Florida High School Moot Court Official Issue Packet

Madison Jackson

v.

State of Florida and Scott County School Board

A collaborative court education project of
The Florida Law Related Education Association, Inc.

Special thanks to

Supreme Court of Florida
District Courts of Appeal
J. Scott Slater, Hill Ward Henderson
Florida Bar Law Related Education Committee

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Case materials authored by
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FLREA FLORIDA LAW RELATED EDUCATION ASSOCIATION, INC.

SUPREME COURT OF THE STATE OF FLORIDA (SAT CITO SI RECTE)

NOVA SOUTHEASTERN UNIVERSITY
Shepard Broad Law Center

TABLE OF CONTENTS

FLORIDA HIGH SCHOOL
APPELLATE COMPETITION
2012 REGISTRATION FORM

_____ Yes, we would like to submit a brief for the Appellate Competition. Teams are limited to two students per brief. Briefs must be received in Tallahassee by March 23rd, 2012.

I. Student's Name: _____
School: _____
Address: _____
City: _____ State: _____ Zip: _____ County: _____
E-mail: _____ Phone: _____ Fax: _____
☐ Team Captain

II. Student's Name: _____
School: _____
Address: _____
City: _____ State: _____ Zip: _____ County: _____
E-mail: _____ Phone: _____ Fax: _____
☐ Team Captain

III. Teacher's Name: _____
School:_____
Address: _____
City: _____ State: _____ Zip: _____ County: _____
E-mail: _____ Phone: _____ Fax: _____

IV. Attorney Coach's Name: _____
Address: _____
City: _____ State: _____ Zip: _____ County: _____
Firm Name: _____
E-mail: _____ Phone: _____ Fax: _____

Brief submitted on behalf of: (Check One)

Appellant/Petitioner or Appellee/Respondent

Return 3 copies of this form and 3 copies of the brief to the address listed below.

The Florida Law Related Education Association, Inc.
2930 Kerry Forest Parkway, Suite 202
Tallahassee, Florida 32309
Phone: (850) 386-8223
Fax: (850) 386-8292

RULES AND GUIDELINES

Introduction

An appeal from a trial court to an appellate court normally involves two components: a written brief and an oral argument. In this exercise, you will prepare a brief which will serve as the basis of an oral argument. The top brief writers in each Appellate District will have the opportunity to present oral arguments in each District Court of Appeal. Selected teams will advance in the competition to the state level, with the statewide finalists having the opportunity to present oral arguments in the Florida Supreme Court in Tallahassee. District competitions will be held in April 2012 and the State Finals will be held on May 10-11, 2012. Multiple teams may submit briefs from each school; however, each team may submit only one brief. In determining which side you choose, you should read and analyze the cases cited in the case materials.

A. Rule 1: Teams

1. Each team must consist of two students. One student should be designated as the team captain.

2. Each team will submit only one brief for either the petitioner or respondent.

3. Teams will need to prepare oral arguments for the party they wrote a brief supporting.

4. Teams may use attorney coaches and teachers as advisors to guide them through the process of preparing the brief and oral arguments; however, the writing of the briefs must be the sole work of the students. Attorneys and teachers are strictly prohibited from writing any portion of the brief.

5. Team Roster

   Team rosters should be completed and submitted to the competition coordinator before the date of the competition. At registration, teams will be identified only by code.

6. Roll Call

   Before a round of competition begins, the students should submit their roll call sheets, found in the packet, to the judges. No information identifying the team, beyond the students' names and team code, should appear on the form.

B. Rule 2: The Packet

1. Students should assume the moot court packet is complete and factual. Briefs which challenge the validity of issues beyond the scope of the issues questioned in the moot court packet will not be entertained. **Students should not reference information contained in the mock trial materials unless so stated in the moot court packet. The moot court and mock trial packets are not interchangeable.**

2. Students may only utilize the case law referenced in the moot court packet. Any deviation is a rules violation.

3. Students may not construct additional facts not found in the moot court packet specifically. Any information utilized that cannot be fairly inferred from the moot court information packet will be considered beyond the scope, and therefore, a rules violation. Students cannot cite information from the mock trial materials if not explicitly found in the moot court packet.

C. Rule 3: Competition Format

1. This competition is composed of two phases: (1) the brief-writing phase; and (2) the oral argument phase.

D. Rule 4: The Brief

1. Three copies of the students' brief must be received by The Florida Law Related Education Association, Inc. no later than March 23, 2012.

2. Each brief should follow the format of the enclosed brief outline. Failure to adhere to the format may lead to disqualification. The entire brief must be no longer than 18 pages inclusive of cover and table of contents. The pages must be letter-sized 8 ½" x 11." Format the text by allowing one-inch margins. All briefs must be typed and double-spaced. The type style should be Times New Roman 12 point font and each paragraph should be indented. Page numbers should appear centered at the bottom of each page. A cover page should identify "Brief for Petitioner" or "Brief for Respondent" and list the participants' names, school, address, telephone numbers, and email addresses.

3. Pursuant to Rule 2, briefs may not include any case law beyond what is presented in the packet and may not include any manufactured or researched facts beyond what is found in the moot court packet specifically.

4. Legal citation is not required, but is encouraged. Information on legal citations can be found in the appendices of the packet.

E. Rule 5: The Oral Argument

1. Two students must participate for a team per round. Both students must speak and address one of the two questions in each round. Only one student may handle rebuttal for petitioner.

2. Each team is given 20 minutes to present their case, as outlined below:

Speaker	Time Limit
Petitioner	*15 minutes*
Attorney - Question 1	7 minutes 30 seconds
Attorney - Question 2	7 minutes 30 seconds
Respondent	*20 minutes*
Attorney - Question 1	10 minutes
Attorney - Question 2	10 minutes
Petitioner - Rebuttal	*5 minutes*

3. Rounds will start on time. If a team, or a portion of the team, fails to appear within ten minutes of the time indicated, the team will compete with an incomplete team. If no student from a team appears within that time limit, the team will be judged to have forfeited the round, and bye round scoring will apply to the other team.

4. Two students will present during any one round of competition. Each student will address one of the two questions presented in the brief. Both students must speak during the oral argument. If the second student does not speak during the course of the oral argument, that student will receive a score of zero (0).

5. No communication should occur between students participating in the round and other team members, coaches, or anyone else in the audience outside the bar. Any communication with anyone outside of the partner student during that round will constitute a rules violation.

6. Students should display dignity and respect to the judges, staff, and other competition personnel.

   Additionally, teams should respect each other.

7. Dress should be professional, courtroom attire.

8. During oral arguments, students will be scored based on the criteria found on the score sheet in the packet.

9. Scores and winners will not be disclosed after a round, but verbal critiques will be given.

F. Rule 6: Videotaping/Photography

1. Cameras and recording devices are permitted in certain courtrooms; however, the use of such equipment may not be disruptive **and must be approved in advance of the competition by The Florida Law Related Education Association, Inc.**

2. When one team requests to videotape during a trial, the opposing team must be consulted and their permission granted prior to taping.

G. Rule 7: Viewing an Argument

1. Team members, alternates, attorney coaches, teacher coaches, and any other persons directly associated with a team, except those authorized by the State Advisory Committee, are not allowed to view other teams in competition so long as their team remains in the competition.

2. Judges should maintain order in the courtroom. If observers are disorderly, they will be asked to vacate the premises.

H. Rule 8: Decisions

1. All decisions of the judges are final.

I. Rule 9: Team Advancement

1. Teams will be scored first on their written briefs to determine if they advance to the oral argument presentations.

2. During the scoring of the written briefs, the panel of evaluators will give each brief a numerical score consistent with the score sheet located on the website. The scores from each of the judges in the panel will be added together to determine the top two to four briefs. The top two to four teams in each district may be given the opportunity to compete in the district competition.

3. During the oral argument competition, a panel of judges will score student performances in each round. The team that receives the higher score from that panel will be awarded that panel's ballot.

4. At the end of the competition, all the ballots will be calculated and the team with the highest number of ballots may advance to the state competition.

