Team H

No. 16-9999

Supreme Court of the United States

WASHINGTON COUNTY SCHOOL DISTRICT,
Petitioner,

—v.—

KIMBERLY CLARK, a minor,
by and through her father ALAN CLARK,
Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

BRIEF FOR RESPONDENT

QUESTIONS PRESENTED

I. Whether Kimberly's Facebook post constitutes a "true threat" under First Amendment jurisprudence?

II. Whether the Washington County School District violated Kimberly's First Amendment rights when they punished her speech by suspending her for one Facebook post initiated off campus on her personal computer?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

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OPINIONS BELOW

The opinions of the United States District Court for the District of New Columbia and the United States Court of Appeals for the Fourteenth Circuit are unreported.

STATEMENT OF JURISDICTION

Following the judgment of the United States Court of Appeals for the Fourteenth Circuit, the Petitioner subsequently filed a petition for certiorari, which this Court granted. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1) (2012).

CONSTITUTIONAL PROVISIONS INVOLVED

The text of U.S. Const. Amend. I is set forth in the Appendix to this Brief.

STANDARD OF REVIEW

This Court reviews questions of law *de novo*. *See Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 134 S. Ct. 1744, 1748 (2014).

STATEMENT OF THE CASE

Kimberly Logan Clark is a student at Pleasantville High School in Pleasantville, New Columbia. R. at 23. She has never been subject to any school disciplinary action, and has no history of any violent behavior. *Id.* After the school day, Kimberly participated in an intrasquad practice basketball game. *Id.* During the game, after an adverse call by the referee, Taylor Anderson, who was playing on the other team, engaged Kimberly in a verbal argument on the court. *Id.* The referee then ejected both Kimberly and Anderson from the game. *Id.*

Kimberly was born female and has identified herself as female throughout her life. R. at 13. Anderson was born male, but identifies herself as a member of the female gender. *Id.* After the game, Kimberly wrote a post to Facebook at home on her personal computer. R. at 23. In the post, Kimberly expressed her problem with Anderson playing on the girls' basketball team. *Id.* Kimberly vented her concern that allowing biologically male students to play on a girls' basketball team was unfair and dangerous. *Id.* She also stated her religious belief that it is immoral and against God's law for people to try to change their God-given gender. *See id.*

Kimberly is not friends with Anderson or any other transgender student on Facebook. *Id.* Kimberly was unsure as to whether Anderson would see her post. *See id.* Regardless, Kimberly asserts that her remarks on social media were mere jokes. *Id.* Kimberly strongly believes that it is dangerous and unfair for the Washington County School District to allow students who are biologically one sex to play on the athletic team of the gender of the biologically opposite gender. R. at 24.

Two days after Kimberly's post went online on Facebook, Anderson's parents, along with the parents of another student, alerted the principal of Pleasantville High about Kimberly's post. R. at 13. Anderson and the other student were highly distressed. *Id.* Anderson's level of anxiety over the matter caused her to stay home for two days. R. at 14. Later on the same day, other students also complained about the post and said that they were very upset. *Id.*

Subsequently the principal met with Kimberly. *Id.* She admitted to authoring the post. *Id.* The principal concluded that Kimberly's comments about transgender students were materially disruptive of the school's learning environment and suspended her. *Id.* The Principal's determination for suspension was based on the School District's Anti-Harassment, Intimidation & Bullying Policy. R. at 15. Kimberly's suspension will remain on her permanent record. R. at 14.

Kimberly contends that her First Amendment rights were violated since she commented on a matter of important public policy, and in return received a suspension. *Id.* Kimberly's father believes that their daughter has been inappropriately denied educational opportunities because of the suspension and has been unfairly shamed before the entire school community. R. at 20. The suspension on her school record will likely

negatively impact Kimberly's future, including college admissions and employment opportunities. *Id.* The principal refused to reconsider his decision to suspend Kimberly, and so Kimberly's father appealed her suspension to the Washington County School Board. *Id.* The School district rejected the appeal and upheld Kimberly's suspension. *Id.*

After exhausting administrative remedies, the Clarks sued the school in the District Court for the District of New Columbia. R. at 1. After the district court found in favor of the school, the Kimberlys won on appeal to the United States Court of Appeals for the Fourteenth Circuit. R. at 12, 39.

