Case No. 05-15759
Oral Argument Scheduled March 24, 2008

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SAVANA REDDING, a minor by her mother and legal guardian, APRIL REDDING

Plaintiff-Appellants,

v.

SAFFORD UNIFIED SCHOOL DISTRICT #1; KERRY WILSON and JANE DOE WILSON, husband and wife; HELEN ROMERO and JOHN DOE ROMERO, wife and husband; PEGGY SCHWALLIER and JOHN DOE SCHWALLIER, wife and husband

Defendants-Appellees.

On Appeal From The United States District Court For The District of Arizona
Case No. CV-04-00265-NFF
The Honorable Nancy Fiora

BRIEF OF *AMICI CURIAE* THE NATIONAL ASSOCIATION OF SOCIAL WORKERS AND THE NATIONAL ASSOCIATION OF SUPPORT WORKERS, ARIZONA CHAPTER, IN SUPPORT OF APPELLANT APRIL REDDING

AMICI SUPPORT REVERSAL OF THE DISTRICT COURT ORDER

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, *amici* disclose that none of the *amici* have any parent corporations or issue publicly held stock.

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STATEMENT OF IDENTITY, INTEREST IN THE CASE, AND SOURCE OF AUTHORITY TO FILE

At issue in this case is whether the Fourth Amendment prohibits the strip search of a thirteen year-old girl, an honors student with no disciplinary problems, to look for medication based on an uncorroborated tip from another student in trouble for possessing the medication.

With 145,000 members, the National Association of Social Workers ("NASW") is the largest organization of professional social workers in the world, with fifty-six chapters in the United States and internationally. The Arizona Chapter of NASW represents 1,936 members. NASW's members are highly trained and experienced professionals who counsel individuals, families, and communities in a variety of settings, including schools, making them directly involved as providers of mental health services to schoolchildren who experience trauma.

Created in 1955 by the merger of seven predecessor social work organizations, the purposes of NASW and its chapters include improving the quality and effectiveness of social work practice in the United States and developing and disseminating high standards of social work practice, concomitant with the strengthening and unification of the social work profession as a whole.

In furtherance of these purposes, NASW promulgates professional standards and criteria, including the NASW Standards for School Social Work Services[1] and the NASW Standards for the Practice of Social Work with Adolescents.[2] Additionally, NASW and its chapters conduct research and prepare studies of interest to the profession. NASW also offers a credentialing program to enhance the professional standing of social workers, including the Certified School Social Work Specialist and the Certified Advanced Child, Youth and Family Social Worker.

NASW supports the fact that children and youth are developmentally different from adults and must be treated appropriately. NASW also has a particular interest in the treatment of children and adolescents in schools. NASW has found that an important positive health factor for adolescents is a school where staff members create empathetic relationships with students and provide opportunities for youth to feel competent, valued, and respected. NASW submits this brief *amicus curiae* to explain and document why school strip searches of youth and children are so extremely intrusive, and to demonstrate their traumatic effect on adolescents and school communities. *Amici curiae* file this brief pursuant to Fed. R. App. P. 29(a). Appellant has consented to the filing of this brief, but

[1] *See* http://www.socialworkers.org/practice/standards/NASW_SSWS.pdf.

[2] *See* http://www.socialworkers.org/practice/standards/NASWAdolescentsStandards.pdf.

Appellees have refused to consent. Accordingly, a motion for leave to file accompanies this brief.

ARGUMENT

I. A STRIP SEARCH OF A 13-YEAR-OLD GIRL BY SCHOOL AUTHORITIES IS AN EXTRAORDINARILY INTRUSIVE SEARCH.

As this Court has acknowledged, in *New Jersey v. T.L.O.*, the Supreme Court established the test for determining whether the search of a student violates the Fourth Amendment. 469 U.S. 325 (1985). The Supreme Court held: "Under ordinary circumstances, a search of a student by a teacher or other school official 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." *Id.* at 341-42 (footnote omitted). Critically, the search "will be 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.*" *Id.* at 342 (emphasis added).

Underpinning the Supreme Court's ruling is the fact that children are not just short adults. As NASW has stated, "NASW supports the fact that children and youth are developmentally different from adults and must be treated appropriately." *Social Work Speaks, National Association of Social Workers*

Policy Statements, 2006-2009, at 241 (7th ed. 2006). Here, those developmental differences require not only a different framework to analyze the reasonableness of Fourth Amendment searches, but also a clear understanding of the effects of excessively intrusive searches on children and youth. On that subject, NASW can speak with some authority.