5. In the event of a tie, all teams' point scores will be calculated with the highest cumulative points winning. If that results in a tie, the judges will consult to break the tie.

6. Briefs will be scored and a Best Brief award presented at the state competition consistent with the practices outlined herein.

7. The state finals will incorporate one preliminary round and one final round of competition. The top two teams will be determined by the panel of DCA judges evaluating the preliminary rounds. These top two teams will meet in the final round of competition. The team receiving the most ballots in the final round will win the competition.

J. Rule 10: Effect of a Bye Round

1. A "bye" becomes necessary when an odd number of teams are present for the tournament. For the purpose of advancement and seeding, when a team draws a bye or wins by default, the winning team for that round will be given a win and the number of ballots and points equal to the average of all winning team's ballots and points of that same round.

K. Rule 11: Eligibility

1. All students on a team must be enrolled in the same public or private school in the district for which they are competing.

2. Students must be enrolled in a Florida high school in order to be eligible.

All questions should be submitted in writing to ABPflreaED@aol.com

NOTE: FLREA strongly encourages the use of an appellate attorney during the coaching process. The FLREA website contains valuable resources to assist you in preparing your brief, as well as your oral argument.

SOURCES OF LEGAL RESEARCH

The legal authorities you will be using as your source of research and for purposes of citing to the Court are included or referenced in the case materials.

You may also read articles and legal authorities from other sources and jurisdictions to get ideas and arguments for your brief, but these materials may only be used to get ideas or to enhance your understanding of the legal issues. They may not be cited as authority in this contest. Your Attorney Coach may wish to suggest reading material. While you are encouraged to explore other sources, there is no requirement that you do so.

Information on research using primary and secondary sources is enclosed in the Appendices for your review.

Additionally, you can utilize on-line research through a variety of sources. You should be able to find most of the cited cases at **www.findlaw.com**, under Laws: Cases and Codes. From the Findlaw "Cases and Codes" page, scroll down and click on the U.S. Supreme Court link and pull all cases with (i.e. 123 U.S. 456). For all Circuit Court cases a ___F.2d, F.3d or F.Supp., click on the applicable Circuit Court link. For example, *Doe v. v. Dept. of Pub. Safety*, 271 F.3d 38, 60 (2d Cir. 2001) would be found under the **Second Circuit**.

Remember that in preparing your brief, you can only use the legal authorities included or referenced in these materials. You can research other authorities but you should only use authorities cited in these materials in preparing your briefs and arguments.

RELEVANT LEGAL AUTHORITY

In developing briefs and oral arguments, student competitors may utilize any authority cited in the mock appellate opinion included in the case materials, including federal and state case law (and various authorities cited therein), federal and state constitutional provisions, and federal and state statutes. Students should be careful to explore the authorities independently as opposed to relying solely on the context in which they are presented in the mock appellate opinion.

Students may also utilize the following authorities:

- *Chandler v. McMinnville Sch. Dist.*, 978 F.2d 524 (9th Cir. 1992)
- *Karp v. Becken*, 477 F.2d 171 (9th Cir. 1972)
- *Burnside v. Byars*, 363 F.2d 744 (5th Cir. 1966)
- *Shanley v. Northeast Independent Sch. Dist.*, 462 F.2d 960 (5th Cir. 1972)
- *Boucher v. Sch. Bd. of Sch. Dist. of Greenfield*, 134 F.3d 821 (7th Cir. 1998)
- *J.S. ex rel. Snyder v. Blue Mountain*, 593 F.3d 286, 301 (3d Cir. 2010)
- *Doninger v. Niehoff*, 527 F.3d 41 (2d Cir. 2008)
- *Killion v. Franklin Reg'l Sch. Dist.*, 136 F.Supp.2d 446 (W.D. Pa. 2001)
- *Emmett v. Kent Sch. Dist. No. 415*, 92 F.Supp.2d 1088 (W.D. Wash. 2000)
- *Beussink v. Woodland R–IV Sch. Dist.*, 30 F.Supp.2d 1175 (E.D. Mo.1998)
- *Pangle v. Bend–Lapine Sch. Dist.*, 10 P.3d 275 (Ct.App.Or.2000)
- *Cox v. Board of Educ.*, 205 F. Supp. 2d 791 (N.D. Ohio 2002)
- *Boucher v. School Board*, 134 F.3d 821 (7th Cir. 1998)
- *Porter v. Ascension Parish School Board*, 393 F.3d 608 (5th Cir. 2004)
- *J.S. v. Bethlehem Area School District*, 807 A.2d 847 (Pa. 2002)

Note that sections 784.089 and 1006.149, Florida Statutes, are fictional. They appear on the next few pages and are not accessible online.

Regarding the facts of the underlying case, the students do not need any facts other than what is provided in the mock appellate opinion.

Florida Statute § 784.049: Cyberbullying[1]

(a) As used in this section:

(1) "Communication" means the electronic communication of information of a person's choosing between or among points specified by the person without change in the form or content of the information as sent and received; and

(2) "Electronic means" means any textual, visual, written, or oral communication of any kind made through the use of a computer online service, Internet service, telephone, or any other means of electronic communication, including without limitation to a local bulletin board service, an Internet chat room, electronic mail, a social networking site, or an online messaging service.

(b) A person commits the offense of cyberbullying if:

(1) He or she transmits, sends, or posts a communication by electronic means with the purpose to frighten, coerce, intimidate, threaten, abuse, harass, or alarm another person; and

(2) The transmission was in furtherance of severe, repeated, or hostile behavior toward the other person.

(c) The offense of cyber bullying may be prosecuted in the county where the defendant was located when he or she transmitted, sent, or posted a communication by electronic means, in the county where the communication by electronic means was received by the person, or in the county where the person targeted by the electronic communications resides.

(d) Cyber bullying is a Class B misdemeanor.

[1] This is a fictional Florida statute.

Florida Statute § 1006.149: Antibullying policies[2]

(a) The Legislature finds that every public school student in this state has the right to receive his or her public education in a public school educational environment that is reasonably free from substantial intimidation, harassment, or harm or threat of harm by another student.

(b) As used in this section:

(1) "Attribute" means an actual or perceived personal characteristic including without limitation race, color, religion, ancestry, national origin, socioeconomic status, academic status, disability, gender, gender identity, physical appearance, health condition, or sexual orientation;

(2) "Bullying" means the intentional harassment, intimidation, humiliation, ridicule, defamation, or threat or incitement of violence by a student against another student or public school employee by a written, verbal, electronic, or physical act that may address an attribute of the other student, public school employee, or person with whom the other student or public school employee is associated and that causes or creates actual or reasonably foreseeable:

(A) Physical harm to a public school employee or student or damage to the public school employee's or student's property;

(B) Substantial interference with a student's education or with a public school employee's role in education;

(C) A hostile educational environment for one (1) or more students or public school employees due to the severity, persistence, or pervasiveness of the act; or

(D) Substantial disruption of the orderly operation of the school or educational environment;

(3) "Electronic act" means without limitation a communication or image transmitted by means of an electronic device, including without limitation a telephone, wireless phone or other wireless communications device, computer, or pager;

(4) "Harassment" means a pattern of unwelcome verbal or physical conduct relating to another person's constitutionally or statutorily protected status that causes, or reasonably should be expected to cause, substantial interference with the other's performance in the school environment; and

(5) "Substantial disruption" means without limitation that any one (1) or more of the following occur as a result of the bullying:

(A) Necessary cessation of instruction or educational activities;

[2] This is a fictional Florida statute.

(B) Inability of students or educational staff to focus on learning or function as an educational unit because of a hostile environment;

(C) Severe or repetitive disciplinary measures are needed in the classroom or during educational activities; or

(D) Exhibition of other behaviors by students or educational staff that substantially interfere with the learning environment.

(c) Bullying of a public school student or a public school employee is prohibited.

(d) A school principal or his or her designee who receives a credible report or complaint of bullying shall promptly investigate the complaint or report and make a record of the investigation and any action taken as a result of the investigation.

