Student Speech Outside the Schoolhouse Gate

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The Supreme Court Hears a Cheerleader’s Outburst

Over the years our Washington Post NIE curriculum guides have included lesson suggestions and resources to introduce students to significant Supreme Court cases. These YOU and YOUR RIGHTS activities have focused on those cases involving students directly and those of current community and national attention.

Topics have included the freedom of assembly and the Occupy Movement (Protest and Petition, March 2012), the Supreme Court and Sexual Harassment (Bullies, March 2005), incarceration (Juvenile Justice, February 2016) and the Fourteenth Amendment (Bloodshed and Emancipation, September 2012). This resource guide focuses on student freedom of speech.

In 2021 the Supreme Court heard the case of Mahanoy Area School District v. B.L. News, legal and popular publications reported on the story that involved a Pennsylvania cheerleader and her off-campus posting on Snapchat.

Teachers may take a number of angles with The Post articles and activities in this guide:

- Student freedom of speech off-campus — First Amendment question on limits school administrations may place on it
- The use of social media to express one’s opinion about school life
- Reporters’ use of four-letter words in quotations and documents — accuracy, community sensibilities, age of readers
- The role of judicial precedents in legal decisions
- Sources to research Supreme Court and other legal decisions

This case has been called “momentous” because it goes beyond a cheerleader’s social media outburst. It does address the changing landscape of student communication through social media, the circumstances when school officials may regulate off-campus speech and the responsibility of parents. The Supreme Court accepted the appeal to hear the case because of the larger question that it addressed: Does the First Amendment prohibit public school officials from regulating off-campus student speech?
A cheerleader’s Snapchat rant leads to ‘momentous’ Supreme Court case on student speech

BY ROBERT BARNES

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The high school cheerleader relegated to the JV squad for another year responded with a fleeting fit of frustration: a photo of her upraised middle finger and another word that begins with F.

“F--- school, f--- softball, f--- cheer, f--- everything,” 14-year-old Brandi Levy typed into Snapchat one spring Saturday. Like all “snaps” posted to a Snapchat “story,” this one sent to about 250 “friends” was to disappear within 24 hours, before everyone returned to Pennsylvania’s Mahanoy Area High School on Monday.

Instead, an adolescent outburst and the adult reaction to it have arrived at the Supreme Court, where the case could determine how the First Amendment’s protection of free speech applies to the off-campus activities of the nation’s 50 million public school students.

“This is the most momentous case in more than five decades involving student speech,” said Justin Driver, a Yale law professor and author of “The Schoolhouse Gate: Public Education, the Supreme Court, and the Battle for the American Mind.”

“Much of the speech from students is off-campus and increasingly online,” Driver said. “When I talk to school administrators, they consistently tell me that off-campus speech bedevils them, and the lower courts desperately need some guidance in this area.”

That shouldn’t be a surprise, as cellphones have become an extension of almost every teenager’s hand and social media a preferred mode of communication. And for the past year, many students have not gone near a school campus, with their “speech” happening...
in their homes during Zoom classes.

The First Amendment does not “force schools to ignore student speech that upends the campus environment simply because that speech originated off campus,” says a brief filed by Mahanoy Area School District, which upheld the school’s decision to kick Levy off the cheer squad.

“Wherever student speech originates, schools should be able to treat students alike when their speech is directed at the school and imposes the same disruptive harms on the school environment.”

The school board’s brief, as well as Driver’s book title, refers to the foundational Supreme Court case regarding student speech, *Tinker v. Des Moines Independent Community School District*. The 1969 decision famously held that students and teachers do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

But it also held that schools have broader authority over students than the state generally does when restricting speech and that authorities can discipline students for on-campus speech that causes or is likely to cause “material and substantial” disruption of school functions. (The court ruled 7 to 2 for Mary Beth Tinker because, it said, the black armband she wore to protest the Vietnam War was not disruptive.)

In the half-century since, the Supreme Court’s decisions have been few and lean toward school administrators. The justices have upheld school disciplinary action regarding lewd speech by students, a student newspaper that operated at the direction of school officials and a nonsensical sign with a seemingly pro-marijuana message — “Bong Hits 4 Jesus” — held by a student at a school activity.

