

No. 05-1338



**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 Petitioner**



**Team 15**  
*Counsel for Petitioner*

## QUESTIONS PRESENTED

- I. Whether students have a First Amendment right to express nonthreatening political opinions through personal webpages that are created off-campus and are not accessed within the school classroom.
  
- II. Whether a high school student's Fourth Amendment right to be free from unreasonable searches, as applied through the Fourteenth Amendment, is violated when school officials conduct a warrantless strip search of the student on school grounds.

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## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

### ***United States Constitution, Amendment I:***

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### ***United States Constitution, Amendment IV:***

The rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### ***United States Constitution, Amendment XIV, § 1:***

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF THE CASE

### I. Summary of the Facts

Petitioners, Kit Politte (“Politte”) and Corey Towles (“Towles”), are students at Horton Hopkins High School (“Horton Hopkins”). (R. at 2.) Politte is an 18-year-old senior and the founder of Drug Use Damages Schools (“DUDS”), a school sponsored club that seeks to reduce drug use within the student body. (R. at 2.) Towles is a sixteen-year-old sophomore who transferred to Horton Hopkins for the 2008-09 school year from a high school in the State of Disarray, where Towles was an honor student and junior varsity baseball player. (R. at 2.) Towles has never been disciplined for a drug-related offense. (*See* R. at 2.)

On September 10, Politte created a network webpage on Friendkepedia called Fighting All Dealers (“FAD”). (R. at 2.) Politte created the webpage as a means for community members to submit information about potential drug dealers, in the hope that such information might lead to the arrest of local dealers. (R. at 2.) Politte promoted the webpage during a DUDS meeting held after school hours in a Horton Hopkins classroom. (R. at 2.) Politte created and maintained DUDS at home from her own personal computer. (R. at 2.)

On October 5, 2008, Respondent Keena Smalls (“Smalls”), Principal of Horton Hopkins, viewed a photograph posted by Politte on FAD that depicted Towles and two other students, Frank Conrad (“Conrad”) and John Thomson (“Thomson”), at Jeff Tweegs’ (“Tweeg”) house. (R. at 3.) The photograph depicted Conrad smoking; neither Thomson nor Towles was depicted smoking. (*See* R. at 3.) The photograph’s caption read: “Police find drug use at local high school party. Are Horton Hopkins students becoming drug dealers?” (R. at 3.) Only one student, Conrad, was cited for drug possession at the party. (*See* R. at 3.)

After viewing the photograph, Smalls ordered Towles, Conrad, Thomson and Tweeg to her office for questioning regarding drug possession. (R. at 3.) All four boys denied possessing drugs. (R. at 3.) Smalls searched each boy's locker and book bag. (R. at 3.) Smalls did not find any drugs or paraphernalia in Towles' locker or book bag. (See R. at 3.) Despite their refusal to be individually searched, Mr. Jim Waters, a gym teacher at Horton Hopkins ("Waters"), strip searched the boys. (See R. at 3.) In a private room, Waters instructed each boy to strip down to his undergarments. (R. at 3.) Waters searched all of the boys' clothing, but did not physically touch the boys. (R. at 3.) Waters did not find any drugs on Towles or in his clothing. (R. at 3.)

Towles responded to the FAD webpage and the strip search by creating his own Friendklopedia page called Students Against Defamatory Statements ("SADS"). (R. at 3.) Towles created and edited the webpage from his personal computer. (R. at 3.) The webpage criticized DUDS as a "school organization under the guise of its website FAD," and alleged that DUDS had invaded his privacy. (R. at 3, 4.) Towles' webpage went on to state: "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. at 4.)

As word of the DUDS and SADS webpages spread, students began accessing the webpages from the school computer labs and library during free time and after school hours. (R. at 4.) Smalls confronted Politte and Towles and demanded they take down their webpages. (R. at 4.) Smalls was concerned with the disturbance caused by the websites and the criticism of the school administration. (R. at 4.) After Politte and Towles refused to shut down their webpages, Smalls suspended both students until they agreed to cooperate. (R. at 4.)

## **II. Summary of the Proceedings**

Politte and Towles, through his parents, brought suit in the Badge County District Court, alleging constitutional violations under both the First and Fourth Amendments, as applied through the Fourteenth Amendment. (R. at 4.) The Badger County District Court granted summary judgment in favor of Horton Hopkins and Smalls, concluding that neither the demand to remove the webpages nor the strip search violated any constitutional rights. (R. at 6,8.)

The State of Grace Court of Appeals affirmed the district court findings with respect to the constitutional violations under the First Amendment. (R. at 10.) The Court of Appeals also affirmed the district court finding that Horton Hopkins and Smalls did not violate Towles' Fourth Amendment right, but on different grounds. (R. at 12.) The Court of Appeals concluded that even though the strip search of Towles was unreasonable, Horton Hopkins and Smalls were entitled to qualified immunity for the search because it was not "clearly established" that a strip search was "unlawful in the situation." (R. at 12.) Both questions are now before the Supreme Court of the State of Grace on writ of certiorari. (R. at 14.)

### **SUMMARY OF THE ARGUMENT**

Schools should not be allowed to have unconditional control over its students, especially when the school attempts to control a student's conduct off campus and unreasonably strip searches students on campus. This Court should reverse the court of appeals and find that Respondents violated Petitioners' First and Fourth Amendment rights. First, this Court should determine that public schools may not regulate off-campus student activity that is nonthreatening and does not pose a substantial disruption to the school environment. Second, this Court should determine that strip-searching Towles was unconstitutional under the circumstances.

Schools may regulate student expression if it causes a substantial disruption to the learning environment. However, students are considered persons under the Constitution and therefore have full protection of the First Amendment when outside school. The lower court erroneously applied the substantial disruption test to Petitioners' webpages. The United States Supreme Court has never held that schools have the authority to regulate off-campus expression. Instead, school officials are permitted to regulate on-campus expression that causes a substantial disruption to the learning environment.

Petitioners created their personal webpages off-campus and did not access the webpages through school computers. Thus, the substantial disruption test does not apply. The lower court's decision to nonetheless extend the substantial disruption test to off-campus speech violates important public policy. First, extending the reach of school discipline off-campus will chill overall student expression. Second, extending the reach of school discipline off-campus will interfere with parental authority.

