***Should Schools Be Able to Discipline Students for What They Say on Social Media?*[1]**
Reading/Discussion

The case of a high school cheerleader who was suspended from her team for comments she made on social media may be heading to the Supreme Court. Do schools have the right to censor or punish students for speech outside of their grounds?

A student makes an offensive joke on Instagram.
A student posts a photo of the food in the cafeteria on Snapchat and writes that it looks disgusting.
A student makes fun of another student on social media and gets hundreds of likes from classmates.

When and how should schools address social media posts by students? Does it matter if they were created at school, during school hours or off school grounds? Should schools have the right to censor or even punish students for things they say online if they believe it is disruptive or harmful to the community? Or would those actions violate students' right to freedom of speech?

In "A Cheerleader's Vulgar Message Prompts a First Amendment Showdown," Adam Liptak writes about a student who sued her school district after she was suspended for a post on Snapchat:

It was a Saturday in the spring of 2017, and a ninth-grade student in Pennsylvania was having a bad day. She had just learned that she had failed to make the varsity cheerleading squad and would remain on junior varsity.

The student expressed her frustration on social media, sending a message on Snapchat to about 250 friends. The message included an image of the student and a friend with their middle fingers raised, along with text expressing a similar sentiment. Using a curse word four times, the student expressed her dissatisfaction with "school," "softball," "cheer" and "everything." Though Snapchat messages are ephemeral by design, another student took a screenshot of this one and showed it to her mother, a coach. The school suspended the student from cheerleading for a year, saying the punishment was needed to "avoid chaos" and maintain a "team like environment."

The student sued the school district, winning a sweeping victory in the United States Court of Appeals for the Third Circuit, in Philadelphia. The court said the First Amendment did not allow public schools to punish students for speech outside school grounds.

[1] **Source**: https://www.nytimes.com/2021/01/29/learning/should-schools-be-able-to-discipline-students-for-what-they-say-on-social-media.html?referringSource=articleShare

Next month, at its first private conference after the holiday break, the Supreme Court will consider whether to hear the case, *Mahanoy Area School District v. B.L.*, No. 20-255. The Third Circuit's ruling is in tension with decisions from several other courts, and such splits often invite Supreme Court review.

In urging the justices to hear the case, the school district said administrators around the nation needed a definitive ruling from the Supreme Court on their power to discipline students for 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 said. "Only this court can resolve this threshold First Amendment question bedeviling the nation's nearly 100,000 public schools."

Mr. Liptak details the key legal precedent of *Tinker v. Des Moines Independent Community School District* from 1969, when "the Supreme Court allowed students to wear black armbands to protest the Vietnam War but said disruptive speech, at least on school grounds, could be punished." Then, he writes:

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.

A divided three-judge panel of the Third Circuit took a different approach, announcing a categorical rule that would seem to limit the ability of public schools to address many kinds of disturbing speech by students on social media, including racist threats and cyberbullying.
In a concurring opinion, Judge Thomas L. Ambro wrote that he would have ruled for the student on narrower grounds. It would have been enough, he said, to say that her speech was protected by the First Amendment because it did not disrupt school activities. The majority was wrong, he said, to protect all off-campus speech.

In a brief urging the Supreme Court to hear the school district's appeal, the Pennsylvania School Boards Association said the line the Third Circuit had drawn was too crude.
"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 said. "The Third Circuit's formalistic rule renders schools powerless whenever a hateful message is launched from off campus."

The student, represented by lawyers for the American Civil Liberties Union, told the Supreme Court that the First Amendment protected 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."

Discussion:

- Should schools be able to discipline students for what they say outside school or on social media? Why or why not? Give some examples from real life or hypotheticals that you think should be censored or punishable by schools and other examples you believe should be protected by free speech.
- What is your reaction to the story of B.L. and how she was suspended from the cheerleading team for comments and a picture she posted for friends on Snapchat? The school says the punishment was necessary to "avoid chaos" and to maintain a "team like environment." Do you agree with that justification? If you were part of the school administration, how would you have handled the incident?
- Does your school have a policy on students' use of social media? Do you think that it is appropriate, fair and constitutional? Why or why not?
- In a brief urging the Supreme Court to hear the school district's appeal, the Pennsylvania School Boards Association said the Third Circuit's ruling "renders schools powerless whenever a hateful message is launched from off campus." However, the student, represented by lawyers for the American Civil Liberties Union, told the Supreme Court that the First Amendment protected 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." Which aspects of the arguments for each side do you find most persuasive? Which do you find less so, and why?
- If the Supreme Court takes the cheerleader case, how would you rule if you were one of the nine justices? Justify your answer using evidence from past cases cited in the article, such as Tinker v. Des Moines

Complete article

A Cheerleader's Vulgar Message Prompts a First Amendment Showdown

A Pennsylvania school district has asked the Supreme Court to rule on whether students may be disciplined for what they say on social media.

WASHINGTON — It was a Saturday in the spring of 2017, and a ninth-grade student in Pennsylvania was having a bad day. She had just learned that she had failed to make the varsity cheerleading squad and would remain on junior varsity.

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Justin Driver, a law professor at Yale and the author of "The Schoolhouse Gate: Public Education, the Supreme Court and the Battle for the American Mind," agreed with the school district, to a point.

"It is difficult to exaggerate the stakes of this constitutional question," he said. But he added that schools had no business telling students what they could say when they were not in school. "In the modern era, a tremendous percentage of minors' speech occurs off campus but online," he said. "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 key precedent is from a different era. In 1969, in Tinker v. Des Moines Independent Community School District, the Supreme Court allowed students to wear black armbands to protest the Vietnam War but said disruptive speech, at least on school grounds, could be punished.

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The brief focused on that last point, and it did not spend much time defending the Third Circuit's broader approach.

The Supreme Court has a reputation for being protective of First Amendment rights. Chief Justice John G. Roberts Jr., in an appearance at a law school last year, as "probably the most aggressive defender of the First Amendment on the court now."

But the court has been methodically cutting back on students' First Amendment rights since the Tinker decision in 1969. And in the court's last major decision on students' free speech, in 2007, Chief Justice Roberts wrote the majority opinion, siding with a principal who had suspended a student for displaying a banner that said "Bong Hits 4 Jesus."

Professor Driver said that suggested a blind spot. "There is at least one major area where Chief Justice Roberts's defense of the First Amendment is notably lax: student speech," he said. "I fervently hope that Roberts will regain his fondness for the First Amendment when the court finally resolves this urgent question."