No. 15-666

In the Supreme Court of the United States

TAYLOR BELL,

Petitioner,

v.

ITAWAMBA COUNTY SCHOOL BOARD, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION

Thomas R. Gerarde
Counsel of Record
Winifred E. Binda
HOWD & LUDORF, LLC
65 Wethersfield Avenue
Hartford, CT 06114
Ph: (860) 249-1361
Fax: (860) 249-7665
tgerarde@hl-law.com

Counsel for Respondent Itawamba County School Board

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTION PRESENTED

Can public school officials, consistent with the First Amendment and *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, impose discipline upon a student for speech initiated off school grounds but directed intentionally at, and foreseeably reaching, the school community that materially and substantially disrupts the work and discipline of the school or that reasonably portends such disruption, in that it was threatening, harassing, and intimidating to a teacher?

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STATEMENT OF THE CASE

On Wednesday, January 5, 2011, Petitioner Bell, a high school senior, posted a rap recording on his public Facebook profile page and later on YouTube. The recording, in part, alleged misconduct against female students by two teachers/coaches, W. and R., and also was undeniably vulgar and profane, as well as intimidating, harassing, and threatening as to the two teachers/coaches. Pet. App. 3a.

Petitioner Bell, who refers to himself in the recording as "T–Bizzle," has acknowledged the following lyrics were in his rap recording:

> Let me tell you a little story about these Itawamba coaches / dirty ass niggas like some fucking cocka roaches / started fucking with the white and know they fucking with the blacks / that pussy ass nigga W[.] *got me turned up the fucking max* /
>
> Fucking with the students and he just had a baby / ever since I met that cracker I knew that he was crazy / always talking shit cause he know I'm from da-city / the reason he fucking around cause his wife ain't got no tidies /
>
> This nigga telling students that they sexy, *betta watch your back* / *I'm a serve this nigga*, like I serve the junkies with some crack / Quit the damn basketball team / the coach a pervert / can't stand the truth so to you these lyrics going to hurt
>
> What the hell was they thinking when they hired Mr. R[.] / dreadlock Bobby Hill the second

/ He the same see / Talking about you could have went pro to the NFL / Now you just another pervert coach, fat as hell / Talking about you gangsta / drive your mama's PT Cruiser / *Run up on T–Bizzle / I'm going to hit you with my rueger*

Think you got some game / cuz you fucking with some juveniles / you know this shit the truth so don't you try to hide it now / Rubbing on the black girls ears in the gym / white hoes, change your voice when you talk to them / I'm a dope runner, spot a junkie a mile away / came to football practice high / remember that day / I do / to me you a fool / 30 years old fucking with students at the school

Hahahah / You's a lame / and it's a dam shame / instead you was lame / eat shit, the whole school got a ring motherfucker

Heard you textin number 25 / you want to get it on / white dude, guess you got a thing for them yellow bones / looking down girls shirts / drool running down your mouth / *you fucking with the wrong one / going to get a pistol down your mouth / Boww*

OMG / Took some girls in the locker room in PE / Cut off the lights / you motherfucking freak / Fucking with the youngins / because your pimpin game weak / How he get the head coach / I don't really fucking know / But I still got a lot of love for my nigga Joe / And my nigga Makaveli / and my nigga codie / W[.] talk shit bitch don't even know me

> *Middle fingers up if you hate that nigga / Middle fingers up if you can't stand that nigga / middle fingers up if you want to cap that nigga / middle fingers up / he get no mercy nigga*

Pet. App. 3a-5a. (Emphasis added.)

Petitioner Bell's recording contains at least four instances of threatening, harassing, and intimidating language against the two teachers/coaches. After stating, "that pussy ass nigga W[.] got me turned up the fucking max," Petitioner Bell states:

1. "betta watch your back / I'm a serve this nigga, like I serve the junkies with some crack";
2. "Run up on T–Bizzle / I'm going to hit you with my rueger";
3. "you fucking with the wrong one / going to get a pistol down your mouth / Boww"; and
4. "middle fingers up if you want to cap that nigga / middle fingers up / he get no mercy nigga".

As noted by the *en banc* panel of the Court of Appeals for the Fifth Circuit, Petitioner Bell's use of "rueger" [sic] references a firearm manufactured by Sturm, Ruger & Co., and to "cap" someone is slang for "shoot." Pet. App. 5a.

A screenshot of Petitioner Bell's Facebook profile page, taken approximately 16 hours after he posted the rap recording, shows that his profile, including the rap recording, was open to, and viewable by, the public. In other words, anyone could listen to it. *Id*.

On Thursday, January 6, 2013, the day after the recording was posted, Coach W. received a text message from his wife, informing him about the recording; she had learned about it from a friend. Pet. App. 6a. After asking a student about the recording, the coach listened to it at school on the student's smartphone (providing access to the Internet). *Id*. The coach immediately reported the rap recording to the school's principal, Wiygul, who informed the school-district superintendent, McNeece. *Id*. The next day, Friday, January 7, 2013, Wiygul, McNeece, and the school-board attorney questioned Petitioner Bell about the rap recording, including the veracity of the allegations, the extent of the alleged misconduct, and the identity of the students involved. *Id*. Petitioner Bell was then sent home for the remainder of the day. *Id*.

During Petitioner Bell's resulting time away from school, and despite his having spoken with school officials about his rap recording including the accusations against the two coaches, Petitioner Bell created a finalized version of the recording, adding commentary and a picture slideshow, and uploaded it to YouTube for public viewing. *Id*. Petitioner Bell was thereafter suspended by an assistant principal, which suspension was upheld by the Respondent Board of Education based on his threatening, intimidation, and/or harassment of one or more school teachers. *Id*. The listed possible basis for such action was consistent with the school district's administrative disciplinary policy, which lists "[h]arassment, intimidation, or threatening other students and/or teachers" as a severe disruption. Pet. App. 8a-10a.

At the hearing, Petitioner Bell stated that he never communicated his concern about the conduct of the two teachers/coaches to school officials, choosing instead to prepare his rap recording. Pet. App. 7a. Petitioner Bell confirmed he knew people were going to listen to his rap, acknowledging several times during the hearing that he posted the recording to Facebook because he knew it would be viewed and heard by students. *Id*. Furthermore, Petitioner Bell confirmed that at least 2,000 people had contacted him about the rap recording in response to the Facebook and YouTube postings. *Id*. He put the recording on Facebook and YouTube knowing it was open to public viewing; part of his motivation was to "increase awareness of the situation"; and, although he did not think the coaches would hear the recording and did not intend it to be a threat, he knew students would listen to it, later stating "students all have Facebook." Pet. App. 8a-9a. Indeed, Coach W. was told by three students, on campus, that they were familiar with the Petitioner's rap recording. Resp. App. 17. One student accessed the recording with his smart phone and handed it to Coach W. so he could listen. *Id*.