Further, the webpages did not cause a substantial disruption to the school environment. Schools must strive to provide comprehensive protection for student expression of political viewpoints. School officials seeking to regulate political expression must have a reason for doing so beyond a mere desire to avoid the discomfort that comes from the expression of an unpopular opinion.

The personal webpages did not disrupt the learning environment. Students who accessed the webpages at school did so either during free time or after school hours. Thus, there is no evidence that the webpages disrupted classroom learning. Moreover, the school took action only after it discovered content that was critical of the administration. A desire to avoid criticism is an improper motive for restricting student free speech. Regardless, the school went too far when

it suspended the petitioners for failing to remove the webpages. The school could have addressed the supposed disruption by limiting student computer access or disabling student access to the webpages through the school internet.

School searches must satisfy the two-part reasonableness test, first articulated in *New Jersey v. T.L.O.*, 469 U.S. 325, 334 (1985), to be considered a constitutional search. First, the search must first be justified at its inception, which occurs 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.” The reasonable grounds necessary must increase as the intrusiveness of the search increases. To justify a strip search, a school official must have individualized suspicion regarding the student who is the subject of the strip search. Second, the chosen search must be reasonably related in scope to the circumstances. A strip search is unreasonable in scope where the search is “excessively intrusive in light of the age and sex of the student and the nature of the infraction.”

Furthermore, qualified immunity is only available to those persons sued in their individual capacity. Even if qualified immunity does apply to persons in their official capacity, qualified immunity does not apply when the constitutional right was clearly established prior to the alleged violation. Even if there is no controlling case on point, reason and ordinary common sense dictates that an unreasonable strip search is unconstitutional.

Smalls engaged in a witch hunt to find drugs without insuring that the *T.L.O.* test was satisfied. In the process, Towles was unconstitutionally subjected to a traumatic and embarrassing strip search without any reasonable suspicion that Towles was violating or had violated Horton Hopkins’ drug policy. One photograph depicting Conrad smoking and Towles not smoking does not create reasonable suspicion that Towles was violating or had violated the

drug policy. Finding drugs in one student's possession does not provide the reasonable suspicion necessary to strip search anyone that might have come into contact with that student. Finally, the strip search of Towles was not justified at its inception because when Smalls determined that a strip search was necessary, Smalls had no individualized suspicion that Towles was or had possessed drugs on school property.

Second, strip-searching Towles was unconstitutional in light of his age, sex and the nature of the infraction. Towles is an impressionable young boy, and ordering him to take off all his clothes in front of a stranger might have been unduly traumatic and embarrassing in light of the circumstances. Further, while drug possession is a serious infraction, Smalls was not even certain as to what she was searching for when she ordered the strip search. Strip-searching Towles was unconstitutional because of the general description of the nature of the infraction.

Finally, qualified immunity is not available to Respondents because neither of them is being sued in their individual capacity. Even if qualified immunity was available, several cases should have put them on notice that strip-searching Towles was clearly established as unconstitutional. Despite there being no case factually identical, Respondents should have used common sense to determine that subjecting a teenage boy to a strip search without a strong suspicion that they would find drugs on his person was unconstitutional.

## **ARGUMENT**

### **I. STANDARD OF REVIEW**

When reviewing Petitioners' claims that Respondents violated both the Petitioners' First Amendment and Fourth Amendment rights, this Court should review the record de novo, without deference to the lower court holdings. *See Phaneuf v. Fraikin*, 448 F.3d 591, 595 (2d Cir. 2006).

## **II. HORTON SCHOOL DISTRICT VIOLATED THE FIRST AMENDMENT WHEN IT REGULATED NONTHREATENING STUDENT WEBPAGES THAT WERE CREATED OFF CAMPUS AND DID NOT CAUSE A SUBSTANTIAL DISRUPTION TO THE SCHOOL ENVIRONMENT.**

The First Amendment of the United States Constitution, as applied to the States through the Fourteenth Amendment, *see Gitlow v. New York*, 268 U.S. 652 (1925), guarantees that “Congress shall make no law . . . abridging the freedom of speech.” U.S. Const. amend. I. Because of the “special characteristics of the school environment,” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969), it is a well established principle that “the constitutional rights of students in public school 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). However, it is also true that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker*, 393 U.S. at 506.

Generally, schools may not regulate student speech occurring on campus unless the student speech causes a substantial disruption to the learning environment. *Tinker*, 393 U.S. at 509. The Court has since identified three exceptions where schools may regulate student speech that does not cause a substantial disruption. First, schools may regulate vulgar and lewd speech. *Fraser*, 478 U.S. 675. Second, schools may regulate speech that the public might reasonably perceive to bear the “imprimatur of the school.” *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271 (1986). Finally, schools may regulate student speech that reasonably appears to promote illegal drug use. *Morse v. Frederick*, 127 S.Ct. 2618 (2007).

Because the free speech standards are limited to on-campus expression, the lower court improperly applied the substantial disruption test to petitioners’ personal websites that were created and maintained off-campus. Precedent and public policy caution against blurring the line between on-campus and off-campus speech. Alternatively, the personal webpages did not cause

a substantial disruption to the school environment because the webpages were not accessed during class time. Moreover, even if the webpages did cause a disruption, the school’s decision to suspend the petitioners was unwarranted.

**A. Horton School District Did Not Have the Authority To Regulate Nonthreatening Off-Campus Speech.**

*1. The Supreme Court’s Free Speech Standards Do Not Apply to Webpages Created Off-Campus.*

The Supreme Court’s school free speech standards are limited to speech expressed on-campus. First, a school’s authority to regulate speech causing a substantial disruption is limited to on-campus expression. *Tinker*, 393 U.S. 503. In *Tinker*, the Court concluded that a school district violated the First Amendment when it suspended students who refused to remove black armbands worn to school in protest of the Vietnam War. *Id.* In finding for the students, the Court announced its standard—territorial in scope—that school regulation of student expression taking place “on school property” requires a “showing that the students’ activities would materially and substantially disrupt the work and discipline of the school.” *Id.* at 513.

