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July 19, 2007

Hon. Norman A. Mordue
United States District Court
Northern District of New York
P. O. Box 7396
Syracuse, New York 13261-7396

Re: **Ochshorn, et al. v. Ithaca City School District, et al.**
Case # 5:05-cv-695 (NAM/GDB)

Dear Judge Mordue:

I am writing in response to Attorney Quesnel's letter brief referencing the recent decision of the United States Supreme Court in *Frederick v Morse*.

Contrary to defendants' contention, *Frederick* offers no support for their position and, if anything, strengthens plaintiffs'. Every Justice of the Court, except Justice Thomas, reaffirmed the First Amendment rights of students as set out in *Tinker v. Des Moines* and the modest limitations set on those rights by the Court's prior decisions. The Court's narrow holding, consistent with those principles, is that schools may limit student speech "that can reasonably be regarded as encouraging illegal drug use." *Frederick*, 2007 WL 1804317, at *3.

In fact, the plaintiffs in *Frederick* had made the same broad argument that defendants make here, that the speech was proscribable because it was "offensive" as that term was used in *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986). * The Court, however, rejected that argument, stating that the issue was "not that Frederick's speech was offensive, but that it was reasonably viewed as promoting illegal drug use." *Frederick*, at *10. Justice Roberts, writing for the majority, concluded that "[s]tripped of rhetorical flourishes, then, the debate between the dissent and this opinion is less about constitutional first principles than about whether Frederick's banner constitutes promotion of illegal drug use." *Id.*, at *11.

Justices Alito and Kennedy in their concurring opinion confirmed the viability of *Tinker* and the view of the majority that upholding the regulation of speech in *Frederick* did not mean “that there are necessarily any grounds for such regulation that are not already recognized in the holdings of this Court.” Nor, stated the Justices, did the Court endorse the broad argument of the petitioners that a school may censor any student speech that interferes with its “educational mission.” *Id.* at *18.

The lesson of *Frederick* is a simple one: “the special characteristics of the school environment” laid out in *Tinker*, coupled with the strong governmental interest in stopping student drug abuse, permits a school to restrict student expression that it reasonably regards as promoting illegal drug abuse. The case says no more than that. It cannot be read as supporting defendants’ right to censor *The Tattler*.

Respectfully yours,

/s/RAYMOND M. SCHLATHER
Bar Roll No. 501364

RMS/sed

cc: Scott P. Quesnel, Esq.

* Notably, the Court itself pointed out the problematic mode of analysis in *Fraser*, but found it unnecessary to resolve the problem as, other than reaffirming the principles set out in the Court’s prior cases, *Fraser* was not directly applicable to the issue in *Frederick*. *Frederick*, at *7-*8.