# Majanoy Area School District v. B.L.

## Facts:

### B.L., a student at Mahanoy Area High School (MAHS) posted a picture of herself on Snapchat with the caption “Fuck school fuck softball fuck cheer fuck everything.” The coaches decided B.L.’s snap violated team and school rules, which B.L. had acknowledged before joining the team, and she was suspended from the junior varsity team for a year.

## Procedural History

### District Court granted summary judgement in B.L’s favor, ruling the school violated her first amendment rights

### U.S. Court of Appeals for Third Circuit Affirmed

## Issue: Does the 1st amendment protect students’ speech from regulation by their school if they are off campus.

## Holding. Yes in this case and there are fact situations where the school can regulate off camuse speecn

## E Argument for B.L.

### B.L

#### B.L. sued the school under 42 U.S.C. § 1983 alleging (1) that her suspension from the team violated the First Amendment; (2) that the school and team rules were overbroad and viewpoint discriminatory; and (3) that those rules were unconstitutionally vague.

## Legal Reasoning Majority,(8-1)

“ We have made clear that students do not "shed their constitutional rights to freedom of speech or expression," even "at the school house gate." Tinker, 393 U. S., at 506; see also Brown v. Entertainment Merchants Assn., 564 U. S. 786, 794 (2011) ("[M]inors are entitled to a significant measure of First Amendment protection" (alteration in original; internal quotation marks omitted)). But we have also made clear that courts must apply the First Amendment "in light of the special characteristics of the school environment." Hazelwood School Dist. v. Kuhlmeier, 484 U. S. 260, 266 (1988) (internal quotation mark omitted). One such characteristic, which we have stressed, is the fact that schools at times stand in loco parentis, i.e., in the place of parents. See Bethel School Dist. No. 403 v. Fraser, 478 U. S. 675, 684 (1986).

     This Court has previously outlined three specific categories of student speech that schools may regulate in certain circumstances: (1) "indecent," "lewd," or "vulgar" speech uttered during a school assembly on school grounds, see id., at 685; (2) speech, uttered during a class trip, that promotes "illegal drug use," see Morse v. Frederick, 551 U. S. 393, 409 (2007); and (3) speech that others may reasonably perceive as "bear[ing] the imprimatur of the school," such as that appearing in a school-sponsored newspaper, see Kuhlmeier, 484 U. S., at 271.

     Finally, in Tinker, we said schools have a special interest in regulating speech that "materially disrupts classwork or involves substantial disorder or invasion of the rights of others." 393 U. S., at 513. These special characteristics call for special leeway when schools regulate speech that occurs under its supervision.”. . .

First, we consider the school's interest in teaching good manners and consequently in punishing the use of vulgar language aimed at part of the school community.. . .

Second, the school argues that it was trying to prevent disruption, if not within the classroom, then within the bounds of a school-sponsored extracurricular activity. But we can find no evidence in the record of the sort of "substantial disruption" of a school activity or a threatened harm to the rights of others that might justify the school's action.

Second, the school argues that it was trying to prevent disruption, if not within the classroom, then within the bounds of a school-sponsored extracurricular activity. But we can find no evidence in the record of the sort of "substantial disruption" of a school activity or a threatened harm to the rights of others that might justify the school's action.”

#### “Given the many different kinds of off-campus speech, the different potential school-related and circumstance-specific justifications, and the differing extent to which those justifications may call for First Amendment leeway, we can, as a general matter, say little more than this: Taken together, these three features of much off-campus speech mean that the leeway the First Amendment grants to schools in light of their special characteristics is diminished. We leave for future cases to decide where, when, and how these features mean the speaker's off-campus location will make the critical difference. This case can, however, provide one example. “

 2, Thomas Dissent

 “While the majority entirely ignores the relevant history, I would begin the assessment of the scope of free-speech rights incorporated against the States by looking to "what 'ordinary citizens' at the time of [the Fourteenth Amendment's] ratification would have understood" the right to encompass.. . . . As I have previously explained, that authority was near plenary while students were at school. See Morse v. Frederick, 551 U. S. 393, 419 (2007

  . . .     So widespread was this rule that it served not only as the basis for schools to discipline disrespectful speech but also to regulate truancy. Although modern doctrine draws a clear line between speech and conduct, cases in the 19th century did not. E.g., Lander, 32 Vt., at 120 (describing speech as "acts of misbehavior"); Stockwell 236-238 (applying the Lander rule to "[t]he conduct of pupils"); Morse, 551 U. S., at 419 (Thomas, J., concurring. . .

     Some courts made statements that, if read in isolation, could suggest that schools had no authority at all to regulate off-campus speech…). But, these courts made it clear that the rule against regulating off-campus speech applied only when that speech was "nowise connected with the management or successful operation of the school." . . .

**B**

     If there is a good constitutional reason to depart from this historical rule, the majority and the parties fail to identify it. I would thus apply the rule. Assuming that B. L.'s speech occurred off campus, the purpose and effect of B. L.'s speech was "to degrade the [program and cheerleading staff]" in front of "other pupils," thus having "a direct and immediate tendency to . . . subvert the [cheerleading coach's] authority." Id., at 115, 120. As a result, the coach had authority to discipline B. L.