A. Social Science Research Indicates That Strip Searches Can Cause Severe Emotional And Psychological Harm To Children.

The NASW recognizes the importance of treating children in ways that recognize their developmental differences, including in the disciplinary context. As NASW has noted, "It did not take long for early [juvenile justice] reformers to realize [that] it was neither humane nor effective to treat children and youths in the same manner as adults." *Social Work Speaks, supra*, at 239. Treating children the same as adult suspects and offenders, including using law enforcement techniques designed for adults, is neither useful as a practical matter nor acceptable as a constitutional matter.

Yet, in recent years, a few schools have, in limited circumstances, resorted to applying the most intrusive adult detection procedures, such as strip searches, to children. The failure to appreciate the emotional and psychological impact of these searches, both on the child and her peer group, has led some school officials to underestimate the immediate and long-term consequences of strip searches. Even

for adults, a strip search is a demeaning and distasteful procedure that requires a high level of justification. "With the onset of puberty, most young people begin to make a thorough assessment of themselves," including comparing their bodies. F. Philip Rice & Kim Gale Dolgin, THE ADOLESCENT: DEVELOPMENT, RELATIONSHIPS, AND CULTURE at 168 (11th ed. 2005). "This critical self-appraisal is accompanied by self-conscious behavior that makes adolescents vulnerable to embarrassment." *Id.*

Therefore, for adolescent youth, "[c]linical evaluations of the [youth] victims of strip searches indicate that they can result in serious emotional damage, including the development of, or increase in, oppositional behavior." Irwin A. Hyman & Donna C. Perone, *The Other Side of School Violence: Educator Policies and Practices that May Contribute to Student Misbehavior*, 36 J. SCHOOL PSYCHOLOGY 13 (1998). Indeed, students who have undergone strip searches "often cannot concentrate in school, and, in many cases, transfer or even drop out." Laura L. Finley, *Examining School Searches as Systemic Violence*, 14 CRITICAL CRIMINOLOGY 117, 126 (2006); s*ee also Flores v. Meese*, 681 F. Supp. 665, 667 (C.D. Cal. 1988) ("Children are especially susceptible to possible traumas from strip searches."), *aff'd*, 942 F.2d 1352 (9th Cir. 1991), *rev'd on other grounds sub nom. Reno v. Flores*, 507 U.S. 292 (1993); Kristin D. Eisenbraun, *Violence in Schools: Prevalence, prediction, and prevention*, 12 Aggression & Violent Behav.

459, 465 (2007) ("Strip searches have been shown to have a negative impact on student self-esteem."). And "[p]sychological experts have also testified that victims often suffered post-search symptoms including 'sleep disturbance, recurrent and intrusive recollections of the event, inability to concentrate, anxiety, depression and development of phobic reactions,' and that some victims have been moved to attempt suicide." Steven F. Shatz *et al.*, *The Strip Search of Children and the Fourth Amendment*, 26 U.S.F. L. REV. 1, 12 (1991).

In a well-known instance in Pennsylvania, school officials conducted strip searches of seven adolescents based on a student tip that one of them was distributing marijuana. All seven were evaluated by a psychologist. All seven had developed some stress symptoms from the search, and two of the seven were diagnosed with full-blown Post Traumatic Stress Disorder. The author of the study summarized:

> The more severe stress responses included refusal to go back to school, ruminations about revenge, undesired thoughts about the incident, loss of faith in school staff whom they once trusted, increased tendency toward either avoidance and withdrawal or aggression and increased anger and defiance at home. These symptoms lasted long enough in the older students to result in attempts to withdraw from school and alleged delinquent behavior.

Hyman & Perone, *supra*, at 14.

