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## Threading the Cyber-Needle: Protecting Children by Banning Smartphones in School While Still Embracing Technology

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**Threading the Cyber-Needle: Protecting Children by  
Banning Smartphones in School While Still Embracing  
Technology**

*Mike Adams\**

*Code Section Affected*

Education Code § 48901.7 (new).

AB 272 (Muratsuchi); 2019 STAT. CH. 42.

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## I. INTRODUCTION

“If you’re going to do it, just do it,” and he hung up the phone.<sup>1</sup> The boy immediately regretted the statement.<sup>2</sup> He tried to call and text-message the girl he had been speaking to.<sup>3</sup> He got no response.<sup>4</sup> Gabriella’s cousin found her dead, hanging by a dog leash in her closet on January 10, 2018.<sup>5</sup> Police officers arrested two twelve-year-old suspects for cyberbullying Gabriella.<sup>6</sup> Gabriella’s mother “blames parents and the school system” for the bullying that led to her daughter’s death.<sup>7</sup> Around one in three students in the United States say they are cyberbullied, and around 12% admit they cyberbully others.<sup>8</sup> Cyberbullying is increasing, and school officials see it as a serious problem.<sup>9</sup> Even the federal government has felt the need to confront this challenge.<sup>10</sup> Smartphones are one of the main conduits for cyberbullying among children.<sup>11</sup>

Cyberbullying is not the only problem smartphones bring to schools.<sup>12</sup> Studies have linked minors’ use of social media, enabled in school by smartphones, to

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1. Jason Dearen, *Two Twelve-Year-Olds Arrested for Cyberbullying Before Girl’s Suicide*, NEWS 5 CLEVELAND (Jan. 25, 2018, 3:50 PM), <https://www.news5cleveland.com/news/two-12-year-olds-arrested-for-cyberbullying-before-girls-suicide> [<https://perma.cc/H54U-5QHL>] (on file with *The University of the Pacific Law Review*).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. See David J. Hvidston et al., *Cyberbullying: Implications for Principal Leadership*, 97 NASSP BULLETIN 297, 297–98 (2013) (“Cyberbullying is on the rise in schools and managing this growing problem has become a major challenge for school leaders.”).

10. See U.S. Dep’t of Health and Human Serv., *Prevent Cyberbullying*, STOPBULLYING.GOV, <https://www.stopbullying.gov/cyberbullying/prevention/index.html> (last updated Sept. 8, 2017) (on file with *The University of the Pacific Law Review*) (“A federal government website managed by the U.S. Department of Health and Human Services.”).

11. See Hvidston, *supra* note 9, at 311 (warning about the legal implications for school leaders because of smartphone use off campus in cyberbullying).

12. See Lulu Garcia-Navarro, *The Risk of Teen Depression and Suicide Is Linked to Smartphone Use, Study Says*, NPR (Dec. 17, 2017), <https://www.npr.org/2017/12/17/571443683/the-call-in-teens-and-depression> [<https://perma.cc/ZZ3X-F6U8>] (on file with *The University of the Pacific Law Review*) (interviewing a noted author on the dangers of excessive smartphone use and the link to depression).

depression and an increased risk of suicide.<sup>13</sup> Distractions smartphones cause also directly interfere with a school's main purpose—education.<sup>14</sup> Studies show that smartphone use in school correlates to reduced educational success.<sup>15</sup> Of course, students can also use smartphones to cheat.<sup>16</sup>

On the other hand, many educators have found benefits from using smartphones in their lessons.<sup>17</sup> Additionally, some disabled students find that smartphones allow them to participate more in the classroom.<sup>18</sup> Finally, there is the all-too-real role that smartphones play in alerting authorities when campus dangers—such as school shootings—occur.<sup>19</sup>

Schools could simply ban smartphones from campus.<sup>20</sup> A smartphone ban would address the problem Gabriella Green's mother sees.<sup>21</sup> Section IV.A will discuss how preventing teen suicide provides a strong motivation to act, and banning smartphones would also address other issues important to schools.<sup>22</sup> For example, section IV.B will describe how reducing students' screen time may reverse worrying trends in educational success and psychological health.<sup>23</sup> Section IV.C will warn how bans can be unnecessarily broad and prohibit beneficial uses of smartphones.<sup>24</sup> Part V will conclude that Chapter 42 achieves a constitutional

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13. *See id.*

14. *See* Louis-Philippe Beland & Richard Murphy, *Ill Communication: Technology, Distraction & Student Performance*, 41 *LABOUR ECON.* 61, 70 (2016) (on file with *The University of the Pacific Law Review*) (“highly multipurpose technology, such as mobile phones, can have a negative impact on productivity through distraction.”).

15. *See id.* at 70 (comparing schools with phone bans to their prior student performance and concluding that students did significantly better after the ban).

16. Jake Peterson, *12 Creative Ways Your Smartphone Can Help You Cheat on a Test*, GADGET HACKS (July 26, 2018, 5:14 PM), <https://smartphones.gadgethacks.com/how-to/12-creative-ways-your-smartphone-can-help-you-cheat-test-0186218/> (on file with *The University of the Pacific Law Review*).

17. *See* 34 *Smart Ideas for Using Smartphones in the Classroom*, TEACHTHOUGHT (Jan. 16, 2019), <https://www.teachthought.com/technology/36-smart-ideas-for-using-smartphones-in-the-classroom/> (on file with *The University of the Pacific Law Review*) (describing a variety of innovative lesson plans that make deliberate use of smartphones).

18. *See* Fage et al., *An Emotion Regulation App for School Inclusion of Children with ASD: Design Principles and Evaluation*, 131 *COMPUTERS & EDUC.* 1, 17 (2019) (on file with *The University of the Pacific Law Review*) (presenting a smartphone app that allows students with Autism Spectrum Disorder to better regulate their emotions and thereby increase their ability to participate in a mainstream classroom).

19. *See* Leslie Meredith, *Cellphones Are Changing School Emergency Plans*, SEEKER (Dec. 16, 2012, 10:26 AM), <https://www.seeker.com/cellphones-are-changing-school-emergency-plans-1766312503.html> (on file with *The University of the Pacific Law Review*) (describing a variety of ways that cellphones can be useful in a crisis like a school shooting).

20. *See, e.g.*, RIDGECREST, CAL., SIERRA SANDS UNIFIED SCH. DIST. BD. POL'Y § 5131(c) (2012) (“Students in grades K-5 may not possess or use electronic communication devices except at the discretion of the principal.”).