(e)(1) The board of directors of every school district shall adopt policies to prevent bullying.

(2) The policies shall:

(A)(i) Clearly define conduct that constitutes bullying.
(ii) The definition shall include without limitation the definition contained in subsection (a) of this section;

(B) Prohibit bullying:
(i) While in school, on school equipment or property, in school vehicles, on school buses, at designated school bus stops, at school-sponsored activities, at school-sanctioned events; or
(ii)(a) By an electronic act that results in the substantial disruption of the orderly operation of the school or educational environment.
(b) This section shall apply to an electronic act whether or not the electronic act originated on school property or with school equipment, if the electronic act is directed specifically at students or school personnel;

*****

(j) This section is not intended to:
(1) Restrict a public school district from adopting and implementing policies against bullying or school violence or policies to promote civility and student dignity that are more inclusive than the antibullying policies required under this section; or

(2) Unconstitutionally restrict protected rights of freedom of speech, freedom of religious exercise, or freedom of assembly.

FORMAT OF THE BRIEF

Each brief should follow the format of the enclosed brief outline. Failure to adhere to the format may lead to disqualification. The entire brief must be no longer than 18 pages, letter-sized 8 ½" x 11." Format the text by allowing one-inch margins. All briefs must be typed and double-spaced. The type style should be Times New Roman 12 point font and each paragraph should be indented. Page numbers should appear centered at the bottom of each page. A cover page should identify "Brief for Petitioner" or "Brief for Respondent" and list the participants' names, school, addresses, telephone numbers, and email addresses.

Do not be overly concerned with legal citation; mistakes will not hurt your score. You may even choose not to use legal citation, so long as you make it clear what case you are referencing**.**

If you do try to use legal citation, here are some pointers – you may want to use the ***Blue Book, a Uniform System of Citation*****,** (18th ed., 2005), which should be available at any local law library for reference. However, you may simply follow the form of citation used in the sample brief.

When first citing a U.S. Supreme Court case, you should cite to the U.S. Reporter. For example, on page 6 of the sample brief, the petitioner cites to "*Jones v. United States*, 463 U.S. 354, 364 (1983)." The number 463 is the volume number, "U.S." stands for the U.S. Reporter, the books in which the Supreme Court cases are published, 354 is the first page of the cited case, and 364 is the exact page in the case upon which either the quoted language or the referenced portion of the case appears. *All subsequent cites* to the same case, immediately following that full cite, should be "*See id*." cites. However, if the referenced portion of the case is on a different page, your cite should appear as "*See id*. at _____" (that specific page on which the quote or reference is located).

If a case has been previously cited but not immediately previously cited, then a shortened cite form should be used. For example, in the sample brief, *Jones v. United States*, is cited on page 6, followed by a "*See id*." cite. Then on page 7, the *United States v. Ward* case is cited in its entirety. The petitioner then must again cite to *Jones v. United States*. If the petition were to use a "*See id*." cite there would be confusion because the reader would assume that the petitioner was referring to the *Ward* case, the immediately preceding case. Therefore, the petitioner abbreviated the case name and simply lists the
volume number of the U.S. Reporter, 463 and only the specific page in the case on which the reference appears after the word "at." If the petitioner went on to cite to the *Jones* case again, he or she could once again use a simple "*See id*. at _____" cite.

Again, it is not necessary that you follow the exact legal citation form used in the sample brief. Do the best you can. We are more concerned with the arguments you choose to make.

You will note that on the cover page of the sample brief, in the lower right hand corner, the petitioner's attorney has only identified himself or herself as counsel for petitioner. **You should include your full name, followed by the names and address of your high school, telephone numbers, and email addresses where you can be reached both at school and home.**

Briefs should conform to the following outline:

I. Cover Page

II. Table of Authorities

III. Opinion Below

IV. Constitutional and Policy Provisions Involved

V. Questions Presented

VI. Statement of the Case

VII. Summary of the Arguments

VIII. Argument

    a. Question I

    b. Question II

IX. Conclusion

SECTIONS OF THE BRIEF

Cover Page

Follow the guidelines and see sample cover page.

Table of Authorities

- List cases you used in your arguments to support your position.
- List relevant constitutional and policy provisions.

Opinion Below

Include a short statement of the proceedings in the lower court/court below and the ruling or judgment of the trial court which is being appealed from.

Constitutional and Policy Provisions Involved

Spell out the relevant provisions in the U.S. Constitution and policy provisions involved in the case from either the perspective of the petitioner or respondent.

Questions Presented

Recite the two constitutional questions or issues on appeal before this Court.

Statement of the Case

This will encompass a statement of the important issues and facts before the Court from either Petitioner's or Respondent's perspective. This section should incorporate (1) a concise (one or two sentences if possible) introductory explanation of the general nature of the case as a lead-in to the brief; (2) a short statement of the proceedings in the court below and the ruling or judgment of the trial court which is being appealed from; (3) a concise statement of the issues before the Court on appeal from the Petitioner's or Respondent's perspective; and (4) a concise statement of the important facts. This section should be presented in a light favorable to your side and contentions in your case.

Summary of Argument

Include three or four paragraphs highlighting a summary of your arguments supporting either the Petitioner's or Respondent's position. Essentially this is a short synopsis of your arguments which will follow. See below.

Arguments

This portion of the brief should discuss your position on the facts, arguments, and legal authorities (statutes and case law) which support your position on the questions presented. If the case law is favorable to your side, show how the prior cases are applicable to the facts or analysis of that case from the present case. You may wish to select the cases which most strongly support your arguments.

Conclusion

This part is a short summary of your answers to the issues on appeal (the questions presented) and should consist of only a few sentences. It is a very concise statement of why you want the appellate court to agree with you. **The conclusion should also state what specific relief is being requested.**

SUBMITTING THE BRIEF

Briefs should be submitted in the required format to The Florida Law Related Education Association, Inc. and should be **received by March 23, 2012**. The winning brief writers will be notified for dates of the local oral arguments.

Submit all briefs to the following address.

The Florida Law Related Education Association, Inc.
2930 Kerry Forest Parkway, Suite 202
Tallahassee, Florida 32309
850-386-8223
Fax 850-386-8292

BRIEF WRITING PRIMER

There are two main ways to argue your position to the appellate court: through the appellate brief and through the appellate oral argument. They serve different functions and, to an extent, courts look for different things from each function.

Of the two functions, the brief is the more important. It succinctly reviews for the court what the case is about (what the relevant facts and legal issues are), what the law is (for each issue raised by the appeal), and what relief you are seeking. It really does not matter which side of the case you are on or which issue you are addressing. Your job is to persuade the court that your position is correct – that is, that the facts and relevant law support the relief you seek and that the outcome you want makes sense.

The brief is your chance to shine. It is your chance to show the court that you understand your issue, that you have done the necessary research into it, and that you can communicate the argument in a scholarly way. The court looks to you for guidance, and it is your responsibility to convince the court that you can be trusted.

Let us go over some of the more important factors that judges look to when reading/grading an appellate brief.

Effective Organization of the Facts/Procedural History

Judges are busy and they look to you to narrow down the facts to those that are most important to deciding the issue. Have you summarized for the court all the facts that are relevant to your issue and that the court needs to know about in order to decide the case? Most cases have a lot of facts, but not all of those facts are relevant to the issue being raised on appeal.

For example, suppose your client was convicted of running a red traffic light and you are appealing that conviction. Does it make a difference how large the tires on his car were? Probably not (it might be relevant to a speeding ticket, but not running a red light). On the other hand, is it important to know what the weather and traffic conditions were at the time, or whether the police officers were in a position to see the intersection at the time that you client drove through it? Probably. Your ability to recognize a relevant or essential fact and to communicate it in an easy-to-understand way is very important to your ability to persuade the court.

Persuasive Use of Pertinent Facts/Diffusing Damaging Facts

Do not ignore bad facts. If they are important to the case (and, of course, relevant to the issues on appeal), someone will find them. Probably your opposing counsel. It will make you look less than honest with the court if you do not disclose bad facts. Your job is to find a way to be candid, but to emphasize the facts that support your position. Finally, do not merely list the essential facts. Weave them into a story. Make the brief interesting to read.