These findings are reinforced by individual accounts of student victims of strip searches. For example, a 15-year-old girl with no disciplinary history was strip searched by New York school officials for suspicion of possessing marijuana. A psychiatrist who treated the girl during fourteen visits following the strip search stated, "Quite consistently, she showed symptoms of intense anxiety, loss of concentration, loss of sleep. She gave up her plans to go to an out-of-town college and, in fact, had to repeat a semester in school." Dennis Hevesi, *Jury Awards $125,000 to Student Strip-Searched at a Bronx School*, N.Y. TIMES, Nov. 24, 1988, at B3. Similarly, a 16-year-old boy who was strip searched called the experience "humiliating" and switched to home-schooling after the incident. Susan Byrnes, *ACLU to Sue Over Search*, SEATTLE TIMES, Jan. 21, 1995, at A7.

Strip searching of adolescents also implicates "some very specific gendered problems." *Finley*, *supra*, at 128. "Menstruating females, for instance, are likely to be even more self-conscious about their bodies." *Id.* Strip searching of females, and males as well, is also potentially worrisome because of the "similarities between strip searches by authority figures and prior incidents of sexual abuse." *Id.* The two factors that most highly correlate with trauma in sexual abuse cases are also present in child strip search cases: "the child's participation is usually coerced, and the searcher is invariably an adult." Jesse Ann White, *A Study of Strip Searching in Pennsylvania Public Schools and an Analysis of the Knowledge,*

Attitudes, and Beliefs of Pennsylvania Public School Administrators Regarding Strip Searching 37 (Aug. 2000) (on file with the Temple University Graduate Board). The fact that a strip search is a one-time occurrence and that the child's body is "viewed rather than touched, do[es] not diminish the trauma experienced by the child." *Id.*

Beyond the immediate emotional impact of coercion, humiliation, and embarrassment, strip searches "label" students and "create stigmas that can be long-lasting," affecting the victims' relationship with their peers and school officials. *Finley, supra*, at 121. Most children and youth who have been strip searched at school experience "difficulties with relationships, including those with peers, educators, and family." *Id.* at 126. Clinical data also indicates that strip searches in which students are required to remove all or most of their clothes "are generally not very successful and tend to cause the greatest emotional turmoil." *Hyman & Perone*, *supra*, at 15. Overall, strip searches are likely to damage students emotionally and to undermine individual student morale.

The use of strip searches also can adversely affect the school environment, increasing student mistrust and alienation. *Hyman & Perone*, *supra*, at 15. Researchers have found that an "unwelcoming and highly inspected school environment," such as a school environment in which strip searches occur, "leads to more school misconduct as opposed to reducing it." Eisenbraun, *supra*, at 465.

Strip searches also can potentially change "students' perceptions of school staff from caregivers/educators to policemen/enforcers." *Hyman & Perone, supra*, at 15. In this case, the use of the school nurse to facilitate the strip search supports this "policemen/enforcer" perception in an especially detrimental manner, sowing mistrust and diminishing the likelihood that students will rely upon the school nurse and school officials in confidence. *See* Helen Freake *et al.*, *Adolescents' views of helping professionals: A review of the literature*, 30 J. ADOLESCENCE 639, 646 (2007) (having medical and mental health professionals protect confidentiality and be kind, caring, and trustworthy are among the top five most important factors to adolescents in dealing with these professionals).

Moreover, it is clear that in this case, as in the cases described in the research, the search created significant emotional stress. As Savana Redding herself described, the strip search was both extremely intrusive and humiliating:

> I took off my clothes while they both watched. Mrs. Romero searched the pants and shirt and found nothing.
>
> Then they asked me to pull my bra out and to the side and shake it, exposing my breasts. Then they asked me to pull out my underwear and shake it. They also told me to pull the underwear out at the crotch and shake it, exposing my pelvic area.

Redding Aff. ¶¶ 19-20. Short of a body cavity search, the strip search of Savana was the most intrusive possible. And, consistent with the social science research in

similar circumstances, the devastating emotional effect on Savana, and her resulting mistrust in school officials, is undeniable. Again, in her own words:

> I was embarrassed and scared, but felt I would be in more trouble if I did not do what they asked. I held my head down so that they could not see that I was about to cry.
>
> ...
>
> The strip search was the most humiliating experience I have ever had. Mrs. Romero and Mrs. Schwallier did not look away while I was taking off my clothes. They did nothing to respect my privacy.
>
> ...
>
> I felt offended by the accusations made against me and violated by the strip search.

Redding Aff. ¶¶ 21, 28, 30.