21. Jason Dearen, *Two Twelve-Year-Olds Arrested for Cyberbullying Before Girl's Suicide*, NEWS 5 CLEVELAND (Jan. 25, 2018, 3:50 PM), <https://www.news5cleveland.com/news/two-12-year-olds-arrested-for-cyberbullying-before-girls-suicide> [<https://perma.cc/H54U-5QHL>] (on file with *The University of the Pacific Law Review*).

22. *Infra* Section IV.A.

23. *Infra* Section IV.B.

24. *Infra* Section IV.C.

balance between protecting students like Gabriella and preserving positive uses of smartphones.<sup>25</sup>

## II. LEGAL BACKGROUND

Schools regulating smartphones have encountered a variety of legal challenges based on three provisions of the U.S. Constitution.<sup>26</sup> Schools attempting to regulate what students say on smartphones encounter First Amendment free speech challenges.<sup>27</sup> Schools banning smartphones face Fourteenth Amendment liberty clause and Fourth Amendment unreasonable search and seizure challenges.<sup>28</sup>

A school's ability to regulate student speech is a particularly murky part of the law.<sup>29</sup> While courts agree that schools can restrict students' speech, courts disagree on how to limit the control schools have over student speech.<sup>30</sup> The Supreme Court has not resolved this split.<sup>31</sup> One way around this gray area is to declare cellphones contraband.<sup>32</sup> When schools declare cellphones contraband, the legal challenges shift from the First Amendment to the Fourth and Fourteenth Amendments.<sup>33</sup>

Section A explains the existing law regarding a school's ability to regulate student speech and the unresolved uncertainties in the law regarding smartphones restrictions.<sup>34</sup> Section B describes how schools can declare smartphones as contraband to avoid free speech issues.<sup>35</sup> Section C outlines the history of California's laws regarding cellphones in schools and schools' reaction to the

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25. *Infra* Part V.

26. See Charles J. Russo & Ralph D. Mawdsley, *Constitutional Issues Surrounding Student Possession and Use of Cell Phones in School*, 280 EDUC. L. REP. 1, 9–13 (2012) (on file with *The University of the Pacific Law Review*) (analyzing a variety of court cases pertaining to constitutional challenges to school policies on cellphones).

27. See Jennifer Butwin, Note, *Children Are Crying and Dying While the Supreme Court is Hiding: Why Public Schools Should Have Broad Authority to Regulate Off-Campus Bullying "Speech"*, 87 FORDHAM L. REV. 671, 677 (2018) (analyzing a variety of free speech issues related to school's regulation of student speech).

28. See Russo & Mawdsley, *supra* note 26, at 9, 13 (addressing the jurisprudence of Fourth Amendment and Fourteenth Amendment challenges to school seizure of phones).

29. See Nicholas J McGuire, Comment, *Dialing It Back: Why Courts Should Rethink Students' Privacy and Speech Rights as Cell Phone Communications Erode the 'Schoolhouse Gate'*, 17 DUKE L. & TECH. REV. 1, 25 (2018) ("As the splits among the courts of appeals increase, so too will the pressure on the Supreme Court to resolve the problem of students' First Amendment speech rights in the age of cell phones.").

30. See Butwin, *supra* note 27, at 677 ("Part II analyzes how lower courts have approached this issue and describes the circuit split regarding the proper test for determining whether a school can discipline a student for off-campus speech.").

31. See *id.* at 692, 93 (suggesting a way that the Supreme Court could resolve the split in the circuit courts).

32. See Ralph D. Mawdsley, *Legal Issues Regarding Student Cell Phones in Schools*, 301 EDUC. L. REP. 1, 5 (2014) (on file with *The University of the Pacific Law Review*) ("The limited case law suggests that courts are going to accord school boards and school administrators a broad swathe of permission in determining whether cell phones are going to be considered to be contraband.").

33. See Russo & Mawdsley, *supra* note 26, at 9 (arguing that the Fourth Amendment and the Fourteenth Amendment are the main challenges to schools' prohibition or restriction of phones).

34. *Infra* Section II.A.

35. *Infra* Section II.B.

laws.<sup>36</sup>

### A. First Amendment Issues

The seminal case regarding student free speech is *Tinker v. Des Moines Independent Community School District*.<sup>37</sup> The court in *Tinker* established a two-part test to help courts determine when a school may regulate student speech.<sup>38</sup> Under *Tinker* a school may regulate student speech if the school has reason to believe the speech will either “substantially interfere with the work of the school or impinge upon the rights of other students.”<sup>39</sup>

*Tinker* only concerned on-campus student speech, but students’ use of smartphones also involves off-campus speech.<sup>40</sup> Unfortunately, the Supreme Court has not addressed off-campus student speech, and the lower courts have developed different approaches.<sup>41</sup> While some circuits apply a test involving the foreseeability of off-campus speech reaching the school, the Ninth Circuit has applied a more stringent standard.<sup>42</sup> The Ninth Circuit’s test also looks to the threatening nature of the speech itself and how likely it is to infringe on the rights of others.<sup>43</sup>

### B. Avoiding First Amendment Issues by Declaring Cellphones Contraband

Attempts by schools to regulate student cellphone speech face legal uncertainty.<sup>44</sup> The school would be on firmer legal footing by simply prohibiting students from using or possessing cellphones on campus.<sup>45</sup> Few cases have

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36. *Infra* Section II.C.

37. 393 U.S. 503 (1969); see Jennifer Butwin, Note, *Children Are Crying and Dying While the Supreme Court is Hiding: Why Public Schools Should Have Broad Authority to Regulate Off-Campus Bullying “Speech”*, 87 *FORDHAM L. REV.* 671, 682 (2018) (describing *Tinker* as the first of four landmark cases that outlined schools’ ability to limit student free speech).

38. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969); see Butwin, *supra* note 27, at 683 (describing the *Tinker* two-part test).

39. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. at 509; Butwin, *supra* note 27, at 683.

40. See Nicholas J McGuire, Comment, *Dialing It Back: Why Courts Should Rethink Students’ Privacy and Speech Rights as Cell Phone Communications Erode the ‘Schoolhouse Gate’*, 17 *DUKE L. & TECH. REV.* 1, 4 (2018) (“the popularity of cell phones has spawned a growing and inconsistent body of law regarding First Amendment protection of off-campus student speech”).

41. See *id.* at 25 (“As the splits among the courts of appeals increase, so too will the pressure on the Supreme Court to resolve the problem of students’ First Amendment speech rights in the age of cell phones.”).

42. *Wynar v. Douglas Cty. Sch. Dist.*, 728 F.3d 1062, 1069–71 (9th Cir. 2013) (interpreting *Tinker* in a way that has more requirements than most circuit courts demand).

