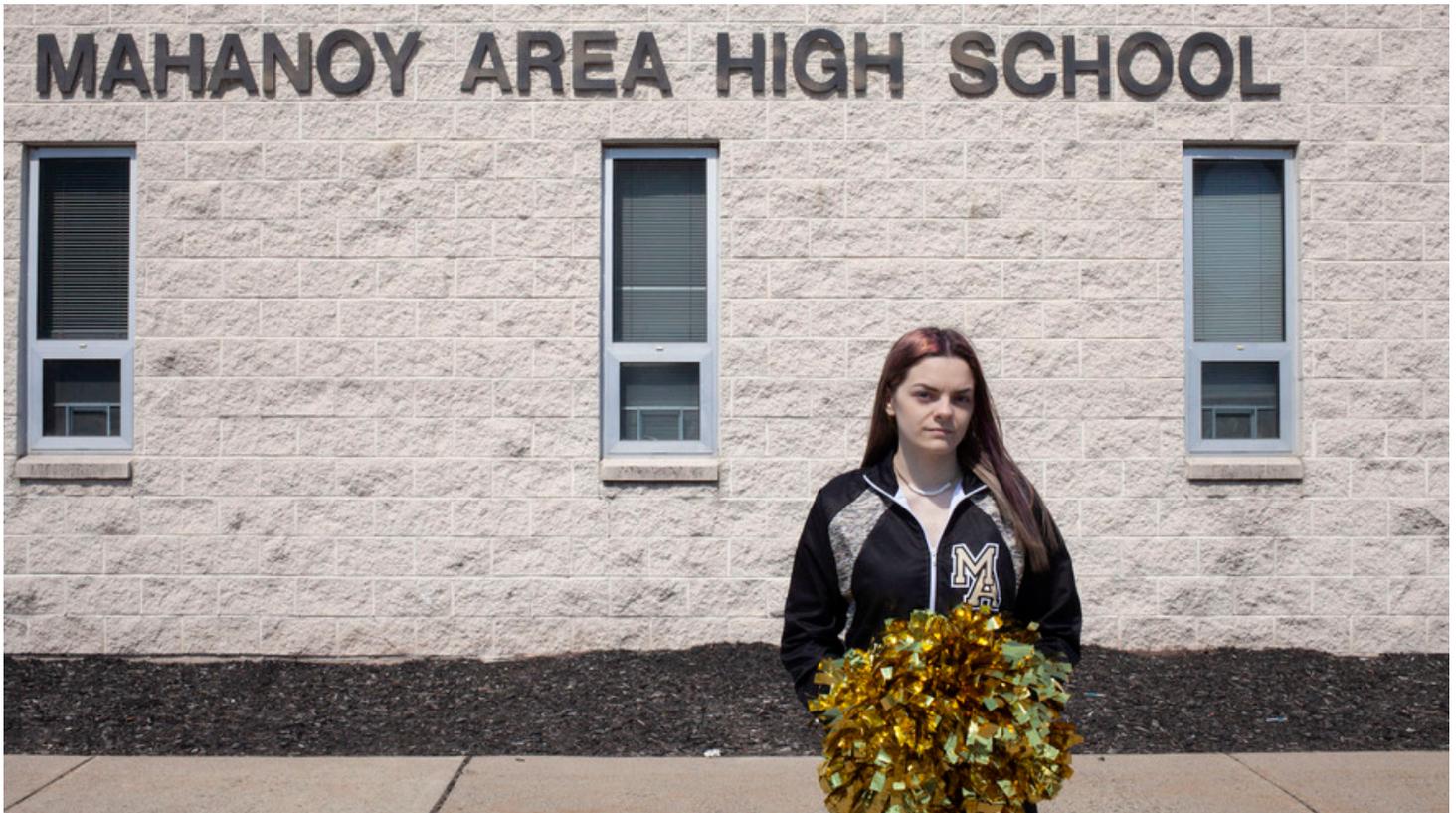


# Supreme Court rules cheerleader's suspension violated First Amendment

By John Fritze, USA Today on 06.30.21

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Brandi Levy in her cheerleading outfit outside Mahanoy Area High School in Mahanoy City, Pennsylvania, on April 4, 2021. The U.S. Supreme Court ruled on June 23, 2021, that the public school wrongly suspended Levy from cheerleading over a profane social media post she made after she did not make it onto the varsity team. Photo: Danna Singer/ACLU

WASHINGTON, D.C. – The Supreme Court on June 23 sided with a former cheerleader who excoriated her school in a profanity-laced post on social media, holding that the punishment of her off-campus speech violated the First Amendment.

