

## ANSWER TO QUESTION NO. 12

**Mr. McGuire's Motion:** It is well-settled that the Constitution only restricts the government, not private actors. *Rendell-Baler v Kohn*, 457 US 8340, 837 (1982); *Public Utilities Comm v Pollak*, 343 US 451, 461 (1972); *Behagen v Amateur Basketball Assoc*, 885 F2d 524, 530 (CA 10, 1989). Consequently, Smith cannot maintain a claim against Mr. McGuire because he was not a government employee or volunteer. There is also no evidence that he was acting on behalf of the school or Mrs. Lady, or that there was any nexus or joint action between the two actors, *Behagen, supra*. Instead, the facts show only that he acted in reaction to a negative statement being made about his son. Since the Constitution does not restrict a private individual's actions, Smith cannot state a First Amendment claim against Mr. McGuire.

**Mrs. Lady's Motion:** The second question pertains to Mrs. Lady and whether school officials can prevent a student at a school sponsored event from displaying a message that could be interpreted as support for drug use. The First Amendment to the U.S. Constitution prohibits the government from infringing on the freedom of speech. However, in the school context, an initial principle to recognize is that although students do not shed their constitutional rights at the schoolhouse gate, *Tinker v Des Moines Ind Comm Schools*, 393 US 503, 506 (1969), students do not have constitutional rights consistent with adults in other settings. *Bethel School Dist No 403 v Fraser*, 478 US 675, 682 (1986). School officials retain the right to exercise authority consistent with constitutional safeguards to prescribe and control conduct in the schools. *Tinker*, 393 US at 507. Thus, the "rights of students 'must be applied in light of the special characteristics of the school environment.'" *Morse v Frederick*, 551 US 393, 397 (2007), quoting *Hazelwood School District v Kuhlmeiner*, 484 US 260, 266 (1988).

Here, under the foregoing case law, and particularly *Morse*, the best argument is that Mrs. Lady did not violate Smith's free speech rights under the First Amendment, so the court should grant her motion. First, there is no dispute under the facts that there was a school policy against advocating drug use, and the school is empowered to enforce such rules. Although the statement on the picket sign is somewhat ambiguous, it can reasonably be considered a statement advocating drug use, for it states that steroids are "the breakfast of champions." See *Morse*, 551 US at 401-402 ("Bong

Hits 4 Jesus" sign found to be advocacy for drug use). Mrs. Lady immediately considered it a violation of school policy, and Smith was concerned that it might be. Hence, the best conclusion is that the sign violated school policy.

Second, the school policy did not violate Smith's limited right to free speech. The school had the authority to enforce its rules at a school function, which this home football game surely was. The school also had an interest in stopping student drug use, a compelling interest of the school. Furthermore, the message made a serious allegation against a student from another high school, which in fact caused the initial disruption in the stands. *Defoe v Spiva*, 625 F3d 324, 340 (CA 6, 2010) (Rogers J., concurring) (noting that disruption is not required, but even threat of disruption goes beyond the abstract desires in *Tinker*). Those interests, coupled with the student's limited free speech rights, suffice to preclude Smith from establishing a First Amendment violation against Mrs. Lady. Additionally, it did not involve political speech which is at the core of First Amendment protections, as it was not displayed or being utilized in a debate on the use of drugs in sports, or other such political debate.