43. See McGuire, *supra* note 29, at 11 (describing various different circuit court approaches to schools regulating off-campus speech).

44. See Butwin, *supra* note 27, at 677, 700-01 (describing the split in the circuit courts in student free speech jurisprudence and the absence of Supreme Court guidance).

45. See Charles J. Russo & Ralph D. Mawdsley, *Constitutional Issues Surrounding Student Possession and Use of Cell Phones in School*, 280 *EDUC. L. REP.* 1, 13 (2012) (on file with *The University of the Pacific Law Review*) (emphasizing that when schools treat phones as contraband every court has deferred to the school except

challenged a school's policy regarding possession or use of cellphones.<sup>46</sup>

Fourteenth Amendment challenges to cellphone bans are based on the Liberty Clause, which gives parents the right to direct their children's education.<sup>47</sup> This type of challenge tends to fail because the right only extends to choosing the venue—not the content—of the child's education.<sup>48</sup> For example, parents may send their children to private instead of public school,<sup>49</sup> but parents may not require public school curriculum to conform to their religious beliefs.<sup>50</sup> Fourth Amendment “search and seizure” strategies have been more successful at challenging what a school may do with a cellphone after school officials have seized it.<sup>51</sup> However, Fourth Amendment strategies have not succeeded at challenging the cellphone's status as contraband in the first place.<sup>52</sup>

*C. While Schools Already Can and Do Ban Cellphone Use, the Trend is Towards Reasonable Exceptions*

California law already allows school districts to regulate possession or use of “electronic signaling devices.”<sup>53</sup> California law previously prohibited any student from having a signaling device in school, but the Legislature made two changes in 2002.<sup>54</sup> First, individual school districts could decide for themselves how to regulate possession and use of electronic signaling devices.<sup>55</sup> Second, the Legislature created a mandatory exception to any ban or restriction on cellphones

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for one egregious counterexample).

46. See Ralph D. Mawdsley, *Legal Issues Regarding Student Cell Phones in Schools*, 301 ED. L. REP. 1, 3 (2014) (“Thus far, relatively few cases exist litigating issues related to possession or use of cell phones on school property.”).

47. See Russo & Mawdsley, *supra* note 26, at 3.

48. See *id.* at 11 (on file with *The University of the Pacific Law Review*) (“Thus, while parents have protected rights under *Meyer*, *Pierce* and *Yoder* about where their children are educated, their interests do not extend to inside the schools”).

49. *Pierce v. Soc’y of the Sisters of the Holy Name of Jesus and Mary*, 268 U.S. 510, 535 (1925) (holding that a law that requires students to attend public school violates the Fourteenth Amendment).

50. *Mozert v. Hawkins Cty. Bd. Of Educ.*, 827 F.2d 1058, 1064, 1070 (6th Cir. 1987) (holding that parents could not require public school to teach that all religions other than the parents’ were in error).

51. See *Klump v. Nazareth Area Sch. Dist.*, 425 F. Supp. 2d 622, 641 (E.D. Pa. 2006) (holding school was not justified in searching phone after seizure); Russo & Mawdsley, *supra* note 26, at 5 (describing a case where the court resolved a Fourth Amendment challenge to a seizure and search of a student’s phone in favor of the student).

52. See *Klump v. Nazareth Area Sch. Dist.*, 425 F. Supp. 2d at 640; Russo & Mawdsley, *supra* note 26, at 10 (arguing that the suspicion standard is very low for the initial seizure of a phone by a school and the real issue is what sort of search the school conducts on the seized phone).

53. CAL. EDUC. CODE § 48901.5 (West 2003).

54. OAKSTONE LEGAL & BUS. PUBL’G, INC., *California Enacts Expedited Credentialing, Permits Student Electronic Signaling*, 15 No. 19 LEGAL NOTES EDUC. 12 (2002) (on file with *The University of the Pacific Law Review*).

55. CAL. EDUC. CODE § 48901.5(a) (West 2003) (providing no definition of the term “electronic signaling devices”).

to allow for a doctor's orders.<sup>56</sup> Some schools exercised their discretion under this law and limited cellphone use on campus.<sup>57</sup> Other schools adopted policies banning students from possessing cellphones on campus entirely.<sup>58</sup>

### III. CHAPTER 42

Chapter 42 expands the California State Education Code regarding a school's ability to regulate the possession and use of smartphones.<sup>59</sup> First, the law explicitly allows schools to institute limitations or bans on smartphone use at school or school-related activities, like field trips.<sup>60</sup> Chapter 42 allows county offices of education and charter schools—not just school districts—to limit or ban smartphone use.<sup>61</sup>

Second, Chapter 42 creates four mandatory exceptions where school policies must allow a student to use a smartphone.<sup>62</sup> Two of these exceptions relate to a student's needs.<sup>63</sup> The first exception preserves a key provision of the prior law.<sup>64</sup> It requires any school policy to allow a student to have a smartphone for doctor-authorized health reasons.<sup>65</sup> Similarly, the second exception applies when a student has special educational needs warranting the use of a smartphone.<sup>66</sup> The third exception allows a teacher or administrator to grant permission for a student to use a smartphone.<sup>67</sup> The remaining exception allows a student to use a smartphone if there is an emergency or a perceived threat of danger.<sup>68</sup>

### IV. ANALYSIS

While Chapter 42 allows schools to regulate or ban smartphones to help students, there are procedural and constitutional problems school leaders should avoid.<sup>69</sup> Section A explains the scope of the problems that smartphones create

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56. CAL. EDUC. CODE § 48901.5(b) (West 2003).

57. *See, e.g.*, ANAHEIM UNION HIGH SCH. DIST., Board Policy 8601 (2003) (“Such devices shall be deactivated and their use strictly prohibited on campus during the regular instructional school day except . . .”); MODESTO CITY SCH., Board Policy 5138 (2003).

58. *See, e.g.*, ARMA J. SHULL ELEMENTARY SCH., Student Handbook, at 12 (2019) (prohibiting electronic communication devices on campus).

59. CAL. EDUC. CODE § 48901.7 (enacted by Chapter 42).

60. CAL. EDUC. CODE § 48901.7(a) (enacted by Chapter 42).

61. *Id.*

62. CAL. EDUC. CODE § 48901.7(b) (enacted by Chapter 42).

63. CAL. EDUC. CODE §§ 48901.7(b)(3)–(4) (enacted by Chapter 42).

64. CAL. EDUC. CODE § 48901.5(b) (West 2003) (“No pupil shall be prohibited from possessing or using an electronic signaling device that is determined by a licensed physician and surgeon to be essential for the health of the pupil and use of which is limited to purposes related to the health of the pupil.”).