Issue Recognition

The way that you frame your issue will direct the court to the specific question it must decide in the case. Once you have identified the issues to be raised on appeal, state them clearly in the

brief. Be direct and forceful, without being wordy. Use active verbs. Remember that judges are very busy. They do not often have the time to wade through wordy, vague, or repetitive briefs.

The way you phrase the issue for the judges sets the stage for everything to follow in the brief. The issue also determines what your analysis will be. You have to make sure that your legal analysis and the conclusion that you reach parallel the issue that you raise.

Legal Analysis

Now that you have framed the issue that you want the appellate court to address, you have to lay out an analysis that is direct, logical, and persuasive. Your reader should be able to follow the analysis and, at the end of it, reach the same conclusion that you did.

Remember that your analysis revolves around the law. What is the law on the subject of your argument/on your issue? You either want the appellate court to apply the existing law (and perhaps extend it to a new set of facts and application) or to explain why, based on the distinct facts in your case, the existing law does not apply.

You must be clear in your thinking and direct in your writing.

Persuasive Use of Authority

Courts are guided by the law, and it is your job to tell them what the law is, how the facts of the cases that you cite are either substantially similar to your facts or are so different (in important ways) that the legal conclusion in those cases should not apply to your case. Your Issue Booklet identifies the leading cases for the issue you have raised. Your job is to explain to the court why the conclusions in those cases do or do not control the outcome in your case.

To do this, you may need to discuss the facts of the more relevant cases. Discussing the facts of those cases may help the court in your case to determine whether the holding in the prior cases apply to your circumstances.

Remember that you, acting in the role of a moot court lawyer, are, essentially, stepping into the same role as an officer of the court that all attorneys step into. While you represent a client, you also play an important role in helping to shape the law. So be candid, thorough, and forceful.

Clarity, Conciseness and "Readability"

In writing, let the first sentence of each section be your thesis sentence. State what your proposition is and let subsequent sentences support your thesis statement. End your paragraph with a conclusion that repeats your thesis statement.

Once you have completed your brief, be prepared to review and edit it. Revision means "to see again." You can revise your writing most effectively if you can figure out a way to see it again. When we review something we have written, however, it is often difficult. Not only do we have what we have written on paper, but we also have what is still in our mind.

To distance ourselves from what we have put on the printed page from what is in our mind, we need to see what we have written in a different way. For example, instead of looking at our complete message, we need to review what we have written differently, i.e. sentence by sentence. As we review each sentence individually, we can ask ourselves the following questions: 1) did the sentence say what I wanted it to say?; 2) did I say it in a clear manner?; 3) could I have said what I wanted to say in fewer words?; and 4) could I have said it better? When we look at what we have written sentence by sentence, we will often find that we wrote many things that were unnecessary. For example, in the preceding sentence, could I have just say "…we'll find we wrote many unnecessary things."

Organization, Headings and Subheadings

No one likes to read a brief that is nothing more than a blob of words (imagine this Help Guide without any headings). Your readers are human and like to be able to focus on certain ideas at a time. As you take notes regarding the issues you are treating, therefore, you should note what the different issues are and organize your writing around each issue. To alert your reader that one issue is ending and another beginning, you should use headings and subheadings. Headings and subheadings not only help you telegraph to your reader that a change in issues or the treatment of a sub-issue is coming up, but help you frame your brie around the issues that will aid the logical organization of your full brief.

Compliance with Rules

Let's be honest. Following your appellate brief-writing rules can be less intellectually challenging than writing other school papers and you might even find it boring. Following the rules, however, is vital to practicing attorneys. Attorneys are required to follow different sets of rules to ensure a certain standard is followed that will be fair to everyone. For example, a Florida attorney writing a brief in state court has to follow the Florida Rules of Appellate Procedure (in federal court, the Federal Rules of Appellate Procedure apply). Because attorneys have to learn and follow court (and their Bar Association) rules, you too are being judged on your willingness to learn and follow you "quasi-court" rules for your moot court competition.

Spelling and Grammar

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Good luck!

Sixth District Court of Appeal

State of Florida, July Term, A.D. 2011

Opinion Filed December 9th, 2011

Consolidated Appeal No. 6D12-0001

Lower Tribunal Nos.
11-0056-B
11-0057-A

MADISON JACKSON,
Appellant,

v.

STATE OF FLORIDA, and **SCOTT COUNTY SCHOOL BOARD**,
Appellees.

Consolidated appeal from the Circuit Court of the Twenty First Judicial Circuit In and For Scott County, Florida.

Before JUDGES RUIZ, HARRISON, and SLATER.

RUIZ, Judge

This appeal comes to this Court from two separate but related cases. We have chosen to consolidate the two cases into a single appeal for reasons of judicial economy.

Appellant Madison Jackson ("Jackson") was the defendant in a criminal case brought by the State of Florida and the plaintiff in a civil case against the Scott County School Board. She appeals both her criminal conviction under Fla. Stat. § 784.049 and the civil trial court's grant of summary judgment entered in favor of the Scott County School Board finding that Fla. Stat. § 1006.149 is constitutional as applied to conduct that occurs outside a school environment.

For the reasons set forth below, we affirm the civil trial court's grant of summary judgment finding that Fla. Stat. § 1006.149 is constitutional as applied to conduct that occurs outside a school environment. We also affirm Jackson's conviction under Fla. Stat. § 784.049 and find that this statute does not infringe an individual's First Amendment rights under the United States Constitution.

I. Facts and Procedural History

At the time of the events underlying this case, Jackson, sometimes called "Mad Jack," was an 18 year-old senior at Paul Laurence Dunbar High School in the city of Pikesville in Scott County, Florida. Jackson and several friends belong to a group of youths called the Pirates, who take their name from a local sports team. Members of the Pirates spend most of their time together outside on the street and many of them also attend the same high school, Paul Laurence Dunbar High School.

Angel Sterling ("Sterling"), a 15 year-old at the time of the underlying events, moved to Pikesville from Nebraska and attended Paul Laurence Dunbar High School as a freshman. After enrolling in the high school, Sterling encountered several problems with the Pirates. She testified in the criminal trial below that she considered herself to be the favorite target of the Pirates. On several occasions, she was punched in the shoulder while she was carrying books. She has also been slammed into lockers by members of the Pirates. Jackson, as a member of the Pirates, participated in these acts. Sterling notified the vice principal of the school about the Pirates and the acts of their members. Although the school spoke to the Pirates about the problem, school authorities did not discipline the Pirates or Jackson, and the incidents continued.

Sterling testified in the criminal trial below that on February 21, 2011, she was up late when she heard a noise coming from the bathroom. When she opened the bathroom door to investigate, she saw two people with ski masks and an open backpack tossing medicine into it. Apparently startled, they dropped the backpack and told Sterling that, "[i]f you ever tell anyone about this, you'll get a brick to the head."

Sterling's grandmother called the police to report the crime. During their investigation, the police discovered an identification card belonging to Jackson. Jackson testified that the identification card had been previously stolen. Because of the lack of evidence, the State of Florida declined to prosecute Jackson for the charge of burglary.

Thereafter, the Pirates, led by an individual named Jesse Woodson, created a web page on a site named FacePlace. FacePlace allows students to converse about various objects in a bulletin board format. Jesse Woodson's page on FacePlace was titled, "Clip Angel's Wings." Various students posted comments about Angel Sterling. Jackson herself posted multiple comments that spanned a numbers of days. Such comments included: "[She] should go back to where they came from," "Angel told the whole world I was part of that robbery – that loser needs to pay," "DHS would be better off without a nothing like Angel. Your life at DHS is over," and "Chubby nerd like that should never have been born."