Second, a school’s authority to regulate vulgar student speech is limited to on-campus expression. *Fraser*, 478 U.S. 675. In *Fraser*, the Court upheld a school’s decision to punish a student who made vulgar and lewd references during a school assembly. *Id.* In doing so, the Court reasoned that schools have an obligation to teach students about proper public discourse. *Id.* at 677. However, the rule applies only to “manner of speech in the classroom or in a school assembly.” *Id.* at 684.

Third, a school’s authority to disassociate itself from student speech is limited to on-campus student expression. *Hazelwood*, 484 U.S. 260. In *Hazelwood*, the Court upheld a school’s exercise of editorial discretion over the school newspaper. *Id.* The Court reasoned that schools have a right to regulate speech that the public might reasonably perceive to bear the

“imprimatur of the school.” *Id.* at 271. Because the school newspaper is an organ of the school, school officials may disassociate the school from the paper’s content. *See id.* at 272. Once again, the Court clearly limited the scope of the standard to student expression “that happens on the school premises.” *Id.* at 271.

Finally, a school’s authority to regulate speech promoting illegal drug use is limited to on-campus expression. *Morse*, 127 S.Ct. 2618. In *Morse*, the Supreme Court upheld a school district’s decision to suspend a student who displayed a sign stating “BONG HiTS 4 JESUS” at a school field trip. *Id.* The Court found that the sign could reasonably be interpreted as promoting illegal drug use, *id.* at 2625, and that schools have a compelling interest in regulating illegal drug use. *Id.* at 2628. Despite the fact that the student did not attend school that day and that he displayed the sign while standing on a side walk, the Court considered the conduct to have taken place on-campus because a student cannot “stand in the midst of his fellow students, during school hours, at a school-sanctioned activity and claim he is not at school.” *Id.* at 2624 (citing App. To Pet. For Cert. 63a). Indeed, the Court specifically rejected the notion that its decision extended school authority to off campus expression when it stated “[t]here is some uncertainty at the outer boundaries as to when courts should apply school-speech precedents, but not on these facts.” *Id.* (citation omitted).

The weight of lower court precedent recognizes the territorial limits to school authority over student expression. *See e.g. Porter v. Ascension Parish Sch. Bd*, 393 F.3d 608 (5th Cir. 2004); *Thomas v. Bd of Educ.*, 607 F.2d 1043, 1050 (2d Cir. 1979); *Emmett v. Kent Sch. Dist. No. 415*, 92 F. Supp. 2d 1088 (W.D. Wash. 2000); *J.S. v. Bethlehem Area Sch. Dist.* 807, A.2d 847 (Pa. 2002). For example, in *Porter* the Fifth Circuit reviewed a school’s decision to punish a student for a drawing that depicted a violent siege of the school. *Porter*, 393 F.3d 608. In finding

for the student, the Fifth Circuit drew a firm line between on-campus and off-campus speech. *Id.* at 615 (“we decline to find that Adam’s drawing constitutes student speech on the school premises.”). The fact the student created the drawing off-campus and never intended to bring it to campus, distinguished the speech from student expression “that happens to occur on the school premises.” *Id.* (quoting *Hazelwood*, 484 U.S. at 271).

Similarly, the Second Circuit refused to extend *Tinker* beyond its intended scope. *Thomas*, 607 F.2d at 1050. The student expression at issue in *Thomas* involved a sexual-satirical publication created by high school students. *Id.* at 1045. The publication was created after school hours in the students’ homes. *Id.* Further, the students never sold the paper on school grounds. *Id.* The Second Circuit declined to apply *Tinker* to these facts:

The case before us, however, arises in a factual context distinct from that envisioned in *Tinker* and its progeny. While prior cases involved expression within the school itself, all but an insignificant amount of relevant activity in this case was deliberately designed to take place beyond the schoolhouse gate.

*Id.*

A student who creates speech off-campus is not subject to school discipline merely because a third party brings the speech on-campus. *Maheffey v. Aldrich*, 236 F. Supp. 2d 779 (D. Mich., 2002). In *Maheffey*, the court reviewed a school’s decision to punish a student for a website entitled “Satan’s web page”, *id.* at 781, that included a list of “people I wish would die.” *Id.* at 782. The student created the webpage off-campus and it only came to the attention of the school after a parent complained. *Id.* The court focused on the fact that “the evidence simply does not establish that any of the complained of conduct occurred on Kettering property.” *Id.* at 784. From the court’s perspective, it was irrelevant—as to the creator of the website—whether other students had accessed the website on school computers.

The petitioners' personal webpages are distinguishable as off-campus expression. First, both students created and maintained their websites from their own home, and there is no evidence either used school resources in creating the websites. The fact Politte promoted the FAD website during a DUDS meeting is not dispositive because the meeting took place after school hours. *See Tinker* 393 U.S. 503 at 512 (describing the school's mission during "prescribed hours"). In addition, there is no evidence Politte downloaded the website during the meeting; rather she directed students to a particular resource and encouraged them to access it on their own time. Talking about a website is not the same as bringing its content onto campus. Second, neither student downloaded or encouraged others to download the websites on school computers. While Towles encouraged students to contact the school, there is no evidence he encouraged students to download his website on school computers. Therefore, if this court is to uphold the lower court decision, it must agree to extend the school free speech standards beyond the scope defined by the Supreme Court.

2. *Extending Tinker Off-Campus is Unnecessary and Contrary to Public Policy.*

When lower courts apply *Tinker* off-campus, they often do so in response to student threats. *See e.g., Wisniewski ex rel. Wisniewski v. Bd. of Educ.*, 494 F.3d 34 (2d Cir. 2007) (where student sent instant message to friends from his own home computer depicting a gun firing a bullet at a person's head and the words "Kill Mr. VanderMolen"); *Doe v. Pulaski County Special Sch. Dist.*, 306 F. 3d 616 (8th Cir. 2004) (where student created letters off-campus that expressed a desire to molest, rape, and murder his ex-girlfriend). Threatening speech "must be distinguished from what is constitutionally protected speech." *Watts v. U.S.*, 394 U.S. 705, 707 (1969). Because true threats are not protected under the First Amendment, it is irrelevant—for

purposes of school regulation—whether or not a student threat is expressed on campus or off campus.