65. CAL. EDUC. CODE § 48901.7(b)(3) (enacted by Chapter 42).

66. CAL. EDUC. CODE § 48901.7(b)(4) (enacted by Chapter 42).

67. CAL. EDUC. CODE § 48901.7(b)(2) (enacted by Chapter 42).

68. CAL. EDUC. CODE § 48901.7(b)(1) (enacted by Chapter 42).

69. *Infra* Sections IV.A–E.

generally and in a school.<sup>70</sup> Section B describes how schools can use Chapter 42 to address those problems.<sup>71</sup> Section C explains exceptions that Chapter 42 establishes and the value of those exceptions.<sup>72</sup> Section D considers possible constitutional challenges that Chapter 42 might encounter.<sup>73</sup> Finally, Section E gives school leaders suggestions for using the opportunity Chapter 42 creates while avoiding potential pitfalls.<sup>74</sup>

### *A. Smartphones Create Real Problems*

Smartphone use in a school setting generally creates three types of problems.<sup>75</sup> Subsection 1 details the problem of cyberbullying that smartphones bring into the school.<sup>76</sup> Subsection 2 describes how excessive screen time contributes to psychological harm.<sup>77</sup> Subsection 3 explains smartphones' effect on educational success—a direct, school-related problem.<sup>78</sup>

#### *1. Cyberbullying*

In the past, a bully's harassment of a fellow student ended at the end of the school day, but now—with the rise of cyberbullying—there is no sanctuary.<sup>79</sup> Students could block communication to potentially escape cyberbullies; unfortunately, cyberbullying can also operate through third party communications.<sup>80</sup> Online interactions are supplanting in-person interactions, which may increase many victims' exposure to cyberbullying.<sup>81</sup> Today, cyberbullying is common, affecting roughly one out of every four middle and high school students.<sup>82</sup> Bullying, of any kind, more than doubles the chances a child or

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70. *Infra* Section IV.A.

71. *Infra* Section IV.B.

72. *Infra* Section IV.C.

73. *Infra* Section IV.D.

74. *Infra* Section IV.E.

75. *Infra* Sections IV.A.1–3.

76. *Infra* Section IV.A.1.

77. *Infra* Section IV.A.2.

78. *Infra* Section IV.A.3.

79. See Jennifer Butwin, Note, *Children Are Crying and Dying While the Supreme Court is Hiding: Why Public Schools Should Have Broad Authority to Regulate Off-Campus Bullying "Speech"*, 87 *FORDHAM L. REV.* 671, 676 (2018) ("If someone is picking on you in the school yard, you can go home," said the mother of a thirteen-year-old boy who committed suicide with a shotgun after cyberbullies taunted him. "When it's on the computer at home, you have nowhere to go.").

80. See *id.* at 672 (describing a cyberbullying incident that involved sharing private information publicly and inducing third parties to leave insulting comments on the victim's profile).

81. See Jean M. Twenge, *Have Smartphones Destroyed a Generation?*, *THE ATLANTIC* (Sep. 2017), <https://www.theatlantic.com/magazine/archive/2017/09/has-the-smartphone-destroyed-a-generation/534198/> (on file with *The University of the Pacific Law Review*) (describing the decreasing in-person interactions among young people and the increasing online interactions).

82. See Justin W. Patchin & Sameer Hinduja, *Summary of Our Cyberbullying Research (2007-2019)*,

adolescent will have suicidal thoughts or suicide attempts.<sup>83</sup> Cyberbullying has an even stronger effect than traditional bullying.<sup>84</sup> In 2015, almost 500 Californian youths under the age of 25 took their own lives.<sup>85</sup> Reducing cyberbullying could potentially save as many as 250 children's lives each year.<sup>86</sup>

## *2. Screen Time's Psychological Harm*

Smartphones have negative effects aside from enabling cyberbullying.<sup>87</sup> Studies have linked social media use to depression and social anxiety.<sup>88</sup> "Eighth-graders who are heavy users of social media increase their risk of depression by 27 percent . . ."<sup>89</sup> Teenagers spending at least five hours a day on an electronic device are far more likely to be at risk of suicide.<sup>90</sup> Adolescents gain some benefits from a small amount of smartphone use, but anything beyond that "Goldilocks" amount drops their mental well-being significantly.<sup>91</sup>

## *3. Reduced Educational Success*

Studies have shown that students' in-class use of smartphones is a distraction

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CYBERBULLYING RESEARCH CTR. (July 10, 2019), <https://cyberbullying.org/summary-of-our-cyberbullying-research> (on file with *The University of the Pacific Law Review*) (presenting year-by-year cyberbullying data, with a multiyear average of 27.8%).

83. See Mitch van Geel, Paul Vedder & Jenny Tanilon, *Relationship Between Peer Victimization, Cyberbullying, and Suicide in Children and Adolescents*, 168(5) JAMA PEDIATRICS 435, at 435 (2014) (presenting research that shows an odds ratio increase of 2.23 for suicide ideation and 2.55 for suicide attempts among children and adolescents who are the victims of bullying).

84. See *id.* at 438 (presenting research that shows that cyberbullying correlates more strongly to suicide ideation than traditional bullying).

85. See Chris Mink, *Doctor's Notes: Youth Suicide is on the Rise, Even Among the Very Young*, CAL. HEALTH REP. (Aug. 9, 2018), <https://www.calhealthreport.org/2018/08/09/doctors-notes-youth-suicide-rise-even-among-young/> (on file with *The University of the Pacific Law Review*) ("In California in 2015, 495 youth, ages 5 to 24, died from suicide.").

86. Compare *id.*, with Geel, Vedder & Tanilon, *supra* note 83, at 438 (presenting data that shows that bullying more than doubles the incidence of suicide attempts).

87. See Minas Michikyan & Carola Suárez-Orozco, *Adolescent Media and Social Media Use: Implications for Development*, 31(4) J. ADOLESCENT RES. 411, 412 (2016) (presenting a variety of studies that show a link between social media use and depression and anxiety).

88. See *id.*

89. Jean M. Twenge, *Have Smartphones Destroyed a Generation?*, THE ATLANTIC (Sep. 2017), <https://www.theatlantic.com/magazine/archive/2017/09/has-the-smartphone-destroyed-a-generation/534198/> (on file with *The University of the Pacific Law Review*).

