Foundations of Government Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Student Free Speech Rights Outside School
Mr. Faulhaber Class Period: \_\_\_\_\_\_\_\_\_\_\_

*Mahanoy Area School District v. B.L.* **(Argued**: April 28, 2021/**Decided:** June 23, 2021)

Directions: Read Highlighting or underlining all the information in this packet other than the questions posed.

Background

Although the First Amendment states that the government cannot make any law “abridging the freedom of speech,” there are still many limits to where and when people can speak and what they can say. Students in public schools, for example, have free-speech rights, but those rights are not the same as those of adults outside of schools.

*Tinker v. Des Moines Independent School District* (1969) established that students have free-speech rights at school as long as the speech does not cause a substantial disruption in the educational process or invade the rights of others. If student speech causes a disruption, it can be restricted in school and the student can even be disciplined. This is sometimes called the “substantial disruption standard” or the “Tinker Test.” With the increased use of social media apps, other advancements in technology, and the sudden switch to remote learning in many schools during the COVID-19 pandemic, the issue of student speech that occurs outside of school but has the potential to disrupt the educational process within school has become the focus of many court cases.

This case, *Mahanoy Area School District v. B.L*, is about a student who sues her public school for violating her First Amendment rights. It decided whether limits on student speech in public schools may extend to speech made off campus but that has a disruptive effect on campus.

Facts

B.L. was a student and cheerleader at Mahanoy Area High School (MAHS) in Pennsylvania. B.L. made the junior varsity (JV) cheerleading squad her freshman year and hoped to be named to the varsity team for her sophomore year. She was very disappointed when the teams were announced, and she was placed on the JV team again.

On Saturday of the week of the announcement, B.L. posted two messages on Snapchat while off campus. Snapchat is a social media app in which the messages (called “snaps”) are visible for only 24 hours and then self-delete. It is commonly known, and Snapchat warns its users, that permanent screenshots can be taken of the snaps by other users. B.L.’s first snap was a picture of B.L. and a friend with their middle fingers raised, tongues sticking out, and the caption, **“F\*\*\* school f\*\*\* softball f\*\*\* cheer f\*\*\* everything”** (Note: B.L. did not use \*\*\* and wrote out the full word). The snap reached about 250 friends, which included other MAHS students and members of the cheerleading team. A screenshot was taken of the snap by a classmate.

When students returned to school the next week, there was talk about the snaps. Several cheerleaders approached the coaching staff to express concerns about B.L. remaining on the team. One cheerleader showed her mother, a cheerleading coach, screenshots of the snaps. Another coach who is also a math teacher at the school, reported that her algebra class was “disrupted quite a bit” because they kept bringing up the snaps, which was “taking class time away from [other] students.”

Cheerleaders at MAHS agree to follow rules that they “have respect for [the] school, coaches, teachers, other cheerleaders;” and will not use “foul language and inappropriate gestures.” They are informed that, “There will be no toleration of any negative information regarding cheerleading, cheerleaders, or coaches placed on the internet.” The coaches determined that B.L.’s conduct violated the rules and removed her from the team for the school year. The coaching staff told B.L. that she could try out again the next year. B.L. faced no further disciplinary action. The principal, athletic director, and school board supported the coaches’ decision to remove B.L. from the team.

B.L. and her parents filed a lawsuit against Mahanoy Area School District in the U.S. District Court for the Middle District of Pennsylvania. They alleged that B.L.’s First Amendment right to free speech was violated because the school disciplined her for off-campus speech. They asked the court to grant a legal order (injunction) to reinstate her on the cheerleading team, erase (expunge) her disciplinary record, issue a statement that her rights had been violated (declaratory relief), and award money (damages). The District Court granted B.L. an injunction to be reinstated on the team, declaratory relief, expungement of her record, and some monetary damages. They said that even if *Tinker v. Des Moines* applied to off-campus speech, this situation was not sufficiently disruptive to the school to warrant the school’s response.

The school district appealed this decision to the U.S. Court of Appeals for the Third Circuit. This court agreed with the District Court’s ruling but for different reasons. They did not rule on whether the snaps were disruptive enough to be disciplined. Instead, they ruled that *Tinker v. Des Moines* does not apply to off-campus speech. They stated school officials may not “reach into a child’s home and control his/her actions there to the same extent that it can control that child when he/she participates in school sponsored activities.” In making this ruling, they decided differently than some other circuit courts that have decided similar questions regarding off-campus speech. When one court of appeals rules differently than another, it is referred to as a “circuit split.”

The school district asked the U.S. Supreme Court to hear this case, and it agreed.

Classifying Arguments: The following is a list of arguments in the **Mahanoy 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***. ***¼*** *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): 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.

\_\_\_\_3. (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.

\_\_\_\_4. (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?

\_\_\_\_5. (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.

\_\_\_\_6. (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.

\_\_\_\_7. (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.

\_\_\_\_8. (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.

**I found the argument above stated in #\_\_\_\_ most compelling for Mahanoy Area SchoolDistrictbecause…**
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**I found the argument above stated in #\_\_\_\_ most compelling for the B.L because…**
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**Decision**

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)](https://www.oyez.org/cases/1968/21), 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.

**Does school authority over student speech extend to non-school activities that are conducted outside school hours? If so, in what circumstances? If not, under what situation would schools be able to restrict student speech?** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**White hoods, cross burning: Iowa students disciplined after photo surfaces**



CRESTON, Ia. — This is not the way any school district or small town wants to go viral.