Levy’s case is different. It concerns speech far beyond the schoolhouse gate, made online and on a weekend, unconnected to a school event.

“This may seem like a very narrow case about a minor temper tantrum on Snapchat, but it is about speech anywhere and everywhere, by students of all ages,” said Frank LoMonte, director of the Brechner Center for Freedom of Information at the University of Florida.

Because it is somewhat rare for the justices to take a student speech case, “they are writing broadly the standards that will apply for two or three generations,” LoMonte said. “And they are writing the standards for all forms of speech across all media.”

None of that was on Levy’s mind, of course, when she and a friend were at the Cocoa Hut, a 24-hour convenience store in Mahanoy City, a town in Pennsylvania’s coal country about 40 miles southwest of Wilkes-Barre. After a year on the Golden Bears junior varsity squad, she had hoped...
to move up to varsity. Worse, in her view, a rising freshman had gotten a spot ahead of her.

“I was just feeling really frustrated and upset at everything that day,” said Levy, now 18 and a college student studying accounting.

Besides the snap in which she and her friend posed with middle fingers extended, she sent another: “Love how me and [another student, whom Levy identified by name] get told we need a year of JV before we make varsity but that doesn’t matter to anyone else?” She signed off with an upside-down smiley face.

It was sent to about 250 people who received Levy’s snaps, which dissolve within 24 hours. “I didn’t think it would have had an effect on anyone, and it didn’t really,” Levy said.

But one person took a screenshot and showed it to another, who happened to be the daughter of one of the cheerleading coaches. Some cheerleaders complained about Levy’s message, and the coaches decided to suspend her from the squad for a year.

The coaches said Levy’s snap violated the team rules she had agreed to, including showing respect, avoiding “foul language and inappropriate gestures,” and a strict policy against “any negative information regarding cheerleading, cheerleaders, or coaches placed on the Internet.”

Brandi’s parents, Larry and Betty Lou, appealed to the athletic director, the principal, the superintendent and the school board, to no avail.

Then, with the help of the ACLU, they filed a federal lawsuit.

A district judge agreed that the suspension from the squad violated the First Amendment, noting that Brandi’s speech was not disruptive. He ordered her reinstated to the JV squad in her sophomore year, and she made varsity her junior and senior years.

“It was a little awkward,” she said, but the most lasting effect of the case is that fellow students sometimes call her “B.L.” because the case is Mahanoy Area School District v. B.L.

A panel of the U.S. Court of Appeals for the 3rd Circuit, acting on the school board’s appeal, went further than the district judge. Disagreeing with other courts that have considered the question, Judge Cheryl Ann Krause said Tinker’s grant of authority to school administrators does not extend to off-campus speech.

Her opinion defined that as “speech that is outside school-owned, -operated, or -supervised channels and that is not reasonably interpreted as bearing the school’s imprimatur.”

The court was mindful of the challenges administrators face to “manage the school environment in the digital age,” Krause wrote.

“We are equally mindful, however, that new communicative technologies open new territories where regulators might seek to suppress speech they consider inappropriate, uncouth, or provocative. And we cannot permit such efforts, no matter how well intentioned, without sacrificing precious freedoms that the First Amendment protects.”

Judge Thomas L. Ambro disagreed with his colleagues regarding off-campus speech and said it would have been enough for his colleagues to simply have ruled in Levy’s favor because her speech was not substantially disruptive.

The school district told the Supreme Court that allowing the 3rd Circuit’s ruling to stand would be dangerous.

“Since the dawn of public education, schools have exercised authority to discipline speech that disrupts the campus or harms other students, whether that speech originates on campus or off,” said the school district’s brief filed by Washington lawyer Lisa S. Blatt.

The district, supported in the Supreme Court by the Biden administration, poses
themselves, target black classmates with photos of lynchings, or text the whole class photos of fellow students in compromising positions, do not limit their invective to school hours.”