90. See Lulu Garcia-Navarro, *The Risk of Teen Depression and Suicide Is Linked to Smartphone Use, Study Says*, NPR (Dec. 17, 2017), <https://www.npr.org/2017/12/17/571443683/the-call-in-teens-and-depression> [<https://perma.cc/ZZ3X-F6U8>] (on file with *The University of the Pacific Law Review*) (interviewing a noted author on the link between smartphone use and mental health problems).

91. See Andrew K. Przybylski & Netta Weinstein, *A Large-Scale Test of the Goldilocks Hypothesis: Quantifying the Relations Between Digital-Screen Use and the Mental Well-Being of Adolescents*, 28(2) PSYCHOL. SCI. 204, 207 Fig.1(d) (2017) (presenting a graph that compares mental well-being with daily smartphone use that peaks just before one hour per day and then declines steadily for increasing usage).

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negatively affecting student learning.<sup>92</sup> Low-achieving students are more susceptible to this distraction effect, decreasing the success of already struggling students.<sup>93</sup> Smartphones also present students with the temptation to cheat.<sup>94</sup> These educational problems give schools the motivation to deal with smartphones, but wise school leaders can also address the other problems smartphones create.<sup>95</sup>

### B. Schools Can Help Solve the Problems Smartphones Create

One solution to the various problems smartphones create is for schools to ban smartphones, as France did in 2018.<sup>96</sup> In England, schools implemented bans of mobile phones on a school-by-school over time, allowing researchers to study the effects of such bans.<sup>97</sup> These bans increased student performance, with low-achieving students gaining the largest benefits.<sup>98</sup> Research has also found some signs that restricting access to social media improves emotional well-being.<sup>99</sup> A smartphone ban that improves students' emotional health also decreases their risk of bullying because depression and anxiety are risk factors for bullying.<sup>100</sup> Banning smartphones would increase student success,<sup>101</sup> reduce opportunities for

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92. See A. Brennan & M. Dempsey, *The Student Voice: The Students Own Views on Smartphone Usage and Impact on Their Academic Performance*, IATED (on file with *The University of the Pacific Law Review*) (comparing surveys of student views of smartphone distraction in class with the research on the effects of such distraction).

93. See Louis-Philippe Beland & Richard Murphy, *Ill Communication: Technology, Distraction & Student Performance*, 41 *LABOUR ECON.* 61, 70 (2016) (on file with *The University of the Pacific Law Review*) (“The results suggest that low-achieving students are more likely to be distracted by the presence of mobile phones, while high achievers can focus in the classroom regardless of whether phones are present.”).

94. Jake Peterson, *12 Creative Ways Your Smartphone Can Help You Cheat on a Test*, GADGET HACKS (July 26, 2018, 5:14 PM), <https://smartphones.gadgethacks.com/how-to/12-creative-ways-your-smartphone-can-help-you-cheat-test-0186218/> (on file with *The University of the Pacific Law Review*).

95. See David J. Hvidston et al., *Cyberbullying: Implications for Principal Leadership*, 97 *NASSP BULLETIN* 297, 299 (2013) (on file with *The University of the Pacific Law Review*) (arguing that schools have responsibility for curtailing a hostile environment for students totally separate from their educational mission).

96. Rory Smith, *Smartphones Banned from French Schools*, CNN (July 31, 2018, 7:43 AM), <https://www.cnn.com/2018/07/31/europe/france-smartphones-school-ban-intl/index.html> (on file with *The University of the Pacific Law Review*).

97. See Beland & Murphy, *supra* note 14, at 62 (describing how they exploited the lack of a comprehensive national approach to compare different approaches and different implementation times to study the effects of smartphone bans).

98. See *id.* at 70 (on file with *The University of the Pacific Law Review*) (“our results indicate that there is an improvement in student performance in schools that have introduced a mobile phone ban, which is driven by previously low achieving students.”).

99. A. Brennan & M. Dempsey, *The Student Voice: The Students Own Views on Smartphone Usage and Impact on Their Academic Performance*, IATED (on file with *The University of the Pacific Law Review*) (presenting the results of a study where half of the participants gave up the use of Facebook for a week, and ended the week feeling less depressed than the control group).

100. See U.S. Dep’t of Health and Human Serv., *Who Is at Risk*, STOPBULLYING.GOV, <https://www.stopbullying.gov/at-risk/index.html> (last updated Feb. 7, 2018) (on file with *The University of the Pacific Law Review*) (listing depression and anxiety among the risk factors for students suffering victimization from bullies).

101. See Beland & Murphy, *supra* note 14, at 70 (“our results indicate that there is an improvement in

cheating,<sup>102</sup> improve emotional well-being,<sup>103</sup> and possibly save lives.<sup>104</sup>

California's previous law only permitted districts to ban smartphones, but many schools are not part of districts.<sup>105</sup> Chapter 42 allows more schools to enact smartphone bans by permitting county education offices and charter schools to adopt policies limiting, or prohibiting, smartphone use.<sup>106</sup> This is a valuable improvement since charter schools are an increasing component of California's educational system.<sup>107</sup>

### *C. A School's Smartphone Ban Must Have Exceptions*

Schools implementing smartphone bans under Chapter 42 must include exceptions accommodating two types of interests.<sup>108</sup> Subsection 1 describes student interests existing law protects that could otherwise conflict with Chapter 42.<sup>109</sup> Subsection 2 describes the teachers' and school leaders' interests that Chapter 42 protects.<sup>110</sup>

#### *1. Some Students Benefit from Smartphones*

Some disabled students have special educational needs requiring educators to work with parents to develop individualized plans addressing each student's needs.<sup>111</sup> The law requires schools to follow these plans, and parents can sue if the school materially deviates from a plan.<sup>112</sup> Some disabled students can benefit from

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student performance in schools that have introduced a mobile phone ban").

102. Jake Peterson, *12 Creative Ways Your Smartphone Can Help You Cheat on a Test*, GADGET HACKS (July 26, 2018, 5:14 PM), <https://smartphones.gadgethacks.com/how-to/12-creative-ways-your-smartphone-can-help-you-cheat-test-0186218/> (on file with *The University of the Pacific Law Review*).

103. See Brennan & Dempsey, *supra* note 92 (showing that abstaining from Facebook for a week lessened feelings of depression).

