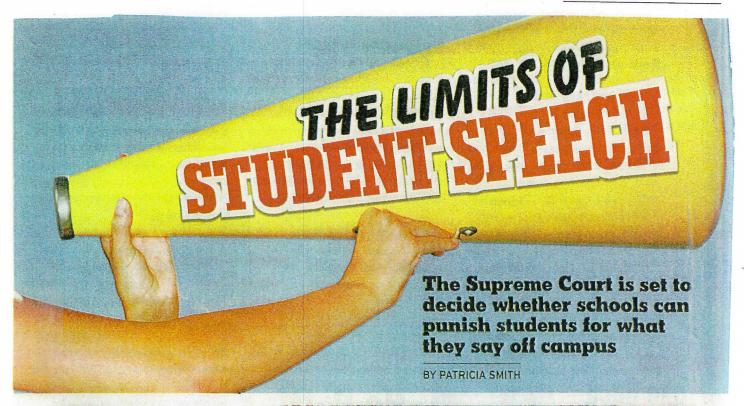
Mahanoy Area School District v. B.L. (2021) Mr. Faulhaber Name

Class Period



randi Levy was having a bad day. It was a Saturday in the spring of 2017, and the ninth-grader at Mahanoy Area Junior/Senior High School in Pennsylvania had just learned that she'd failed to make the varsity cheerleading squad and would remain on JV.

Levy vented her frustration on social media, sending a Snapchat message to about 250 friends. The message included an image of herself and a friend with their middle fingers raised, along with text expressing a similar sentiment. Using a curse word four times, Levy expressed her dissatisfaction with "school," "softball," "cheer," and "everything."

Though Snapchat messages

are designed to disappear, another student took a screenshot of this one and showed it to her mother, one of the cheerleading coaches. The school suspended Levy from cheerleading for a year, saying the punishment was needed to "avoid chaos" and maintain a "teamlike environment."

Levy sued the school district, winning a sweeping victory in the U.S. Court of Appeals for the Third Circuit, in Philadelphia. The appeals court said



How far off campus does school authority extend?

the First Amendment did not allow public schools to punish students for speech outside school grounds. The school district appealed.

Now the Supreme Court has agreed to hear the case,

Mahanoy Area School District v. B.L. (as Levy is known in court papers). It will be an opportunity for the nation's highest court to decide whether schools can punish students for off-campus speech.

"The case is an important one because school administrators, students, and

parents have no idea just how far the arm of school authority extends off campus," says David Hudson, a First Amendment expert and a law professor at Belmont University in Nashville. He adds, "This is an issue that has been crying out for Supreme Court review for a long time."

#### A High-Stakes Question

In urging the justices to hear the case, the school district said administrators around the nation need a definitive ruling from the Supreme Court on their power to discipline students for MACES (BRANDILE

what they say away from school.

"The question presented recurs constantly and has become even more urgent as Covid-19 has forced schools to operate online," a brief for the school district says. "Only this court can resolve this threshold First Amendment question bedeviling the nation's nearly 100,000 public schools."

Justin Driver, a law professor at Yale University, agrees that the issues in this case are important. In fact, he says, "it is difficult to exaggerate the stakes of this constitutional question."

Driver himself doesn't believe that schools have a right to tell students what they can say when they're not in school,

"In the modern era, a tremendous percentage of minors' speech occurs off campus but online," he says. "Judicial decisions that permit schools to regulate off-campus speech that criticizes public schools are antithetical to the First Amendment. Such decisions empower schools to reach into any student's

home and declare critical statements verboten, something that should deeply alarm all Americans."

### The Rise of Social Media

In the past half-century, the Supreme Court has issued a number of important decisions about students' First Amendment rights (see "Key Rulings' on Student Speech," below). The main precedent is from a different era. In 1969, in Tinker v. Des Moines Independent Community School District, the Supreme Court ruled that students had a right to wear black armbands to protest the Vietnam War but said

disruptive speech, at least on school grounds, could be punished by school officials.

Making distinctions between what students say on campus and off was easier

in 1969, before the rise of social media. These days, most courts have allowed public schools to discipline students for social media posts so long as they are linked to school activities and threaten to disrupt them.

