Nos. 09-1478 and 09-1454

In The
Supreme Court of the United States

JAMES ALFORD,
DESCHUTES COUNTY DEPUTY SHERIFF,
Petitioner,
v.
SARAH GREENE, personally and as
next friend for S.G., a minor and K.G., a minor,
Respondent.

BOB CAMRETA,
Petitioner,
v.
SARAH GREENE, personally and as
next friend for S.G., a minor and K.G., a minor,
Respondent.

On Writs of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

BRIEF OF THE RUTHERFORD INSTITUTE, AMICUS CURIAE, IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

Whether a police officer and a child protective services investigator violated the Fourth Amendment when they conducted a two-hour-long custodial interrogation of a 9-year-old girl at her school building, to determine if she was the victim of paternal child abuse, without a warrant or court order, without exigent circumstances, and without the consent of the mother?

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INTEREST OF *AMICUS CURIAE*[1]

Since its founding over 29 years ago, The Rutherford Institute has emerged as one of the nation's leading advocates of civil liberties and human rights, litigating in the courts and educating the public on a wide variety of issues affecting individual freedom in the United States and around the world.

The Institute's mission is twofold: to provide legal services in the defense of civil liberties and to educate the public on important issues affecting their constitutional freedoms. Whether our attorneys are protecting the rights of parents whose children are strip-searched at school, standing up for a teacher fired for speaking about religion or defending the rights of individuals against illegal searches and seizures, The Rutherford Institute offers assistance—and hope—to thousands.

The case now before the Court concerns the Institute for two reasons. First, the Institute is concerned about the increasing erosion of the rights of children and parents in the context of public schools. Second, the Petitioners' arguments are wholly at odds with long-established Fourth Amendment principles governing the legality of

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[1] Counsel of record to the parties in this case have consented to the filing of *amicus* briefs in support of either party or neither party. No counsel to any party authored this brief in whole or in part, and no person or entity other than *amicus curiae* and its counsel have contributed monetarily to its preparation or submission.

seizures of the person that are the equivalent of an arrest.

SUMMARY OF THE ARGUMENT

Despite this Court's long-standing recognition that students do not shed their constitutional rights at the schoolhouse gates, our schools are increasingly being transformed into police states where children are subject to indignities, such as mass, suspicionless searches, and parental rights to the primary care, custody, and control of their children are ignored. The Petitioners request that this Court give its support to a further degradation of the rights of public school children and their parents even though the focus of the suspected criminal conduct has no nexus to the school whatsoever, save that the child at issue attends a public school. Acceptance of the Petitioners' request that a generalized exception to the Fourth Amendment rights of students and parents be recognized in this case would send a message that individual rights are forfeited when parents send their children to public schools.

ARGUMENT

I. THE SEIZURE OF S.G. WAS THE EQUIVALENT OF AN ARREST AND ILLEGAL UNDER ESTABLISHED FOURTH AMENDMENT STANDARDS

The Petitioners and their supporting *amici* invoke the "reasonableness" test of the Fourth Amendment but divorce it from bedrock principles

that have informed this fundamental protection of individual privacy. Although it is nowhere disputed by the Petitioners that the actions of the Petitioners in interrogating S.G. constituted a seizure of the person, they fail to acknowledge the venerable principle that such seizures, if executed without probable cause or judicial authorization, are presumptively constitutionally unreasonable. With rare exceptions, the seizure of a person is deemed per se unreasonable unless a warrant is obtained from a neutral magistrate upon a showing of probable cause. *United States v. Place*, 660 F.2d 44, 47 (2d Cir. 1981), *affirmed*, 462 U.S. 696 (1983) (citing *Katz v. United States*, 389 U.S. 347, 357 (1967)).

Even with respect to brief seizures based upon reasonable suspicion and in the interest of officer safety condoned in *Terry v. Ohio*, 392 U.S. 1 (1968), the exception is narrow:

> *Terry* and its progeny nevertheless created only limited exceptions to the general rule that seizures of the person require probable cause to arrest. Detentions may be "investigative" yet violative of the Fourth Amendment absent probable cause. In the name of investigating a person who is no more than suspected of criminal activity, the police may not carry out a full search of the person or of his automobile or other effects. Nor may the police seek to verify their suspicions by means that approach the conditions of arrest.