While courts have applied the *Watts* standard to student threats, *see Lovell v. Poway Unified Sch. Dist.*, 90 F.3d 367 (9th Cir. 1996), it can be argued that the standard is too high to effectively deal with the unique challenge of school violence. Therefore, this court might reasonably conclude that the less stringent *Tinker* standard should apply to student threats.<sup>1</sup> However, such a determination is not necessary in this instance because neither webpage was threatening. While both webpages called for action, neither webpage advocated for—or even joked about—the use of violence. Indeed, the strongest language from either webpage is the reference to school officials as “these idiots.”

Extending *Tinker* to nonthreatening off-campus speech, *see e.g., Doninger v. Niehoff*, 527 F.3d 41 (2d Cir. 2008); *Killion v. Franklin Reg’l Sch. Dist.*, 136 F.Supp.2d 446 (W.D.Pa.2001), contradicts the very public policy upon which *Tinker* rests. Not only did the Court rule in favor of the students in *Tinker*, but it carefully articulated the importance of limiting the authority of school officials: “School officials do not possess absolute authority over their students. Students in school as well as out of school are ‘persons’ under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations.” *Tinker*, 393 U.S. at 511. By wielding *Tinker* in its attempt to blur the line between on-campus and off-campus speech, the lower court provides school officials with the kind of absolute authority that *Tinker* was designed to protect against. *See e.g., Mary-Rose Papandrea*,

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<sup>1</sup> For an example of the high bar created by *Watts* and how courts can turn to the more flexible *Tinker* standard when evaluating student threats, *see J.S. Bethlehem Area School District*, 569 Pa. 638, 807 A.2d 847 (2002). In *Bethlehem*, the student expressed dislike for a teacher over the internet by asking why the teacher should die, depicting the teacher with her head severed and soliciting funds for a hitman to kill the teacher. The court held that the speech did not rise to the level of a true threat under *Watts* because “it did not reflect serious expression of intent to inflict harm.” *Id.* at 859. Nonetheless, the court upheld the school’s decision to punish the student according to the *Tinker* substantial disruption standard due to the effect the speech had on the teacher, causing her to take a medical leave of absence. *Id.* at 869.

*Student Speech Rights in the Digital Age*, 60 Fla. L. Rev. 1027, 1093 (2008) (stating that “applying *Tinker*’s substantial disruption standard to digital speech permits school officials to exercise too much control over juvenile expression generally.”). This increased authority will have two primary effects.

First, the absolute authority granted to school officials will have a chilling effect on student free speech. A democratic society “depends upon leaders trained through wide exposure to that robust exchange of ideas . . .” *Tinker*, 393 U.S. at 512 (quoting *Keyishian v. Bd. of Regents*, 385 U.S. 589 (1967)). Accordingly, schools should encourage students to develop and express viewpoints. *Tinker*, 393 U.S. at 512. Because “it cannot be denied that rapidly increasing numbers of young people have become dependent upon their computers and cell phones to communicate,” Papandrea, *supra* at 1032, school regulation of off-campus internet speech threatens to frustrate student expression. Specifically, upholding the lower court’s rule would leave students uncertain as to whether what they communicate online might be punishable by the school.

Instead of creating a general sense of paranoia, schools should encourage students to embrace this unique medium of communication. Indeed, students will only learn how to exercise discretion in cyberspace through trial and error, as they cross lines and suffer consequences. However, when the expression occurs outside the school, the policing should come from parents, friends and society. Only a firm rule distinguishing on campus and off-campus speech will provide students the degree of certainty necessary to engage in robust cyberspace dialogue.

Second, the absolute authority given to school officials will encroach on parental authority. Schools do indeed have an interest in educating their students on proper public discourse. *Fraser*, 478 U.S. at 677. However, parents should assume the responsibility for

teaching their children about broader societal interaction outside of school. *See e.g., Thomas*, 607 F.2d at 1051. The lower court’s decision extends the arm of the school beyond the school house gate and into the living room of the home. The lower court’s standard could be applied to all forms of off-campus communication—expressed or viewed—that could conceivably affect the school environment. What a child views on her personal computer or watches on television within her own home should be decided by parents and not school officials. Therefore, only a firm distinction between on campus and off-campus speech will limit school authority.

Drawing a firm line between on-campus and off-campus speech will not unnecessarily handcuff school officials. To begin with, school officials can always turn to parents and law enforcement when off campus speech becomes a concern. *See Clay Calvert, Off-Campus Speech, On-Campus Punishment: Censorship of the Emerging Internet Underground*, 7 B.U.J.Sci. & Tech. L. 243 (2001). Moreover, school officials may regulate internet speech that is brought on campus, either by the student who created the speech or others who merely view it. *Id.* at 271 (explaining how *Tinker* applies only when “students ‘bring’ their personal Web sites on campus by downloading them, or causing them to be downloaded, on school-controlled computers.”); *see also Bethlehem*, 807 A.2d at 865. However, the school has no authority to chase the student beyond the school house gate.

**B. The Student Webpages Did Not Cause a Substantial Disruption.**

Even if this court refuses to draw a firm line between on-campus and off-campus speech, the lower court opinion should be overturned because the webpages did not cause a substantial disruption. The Court in *Tinker* was concerned with providing comprehensive protection for the expression of political viewpoints, or what it considered “pure speech.” *Tinker*, 393 U.S. at 508. Because the students’ viewpoints on the Vietnam War constituted pure speech, the viewpoints

could not be regulated out of a “mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.” *Id.* at 509. Instead, the Court fashioned its substantial disruption standard and concluded that the students “caused discussion outside of the classrooms, but no interference with work and no disorder.” *Id.* at 514. Finding no evidence of “threats or acts of violence on school premises,” *id.* at 508, the Court reversed the lower court and remanded for further proceedings. *Id.* at 514.

The student webpages were political in nature and therefore forms of pure speech. Politte created the FAD website in order to identify the sources of the school drug problem. Not only did Politte engage in public discourse, but she sought to take on a problem that schools have a compelling interest in regulating. *Morse*, 127 S.Ct. at 2628. Towles’ website was equally political in nature. Perceiving an injustice, Towles advocated for and defended his First Amendment rights. Schools should encourage such conversations, not seek to restrict them.

