

**FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

TYLER CHASE HARPER, a minor, by  
and through his parents Ron and  
Cheryl Harper; RON HARPER; CHERYL  
HARPER,

*Plaintiffs-Appellants,*

v.

POWAY UNIFIED SCHOOL DISTRICT;  
JEFF MANGUM; LINDA VANDERVEEN;  
PENNY RANFTYLE; STEVE McMILLAN;  
ANDY PATAPOW, All Individually and  
in their official capacity as Members  
of the Board of the Poway Unified  
School District; DONALD A. PHILLIPS,  
Individually, and in his official  
capacity as Superintendent of the  
Poway Unified School District;  
SCOTT FISHER, Individually and in his  
official capacity as Principal of  
Poway High School; LYNELL  
ANTRIM, Individually and in her  
official capacity as Assistant  
Principal of Poway High School; ED  
GILES, Individually and in his  
official capacity as Vice Principal of  
Poway High School; DAVID  
LEMASTER, Individually and in his  
official capacity as Teacher of  
Poway High School; DOES 1  
THROUGH 20, INCLUSIVE,

*Defendants-Appellees.*

No. 04-57037

D.C. No.  
CV-04-01103-JAH  
Southern District  
of California,  
San Diego

ORDER  
AMENDING  
OPINION

Filed May 31, 2006

Before: Stephen Reinhardt, Alex Kozinski, and  
Sidney R. Thomas, Circuit Judges.

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### ORDER

The majority opinion filed April 29, 2006, is hereby amended as follows:

1. At Slip Op. at 4676, footnote 28, at the end of the footnote, add: “We do not exclude, however, the possibility that some verbal assaults on the core characteristics of majority high school students would merit application of the *Tinker* “intrusion upon the rights of other students” prong. That question is not presently before us.”

The dissenting opinion filed April 29, 2006, is hereby amended as follows:

1. At Slip Op. at 4710, footnote 11, between <*Id.* at 4667.> and <Read broadly, this would protect>, add: “The majority also does not “exclude . . . the possibility that some verbal assaults on the core characteristics of majority high school students would merit application of the *Tinker* ‘intrusion upon the rights of other students’ prong.” *Id.* at \_\_\_ n.28.

Appellants’ petition for rehearing en banc is still pending before this court.



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