104. See *supra* Section IV.A.1 (estimating that a smartphone ban could save as many as 250 childrens' lives each year).

105. CAL. EDUC. CODE § 48901.5 (West 2003).

106. CAL. EDUC. CODE § 48901.7(a) (enacted by Chapter 42).

107. See Theresa Harrington, *California's K-12 Enrollment Drop Again, Charter Schools See Increase*, EDSOURCE (Mar. 28, 2019), <https://edsources.org/2019/californias-k-12-enrollment-drops-again-charter-schools-see-increase/610573> (on file with *The University of the Pacific Law Review*) (presenting data showing that while California student enrollment dropped slightly from 6.20 million to 6.19 million from 2014–15 to 2018–19, enrollment in charter schools increased from 544,980 to 652,933 over the same time period).

108. CAL. EDUC. CODE § 48901.7(b) (enacted by Chapter 42).

109. *Infra* Section IV.C.1.

110. *Infra* Section IV.C.2.

111. See *IEPs (Individualized Education Programs)*, CAL. COURTS, <https://www.courts.ca.gov/35398.htm> (last visited July 13, 2019) (on file with *The University of the Pacific Law Review*) (explaining to parents their role in the team that develops the IEP for their child, who is on that team, and what steps the parent should take if they are not satisfied with the IEP or how the school implements the IEP).

112. See *Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 826 (9th Cir. 2007) (holding that a material shortfall in instruction justified ruling in the student's favor).

using a smartphone in the classroom.<sup>113</sup> Chapter 42 carves out an exception to prevent potential conflicts between a policy banning smartphones and a student's mandatory educational plan.<sup>114</sup> This exception's potential for misuse is slight because individualized education plans receive yearly attention from parents and a team of educators.<sup>115</sup>

## 2. Some Educators Find Smartphones in the Classroom Useful

While studies show that smartphone use in classrooms correlates to lower educational results, researchers attribute this correlation to distraction.<sup>116</sup> However, some educators believe that deliberate use of smartphones in lessons can instead produce educational benefits.<sup>117</sup> A teacher can design lessons making smartphone use the focal point of learning, instead of a distraction.<sup>118</sup> Not every teacher will create smartphone-integrated lessons, but some will, and Chapter 42 wisely establishes an exception allowing educators to integrate smartphones into the classroom.<sup>119</sup> Also, some schools may decide safety concerns—such as those related to school shootings—necessitate smartphones in school.<sup>120</sup>

## D. Potential Constitutional Barriers to Smartphone Bans

This section will explain how a poorly written or poorly implemented smartphone policy can infringe on constitutional rights the First, Fourth, and Fourteenth Amendments guarantee.<sup>121</sup> Subsection 1 explains the potential First Amendment problems for Chapter 42 that existing device bans avoid.<sup>122</sup> Subsection 2 describes Fourth and Fourteenth Amendment concerns that may

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113. See Fage et al., *An Emotion Regulation App for School Inclusion of Children with ASD: Design Principles and Evaluation*, 131 COMPUTERS & EDUCATION 1, 17–18 (2019) (on file with *The University of the Pacific Law Review*) (presenting a smartphone app that allows students with Autism Spectrum Disorder to better regulate their emotions and thereby increase their ability to join a mainstream classroom).

114. CAL. EDUC. CODE § 48901.7(b)(4) (enacted by Chapter 42).

115. See *IEPs*, *supra* note 111 (explaining to parents the yearly review process that involves a meeting of the whole team with the parents input each year and the ability for the parent to call a meeting sooner if they have concerns).

116. See A. Brennan & M. Dempsey, *The Student Voice: The Students Own Views on Smartphone Usage and Impact on Their Academic Performance*, IATED (on file with *The University of the Pacific Law Review*) (explaining the mechanism by which distraction causes a reduction in learning).

117. See John Hardison, *44 Smart Ways to Use Smartphones in Class (Part 1)*, GETTING SMART (Jan. 7, 2013), <https://www.gettingsmart.com/2013/01/part-1-44-smart-ways-to-use-smartphones-in-class/> (on file with *The University of the Pacific Law Review*) (arguing in favor of using smartphones in the classroom).

118. See *id.*

119. CAL. EDUC. CODE § 48901.7(b)(2) (enacted by Chapter 42).

120. See Leslie Meredith, *Cellphones Are Changing School Emergency Plans*, SEEKER (Dec. 15, 2012 10:26 AM), <https://www.seeker.com/cellphones-are-changing-school-emergency-plans-1766312503.html> (on file with *The University of the Pacific Law Review*) (describing some schools that have included cellphones as a deliberate part of their emergency response plans).

121. *Infra* Sections IV.D.1–2.

122. *Infra* Section IV.D.1.

arise, depending on how school officials implement procedural details locally.<sup>123</sup>

### 1. First Amendment

In a school setting, the First Amendment provides less protection than in other circumstances.<sup>124</sup> Schools have more latitude to restrict student speech because of the strong government interest in providing a safe and effective education for children.<sup>125</sup> However, the First Amendment still restricts a school's ability to limit student speech.<sup>126</sup> Familiar issues—such as content neutrality and prior restraint—are still pertinent, but balancing interests often yields different results than other circumstances.<sup>127</sup>

Schools can avoid First Amendment entanglements by declaring all communication devices contraband.<sup>128</sup> A comprehensive ban avoids content protections under the First Amendment.<sup>129</sup> The Supreme Court has repeatedly supported schools' speech limitations of this kind.<sup>130</sup> Nevertheless, some of Chapter 42's provisions may increase the chance of a successful First Amendment challenge.<sup>131</sup>

Two of Chapter 42's provisions are concerning: the emergency use exception and the school permission exception.<sup>132</sup> The emergency use exception uses the undefined terms "emergency" and "perceived threat of danger."<sup>133</sup> Any litigation

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123. *Infra* Section IV.D.2.

124. See Jennifer Butwin, Note, *Children Are Crying and Dying While the Supreme Court is Hiding: Why Public Schools Should Have Broad Authority to Regulate Off-Campus Bullying "Speech"*, 87 FORDHAM L. REV. 671, 683 (2018) (describing the *Tinker* test that allows a school to regulate speech that the First Amendment would otherwise protect).

125. *Kowalski v. Berkeley Cty. Sch.*, 652 F.3d 565, 571 (4th Cir. 2011) ("The question thus presented is whether Kowalski's activity fell within the outer boundaries of the high school's legitimate interest in maintaining order in the school and protecting the well-being and educational rights of its students.").

126. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 514 (1969) (holding that a school could not prevent students from protesting the Vietnam war by wearing black armbands).

127. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 272–73 (1980) (holding that a school's educational purpose allowed them to censor student speech).

128. See Ralph D. Mawdsley, *Legal Issues Regarding Student Cell Phones in Schools*, 301 EDUC. L. REP. 1, 5 (2014) ("the court observed that a student's decision to violate school rules by bringing contraband on campus and using that contraband within view of teachers appropriately results in a diminished privacy expectation in that contraband").