Sterling saw Jackson's comments on FacePlace and ultimately reported them to the vice principal because she was frightened. Sterling said she frequently became sick to her stomach, would occasionally vomit, was not able to focus on her class work, and began earning poor grades in school. She testified, however, that she never believed any serious harm would come to her. The vice principal, with the assistance of the school's computer team, verified that the comments had been posted on FacePlace, but that school computers and resources were not used to make the posts. The vice principal informed the principal of the FacePlace page. The principal called the police to report the incident.

A week after the police were informed of the FacePlace page and Jackson's comments, Sterling was attacked on her way home from school with a brick near a dilapidated apartment building. Police suspected that either Jackson or Jesse Woodson was the aggressor, but they lacked sufficient evidence to prosecute Jackson.

However, Jackson was subsequently arrested and charged by information with one count of violating Fla. Stat. § 784.049, Florida's cyber bullying statute. Jackson's attorney timely filed a motion to dismiss the information on the grounds that Fla. Stat. 784.049 is unconstitutional because it impermissibly regulates protected speech and because it is unconstitutionally overbroad and vague. The trial court denied the motion to dismiss and proceeded to trial. Jackson was found guilty and sentenced by the court to jail time and probation.

At nearly the same time that Jackson was arrested, the principal of Paul Laurence Dunbar High School suspended Jackson for a month due to Jackson's various acts of bullying. During the suspension hearing, the principal cited Fla. Stat. § 1006.149 as grounds for basing Jackson's suspension, in part, on her bullying activities conducted by electronic acts, namely FacePlace.

Jackson filed a lawsuit against the Scott County School Board alleging that Jackson's First Amendment rights were violated. Jackson argued that applying the policy articulated in Fla. Stat. § 1006.149 deprives Jackson of her rights under the First Amendment as applied to activities committed outside of a school environment. The Scott County School Board moved for summary judgment to determine the case on the grounds that there was no constitutional violation. Jackson also moved for summary judgment. The civil trial court agreed with the Scott County School Board and granted its motion for summary judgment while denying Jackson's motion for summary judgment.

Jackson now appeals the conviction based on the denial of the motion to dismiss the information and appeals the decision of the civil trial court denying Jackson's motion for summary judgment and granting the School Board's motion. Jackson's timely appeal is limited to the constitutional challenges referenced above; there is no challenge to the sufficiency of the evidence underlying the conviction or suspension.

II. Standard of Review

"The standard of review governing a trial court's ruling on a motion for summary judgment posing a pure question of law is de novo." *Major League Baseball v. Morsani*, 790 So. 2d 1071, 1074 (Fla. 2001).

"A trial court decision on the constitutionality of a statute is reviewed by the de novo standard, because it presents a pure issue of law. The appellate court is not required to defer to the judgment of the trial court." *State v. Wells*, 965 So. 2d 834, 837 (Fla. 1st DCA 2007). Therefore, this Court reviews the constitutionality of section 784.049 without deference to the trial court or the presumption that the trial court's decision was correct. That being said, "[i]f it is reasonably possible to do so, a court is obligated to interpret statutes in such a manner as to uphold their constitutionality." *Id.*

III. The Antibullying Statute is Constitutional As Applied to Activities Occurring Outside A School Environment

The Supreme Court has long held that "[f]irst amendment rights…are available to teachers and students." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* The Supreme Court has held as much for nearly 90 years. *See Meyer v. Nebraska*, 262 U.S. 390 (1923); *Bartels v. Iowa*, 262 U.S. 404 (1923).

In *W. Va. State Bd. Of Educ. v. Barnette*, 319 U.S. 624, 642 (1943), the court upheld the right of Jehova's Witnesses schoolchildren, under the First Amendment's free speech clause, to refuse to salute the flag or recite the Pledge of Allegiance. The court stated its guiding principle as follows:

> "The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures-Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they 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."

Id. at 637.

The rights of students and children, however, are not absolute. The Supreme Court began to recognize as much in *Prince v. Massachusetts*, 321 U.S. 158 (1944). In *Prince*, the court upheld Massachusetts' child labor law against a challenge rooted in the free exercise of religion clause of the First Amendment. *Id.* at 169-70. Although recognizing that children hold constitutional rights, the Court stated that, "the state's authority over children's activities is broader than over like actions of adults." *Id.* at 168. "[W]hat may be wholly permissible for adults… may not be so for children, either with or without their parents' presence." *Id.* at 169. The Court reiterated its guiding principle: "A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies." *Id.* at 168. *See also Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (public education is "a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment").

In *Tinker*, the court weighed the rights of students to wear black armbands in school as a silent, non-disruptive protest of the Vietnam War. *Tinker*, 393 U.S. at 513-14. Such symbolic speech would unquestionably be protected on "Main Street," but the court stated that students' expressive rights are limited by the "comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools." *Id.* at 507.

Tinker permits school authorities to discipline student expression that undermines one or both of two state interests, one grounded in maintaining the overall educational environment, and the other grounded in protecting the personal rights of other students. *Id.* at 513. *Tinker* permits the suppression of the speech by showing "facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities." *Id.* at 514. School authorities do not have to wait until disruption actually occurs before they act. *Chandler v. McMinnville Sch. Dist.*, 978 F.2d 524, 529 (9th Cir. 1992).

The Supreme Court has not receded from *Tinker*, but has arguably strengthened its dictates. In *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 678, 683-85 (1986), the Court upheld the school's authority to suspend a student for delivering an "offensively lewd and indecent," "vulgar" speech laden with "an elaborate, graphic, and explicit sexual metaphor" during a student assembly. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 262-63, 266-67, 276 (1988) upheld the authority of the school to remove two articles in the school's student newspaper before being published that dealt with pregnancy and divorce. More recently in *Morse v. Frederick*, 551 U.S. 393, 399-400, 408-09 (2007) the Court upheld the authority of school authorities to prevent a student from displaying a sign reading "BONG HiTS 4 JESUS" because it violated the school's policy against promoting illegal drugs.

Despite the plethora of precedent to support the unambiguous state of the law regarding regulation of non-political speech on a school campus, the Supreme Court of the United States has not provided any direct guidance regarding whether school authorities may discipline students for conduct that occurs outside the school environment, but which would otherwise not be allowed inside the school setting.

We hold today that the place of origin of the speech subjecting a student to discipline presents no constitutional infirmities so long as the regulation of the speech comports with the dictates of *Tinker*. *Tinker* drew no distinction between speech that occurs on or off school premises. Rather, the *Tinker* Court focused on the effect of student conduct and speech on the overall educational mission of a school. If students are engaged in conduct that has a potential to substantially disrupt the operation of the school or the education of its students, *Tinker* permits school authorities to regulate the students' conduct and speech.

However, *Tinker* does not stand for the broad proposition that all speech is subject to regulation by school administrators. Due process and protections of the First Amendment require a limit to the school board's exercise of its authority. We agree with the Second Circuit's rationale that so long as it is reasonably foreseeable that the speech at issue will reach the school grounds, the speech transforms from protected speech into speech subject to regulation under *Tinker*. *Wisniewski v. Board of Educ. of Weedsport Cent. School Dist.*, 494 F.3d 34, 38-39 (2d Cir. 2004).

In applying *Tinker* to the facts at hand, we look to the totality of the relevant facts, including both Jackson's actions and the circumstances confronting school officials. The parties do not dispute that Jackson's messages on FacePlace were calculated to intentionally harass, intimidate, humiliate, and ridicule Sterling.

It was reasonably foreseeable that Jackson's speech would reach the gates of the schoolhouse. Jackson's comments were posted on a public site on the Internet: FacePlace.

FacePlace is accessed regularly by students at Paul Laurence Dunbar High School as well as members of the public in general. Furthermore, FacePlace was accessible to students using school computers. In this day and age, the Internet pervades any space where a person has access to a computer. Because the comments on FacePlace were placed on an Internet site for all the public to see, particularly one frequented by high school students, Jackson should have reasonably foreseen that the speech could have reached Paul Laurence Dunbar High School.