But now Creston has no choice but to wrangle with the fallout after five high school students on the football team were photographed [wearing white hoods, brandishing a Confederate flag and rifle and standing in front of a burning cross.](http://www.desmoinesregister.com/story/news/2017/09/06/white-hoods-apparent-confederate-flag-iowa-students-disciplined-after-photo-surfaces/637953001/)

The image spread like wildfire across social media and instantly catapulted this Union County seat of 7,800 into the epicenter of our nation’s continuously churning debate on race.

Two of the school officials at the eye of the storm, high school principal Bill Messerole and Creston/Orient-Macksburg head football coach Brian Morrison, have spent the last two days dealing with the crisis.

Morrison, a 16-year veteran of the district who's in his eighth year as head coach, kicked the five players off his high school team in what has become his most difficult week as an educator.

The coach also ordered his athletes to stop commenting on the incident on social media and to work together to “move forward as a football team and be better from it.”

Morrison, wiping away tears as he spoke Thursday, said that he had agonized over whether to hold football practice Wednesday as the photo quickly spiraled into a national story.

But ultimately it was good for his students to return to some semblance of routine, he said, after spending time talking through the implications of what had happened.

“We met yesterday before practice and discussed as a team us moving forward, what this team means to the community,” said Morrison, who in 2014 took the squad to the Class 3A state semifinals at the UNI-Dome in Cedar Falls. “People look up to us. If we did not present ourselves in a positive manner … whether you do right or wrong, if you’re a part of it, you’re a reflection of our team and past players and former coaches.

"So we try to have a positive influence not only in the high school but also in the community.”

The high school football team of 74 players — now 69 — has four racial minority athletes, including its 16-year-old varsity quarterback.

The Creston/O-M Panthers are 1-1 heading into Friday's varsity game at Harlan, where there will be no official recognition of the incident.

“It’s not fair to the kids to keep reliving the past," Morrison said."If you’re a part of this program, you should feel like you’re a part of the family."

Creston's K-12 enrollment is nearly 90 percent white, 4.5 percent Hispanic and 1.6 percent African-American, according to the latest data from the Iowa Department of Education.

Even though this could happen anywhere, it happened here,” Messerole said. “So we’ve got to own this and move on in a positive way.”

He plans to implement school-wide sensitivity and diversity training, among other long-term efforts.

“I think we need to become a model of how to handle this,” he said.

“I don’t mean we’re going to get a speaker to come in one time and say, 'Hey, we’re doing something because we brought in a speaker.'"

Messerole, who declined to comment on the discipline of the five students beyond their dismissal from the football team, added that the school district has consulted its attorney.

[Some legal experts have weighed in](http://www.desmoinesregister.com/story/news/crime-and-courts/2017/09/06/discipline-punishment-against-creston-students-free-speech-violation/639628001/) on the photo, observing that although the image is offensive and racist, it may qualify as protected free speech off school grounds.

Messerole said that as an administrator weighing the boundaries of free speech rights, “that line probably is if it’s a material and substantial disruption to the school day.”

**Discipline against cross-burning students may be free-speech issue**

School leaders' decision to discipline Creston High School students who were pictured [wearing Ku Klux Klan-type hoods](http://www.desmoinesregister.com/story/news/2017/09/06/white-hoods-apparent-confederate-flag-iowa-students-disciplined-after-photo-surfaces/637953001/)beside what appears to be a burning cross may be overreaching, said Drake University Law Professor Mark Kende.

While the picture may be offensive, “this is a significant free speech issue,” said Kende, who specializes in constitutional law. “If they’re off school grounds and they’re doing it in their free time and they’re not targeting someone in school … then this is a form of expressive speech.”

Under the Constitution, hate speech is legal and protected, Kende said.

In Iowa, hate speech does not rise to a criminal offense unless it’s specifically targeted, which doesn’t appear to be the case in Creston, Kende said. There are also no state-specific laws regarding burning torches or wearing certain garb.

“The school district’s going to have an issue,” Kende said. “The issue is complicated by the fact that the school is reaching beyond its typical school (borders) to penalize them.”

However, the law get complicated when considering "school politics" and social media, Kende said.

For example, the disciplined students may have been required to sign documents to join extracurricular activities stating they won’t engage in certain behavior, Kende said.

He also said there may be more to the story than the image spreading around social media. He said there may be coded messages in the images the general public are unaware of, but school officials recognize.

"Is there a message that’s not explicit? If that message is clear enough, does it rise to the level of intimidation or threat?" Kende said. "From what I’ve heard so far, the answer doesn’t seem like it does, but the way schools work, there’s so much inside politics and inside turmoil within a school ... so there may be more to the story, but in general, people are allowed to engage in this country in this offensive speech."

The image also shows the students pictured alongside a firearm and a burning object. While these elements enhance the offensiveness of the image, they are still protected a free speech as long as nobody is targeted with the offensive speech, Kende said.

"It very well could be viewed, for lack of a better phrase, (as) really, really offensive racist free speech," Kende said.

 **If I was a lawyer for the students and applied precedent, I would argue against their punishment constitutionality stating…**
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**If I was a lawyer for the school district and applied precedent, I would argue their punishment was constitutional stating…**
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**How Should This Case Be Decided? Explain**
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**After explaining the scenario to my parent(s), guardian(s), adult(s), peer(s) in my life I was told…I agree/disagree because…**

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