

## United States Supreme Court Rules in Favor of Cheerleader Who Published Critical Social Media Post in Free-Speech Case

On June 23, 2021, in *Mahanoy Area School District v. B.L.*, the United States Supreme Court ruled a Pennsylvania school district violated the First Amendment rights of a cheerleader by disciplining her for her profanity-laden complaint on a social media platform after she was not selected for the varsity team. However, the majority declined to outright bar public schools from regulating all off-campus speech. The recent opinion raised significant questions about the authority of schools to regulate the off-campus speech of students under the 1969 decision of *Tinker v. Des Moines Independent Community School District*, in which the court held schools can suppress student speech that causes a "substantial disruption" to the learning environment of the school.

The Mahanoy case involved a 14-year-old student who did not make her public school's varsity cheerleading team. She later expressed her disappointment in a profanity-laden social media post. The social media post was seen by her coaches, causing her to receive a one-year suspension from the junior varsity team because the social media post violated team and school rules. The student later filed suit arguing the discipline she received violated her First Amendment right. After a lower court decision in her favor, the case ultimately reached the Supreme Court to weigh in.

In the 8-1 decision, the Supreme Court held that the school district's discipline for the student's post - made on a social media platform at a local convenience store on a weekend - violated her free speech rights under the First Amendment. The majority did not believe "the special characteristics that give schools additional license to regulate speech always disappear when a school regulates speech that takes place off-campus." The majority suggested the school district may have a substantial interest in regulating different kinds of off-campus conduct like severe bullying, threats aimed at teachers or students, participation in online school activities, or hacking into school computers.

Conversely, the majority noted three features of off-campus speech that will make it less likely that schools will have an interest in regulating it: schools generally lack control over students off-campus when they are under the control of their parents; schools cannot completely regulate students' speech outside of school, particularly political or religious speech outside of school activities; and schools have an interest in protecting a student's unpopular speech and expressions as part of maintaining a free marketplace of ideas. However, even in situations where schools may have authority to regulate students' off-campus speech, the majority noted the discipline in Mahanoy still violated the student's First Amendment rights. The reasoning was the social media post was outside the school, did not specifically target any other member of the school community "with vulgar or abusive language" and the post was transmitted through a personal cellphone to an audience of the student's private social media friends.

Justice Clarence Thomas dissented stating that while he generally agrees that "off-campus, the authority of schools [to regulate speech] is somewhat less," the majority's opinion "entirely ignores the relevant history" of administrators disciplining students under similar circumstances. He also criticized the majority opinion stating it "simply posits three vague considerations and reaches an outcome" and will cause lower courts to be "at a loss" in trying to apply the ruling.

Comment: The Supreme Court's decision was clear in holding schools have less power over off-campus speech than on-campus speech. However, the opinion appears to leave the door open to future litigation to better define the scope of the power schools ultimately hold in regulating off-campus speech. This opinion may likely have significant implications as social media platforms evolve and become more popular for

# 07.01.21



millions of young students across the country.