Superintendent of Schools McNeese testified at the preliminary injunction hearing in District Court that she foresaw disruption as a result of the rap recording and that one of the teacher/coaches experienced actual disruption, as it interfered with his ability to do his job. Resp. App. 9-10. Both teachers/coaches identified in the rap recording testified at Petitioner Bell's injunction hearing in District Court that the rap recording adversely affected their work at the school. Resp. App. 15, 18-19. Coach R. testified that, subsequent to the publication of the recording, students began spending

more time in the gym, despite teachers telling them to remain in classrooms, and the recording affected him in the way he conducted himself around students, noting he would no longer work with female members of the track team, instead instructing males on the team on how to coach the females and then having the males do so. Pet. App. 12a; Resp. App. 15. Coach W. testified that he interpreted the statements in the rap recording literally after hearing it on a student's smartphone at school; that he was "scared" because "you never know in today's society ... what somebody means, [or] how they mean it"; and that he would not allow the members of the school basketball team he coached to leave after games until he was in his vehicle. Pet. App. A1448.

Petitioner Bell's message was a fact-specific communication targeted at these two teachers, and was not a rhetorical commentary on social, educational, or political policy. Contrary to his characterization in the Petition for Writ of Certiorari, the Petitioner's violent statements were not the equivalent of constitutionally protected speech, such as an effort to express a controversial religious idea in church, a blog post against abortion, or advocacy on a public sidewalk to cut off a school's football program.

The recording pertained directly to events occurring at school. It identified the two teachers by name. It was understood by one teacher to threaten his safety, and was understood by neutral third parties as threatening possible consequences, including the death of two teachers. Pet. App. 8a.

The District Court denied injunctive relief to the Petitioner, and Petitioner Bell appealed to the Court of

Appeals for the Fifth Circuit. The Court of Appeals reversed the District Court decision, but thereafter granted a rehearing *en banc*. Upon rehearing, the *en banc* panel affirmed the District Court's denial of injunctive relief. *Bell v. Itawamba County School District*, 799 F.3d 379 (5th Cir. 2015). Pet. App. 1a-37a. The *en banc* panel applied the analysis established by this Court more than forty years ago in *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969), and concluded that the Petitioner's speech was not protected because it was foreseeably disruptive to the work and discipline of the school, and, in fact, caused such disruption. *Bell v. Itawamba County School District*, 799 F.3d 379. Pet. App. 1a-37a.

REASONS FOR DENYING THE PETITION

I. INTRODUCTION.

This matter fails to present a novel or compelling issue warranting the grant of certiorari. The Fifth Circuit's ruling in this matter is premised upon the well established framework for the regulation of student speech that is disruptive to the work and discipline of a school, set forth by this Court 46 years ago in *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. at 513, 89 S. Ct. 733, 21 L. Ed. 2d 731. The *Tinker* doctrine, which allows regulation of student speech occurring inside or outside the classroom that materially disrupts the work of the school, has stood the test of time, and certainly is relevant to modern day scenarios involving student speech that occurs off campus but is intended to reach, and predictably does reach, the school. Although *Tinker* was decided more than 25 years before the internet became a part of

everyday life, it is easily applied to today's off-campus speech designed to reach campus because it focuses on the disruptive effect of the speech to the work and discipline of the school. Accordingly, federal courts throughout the country regularly, consistently, and effectively analyze off-campus speech designed to reach campus under *Tinker*, and render decisions based on the particular facts at hand. That is precisely what occurred as to Petitioner Bell's rap recording. Petitioner Bell obviously hoped for a different result upon application of *Tinker* to the facts of his case, but he cannot realistically dispute that *Tinker* is the appropriate standard a reviewing court should apply.

As discussed below, the District Courts and Courts of Appeals routinely apply *Tinker* to off-campus speech that is designed to reach campus and either causes a material disruption in the work of the school or portends such disruption. Petitioner Bell's assertion that the doctrine is "fractured" is simply not accurate. The Circuit Courts have had no trouble applying *Tinker* to student speech occurring both on and off campus. Petitioner Bell's assertion that the decisions by the Third Circuit in *Layshock v. Hermitage Sch. Dist.*, 650 F.3d 205 (3rd Cir. 2011), and *J.S. v. Blue Mountain Sch. Dist.*, 650 F.3d 915 (3rd Cir. 2011), conflict with those of the other Circuits that have applied *Tinker* to off-campus speech also is inaccurate. These Third Circuit decisions recognize, and affirm, that *Tinker* is the standard for their analysis of perceived disruptive speech. The Third Circuit panels simply reached different conclusions after applying *Tinker* to the specific facts at hand. This is precisely how Supreme Court doctrine should work. The parameters for analysis are established and

understandable; the lower courts then apply the parameters to differing sets of facts, resulting in a body of case law that can be relied upon by practitioners, as well as those directly impacted by a given decision. Accordingly, the Petition for Writ of Certiorari should be denied.

II. THERE EXISTS NO CONFLICT AMONG THE CIRCUIT COURTS OF APPEALS WITH REGARD TO THE APPLICATION OF *TINKER* TO STUDENT SPEECH CLAIMED TO BE MATERIALLY DISRUPTIVE TO THE EDUCATIONAL PROCESS.

Tinker remains the undisputed framework upon which courts analyze student speech that is claimed to be materially disruptive to the educational process. Given the ease with which a student can reach campus with off-campus speech, it is no surprise that court cases have arisen involving on-campus disruption caused by off-campus speech. *Tinker* has proven to be a clear and concise framework for the analysis of off-campus speech, and the body of reported decisions that now exists is not in conflict or aberrant in any way. *See*, *e.g.*, *Doninger v. Niehoff*, 642 F.3d 334, 346 (2d Cir. 2011), *cert. denied*, 132 S. Ct. 499, 181 L. Ed. 2d 346 (2011) (*Tinker* applied to off-campus blog post designed to reach fellow students and that reasonably portended disruption on campus); *Wisniewski v. Bd. of Educ.*, 494 F.3d 34, 40 (2d Cir. 2007), *cert. denied*, 552 U.S. 1296, 128 S. Ct. 1741, 170 L. Ed. 2d 540 (2008) (determining that a student may be disciplined for off-campus speech where the student's speech would foreseeably create a risk of substantial disruption of the school environment); *J.S. v. Blue Mountain Sch. Dist.*, 650