The student webpages did not cause a substantial disruption and are therefore deserving of comprehensive protection. There is no evidence of physical altercations or threats. Likewise there is no evidence that the webpages caused a disruption in the classroom, as students accessed the websites during free time or after school hours. Indeed, the most school officials can point to in the way of disruption is the potential inconvenience of having to respond to inquiries generated by the anti-defamation website. This minor inconvenience falls far short of the kind of substantial disruption envisioned by *Tinker*.

Further, the evidence suggests school officials acted out of a mere dislike and annoyance at the content. Specifically, officials did not act until they became aware of the anti-defamation website, the content of which was highly critical of the school. Indeed, Smalls admitted that when she took action “she was angry about Towles’ criticism of the school administration’s

actions in dealing with the drug problem on school grounds.” By regulating speech that it disliked, the school sent the wrong message about the value of pure speech. Politte and Towles constructively channeled their respective frustration and concern through personal webpages. School should encourage students to express frustration through public discourse and not resort to private violence or destructive behavior. Unfortunately, the lower court’s decision effectively encourages students to abandon discourse. Absent a substantial disruption—something the school has failed to prove—school officials may not regulate pure speech merely because they disagree with it.

The lower court’s finding of a substantial disruption is inconsistent with the approach of other courts that have applied *Tinker* to off-campus speech. For example, the court in *Beussink v. Woodland R-IV Sch. Dist.*, 30 F. Supp.2d 1175 (E.D. Mo. 1998), applied the *Tinker* substantial disruption test to a student webpage that used vulgar language to criticize school officials while encouraging readers to contact the school. *Id.* at 1177. The webpage included a hyperlink to the school’s homepage. *Id.* In applying *Tinker*, the court found that the speech did not substantially interfere with school affairs, and that school officials suspended the student for expressing unpopular views that upset the school administration. *Id.* at 1180.

Just as in *Beussink*, the students in this case did not cause a substantial disruption aside from expressing speech that was unpopular with the school administrators. Further, the speech in this case is distinguishable from that in *Beussink*. Arguably, the school had greater authority to regulate the vulgar speech expressed in *Beussink*. *Fraser*, 478 U.S. 675. In contrast, the student speech in this case is inherently political and therefore constitutes a pure form that schools have a duty to protect. If *Tinker* does not apply to vulgar online speech, then it certainly does not apply to political online speech.

The lower court's reliance on *Doninger v. Niehoff*, 527 F.3d 41 (2<sup>nd</sup> Cir. 2008), is also misplaced. In *Doninger*, the Second Circuit reviewed the decision of a school to punish a student who criticized school officials on her publicly accessible web blog. *Id.* at 45. The student, a member of student council, posted a personal blog protesting the school's handling of the annual school concert. *Id.* In the blog the student made derogatory references to a school official, criticized the school's uncooperativeness, and called on individuals to contact the school. *Id.* The Second Circuit applied the *Tinker* test and held that the blog caused a substantial disruption. *Id.* at 53. Specifically, the court emphasized how the blog precipitated a flood of calls directed to the school office, ultimately causing officials to divert time and resources away from its educational mission. *Id.* at 46.

However, the *Doninger* court was not concerned with the mere inconvenience to the administration, but rather focused on the content of the email, which it characterized as misinformation. *Id.* at 51. Therefore, the court was concerned with the fact that "school operations might well be disrupted further by the need to correct misinformation as a consequence of Avery's post." *Id.* Here, there is no evidence that either student webpage contained misinformation similar to the bad faith displayed in *Doninger*.

Even if the school had the authority to act in this case, it did so prematurely. The lower court assumed that "Principal Smalls does not need to show a disruption did occur; she need only demonstrate that she and the school district could reasonably 'forecast' a disruption." This statement provides school officials with blanket discretionary power that is contrary to the *Tinker* decision. While the Court in *Tinker* did use the word "forecast," its intent was not to grant schools authority to regulate student speech based on mere conjectures; rather the purpose was to permit schools to act in preventing future disturbances deemed likely to occur based on concrete

facts. *See Tinker*, 393 U.S. at 514. Just as there were no facts in *Tinker* to support the school's forecast of substantial disruptions, so too there are no facts supporting a forecast of substantial disruption in this case. At the time Smalls suspended the petitioners, there was no evidence students had downloaded the webpages in school classrooms. Moreover, the "[l]et's speak out" language from Towles' website did not explicitly direct readers to call the school administration. Regardless, readers would have contacted the school in response to accurate information. *Compare to Doninger*, 527 F.3d at 51.

The forecasted disruption was not substantial. In *Boucher v. Sch. Bd. of School Dist. of Greenfield*, 134 F.3d 821 (7th Cir. 1998) the Seventh Circuit vacated the district court's preliminary injunction against the suspension of a student who had written an off-campus article on how to hack into the school's computers, which the student distributed on school grounds. From the evidence, the Seventh Circuit held that the school was reasonable in forecasting a substantial disruption, given that the article was a "blueprint for the invasion of the school district's computer system along with the encouragement to do just that." *Id.* at 828. There is a strong difference between encouraging others to invade a school's computer system and encouraging others to contact school officials to voice concerns about a First Amendment issue. The nature of the disturbance differs significantly, as a crash of the district's computer system would substantially disrupt every aspect of learning environment, from classroom teaching to school administration. In this case there is no evidence in the record that student viewing of the websites on school premises threatened to overload the school computer system.

**C. Horton School District Could Have Addressed Any Disruption Without Suspending Petitioners.**

Even if this court finds a substantial disruption, the lower court should still be overturned because the school went too far when it suspended the students. In *Doninger*, the school's

discipline of a student who posted a derogatory and factually incorrect blog about the school's supposed cancellation of student event was limited to disqualifying the student from running for student council. *Doninger*, 527 F.3d at 52. The school did not suspend the student or take adverse action beyond the narrow circumstances from which the speech arose. Indeed, the court emphasized the narrowness of its holding when it pointed out "we have no occasion to consider whether a different, more serious consequence than disqualification from student office would raise constitutional concerns." *Id.*

Smalls could have pursued less serious measures when dealing with the alleged disruption caused by the webpages. Similar to membership on student council, student use of a school computer and internet is a distinct privilege. Accordingly, the school could have punished students who viewed the online webpage by restricting their privileged access to school computers. Additionally, the school could have taken measures to disable access to the webpages from the school computers. *See Layshock v. Hermitage Sch. Dist.*, 496 F.Supp.2d 587, 591 (W.D.Pa.2007) (where school attempted to block access to Myspace from the school computers). Doing so would have addressed the substantial disruption concerns of the school administrators.

