

### **Supreme Court Rules in Favor of Student in Free Speech Case**

In June 2021, the U.S. Supreme Court ruled 8-1 in favor of a Pennsylvania high school cheerleader who was punished by the school for a vulgar social media post made on her personal cellphone while off campus after she failed to make the high school varsity cheerleading team. The school suspended the student from the junior varsity team for a year due to the post upon a finding that the punishment was warranted to “avoid chaos” and maintain a “team-like environment.” The Court ruled that the punishment violated the student’s First Amendment rights to free speech.

In ruling for the student, however, the Court did not set a categorical ban on the regulation of such speech outside of school, citing a need for schools to address bullying and threats. The Court looked at three factors in determining the case: first, “geographically speaking, off-campus speech will normally fall within the zone of parental, rather than school-related, responsibility”; second, “courts must be more skeptical of a school’s efforts to regulate off-campus speech, for doing so may mean the student cannot engage in that kind of speech at all”; and third, schools should teach students that the free exchange of ideas “facilitates an informed public opinion, which, when transmitted to lawmakers, helps produce laws that reflect the people’s will”.

Justice Stephen Breyer, writing for the majority noted that unlike the lower court “we do not believe the special characteristics that give schools additional license to regulate student speech always disappear when a school regulates speech that takes place off campus. The school’s regulatory interests remain significant in some off-campus circumstances. This includes serious or severe bullying or harassment targeting particular individuals; threats aimed at teachers or other students; failure to follow rules concerning lessons, the writing of papers, the use of computers or participation in other online school activities and breaches of school security devices, including material maintained with school computers.”

This ruling marks the first time in over 50 years that a high school student has won a free-speech case in the Supreme Court. Unfortunately, this was not a landmark decision on students’ freedom of speech and the Court remained somewhat ambiguous on where boundaries lie both on and off-campus.

The lesson here is to review instances of school discipline related to freedom of speech very carefully. The laws have not been able to keep up with the explosion of media platforms that students (and educators) have available to voice their opinions which have only increased with the volatile political divide in recent years.

The effect this decision will have has yet to be determined. Though it protects the student’s freedom of speech rights outside the school purview, it does so in a limited manner. Issues of physical bullying and online bullying occurring off campus may affect a student’s ability to learn, requiring some type of school intervention and/or policy consideration. Schools are advised to consult with their general counsel in addressing such matters.