F.3d at 926 ("assum[ing] without deciding that *Tinker* applies to J.S.'s off campus [internet] speech"); *Kowalski v. Berkeley County Sch.*, 652 F.3d 565, 567 (4th Cir. 2011) (quoting *Tinker* in finding that the plaintiff "used the Internet to orchestrate a targeted attack on a classmate, and did so in a manner that was sufficiently connected to the school environment as to implicate the School District's recognized authority to discipline speech which 'materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school and collid[es] with the rights of others'"); *Wynar v. Douglas County School Dist.*, 728 F.3d 1062, 1068 (9th Cir. 2013) (*Tinker* applied to student's off-campus MySpace post that discussed shooting fellow students); *D.J.M. ex rel. D.M. v. Hannibal Public School Dist. No. 60*, 647 F.3d 754, 766 (8th Cir. 2011) (*Tinker* applied to off-campus instant message posting by a student that referenced his getting a gun and shooting other students); *Boim v. Fulton County School District*, 494 F.3d 978, 982-83 (11th Cir. 2007) (*Tinker* applied to student essay written off campus describing a dream about shooting math teacher); *LaVine v. Blaine Sch. Dist.*, 257 F.3d 981, 989-90 (9th Cir. 2001), *cert. denied*, 122 S. Ct. 2663 (2002) (applying *Tinker* to a student's poem written off campus and later brought onto campus by the student).

The above decisions by the Courts of Appeals for the Second, Third, Fourth, Eighth, Ninth, and Eleventh Circuits are consistent in how they examine whether the off-campus speech was likely to reach campus and whether the speech at issue was disruptive. The Fifth Circuit's ruling in the case at bar followed the same approach and arrived at a decision consistent with the

developed body of case law applying the *Tinker* doctrine. It cannot be disputed that Petitioner Bell's rap recording was aimed at campus, and he expected students to listen to it once it was first placed on his public internet (Facebook) site and then enhanced for a You Tube release. One can easily envision the extent of disruption that occurs in a school system when a public statement is made by a student accusing a teacher of serious wrongdoing, under circumstances where the student declares that he is "turned up to the fucking max," and uses the following intimidating, threatening, and harassing language:

> "betta watch your back…"
> "I'm going to hit you with my rueger…"
> "you fucking with the wrong one… going to get a pistol down your mouth…"
> "middle fingers up if you want to cap that nigga…middle fingers up…he get no mercy nigga."

The Fifth Circuit *en banc* majority recognized how disruptive this can be to a teacher or coach who is the target of the above message, and how, in turn, that impacts the entire educational process noting:

> It goes without saying that a teacher, which includes a coach, is the cornerstone of education. Without teaching, there can be little, if any, learning. Without learning, there can be little, if any, education. Without education, there can be little, if any, civilization. It equally goes without saying that threatening, harassing, and intimidating a teacher impedes, if not destroys, the ability to teach; it impedes, if not destroys, the ability to educate. It disrupts, if not destroys, the discipline necessary for an environment in

> which education can take place. In addition, it encourages and incites other students to engage in similar disruptive conduct. Moreover, it can even cause a teacher to leave that profession. In sum, it disrupts, if not destroys, the very mission for which schools exist—to educate.

Bell v. Itawamba County School Bd.,799 F.3d at 399-400. Pet. App. 36a.

The Petition for Certiorari should be denied because the *en banc* decision below is legally and logically correct, and because the *Tinker* analysis has adapted well to the advances in communications over the past 15 years. It is essential that *Tinker* continue as the standard for evaluating disruptive speech that impacts campus, regardless of whether the speech originated from a classroom, the auditorium, the cafeteria, a remote part of campus, or off campus. As noted by Judge Jordan in his concurring opinion in *Layshock*:

> For better or worse, wireless internet access, smart phones, tablet computers, social networking services like Facebook, and stream-of-conscious communications via Twitter give an omnipresence to speech that makes any effort to trace First Amendment boundaries along the physical boundaries of a school campus a recipe for serious problems in our public schools.

Layshock v. Hermitage Sch. Dist., 650 F.3d at 220-21 (Jordan, J., concurring).

III. THERE IS NO CONFLICT BETWEEN THE DECISIONS IN THE THIRD CIRCUIT COURT OF APPEALS AND THE OTHER CIRCUITS.

The Petitioner's claim that a conflict exists between the decision in this matter and the decisions of the Third Circuit in the matters of *Layshock v. Hermitage Sch. Dist.*, 650 F.3d 205, and *J.S. v. Blue Mountain Sch. Dist.*, 650 F.3d 915, is without merit. The *Layshock* and *J.S.* decisions are not in conflict with the other circuits; rather, they are consistent in that they each recognize *Tinker* as the appropriate standard for evaluating off-campus internet speech that results in disruption.

In *Layshock*, the plaintiff utilized his grandmother's computer during non-school hours to create a "MySpace" internet profile of his principal containing vulgar and offensive material. *See Layshock*, 650 F.3d at 207. Word of the profile "spread like wildfire" and reached most of the student body. *Id*. at 208. The plaintiff was ultimately suspended as a consequence of creating the profile. *Id*. at 210. The School District in *Layshock* conceded that it was "*not arguing that [the internet profile] created any substantial disruption in the school*." *Id*. at 219 (emphasis added). Rather, the District's argument rested upon the regulation of vulgar and offensive student speech set forth in *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 106 S. Ct. 3159, 92 L. Ed. 2d 549 (1986). *Layshock*, 650 F.3d at 217. Thus, the decision in *Layshock* is inapplicable to the case at bar, as it was decided on different grounds, namely under *Fraser*'s vulgar and offensive standard

rather than *Tinker*'s standard for disruptive speech, as was applied in the present matter.

Nevertheless, the *Layshock* Court acknowledged the propriety of regulating off campus internet speech, which results in disruption at school, in accordance with *Tinker*. In particular, the *Layshock* Court acknowledged that it was aware of no authority which would support a student's punishment for the creation of such an internet profile "unless it results in foreseeable and substantial disruption of school." *Id*. at 219 (emphasis added). It is, therefore, not surprising that the *Layshock* Court concluded that, under the circumstances presented, the First Amendment prohibited the school from reaching beyond the schoolyard to impose what might otherwise have been appropriate discipline where the speech at issue did not disturb the school environment and was unrelated to any school sponsored event. *Id*. at 207-08.

Moreover, Judge Jordan's concurring opinion in *Layshock* makes clear that the Third Circuit's ruling does not vary *Tinker*'s application to off-campus speech. *See Layshock*, 650 F.3d at 220 (Jordan, J., concurring). As the concurrence aptly noted:

> *Tinker* teaches that schools are not helpless to enforce the reasonable order necessary to accomplish their mission. Again, school officials may curtail speech if they can show facts which might reasonably have led them to forecast substantial disruption of or material interference with school activities. . . . We have similarly stressed that, if a school can point to a well-founded expectation of disruption . . . the restriction may pass constitutional muster.

