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.

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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