SUMMARY OF THE ARGUMENT

The decision of the lower court should be affirmed. The school's policy is content based. The policy on its face bans bullying based on the distinctive message of "harassment, intimidation, bullying and threats." R. at 17. The policy enumerates categories of banned speech to the exclusion of other categories, preventing bullying "based on race, national origin, . . . gender, sexual orientation, gender identity." *See id.*

Kimberly's post was not a true threat. She only intended for a small group of her exclusive "Facebook friends" to see her post. She expressed a frustration about her teammate in jest, communicating no serious message of bad intentions to commit an unlawful act. The post was made in the privacy of her home, Kimberly was unsure as to whether her post would reach Anderson, and she made no overt attempt to try to get Anderson to see the post.

Kimberly does not have the sufficient *mens rea* for her post to qualify as a true threat. From Kimberly's perspective, she was venting her frustrations about a school

policy that she disagreed with. Kimberly is not friends with Anderson on Facebook and thereby has no reason to believe that her words would reach Anderson and cause her such anguish. Kimberly's post was not specific, imminent, or unprovoked. The post originated following a verbal altercation between Kimberly and Anderson during an intrasquad practice. Kimberly has no history of disciplinary infractions or violent behavior. No physical violence occurred.

The particularly virulent exception in *Black* does not apply to Kimberly's case. Kimberly's Facebook post cannot be compared to the Kl Klux Klan's (KKK's) use of cross burnings to cause fear anymore than a burning cross could be compared to a swastika. Extending the particularly virulent exception will swallow the entire content and viewpoint-neutrality rule.

Tinker does not apply. *Tinker* and its progeny were grounded in the physical geography of the interior of the school-house. Extending *Tinker* beyond the school will greatly chill free speech. The spread of social media does not justify a governmental interest in allowing schools to restrict student expression that they reasonably regard as unsavory political speech, such as Kimberly's post made from the confines of her home.

No substantial disruption occurred, nor could one be reasonably forecasted. Anderson missed only two days of school from the post. Although some students complained about the post, no classes were cancelled, or set back. The normal activities of the school in educating students had no change in function.

ARGUMENT

I. Kimberly's post cannot be considered a true threat because of the lack of intent for readership, failure of subjective and objective intent tests, and absence of a "particularly virulent" exception.

A. Kimberly's speech is not a true threat because she did not intend for Anderson to see her Facebook post.

The Court in *Black* laid great weight on the intent requirement, offering this definition of unprotected "true threats" and intimidation: true threats encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. *See Black*, 538 U.S. at 363. Each of the Justices positions in the four-justice plurality of the court takes a similar position on the necessity of the intent element. *United States v. Cassel*, 408 F.3d 622, 630-32 (9th Cir. 2005). Eight justices agreed that intent to intimidate is necessary and that the government must prove it to secure a conviction. *Id.*

Kimberly did not intentionally or knowingly communicate her post in a sufficient way to remove it from the protection of the First Amendment. Where there is no intent to communicate, the negligence standard of an objective person determining what is and isn't a true threat cannot be applied in the civil context. *Porter v. Ascension School District*, 393 F.3d 608, 618 (5th Cir. 2004). "The government . . . has no valid interest in the contents of a writing that a person..might prepare in the confines of [her] home." *See Porter*, 393 F.3d at 618 n.32; *United States v. Pryba*, 502 F.2d 391, 407 (D.C. Cir. 1974). The Constitution extends to the home special protections that are not present in other places within civil society. *See Porter*, 393 F.3d at 618 n.32. In *Porter,* a student created

threatening artwork and showed the drawing to his mom, brother, and friend in his home. *Id.* at 618. The student then kept the work within his home. *Id.* Likewise, Kimberly posted to Facebook from her home and meant to keep the post available to only a select group of friends. *See* R. at 18, 23. On Facebook, a user has the ability to choose friends and control the distribution of a post among friends. Like the brother of the student at issue in *Porter* bringing the artwork to school, the introduction of Kimberly's Facebook post to the school was accidental and unconnected to the initial Facebook post. *See* R. at 18. The student in *Porter* could not anticipate that his brother would bring the artwork he showed him to school because the communication was confined to a limited audience. *See Porter*, 393 F.3d at 618. Analogously, Kimberly's post was not meant for public scrutiny but rather for the members of her exclusive digital club, which transgender students were not a part of. *See* R. at 23.