Id. at 221 (Jordan, J., concurring) (internal quotation marks and citations omitted). In fact, the concurrence expressly rejected the very notion advanced by the Petitioner in this matter that school officials violate a student's First Amendment rights when they impose discipline on students for off-campus speech:

> We cannot sidestep the central tension between good order and expressive rights by leaning on property lines. With the tools of modern technology, a student could, with malice aforethought, engineer egregiously disruptive events and, if the trouble-maker were savvy enough to tweet the organizing communications from his or her cellphone while standing one foot outside school property, the school administrators might succeed in heading off the actual disruption in the building but would be left powerless to discipline the student . . . . It is, after all, a given that "[t]he most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic". . . and no one supposes that the rule would be different if the man were standing outside the theater, shouting in. Thus it is hard to see how words that may cause pandemonium in a public school would be protected by the First Amendment simply because technology now allows the timing and distribution of a shout to be controlled by someone beyond the campus boundary.

Id. at 221-22 (Jordan, J., concurring).

The decision in *J.S. v. Blue Mountain Sch. Dist.*, 650 F.3d 915, is similarly consistent with the Fifth

Circuit's ruling in this matter. In *J.S.*, the plaintiff was suspended for creating a MySpace profile on her home computer that made fun of her principal. *See id*. at 920-21. In analyzing the plaintiff's claim, the *J.S.* Court stated that, "[t]he Supreme Court established a basic framework for assessing student free speech claims in *Tinker*, and we will assume, without deciding, that *Tinker* applies to J.S.'s speech in this case." *Id*. at 926.

There existed no dispute that J.S.'s speech did not cause actual disruption in the school – the School District conceded as much. *Id*. at 928. Instead, the School District contended that the discipline was justified under *Tinker* on the basis that the facts could have reasonably led school officials to forecast substantial disruption of or material interference with school activities. *Id*. The Court of Appeals, however, held that the circumstances presented did not support a reasonable forecast of substantial disruption. *Id*.

Unlike the instant matter, essential to the Third Circuit's ruling was the fact that it was undisputed that J.S.'s speech did not cause substantial disruption in the school, and that the facts presented did not justify a finding that the School District could have reasonably forecasted substantial disruption. In fact, the Third Circuit made it a point to distinguish the facts and circumstances presented in *J.S.* from those presented in *cases where the speech was undeniably disruptive*. *See id*. at 930. In so doing, the Third Circuit expressly acknowledged that, "it was clearly not reasonably foreseeable that J.S.'s speech would create a substantial disruption or material interference in school, and this case is therefore distinguishable from

the student speech at issue in [*Doninger IV*]." *Id*. The Court continued, "unlike the [petitioner] in [*Doninger IV*,] . . . J.S. did not even intend for the speech to reach the school – in fact, she took specific steps to make the profile 'private' so that only her friends could access it." *Id*.

This comparative analysis applies equally to Petitioner Bell's speech. Unlike J.S., Petitioner Bell meant for his Facebook followers and fellow students to listen to his speech, and, unlike J.S., there are statements in Petitioner Bell's speech that harm may come to a teacher as retribution for the teacher's wrongdoing.

It is instructive that Judge Smith's concurring opinion in *J.S.* explicitly states that *Tinker* should apply to circumstances similar to those presented in the case at bar. Judge Smith recognized that, "[t]he answer plainly cannot turn solely on where the speaker was sitting when the speech was originally uttered," since "[s]uch a standard would fail to accommodate the somewhat 'everywhere at once' nature of the internet." *See id*. at 940 (Smith, J., concurring). Judge Smith concluded that he "would have no difficulty applying *Tinker* to a case where a student sent a disruptive email to school faculty from his home computer" because "[r]egardless of its place of origin, speech intentionally directed towards a school is properly considered on-campus speech." *Id*.

This is precisely the circumstance presented in the instant matter, namely a disruptive and threatening rap recording, which is intentionally directed towards the school, involves school personnel, and expresses a message that two teachers, with whom the Petitioner

clearly has a complaint, are subject to having a "ruger" pointed down their throats and being "capped." The Petitioner even goes so far as to incite the listeners to "raise their middle finger" if they hate the coaches and want them "capped," and promises there will be no mercy shown to them.

Contrary to the Petitioner's assertions, the rulings in *Layshock* and *J.S.* do not represent a split on a fundamental constitutional issue between the Third Circuit on one hand, and the Second, Fourth, Fifth, Eighth, Ninth, and Eleventh circuits on the other. The fact that the Third Circuit concluded in *Layshock* and *J.S.* that the student speech at issue could not be regulated as disruptive is an affirmance of *Tinker* as a useful doctrine. A difference in the ultimate decision reached, after applying *Tinker* to unique sets of facts, is not a conflict among the circuits that needs to be remedied by this Court. Differing conclusions are bound to occur given the different facts of each case. What is clear from all of the above rulings is that they are entirely consistent in finding that *Tinker* applies to student speech originating off campus, which is directed towards campus, and results in disruption or reasonably forecasts disruption. Accordingly, the Petition should be denied as no conflict exists among the Circuit Courts of Appeals.

IV. THE ISSUE OF DISCIPLINE FOR DISRUPTIVE STUDENT SPEECH DOES NOT PRESENT A NOVEL QUESTION OF FEDERAL LAW WHICH SHOULD BE SETTLED BY THIS COURT, AND IN FACT IS ONE WHICH THIS COURT HAS PREVIOUSLY DEEMED UNWORTHY OF REVIEW.

More than 7 years ago, in a case with strikingly similar facts to the case at bar, this Court denied Certiorari to a Petitioner who lost summary judgment after a *Tinker* analysis. *See Wisniewski v. Bd. of Educ.*, 552 U.S. 1296, 128 S. Ct. 1741, 170 L. Ed. 2d 540.

In *Wisniewski*, the parents of an eighth-grade student brought suit against the school Board and Superintendent, alleging that the Board violated the student's First Amendment rights in suspending the student for sharing with his friends, via an on-line instant message, a drawing which suggested that his teacher should be killed. *See Wisniewski*, 494 F.3d at 35-6. There was no detail, or discussion of a plan, just a moniker that accompanied each instant message that showed a gun aimed at a head and with "Kill Mr. V." written beneath it. The message was forwarded to fifteen of the student's friends, but was not sent to the teacher at issue or any other school official. *Id*. at 36. It was certainly foreseeable, however, that the message would reach school authorities and the teacher, Mr. V. The Board ultimately moved for summary judgment, which was granted by the District Court on the basis that the message was a threat and, therefore, not protected under the First Amendment. *Id*. at 37. On appeal, the Second Circuit addressed the merits of the

plaintiff's claim that the message was protected under the First Amendment. *Id*. at 37. The Second Circuit concluded that *Tinker* provided the proper standard by which to analyze the plaintiff's claim. *Id*. at 38. The Second Circuit concluded that the message was not protected under *Tinker*, as it posed a reasonably foreseeable risk that it would come to the attention of school authorities and would materially and substantially disrupt the work and discipline of the school. *Id*. at 38-9. The Court further concluded that the student was not insulated merely because the creation and transmission of the message occurred off school grounds noting, "off-campus conduct can create a foreseeable risk of substantial disruption within a school." *Id*. at 39, *citing Thomas v. Bd. of Educ.*, 607 F.2d 1043, 1052 n. 17 (2d Cir. 1979).

