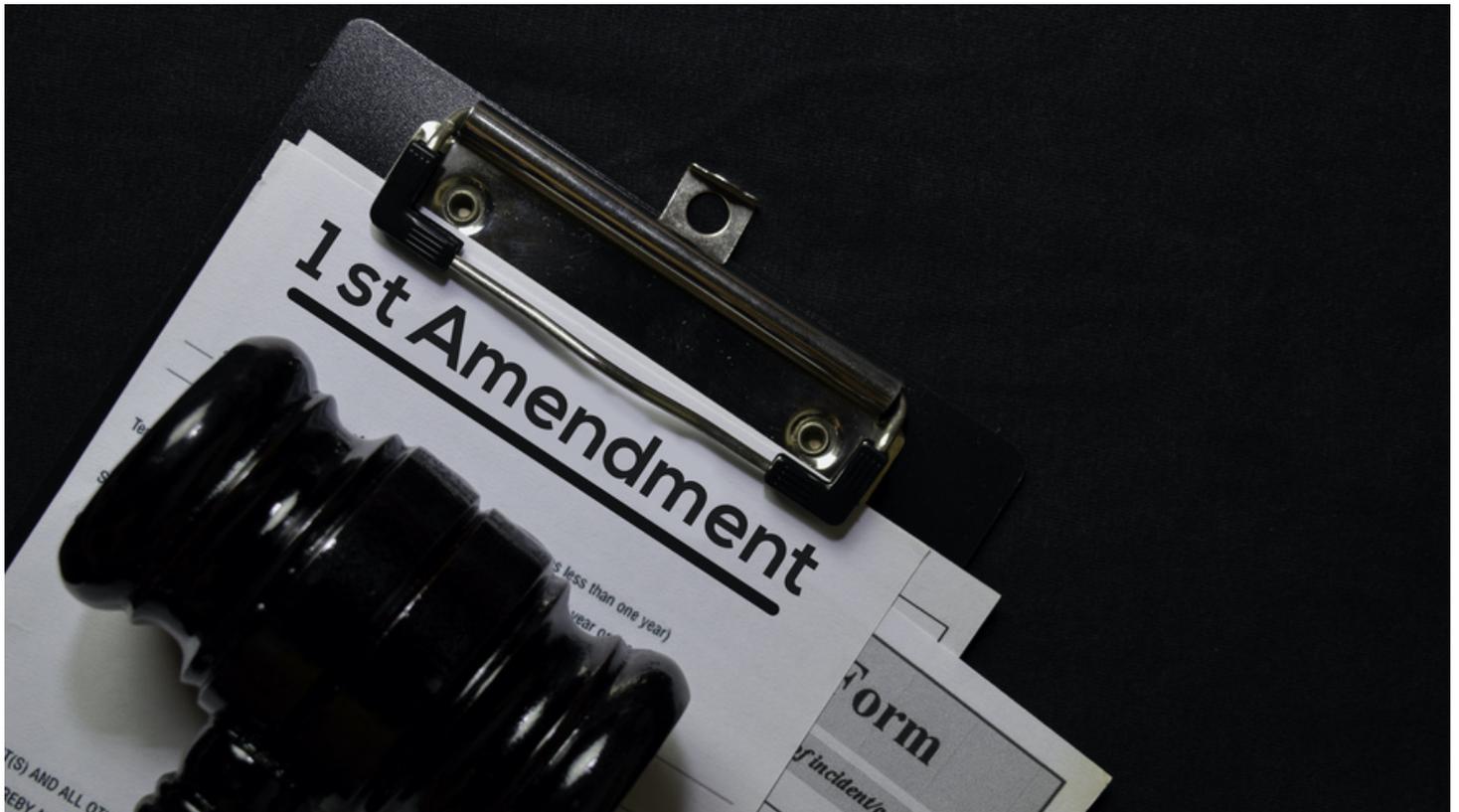


Student's Snapchat profanity leads to high court speech case

By Associated Press, adapted by Newsela staff on 05.06.21

Word Count **959**

Level **1080L**



A Supreme Court case will examine whether public schools can discipline students over something they say off-campus. The case will evaluate the limits of the U.S. Constitution's First Amendment. The court heard arguments on April 28. Photo: Syahrir Maulana/Getty Images

When Brandi Levy was 14 years old, she did not make her high school's varsity cheerleading squad. She took to Snapchat to express her frustration. She posted an angry rant directed at her school and the cheer team. The post contained some profane words and a profane gesture. The incident has resulted in the most significant case on student speech in over 50 years. The case is currently being considered by the Supreme Court.