The school's suspension of the two students raises constitutional concerns. By suspending the students, the school in effect forced the students to disavow their opinions. Not only could the students not access the websites on school grounds, but the students had to remove the content from their personal websites. Because internet communication is the primary means of student expression today, the suspension had the effect of silencing political speech. To compare with *Tinker*, it is as if the school restricted students from wearing armbands within

their own home. This is not an appropriate school objective. The suspensions are sweeping in scope and therefore raise serious concerns about student free speech.

**III. TOWLES' FOURTH AMENDMENT RIGHTS WERE VIOLATED WHEN RESPONDENTS STRIP SEARCHED HIM BECAUSE THE STRIP SEARCH WAS NOT JUSTIFIED AT ITS INCEPTION, WAS UNREASONABLE UNDER THE CIRCUMSTANCES, AND QUALIFIED IMMUNITY DOES NOT APPLY.**

The strip search conducted by Horton Hopkins, at Smalls' direction, of Towles violated Towles' Fourth Amendment right to be free from unreasonable searches, as applied through the Fourteenth Amendment. The strip search fails the two-part test articulated in *New Jersey v. T.L.O.* because the strip search was neither justified at its inception, nor was the search reasonably related in scope to the circumstances. Smalls had no reasonable grounds to suspect that a strip search of Towles would uncover evidence that Towles had violated or was violating school rules. Furthermore, even if the strip search could be reasonably related to protecting a legitimate school interest, the strip search was excessively intrusive in light of Towles' age, sex and the nature of the alleged infraction. Finally, qualified immunity does not apply because it is only available to those persons sued in their individual capacity. Even if qualified immunity does apply to Respondents, they are not entitled to qualified immunity because the constitutional right to be free from unreasonable strip searches at school was clearly established when Respondents strip-searched Towles.

The Fourth Amendment right to be free from unreasonable searches applies to the search by a public school official of a student through the Fourteenth Amendment. *New Jersey v. T.L.O.*, 469 U.S. 325, 334 (1985). Because of the unique nature of the school setting, the reasonableness of a school official-conducted search requires a balance between an individual's expectations of privacy and the school's need to establish safety and order in schools. *Id.* at 337. To best accommodate the objectives sought by this balance, school searches do not need to

strictly adhere to the probable cause requirement before a search can be undertaken. *Id.* at 341. Rather, school searches must satisfy the two-part reasonableness test, evaluated in light of the particular circumstances of each case, to be considered a constitutional search. *See id.*

**A. The Strip Search of Towles Violated His Fourth Amendment Rights Because the Strip Search Was Not Justified At Its Inception.**

To evaluate whether a school search violates a constitutional right, the search must first be justified at its inception. *E.g., New Jersey v. T.L.O.*, 469 U.S. at 342; *Redding v. Safford Unified Sch. Dist. #1*, 531 F.3d 1071, 1079 (9th Cir. 2008). As several courts have articulated, a search is 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.” *Redding*, 531 F.3d at 1081 (quoting *T.L.O.*, 469 U.S. at 341-42). For example, the *Redding* court concluded that a strip search of a thirteen-year-old female student was not justified at its inception because there were no reasonable grounds for the assistant principal to conclude that the female student possessed banned ibuprofen or was otherwise violating school rules. *Id.* at 1085. The assistant principal ordered the strip search of the female student based upon an unsubstantiated tip from another student that had been caught with hidden contraband herself, rumored allegations that the female student had consumed alcohol months earlier, and the fact that the female student lent her planner to another student, who then used the planner to conceal contraband. *Id.* These facts, coupled with the absence of any additional investigation, led the *Redding* court to conclude that the assistant principal could not have reasonably believed that the strip search would have led to the discovery of the banned ibuprofen; therefore, the search was not justified at its inception. *Id.*

Furthermore, the reasonable grounds necessary must increase as the intrusiveness of the search increases. *See Redding*, 531 F.3d at 1081; *Cornfield v. Consolidated High Sch. Dist. No.*

230, 991 F.2d 1316, 1321 (7th Cir. 1993). As the Seventh Circuit articulated in *Cornfield*, “What may constitute reasonable suspicion for a search of a locker or even a pocket or pocketbook may fall well short of reasonableness for a nude search.” *Cornfield*, 991 F.2d at 1321. Reasonable suspicion, and its connection to the individual student to be searched, should be evaluated on a case-by-case basis. *See, e.g., id.* at 1320. For example, a strip search may be justified at its inception when there is reliable evidence that a student is concealing drugs in his genital area by virtue of a teacher’s report and observation that the student appeared “too well-endowed.” *See Cornfield*, 991 F.2d at 1319. However, a strip search of a female student to find ibuprofen is not justified at its inception when the evidence relied upon is an unsubstantiated tip by a student with an ulterior motive and the school official undertook no further investigation prior to ordering the strip search. *Redding*, 531 F.3d at 1081. Therefore, whether a school official had a reasonable suspicion depends upon the circumstances, and the more intrusive the search—such as a strip search—the higher the degree of reasonable suspicion is necessary for the search to be constitutional, including individualized suspicion. *See id.* at 1081; *Bell v. Marseilles Elementary Sch.*, 160 F. Supp. 2d 883, 887-88 (N.D. Ill. 2001) (determining that suspicion of a group of student was not sufficient reasonable suspicion to strip search the students).

The strip search of Towles was not justified at its inception. Like the school official in *Redding*, whose strip search of a female student based upon the unsubstantiated word of another student with an ulterior motive was not justified at its inception, Smalls ordered Towles into her office based solely upon her view of the website and photograph, which depicted Towles sitting at a party where drugs were found. The photograph does not show Towles with drugs, and Towles was not the student arrested at the party for having drugs. After searching Towles’ and other students’ lockers and backpacks, Smalls did not find any drugs in Towles’ locker or

backpack. Towles has absolutely no history of prior drug disciplinary problems associated with drugs. Smalls had not received any information that Towles had violated or was violating the School's drug policy. At the time that Smalls ordered the strip search of Towles, the strip search was not justified at its inception with respect to Towles. Therefore, this Court should determine that the strip search was unconstitutional because it failed the first prong of the two-part reasonableness test.