Kimberly was also not explicitly broadcasting a message to Anderson. In *Doe*, a student wrote threatening letters about an ex-girlfriend and then showed them to a friend, knowing that there was a good possibility that his friend would tell the ex-girlfriend. *Doe v. Pulaski County Special School District*, 306 F.3d 625 (8th Cir. 2002). The eighth circuit held that the student in *Doe* had intended to communicate threatening language to his ex-girlfriend because the student had told both the ex-girlfriend and her friends about the threatening letter as well. *See id.* Kimberly, however, was only aware that the post might reach Anderson. *See* R. at 14. Kimberly was not overtly willing to let Anderson read her post. There is no indication in the record that any of Kimberly's friends are mutual friends with Anderson. Thus, Kimberly's discussion of Anderson among her friends is unlike the kind of overt discussion of the ex-girlfriend in *Doe*. While it may be

likely that discussion on Facebook of another student may reach the ears of that student, conversation among selective friends, even digitally and covertly, is not overt discussion. Thus, the court should find it unnecessary to consider whether her statement is a true threat based on a subjective or objective test.

B. Kimberly's post cannot be considered a true threat under either a subjective or objective intent test.

The subjective requirement of the "true threat" exception to the First Amendment is met "only if the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Burge v. Colton school District*, 100 F. Supp. 3d 1057, 1068 (D. Or. 2015). It is therefore not sufficient that objective observers would reasonably perceive such speech as a threat of injury or death." *Black*, 538 U.S. at 359. *Black* calls for determining whether Kimberly subjectively intended her Facebook post to be a threat and if she had the intent to communicate her post to Anderson. *Cassel*, 408 F.3d at 626.

The Court clearly stated in *Black* that intent is required to prove a true threat. *Black*, 538 U.S. at 359. The Court, however, was unclear as to what was the necessary *mens rea* requirement. *Id.* In *Elonis*, the Court explicitly banned the use of a negligence standard of a reasonable person test for *mens rea* for true threats. *See Elonis v. United States*, 135 S. Ct. 2004 (2015). The Supreme Court has never explicitly adopted either an objective test or subjective test with regards to the *mens rea* necessary for true threats. *Id.* Justice Alito suggested using recklessness, which requires proof that the statement was made with reckless disregard for their threatening nature, which is similar to the reasonable recipient approach. *Id. Lovell* applied an objective test but used the reasonable

person approach rejected in *Elonis* and so is inapplicable to Kimberly's case. *Lovell by & Through Lovell v. Poway Unified Sch. Dist.*, 90 F.3d 367, 369 (9th Cir. 1996).

The subjective intent test requires both the general intent of knowingly and a specific *mens rea.* Kimberly's statements cannot be a "true threat," lacking First Amendment protection based on the subjective standard. When Kimberly posted her comments to Facebook, she did not intend to threaten or intimidate Anderson or any other transgender person. *See Burge*, 100 F. Supp. 3d at 1068; R. at 23. Kimberly did not even believe that Anderson would see her comments because Kimberly is not a Facebook friend of Anderson. *See* R. at 23. Kimberly only meant to express her dissatisfaction with allowing Anderson onto the basketball team and receive responses from Kimberly's Facebook friends. *Id.* There is no reason that Kimberly would suspect that her mere words would have such a strong psychological reaction for Anderson.

Under the objective test, the speaker must intend to threaten and a reasonable recipient must interpret the statement as a threat. *Doe*, 306 F.3d at 624. The speaker does not have to be able of carrying out the threat. *Id.* The post in *Doe* contained "violent misogynic and obscenity laden rants" expressing the desire of a middle school student to murder an ex-girlfriend. *Id.* Kimberly's post, however is ambiguous even under the objective test. Both the author of the letter in *Doe* and his ex-girlfriend were middle schoolers at the time. *Id.* Kimberly's post, on the other hand, was not extremely graphic, exact, or immediate. *See* R. at 18. The most threatening part of Kimberly's post is "Taylor better watch out at school. I'll make sure IT gets more than just ejected. I'll take IT out one way or another." *Id.*