. . .     But the majority and the parties provide no textual or historical evidence to suggest that federal courts generally can police the proportionality of school disciplinary decisions in the name of the First Amendment.

**II**

     The majority declines to consider any of this history, instead favoring a few pragmatic guideposts. This is not the first time the Court has chosen intuition over history when it comes to student speech. The larger problem facing us today is that our student-speech cases are untethered from any textual or historical foundation. That failure leads the majority to miss much of the analysis relevant to these kinds of cases.

**A**

     Consider the Court's longtime failure to grapple with the historical doctrine of in loco parentis. As I have previously explained, the Fourteenth Amendment was ratified against the background legal principle that publicly funded schools operated not as ordinary state actors, but as delegated substitutes of parents. Id., at 411-413. This principle freed schools from the constraints the Fourteenth Amendment placed on other government actors. "[N]o one doubted the government's ability to educate and discipline children as private schools did," including "through strict discipline . . . for behavior the school considered disrespectful or wrong." Id., at 411-412. "The doctrine of in loco parentis limited the ability of schools to set rules and control their classrooms in almost no way." Id., at 416.

     Plausible arguments can be raised in favor of departing from that historical doctrine. When the Fourteenth Amendment was ratified, just three jurisdictions had compulsory-education laws. M. Katz, A History of Compulsory Education Laws 17 (1976). One might argue that the delegation logic of in loco parentis applies only when delegation is voluntary. But cf. id., at 11-13 (identifying analogs to compulsory-education laws as early as the 1640s); Pierce v. Society of Sisters, 268 U. S. 510 (1925) (requiring States to permit parents to send their children to nonpublic schools). The Court, however, did not make that (or any other) argument against this historical doctrine.

     Instead, the Court simply abandoned the foundational rule without mentioning it. See Tinker v. Des Moines Independent Community School Dist., 393 U. S. 503 (1969). Rather than wrestle with this history, the Court declared that it "ha[d] been the unmistakable holding of this Court for almost 50 years" that students have free-speech rights inside schools. Id., at 506. "But the cases the Court cited in favor of that bold proposition do not support it." Morse, 551 U. S., at 420, n. 8 (Thomas, J., concurring). The cases on which Tinker chiefly relied concerned the rights of parents and private schools, not students. 551 U. S., at 420, n. 8. Of the 11 cases the Court cited, only one--West Virginia Bd. of Ed. v. Barnette, 319 U. S. 624 (1943)--was on point. But, like Tinker, Barnette failed to mention the historical doctrine undergirding school authority. Not until decades later did the Court even hint at this doctrine, and, then, only as an aside. See Fraser, 478 U. S., at 684.

     The majority does no better today. At least it acknowledges that schools act in loco parentis when students speak on campus. See, e.g., ante, at 5. But the majority fails to address the historical contours of that doctrine, whether the doctrine applies to off-campus speech, or why the Court has abandoned it.

**B**

     The Court's failure to explain itself in Tinker needlessly makes this case more difficult. Unlike Tinker, which involved a school's authority under a straightforward fact pattern, this case involves speech made in one location but capable of being received in countless others--an issue that has been aggravated exponentially by recent technological advances. The Court's decision not to create a solid foundation in Tinker, and now here not to consult the relevant history, predictably causes the majority to ignore relevant analysis.

     First, the majority gives little apparent significance to B. L.'s decision to participate in an extracurricular activity. But the historical test suggests that authority of schools over off-campus speech may be greater when students participate in extracurricular programs. The Lander test focuses on the effect of speech, not its location. So students like B. L. who are active in extracurricular programs have a greater potential, by virtue of their participation, to harm those programs. For example, a profanity-laced screed delivered on social media or at the mall has a much different effect on a football program when done by a regular student than when done by the captain of the football team. So, too, here.

     Second, the majority fails to consider whether schools often will have more authority, not less, to discipline students who transmit speech through social media. Because off-campus speech made through social media can be received on campus (and can spread rapidly to countless people), it often will have a greater proximate tendency to harm the school environment than will an off-campus in-person conversation.

     Third, and relatedly, the majority uncritically adopts the assumption that B. L.'s speech, in fact, was off campus. . .

     Here, it makes sense to treat B. L.'s speech as off-campus speech. There is little evidence that B. L.'s speech was received on campus. The cheerleading coach, in fact, did not view B. L.'s speech. She viewed a copy of that speech (a screenshot) created by another student. Ante, at 2. But, the majority mentions none of this. It simply, and uncritically, assumes that B. L.'s speech was off campus. Because it creates a test untethered from history, it bypasses this relevant inquiry.**\*  \*  \***

     The Court transparently takes a common-law approach to today's decision. In effect, it states just one rule: Schools can regulate speech less often when that speech occurs off campus. It then identifies this case as an "example" and "leav[es] for future cases" the job of developing this new common-law doctrine. Ante, at 7-8. But 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.. . .

     Perhaps there are good constitutional reasons to depart from the historical rule, and perhaps this Court and lower courts will identify and explain these reasons in the future. But because the Court does not do so today, and because it reaches the wrong result under the appropriate historical test, I respectfully dissent.”