The 8-1 ruling left unresolved the broader question of when schools may regulate off-campus speech and when such punishment is off-limits.

"It might be tempting to dismiss [the student's] words as unworthy of the robust First Amendment protections discussed herein," Associate Justice Stephen Breyer wrote for the majority. "But sometimes it is necessary to protect the superfluous in order to preserve the necessary."

Associate Justice Clarence Thomas dissented, asserting that the court's opinion left an unworkable standard for schools to try to follow.

When Brandi Levy, who was 14 at the time, failed to make the varsity cheer team in 2017, she and one of her friends posted a vulgar message on Snapchat that contained profane words. The message made it back to her coaches, who cut her from the junior varsity squad. After appealing to school authorities, her parents sued the school district in federal court.

Levy's attorneys at the American Civil Liberties Union argued that allowing principals to punish students for their off-campus speech, including on social media, would give schools far too much power to police innocuous interactions with their friends. School officials said they need to be able to discipline bullying and cheating that can begin off-campus or online before working its way into the school building.

Several of the justices said during oral arguments that they were wary of setting a hard-and-fast standard for when schools could regulate off-campus speech, and that hesitancy was reflected in the majority opinion. The court held that schools can sometimes punish a student for something said at home but that their power to do so is more limited than at school.

"The school's regulatory interests remain significant in some off-campus circumstances," Breyer wrote.

"Thus, we do not now set forth a broad, highly general First Amendment rule stating just what counts as 'off campus' speech and whether or how ordinary First Amendment standards must give way off campus," Breyer wrote.

Breyer said the court would leave that question to "future cases."

Thomas took issue with that approach in his dissent. He wrote that historical factors suggest schools could regulate off-campus speech that could harm the school, its faculty or other students. Thomas said he believes that standard was met in Levy's case.

"The court's foundation is untethered from anything stable, and courts (and schools) will almost certainly be at a loss as to what exactly the court's opinion today means," Thomas wrote.

The standard for on-campus speech is more clear. In 1969, a landmark Supreme Court decision, *Tinker v. Des Moines*, reaffirmed students' First Amendment rights at school, but the court said teachers and principals may regulate student speech in situations when it "materially disrupts" the operation of the school. That case involved a group of students who wore black armbands to protest the war in Vietnam.

In Levy's case, the Mahanoy Area School District in Pennsylvania asserted that the standard developed in the *Tinker* case should apply to off-campus speech.

Both sides claimed a measure of victory in the outcome.

"The school went too far, and I'm glad that the Supreme Court agrees," Levy said in a statement after the court handed down its opinion. "I was frustrated, I was 14 years old, and I expressed my frustration the way teenagers do today."

The school district said it was "pleased with and vindicated by" the fact that the court did not block schools from regulating off-campus speech altogether.

"The Supreme Court instead enumerated many examples of situations when school districts can regulate off-campus speech and made it clear that its list was not exclusive," the school district

said in a statement.

The justices struggled with the questions involved at oral arguments in April, and several signaled a desire to craft as narrow a ruling as possible. Associate Justice Brett Kavanaugh, who has two school-age children, repeatedly questioned whether the school district hadn't just overreacted to Levy's post.

A federal district court ruled for Levy in 2019, finding that – even if the Tinker standard applied off campus – the speech she used wasn't disruptive enough to trigger disciplinary action. The Philadelphia, Pennsylvania-based U.S. Court of Appeals for the 3rd Circuit went a step further, holding that Tinker does not apply to off-campus speech.