The Pennsylvania School Boards Association filed a brief in support of the school district's appeal to the Supreme Court.

"Whether a disruptive or harmful tweet is sent from the school cafeteria or after the student has crossed the street on her walk home, it has the same impact," the brief says, adding that the appeals court ruling "renders schools powerless whenever a hateful message is launched from off campus."

Levy, who is represented by lawyers for the American Civil Liberties Union, a group that defends constitutional rights, told the Supreme Court that the First Amendment protects

her "colorful expression of frustration, made in an ephemeral Snapchat on her personal social media, on a weekend, off campus, containing no threat or harassment or mention of her school, and that did not cause or threaten any disruption of her school."

The Supreme Court has a reputation for protecting First Amendment rights. Chief Justice John G. Roberts Jr. recently described himself as "probably the most aggressive defender of the First Amendment on the Court now." But the Court has been slowly chipping away at students' free speech rights since the *Tinker* decision in 1969, such as with its 2007 ruling restricting some kinds of student speech off school grounds.

Now the widespread use of social media by students has further complicated the issue. And that makes this a particularly good time for the Supreme Court to re-examine students' First Amendment rights, says Hudson, the First Amendment expert.

"This case is a good opportunity," he says, "for the Court to explain what the rules are with this new revolutionary form of communication." •

Teens do
much of their
speaking
online, away
from school,

**Key Rulings on Student Speech** 

Three Supreme Court cases that have defined freedom of speech in schools

# Tinker v. Des Moines Independent Community School District (1969)

After students were suspended for wearing black armbands to protest the Vietnam War, they sued, claiming their freedom of speech had been violated. The Court ruled in their favor, saying that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." The landmark ruling established that public schools can't censor student speech unless it disrupts the educational process.

## Hazelwood School District v. Kuhlmeier (1988)

High school students sued their school district after the principal removed two articles considered inappropriate from the school newspaper. The Court ruled that schools may censor student newspapers and other forms of



Mary Beth and John Tinker and the armbands they wore as a war protest

student expression such as yearbooks and graduation speeches "so long as their actions are reasonably related to legitimate [educational] concerns."

### Morse v. Frederick (2007)

A student was suspended after displaying a banner that said "Bong Hits 4 Jesus" at a school-sponsored event off campus. The Court ruled that schools may restrict student speech that can be reasonably interpreted as promoting illegal drug use.

With reporting by Adam Liptak of The Times.