Wisniewski sought review by this Court, in part, on the issue of "Whether a public school district may lawfully punish a student for engaging in a private conversation, off school grounds and not at an event bearing the imprimatur of the district, merely because the subject matter of the speech relates to the District?" *See* Petition for Writ of Certiorari, *Wisniewski v. Bd. of Educ.*, 2008 WL 261214, *i (U.S. 2008) (No. 07-987). In support of the petition, the Petitioner argued that review should be granted in order "to resolve a growing conflict in the circuits, and to eliminate the ongoing uncertainty as to the First Amendment protection afforded to off campus student speech. *Id*. at *14. The plaintiff further argued that guidance was needed as to the parameters of student discipline for internet speech that occurs off school grounds. *Id*. Lastly, the plaintiff argued that *Tinker*

would effectively be overruled if the Second Circuit ruling was permitted to stand. *Id*. at *22.

In opposing the petition, the Board argued that the Second Circuit's ruling was in keeping with this Court's ruling in *Tinker* in that schools may regulate student speech which materially and substantially disrupts work and discipline in the school. *See* Brief in Opposition, *Wisniewski v. Bd. of Educ.*, 2008 WL 582497, *22-24 (U.S. 2008) (No. 07-987). The Board further refuted the Petitioner's claim that a conflict existed among the Circuits, as many courts have applied *Tinker*'s standard in evaluating off-campus student speech. *Id*. at *24-25. Finally, the Board argued that the Second Circuit's ruling did not substantively overrule *Tinker* as alleged by the petitioner, but, rather, the decision was a consistent application of *Tinker*'s standard and the subsequent developing law in sister Circuits. *Id*. at *22-24.

The instant petition is strikingly similar to the denied Petition in *Wisniewski*, and like *Wisniewski* fails to present a compelling reason for review. As in *Wisniewski*, the Petitioner here argues that a conflict exists amongst the Circuits as to the regulation of off campus student speech. However, while the cases may have reached differing conclusions, the Courts have consistently evaluated the claims involving off-campus speech under *Tinker*'s test for material and substantial disruption, so there is, in fact, no conflict among the Circuits.

Furthermore, as in *Wisniewski*, the instant matter does not present a novel question of federal law in need of resolution by this Court. The concept of discipline for student speech uttered off campus is not novel. The

Tinker court stated 46 years ago that disruptive student speech was subject to discipline, whether occurring inside or outside of the classroom. *See Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. at 513, 89 S. Ct. 733, 21 L. Ed. 2d 731. While it is doubtful the *Tinker* court foresaw the advances in technology that have occurred over the past 15 years, this principle remains as forceful today as it was in 1969. The internet's "everywhere, all the time" nature renders useless an inside the classroom/outside the classroom or on campus/off campus distinction when it comes to disruptive speech. The Courts of Appeals have universally recognized this, and there is no need for a modification, or even an affirmance, of *Tinker* at this time.

V. THE COURT OF APPEALS FOR THE FIFTH CIRCUIT CORRECTLY APPLIED TINKER TO THE FACTS.

The undisputed facts in the case before the Fifth Circuit were that Petitioner Bell made statements that are reasonably understood to mean:

1. The Petitioner is extremely angry, as seen in the derogatory statement that coach [W.] is a "pussy ass nigga" and that the Petitioner is "turned up to the max."
2. The coach had better watch his back.
3. The coach [R.] is going to get hit, or more likely shot, with a Sturm Ruger handgun.
4. The coach [R.] is "fucking with the wrong one" (the Petitioner) and is going "to get a pistol down your mouth."
5. Coach [W.] is a bitch, and the listeners of the rap are encouraged to join a group (with middle

fingers up) that hates Coach [W.], and wants him shot with a gun.

6. Coach [W.] will be shown no mercy.

The Petitioner, at the injunction hearing, testified that he was speaking truthfully when he made his recording; that he meant what he said; and that he intended to communicate the idea that getting a pistol down one's throat meant getting shot. Resp. App. 3, 6-7. The Superintendent of Schools testified that disruption on campus was foreseeable to her as a result of the posting of the rap, and that the rap had a disruptive effect on at least one teacher's ability to perform his job. Resp. App. 9-11. Coach [R.] changed the way he taught his students. Resp. App. 14-15. Coach [W.] took the message literally, was scared, and required students to remain in the gymnasium at the end of practice until he had made it safely to his car. Resp. App. 20.

Teachers should not be put in a position to have to make a judgment whether someone who "is turned up to the fucking max" is just being an artist, or actually means what he says, when he states, "gonna get a pistol down your mouth." The amici who write regarding the culture and meaning of rap music, with the support of several accomplished rap artists, miss the point regarding this area of First Amendment jurisprudence. While the language in rap recordings published by professional rap artists enjoys the full protection of the First Amendment, the same protection does not automatically apply in a public educational setting, particularly when such language foreseeably causes disruption or portends disruption. Two teachers were identified and called out by name by Petitioner

Bell in his rap recording. The amici would have every teacher make a blanket assumption that no rap artist means what he says literally, and simply shrug off the threatening language. Teachers, however, could not possibly make this judgment without knowing the proclivities and personal circumstances of every student in the school. They do not know which student may be a rap artist, who is simply using the words of the culture as part of his art, and which student means what he says and intends to put his words into action. Petitioner Bell testified at his injunction hearing that he spoke the truth and that he intended to communicate the idea that getting a pistol down one's throat meant getting shot. Resp. App. 6-7. Furthermore, the fact that the Petitioner, in his rap, incited listeners to put "middle fingers up if you want to cap that nigga" brings other students into play, who are not rap artists. Such language reasonably causes a teacher to fear that a student, who agrees with the Petitioner's call for retribution, will follow the Petitioner's exhortation and shoot the teacher. The teacher, thus, is not only asked by the amici to "know" that the rap artist does not mean what he says, but is also asked to believe that the rest of the student body who hears the rap also knows that the rap artist does not mean what he says.

