

# Off-Campus Speech

Mahanoy Area School District v. BL

# Question

- Does the First Amendment prohibit public school officials from regulating off-campus student speech?

# Precedent

- Tinker v. Des Moines Independent Community School District (1969)
  - Schools can regulate speech that substantially disrupts school.
- Bethel School District No. 403 v. Fraser (1986)
  - Offensive speech inside school is a substantial disruption.
- Morse v. Fredericks (2007)
  - Case that Group 3 is arguing.
  - Speech that violates school's anti-drug policy is a substantial disruption.

# Note to Petitioners

- Participant 1 might have more content than participant 2, so you might want to consider reversing the arguments.
- Both of these arguments rely heavily on hypotheticals,
  - The goal here is to show how unworkable a no restrictions on off-campus speech would be
  - Use the hypotheticals in your arguments!

# Petitioner's Argument

- First Participant
  - Facts
  - Argument – off campus speech disruptive to school can be regulated (I)
    - Public Schools have always disciplined off-campus speech to prevent in school disorder (A)
    - Tinker allows for regulation of off-campus speech (B)
      - Schools are unique (1)
      - Schools have legitimate pedagogical interests that they must protect (2)
      - NOTE – you skip (3) if you want, as it talks about how appellate courts have applied Tinker
      - Part C is very similar to B and can merged with it or skipped.
    - Current precedent protects against intrusions into private sphere (D)
      - Skip 1 (personal jurisdiction analogy)
      - Only real disruptions, not mere disagreements, can be restricted (2 & 3)

# Petitioner's Argument

- Second Participant
  - Argument – banning restrictions of off-campus speech will cause chaos (II)
    - Laws aimed at protecting students will be invalidated (A)
      - State laws protecting students will be unenforceable (1)
      - Federal protections of students will be unenforceable (2)
      - NOTE – (3) gives examples of what these laws protect against.
    - School's ability to function will be threatened (B)
      - (1) gives examples of disruptions
      - Schools will be unable to protect staff from harassment (2)
    - Instead of creating clarity, this will allow for arbitrariness. (C)
      - Focuses on what is and is not “school”

# Respondent's Argument

- First Participant
  - Facts
  - Argument – applying Tinker outside of school would harm student free speech rights (I)
    - Tinker is narrow exception to no content-based censorship rule. (A & B)
    - Expanding Tinker beyond school would harm free speech (C & D)
    - Anti-harassment policies can still be enforced (E)

# Respondent Argument

- Second Participant
  - Argument – Proposed expansions of Tinker are not justified.
    - Proposed expansion of Tinker would have no limits (II A, B & C)
    - U.S. (Solicitor General) approach would not adequately protect speech but adding an intent requirement would. (III & IV)
    - There was no disruption under Tinker (V)



# Solicitor General

- No Facts Necessary – the parties will do this.
- Argument – off-campus school speech can be regulated
  - Past cases show that special characteristics of school sometimes justifies regulation of rights (A)
  - Inability to restrict some off-campus speech could undermine school's ability to protect students/staff (A2b)
    - NOTE – I am suggesting you argue this on its own, not as part of the first argument.
  - There are limited categories of off-campus speech that should be subject to school discipline (B)