A coalition of groups concerned about cyberbullying filed a brief filled with examples of such tragic results, including “another cheerleader, a two-hour drive away” who took her own life after relentless online harassment.

The 3rd Circuit opinion said because Levy’s case did not raise those issues, it was “reserving for another day the First Amendment implications of off-campus student speech that threatens violence or harasses others.”

“Schools need to deal with cyberbullying,” said Witold J. Walczak, head of the Pennsylvania ACLU. “What separates us [the ACLU and the school board] is how much power the school is given to address those problems. We feel like the school district’s approach is too big a power grab.”

Levy has drawn support from a wide and ideologically diverse coalition of more than 100 organizations, 250 individuals and nine Republican state attorneys general.

“You won’t find another case in the past decade with such a diverse range of groups on the same side,” said David Cole, ACLU national legal director, who will argue the case when the Supreme Court hears it Wednesday. “We have support from the right to the left, from students to administrators, from civil rights groups, religious liberty organizations and red states.”

The issue comes before a Supreme Court that seems to pride itself on protecting unpopular speech. As LoMonte wrote in Slate, “The Roberts court has reliably said that . . . the First Amendment requires us to tolerate all manner of unpleasantness. That even includes anti-gay hate speech (Snyder v. Phelps), lying about military heroism (United States v. Alvarez), or selling videos of graphically violent dog fights (United States v. Stevens).”

Chief Justice John G. Roberts Jr. has called himself “probably the most aggressive defender of the First Amendment on the court.”

But he wrote the Morse v. Frederick decision in 2007, which upheld school administrators’ decision to discipline the student in the “Bong Hits 4 Jesus” case.

“The Roberts court has been noticeably hesitant to vindicate free speech rights when it comes to public school students,” said Driver, who notes that the court accepted for review a case in which the student prevailed.

Other justices have history, too. Justice Clarence Thomas wrote in Morse that Tinker was wrongly decided and that the Constitution “does not protect student speech in public schools.”

Justice Samuel A. Alito Jr., who has complained about the speech rights of conservatives on campuses not being respected, reluctantly joined the majority in Morse regarding speech about illegal drugs.

But he said he viewed that regulation “as standing at the far reaches of what the First Amendment permits. I join the opinion of the court with the understanding that the opinion does not endorse any further extension.”

Five of the justices were not on the court for Morse, the court’s last major student speech case.

But Justice Sonia Sotomayor, as a judge on the U.S. Court of Appeals for the 2nd Circuit, joined an opinion that sided with school administrators who barred a student from running for student council after she wrote in a blog post that officials were “douchebags” for interfering with a battle of the bands concert.

LoMonte said it is the relatively low stakes of student speech cases — the silly sign, a band concert, suspension from the cheerleading squad — that brings the possibility that judges and the public will trivialize them.

But he analogizes it to a police officer handing out $5 tickets to people wearing T-shirts with political statements the government doesn’t like.

“No federal judge in America would say, ‘Suck it up and pay the ticket,’” LoMonte said. “Even a very small amount of government punishment that is meant to deter you from speaking is enough to violate the First Amendment, and judges understand that very well every place other than schools.”

Robert Barnes has been a Washington Post reporter and editor since 1987. He joined The Post to cover Maryland politics, and he has served in various editing positions, including metropolitan editor and national political editor. He has covered the Supreme Court since November 2006.
Why we all should want the suspended cheerleader to win her Supreme Court case

What role should schools play in shaping the next generation of citizens? How should they mediate the tensions between inculcating values of robust debate, on the one hand, and of disciplined civility on the other? Competing answers to those questions have riddled Supreme Court justices’ opinions on issues of student speech since 1969, when the court vindicated the constitutional rights of siblings John and Mary Beth Tinker. In that case, students in Des Moines wore black armbands to protest the Vietnam War over the objections of educators. Tellingly, though, no high school student has prevailed in a First Amendment case at the high court since 1969.