In times of increasing gun violence in school settings, the disruption caused to the educational process by Petitioner Bell's rap recording is palpable. The *en banc* panel of the Fifth Circuit Court of Appeals properly determined, upon applying *Tinker*, that regulating the Petitioner's speech was not a violation of the First Amendment, and its decision should stand.

VI. PETITIONER'S CLAIM THAT HIS RECORDING WAS PROTECTED SPEECH ON A MATTER OF PUBLIC CONCERN IS NOT WORTHY OF REVIEW.

The Petitioner has asserted that his recording constituted speech on a matter of public concern. Petitioner Bell admits, however, that he passed on opportunities to bring his concerns to a responsible adult at the High School. Pet. App. 7a. Furthermore, even if this were speech motivated by public concern, such speech is not protected when made in a way that causes disruption under a *Tinker* analysis. In the somewhat analogous field of public employment, this Court has recognized that a public employee's speech is not automatically privileged. Courts balance the First Amendment interest of the employee against "the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Duryea v. Guarnieri*, 564 U.S. 379, 131 S. Ct. 2488, 2493 (2011), *citing Pickering v. Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U.S. 563, 568, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968).

"[W]e have given substantial weight to government employers' reasonable predictions of disruption, even when the speech involved is on a matter of public concern, and even though when the government is acting as sovereign our review of legislative predictions of harm is considerably less deferential." *Waters v. Churchill*, 511 U.S. 661, 673, 114 S. Ct. 1878 (1994); *compare*, *e.g.*, *Connick v. Myers*, 461 U.S. 138, 151-152, 103 S. Ct. 1684 (1983); *Civil Service Comm'n v. Letter Carriers*, 413 U.S. 548, 566-567, 93 S. Ct. 2880 (1973), with *Sable Communications of Cal., Inc. v. FCC*, 492

U.S. 115, 129, 109 S. Ct. 2829, 106 L. Ed. 2d 93 (1989); *Texas v. Johnson*, 491 U.S. 397, 409, 109 S. Ct. 2533, 105 L. Ed. 2d 342 (1989).

Whether it is a government employment setting or a public education setting, speech on a matter of public concern has some protection, but that protection is not absolute; it lapses when the alleged protected speech causes a material disruption of the workplace or the school. This has been black letter law from this Court since the *Pickering* and *Tinker* decisions in 1968 and 1969, respectively. Accordingly, the Petition for Writ of Certiorari should be denied.

CONCLUSION

For the foregoing reasons, the Respondent, ITAWAMBA COUNTY SCHOOL BOARD, respectfully requests that the Court deny this petition.

Respectfully Submitted,

Thomas R. Gerarde
Counsel of Record
Winifred E. Binda
HOWD & LUDORF, LLC
65 Wethersfield Avenue
Hartford, CT 06114
Ph: (860) 249-1361
Fax: (860) 249-7665
tgerarde@hl-law.com

Counsel for Respondent
Itawamba County School Board

APPENDIX

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APPENDIX 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI

Cause No. 1:11CV056

[Dated March 10, 2011]

TAYLOR BELL, DORA BELL,
Individually and as mother of Taylor Bell
Plaintiff

v.

ITAWAMBA COUNTY SCHOOL BOARD,
TERESA MCNEECE, Superintendent Of
Education of Itawamba County,
Individually and in Her Official Capacity,
and TRAE WIYGUL, Principal of
Itawamba Agricultural High School
Individually and in His Official Capacity
Defendants

Oxford, Mississippi
March 10, 2011
3:00 p.m.

PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE NEAL B. BIGGERS
UNITED STATES SENIOR DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

WILBUR O. COLOM, ESQ.
SCOTT WINSTON COLOM, ESQ.
The Colom Law Firm
406 Third Avenue North
Post Office Box 866
Columbus, Mississippi 39703-0866

For the Defendants:

BENJAMIN E. GRIFFITH, ESQ.
BEEBE SAFFOLD GARRARD, ESQ.
Griffith & Griffith
123 South Court Street
Post Office Drawer 1690
Cleveland, Mississippi 38732-1680

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APPEARANCES CONCLUDED

MICHELE HORN FLOYD, ESQ.
Michele H. Floyd, Attorney
Post Office Box 1738
Fulton, Mississippi 38843

Court Reporter:

Rita Davis Sisk, FCRR, RPR
911 Jackson Avenue, Room 369
Oxford, Mississippi 38865
(662) 416-2038

Proceedings recorded by mechanical stenography, transcript produced by computer.

* * *

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officials that they had heard the song?

A. I posted the song on the first Wednesday in January. That Friday, that's when I -- the school officials questioned me about it.

Q. And, so, when they questioned you, what, if anything, did they say?

A. Basically, at that time, they told me that they -- that the coach had came --

Q. Explain to the Court who is *they*.

A. It was Mr. Wiygul, my principal; the school attorney; and the superintendent.

Q. Okay. Now, what did they question you about?

A. They questioned me about the song. They asked me if the things I said in the song were true or not.

Q. And how did you respond?

A. I responded and told them that, you know, it was true, everything I said in the song was true.

Q. How did they respond to that?

A. They told me that the coach -- one coach in particular felt like he had been slandered. So they told me either, you know, I needed to provide some information showing that the things I said in the songs were true; and they'd deal with me -- I mean, they'd deal with the coach. Or if I can't provide any information, that everything that I said in the song

would be deemed false; and they'd have to deal with me.

* * *

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the likelihood of disruption of the school process under *Tinker*.

THE COURT: Objection overruled.

MR. SCOTT COLOM: Thank you, Your Honor.

THE COURT: He may answer the question.

THE WITNESS: Can you repeat the question?

BY MR. SCOTT COLOM:

Q. Did anyone at any of these school proceedings ever ask you did you intend to threaten anyone?

A. No, sir.

Q. Did they ever ask you were you intending to cause violence to anyone?

A. No, sir.

Q. To harm anyone?

A. No, sir.

MR. SCOTT COLOM: No further questions, Your Honor.

MR. GRIFFITH: May I proceed, Your Honor?

THE COURT: Yes, you may.

MR. GRIFFITH: I know the hour is late. I'll move along very quickly, Your Honor.

(AFTER OFF-THE-RECORD COMMENTS, THE PROCEEDING CONTINUED)

MR. GRIFFITH: Your Honor, I've consulted with Mr. Colom; and we've agreed to jointly sponsor the exhibit, which will consist of the Taylor Bell Facebook, the song version No. 1, the first version that he produced that he's

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just described.

THE COURT: Very well.

MR. GRIFFITH: And I'd ask that that be marked as an exhibit and introduced.

THE COURT: Okay.

(EXHIBIT D11 MARKED.)