Because strip searching children at school clearly does inflict damage, and in keeping with the basic tenet that children must be differentiated from adults, NASW urges that disciplinary practices in schools "must reflect the desire to shape students' behavior toward productive participation in schools and society," and utilize a problem-solving process with parents and guardians. *Social Work Speaks, supra*, at 117. NASW also has found that an important positive health factor for adolescents is a school where staff members "create empathetic relationships with students and provide opportunities for youth to feel competent, valued, and respected." *Id.* at 4. Such school environments "enable youths to resist and overcome negative influences in their lives more effectively." *Id.* The studies and

analysis described herein demonstrate that strip searches undermine students' productive participation in school, produce significant emotional harm, and damage relationships with peers and school officials.

B. Courts Analyzing Analogous School Strip Searches Have Agreed With Social Science Researchers That They Are Excessively Intrusive And Traumatic.

The Supreme Court required in *T.L.O.* that a search be "not excessively intrusive in light of the age and sex of the student and the nature of the infraction." 469 U.S. at 342. Accordingly, whether a schoolhouse search is reasonable under the Fourth Amendment "will vary according to the context of the search." *Cornfield ex rel. Lewis v. Consolidated High School Dist. No. 230*, 991 F.2d 1316, 1320 (7th Cir. 1993). "Therefore, as the intrusiveness of the search of a student intensifies, so too does the standard of Fourth Amendment reasonableness." *Id.* at 1321. What may constitute reasonable suspicion for a pocket or locker search "may fall well short of reasonableness for a nude search." *Id.* And "[a]lthough students may surrender some expectations of privacy when they enter the schoolhouse door, an expectation that they will be free from forced strip searches is not one of them." *Thomas ex rel. Thomas v. Roberts*, 261 F.3d 1160, 1168 (11th Cir. 2001) (concluding that a strip search at school is a "serious intrusion" on students' rights, and that given "the important privacy interests at stake and the intrusive nature of the searches, school officials must have possessed a truly

important interest that would have otherwise been endangered in order to justify" their actions), *vacated for reconsideration*, 536 U.S. 953 (2002), *reinstated* 323 F.3d 950 (11th Cir. 2003). As Justice Stevens noted in *T.L.O.* itself, "One thing is clear under any standard—the shocking strip searches that are described in some cases have no place in the schoolhouse." 469 U.S. at 382 n.25 (citing *Doe v. Renfrow*, 631 F.2d 91, 92-93 (7th Cir. 1980)).

The common sense conclusion that a strip search of a young teenager at school is a uniquely invasive act was eloquently stated by the Seventh Circuit:

> It does not require a constitutional scholar to conclude that a nude search of a thirteen-year-old child is an invasion of constitutional rights of some magnitude. More than that: it is a violation of any known principle of human decency.
>
> ...
>
> We suggest as strongly as possible that the conduct herein described exceeded the "bounds of reason" by two and a half country miles. It is not enough for us to declare that the little girl involved was indeed deprived of her constitutional and basic human rights. We must also permit her to seek damages from those who caused this humiliation and did indeed act as though students "shed at the schoolhouse door rights guaranteed by * * * any * * * constitutional provision."

Doe v. Renfrow, 631 F.2d 91, 92-93 (7th Cir. 1980); *see also Cornfield*, 991 F.2d at 1321 ("no one would seriously dispute that a nude search of a child is traumatic"); *cf. Calabretta v. Floyd*, 189 F.3d 808, 819 (9th Cir. 1999) (denying

immunity for coerced strip search of young child during non-consensual entry to home). Courts have also recognized that adolescents are likely to suffer greater trauma from a strip search because, as they "go through puberty, they become more conscious of their bodies and self-conscious about them." *Cornfield*, 991 F.2d at 1321 n.1.

Thus, research and precedent both establish that a strip search of a youth or child by school officials at school is one of the most intrusive searches possible, with consequences that must be taken into account. Under *T.L.O.* and its progeny, the strip search at school of a 13 year-old girl based on an uncorroborated tip that she might have had Ibuprofen cannot be justified.

II. THE EXCESSIVELY INTRUSIVE SEARCH HERE WAS NOT JUSTIFIED BY ANY SUFFICIENTLY RELIABLE BASIS FOR THE SEARCH OR BY THE NATURE OF THE SUSPECTED INFRACTION.