Furthermore, Smalls did not undertake any investigation to determine whether the headline posted with the photograph was accurate. The photograph showed that Conrad, another student, was smoking, but the photograph also showed that Towles was not smoking. Smalls made no attempt to contact Towles' teachers, parents, guidance counselors, or friends to determine whether Towles posed a danger to himself and others by possessing drugs. Smalls, jumped to the conclusion that the photograph's headline was accurate and that every student at Horton Hopkins that had attended the party in the photograph had a drug problem. Smalls made no attempt to determine whether there was a reasonable suspicion that Towles had drugs in his possession; therefore, Smalls' directive to strip search Towles was not justified at its inception.

Additionally, the intrusiveness of the strip search performed on Towles indicates that there should have been a higher level of reasonable suspicion than there actually was. Unlike the school official in *Cornfield*, who was justified in the strip search of a student who had hidden drugs in his genital area and thus looked "too well-endowed," there is no indication here that Towles had any drugs on his person or in his possession. Smalls did not receive any information that Towles was connected to the drug problems at Horton Hopkins. Towles did not have any previous disciplinary drug problems, nor was Towles depicted in the photograph with any drugs. Furthermore, Smalls searched Towles' locker and backpack and found no evidence of drugs.

Smalls made no attempt to determine whether she had reasonable suspicion to strip search Towles; instead, Smalls went on a “witch hunt” at Towles’ expense. Because of the heightened expectation of reasonable suspicion necessary when a school conducts a strip search, the strip search of Towles was not justified at its inception. Therefore, this Court should reverse the Court of Appeals’ decision, and determine that Towles’ Fourth Amendment rights were violated.

**B. The Strip Search of Towles Was Not Reasonably Related In Scope to the Circumstances and Excessively Intrusive In Light of Towles’ Age, Sex and the Nature of the Infraction.**

Even if this Court determines that the strip search of Towles, based upon one unsubstantiated headline on a photo, was justified at its inception, the strip search was not reasonably related in scope to the circumstances and was excessively intrusive in light of Towles’ age, sex, and nature of the infraction. *See, e.g., New Jersey v. T.L.O.*, 469 U.S. 325, 342 (1985). If the search of a student was justified at its inception, then the next step is to determine whether the chosen search was reasonably related in scope to the circumstances. *E.g., Williams by Williams v. Ellington*, 936 F.2d 881, 886 (6th Cir. 1991). In *Williams*, the court determined that a strip search of a female high school student was reasonable because the principal had reason to suspect that the student was concealing a small glass vial. *Id.* at 887. The principal in *Williams* had multiple reports that the student had a small glass vial containing a “white powdery substance.” *Id.* Furthermore, the principal undertook additional investigation by questioning the student’s relatives in an attempt to substantiate that the student might be in possession of the small glass vial. *Id.* Once the principal searched the student’s locker and purse and did not find the vial, the court determined that it was reasonable for the principal to suspect that the small glass vial would be found on the student’s person. *Id.* at 887-88. The *Williams* strip search was reasonable because the principal had a reasonable suspicion that the small glass vial containing a

white powdery substance would be found on the student's person. *Id.* at 889. Therefore, when the circumstances demonstrate that a school official reasonably suspects drugs might be found on a student's person, the search might be reasonably related in scope to the circumstances.

A strip search is unreasonable in scope in light of the circumstances where the search is "excessively intrusive in light of the age and sex of the student and the nature of the infraction." *E.g., Redding v. Safford Unified Sch. Dist. #1*, 531 F.3d 1071, 1085 (9th Cir. 2008). In *Redding*, the school strip-searched a thirteen-year-old female student in an attempt to locate an ibuprofen tablet. *Id.* The *Redding* court reasoned that the psychological trauma inherent in a strip search is exacerbated when the person being searched is a child. *Id.* at 1086 ("No one would seriously dispute that a nude search of a child is traumatic.") Children, particularly those entering puberty, are more susceptible to being embarrassed and self-conscious about their bodies and exposing their bodies. *Id.* Many states have recognized that the psychological trauma inherent in a strip search of a child is so severe that those states have enacted complete prohibitions against such strip searches. *See, e.g., Wis. Stat. § 118.32* (2005).

Further, the nature of the infraction in *Redding*, possessing an ibuprofen tablet, did not rise to the seriousness necessary to warrant a strip search. *Redding*, 531 F.3d at 1086-87. As the *Redding* court articulated, while the search should be no more intrusive than necessary to achieve the school's goal, "[t]he lack of any immediate danger to students [from the ibuprofen] only further diminishes the initial minimal nature of the alleged infraction of bringing ibuprofen onto campus." *Id.* at 1087. As a result of the female student's age and the nature of the infraction, the *Redding* court determined that the strip search of a thirteen-year-old female student was excessively intrusive when searching for an ibuprofen tablet. *Id.*

The strip search of Towles was excessively intrusive in light of Towles' age and sex. Like the female student strip searched in *Redding*, who was strip searched to find an ibuprofen tablet, Towles is a teenage boy who was forced to take his clothes off and endure a strip search when the school did not even know what it was searching for. This strip search was traumatic for Towles, a teenage boy, and teenage boys are usually self-conscious about their bodies and embarrassed when having to expose their bodies. Therefore, this Court should determine that the strip search of Towles was excessively intrusive because Towles was a sixteen-year-old boy that was forced to endure a traumatic and embarrassing experience when Respondents made him take his clothes off in front of a stranger.

Further, strip-searching Towles was excessively intrusive in light the nature of the alleged infraction. Unlike the strip search in *Williams*, where the court determined that the principal had reason to believe that the strip search would uncover a small glass vial containing a white powdery substance, Smalls had no reason to believe that strip searching Towles would lead to the discovery of any drugs. Smalls had received no information, and there were no allegations, that Towles was in possession of drugs or was otherwise violating the school's drug policy. Smalls knew that Towles had attended a party where there were drugs, but attending a party is not in violation of the school's drug policy. While drug possession is a serious infraction, Smalls had no indication that Towles was connected to drug possession.