129. See Nicholas J McGuire, Comment, *Dialing It Back: Why Courts Should Rethink Students' Privacy and Speech Rights as Cell Phone Communications Erode the 'Schoolhouse Gate'*, 17 DUKE L. & TECH. REV. 1, 14 (2018) (describing how seizing a phone might be permitted while searching the contents of the phone might not).

130. See Charles J. Russo & Ralph D. Mawdsley, *Constitutional Issues Surrounding Student Possession and Use of Cell Phones in School*, 280 ED. L. REP. 1, 13 (2012) (on file with *The University of the Pacific Law Review*) ("To reiterate, as reflected in all of the cases except *Klump* the judiciary deferred to the authority of educators to enact reasonable cell phone policies").

131. CAL. EDUC. CODE §§ 48901.7(b)(1)–(2) (enacted by Chapter 42) (allowing cellphone use based on the content of the speech).

132. *Id.*

133. CAL. EDUC. CODE § 48901.7(b)(1) (enacted by Chapter 42).

stemming from this exception would need to discuss these terms in relation to a student's smartphone usage.<sup>134</sup> Such a discussion would focus on the student's subjective state of mind and the content while using the device.<sup>135</sup> If a school punishes a student for sending the wrong kinds of messages in an emergency, then the school action is no longer content-neutral.<sup>136</sup> Even in a school setting, content-based restrictions are harder to defend than content-neutral ones.<sup>137</sup>

The school permission exception presents a similar danger.<sup>138</sup> If an educator permits a student to use a smartphone for school-related speech, but would otherwise not allow using the device, the school action is no longer content-neutral.<sup>139</sup> The educator is allowing students to engage in one kind of speech, but not another.<sup>140</sup> This kind of school speech regulation is not automatically unconstitutional, but it is harder to defend than a wholesale ban.<sup>141</sup>

## 2. *Fourth and Fourteenth Amendment*

Parents who disagree with a school's cellphone policy have used the Fourteenth Amendment to attack the policy.<sup>142</sup> Courts have interpreted the Fourteenth Amendment to guarantee parents' right to direct the education of their children.<sup>143</sup> Such attacks have been unsuccessful because courts have limited that right to parents choosing where they send their children to school.<sup>144</sup> The interests the Fourteenth Amendment protects do not include what happens inside of a

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134. See McGuire, *supra* note 29, at 17 (explaining that searches must be reasonable, implying a similar rule would apply to seizures).

135. EDUC. § 48901.7(b)(1) (enacted by Chapter 42) (allowing students to use a cellphone "in response to a perceived threat of danger.") (emphasis added).

136. See *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969) ("[Students] may not be confined to the expression of those sentiments that are officially approved.").

137. See *id.* ("school officials cannot suppress 'expressions of feelings with which they do not wish to contend.'").

138. CAL. EDUC. CODE § 48901.7(b)(2) (enacted by Chapter 42).

139. See *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. at 511 (stating "[Students] may not be confined to the expression of those sentiments that are officially approved" which could conflict with a school official giving permission for only school-related speech).

140. See *id.* ("school officials cannot suppress 'expressions of feelings with which they do not wish to contend.'").

141. See *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 272–73 (1980) (concluding that a school could censor student speech in the school newspaper even if the *Tinker* standard would not normally allow the school to punish that speech).

142. See Charles J. Russo & Ralph D. Mawdsley, *Constitutional Issues Surrounding Student Possession and Use of Cell Phones in School*, 280 EDUC. L. REP. 1, 4 (2012) (on file with *The University of the Pacific Law Review*) (presenting several cases where parents unsuccessfully attempted to assert a Fourteenth Amendment claim against a school).

143. See *id.* at 11 (on file with *The University of the Pacific Law Review*) (listing several cases in which the Supreme Court supported a Fourteenth Amendment right of parents to direct the education of their children).

144. See Ralph D. Mawdsley, *Legal Issues Regarding Student Cell Phones in Schools*, 301 EDUC. L. REP. 1, 6 (2014) (describing how the Fourteenth Amendment does not allow parents to make decisions about public school curriculum, and this has led courts to reject Fourteenth Amendment challenges to school phone policies).

school.<sup>145</sup> In an important cellphone case, the court determined a medical exception in the policy—such as the exception Chapter 42 requires—satisfied parental interests.<sup>146</sup> If schools carefully follow Chapter 42’s exceptions, courts will likely reject Fourteenth Amendment challenges to such school policies.<sup>147</sup>

The Fourth Amendment presents a bigger problem for schools, mostly in terms of how schools implement any policies they create under Chapter 42.<sup>148</sup> If a school seizes a smartphone because the student violated a smartphone ban, the school must be careful how they use the seized device.<sup>149</sup> A district court in Pennsylvania held that when school officials used a seized cellphone to call and text other students, the school went beyond what the Fourth Amendment permits.<sup>150</sup> In these circumstances, the problem is not with the policy itself.<sup>151</sup> Instead, the problem is with the school implementing the policy inappropriately.<sup>152</sup> Chapter 42 does not tell schools how to implement the policies they create, so school leaders must guide themselves.<sup>153</sup> Even if Chapter 42 gives a school the power to seize a smartphone, the school must be cautious with what it does with the seized device.<sup>154</sup>

### *E. Implementing a Policy Under Chapter 42*

Some schools already have policies prohibiting smartphone use during class time.<sup>155</sup> Other schools have policies prohibiting smartphone possession.<sup>156</sup> School

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145. See Russo & Mawdsley, *supra* note 26, at 11 (“Thus, while parents have protected rights under *Meyer*, *Pierce* and *Yoder* about where their children are educated, their interests do not extend to inside the schools”).

146. See *Price v. N.Y. Bd. Educ.*, 855 N.Y.S.2d 530, 539 (N.Y. App. Div. 2008) (acknowledging that parents had a valid interest in communicating with their child for medical reasons but noting the regulation had an exception for that situation).

147. See Mawdsley, *supra* note 32, at 6 (discussing in detail the *Price* case and that court’s support for a phone ban that included a medical exception).

148. See *Klump v. Nazareth Area Sch. Dist.*, 425 F. Supp. 2d 622, 646 (E.D. Pa. 2006) (deciding in favor of the student in their Fourth Amendment claim against the school).

149. See *id.* at 640–41 (deciding that the school was justified in seizing the student’s phone, but the school was not justified in what they did with the phone).