Now the issue has returned in a case whose quotidian facts hardly seem the stuff of a landmark legal opinion. But that ubiquity may be precisely the point. The case — involving a high school student who posted a profanity-laced message on Snapchat — arises in an era when pervasive social media and smartphones have combined to pose novel challenges for schools, as for society, and when concerns about uncivil speech have reached new heights.

The case began in 2017, when Brandi Levy, a former cheerleader at Mahanoy Area High School in Mahanoy City, Pa., learned that she had failed to make the varsity cheerleading squad. Being demoted to junior varsity left her feeling less than cheerful. She vented her frustration by firing off what would become an infamous eight-word message. “Fuck school fuck softball fuck cheer fuck everything,” Levy wrote, while hanging out at a convenience store on a Saturday.

The message was designed to disappear, but Levy’s cheerleading coaches got wind of it and suspended Levy from cheerleading for a year. Levy sued, and a federal appeals court ruled that the school had violated her free speech rights.

Levy’s outburst is hardly the high-minded stuff of antiwar protests, but it illuminates the same divergent conceptions of citizenship that divided the court in Tinker v. Des Moines Independent Community School District. Writing for the seven-justice majority, Justice Abe Fortas declared that students could not be forced to
“shed their constitutional rights” to free expression “at the schoolhouse gate.” Rather, he contended, in our “relatively permissive, often disputatious, society,” public schools must permit robust, rollicking debate because that democratic value is “the basis of our national strength.”

Justice Hugo Black vehemently dissented, but he tacitly agreed that schools do in fact play an indispensable role in fostering citizens. Rather than schools welcoming dissident student views, Black advanced the conception of citizenship that is found on many young students’ report cards — one that prioritizes compliance, deference to authority and, perhaps above all, playing nicely with others. “School discipline,” he wrote, “is an integral and important part of training our children to be good citizens — to be better citizens.”

Black’s thin conception of citizenship has become the dominant view. In 1986, the court permitted the suspension of a student for delivering a school assembly address laden with sexual innuendo, emphasizing that schools are entrusted with transmitting “the essential lessons of civil, mature conduct.” In 2007, the court upheld a suspension of a high school senior for unfurling a 14-foot banner at a school-sanctioned parade that read: “BONG HiTS 4 JESUS.”

This trend might appear to doom Levy. But ruling against her would send a chilling citizenship lesson to the nation’s students, and extend the government’s authority over students to dangerous new levels. It is one thing for the judiciary to permit a narrowed conception of citizens’ free-speech rights when students are in school. But it is quite another for the judiciary to apply that same crabbed conception to speech beyond the school setting. That unbounded view of government authority over even young people is antithetical to American traditions.

It may be tempting to believe that in the digital age schools must be empowered to punish speech that is uttered beyond the metaphorical “schoolhouse gate.” After all, cyberbullying and threats of violence directed toward students, schools and educators are unmistakably serious problems. But existing laws already give authorities leeway to regulate that harmful conduct. Such measures render it both unwise and unnecessary to impose diluted First Amendment protections on students when they are in the public square rather than in the public school.

Fifty years ago, the court concluded that a man could not be punished for wearing a jacket emblazoned with the words “Fuck the Draft” in a courthouse corridor, noting that “one man’s vulgarity is another’s lyric.” The military draft doubtless holds more national import than the composition of cheerleading squads. But young people routinely find their voices by speaking out about matters of perceived injustice involving schools. If the court permits Levy’s sanction to stand, moreover, it could prove exceedingly difficult to cabin that holding to extracurricular activities. Recall that Levy said “fuck school,” not just “fuck cheer,” and overzealous principals will doubtless assert that such vulgarity, even uttered off campus, disrupts core educational activities.

We should hope that the court avoids taking even the first step down that treacherous road.

Justin Driver, a professor at Yale Law School, is the author of “The Schoolhouse Gate: Public Education, the Supreme Court, and the Battle for the American Mind.”
The case of the cheerleader’s salty language comes to the Supreme Court on Wednesday [April 28], at a moment when technological and social changes should cause the court to expand First Amendment protections of student speech. Social media necessitate rethinking the proper scope of government’s jurisdiction, through public schools, in controlling students. And the fact that freedom of speech is besieged in academic settings justifies judicial supervision of schools’ attempts to extend their controls.