If a school strip search of a 13-year-old girl could be justified in some circumstances, it was certainly not justified here. To the contrary, the uncorroborated tip of another girl *already in trouble for actually possessing the Ibuprofen* was not even close to adequate grounds to conduct the strip search. Moreover, while Ibuprofen (in either prescription strength or over-the-counter strength) may have been proscribed at school, it is nonetheless relevant to the reasonableness of the search that the "nature of the infraction" (in the Supreme

Court's words) here involved the possible possession by a 13-year-old girl of a medication commonly used to relieve menstrual cramps.[3]

Circuit and district courts nationwide have applied the *T.L.O.* standard to school strip searches, and have found such searches to be unconstitutional under circumstances analogous to this case. Significantly, although a panel of this Circuit attempted to distinguish *Phaneuf v. Fraikin*, it is directly applicable and analogous. In *Phaneuf*, a search of high school students' bags revealed a package of cigarettes in student Kelly Phaneuf's purse, in violation of school regulations. 448 F.3d 591, 592-93 (2d Cir. 2006). A student also told a teacher that Phaneuf said she possessed marijuana and planned to hide it in her pants. The principal believed the student tipster to be trustworthy and confronted Phaneuf, who denied

[3] Unlike the "drug search" cases relied on by the panel decision, there was no suspicion that Savana was in possession of an illegal drug or narcotic. *Cf. Cornfield*, 991 F.2d at 1322 (suspicion of "crotching drugs" like marijuana and cocaine); *Williams ex rel. Williams v. Ellington*, 936 F.2d 881, 882 (6th Cir. 1991) (white powder and a volatile substance called "rush"). Instead, the only two drugs ever referenced were Ibuprofen and Naprosyn. As Williams acknowledged, the blue Naprosyn tablet found is an over-the-counter medication. *See* Wilson Aff., Sept. 30, 2004, ¶ 13. Notably, treatment of menstrual cramps is among Naprosyn's approved uses for adolescents. *See The Harriet Lane Handbook, A Manual for Pediatric House Officers* 892 (Jason Robertson & Nicole Shilkofski eds., The Johns Hopkins Hospital, 17th ed. 2005). Moreover, the dosage of the pill found on the other girl, 200 mg, is within the recommended dosage range for treatment of menstrual cramps. *See id.* (stating recommended dosage as 250 mg every 6-8 hours). Likewise, 400 mg of Ibuprofen is an approved dosage for the treatment of menstrual cramps. *See id.* at 840. It is also the equivalent of two standard over-the-counter Ibuprofen tablets.

the allegation about hiding marijuana, allegedly in a manner that made the principal believe she was lying. Phaneuf had a history of disciplinary problems, but no drug use. Phaneuf ultimately was strip searched, pulling her underpants and bra down during the search for marijuana, which proved fruitless. *Id.* at 593-94.

Methodically analyzing the student tip, Phaneuf's past discipline problems, the "manner" of Phaneuf's denial, and the contraband cigarettes Phaneuf possessed, the Second Circuit concluded that even these four factors in combination did not generate reasonable suspicion to permit the strip search. *See id.* at 597-600. Notably, the court emphasized that there was "no evidence that either [the principal or teacher] had ever previously relied on" the tipping student for information or knew the student to be a reliable source of information based on past interactions. *Id.* at 598. Indeed, the court stated, "As a general rule, we are wary of vague or conclusory statements about an informant's reliability." *Id.* Regarding the cigarettes, the Court found that the "school acted unreasonably in treating all contraband alike .... [and] cannot vault from the finding of one type of (commonly used) contraband, to a suspicion involving the smuggling of another." *Id.* at 600.

Likewise, *Fewless ex rel. Fewless v. Board of Education* demonstrates the careful scrutiny that must be applied to student tips before conducting a strip search on that basis. 208 F. Supp. 2d 806 (W.D. Mich. 2002). In *Fewless*, four

high school students told the assistant principal, Thomas Cutler, that 14 year-old Joseph Fewless had marijuana in a "dime roll" at school. Several of the students said they saw the dime roll and one said he saw the actual marijuana. However, Cutler knew that three of the four students had picked on Fewless and were to serve detention for their conduct. Still, Cutler said that one of the students was emotional about being around drugs, which led him to believe that the student was telling the truth. Cutler brought Fewless to his office and searched his bag, pockets, and dime roll. *Id.* at 809. Fewless cooperated, no marijuana was found, and Fewless returned to class. *Id.* at 810.