In *Dinwiddie*, the eighth circuit found that the true threat inquiry was fact intensive under the reasonable recipient approach. *United States v. Dinwiddie*, 76 F.3d 913, 913 (8th Cir. 1996). The factors to consider are the reaction of those who heard the alleged threat, whether the threat was conditional, whether the person who made the alleged threat communicated it directly to the object of the threat, whether the speaker had a history of making threats against the person purportedly threatened and whether the recipient had a reason to believe that the speaker had the propensity to engage in violence. *Doe*, 306 F.3d at 623. The exhortation of "Taylor better watch out" came after a passage where Kimberly expressed her disapproval over the school's transgender student policy, allowing Anderson to play on the basketball team with Taylor. *Id.* The post originated following a verbal altercation between Kimberly and Anderson during an intrasquad practice. Kimberly has no history of disciplinary infractions or violent behavior. R. at 13, 23. The argument was confined to use of verbal slings and not physical blows. Correspondence directed to one's home or work is more likely to be perceived as a threat than a general statement delivered at a public gathering. *Doe*, 306 F.3d at 625. Kimberly's statement was not directed specifically to Anderson, while it mentioned her, the statement was delivered to a limited audience of Kimberly's selected Facebook friends. *See* R. at 18.

C. *Black*'s "particularly virulent" exception for true threats does not apply to Kimberly's online speech.

While the majority opinion in *Black* fails to give an explicit sort of jury instruction to determine if a true threat is particularly virulent, the Court placed a great weight on the KKK's use of cross burnings as a symbol of impending violence to create

fear. *See Black*, 538 U.S. at 363. In effect, the Court seems to suggest that the jury should consider the circumstances that the threat was made and the history of the symbolism of the threat. *Id.* The Virginia statute was constitutional since it was justified by a sufficient purpose of preventing cross burnings that invoke fear in everyone because of the KKK's history of using cross burnings as a symbol of fear towards various racial and ethnic minorities, especially African-Americans. *Id.*

The school's policy, unlike the statute in *Black*, lacks a sufficient purpose. The school policy, while claiming to prevent the secondary effects that cyber bullying may cause on the school environment, is actually meant to suppress hostile speech towards people belonging in the listed categories. *See* R. at 17. Unlike the statute in *Black*, the school's policy identifies "gender identity" as a class in need of special protection. *Compare Black*, 538 U.S. at 343 *with* R. at 17. The fear of impending violence that the burning cross-inspired was deeply rooted in the history of the KKK. *See Black*, 538 U.S. at 343. Kimberly's post can hardly be characterized as symbolizing a long history of trans-phobic imagery signaling imminent harm. *See* R. at 17. It is unclear as to what a student should expect the policy to cover in preventing bullying. If Kimberly had posted an image of a swastika would she punished under this policy? Based on the listed protected attributes and Court's decision in *Skokie*, the answer is resoundingly no. *See National Socialist Party of America v. Village of Skokie,* 432 U.S. 43 (1977).

In essence, the school policy has imposed a value judgment as to what speech deserves to be protected and what speech deserves to be punished. The school policy permits an end run on the First Amendment, since the school will always be able to point to some neutral, non-speech justification for its actions. *See* Stephen Wermiel & Erwin

Chemerinsky, *Constitutional Law- The First Amendment* 45 (Wolters Kluwer 2016). The "particularly virulent" exception to *R.A.V*. should be read as a completely speech neutral term. Steven Gey, *A Few Questions About Cross Burning, Intimidation And Free Speech*, 80 NOTRE DAME L. REV. 1287, 1306 (2005). The concept of an especially "virulent" subset of true threats should be limited to examples of a true threats that produce a greater magnitude of concrete consequences unrelated to the content expressed than other true threats. *Id*. The virulence exception should be limited only to examples of grave concrete consequences, which is not present with Kimberly's post. *See id.* at 1307. To expand the exception in any other way would consume the content and viewpoint-neutrality rule. *Id.* at 1309. If the exception is broadened to include a listener's generalized reaction to frightening ideas communicated by a speaker, then every dissenting speaker on a highly contentious issue will fall into the exception. *Id.*

II. The school policy is not permissible under the first Amendment because it is content based, invalid under *Tinker*, and there was no predictable or actual school disruption.