When B.L., a Pennsylvania ninth-grader, failed to make the varsity cheerleading team, she posted on Snapchat a picture of her raised middle finger and this caption: “Fuck school fuck softball fuck cheer fuck everything.” Another student brought this episode of adolescent volatility to the attention of the school’s coaches, who suspended B.L. from the junior varsity cheerleading team because she had damaged the school’s image by violating the requirement to “have respect” for coaches and the rule against “foul language and inappropriate gestures.”

B.L.’s parents sued the school district for violating her First Amendment rights. Two lower courts sided with her, citing cases beginning with the Supreme Court’s 1969 ruling about two Des Moines high school students who planned to wear black armbands to school to protest the Vietnam War. The Iowa school preemptively adopted a rule making refusal to remove an armband grounds for suspension. The students’ parents sued. Two lower courts upheld the rule as reasonably related to maintaining school order. The Supreme Court ruled otherwise, saying that armbands are quiet and passive, and hence neither disruptive nor violative of the rights of others.

The court said students do not lose their constitutional rights when they enter school property. In 1969, however, the world was young and social media were nonexistent. Today, tens of millions of students are doing “remote learning,” and off-campus social media speech saturates schools. B.L.’s school says she has scant First Amendment protections even away from school because social media guarantee that what is said off-campus does not stay.
off campus. But two libertarian institutions, the Pacific Legal Foundation and the Cato Institute, and libertarian satirist P.J. O’Rourke (who tells the court that he “has heard the exact rant at issue in this case at the family dinner table”), have submitted an amicus brief supporting B.L. They make four arguments:

Schools that erase the distinction between on- and off-campus behavior subject students to constant monitoring of their thoughts. Such ubiquitous monitoring derogates the constitutionally protected right of parents to supervise their children. Allowing schools to punish anytime-anywhere speech will encourage schools in their aggressive enforcement of political agendas, and will inevitably involve punishing speech because of reactions to it, thereby allowing a “heckler’s veto.” (In 2014, the incorrigible U.S. Court of Appeals for the 9th Circuit upheld a school ban on wearing T-shirts emblazoned with the U.S. flag on Cinco de Mayo, lest some other students be offended.) All that in turn incentivizes “informant-style behavior” and the snitch culture that fuels today’s vindictive Internet mobs that stifle ideas by punishing people for social media speech.

This brief urges the court to adopt “a rule that permits schools to regulate student speech only when the speech occurs in a place or during a time controlled and supervised by school staff, and only when necessary to address objective disruption of the learning environment.” Another amicus brief on B.L.’s behalf is written by three constitutional scholars: Jane Bambauer of the University of Arizona, Ashutosh Bhagwat of the University of California at Davis and Eugene Volokh of UCLA.

They argue that while schools may control virtual as well as physical classrooms, it does not follow that they may control online or other speech outside the “school context.” Because school-children are indeed especially vulnerable to cruelty from their classmates, schools should be able to punish such online cruelties, though only when they are about “the characteristics of individual people, not about broader policy matters,” the brief argues. “Threats” are not accorded First Amendment protection, while speech that threatens only the serenity or the sense of “safety” of the hypersensitive is protected.

In the 1969 armband case, when the court said schools may not become “enclaves of totalitarianism,” this language conjured a merely hypothetical danger. No longer. Today, many schools, from kindergarten through college, are aggressive engines of intellectual homogeneity, sacrificing freedom of speech to imperatives of woke indoctrination. This cultural change, and the dynamics of social media, require from the court a defense of the First Amendment as robust as today’s assaults on it. ■

George F. Will writes a twice-weekly column on politics and domestic and foreign affairs. He began his column with The Post in 1974, and he received the Pulitzer Prize for commentary in 1977. His latest book, “The Conservative Sensibility,” was released in June 2019.
Snapchat, Salty Language, Suspension and the Cheerleader

In 2021 the Supreme Court heard the case of Mahanoy Area School District v. B.L. Many news, legal and popular publications reported on the story that involved a Pennsylvania cheerleader and her off-campus posting on Snapchat. Read the Washington Post article written by Robert Barnes who has covered the Supreme Court since November 2006, the column of George F. Will and guest commentary of Justin Driver.

