No. 09-1454; 09-1478

IN THE
# *Supreme Court of the United States*

BOB CAMRETA, *Petitioner* v. SARAH GREENE, personally and as next friend for S.G., a minor, and K.G., a minor, *Respondent*

JAMES ALFORD, DESCHUTES COUNTY DEPUTY SHERIFF, *Petitioner* v. SARAH GREENE, personally and as next friend for S.G., a minor, and K.G., a minor, *Respondent*

**On Writ of *Certiorari* to the United States Court of Appeals for the Ninth Circuit**

## *AMICI CURIAE* BRIEF OF NATIONAL SCHOOL BOARDS ASSOCIATION, CALIFORNIA SCHOOL BOARDS ASSOCIATION, AND OREGON SCHOOL BOARDS ASSOCIATION IN SUPPORT OF PETITIONERS


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## INTEREST OF *AMICI CURIAE*[1]

The National School Boards Association (NSBA) is a not-for-profit federation of state associations of school boards across the United States. Through its state associations NSBA represents the nation's 95,000 school board members, who, in turn, govern approximately 15,000 local school districts. These local public school districts serve more than 46.5 million public school students, or approximately 90 percent of the elementary and secondary students in the nation.

The California School Boards Association (CSBA) is a California non-profit corporation. CSBA is a member-driven association composed of nearly 1,000 K-12 school district governing boards and county boards of education throughout California. CSBA supports local school board governance and advocates on behalf of school districts and county offices of education. As part of CSBA, the Education Legal Alliance (the "Alliance") helps to ensure that local school boards retain the authority to fully exercise the responsibilities vested in them by law to make appropriate policy and fiscal decisions for their local educational agencies. The Alliance represents its members, just under 800 of the state's 1,000 school districts and county offices of education, by addressing legal issues of statewide concern to school districts. The Alliance's activities include joining in

[1] This brief is filed with the consent of all the parties. Letters of consent are on file with the Clerk of this Court. No attorney for any party has authored this brief in whole or in part, and no person or entity other than the *amici curiae* and their members and counsel made any monetary contribution to the preparation or submission of this brief.

litigation where the interests of public education are at stake.

The Oregon School Boards Association (OSBA) is a non-profit association representing more than 1,600 locally-elected public officials who serve school and education service district boards charged with shaping the education programs for the more than 565,000 kindergarten through 12th grade students in Oregon. OSBA's Legal Assistance Trust was established to help districts with the expense of litigation, primarily at the appellate level, which has a statewide impact.

*Amici* represent the school districts attended by many students who unfortunately are or will become victims of child abuse or neglect. Because of their special responsibility to promote the safety and welfare of all students, public school districts have a strong interest in advocating for the interpretation and application of federal, state and local laws in a manner that allows them to meet their student safety obligations with respect for the rights of students and their families but without undue legal burdens or potential liability. The Ninth Circuit's ruling under review here imposes such burdens and the risk of liability, placing school districts in an untenable legal position while attempting to meet their responsibilities under child abuse laws. *Amici* submit this brief to help inform the Court of the concerns of all public school districts that will be directly affected by the Court's decision in this case.

## SUMMARY OF THE ARGUMENT

Although the Ninth Circuit issued no ruling as to the constitutionality of the school district's actions in this case, its decision, if affirmed by this Court, will have a profound effect on the manner in which school districts interact with child protective services workers and law enforcement officers who seek to interview suspected child abuse victims at school. The Ninth Circuit's determination that the interview in this case constituted a seizure to which the Fourth Amendment's probable cause requirement applies raises substantial cause for concern for public school officials for several reasons. The decision leaves open the question of whether the school counselor's actions, which are typical of the role school officials often play in child abuse investigations, would similarly implicate Fourth Amendment concerns. *Amici* urge the Court to declare that where a school official merely grants access to the suspected abuse victim and undertakes no other action with respect to the interview, these actions do not constitute a seizure by the school official. The decision also forces school districts into a position in conflict with many state statutes, including child abuse laws, that encourage or mandate as a matter of public policy that school officials act in manner to protect the health, safety and welfare of the children who are entrusted to them. Finally, it imposes on school officials the legally untenable responsibility to act as a gatekeeper required to assess the constitutionality of the proposed actions of employees of other government agencies charged with investigating suspected child abuse. This responsibility presents a difficult dilemma for school districts: either allow the

interview and risk a lawsuit asserting a constitutional violation or deny the interview in contravention of state statutes and risk permitting the continued abuse of the child. *Amici* urge the Court to rule in a manner providing clear guidance that eliminates the conflict with state laws and removes the legally imposed dilemma that school officials face under the Ninth Circuit's ruling.

