledged that it would be difficult to predict how the impact of a strip search will vary with the age of the individual. Id. at 1321. Further, they recognized "what is reasonable depends on the context within which the search takes place." Id. at 1320. In coming to their conclusion, the court noted the importance of the fact that school officials believed the strip search was the least intrusive way to discover if the student had drugs on his person. Id. at 1323. Also significant was the fact that they never touched the student, and they did not force him to "suffer the indignity of standing naked before them." Id.

On the other hand, courts have found situations where searches proved to be excessively intrusive. See, Redding, 531 F.3d at 1085; Beard v. Whitmore, 402 F.3d at 605. In Redding, the court found public school authorities adopted a disproportionately extreme measure to search a thirteen-year-old girl for violating a school rule prohibiting the possession of prescription and

over-the-counter drugs. Redding, 531 F.3d at 1085. Further, the court stated it only took common sense to recognize the excessive intrusiveness in directing a thirteen-year-old girl to reveal her breasts and pelvic area for allegedly possessing ibuprofen. 531 F.3d at 1085. The court emphasized the “feelings of humiliation and degradation associated with forcibly exposing one’s nude body to strangers for visual inspection” in determining the search was excessively intrusive. Id. (quoting Thompson v. City of Los Angeles, 885 F.2d 1439, 1446 (9th Cir. 1989)).

In Beard, the court found that a highly intrusive search undertaken to find money was unreasonable, but noted the same search may have been reasonable if undertaken to find drugs or weapons. 402 F.3d at 605. Additionally, the court stated the fact that searches were performed on twenty-five students was significant in determining that the searches were unreasonable. Id. at 605. Also significant was the fact that the males were required to expose their privates to school officials and the females were searched while in the presence of other students. Id. at 606.

However, the facts of the case at hand contrast immensely from Redding and Beard. Here, the governmental interest was compelling because the search was conducted in order to find marijuana, not ibuprofen or stolen money. (R. at 3.) Horton Hopkins officials searched only the four students whom they believed possessed drugs. (R. at 3.) Furthermore, the search of Towles was conducted in private by a male gym teacher, and no other students or teachers were permitted in the room. (R. at 3.) Differing from Beard, Towles did not have to subject himself to the humiliation of being searched in the presence of other students. Most importantly, differing from both Redding and Beard, at no time during the search was Towles nude or forced to expose himself by pulling his undergarments away from his body. (R. at 3.) By taking these precautions, school officials ensured they respected Towles’s right to privacy. They took reasonable steps in searching Towles in a manner they deemed reasonable in light of both

Towles's age and sex and the possibility that Towles was concealing drugs on his person. As such, the scope of the search was permissible.

C. Principal Smalls is Entitled to Qualified Immunity Because She Could Not Have Known That Protecting a High School From Illicit Drugs by Searching the Persons of Students Suspected of Possessing Marijuana Violated Constitutionally Permissible Norms.

Qualified immunity protects government officials from civil liability if their “actions did not ‘violate clearly established statutory or constitutional rights of which a reasonable person would have known.’” Beard, 402 F. 3d at 606 (quoting Harlow, 457 U.S. at 818). For a right to be clearly established the law must be concrete and factually defined to make it obvious to all reasonable individuals that their actions violate federal law. Jenkins by Hall v. Talladega City Bd. Of Education, 115 F.3d 821, 823 (11th Cir. 1997). Qualified immunity protects all but the plainly incompetent and those who knowingly violate another's rights. Malley v. Briggs, 475 U.S. 335, 344-45 (1986). The violated right must be clearly established to the point that the “contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right”. Saucier, 533 U.S. 194, 202 (2001) (quoting Anderson v. Creighton, 483 U.S. 635, 640 (1987)). In addition, it is not enough that previously the action was held unlawful, but rather, that pre-existing law definitively made the unlawfulness apparent. Williams by Williams v. Ellington, 936 F.2d 881, 885 (6th Cir. 1991) (citing Anderson, 483 U.S. at 640).

To determine whether a right is clearly established, courts should look first to the decisions of the United States Supreme Court, then decisions of courts within their circuit, and finally to decisions of other circuits. Beard, 402 F. 3d 598, 606-607 (6th Cir. 2005) (quoting McBride v. Village of Michiana, 100 F.3d 457, 460 (6th Cir. 1996)). In T.L.O., Justice Brennan stated that judging a school search on a scale of reasonableness was unclear and unprecedented.

469 U.S at 749 (Brennan, J., concurring in part and dissenting in part). He elaborated that it would be problematic for school officials when their only definitive guide is that the standard of reasonableness is less than the standard of probable cause. Id. In subsequent cases, the United States Supreme Court only considered school searches in the context of drug testing students participating in athletics and extra-curricular activities without individualized suspicion. See, e.g., Acton, 515 U.S. at 646; Earls, 536 U.S. at 822. Therefore, the Supreme Court never elaborated on the two-prong test it set forth in T.L.O.

Consequently, school officials are forced to decipher the different holdings of the circuit courts for guidance in deciding what is and what is not reasonable. In Beard, the court stated that while the United States Supreme Court set the guidelines for determining the reasonableness of school searches it did not “explain how the factors should be applied in the wide variety of factual circumstances facing school officials today.” 402 F.3d at 598. In Beard, the court held that strip searches of high school students to find money were unreasonable, but that the constitutionality of them was not clearly established at the time. Id. at 608. In Jenkins, the Eleventh Circuit Court of Appeals held that strip searches of two eight-year old girls to find seven dollars were unreasonable, but that school officials were still entitled to qualified immunity. 115 F.3d at 821. The court stated that school officials need detailed guidance about how exactly the reasonable nature of a search is affected when the student is a boy or girl, younger or older, and what infraction would warrant a reasonable search. Id. at 826. The court further noted that “school officials cannot be required to construe general legal formulations that have not once been applied to a specific set of facts by any binding judicial authority.” Id. at 827. In Doe v. Renfrow, the Seventh Circuit Court of Appeals held searching the nude body of a thirteen-year-old girl following an alert by a police dog was unreasonable, 631 F.2d 91 (7th Cir.

1980), but in Bridgman v. New Trier High Sch. Dist. No. 203, they held a strip search of student upon suspicion that the student was under the influence of drugs was reasonable. 128 F.3d 1146, 1150 (7th Cir. 1997).

Here, given the evidence before her, Principal Smalls could not have known that searching Towles's person was a clear violation of established law. Principal Smalls was the principal of a school being overrun by drugs. (R. at 1.) She had tips that certain students were dealing drugs and corroboration of that tip. (R. at 3.) She had Towles searched in private and without having to be in the nude. (R. at 3.) Consequently, the law has not considered a situation sufficiently similar to the case at hand. Furthermore judges and circuits differ about whether searches in specific instances are reasonable or not. Thus, it would be inequitable to hold Principal Smalls liable for the alleged Fourth amendment violations. As such, she is entitled to qualified immunity.

CONCLUSION

For the aforementioned reasons, Horton Hopkins School District and Keena Smalls respectfully request that this Court uphold the judgment of the Court of Appeals of the State of Grace.

Respectfully Submitted,
Team No. 10
Counsel for Respondents

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