Florida v. Royer, 460 U.S. 491, 499 (1983).. In *Dunaway v. New York*, 442 U.S. 200 (1979), a state also attempted to justify the warrantless seizure of a person for the purposes of questioning on the basis that the police believed he had intimate knowledge about a serious unsolved crime. This Court refused to uphold the seizure, stressing that the one-hour questioning did not amount to the kind of brief seizure at issue in *Terry* and warning that "any 'exception' that could cover a seizure as intrusive as that in this case would threaten to swallow the general rule that Fourth Amendment seizures are 'reasonable' only if based on probable cause." *Id.* at 213.

The *Dunaway* decision also rejected adoption of precisely the kind of "reasonableness" approach urged by the Petitioners in this case:

> In effect, respondent urges us to adopt a multifactor balancing test of "reasonable police conduct under the circumstances" to cover all seizures that do not amount to technical arrests. But the protections intended by the Framers could all too easily disappear in the consideration and balancing of the multifarious circumstances presented by different cases, especially when that balancing may be done in the first instance by police officers engaged in the "often competitive enterprise of ferreting out crime." *Johnson v. United States,* 333

> U.S. 10, 14, (1948). A single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront. Indeed, our recognition of these dangers, and our consequent reluctance to depart from the proved protections afforded by the general rule, are reflected in the narrow limitations emphasized in the cases employing the balancing test. For all but those narrowly defined intrusions, the requisite "balancing" has been performed in centuries of precedent and is embodied in the principle that seizures are "reasonable" only if supported by probable cause.

Dunaway, 442 U.S. at 213-214.

S.G.'s detention in this case was similar to that considered in *Dunaway* and must be considered the kind of significant seizure to which the established principles of the Fourth Amendment apply.[2] S.G. was taken from her classroom by a

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[2] *Amici* California State Association of Counties and League of California Cities argue that this Court should rule at the threshold that there was no seizure of S.G. (Brief of California State Assoc. of Counties, and League of California Cities at 7-22). However, the Ninth Circuit noted that the Petitioners did not contest that the questioning of S.G. constituted a seizure of her person, *Greene v. Camreta*, 588 F.3d 1011, 1022 (9th Cir. 2009),

school counselor and placed in an office with two strangers who began to interrogate her. Nothing in the record indicates that S.G. was asked by the counselor whether she wanted to go see these men; all indications are that S.G.'s presence in the room was mandated by the counselor. The Petitioners do not cite to anything in the record indicating that they told S.G. she could stop the encounter at any time and return to her school activities. S.G. clearly was not free to leave, and it is even clearer that a reasonable nine-year-old would not have felt free to leave. Under this Court's guiding principles, S.G. was seized for purposes of the Fourth Amendment. *See Doe v. Heck*, 327 F.3d 492, 510 (7th Cir. 2003) (student was seized when taken by social services caseworker and law enforcement officer into a room for questioning in a sexual abuse investigation because a reasonable student would not have felt free to leave, citing *United States v. Mendenhall*, 446 U.S. 544, 554 (1980)).

Contrary to the suggestions of the Petitioners and some of their supporting *amici*, the treatment of S.G. was not the equivalent of "mere questioning" by state officials which does not trigger traditional Fourth Amendment scrutiny of seizures of the person. Both Petitioners argue that *Illinois v. Lidster*, 540 U.S. 419 (2004), should control here because S.G. was questioned as a witness, not a suspect. But *Lidster* does not justify any and all seizures of the person not aimed at building a criminal case against that person. Instead, this Court emphasized that its decision applied to "*brief*,

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effectively conceding that the Fourth Amendment is implicated by the conduct of the state officials.

information-seeking *highway stops* of the kind now before us." *Lidster* was grounded in large part upon the more limited expectation of privacy of motorists on the highway. *See id.*, 540 U.S. at 424 ("The Fourth Amendment does not treat a motorist's car as his castle."). By distinction, this case involves an individual's right to bodily autonomy and to be free of detention pursuant to a claim of authority by the government. Unlike the situation of a person in a vehicle, this right finds no similar limitation in this Court's Fourth Amendment precedent. *See Royer*, 460 U.S. at 501-02 (when officials make a show of authority such that a reasonable person would not believe he was free to leave and must accompany the officials to another location, a person is effectively seized in a manner equivalent to an arrest).