Later that day, two students told Cutler that Fewless said he had hid the marijuana in his "butt crack," and a teacher told Cutler that students told him the same thing. Cutler again approached Fewless, who denied having any marijuana or hiding it. *Id.* Fewless was then subjected to a strip search, during which Fewless stated that he dropped his boxers to his ankles. *Id.* at 811. The court concluded that the strip search failed both prongs of the *T.L.O.* test. In particular, the court noted the bias of the student informers and that Cutler did not engage in questioning "regarding their clearly possible ulterior motives." *Id.* at 816. Moreover, "No adult, at any time during this day, smelled marijuana on [Fewless] or reports having observed him acting suspiciously, erratically, etc." *Id.* Nor, the court noted, did Cutler speak with other students, teachers or Fewless's parents,

nor did Cutler search Fewless's locker prior to ordering the strip search. *Id.* at 817. The Court concluded that, where school searches have been found constitutional, there was "more evidence and evidence of greater reliability than the instant case." *Id.* at 818.

Here, there is even less basis to conduct a strip search than in *Phaneuf*, *Fewless*, and numerous other cases cited by Appellant. The evidence offered to justify the strip search is: 1) a student, Jordan, who had admitted inappropriate drug use to school officials only a week earlier, gave assistant principal Kerry Wilson a 400 mg Ibuprofen tablet that he said another student, *Marissa*, had given to him and told Wilson that a group of students were planning to take pills at lunch; 2) Wilson had *Marissa* empty her pockets and wallet, finding several more pills; 3) when asked where the blue pill came from, *Marissa said* that Savana gave her the pills. *See Redding v. Stafford Unified Sch. Dist. No. 1*, 504 F.3d 828, 829-30, 832 (9th Cir. 2007). Savana denied having possessed or distributed any pills at school and the search of her backpack revealed no contraband. Redding Aff. ¶¶ 11-16.

Similar to *Phaneuf* and *Fewless*, the only actual "evidence" of drug possession *by Savana* is the statement of a single student who was already in trouble for possessing medication. There is no evidence that this student, with an

obvious motive to get herself out of trouble by blaming someone else, should be deemed credible.

First, there is no indication in the record that Wilson questioned Marissa about the veracity of her accusation or the depth and status of her alleged friendship with Savana. Second, at no point in Wilson's affidavits does he state that he found Marissa credible, whether because of her alleged friendship with Savana or for any other reason. Third, as in *Fewless*, Wilson did not question other students or teachers regarding Marissa's accusation and did not search Savana's locker, nor did any adult report any suspicious behavior by Savana. There also was no indication from anyone, *including Marissa*, that Savana possessed any medication or that she was hiding pills under her clothes. And, as in *Fewless,* there was a powerful ulterior motive of the student tipster that went ignored: when caught with drugs in the assistant principal's office, it would not be surprising if a middle school student accused someone else rather than accept guilt.

Nor can the planner noted in the panel discussion provide any support for the strip search. First, the planner was found near Marissa's desk, not with Savana. Only through a twisted fallacy does *Marissa's* possession of a planner containing *Marissa's* contraband (not including medication or drugs) become evidence of Savana's possession of drugs so as to justify a strip search. Not only is this a prohibited "vault" from one type of contraband to another, *see Phaneuf*, 448 F.3d

at 600, but also it is a transfer of suspicion from *Marissa*, who actually possessed the contraband, to Savana, who was only "guilty" of lending Marissa a planner.

Additionally, although Appellees attempt to make much hay of "unusually rowdy behavior" and a student tip/rumor of drinking by Savana prior to a school dance months earlier, these allegations do not legitimately support any reasonable suspicion of Savana distributing medication at school. First, if teenagers being "rowdy" offered justification to strip search them, the Fourth Amendment would have to exclude teenagers from protection altogether. Second, the rumor of alcohol use was flatly denied by April Redding, Savana's mother, and never corroborated. *See* Wilson Aff., Sept. 30, 2004, ¶¶ 5-6. It is hardly reasonable, therefore, to credit that uncorroborated rumor spread by a troubled teen user over the word of Savana's mother. Indeed, school officials apparently did not credit it at the time, as they did no more than make a phone call. Finally, even if the rumor were true, drinking prior to a school dance months earlier provides no more evidence of distributing pills at school than possession of cigarettes provides evidence of marijuana possession. *See Phaneuf*, 448 F.3d at 600. The former simply provides no support for reasonable suspicion of the latter.