Respond to the following questions on your own paper.

1. Compare and contrast the lede paragraphs of the three pieces. In what ways do they prepare readers for the particular focus of each writer?

2. Summarize the situation that resulted in a lawsuit, appeals court decision and the Supreme Court hearing. Include answers to the following questions in your summary.
   a. What action upset 14-year-old Brandi Levy?
   b. What was the reaction of coaches and the school administration?
   c. What did the cheerleader’s parents do?

3. Could the writers have avoided use of the four-letter word and still reported the specifics of the case? Explain your response.

4. After the initial federal lawsuit in district court, the school board appealed to the U.S. Court of Appeals for the 3rd Circuit. What was the judgment of this panel?

5. The Supreme Court heard the case on April 28, 2021. Summarize the school board’s position.

6. The case drew support from more than 100 organizations, 250 individuals and nine Republican state attorneys general. A wide range of interests “from the right to the left, from students to administrators, from civil rights groups, religious liberty organizations and red states.” George Will summarized the amicus briefs of libertarians in four arguments. What are the four positions taken?

7. All three writers included precedents set in previous Supreme Court decisions involving student freedom of speech. List three of the cases and the majority decision in each one.

8. State the arguments that were presented by both sides concerning cyberbullying and off-campus speech that threatens violence.

9. Read the concluding paragraphs of all three pieces.
   a. Summarize the main idea presented by each writer.
   b. Which writer’s approach is most compelling to you? Explain your response.

10. All three selections were published before the Supreme Court decided the case. Do some research. What was the Court’s majority opinion and the dissenting argument in Mahanoy Area School District v. B.L.?
Think Like a Reporter | Know the Student Rights Cases and the Supreme Court Decisions

Reporters often have beats, areas where they develop expertise, contacts and vocabulary to cover more accurately the people and events in that arena. The legal beat might cover local courts, state laws, appeals and even the Supreme Court and the International Court of Justice or World Court. The procedures and make-up of these bodies are clearly defined. For this activity we will focus on the U.S. Supreme Court, the highest court in the judicial branch of government.

Currently the Court is composed on nine justices, with one being the chief justice. If all justices do not agree with a decision on a case that has been argued before them, a majority decision(s) and a minority or dissenting decision(s) will be written. For example:


Summary: The Court reversed and remanded the Court of Appeals for the Eleventh Circuit. The Court held that an individual “exceeds authorized access” under the Computer Fraud and Abuse Act of 1986, 18 U. S. C. §1030(a)(2), when he accesses a computer with authorization but then obtains information located in particular areas of the computer — such as files, folders, or databases — that are off-limits to him.

Precedent and Supreme Court Decisions
When you read a summary of the arguments presented by lawyers for both sides or read the decisions of the Court, you will see references to previous Court decisions. These are called judicial precedent in which similar circumstances and issues existed when that Court made its decision. Lawyers in their briefs and oral arguments try to make a case for the previous cases and principles that apply to their appeal. These earlier cases influence the decision of the justices on the current case and are the authority or persuasion that exists to create a continuity of justice.

If the current justices concur that the precedent no longer applies to society, if the precedent has been “abandoned by subsequent legal developments,” or it should be overturned for constitutional reasons, the new decision takes the place of the precedent. This is not done lightly as some precedents are more than 200 years old, are based on common law and provide a national consistency to our laws.
Student Rights and the Supreme Court

Below are five Supreme Court cases that involve student rights. The Tinker case is the most cited as a judicial precedent in the cases that followed it. Each case has reliable sources listed to read more about the situation that brought the case before lower courts and ultimately to the Supreme Court.