More significantly, *Lidster* involved a "brief" seizure of motorists. The facts there indicated that a car would be stopped for between 10 and 15 seconds. *Lidster*, 540 U.S. at 422. Clearly, the brevity of a seizure is an important factor in determining the Fourth Amendment interests at stake. *Place*, 462 U.S. at 709. The seizure of S.G. was anything but brief; she was kept in the room with the Petitioners for *two hours*, far longer than the kind of investigative detention evaluated under the "reasonableness" test set forth in *Lidster*, 540 U.S. at 427.

Indeed, it is the brevity inherent in the kind of information-seeking vehicle stops at issue in *Lidster* that was the basis for the Court's use of a generalized "reasonableness" test as opposed to the

presumptive rule of unconstitutionality. The *Lidster* decision stressed at several points that the kind of seizures considered there "are likely brief." 540 U.S. at 425. It refused to employ the analysis used in *Indianapolis v. Edmond*, 531 U.S. 32 (2000), because the information-gathering "motorist stop will likely be brief. Any accompanying traffic delay should prove no more onerous than many that typically accompany normal traffic questioning." *Lidster*, 540 U.S. at 426.

Contrary to the Petitioners' contentions, *Lidster* does not stand for the proposition that any seizure in which government officials seek to obtain information about possible criminal activity from a non-suspect is subject to the "reasonableness" balancing test employed in that case. Such balancing was employed there because the kind of seizure at issue was by its nature likely to be brief. Where police stop motorists in order to determine whether they have information about an incident, there is little reason to believe that the seizure will be onerous because police will quickly determine whether the motorist has some information. To the extent the motorist does have information to impart, any extension to the stop for additional questioning will be wholly with the consent of the motorist. *Id.* Thus, *Lidster* does not make all information-gathering seizures subject to the reasonableness balancing test, but only those which are inherently brief and are additionally less invasive of privacy due to a lessened expectation of privacy.

Seizures of the kind at issue here are not inherently brief and this Court should not extend

the analysis of *Lidster* to in-school custodial questioning of students as part of abuse investigations. Unlike questioning of an adult motorist about his or her knowledge of an incident, questioning of minors about their family life will almost certainly be drawn out and require an extended period of detention by state officials. Children are understandably reluctant to speak about their home life with strangers and even more so when the discussion turns to matters of a sexual nature. From an early age children are warned to be protective when it comes to their "private parts" or adults (strangers or otherwise) who start to pry into those inherently private areas. Given this reluctance, investigators such as the Petitioners are likely to press a child for an extended period of time in order to determine whether an initial negative response to questions about whether the child has been abused are really "true." Additionally, communication problems may be an issue, especially for younger children, which will require investigators to prolong the detention and questioning even further. Clearly, the context presented by this case is not one where the seizure could be expected to be brief. Indeed, in this case the Petitioners felt it necessary to hold S.G. for two hours. The *Lidster* rule should not be extended to the kind of child questioning at issue here because it is unlikely that the seizure government officials will deem required will be brief.

In its *amicus* brief, the United States argues that the generalized reasonableness test should be applied when students are seized for abuse investigations because they are unlike traditional

arrests. Yet, apart from the fact that S.G.'s seizure occurred at school (as discussed, *infra*), her detention was certainly closer to an arrest and more restrictive and invasive than the kind of seizures of the person deemed subject to a lesser Fourth Amendment standard. As pointed out above, the seizure of S.G. specifically and similar seizures generally are not the kind of brief, on-the-street stops considered in *Lidster*, nor are they like the roving vehicles stops for immigration enforcement considered in *United States v. Brignoni-Ponce*, 422 U.S. 873, 880 (1975), which involved detention for less than a minute and posing of a question or two.

Indeed, the seizure of S.G. more closely resembles the seizure considered in *Dunaway*, which the United States admits was the functional equivalent of an arrest. As in that case, S.G. was taken by authority figures to an isolated spot where she was questioned for an extended period of time. She was not questioned where she was found. *Dunaway*, 442 U.S. at 212. S.G. was never informed that she had the option of terminating the interview and it is beyond question that if she had attempted to terminate the interview and return to her class, she would have been physically restrained. *Id.* This seizure plainly was not like the momentary stops this Court has found to be subject to the kind of reasonableness analysis the Petitioners and their supporting *amici* argue should apply here.