## STATEMENT OF THE CASE

The facts of this case are representative of a scene repeated daily in schools all across the country.

Bob Camreta, a social services caseworker, and James Alford, a deputy sheriff, arrived at Elk Meadow Elementary School to interview S.G., age nine, in private. *Greene v. Camreta*, 588 F.3d 1011, 1016-17 (9th Cir. 2009). The purpose of the interview was to check on S.G. and her younger sister after their father had recently been arrested and charged, although released on bail, on suspicion of sexually abusing another child. *Id.* at 1016. Camreta and Alford had neither a warrant nor a court order to interview S.G. *Id.* at 1017.

Terry Friesen was a guidance counselor and employee of the Bend LaPine School District (School District). *Id.* She went to S.G.'s classroom and told her that someone had come to the school to talk to her. *Id.* Friesen then showed S.G. to the room where Camreta and Alford were waiting and left. *Id.* Camreta interviewed S.G. for close to two hours while Alford observed. *Id.* The interview confirmed Camreta's suspicion that the father had victimized S.G. too. *Id.* at 1018.

Camreta and Alford, however, were not the only defendants to this action, alleging violation of the Fourth Amendment. *Id.* at 1020 n. 4. The complaint also alleged that the School District and Friesen participated in the "seizure" of S.G. *Id.* But S.G. and her mother failed to preserve their claims against Friesen and the School District on appeal, and so the Ninth Circuit deemed the claims waived. *Id.*

*Amici* nevertheless urge the Court to remain cognizant of the considerable impact that this case will have for thousands of school districts, and even more school officials. For every request by a caseworker and/or law enforcement officer to interview a potential child abuse victim at school, there will be a school official required to make a decision about how to handle it.

## ARGUMENT

### I. MERELY ALLOWING ACCESS TO A STUDENT WHO IS A SUSPECTED VICTIM OF CHILD ABUSE DOES NOT CONSTITUTE A SEIZURE BY SCHOOL OFFICIALS.

The threshold inquiry in this case is whether S.G. was "seized" within the meaning of the Fourth Amendment. "A person is 'seized' only when, by means of physical force or a show of authority, [her] freedom of movement is restrained." *United States v. Mendenhall*, 446 U.S. 544, 553 (1980). This concept is best known and most frequently applied in the law enforcement context, where this Court has repeatedly concluded that not all contact between police and

citizens necessarily involves seizures of persons. *See, e.g., Terry v. Ohio*, 392 U.S. 1, 19 n. 16 (1968).

This Court has also emphasized that whether a seizure has occurred must be assessed "in view of all of the circumstances surrounding the incident." *Mendenhall*, 446 U.S. at 554. At least one key factor is the setting of the alleged seizure. For example, "when people are at work their freedom to move about has been meaningfully restricted, not by the actions of law enforcement officials, but by the workers' voluntary obligations to their employers." *INS v. Delgado*, 466 U.S. 210, 218 (1984). Likewise, a passenger on a bus set to depart may legitimately feel confined, "but this [is] the result of his decision to take the bus; it says nothing about whether or not the police conduct at issue was coercive." *Florida v. Bostick*, 501 U.S. 429, 436 (1991).

Perhaps no setting is quite as unique as the school environment. Indeed, the Court has already determined that "Fourth Amendment rights, no less than First and Fourteenth Amendment rights, are different in public schools than elsewhere," owing to the schools' custodial and tutelary responsibility for students. *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 656 (1995). At school, students lack the right to come and go at will and are subject to "a degree of supervision and control that could not be exercised over free adults." *Id.* at 654-55. On this rationale, the Tenth Circuit recently adopted the following standard: "To qualify as a seizure in the school context, the limitation on the student's freedom of movement must significantly exceed that inherent in everyday, compulsory attendance." *Couture v. Board of Educ. of Albuquerque Pub. Schs.*, 535 F.3d 1243, 1251 (10th Cir. 2008).