As the School Board correctly argues, the speech constituted a substantial potential disruption of the school's operation and the education of its students. School officials were taken from their regular duties to address a potential threat to the physical and emotional safety of another student. Given the recent episodes of cyber bullying at other schools across the country, we believe that there is a serious potential for substantial disruption of the school's operation and the education of one of its students, Angel Sterling. School administrators reached the same conclusion and we believe that they are in a better position to make determinations on such matters. *LaVine v. Blaine School Dist.*, 257 F.3d 981, 988 (9th Cir. 2001) ("…courts are not in the best position to decide what schoolhouse speech restrictions are appropriate").

We disagree with Jackson and the dissent's argument that reasonable foreseeability is not the appropriate standard to utilize when applying *Tinker* to off-campus speech. Given the "comprehensive authority of the States and of school officials" to regulate schools, a standard of reasonable foreseeability provides officials with the appropriate level of control while safeguarding students' First Amendment rights. *Tinker*, 393 U.S. at 507.

For the foregoing reasons, we affirm the grant of summary judgment in favor of the School Board and the denial of Jackson's motion for summary judgment and find that the statute is constitutional so long as a student may reasonably foresee that the off-campus speech will reach the schoolhouse gates.

IV. The Cyber bullying Statute Is Constitutional Under the First Amendment As It Is Neither Overbroad Nor Vague

Jackson argues that Fla. Stat. § 784.049 (the "cyber bullying statute") is an unconstitutional infringement on the freedom of speech and violates due process because the statute is vague and/or overbroad. We address each argument in turn.

a. Vagueness

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *State v. Shank*, 795 So. 2d 1067, 1070 (Fla. 4th DCA 2001); *accord Wyche v. State*, 619 So. 2d 231, 236 (Fla. 1993). "The requirements of due process are not fulfilled unless the language of a penal statute is sufficiently definite to apprise those to whom it applies of the conduct it prohibits." *Bertens v. Stewart*, 453 So. 2d 92, 93 (Fla. 2d DCA 1984). "It is constitutionally impermissible for a statute to contain such vague language that a person of common intelligence must speculate about its meaning and subject himself to punishment if his guess is wrong." *Id.*

The vagueness doctrine, however, is intended to combat more than inadequate notice to citizens of what conduct is prohibited. As another appellate court has explained:

> Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute abuts upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.

Shank, 795 So. 2d at 1070 (quotations omitted); *accord City of Pompano Beach v. Capalbo*, 455 So. 2d 468, 470 (Fla. 4th DCA 1984). There are thus three underlying policies of the vagueness doctrine: (1) fair notice of the conduct prohibited; (2) clear standards for those enforcing the law; and (3) avoiding the unintended consequence of citizens refraining from exercising lawful expression for fear of violating the law.

The cyber bullying statute provides fair notice of the conduct it intends to prohibit. It criminalizes the transmission by electronic means of a communication "with the purpose to frighten, coerce, intimidate, threaten, abuse, harass, or alarm another person" when the transmission is "in furtherance of severe, repeated, or hostile behavior toward the other person." Fla. Stat. § 784.049. The statute defines a "communication" as "the electronic communication of information of a person's choosing between or among points specified by the person without change in the form or content of the information as sent and received." Fla. Stat. § 784.049. It also defines "electronic means" as "any textual, visual, written, or oral communication of any kind made through the use of a computer online service, Internet service, telephone, or any other means of electronic communication, including without limitation to a local bulletin board service, an Internet chat room, electronic mail, a social networking site, or an online messaging service."

Jackson argues that several terms, such as "alarm," "abuse," "repeated," and "hostile," are undefined in the statute. However, undefined statutory terms are to be construed according to their plain and ordinary meaning. *Bertens*, 453 So. 2d at 94. This can be ascertained by reference to a dictionary, *State v. Barnes*, 686 So. 2d 633, 637 (Fla. 2d DCA 1996), as well as "case law or related statutory provisions that define the term," *Bertens*, 453 So. 2d at 94.

The Merriam-Webster Online Dictionary defines the term "alarm" as "sudden sharp apprehension and fear resulting from the perception of imminent danger." Alarm, http://www.merriam-webster.com/dictionary/alarm, (last visited December 1, 2011). It defines "abuse" as "language that condemns or vilifies usually unjustly, intemperately, and angrily." Abuse, http://www.merriam-webster.com/dictionary/abuse, (last visited December 1, 2011). It defines "repeated" as "renewed or recurring again and again."

Repeated, http://www.merriam-webster.com/dictionary/repeated, (last visited December 1, 2011). The other words in the statute have similar definitions.

A person of ordinary intelligence can reasonably conclude that the statute protects persons from repeated or hostile electronic communications that aim to disparage or incite fear of imminent danger in another person. There is nothing in the statute sufficiently vague as to deny an ordinary citizen due process. In any criminal prosecution, the prosecutor will have to prove beyond a reasonable doubt that the speech at issue was intentionally and repeatedly communicated electronically so as to alarm, abuse, threaten, intimidate, etc. another.

Moreover, because we do not perceive any uncertain meanings in the statute, we do not agree with Jackson that there exists a reasonable probability that free speech will be burdened.

The statute provides reasonable notice as to the conduct it prohibits. Although it is not the most artfully drawn statute on record, it indicates the means of communication that are covered as well as the substance of messages and the criminal intent required. We therefore find that the cyber bullying statute satisfies the underlying policies of the vagueness doctrine.

b. Overbreadth

Although the doctrines of vagueness and overbreadth appear to overlap at times, they are different in scope. As the Florida Supreme Court explained:

> Too often, courts and lawyers use the terms 'overbroad' and 'vague' interchangeably. It should be understood that the doctrines of overbreadth and vagueness are separate and distinct. The overbreadth doctrine applies only if the legislation is susceptible of application to conduct protected by the First Amendment. The vagueness doctrine has a broader application, however, because it was developed to assure compliance with the due process clause of the United States Constitution.

Se. Fisheries, 453 So. 2d at 1353 (citations and quotations omitted). Here, the statute in question implicates free speech rights under the First Amendment; therefore, both the doctrine of vagueness and the doctrine of overbreadth apply.

"Generally, a statute that has the potential to criminalize constitutionally protected, innocent activity as well as illegal, unprotected activity is impermissibly overbroad, and violates due process." *State v. Montas*, 993 So. 2d 1127, 1131 (Fla. 5th DCA 2008); *accord Siplin v. State*, 972 So. 2d 982, 989 n. 8 (Fla. 5th DCA 2007) ("Generally, it violates substantive due process to criminalize purely innocent conduct.") (citing *State v. Giorgetti*, 868 So. 2d 512 (Fla.2004)). "In the context of the First Amendment, an overbroad statute is one that restricts protected speech or conduct." *Montas*, 993 So. 2d at 1130. "Even if speech or conduct is unprotected by the First Amendment, the overbreadth doctrine prohibits the Government from banning unprotected speech if a substantial amount of protected speech is prohibited or chilled in the process." *Id.* (quotations omitted).

If a statute potentially implicates protected speech, then it is unconstitutionally overbroad unless it "is supported by a compelling governmental interest and is narrowly drawn to protect that interest." *Id.*; *accord Wyche*, 619 So. 2d at 234 ("When lawmakers attempt to restrict or burden fundamental and basic rights such as these, the laws must not only be directed toward a legitimate public purpose, but they must be drawn as narrowly as possible."). "[T]he requirement of narrow tailoring is satisfied so long as the ... regulation promotes a substantial government interest that would be achieved less effectively absent the regulation." *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989) (internal quotations and citations omitted).

We do not agree with Jackson that the statute may potentially "criminalize constitutionally protected, innocent activity…" *Montas*, 993 So. 2d at 1131. Many threats do not come under the umbrella of protected speech. *See Virginia v. Black*, 538 U.S. 343, 362-63 (2003) (permitting a state to regulate intimidating speech). As such, there is no danger that the statute criminalizes potentially innocent activity.