Had this seizure been effected other than in a public school, there would be no question that it was illegal and violated the Fourth Amendment. The exception the Petitioners seek to fall within here is

narrow and applies only when the detention is brief. That the target of the seizure was not suspected of any crime does not control, because government officials are not privileged to detain individuals against their will on the basis that those persons may have information helpful in ferreting out criminal activity. "It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior." *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 530 (1967). Because, as discussed *infra*, the school context does not justify the kind of seizure at issue here, the judgment below that the Petitioners violated the Fourth Amendment should be upheld.

II. CHILDREN IN PUBLIC SCHOOLS ARE NOT IN THE CUSTODY OF THE GOVERNMENT TO SUCH AN EXTENT THAT SEIZURES OF THE KIND AT ISSUE IN THIS CASE CAN BE DEEMED CONSTITUTIONALLY INSIGNIFICANT

The arguments of Petitioners and their supporting *amici* that seizures of children at public schools like the one effected upon S.G. are justified by the fact that it occurred at public school is evidence of the pernicious societal trend of deeming children and their parents to have forfeited their constitutional rights by attending or sending their children to public schools. In its brief, *amicus* United States asserts that the liberty restrictions arising from the kind of seizure and questioning

S.G. was subjected to "arise primarily from the custodial aspects of public schooling" (Brief for the United States at 26), suggesting that school children are and must expect to be under the complete control of government agents, whether or not associated with the school or carrying out a public education function, with respect to their personal liberty. Other *amici* go so far as to argue that the Fourth Amendment is not implicated whatsoever by the detention and questioning of S.G. because it was equivalent to the kind of limitation on the child's liberty and privacy inherent in public school attendance (Brief of California State Assoc. of Counties, and League of California Cities at 20). Thus, a cornerstone of the arguments supporting the Petitioners is that the privacy and personal security of students is so limited when attending public schools that the protections of the Fourth Amendment are effectively irrelevant (Brief of the United States at 31).

However, the American constitutional system long ago rejected any notion that a child is "the mere creature of the State" and, on the contrary, has affirmed that that parents generally have the right to control and custody of their children. *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925). *See also Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972). Indeed, the idea that students have no personal privacy interests protected by the Fourth Amendment was explicitly rejected in *New Jersey v. T.L.O.*, 469 U.S. 329 (1985), even as applied to the actions of school officials carrying out school disciplinary functions.

While the Petitioners and their supporters would have this Court hold, explicitly or implicitly, that public school students are subject to the control and custody of *any* government official for *any* governmental purpose, this invitation must be resisted. As Justice O'Connor wrote, "if we are to mean what we often proclaim—that students do not 'shed their constitutional rights at the schoolhouse gate,' *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 506 (1969)—the answer [to this invitation] must plainly be no." *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 681 (1995) (O'Connor, J., dissenting).

A. Children in Public Schools Retain a Liberty Interest to be Free From Seizures Unrelated to Discipline or Another School Interest

Even if the Fourth Amendment rights of students in public schools may be "different", *Acton*, 515 U.S. at 656, they are not nonexistent. More importantly, the limitation on the liberty of public school students and qualification of their Fourth Amendment rights that this Court has recognized is based upon the maintenance of "swift and informal disciplinary procedures needed in schools." *T.L.O.*, 469 U.S. at 340. Children's privacy rights vis-à-vis teachers and administrators are lessened because of "the substantial need of teachers and administrators for freedom to maintain order in the schools." *Id.* at 341. Restrictions on the liberty and privacy of students are justified by the need to preserve a "'proper educational environment,'" *Acton*, 515 U.S. at 655 (quoting *T.L.O.*, 469 US. at

339), and to allow school authorities to "inculcate the habits and manners of civility." *Acton*, 515 U.S. at 655 (quoting *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 681 (1986)). "A student's privacy interest is limited in the public school environment where the State is responsible for maintaining discipline, health and safety. . . . Securing order in the school environment sometimes requires that students be subjected to greater controls than those appropriate for adults." *Bd. of Educ. Of Indep. Sch. Dist. No. 92 of Pottawatomie County v. Earls*, 536 U.S. 822, 830-31 (2002).