Nor was there any emergency justifying the search. The purported exigency in this situation was the statement from Jordan to Wilson that "a group of students was planning on taking the [Ibuprofen] pills at lunch." Wilson Aff., Sept. 30,

2004, ¶ 7. Again, there is simply no corroboration for this statement made by a single student. Nor was there any indication that school officials attempted to identify who was in this group, or that they took any steps to stop them. There is no evidence that school officials attempted to investigate or verify this planned meeting with other students. Rather than resorting to a strip search, school officials could have monitored the situation at lunch and then questioned any students seen to be forming such a group.

In short, rather than conducting a strip search under the circumstances here, the constitutional course of action under *T.L.O.* is to investigate and potentially conduct a limited, less intrusive search of personal items and pockets. *See, e.g.*, *Bravo ex rel. Ramirez v. Hsu*, 404 F. Supp. 2d 1195, 1201-02 (C.D. Cal. 2005) (following tip from student and bathroom monitor regarding drug possession by eighth grade girl, assistant principal searched her backpack, pockets, and shoes, but "[t]he search was not excessively intrusive in light of [the girl's] age and sex: [the girl] was not asked to disrobe or physically touched."); *see also Sostarecz v. Misko*, No. 97-2112, 1999 WL 239401, at *6 (E.D. Pa. Mar. 26, 1999) (finding that where nurse tests of vital signs and pupils of student suspected of drug use were normal, no "reasonable personal would then force the student" to submit to a strip search). Of course, it would be easier if school officials could simply search every student accused by anyone of possessing contraband regardless of circumstance, just as it

would be easier for police to strip search anyone they might think has contraband. But such methods, while administratively easier, do not comport with the Fourth Amendment.

Accordingly, the question for the Court is whether a suspicion that an honors student with no disciplinary problems might have menstrual cramp medication (even though none was found in her backpack), based on an uncorroborated tip from another student already in trouble for possessing the same medication, justifies a strip search that fully exposed a thirteen year-old female, subjecting her to immediate humiliation and embarrassment, and to potentially long-term emotional and social trauma. If children retain any right to privacy at the schoolhouse, as our Supreme Court has said they do,[4] the answer must be a resounding no. Under *T.L.O.*, this Court should find that the strip search of Savana Redding was unreasonable and in violation of the Fourth Amendment.

[4] *See Morse v. Frederick*, --- U.S. ---, 127 S. Ct. 2618, 2622 (2007) ("[S]tudents do not 'shed their constitutional rights … at the schoolhouse gate.'") (quoting *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 506 (1969)).

CONCLUSION

For the foregoing reasons, the decision of the District Court should be reversed.

Respectfully submitted,

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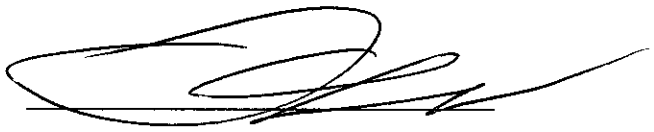
CERTIFICATE OF COMPLIANCE

I, David A. Handzo, hereby certify pursuant to Ninth Circuit Rule 32-1 that the foregoing brief is not subject to the type-volume limitations because it is an amicus brief of no more than 25 pages submitted after the Court has voted to rehear the case en banc (pursuant to Circuit Rule 29-2(c)(3)) and complies with Fed. R. App. P. 32(a)(1)(5).



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I, Michael A. Hoffman, certify that on February 21, 2008, I served two true copies of the foregoing document by U.S. mail, postage-prepaid, on the following parties:

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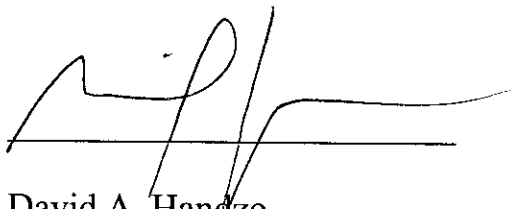

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