MR. GRIFFITH: May I approach the witness, Your Honor?

THE COURT: You may.

CROSS-EXAMINATION

BY MR. GRIFFITH:

Q. Mr. Bell -- and by the way, it's good to meet you this afternoon.

A. Nice to meet you.

Q. I'm handing you what purports to be a copy of your Facebook, first page, what we call the front page. Do you see that?

A. Yes, sir.

Q. Can you identify it as the true, authentic, correct, first page of your Facebook account?

A. Yes, sir.

Q. Okay.

MR. SCOTT COLOM: May I approach?

BY MR. GRIFFITH:

Q. Do you see on that the emblem for the Itawamba County

* * *

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Q. Mr. Bell, the words that you included in your artistic endeavor, the song, were, "Middle fingers up, if you want to cap that nigger." Didn't you write those words?

A. Yes, sir.

Q. And you intended to write those words, didn't you?

A. Yes, sir.

Q. And when you wrote the words "going to get a pistol down your mouth," you intended to communicate that, didn't you?

A. Yes, sir.

Q. And you intended to communicate the idea of shooting someone, didn't you?

A. Repeat the question.

Q. You intended to communicate the idea of shooting someone, didn't you? Regardless of who did it, you intended that, didn't you?

A. Yes, sir.

Q. You thought about it, you typed it in, you entered it on your Facebook account; and you were proud of it, weren't you?

A. Umm, I cannot say that I was proud of it.

Q. Were you angry at someone when you did that?

A. No, sir, I was not angry.

Q. Did you do that as a matter of artistic flair?

A. I just -- no, sir. I just did the song because I'm an artist; and, you know, I mean -- when I did that song, you know, it wasn't to -- to me, trying to be proud of myself. You

* * *

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TERESA McNEECE,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GRIFFITH:

Q. Would you state your full name and your position for Judge Biggers, please?

A. Teresa McNeece, T-e-r-e-s-a, M-c-N-e-e-c-e. I'm the Superintendent of Education for the Itawamba County School District.

Q. Very briefly, what are your duties and responsibilities as they relate to student discipline and student actions, such as what you' ve heard here today?

A. Yes, sir. My job, that is guided by state board policy and local board policy, is to provide safe and orderly schools for not only our students but our employees as well.

Q. When did you first become aware of the song that is Mr. Bell's public domain song; that he published on Facebook and You Tube?

A. I believe it was Thursday, January 6th or so. Mr. Wiygul first told me about it when he was at my office, and then one of the coaches came to me and personally spoke to me about it. So it was on that Thursday afternoon, I believe.

Q. Thereafter, what did you do, Ms. McNeece?

A. Of course, at that time, Taylor had already been dismissed for the day. So I told Ms. Floyd, the school board attorney,

* * *

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MR. WILBUR COLOM: Your Honor, first off, it's so leading. He's calling it a threat.

THE COURT: Well, objection overruled.

MR. GRIFFITH: Your Honor, I'm trying to move things along. I'm trying to beat a ten-minute deadline, too.

THE COURT: All right.

BY MR. GRIFFITH:

Q. Ms. McNeece?

A. My job -- my duty, as superintendent, is to be proactive and to foresee if there could be a possible disruption or danger at our schools. So instead of being reactive, we have to be proactive about how we handle this type situation. We felt at that time that was the response we needed to have.

Q. State whether or not -- my last question to you -- there was such a danger of a substantial disruption at the Itawamba schools by virtue of this, quote, song, close quote?

A. Our foreseeable look at it was, yes, it could be.

MR. GRIFFITH: No further questions, Your Honor.

THE COURT: All right. You did that in six minutes, Mr. Griffith.

MR. WILBUR COLOM: Your Honor, I'm going to try to be fast, too.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. WILBUR COLOM:

* * *

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that would concern you, wouldn't it?

A. It would be difficult to look down a girl's skirt. I think it said girl's shirt. Did it not?

Q. Shirt. Excuse me. Shirt?

A. Yes, that would be.

Q. And that would be something of importance at a public school and something important to the public; would it not?

A. Absolutely, if it was happening at our school.

Q. You said that you were concerned about disruption. But is it in fact true that there was no disruption at the school? Isn't that true?

A. As I said, it is my position to make sure that I am proactive to maybe foresee that there could be a disruption.

Q. So -- but there was none that you know of?

A. I believe the coach who was named in that song -- it did have a disruptive effect on his ability to perform his job. Yes, I do believe there was a disruption there.

Q. He was the one who was concerned about being slandered?

A. Yes, sir.

Q. But if it's true, it's not a disruption; it's just a fact, isn't it?

A. Your opinion or my opinion?

MR. GRIFFITH: Objection, Your Honor.

BY MR. SCOTT COLOM:

Q. But if it is true, it's not a disruption; it's a service,

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isn't it?

A. It would still be a disruption if it's true.

Q. If it's true, isn't it not his duty to make it known?

A. It's not-- it's the parents of that child; it's the -- those children themselves that concern me; that if that was happening, why hadn't Mr. Wiygul not been told? Why had I not been told? Why did we find out about it through Taylor's song?

Q. All right. But if you know of wrongdoing going on, it's your duty to disclose it, isn't it?

A. Yes. Yes, you're right. You're right about that.

MR. WILBUR COLOM: All right. Thank you.

THE COURT: All right.

MR. GRIFFITH: No further questions of this witness, Your Honor.

THE COURT: Okay. You can step down.

(WHEREUPON, THE WITNESS WAS EXCUSED FROM THE WITNESS STAND.)

THE COURT: Who do you call next?

MR. CARR: Your Honor, Mike Carr for the defendants. At this time, we call coach Chris Rainey to the stand.

THE COURT: Okay. Have you been here all day, Mr. Carr?

MR. CARR: I have. I've been sitting right there.

THE COURT: All right. Well --

MR. GRIFFITH: Your Honor, he's just not been as obnoxious as me.

* * *

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THE WITNESS: Chris Rainey, C-h-r-i-s, R-a-i-n-e-y.

THE COURTROOM DEPUTY: Thank you.

MR. CARR: May I proceed, Your Honor?

THE COURT: You may.

CHRIS RAINEY,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CARR:

Q. Mr. Rainey, my name is Mike Carr. I'm an attorney for Itawamba High School. We've met before, haven't we?

A. Yes.

Q. And you know what issues we're here on today, that is, is the song; is that right?

A. Yes.

Q. And have you ever heard this song?

A. No, sir, I haven't.

Q. Okay. Well, how did this song come to your attention?

A. I got a call from Maquel Miller, and he told me.

Q. From who?

A. Maquel Miller.

Q. Who is that?

A. He's a quarterback for us.

Q. So he's a high school student?

A. Yes.

Q. And he told you about it?

* * *

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A. No, sir, it hasn't.

