



**B**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

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."

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

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." ●

## 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.



**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."

### *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

### *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.

BETTMANN/CLTY IMAGES

With reporting by Adam Liptak of *The Times*.



**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 *stare decisis* (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.

**Applying Precedent:** Determine which side the Supreme Court would rule in favor of (*Mahanoy Area School District* or *B.L.*) if the Court found the case **analogous** (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:

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 *Mahanoy Area School District v. B.L.* be decided?

**If I was a Supreme Court Justice, I would you decide the case for... because...**

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