150. See *id.* at 627 (“Subsequently Ms. Kocher and Assistant Principal Grube called nine other students listed in Christopher’s phone number directory to determine whether they, too, were violating the school’s cell phone policy. The assistant principal and teacher also accessed Christopher’s text messages and voice mail. They also held a conversation with Christopher’s younger brother by using the cell phone’s America Online Instant Messaging feature, without identifying themselves as being anyone other than Christopher.”).

151. See *id.* at 640 (“Here, defendant Kocher was justified in seizing the cell phone, as plaintiff Christopher Klump had violated the school’s policy prohibiting use or display of cell phones during school hours.”).

152. See *id.* at 641 (“there was no justification for the school officials to search Christopher’s phone for evidence of drug activity”).

153. CAL. EDUC. CODE § 48901.7 (enacted by Chapter 42).

154. See *Klump v. Nazareth Area Sch. Dist.*, 425 F. Supp. 2d at 640–41 (deciding that the school was justified in seizing the student’s phone, but the school was not justified in what they did with the phone).

155. See MODESTO, CAL., MODESTO CITY SCHOOLS BD. POL’Y § 5138 (2014) (“Electronic signaling or communication devices shall be turned off and not be visible during class time, unless used for instructional purposes.”).

156. See RIDGECREST, CAL., SIERRA SANDS UNIFIED SCHOOL DISTRICT BD. POL’Y § 5131(c) (2012) (“Students in grades K-5 may not possess or use electronic communication devices except at the discretion of the

leaders may choose to prohibit possession because it is easier to police and has less potential for conflict with the First Amendment.<sup>157</sup> On the other hand, possession is harder to regulate than use because of Chapter 42's emergency use exception.<sup>158</sup> Schools can manage the exceptions allowing certain students to possess or use smartphones by simply keeping track of which students may have smartphones.<sup>159</sup> Schools can manage the exception allowing teachers and administrators to permit smartphone use in the same way.<sup>160</sup>

However, the exception allowing students to use smartphones in the case of emergencies or perceived threats will be harder to handle.<sup>161</sup> A school that bans smartphones from campus will have difficulty explaining how it allows students to use smartphones in emergency circumstances.<sup>162</sup> A possible solution for a school to regulate possession is to prohibit students from having smartphones on their person.<sup>163</sup> The school can instead require students to keep their smartphones in an accessible location, like a classroom locker or the teacher's desk.<sup>164</sup>

## V. CONCLUSION

Although bullying is not likely to ever disappear, it is receiving increased attention, and schools are the most natural place to address bullying.<sup>165</sup> Cyberbullying overlaps with other technological problems like excessive screen time and cheating.<sup>166</sup> In schools, the same device enables all these problems: the smartphone.<sup>167</sup> Chapter 42 allows schools to ban smartphones, and schools can

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principal.”).

157. *Supra* Section IV.D.

158. CAL. EDUC. CODE § 48901.7(b)(1) (enacted by Chapter 42) (allowing any student to possess smartphones in emergency circumstances, possibly conflicting with a school's general prohibition on possession).

159. CAL. EDUC. CODE §§ 48901.7(b)(3)–(4) (enacted by Chapter 42) (allowing only certain students to possess smartphones).

160. CAL. EDUC. CODE § 48901.7(b)(2) (enacted by Chapter 42) (allowing students to have smartphones in circumstances controlled by a school official).

161. EDUC. § 48901.7(b)(1) (enacted by Chapter 42) (allowing students to have smartphones under circumstances that are out of the school's control and based on a subjective assessment made by the student).

162. *Id.* (requiring the school to allow the student to use a smartphone that the school may not have allowed the student to bring to campus).

163. See Nicholas J McGuire, Comment, *Dialing It Back: Why Courts Should Rethink Students' Privacy and Speech Rights as Cell Phone Communications Erode the 'Schoolhouse Gate'*, 17 DUKE L. & TECH. REV. 1, at 1 (2018) (“Because cell phone users keep their phones on their person, this poses several problems in the school setting, where traditionally school administrators can regulate certain student speech and conduct some searches of student belongings.”).

164. See *Policies & Consequences, Away for the Day* (2018), <https://www.awayfortheday.org/policies> (on file with *The University of the Pacific Law Review*) (compiling school phone policies from around the country and presenting best practices that involve keeping phones physically off students).

165. See U.S. Dep't of Health and Human Serv., *Prevention at School*, STOPBULLYING.GOV, <https://www.stopbullying.gov/prevention/at-school/index.html> (last updated Sep. 28, 2017) (on file with *The University of the Pacific Law Review*) (describing prevention of bullying with schools in a central role).

166. *Supra* Section IV.A.

167. *Supra* Section IV.B.

seize this opportunity to protect students' education, mental health, and lives.<sup>168</sup> School leaders should not hesitate to limit students' use of smartphones because science is beginning to confirm how excessive use of these devices cause harm.<sup>169</sup> School leaders should consider prohibiting possession and not just use because possession is easier to police than use and has less potential for conflict with the First Amendment.<sup>170</sup>

As discussed above, smartphones also have beneficial uses.<sup>171</sup> Smartphones can make it easier for disabled students to join a mainstream classroom.<sup>172</sup> Innovative teachers can use smartphones to present engaging lessons.<sup>173</sup> In a crisis, smartphones can provide essential communication.<sup>174</sup> Some school policies go too far and ban even positive uses of smartphones.<sup>175</sup> Schools should pay careful attention to the exceptions that Chapter 42 requires.<sup>176</sup> There is a way for schools to protect students like Gabriella Green and still gain benefits from smartphones.<sup>177</sup>

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168. *Supra* Section IV.B.

169. *Supra* Section IV.A.

170. *Supra* Section IV.D.

171. *Supra* Section IV.C.

172. *Supra* Section IV.C.1.

173. *Supra* Section IV.C.2.

174. See Leslie Meredith, *Cellphones Are Changing School Emergency Plans*, SEEKER (Dec. 15, 2012 10:26 AM), <https://www.seeker.com/cellphones-are-changing-school-emergency-plans-1766312503.html> (on file with *The University of the Pacific Law Review*) (describing some schools that have included cellphones as a deliberate part of their emergency response plans).

175. See RIDGECREST, CAL., SIERRA SANDS UNIFIED SCHOOL DISTRICT BD. POL'Y § 5131(c) (2012) ("Students in grades K-5 may not possess or use electronic communication devices except at the discretion of the principal.").

176. CAL. EDUC. CODE § 48901.7(b) (enacted by Chapter 42).

177. *Supra* Section IV.E.