Q. Now, do you know if other students, other than Mr. Miller -- you said that was his name, Miller?

A. Yes.

Q. Have other students heard, other than him?

A. Yes, I think so.

Q. All right. I'm going to ask you -- you teach at the school every day, right?

A. Yes, sir.

Q. And you're an athletic coach, right?

A. Yes.

Q. And you have constant interaction with students?

A. Yes.

Q. Have you noticed any type of effect at the school that this song has had?

A. Well --

MR. WILBUR COLOM: Your Honor, I would object. Again, Your Honor, this is stuff not presented at the hearing. And we -- what was presented at the disciplinary hearing had nothing to do with --

THE COURT: All right. You may have a continuing objection.

MR. CARR: Thank you, Your Honor. May I proceed?

BY MR. CARR:

Q. Again, how has it affected the school, if any?

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A. Well, it has affected me by the way I, you know, talk to kids now.

Q. Okay. And what do you do different now that you weren't doing before this song came out?

A. Well, you kind of watch what you do now. And the thing is, when you're a coach, you're not just a coach. It's not, like, about Xs and Os. You've kind of got to get close to the kids and let them trust you. And, you know, that's the way you can relate to them. And I don't feel like I can do that now.

Q. When you say "get close to the kids," do you mean physically touching them?

A. No. Sometimes you're a parent figure to a kid, maybe a father figure or a mother figure. And they come to you for, you know, sometimes that crutch. And I don't feel like I can -- sometimes I feel like that's getting in the way now since this song.

Q. How, specifically, has it affected your coaching duties?

A. Well, I do assistant track, like I said; and I have boys and girl sprinters. And sometimes I tell the boys to go and work with the girls. You know, I tell them what to do; and they go and work with them, rather than being hands-on and working with them myself some.

Q. Okay. So it's changed the way that you coach?

A. Yes.

MR. CARR: Now -- Court's indulgence just for a

* * *

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DIRECT EXAMINATION

BY MR. CARR:

Q. Mr. Wildmon, my name's Mike Carr. We met earlier today. Is that right?

A. Yes, sir.

Q. You are an employee of the Itawamba County School District, and you work at Itawamba Agricultural High School?

A. Yes, sir.

Q. All right. What position do you hold right now?

A. A teacher and basketball coach.

Q. All right. How long have you worked there?

A. This is my second year.

Q. Now, you're familiar with the issue we're here on today; is that right?

A. Yes, sir.

Q. And that is "the song"; that's what we call it here in the courtroom?

A. Yes, sir.

Q. How did you first -- how did you first hear it?

A. I was on my break at school, my planning period; and I received a text message from my wife. A friend of

ours had seen it on one of the students' Facebook pages.

Q. So a friend of yours had seen it on a student's Facebook page, told your wife, who told you?

A. Yes, sir.

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Q. And then after you received that text message, what did you do?

A. I asked -- there were three seniors sitting beside me, and I asked them if they knew anything about it. And they said yes. And one of them got their phone and let me listen to it.

Q. Okay. So it was just accessible right there, and you were able to listen to it within several minutes of you getting that text message?

A. Yes.

Q. So after you listened to it, how did it make you feel?

A. I was angry at first. And, then, you know, the more I thought about it, you know, he -- the accusations were a felony. I mean, that was my life. And I got up and went straight to Mr. Wiygul, the principal.

Q. Does it say your name in that song?

A. Yes, it does.

Q. Do you know if it says it more than once?

A. I believe it says it twice. But I haven't listened to it in so long, I don't remember for sure.

Q. When you heard that song, you said you went to your principal; is that right?

A. Yes, sir.

Q. And told him about it?

A. Yes, sir.

Q. Then I just want to ask you generally -- because I only

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have a few minutes here, Coach. And again, what do you coach?

A. Basketball and cross country, both boys.

Q. All right. I'm going to kind of open it up to you then. How has it affected the school, if at all, in your opinion, as a teacher?

A. I mean, that's while I'm teaching now or anything that I do, I'm having to think, you know, Is this kid going to think that I'm doing this, or, Is somebody going to see me do this thing and think it's something inappropriate? You know, it's constantly in the back of my mind, you know, what am I doing.

Q. What about parents? Have any of them approached you about this, or are you concerned about parents?

A. I had one parent who contacted me and told me that she had heard about it, but she did not believe it was true.

MR. WILBUR COLOM: I object, Your Honor. It's hearsay.

THE COURT: Objection sustained.

MR. CARR: Thank you.

BY MR. CARR:

Q. Has the language that Taylor Bell chose to put in his song affected the way that you teach at all?

A. I tried to make sure, you know, if I'm teaching, and if I'm scanning the classroom, that I don't look in one area too long. I don't want to be accused of, you know, staring at a girl or anything of that matter.

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Q. Have you ever texted a girl, like No. 25, on the basketball team?

A. No, sir.

Q. Okay. You said how it affected you in the classroom. Has it affected the way that you interact with students when you're coaching?

A. I mean, even with the boys now, you know, their practice, I would try not to grab them by their arms. I would try to make sure I had their jersey or whatever to put them into position. I just wouldn't, you know, move them like I had been. You know, I didn't want anything to be taken --

Q. Do you know, if at all, that it's affected the operation of the school in general?

A. I teach Driver's Ed, so a lot of times I'm gone. So the kids that I have in the car, no. I mean, they seem to act normal.

Q. Okay. And then finally, Coach, when you heard that song that referenced your name and your wife and used that phrase about capping you and putting a pistol down your throat, how did you take it?

A. I mean, I took it literally. After ball games when we would get clean, I would get those kids; and I wouldn't let them leave until I was in my truck. I mean, I didn't know how to take it. I mean, you never know in today's society, you know, what somebody means, how they mean it. And I mean, I was

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scared.

MR. CARR: No further questions, Your Honor.

CROSS-EXAMINATION

BY MR. WILBUR COLOM:

Q. It's true that you did not testify at the disciplinary hearing, nor before the school board?

A. That's true.

Q. And the day you heard about it, you have a student pull out a cell phone; is that correct?

A. Yes.

Q. Now, you know, having a cell phone is actually against school policy, isn't it?

A. Yes, sir.

Q. And, so, you had a student violate school policy?

THE WITNESS: Can I explain?

THE COURT: Sure.

THE WITNESS: He was coming back from basketball practice. Seniors have senior leave, and he had got back early. And since he, technically, wasn't in school -- I asked because it was talked about my name, accusing me of something.

BY MR. WILBUR COLOM:

Q. But you were on school property?

A. Yes, sir.

Q. And you had him play the song:

A. Yes.

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