While the Ninth Circuit concluded that the interview conducted by the child protective services worker in the presence of a police officer constituted a "seizure," it did not have occasion to rule on the constitutionality of the school district official's actions. It did note that neither of the defendants occupied such a role. *Camreta*, 588 F.3d at 1024. Moreover, the interview was not conducted at the School District's request or for the purpose of maintaining discipline in the classroom or on school grounds. *Id.* at 1024-25. The role of the counselor was limited to informing the student that someone had come to the school to talk to her and then showing her to the room where the interview took place. *Id.* at 1017. The school counselor had absolutely no involvement in the interview, either in questioning the student or even sitting in as an observer. *Id.*

If these facts alone constitute a "seizure" of the student, then *amici* are hard pressed to imagine much, if any, contact between a school official and student that would not also constitute a seizure and thereby trigger Fourth Amendment scrutiny. This result is contrary to the Court's long line of cases in the law enforcement context, declining to hold that all contact between police and citizens necessarily involves seizures of persons. So it is particularly ill-suited to the school environment, which "requires close supervision of school children, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult." *New Jersey v. T.L.O.*, 469 U.S. 325, 339 (1985).

Students generally are not at liberty to leave the school campus, or even their assigned classroom, as they please, to say nothing of such common practices as keeping a student from recess to complete

an unfinished assignment, sending a student to the principal's office, or giving a student after school detention. Furthermore, "no one wishes to substitute courts for school boards, or to turn the judge's chambers into the principal's office." *Morse v. Frederick*, 551 U.S. 393, 428 (2007) (Breyer, J., concurring in the judgment and dissenting in part).

To the extent that a student reasonably believed to be a victim of child abuse is interviewed by law enforcement or child protective service workers is seized at all, school district and school personnel who make the child available for such an interview at school are not implicated. *Amici* urge this Court to so find.

## II. IMPLICATING SCHOOL DISTRICTS AND OFFICIALS IN SUCH A "SEIZURE" PLACES THEM IN AN UNTENABLE POSITION.

*Amici* generally oppose any disruption of or interference with the school day and environment, especially when it involves removing students from the classroom and learning activities. *Amici* do, however, regard student safety and welfare as a high priority. As part of their obligations in promoting student safety and welfare, school personnel well understand their responsibility as mandated reporters under the child abuse laws in every state.[2]

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[2] U.S. Department of Health and Human Services Administration for Children and Families, *Mandatory Reporters of Child Abuse and Neglect: Summary of State Laws* (2010), *available at* http://www.childwelfare.gov/systemwide/laws_policies/statute/manda.cfm

In fact, school personnel are often the first people to notice that a child may be the victim of abuse or neglect. School employees who fail to report child abuse can be charged with a crime, fined, and lose their jobs. For these reasons and out of a sense of moral obligation, school district employees take seriously their responsibility to notice and report suspected child abuse. Given this critical role in the process of identifying suspected abuse and minimizing its negative effect upon children, school officials understand why caseworkers and law enforcement officers might seek access to potential abuse victims at school. School is a familiar environment for students and may be one of the few safe locations for an abuse victim, particularly if the victim resides with the abuser. In addition, given their role as mandated reporters, turning away a child abuse investigator would, in some respects, seem counterintuitive to many school employees. After all, these are the people school employees are required to notify if they suspect a child has been the victim of abuse.

A number of states already recognize the benefits of interviewing potential abuse victims at school. States like Florida, Oregon, and South Carolina, for example, mention school as a possible and even preferred interview site. *See, e.g.*, Fla. Stat. Ann. § 39-301(19) (West 2010); Or. Rev. Stat. Ann. § 419B.045 (West 2010); S.C. Code Ann. § 63-7-920(C) (2010). Still more states give caseworkers and law enforcement officers the right to interview children at school while necessarily forbidding school officials from denying such access. *See, e.g.,* Cal. Penal Code § 11174.3(a) (West 2010); Iowa Code Ann. § 232.71B(6) (West 2010); Kan. Stat. Ann. § 38-2226(g) (West

2010); La. Child. Code Ann. art. 612(A)(2) (2010); Me. Rev. Stat. Ann. tit. 22, § 4021(3) (2010); N.H. Rev. Stat. Ann. § 169-C:38, IV (2010).