A. The school's policy is a content-based regulation, which is subject to strict scrutiny and presumably invalid.

In *Black*, the Court held that it did not violate the constitution for a state to ban the burning of a cross with intent to intimidate. *Virginia v. Black*, 538 U.S. 343, 343 (2003). The Supreme Court of Virginia consolidated the appeals of three people convicted of violating the Virginia statute and held the statute unconstitutional on its face on the grounds that, although it punishes speech within the generally unprotected category of

true threat, it "selectively chooses only cross burnings because of its distinctive message." This was consistent with the Supreme Court's holding in *R.A.V* where the Court struck down a Minnesota statute banning fighting words that drew a content based distinction among the types of banned speech. *R.A.V. v. City Of St. Paul*, 505 U.S. 377, 377 (1992). The Supreme Court, however, reversed the holding of the Supreme Court of Virginia, throwing a wrench in the consistency of the Court's precedence.

The school's policy is clearly content based. The School District of Washington County, New Columbia Anti-Harassment, Intimidation & Bullying Policy ("Bullying Policy") states that "it is the policy of the [school] to prohibit harassment, intimidation, bullying and threats . . . [which] reasonably could be expected to harm a student." *See* R. at 17. The policy applies only to students who bully other students based on the enumerated protected statuses of "race, national origin, skin color, physical appearance, ancestry, gender, sexual orientation, gender identity, pregnancy, marital status, economic status or physical, mental or sensory disability." *See id.* While the statute also lists proscribing "all forms of harassment," that phrase is then modified "based on" the listed and approved state classifications. Under the canon of construction *expressio unius est exclusio alterius*, the inclusion of the prior categories is meant to be at the exclusion of other attributes.

B. *Tinker* does not apply to the present case.

Schools must be limited to enforcing discipline inside the physical boundaries of the school. Regardless, Kimberly's speech was political speech and is therefore protected. Kimberly's post was not made at school or during a school event. *See* R. at 23. No teachers or supervisors were present. *Id.* The special circumstances of Kimberly posting

on Facebook, and the omnipresent nature of the internet does not create a governmental interest in allowing schools to restrict student expression that they reasonably regard as unsavory political speech. *See Morse v. Frederick*, 551 U.S. 393, 394 (2007).

If *Tinker*, *Fraser*, *Morse* were to apply to off school speech, then school officials would be given the power to decide how a student is to conduct effective public discourse not only within the walls of the schoolhouse, but in the confines of the home. *See Morse*, 551 U.S. at 393; *Bethel School District v. Fraser*, 478 U.S. 675 (1986); *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969). School officials could ban any speech by a student that takes place anywhere at any time, so long as the speech is about the school, is brought to the attention of a school official and is deemed offensive by the prevailing authority. *See J.S. ex rel. Snyder v. Blue Mountain School District*, 650 F.3d 915, 933 (3d Cir. 2011) (en banc) (Smith, J., concurring).

The concept of particularly virulent within true threats or the application of the *Tinker* framework to student speech on the Internet is similar to the Court's doctrine on indecent speech. The Court explicitly rejected the cyber zoning of the Internet for the protection of children from "indecent" and "patently offensive" speech in striking down part of the "Communications Decency Act (CDA) of 1996" as a content based restriction of speech. *Reno v. ACLU*, 521 U.S. 844, 844 (1997). Like the CDA, the school's policy extends the power of schools to decide what students can and cannot say on social media. *Id.* at 845. Users on the Internet rarely encounter information by accident. *Id.* Like how a person was free to look away from Cohen's "fuck the draft" jacket, Anderson could simply ignore Kimberly's post. *See Cohen v. California*, 403 U.S. 15, 22 (1971). If you don't like someone's speech you can simply look away. *Id.*

Children have significant free speech rights. *Tinker,* 393 U.S. at 405. Applying *Tinker* to Kimberly's post would fail to give student's adequate notice of when student speech crosses the line between permissible and punishable off campus expression. *Id.* Applying the Tinker framework to off campus speech like Kimberly's Facebook post ignores that *Tinker's* holding and its *sui generis* substantial disruption framework, expressly grounded in the special characteristics of the school environment and the need to defer to school officials authority to control conduct in schools, not outside of schools. *Id. Tinker* allows schools to regulate in school student speech in a way that would not be constitutional at home on Facebook.