That created a split with other appeals courts, setting up a different legal standard depending on where students live.

During nearly two hours of oral arguments, several justices said they were concerned about drawing bright lines in the case. Breyer, whose father worked for decades as a lawyer for the school board in San Francisco, California, said he was "frightened to death" of trying to write a legal standard for when schools may regulate off-campus speech, particularly when students increasingly communicate with each other – and their teachers – online from home.

Associate Justice Amy Coney Barrett, who has seven children, said during arguments that although there might be good "policy reasons" for extending a school's authority beyond campus, such as bullying or cheating, she questioned what precedent the court could rely on to rule in favor of the school district.

## Quiz

1 Read the sentence from the article.

*Several of the justices said during oral arguments that they were wary of setting a hard-and-fast standard for when schools could regulate off-campus speech, and that hesitancy was reflected in the majority opinion.*

Which sentence from the article BEST supports this idea?

- (A) He wrote that historical factors suggest schools could regulate off-campus speech that could harm the school, its faculty or other students.
- (B) In 1969, a landmark Supreme Court decision, *Tinker v. Des Moines*, reaffirmed students' First Amendment rights at school, but the court said teachers and principals may regulate student speech in situations when it "materially disrupts" the operation of the school.
- (C) "The Supreme Court instead enumerated many examples of situations when school districts can regulate off-campus speech and made it clear that its list was not exclusive," the school district said in a statement.
- (D) Breyer, whose father worked for decades as a lawyer for the school board in San Francisco, California, said he was "frightened to death" of trying to write a legal standard for when schools may regulate off-campus speech, particularly when students increasingly communicate with each other – and their teachers – online from home.

2 This evidence was gathered to support the idea that the Supreme Court ruled in favor of Levy.

1. *"It might be tempting to dismiss [the student's] words as unworthy of the robust First Amendment protections discussed herein," Associate Justice Stephen Breyer wrote for the majority. "But sometimes it is necessary to protect the superfluous in order to preserve the necessary."*
2. *"Thus, we do not now set forth a broad, highly general First Amendment rule stating just what counts as 'off campus' speech and whether or how ordinary First Amendment standards must give way off campus," Breyer wrote.*
3. *Thomas took issue with that approach in his dissent. He wrote that historical factors suggest schools could regulate off-campus speech that could harm the school, its faculty or other students. Thomas said he believes that standard was met in Levy's case.*
4. *"The court's foundation is untethered from anything stable, and courts (and schools) will almost certainly be at a loss as to what exactly the court's opinion today means," Thomas wrote.*

Is this evidence adequate support for the idea? Why or why not?

- (A) Yes; it highlights the perspectives of two justices who wanted to protect Levy's First Amendment rights.
- (B) Yes; it highlights the perspectives of two justices who questioned the school district's reactions.
- (C) No; it fails to show the positions of Kavanaugh and Barrett and even focuses on Thomas's opposition.
- (D) No; it fails to show the positions of any justices in the majority and even focuses on a minority opinion.

- 3 Which sentence BEST explains how *Tinker v. Des Moines* affected the U.S. Court of Appeals for the 3rd Circuit's ruling on Levy's case?
- (A) Even though the court applied the *Tinker* standard to Levy's case, the court said Levy's speech was not disruptive enough.
  - (B) Even though the court mentioned the *Tinker* case, the court did not feel it could be invoked in Levy's case about off-campus speech.
  - (C) Because the court did not apply the *Tinker* standard to the Levy case, the court ruled against Levy and in favor of the school's disciplinary action.
  - (D) Because the court did not want to dismiss the *Tinker* standard, the court invoked it in the Levy case and used it to support Levy's position.

- 4 Which idea did the author develop the LEAST in this article?
- (A) the reasons why school district officials wanted to regulate off-campus speech
  - (B) the rulings lower courts made on Levy's case before the Supreme Court decision
  - (C) the reaction Brandi Levy had to the Supreme Court's decision to rule in her favor
  - (D) the precedent the Supreme Court tried to use to rule in favor of the school district