By making schools a preferred location for interviewing children suspected of being abused or by granting caseworkers and law enforcement officers the right to interview these children at school, these statutes presume that there are no Fourth Amendment implications to be considered when such interviews occur. This presumption is apparent given that none of these state statutes require case workers or police to have a warrant or court order before gaining access to students at school for interviews; nor do they refer to any responsibility on the part of school officials to assess the constitutionality of such an interview before allowing it to take place. Some, as noted, affirmatively prohibit school officials from denying law enforcement officers and child protective service workers access to children.[3] If the Ninth Circuit's ruling is correct, then in some cases, these laws would be instructing school officials to allow unconstitutional seizures by other government agencies to occur on school grounds, calling into question the validity of these provisions.

If the presumption underlying these statutes is incorrect and school districts and officials are potentially implicated in a "seizure" merely by allowing access to a student, then they are cast in the very uneasy and ultimately untenable role of

[3] *See* Kan. Atty. Gen. Op. No. 05-10, 2005 WL 751938 (Kan. A.G. 2005) (indicating that under state law school official could refuse to permit a law enforcement officer to interview a pupil on school property in connection with a criminal investigation where the pupil may be a potential witness but could not do so if the investigation involved child abuse or neglect).

gatekeeper. To avoid potential Fourth Amendment liability, school officials will have to satisfy themselves that the caseworker and/or police officer have sufficient legal basis and justification for the "seizure" before allowing access, even though no such responsibility is contemplated by the statutes that make schools the preferred location for such interviews to take place. Even assuming that a school official is able to make the determination that sufficient legal basis exists to allow the interview, this does not insulate the official or the school district from a lawsuit brought by parents asserting that the determination was in error and consequently the interview was an unconstitutional seizure.

The very role of gatekeeper into which the Ninth Circuit's opinion casts school officials will in some cases place them in direct defiance of state laws that forbid school officials from denying access to children at school. And the role is certainly not without its complications for school officials in the remaining states either. School officials understand school rules, and may even have a "layman's familiarity with the types of crimes that occur frequently in our schools." *T.L.O.*, 469 U.S. at 350 n.1 (Powell, J., concurring). They are not, however, police officers and "have no law enforcement responsibility or indeed any obligation to be familiar with the criminal laws." *Id.* Moreover, "[a] teacher has neither the training nor the day-to-day experience in the complexities of probable cause that a law enforcement officer possesses, and is ill-equipped to make a quick judgment about the existence of probable cause." *Id.* at 353 (Blackmun, J., concurring). While the presentation of a warrant or court order might relieve that burden for some school

officials, there are others who would feel uncomfortable even having to make an assessment as to the validity of those documents. Certainly, very few, if any school officials would, in the absence of such documents, feel qualified to make a determination as to the existence of exigent circumstances that might form the asserted basis for the request to interview the student. Even if some less stringent Fourth Amendment standard, such as reasonable suspicion, applied to such interviews, school officials would be ill-equipped to make such determinations with respect to the actions of outside government agencies. It is true that many school officials have the necessary understanding, experience and familiarity with their students and school communities to determine whether reasonable suspicion exists as to prohibited conduct by students on school grounds, but that is a far cry from having to evaluate whether that standard is met by the evidence presented by a child protective services worker or police officer to justify a request to interview a child at school.

Even assuming that school officials received the right training and experience to make such assessments of constitutionality under the Fourth Amendment, school officials would have to rely on the caseworker and/or police officers to supply the necessary information since the school official making the determination would in most instances have no independent knowledge of the underlying facts surrounding the suspected abuse. But various states' laws deem this information strictly confidential and may prohibit such an exchange. *See, e.g.*, Ark. Code Ann. § 12-18-501 (2010); Cal. Penal Code § 11167.5 (West 201); Conn. Gen. Stat. Ann. § 17a-101k (West

2010); Ga. Code Ann. § 49-5-44 (West 2010); Haw. Rev. Stat. § 350-1.4 (2010); Iowa Code Ann. § 235A.17 (West 2010); La. Child. Code Ann. art. 616 (2010); Neb. Rev. Stat. Ann. § 28-725 (2010); N.J. Stat. Ann. § 9:6-8.10a (West 2010); Pa. Cons. Stat. Ann. tit. 23, § 6339 (2010); R.I. Gen. Laws § 42-72-8 (2010); S.C. Code Ann. § 63-7-1990 (2010); S.D. Codified Laws § 26-8A-13 (2010); W. Va. Code § 15-13-5 (2010); Wyo. Stat. Ann. § 14-3-214 (2010). Even in the absence of a confidentiality law, the caseworker and/or police officer may understandably be reluctant or unwilling to share much, if any, information or sources in order to preserve the integrity of a still developing investigation.

