CENTER FOR LAW BRAIN & BEHAVIOR
MASSACHUSETTS GENERAL HOSPITAL
MASSACHUSETTS GENERAL HOSPITAL
HARVARD MEDICAL SCHOOL TEACHING HOSPITAL

CLBB News

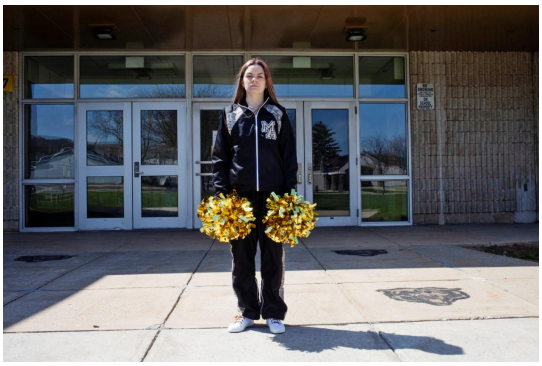
A newsletter from the Center for Law, Brain & Behavior

June 23, 2021

CLBB Provides Neuroscience Expertise in Pivotal Free Speech Case

Earlier today, the Supreme Court announced an 8-1 verdict in favor of Brandi Levy, a high school student suspended from her cheerleading team after posting on Snapchat. CLBB joined the Juvenile Law Center and other organizations as amici to provide the most up to date neuroscience data on adolescent and emerging adult brain development in support of Levy's petition.

See below for details on CLBB's contributions to this major development for students' First Amendment rights.



When Can Schools Discipline Students for Off-Campus Speech?

In 2017, then 14-year-old Brandi Levy posted a profanity-laden outburst on Snapchat expressing her frustration at not making varsity on her high school's cheerleading team.

After learning of her posts, school officials suspended her from the junior-varsity team for the rest of the school year.

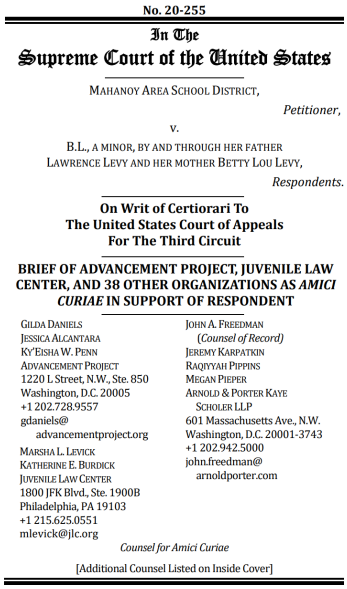
Levy filed suit, arguing that her off-campus use of Snapchat was constitutionally protected speech.

(Source: CNN)

CLBB Joins Amicus Brief in Support of Respondent

CLBB joined the Juvenile Law Center and experts in education, first amendment litigation, young adult psychology, and related fields to file an amicus brief in support of Levy's case.

Neuroscience highlight: CLBB provided insight on the most up-to-date adolescent and emerging adult neuroscientific research, explaining how *"Young people's 'lack of maturity' and 'underdeveloped sense of responsibility' make them more prone to 'impetuous and ill-considered actions and decisions'"* such as Levy's decision to post on Snapchat.



No. 20-255

In The

Supreme Court of the United States

MAHANOY AREA SCHOOL DISTRICT,

Petitioner,

v.

B.L., A MINOR, BY AND THROUGH HER FATHER LAWRENCE LEVY AND HER MOTHER BETTY LOU LEVY,

Respondents.

On Writ of Certiorari To The United States Court of Appeals For The Third Circuit

BRIEF OF ADVANCEMENT PROJECT, JUVENILE LAW CENTER, AND 38 OTHER ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

GILDA DANIELS
JESSICA ALCANTARA
KY'EISHA W. PENN
ADVANCEMENT PROJECT
1220 L Street, N.W., Ste. 850
Washington, D.C. 20005
+1 202.728.9557
gdaniels@advancementproject.org

MARSHA L. LEVICK
KATHERINE E. BURDICK
JUVENILE LAW CENTER
1800 JFK Blvd., Ste. 1900B
Philadelphia, PA 19103
+1 215.625.0551
mlevick@jlc.org