Even if we were to find that the statute regulated protected speech, we also find merit in the State's argument that the statute is supported by a compelling governmental interest and is narrowly drawn to protect that interest. The State argues that Florida has a compelling interest in protecting all persons, not just students, from electronic communications that fit within the boundaries of the cyber bullying statute. The Internet poses new problems and new solutions are required to address them. Florida has recognized the emerging threat of the ease of bullying by electronic means.

In support of their position, the State points to disturbing trends and incidents around the country involving violence arising out of cyber bullying. Most of these individuals have been students. In one instance, a student named Megan Meier committed suicide when an adult created a fake profile on the social networking site MySpace. The adult used the fake profile to extract information about Meier and subsequently used it to harass her. Meier committed suicide by hanging herself. In another instance referred to by the State, a Rutgers student named Tyler Clementi jumped off the George Washington Bridge after a video showing an intimate encounter was surreptitiously posted on the Internet. The State points to a third instance of bullying with a student named Phoebe Prince, who committed suicide in Massachusetts after being bullied.

Jackson argues that the State's interest is more properly defined as cyber bullying against students based on the examples they have cited. However, we agree with the State that cyber bullying is not limited to students. The crime of cyber bullying can have any person as a victim. The fact that the State has cited examples where students were the victims does not diminish the potential for harm among other sectors of the populous. It is not unreasonable to imagine cyber bullying occurring between former romantic partners, workplace employees, or in many other social spheres.

We find the State's claim that they have a compelling governmental interest in protecting all persons in Florida from cyber bullying to be legitimate and compelling. The only question that remains is whether the cyber bullying statute is narrowly tailored to serve that interest.

The State argues that the cyber bullying statute is narrowly tailored to achieve the government's compelling interest of protecting all citizens from the conduct is prohibits. It

contends that the statute contains the appropriate *mens rea* requirement that limits the statute to the speech at issue. The criminal element of "purpose" as its *mens rea* is required to sustain a conviction under the cyber bullying statute. As such, the State argues, the statute is narrowly tailored because, in actuality, it criminalizes only the threatening speech that is necessary to further the State's compelling interest. In short, the statute does not criminalize purely innocent conduct.

We agree with the State. The required *mens rea* of purpose, the highest the law recognizes, ensures that only the speech that causes cyber bullying is subject to criminal prosecution. Purposefully uttering threats or similar communications in furtherance of severe, repeated, or hostile behavior is not innocent conduct. The State has shown that such conduct has led to several deaths around the country.

The regulation promotes a substantial government interest that would be achieved less effectively absent the regulation. We therefore hold that the cyber bullying statute, Fla. Stat. § 784.049, is not unconstitutional under the doctrine of overbreadth.

V. Conclusion

For the foregoing reasons, we find that the trial court did not err when it concluded that Fla. Stat. § 1006.149 is constitutional as applied to conduct that occurs outside a school environment. We also find that Florida's cyber bullying statute, Fla Stat. § 784.049, is constitutional as it is neither overbroad or vague. The rulings of both trial courts are therefore AFFIRMED.

HARRISON, J., CONCURS

SLATER, C.J., DISSENTING

The majority today holds that schools have authority to discipline students for speech that occurs outside of school premises so long as there is any reasonable chance that the speech would reach the schoolhouse gates. Because I believe that the First Amendment requires a closer connection -- a nexus -- between the speech at issue and the operation of the school, and because I do not believe Jackson's actions would cause a *substantial* disruption of school functions, I would reverse the civil trial court's rulings on the motions for summary judgment.

Similarly, the majority reaches the conclusion that the criminal cyber bullying statute is neither vague nor overbroad. I disagree with the analysis of my brethren and would reverse Jackson's conviction.

I address each of my issues with the majority's opinion in turn.

I. The Antibullying Statute Is An Unconstitutional Infringement On Students' First Amendment Rights

The majority's conclusion that the appropriate standard to utilize to determine when to permit school officials to discipline students for speech that occurs outside of school premises is too easily satisfied to provide meaningful safeguards of First Amendment rights. Although some

courts have utilized this standard, *see, e.g. Wisniewski v. Bd. of Educ.*, 494 F.3d 34 (2d Cir. 2007) (finding that off campus speech could be regulated because it reached the schoolhouse and because it was reasonably foreseeable that it would), I believe fundamental constitutional rights deserve more protection. .

Other courts agree that First Amendment rights deserve more protection when off-campus speech is the speech at issue. In *Thomas v. Bd. of Educ., Granville Cent. Sch. Dist.*, 607 F.2d 1043, 1046 (2d Cir. 1979), several high school students were disciplined for publishing a newspaper that school authorities deemed "morally offensive, indecent, and obscene." The students had worked on the newspaper mostly "in their homes, off campus and after school hours." *Id.* at 1045. However, there were times when "an occasional article was composed or typed within the school building, always after classes." *Id.* Although school officials did nothing when a copy of the newspaper was confiscated from a student, the school board eventually took action and disciplined the students. *Id.* at 1045-46.

The court held that when off-campus speech is to be regulated, it must satisfy the highest levels of First Amendment scrutiny. *Id.* at 1044-45. It stated:

> "[O]ur willingness to defer to the schoolmaster's expertise in administering school discipline rests, in large measure, upon the supposition that the arm of authority does not reach beyond the schoolhouse gate. When an educator seeks to extend his dominion beyond these bounds, therefore, he must answer to the same constitutional commands that bind all other institutions of government."

Id.

Importantly, the court unequivocally rejected the notion that speech that occurs off-campus can be regulated or prohibited by school officials if it was reasonably foreseeable to the student that the speech would reach the schoolhouse gates. The court stated, "[W]e believe that this power is denied to public school officials when they seek to punish off-campus expression simply because they reasonably foresee that in-school distribution may result." *Id.* at 1053, n. 18.

In *Layshock v. Hermitage Sch. Dist*., 650 F.3d 205, 207 (3d Cir. 2011), the court held that simply because off-campus speech reaches the schoolhouse gate, it is not automatically transformed into speech subject to regulation under *Tinker*. *Layshock* involved a student that created a fake profile of his principal on Myspace. *Id.* at 207-08. The student in *Layshock* created the MySpace profile while off campus, but students on campus accessed the fake profile until on-campus computer use was severely curtailed. *Id.* The court adopted the reasoning in *Thomas* and held that the student's activities were not sufficiently related to the school to justify the use of disciplinary authority by school officials. *Id.* at 215-16. In short, there was no nexus. *Id.* at 214-15.

Requiring a nexus between the off-campus speech and the school's activities or operation safeguards First Amendment freedoms. This standard assures that school officials do not take on the role of parens patriae. Stated simply, "the First Amendment forbids public school administrators and teachers from regulating the material to which a child is exposed after he

leaves school each afternoon" without a sufficient nexus between the speech at issue and the school. *Thomas*, 607 F.2d at 1051.

Here, as in *Thomas* and *Layshock*, Jackson's activities occurred entirely off-campus. The School Board has not demonstrated a sufficient nexus between the speech at issue and the proper operation of the school sufficient to justify exercising its disciplinary authority. Even though school officials had to take time out of their schedules to address what they perceived to be a problem, there still exists no nexus between Jackson's actions and the school.

Even assuming there existed a nexus between Jackson's actions and the school sufficient to confer regulatory authority upon the School Board, Jackson's actions do not give rise to a set of "facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 514 (1969).

Jackson's actions do not rise to the level of potentially causing a *substantial* or *material* disruption with school activities. Jackson is an individual whose conduct affected another individual and not the entire school or even a couple of students. The majority finds that a substantial disruption occurred because school administrators were taken from their routine duties to address the issues confronting Sterling. Other than this, the School Board has brought forth no evidence to show a substantial or material interference with school activities.

This is simply not the type of substantial or material interference that courts have found sufficient to justify regulation of speech and the imposition of disciplinary sanctions on students. Speech that affects one student can hardly be classified as causing a substantial or material interference with school activities.

The antibullying statute is an unconstitutional regulation of students' First Amendment rights. Absent a nexus between the speech and the school, the statute fails First Amendment scrutiny. Additionally, even if the statute were constitutional, I would find there is no substantial or material disruption of school activities under these circumstances.