In this case and others involving abuse investigations, the interests in school order and student discipline are not implicated and can in no way be used as a justification for the seizure of the student. Although the Petitioners and their supporting *amici* rely upon *Acton* and other cases upholding invasions of the privacy rights of public school students as grounds for applying a limited privacy right for S.G. and other students, in each of those cases the invasion was tied to a legitimate interest of the public schools. S.G. was seized and questioned about intimately personal matters not because of any need or desire to maintain school discipline and order, but in order to investigate alleged criminal conduct that took place outside of the school. Indeed, the seizure was not even initiated by school officials; it was at the instigation of child welfare and law enforcement officials.

Because a child abuse investigation such as the one involving S.G. has no nexus to school order or discipline, the limitation on student Fourth

Amendment rights recognized in cases like *T.L.O.*, *Acton*, and *Earls* may not be used to justify the seizure at issue here or similar seizures undertaken for a law enforcement purpose. Just as the scope of a search must be strictly tied to and justified by the circumstances justifying its inception, *Terry*, 392 U.S. 18, so also any qualification of an individual's liberty and privacy must be tied to the circumstances justifying the qualification. The Petitioners were not acting in the interest of school discipline or order, which may require prompt and immediate action that makes pre-seizure judicial intervention impracticable.

The suggestion that students in public schools are already in the custody of the state to an extent that is equivalent to an arrest, thereby allowing government officials to impose additional restrictions on student liberty as they see fit and for any governmental purpose, must be rejected. Indeed, the Court remarked in *T.L.O.*, 469 U.S. at 338-39, "we are not yet ready to hold that the schools and the prisons need be equated for purposes of the Fourth Amendment."

The decision in *Ingraham v. Wright*, 430 U.S. 651 (1977), specifically rejected the idea posited by Petitioners that students have little or no liberty interests upon attending public schools. In ruling that there was no need to extend the Eighth Amendment's prohibition on cruel and unusual punishment to students, the Court noted:

> Though attendance may not always be voluntary, the public school remains an

> open institution. Except perhaps when very young, the child is not physically restrained from leaving school during school hours; and at the end of the school day, the child is invariably free to return home. Even while at school, the child brings with him the support of family and friends and is rarely apart from teachers and other pupils who may witness and protest any instances of mistreatment.

Ingraham, 430 U.S. at 670.

Justice Alito rejected a similar suggestion in *Morse v. Frederick*, 551 U.S. 393, 423 (2007) (Alito, J., concurring), that any and all student speech that interferes with a school's "educational mission" may be censored, pointing out that such an argument could be easily manipulated in dangerous ways. "It is a dangerous fiction to pretend that parents simply delegate their authority--including their authority to determine what their children may say and hear--to public school authorities." *Id.* at 423. It would be just as dangerous to hold that public school custody of students entails a degree of restraint that is no different from an arrest.

Amicus United States finds support for its argument in the reference to the doctrine of *in loco parentis* in *Acton*, 515 U.S. at 654-55, and the presumed delegation of parental authority to public school officials. But the *Acton* decision immediately thereafter disclaimed the idea that the state has the kind of power over public school students which

justifies wholesale elimination of the liberties of students. *Id.* at 655 (degree of school control over students is not so extensive as to give rise to a constitutional duty to protect). Moreover, the idea of a voluntary delegation of parental authority underlying the *in loco parentis* justification has no basis in current realities. "*In loco parentis* assumes a voluntary delegation of parental authority and was envisioned during a time of either home-schooling tutors or small residential, private schools. The doctrine is now anachronistic in an era of involuntary delegation occasioned by compulsory attendance laws and of large public schools with responsibilities that often go beyond educational function." Susan Stuart, *In Loco Parentis in the Public Schools: Abused, Confused and in Need of Change*, 78 U. Cin. L. Rev. 969, 971 (2010).