Additionally, Smalls could not be more specific on the nature of the alleged infraction than the generic term, "drug possession." Unlike the *Williams* infraction, where the nature of the infraction was the possession of a small glass vial containing a white powdery substance, the nature of the infraction here is so general that the high level of intrusiveness of the strip search cannot be reasonably related in scope to the general nature of the alleged infraction. Without a

more specific alleged infraction, school officials could strip search any student at any time, regardless of reasonable suspicion, as long as the school official was concerned with “drug possession.” Therefore, this Court should determine that the strip search of Towles was excessive in light of nature of the alleged infraction because there was no specific allegation, but merely a general concern regarding drug possession.

**C. Qualified Immunity Does Not Apply Because Respondents Were Not Sued in Their Individual Capacity, the Right Was Clearly Established When the Respondents Conducted the Strip Search, and Respondents Should Have Used Common Sense to Determine That the Strip Search of Towles Was Unconstitutional.**

Qualified immunity cannot neutralize the violation of Towles’ Fourth Amendment rights. Qualified immunity does not apply here because it is only available to those persons sued in their individual capacity. Even if qualified immunity does apply to Respondents, they are not entitled to qualified immunity because the constitutional right to be free from unreasonable strip searches at school was clearly established when Respondents strip searched Towles. Even if there was no controlling case specifically on point, reason and ordinary common sense dictates that Respondents should have known that a strip search violates Towles’ Fourth Amendment rights.

*1. Qualified Immunity Is Not Available to Respondents Because They Are Not Being Sued as Individuals.*

“Qualified immunity is intended to provide municipal officials sued in their personal capacities with the ability to reasonably anticipate when their conduct may give rise to liability for damages.” *Anderson v. Creighton*, 483 U.S. 635, 638 (1987). Neither Horton Hopkins nor Smalls has been sued in their personal capacities. Therefore, qualified immunity does not apply.

2. *Qualified Immunity Is Not Available to Respondents Because the Right Violated Was Clearly Established at the Time of the Strip Search.*

If a student's constitutional rights were violated by a public official and these rights were clearly established at the time of the search, the official cannot be qualifiedly immune in their individual capacities if a reasonable official would have or should have understood that their conduct violated the students' rights. *See, e.g., Williams by Williams v. Ellington*, 936 F.2d 881, 885 (6th Cir. 1991); *Redding v. Safford Unified Sch. Dist.*, 531 F.3d 1071, 1087-88 (9th Cir. 2008); *see also Beard v. Whitmore Lake Sch. Dist.*, 402 F.3d 598 (6th Cir. 2005). For example, the *Redding* court determined that a strip search of a thirteen-year-old suspected of possessing an ibuprofen tablet not only was unconstitutional, but also that the right was clearly established at the time of the strip search. *Redding*, 531 F.3d at 1087-89. The *Redding* court emphasized that a right can be clearly established despite there being no factually identical cases. *Id.* at 1087. To be clearly established, "it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Id.* Therefore, a constitutional right does not need to be explicitly articulated prior to the school intervention to be considered a clearly established right. *See id.*

Towles' constitutional right to be free from an unreasonable strip search was clearly established when Respondents subjected him to the strip search. Smalls, in ordering the strip search, should have known, based upon the decisions in *Williams*, *Redding* and *Beard*, that a strip search would be unconstitutional in light of the information available to Smalls at the time. Further, Smalls cannot claim that Towles' constitutional right was not clearly established because there are no factually identical cases; Smalls should have known that strip-searching Towles' without a high level of reasonable suspicion was unconstitutional. Therefore, qualified immunity does not apply because Towles' constitutional right was clearly established at the time.

3. *Qualified Immunity Is Not Available to Respondents Because Respondents Should Have Used Common Sense to Determine That the Strip Search Was Unconstitutional.*

Furthermore, even if there is no factually identical case, reason and common sense should dictate whether an official knew his conduct was unlawful. *Redding*, 531 F.3d at 1088; *Brannum v. Overton County Sch. Bd.*, 516 F.3d 489, 499 (6th Cir. 2008). For example, the Sixth Circuit, in rejecting a claim of qualified immunity, reasoned that:

[A] person of ordinary common sense, to say nothing of professionals school administrators, would know without need for special instruction from a federal court, that teenagers have an inherent personal dignity, a sense of decency and self-respect, and a sensitivity about their bodily privacy that are at the core of their personal liberty.

*Brannum v. Overton County Sch. Bd.*, 516 F.3d 489, 499 (6th Cir. 2008). Requiring a student to strip their clothes off for a search not only violates this personal dignity, sense of decency, self-respect and sensitivity about bodily privacy, but also offends reasoning and common sense. *See Redding*, 531 F.3d at 1088. No complex analysis is necessary to conclude that a strip search where you are forced to take your clothes off in front of another person offends rudimentary human dignity, and therefore is it clearly established that a suspect strip search of a teenage boy violates his constitutional rights, especially when the school does not have individualized suspicion that the boy was violating or had violated a school policy.

Respondents should have known, through reason and common sense, that strip-searching Towles was unconstitutional. At the moment that Smalls decided to have Towles strip-searched, she had viewed the photograph of Towles at the party, knew that police had found one person in possession drugs at the party, and Smalls found drugs in another student's locker. Smalls did not see Towles with drugs and she did not hear from anyone that Towles might have drugs on his person. Without having individualized suspicion, Smalls should have known, through reason

and common sense, that forcing a teenage boy to take his clothes off in front of another person was unconstitutional. Therefore, this Court should determine that the strip search of Towles by Respondents was unconstitutional because qualified immunity does not apply.

### **CONCLUSION**

For the reasons discussed above, Kit Politte and Corey Towles respectfully request that this Court reverse the judgment of the Court of Appeals of the State of Grace and find that Horton Hopkins High School and Principal Keena Smalls violated Politte and Towles' First Amendment rights. Further, Corey Towles respectfully requests that this Court reverse the judgment of the Court of Appeals of the State of Grace and find that Horton Hopkins High School and Principal Keena Smalls violated Towles' Fourth Amendment rights.