Written by **Elad Hakim** on April 9, 2021

SCOTUS to Decide if Public Schools May Regulate Off-campus Speech

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When Brandi Levy, a high school freshman, issued an F-bomb-laden Snapchat post to some of her followers, she probably didn't expect any pushback from the school district. To her dismay, Levy, who had unsuccessfully tried out for the school cheerleading team, was suspended from cheerleading for an entire year by the school district as a result of her post. After prevailing in several lower courts, Levy has asked the Supreme Court to intervene, and arguments in front of the Supreme Court are scheduled for later this month. In essence, the Supreme Court will decide whether a school may regulate speech that occurs off-campus in the same manner that it does with speech that occurs on-campus.

As reported by the Morning Call:

> Frustrated at not making the varsity cheerleading squad or getting the softball position she wanted and worried about final exams, the Schuylkill County teen posted a picture of herself and a friend with middle fingers extended and the text, "F— school f— softball f— cheer f— everything."

Levy sent the post on her own personal cellphone, away from school property, and on a Saturday. Despite these important facts, the school district suspended her after a coach from the school informed the district about her post.

Given the suspension, the U.S. Supreme Court has agreed to hear arguments about whether the school board exceeded its authority when it suspended Levy. Since, as stated above, Levy's post was made on her personal device, away from school grounds, and on a Saturday, at issue is whether the school was permitted to "police" such posts and to take remedial action under such circumstances?

In the 1969 case of *Tinker v. Des Moines Independent Community School District*, the U.S. Supreme Court addressed the question of student speech and the First Amendment. As the Supreme Court explained:

> In December, 1965, a group of adults and students in Des Moines held a meeting at the Eckhardt home. The group determined to publicize their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands during the holiday season and by fasting on December 16 and New Year's Eve. Petitioners and their parents had

> previously engaged in similar activities, and they decided to participate in the program.
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> The principals of the Des Moines schools became aware of the plan to wear armbands. On December 14, 1965, they met and adopted a policy that any student wearing an armband to school would be asked to remove it, and, if he refused, he would be suspended until he returned without the armband. Petitioners were aware of the regulation that the school authorities adopted.
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> On December 16, Mary Beth and Christopher wore black armbands to their schools. John Tinker wore his armband the next day. They were all sent home and suspended from school until they would come back without their armbands. They did not return to school until after the planned period for wearing armbands had expired — that is, until after New Year's Day.

The Supreme Court ultimately ruled that public-school officials could not censor student speech/expression unless they could forecast that the expression would result in "substantial disruption of or material interference with school activities" or "intrude in the school affairs or the lives of others." As the Supreme Court noted:

> As we have discussed, the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred. These petitioners merely went about their ordained rounds in school. Their deviation consisted only in wearing on their sleeve a band of black cloth, not more than two inches wide. They wore it to exhibit their disapproval of the Vietnam hostilities and their advocacy of a truce, to make their views known, and, by their example, to influence others to adopt them. They neither interrupted school activities nor sought to intrude in the school affairs or the lives of others. They caused discussion outside of the classrooms, but no interference with work and no disorder. In the circumstances, our Constitution does not permit officials of the State to deny their form of expression.

Since the Tinker decision, the Supreme Court has created several exceptions to such protection, which are discussed here, here, and here. One obvious question, however, is whether these exceptions should be applied to speech/expression that occurs away from school property, on a personal device, and not during school hours.

A ruling against Levy could have far-reaching implications due to the possible chilling effect it could have on First Amendment-guaranteed rights. Clearly, there are times when schools must take remedial action against students for certain forms/types of expression, including such cases where threats or incitements are made (such speech/expression is generally not protected under the First Amendment). However, if students can be disciplined for merely "venting" on their own personal devices, where will the line be drawn between protected speech and unprotected speech? More to the point, how much power will school administrators/officials have to police what students say? Finally, if such broad police powers exist, who will police those who are doing the "policing?" Are students merely at the whim of the school administrators/officials? Could this result in instances of selective enforcement? Will the students' First Amendment-protected rights outside of the school be equivalent to those inside of the school?

Our First Amendment rights are vital. Sadly, they are already being eroded. Hopefully, the Supreme Court will provide some additional guidance in this context.