Classifying Arguments: The following is a list of arguments in the Mahanov Area School District v. B.L. (2021) Supreme Court case. Read through each argument and decide whether it is an Arguments for Mahanoy Area School District (M) or if it supports the position of the student, B.L (BL). Place the appropriate mark in the blank provided AND circle the appropriate letter. 1/2 Point Each 1. (M/BL); No matter where speech originates, schools should be able to treat students the same when their speech is directed at the school and causes the same disruption on the school environment. 2. (M/BL): As Tinker v. Des Moines established, "Students do not check their First Amendment rights at the schoolhouse gate," but the First Amendment does not force schools to ignore speech that disrupts the school environment or invades other students' rights just because the student speaks from one step outside the schoolhouse gate. 3. (M/BL): B.L.'s snaps were posted on a Saturday, off campus, not during any school-sponsored activity, and sent from B.L.'s personal smartphone to only her Snapchat friends. The school should not have any authority over this speech. 4. (M/BL): Concerns about school censorship are exaggerated because even if schools are able to discipline off-campus speech that causes a disruption, they still will not be able to punish speech only because they disagree with the message. 5. (M/BL): B.L.'s off-campus speech disrupted the learning environment at MAHS. Students were talking about the snaps during class time, and it caused conflict within the cheerleading team. 6. (M/BL): The fact that most students have smartphones and the complexity of remote and hybrid learning during the pandemic, makes the decision of the U.S. Court of Appeals (that Tinker v. Des Moines does not apply to off-campus speech) difficult to apply in real-life situations. 7. (M/BL): If schools have authority to discipline students' social media posts that encompass anything said to a classmate, regardless of topic, and anything said about the school, regardless of audience, it is tantamount to them having authority over students' whole lives since a vast majority of young people's speech falls within those vague categories. 8. (M/BL): The snaps taken on a Saturday would not still be visible by the time school started on Monday morning. This shows that B.L. did not intend to disrupt school and could not have reasonably foreseen that it would. Her original snap was not the cause of the disruption (if there was one). 9. (M/BL): It will be impossible for schools to clearly define what "off campus" and "on campus" means. If on the weekend a student uses a private email to blast harassing messages to school email accounts, is that off-campus or on-campus speech? 10. (M/BL): Only B.L.'s Snapchat friends could see the snaps, which were not otherwise public. It was only visible on campus because another student took a screenshot of the snap and shared it within the school. It was not B.L.'s action, but the act of a third party that brought the snap to school. 11. (M/BL): The snap did not identify any school official or MAHS by name. In the photo, B.L. was not wearing her cheerleading uniform, there was no school logo visible, and there was nothing in the photo connecting B.L. or her friend to the school. 12. (M/BL): Off-campus student speech is only within the school's authority when the student directs their speech at the school community, as B.L. did in this case. 13. (M/BL): The snaps were spontaneous expressions of frustration and were not threatening nor harassing. If they had been, the school could have acted because they do have the authority to punish true threats, harassment, bullying, and cheating even if it occurs off campus. 14. (M/BL): Even if the Court does apply Tinker to this off-campus speech, B.L.'s snaps were not substantially disruptive to the school environment. They, therefore, fail the Tinker Test (or substantial disruption standard) that allows schools to discipline the speaker. 15. (M/BL): Extending the school's authority everywhere young people go would teach them to avoid saying anything that might be controversial, politically incorrect, or critical of the status quo (the way things are), for fear of punishment by the government. This would undermine the First Amendment. 16. (M/BL): Schools need to be able to prevent harassment and bullying that impacts students at school without any limitations on where the harassment originates. The ruling in this case will impact the school's ability to discipline online harassment and cyberbullying. The Argument(s) above I thought was most persuasive stated.... because...

What you need to know before you begin: When the Supreme Court decides a case, it clarifies the law and serves as guidance for how future cases should be decided. Before the Supreme Court makes a decision, it always looks to precedents— past Supreme Court decisions about the same topic—to help make the decision. A principle called <i>stare decisis</i> (literally "let the decision stand") requires that the precedent be followed. If the case being decided is legally identical to a past decision, then the precedent is considered binding and the Supreme Court must decide the matter the same way. However, cases that make it to the Supreme Court are typically not completely identical to past cases, and justices must consider the similarities and differences when deciding a case.
The process of comparing past decisions to new cases is called applying precedent. Lawyers often argue for their side by showing how previous decisions would support the Supreme Court deciding in their favor. This might mean showing how a previous decision that supports their side is analogous (similar) to the case at hand. It can also involve showing that a previous decision that does not support their side is distinguishable (different) from the case they are arguing.
<b>Applying Precedent:</b> Determine which side the Supreme Court would rule in favor of ( <i>Mahanoy Area School District or B.L.</i> ) is the Court found the case <b>analogous</b> (similar) and whose precedent should apply in their ruling:
1. If SCOTUS used the precedent from Tinker v. Des Moines, the Court would rule for Mahanoy Area School District/B.L (circle one) because:
2. If SCOTUS used the precedent from Hazelwood v. Kuhlmeier, the Court would rule for Mahanoy Area School District/B.L (circle one) because
3. If SCOTUS used the precedent from Bethel v. Fraser, the Court would rule for Mahanoy Area School District/B.L (circle one) because:
4. If SCOTUS used the precedent from Morse v. Frederick, the Court would rule for Mahanoy Area School District/B.L (circle one) because:
4. If SCOTOS used the precedent from Morse v. Frederice, the Court would rule for Mananoy Area School District/ B.L. (circle one) because:
5. The question the Court had to decide in this case was: Does the First Amendment Prohibit public school officials from regulating off-campus student speech? Based on the application of the precedent, how should <i>Mahanoy Area School District v. B.L.</i> be decided?
If I was a Supreme Court Justice, I would you decide the case for because