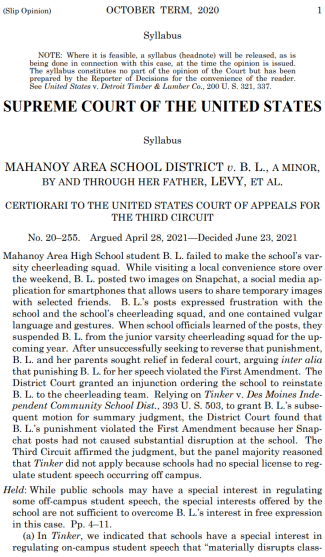
JOHN A. FREEDMAN
(Counsel of Record)
JEREMY KARPATKIN
RAQIYYAH PIPPINS
MEGAN PIEPER
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Ave., N.W.
Washington, D.C. 20001-3743
+1 202.942.5000
john.freedman@arnoldporter.com

Counsel for Amici Curiae

[Additional Counsel Listed on Inside Cover]

Impulsive speech is developmentally appropriate for young adults: "*As young people 'explore, experiment, and learn, they require. . . environments that bolster opportunities to thrive.*" Young adults also have a heightened need for peer validation; maintaining social connections is an essential element in helping youth *"discover their identity, role, and purpose."*

Allowing schools to discipline students for their off-campus behavior, amici argued, would subject students to potential punishment for speech subjectively viewed as "vulgar" or "disorderly." This would disproportionately affect students from marginalized groups and hinder normal psychosocial development.



(Slip Opinion) OCTOBER TERM, 2020 1

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

MAHANOY AREA SCHOOL DISTRICT *v.* B. L., A MINOR, BY AND THROUGH HER FATHER, LEVY, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 20–255. Argued April 28, 2021—Decided June 23, 2021

Mahanoy Area High School student B. L. failed to make the school's varsity cheerleading squad. While visiting a local convenience store over the weekend, B. L. posted two images on Snapchat, a social media application for smartphones that allows users to share temporary images with selected friends. B. L.'s posts expressed frustration with the school and the school's cheerleading squad, and one contained vulgar language and gestures. When school officials learned of the posts, they suspended B. L. from the junior varsity cheerleading squad for the upcoming year. After unsuccessfully seeking to reverse that punishment, B. L. and her parents sought relief in federal court, arguing *inter alia* that punishing B. L. for her speech violated the First Amendment. The District Court granted an injunction ordering the school to reinstate B. L. to the cheerleading team. Relying on *Tinker* v. *Des Moines Independent Community School Dist.*, 393 U. S. 503, to grant B. L.'s subsequent motion for summary judgment, the District Court found that B. L.'s punishment violated the First Amendment because her Snapchat posts had not caused substantial disruption at the school. The Third Circuit affirmed the judgment, but the panel majority reasoned that *Tinker* did not apply because schools had no special license to regulate student speech occurring off campus.

Held: While public schools may have a special interest in regulating some off-campus student speech, the special interests offered by the school are not sufficient to overcome B. L.'s interest in free expression in this case. Pp. 4–11.

(a) In *Tinker*, we indicated that schools have a special interest in regulating on-campus student speech that "materially disrupts class-

Supreme Court Holds Levy's Speech is Constitutionally Protected

Today's 8-1 decision marks the first time a high school student has won a Supreme Court free speech case in over 50 years.

In an opinion authored by Justice Breyer, the Court found that Levy's speech was constitutionally protected.

The Court's holding does not categorically protect off-campus speech, but does limit schools' ability to address students' expression on social media in the absence of "substantial disruption of learning-related activities" or a need for "protection [of] those who make up a school community."

In Levy's case, the Court concluded, the school had only a diminished interest in regulating her speech. The district had no generalized policy aimed at preventing students from using profanity off campus, and Levy had posted the message to a private circle of friends outside of school hours and while off of school property. The vulgarity of her message was not directed at any individual member of the school community and it did not meaningfully disrupt school activities.

CENTER FOR LAW, BRAIN & BEHAVIOR

clbb.org