The question before the court is whether public schools can discipline students over something they say off-campus. The topic is especially meaningful in a time of remote learning because of the coronavirus pandemic and rising awareness of the harmful effects of online bullying.

The Supreme Court heard arguments on April 28 via telephone because of the pandemic. Several justices on the court have school-age children or recently did.

The case has its roots in the 1969 *Tinker v. Des Moines* case. In that case, a high school in Des Moines, Iowa, suspended students who wore armbands to protest the Vietnam War. In a key

ruling, the Supreme Court sided with the students. It declared students don't "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

Ever since, courts have wrestled with the details of the decision in *Tinker v. Des Moines*.

Suspended From The Cheerleading Team

After Levy made that post from a store in her hometown of Mahanoy City, Pennsylvania, the post was brought to the attention of the cheer team coaches. They suspended Levy from the cheerleading team for a year.

Levy, now 18 years old, is finishing her first year in college. "I was a 14-year-old kid," she said. "I was upset, I was angry. Everyone, every 14-year-old kid speaks like that at one point."

Her parents knew nothing about the Snapchat post until she was suspended, she said. Levy added that she wasn't grounded or otherwise punished for what she did.

Instead, her parents filed a federal lawsuit. Such lawsuits involve cases of national law, such as something that might go against the Constitution. The parents claimed the suspension violated their daughter's constitutional right to free speech.

Lower courts agreed and restored her to the cheerleading team. The 3rd U.S. Circuit Court of Appeals in Philadelphia, Pennsylvania, held that the *Tinker* case "does not apply to off-campus speech." Appeals courts, also known as appellate courts, review decisions that lower courts make to ensure the proceedings were fair. The court said it would let a later court decide "the First Amendment implications of off-campus student speech that threatens violence or harasses others."

However, the school district, education groups, President Joe Biden's administration and anti-bullying organizations said that the appeals court went too far.

Should Schools Have To Ignore Disruptive Speech?

The First Amendment does not completely prohibit public schools "from disciplining students for speech that occurs off campus," wrote Elizabeth Prelogar. She is acting Solicitor General for Biden's administration.

Philip Lee is a law professor who has written about the regulation of cyberbullying. He said it makes no sense to draw the line on policing students' speech at the edge of campus.

"Most cyberbullying content is created off campus on computers, iPads, all kinds of electronic devices," said Lee. He and other education scholars have called for a more careful approach to regulating student speech online.

"But at the same time, you don't want a situation where schools are monitoring everyone's speech at home," he said.

The Mahanoy Area School District declined to comment on the case, its lawyer, Lisa Blatt, said.

In her statement for the district, Blatt wrote, "This case is about how schools address the bad days."

Schools should not be forced "to ignore speech that disrupts the school environment or invades other students' rights just because students launched that speech from five feet outside the schoolhouse gate," Blatt wrote.

Support For Levy

The school's approach would allow educators to police what students say round the clock, said Witold "Vic" Walczak. He works for the American Civil Liberties Union (ACLU), the civil rights nonprofit group which is representing Levy.

"And that is super dangerous. Not only would students like Brandi not be able to express non-threatening, non-harassing bursts of frustration, but it would give schools the possibility of regulating important political and religious speech," Walczak said.

An unusual alliance of conservative and liberal groups has formed behind Levy. All point to the dangers of expanding school regulation of students' speech.

The Alliance Defending Freedom and Christian Legal Society urged the court to affirm the appellate ruling. They pointed to the dangers of schools regulating off-campus speech. "Religious speech, in particular, provokes debate and inflames passions," they said.

Mary Beth and John Tinker, the siblings at the center of the 1969 case, also are on Levy's side. Their protest, updated for the digital age, would have possibly included a social media aspect, they wrote in a court statement.

The outcome proposed by the school district would have left them subject to discipline, the Tinkers wrote.

Walczak, the ACLU lawyer, acknowledged that the "speech here is not the most important in the world. This isn't political or religious speech."

"I'm just trying to prove a point that young students and adults like me shouldn't be punished for them expressing their own feelings and letting others know how they feel," Levy said.

Do you think your posts on social media should be considered part of your right to free speech as a student? Should schools be allowed to discipline students for what they post on social media? Newsela is taking student opinion submissions through May 24. Send 100-300 words to editorial@newsela.com. Don't forget to get your caretaker's [permission \(click here for the signature form\)](#).