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August 30, 2010

*Delivered via ECF*

Marcia M. Waldron  
Clerk of Court  
United States Court of Appeals for the Third Circuit  
21400 U.S. Courthouse  
601 Market Street  
Philadelphia, PA 19106-1790

RE: Fed. R. App. P. 28(j) letter in *Layshock v. Hermitage School District*, No. 07-4465.

Dear Ms. Waldron:

Justin Layshock submits this citation of supplemental authority, under Fed. R. App. P. 28(j), to highlight the relevance of the recent decision in *McCauley v. Univ. of the Virgin Islands*, No. 09-3735, 2010 WL 3239471 (3d Cir. August 18, 2010). In voiding on First Amendment overbreadth grounds portions of the University's disciplinary code, the Court held that "[p]ublic universities have significantly less leeway in regulating student speech than public or elementary schools," and that application of the four U.S. Supreme Court student-speech cases "in the university setting should be scrutinized carefully, with an emphasis on the underlying reasoning of the rule to be applied." Slip op. at 31.

*McCauley* highlights the importance of confining *Tinker v. Des Moines* and its Supreme Court progeny to expression inside the schoolhouse gate. The Court reviews the substantial authority elementary and high school officials have to, *inter alia*, "inculcate a 'child [with] cultural values,'" teach "shared values of a civilized order," and "demonstrate the appropriate form of civil discourse and political expression," all as part of schools' "unique responsibility to act *in loco parentis*" while the students are *in school*. *Id.* at 22-23 (citations omitted). The Court implicitly recognized the importance of respecting *Tinker's* proverbial "schoolhouse gate" by noting that no such in-school-versus-out-of-school demarcation exists in universities because many students live on campus. *Id.* at 30. *McCauley* thus supports appellees'

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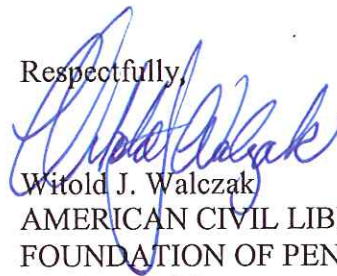
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argument in this case that *Tinker* and progeny are and should be limited to analyzing student-speech issues inside the school, not when the speech occurs at home or in the community. *See* Second-Step Brief of Appellee and Cross-Appellants at 21-43. Expanding officials' substantial authority over students when they are in school to their activities in the community would severely curtail students' First Amendment and parents' corresponding Fourteenth Amendment rights.

Respectfully,



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cc: All counsel via ECF