YOUR ASSIGNMENT: Select a case. Read all sources listed. Summarize the situation, lower court action, and Supreme Court’s majority decision and the dissenting decision. Which of the sources was most helpful to you and easiest to understand?

https://www.oyez.org/cases/1968/21
https://supreme.justia.com/cases/federal/us/393/503/
https://www.law.cornell.edu/supremecourt/text/393/503

Bethel Sch. Dist. No. 403 v. Fraser (1986)
https://www.oyez.org/cases/1985/84-1667
https://supreme.justia.com/cases/federal/us/478/675/
https://www.law.cornell.edu/supremecourt/text/478/675

https://www.oyez.org/cases/1987/86-836
https://splc.org/1988/01/hazelwood-school-district-v-kuhlmeier/

Morse v. Frederick (2007)
https://www.oyez.org/cases/2006/06-278
https://supreme.justia.com/cases/federal/us/551/393/#tab-opinion-1962461
https://www.law.cornell.edu/supct/cert/06-278
https://splc.org/2007/06/morse-v-frederick/

Mahanoy Area School District v. B.L. (2020)
https://www.oyez.org/cases/2020/20-255
https://www.law.cornell.edu/wex/mahanoy_area_school_district_v_b_l.
Does the First Amendment prohibit public school officials from regulating off-campus student speech?

Mahanoy Area School District v. B.L. goes beyond one cheerleader’s words and image on social media. The Supreme Court accepted the appeal to hear the case because of the larger question that it addressed: Does the First Amendment prohibit public school officials from regulating off-campus student speech?

On the Oyez website, readers can read facts of Supreme Court cases (a summary), a transcript of each case, the opinion of the Court (majority), concurring opinions and dissenting opinion(s).

The First Amendment limits but does not entirely prohibit regulation of off-campus student speech by public school officials, and, in this case, the school district’s decision to suspend B.L. from the cheerleading team for posting to social media vulgar language and gestures critical of the school violates the First Amendment. Justice Stephen Breyer authored the 8-1 majority opinion of the Court.

Although public schools may regulate student speech and conduct on campus, the Court’s precedents make clear that students do not “shed their constitutional rights to freedom of speech or expression” when they enter campus. The Court has also recognized that schools may regulate student speech in three circumstances: (1) indecent, lewd, or vulgar speech on school grounds, (2) speech promoting illicit drug use during a class trip, and (3) speech that others may reasonably perceive as “bear[ing] the imprimatur of the school,” such as that appearing in a school-sponsored newspaper. Moreover, in Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969), the Court held that schools may also regulate speech that “materially disrupts classwork or involves substantial disorder or invasion of the rights of others.”

The school’s interests in regulating these types of student speech do not disappear when the speaker is off campus. Three features of off-campus speech diminish the need for First Amendment leeway: (1) off-campus speech normally falls within the zone of parental responsibility, rather than school responsibility, (2) off-campus speech regulations coupled with on-campus speech regulations would mean a student cannot engage in the regulated type of speech at all, and (3) the school itself has an interest in protecting a student’s unpopular off-campus expression because the free marketplace of ideas is a cornerstone of our representative democracy.

In this case, B.L. spoke in circumstances where her parents, not the school, had responsibility, and her speech did not cause “substantial disruption” or threaten harm to the rights of others. Thus, her off-campus speech was protected by the First Amendment, and the school’s decision to suspend her violated her First Amendment rights.

Justice Samuel Alito authored a concurring opinion, joined by Justice Neil Gorsuch, explaining his understanding of the Court’s decision. Justice Alito argued that a key takeaway of the Court’s decision is that “the regulation of many types of off-premises student speech raises serious First Amendment concerns, and school officials should proceed cautiously before venturing into this territory.”

Justice Clarence Thomas authored a dissenting opinion, arguing that schools have historically had the authority to regulate speech when it occurs off campus, so long as it has a proximate tendency to harm the school, its faculty or students, or its programs. Justice Thomas viewed the facts of this case as falling squarely within that rule and thus would have held that the school could properly suspend B.L. for her speech.

https://www.oyez.org/cases/2020/20-255

YOUR ASSIGNMENT: Write a commentary to inform your school community about the Mahanoy Area School District v. B.L. Supreme Court decision.