II. The Cyber bullying Statute Is Unconstitutional As It Is Both Vague and Overbroad

I disagree with the majority's opinion that the cyber bullying statute is neither vague nor overbroad. I would find that the statute suffers from both constitutional infirmities and would overturn Jackson's conviction below.

a. Vagueness

The majority is correct in one regard: in order to be constitutional, the cyber bullying statute must provide (1) fair notice of the conduct prohibited; (2) clear standards for those enforcing the law; and (3) avoiding the unintended consequence of citizens refraining from exercising lawful expression for fear of violating the law. The statute fails to provide all three and is therefore vague and unconstitutional.

In order to survive a vagueness challenge, "[t]he language of the statute must 'provide a definite warning of what conduct' is required or prohibited, 'measured by common

understanding and practice.' " *Warren v. State*, 572 So .2d 1376, 1377 (Fla. 1991) (quoting *State v. Bussey*, 463 So .2d 1141, 1144 (Fla. 1985)). "Because of its imprecision, a vague statute may invite arbitrary or discriminatory enforcement". *Brown v. State*, 629 So. 2d 841, 842 (Fla. 1994) (citing *Southeastern Fisheries Ass'n, Inc. v. Department of Natural Resources*, 453 So.2d 1351, 1353 (Fla. 1984)).

In *Brown v. State*, 629 So. 2d 841, 843-44 (Fla. 1994), the Florida Supreme Court invalidated a statute on grounds that it was vague because it failed to define the phrase "public housing facility." The Court indicated that regardless of the good intentions of the legislature, statutes "must include sufficient guidelines to put those who will be affected on notice as to what will render them liable to criminal sanctions." *Id.* at 843. "When the Legislature fails to provide guidelines, this Court cannot step in and guess about legislative intent." *Id.*

First, the cyber bullying statute fails to provide fair notice of the conduct prohibited and fails to provide clear standards for those enforcing the law. Despite the definitions cited by the majority, the dictionary is simply insufficient to save this statute from its own constitutional demise. The statute requires that one purposefully intend to "frighten, coerce, intimidate, threaten, abuse, harass, or alarm another person… in furtherance of severe, repeated, or hostile behavior towards the other person." Fla. Stat. § 784.049. The text of the statute does not require that the other person actually be frightened, coerced, intimidated, threatened, abused, harassed, or alarmed, but merely that the perpetrator act with the purpose to frighten, coerce, intimidate, threaten abuse, harass, or alarm another person.

The statute, however, fails to define what level of fright is required and whose fright is at issue. Does it require that a reasonable person would have felt frightened, or that the intended victim would consider the communication frightening? Additionally, how alarmed should one have to be? How intimidated should one feel? This line of reasoning applies to all the manners in which the statute could potentially be violated.

The confusion continues with the behavior requirement in subsection (b)(2). What does "severe" behavior mean? How do we judge what it means to be "severe"? Is it severe to the victim, the perpetrator, or a reasonable person? By the same token, how do we judge "hostile" behavior? How repeated does the behavior have to be to violate the statute? Is twice enough?

Given the simple fact that the legislature has not provided us with standards to use in determining whether a statute is violated, it is hardly appropriate to assume that a citizen of average intelligence could do any better. Additionally, law enforcement personnel are in no better position to enforce this law than are trial court judges charged with interpreting and applying it. The result, I fear, is arbitrary and selective enforcement of this statute.

Without adequate standards, the statute has the potential to chill lawful, protected speech. One can simply envision a voter that repeatedly threatens a politician with withdrawing support for his or her candidacy. This could potentially run afoul of the statute. After all, the dictionary defines "threaten" as, "to give signs or warning of… to announce as intended or possible… to cause to feel insecure or anxious." Threaten, http://www.merriam-webster.com/dictionary/threaten, (last visited December 1, 2011). One can think of other examples, but it suffices that the language of the statute is so vague that the threat of chilling legitimate, protected speech is great.

The legislature could have drafted a much clearer statute that would provide fair notice of the conduct prohibited, clear standards for enforcement of the law, and assure that lawful expression would not be restrained. Its failure to do so requires that the statute be found unconstitutional because it is vague. I would so hold.

b. Overbreadth

The cyber bullying statute also suffers from the constitutional infirmity that it is overbroad. It potentially covers protected speech and it is not narrowly tailored to serve the government's compelling interest.

"A statute is overbroad when legal, constitutionally protected activities are criminalized as well as illegal, unprotected activities, or when the Legislature sets a net large enough to catch all possible offenders and leaves it to the courts to step inside and determine who is being lawfully detained and who should be set free." *Schultz v. State*, 361 So. 2d 416, 418 (Fla. 1978) (citing *Coates v. Cincinnati*, 402 U.S. 611(1971)); *State v. Wershow*, 343 So. 2d 605 (Fla. 1977). However, even in the context of unprotected speech or conduct, "[t]he overbreadth doctrine prohibits the Government from banning unprotected speech if a substantial amount of protected speech is prohibited or chilled in the process." *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 255 (2002). "[I]t has been the judgment of [the Supreme Court] that the possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that protected speech of others may be muted and perceived grievances left to fester because of the possible inhibitory effects of overly broad statutes. *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973).

I disagree with the majority that the statute does not cover protected speech. By its plain language, the statute does not apply merely to school activities or electronic communications directed at students in a school setting. Rather, it applies to any person in the state posting any electronic communication that satisfies the elements of the crime.

As I have stated previously, it is conceivable that this statute could be applied to protected political speech directed electronically at a particular government official that is repeated and would potentially alarm or intimidate the official. Such speech normally enjoys the highest levels of protection under First Amendment jurisprudence, but the cyber bullying statute potentially criminalizes this type of speech.

The State and the majority paint with too broad a brush in defining the interest that the cyber bullying statute seeks to serve. In one fell swoop, the majority holds that the interest is to protect all citizens in the state. However, the State has presented no evidence that the citizens of Florida are under threat by cyber bullying. At best, the State has shown that the true threat arises out of cyber bullying in school or between students. They have cited no examples of cyber bullying outside of an educational context. As such, I would agree that the State has a compelling interest in preventing cyber bullying between students.

Given the scope of the compelling interest, the statute is not narrowly tailored to serve that interest. The cyber bullying statute covers persons outside of a school environment where First Amendment protections are greater. Although the statute need not be the most restrictive

means to serve the interest, this statute burdens substantially more speech than is reasonably necessary to serve the State's interest. The legislature could have limited the statute to speech that occurs on school premises or that has a nexus to a school activity, but it did not do so, and it is not our responsibility to rewrite the law.

I would find that the statute covers protected speech, is not narrowly tailored to serve the government's compelling interest, and is therefore unconstitutional.

III. Conclusion

For the aforementioned reasons, I believe that the civil trial court erred in its rulings on the competing motions for summary judgment. Moreover, the criminal conviction should be reversed because of the constitutional infirmities plaguing the cyber bullying statute.

I respectfully dissent.

Supreme Court of Florida

No. SC12-0001

MADISON JACKSON,
Petitioner,

v.

STATE OF FLORIDA and **SCOTT COUNTY SCHOOL BOARD**,
Respondents.

ORDER INVOKING DISCRETIONARY JURISDICTION

On consideration of Petitioner's Notice to Invoke Discretionary Appellate Jurisdiction, the above-styled case is hereby acknowledged. Upon direction of the Justices of the Court, it is hereby ordered that the following issues will be briefed and argued to the Court by the parties:

1. Whether the antibullying statute, codified in Fla. Stat. § 1006.149, is unconstitutional on First Amendment grounds as applied to conduct that occurs outside of a school environment.

2. Whether Florida's cyber bullying statute, codified in Fla. Stat. § 784.049, is an unconstitutional infringement of an individual's freedom of speech because it is overbroad, vague, or both.

Dated: January 3rd, 2012.

Sarah Rojas

Sarah Rojas
Clerk, Supreme Court

HOW A CASE PROGRESSES THROUGH THE COURT