B. Government Restraint on Public School Students' Liberty Is a Dangerous Trend and Should Not Be Extended by Recognizing That the Seizure of S.G. Was Legal

The suggestion that children sent to public schools are essentially "in custody" in the strictest sense, subject to the control of government officials for whatever purpose the officials deem appropriate, is symptomatic of a larger trend of government officials deeming public school students surrendered to the state and open to any use or manipulation deemed beneficial by the state. Contrary to the long-established warning that children are not "creatures of the state", incidents from around the

country demonstrate that governmental authorities increasingly deem public school students their wards in defiance of the individual liberty of students and their parents. The Rutherford Institute, as a resource for students and parents on their civil rights, receives numerous reports each year of public school arrogation of authority and power over children, such as the following:

- In April of this year, authorities in Springfield, Missouri conducted mass, suspicionless searches at a high school. Authorities brought in drug-sniffing dogs to scan the persons and effects of students. Students reported that their backpacks and other belongings were opened and rummaged through in the course of the "lock down" even though no drugs were found in their belongings. School officials publicly stood by the lock down and search as part of their responsibilities as educators and in order to protect students. *See* http://articles.kspr.com/2010-09-27/search_24122704. *See also Doe ex rel. Doe v. Little Rock Sch. Dist.*, 380 F.3d 349 (8th Cir. 2004) (finding unconstitutional a school district policy of conducting random, suspicionless searches of students' persons and belongings despite school's generalized concern about drugs and weapons);
- In Indiana, and elsewhere around the country, schools subjected students to a psychological examination called "TeenScreen" without obtaining the actual consent of parents. "TeenScreen" involves

invasive questions about the students' personal behaviors, family life, thoughts, and feelings. While student responses were purportedly confidential, the responses were used to make on-the-spot diagnoses of the students' mental health. Moreover, students were told they suffered from serious psychological conditions, such as obsessive compulsive disorder and social anxiety disorder, without consulting with parents. *See Rhoades v. Penn-Harris-Madison Sch. Corp.*, 574 F. Supp. 2d 888 (N.D. Ind. 2008);

- Virginia's Attorney General recently issued an opinion that school officials may seize and search the information contained on a student's cell phone or other personal electronic device in order to investigate a suspicion that the student has engaged in "cyber bullying" or "sexting." Va. Atty. Gen. Op. 10-105, 2010 WL 4909931 (Nov. 24 , 2010). The opinion gives virtually no recognition to the privacy rights of students or guidance to school officials in determining when they have sufficient evidence to give rise to reasonable suspicion (such as corroborating evidence of an accusation). Instead, the opinion stresses that school searches present "special needs" (without any discussion of limitations on that doctrine) and is effectively a general invitation to school officials to search the belongings of students whenever they are worried about wrongdoing.

These incidents and the arguments in support of Petitioners that S.G. really was not

seized in any significant way because she was already in state custody evidence the dangerous trend afoot to turn schools into virtual police states. The liberties supposedly guaranteed by *Tinker*'s admonition that students do not shed their constitutional rights when they enter public schools are quickly vanishing. "The consequences for students have been enormous, from increasing restrictions on student speech to loosening restrictions on how schools can conduct student searches. Schools have been given license to reach the outer boundaries of control by courts' countenancing institutional and official behavior that is farther and farther from the reaches of professional conduct." Stuart, *supra*, at 997. As pointed out by one commentator, "[t]he states, through a combination of compulsory attendance laws and *in loco parentis*-inspired policies, have 'bootstrapped' themselves into possessing a right to infringe on the personal liberties of students in a manner similar to a parent." Comment, *Student Drug Testing: The Blinding Appeal of In Loco Parentis and the Importance of State Protection of Student Privacy*, 2008 B.Y.U. Educ. & L.J. 251, 272 (2008).

The harm caused by attitudes and policies that treat public school students as state vassals is not simply only a short-term deprivation of individual rights. It also is a long-term inculcation of attitudes among our youth that civil liberties are luxuries that may be discarded at the whim and caprice of government officials if they deem doing so is for the "greater good." As this Court has warned, "'[t]hat [schools] are educating the young for

citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.'" *T.L.O.*, 469 U.S. at 334 (quoting *West Virginia St. Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943)).

CONCLUSION

The public's desire to stop and prevent child abuse cannot be gainsaid, but the government interest in investigating criminal activity has never been deemed sufficient to override fundamental rights such as the right to bodily freedom. "Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. . . . The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding." *Olmstead v U.S.*, 277 U.S. 438, 479 (1928) (Brandeis, dissenting). The Petitioners' request for recognition of a special exemption from general Fourth Amendment principles should be denied, and the rights of students to their fundamental liberty interests should be reaffirmed by upholding the judgment below.

Respectfully submitted,

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