The free sharing of information, however, does not necessarily resolve all concerns. In coming to the school and requesting to interview a student, the caseworker and/or police officer presumably believe that there is sufficient legal basis and justification for the "seizure." Under the Ninth Circuit's ruling, the presentation of a warrant or court order might give a school official at least some confidence in allowing the interview. But in the absence of such legal assurances, a school official who remains unsure or disagrees that there is sufficient legal basis and justification should deny the request, both to protect the student's constitutional rights and to limit the school official's potential liability. This creates a real dilemma for the typical school official, who has an engrained concern for student safety and welfare and may wish to cooperate with other entities he or she perceives to share this concern; yet by acting in a prudent and responsible manner by denying the interview that he or she believes is unconstitutional, ironically the school official risks becoming a

scapegoat if the student is in fact being abused and continues to be victimized.

In addition, the school official who resists providing access to the child also puts himself, perhaps reluctantly, at odds with the caseworker and/or police officer, and thereby opens himself to exposure of another kind—criminal prosecution. Most states have laws that criminalize conduct viewed as delaying, obstructing, or interfering with an investigation. *See, e.g.*, Ala. Code § 13A-10-2 (2010); Ark. Code Ann. § 5-54-102 (West 2010); Cal. Penal Code § 148 (West 2010); Colo. Rev. Stat. § 18-8-104 (West 2010); Conn. Gen. Stat. Ann. § 53a-167a (West 2010); Fla. Stat. Ann. § 843.06 (West 2010); Ga. Code Ann. § 16-10-24 (West 2010); Idaho Code Ann. § 18-705 (2010); Mass. Gen. Laws Ann. ch. 268, § 24 (2010); Minn. Stat. Ann. § 609.50 (West 2010); Mont. Code Ann. § 45-7-302 (2010); Neb. Rev. Stat. Ann. § 28-906 (2010); N.C. Gen. Stat. Ann. § 14-223 (West 2010); Ohio Rev. Code Ann. § 2921.31 (West 2010); Okla. Stat. Ann. tit. 21, § 540 (2010); Or. Rev. Stat. Ann. § 162.247 (West 2010); R.I. Gen. Laws § 11-32-1 (2010); S.D. Codified Laws § 22-11-6 (2010); Tenn. Code Ann. § 39-16-602 (West 2010); Tex. Penal Code Ann. § 38.15 (West 2010); Utah Code Ann. § 76-8-301 (West 2010); Vt. Stat. Ann. tit. 13, § 3001 (2010); Wash. Rev. Code Ann. § 9A.76.020 (2010); W. Va. Code § 61-5-14 (2010); Wis. Stat. Ann. § 946.41 (West 2010); Wyo. Stat. Ann. § 6-5-204 (2010). So in denying a caseworker and/or police officer access to a student, a school official runs the real risk of criminal prosecution.

Moreover, if school districts and officials are implicated in the "seizure," they likely have an obligation to monitor its scope for reasonableness. For example, if an interview is on the precipice of going too long (an inherently subjective determination), then the school official should intervene and call an end to the questioning, again both to protect the student's constitutional rights and to limit the school official's potential liability. But this, too, is a recipe for confrontation with the caseworker and/or police officer with the same or greater risk of criminal prosecution for appearing to delay, obstruct, or interfere with the investigation.

## CONCLUSION

School officials who, often in compliance with state statutes, grant the requests of police officers and child protective services workers to interview a child who is suspected of being abused have not participated in any "seizure" of that child. To rule otherwise would be contrary to public policy that encourages schools to act in a manner that protects the safety and welfare of the children in their care and would place school districts in an untenable legal position. For these reasons, *Amici* request the Court to consider carefully the legal standards that should apply to interviews of suspected child abuse victims

at school and to provide the clarity necessary so that schools may carry out their responsibilities without undue concern that their actions are placing themselves or these children at further risk.

Respectfully submitted,

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December 17, 2010