C. No substantial disruption occurred, nor could a substantial disruption be reasonably forecasted by the school.

Substantial disruptions occur only when the activities of a student cause classes and the functions of the school to cease. *See Wynar v. Douglas County School District*, 728 F.3d 1062, 1069 (9th Cir. 2013); *S.J.W. v. Lee's Summit R-7 School District*, 696 F.3d 771 (8th Cir. 2012); *Boucher v. School Bd.*, 134 F.3d 821, 829 (7th Cir. 1999). Unlike the student in *Kowalski*, Kimberly did not know that her Facebook post would be, as it in fact was, published beyond her home. *See Kowalski v. Berkeley county Schools*, 652 F.3d 565, 577 (4th Cir. 2011). School officials could not reasonably expect Kimberly's Facebook post to affect the school environment. After her post was brought into the school environment, no classes were disrupted nor where the regular school activities affected in any substantive and tangible way. However, Principal Franklin felt that there was a disruption because a few students complained and appeared to be upset. *See* R. at 14. A mere desire to avoid a disruption is not enough to justify infringing on the

political speech of other students. *See Kowalski*, 652 F.3d at 572. Students complained two days after Kimberly put the post on Facebook, and Anderson had taken that time to disconnect from the school environment. *See* R. at 14. None of the complaining students said that the post affected their abilities to learn or participate in the pedagogical and extra-curricular activities of the school. *See id.*

Kimberly's post is protected speech on a matter of public concern, and should therefore receive the highest degree of First Amendment protection. Allowing a student's offline, off campus speech to be censored erodes the traditional divide between the privacy of one's abode and the confines of a school. *Bell v. Itawamba County Sch. Bd*., 799 F.3d 379, 404 (5th Cir. 2015) (Dennis, J., dissenting). Extending the power of a school into the home turns teachers *in loco parentis* not only during class hours but also after the school day has concluded. *See id.*

Freedom of speech is nothing if children can only espouse the pre-approved doctrines of the state. *Id.* at 406. The freedom to think independently was denied to Kimberly because she dared criticize another student. The nature and content of Kimberly's post was political and related to a matter of public concern of the school's transgender policies in relation to team sports. *See* R. at 18. Thus, the effect of the school in disciplining Kimberly is to take a side in a national debate about transgender rights. Crucially, no other in school disturbance besides Anderson's parents bringing the post to the attention of school officials, has occurred because of Kimberly's post. *See* R. at 21-22. Despite the school's assertion that a substantial disruption occurred, the school can identify no physical disruption to school activities or that any class was impeded from teaching students. *See id.*

If *Tinker* were to apply to off campus speech, a school would be able to punish a student for expressive activities no matter where it takes place, when it occurs, or what subject matter it involves- so long as it causes a substantial disruption at school. *J.S.*, 650 F.3d at 940. Extending *Tinker* would allow school officials to suppress political speech, the crux of what the First amendment protects. Suppose that Kimberly, while at home after school hours, were to write a blog entry defending gay marriage. Then Kimberly's classmates got wind of the entry and a significant disturbance occurred at school. While the school could clearly punish the students who acted disruptively at school, if *Tinker* were to apply off campus, the school could also punish Kimberly since her blog entry was the supposed impetus for the disruption.

Even if Kimberly's post does not involve political speech in posting a mean spirited venting about Anderson the lack of political content is irrelevant for First Amendment purposes. There is no First Amendment exception for offensive speech or for speech that lacks a certain quantum of social value. *Id.* The Court has consistently refused to embrace the notion that, antithetical to first amendment values, the degree of protection of first amendment values varies with the social value ascribed to that speech by five justices. *Id.* While Kimberly's post may be offensive to some, it enables her to vent her frustrations in nonviolent ways. Such a venting mechanism is crucial to society.

CONCLUSION

For the foregoing reasons, this Court should affirm the Fourteenth Circuit's order in favor of Ms. Clark.

Respectfully submitted,

/s/

/s/
The Advocates for Team H
Attorneys for Respondent

CERTIFICATE OF SERVICE

We, the advocates of Team H, attorneys for the Respondents, certify that on January 31, 2017, have served upon the Petitioner a complete and accurate copy of this Brief for Respondent, by placing a copy in the United States Mail, sufficient postage affixed and properly addressed.

DATE: Jan. 31, 2017

/s/

/s/
The Advocates for Team H
Attorneys for Respondent

APPENDIX

U.S. Const. Amend. 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.