

The Boston Globe

It's 'Bong Hits 4 Jesus' all over again

Alex Beam

April 5, 2021

The Supreme Court will hear oral arguments in *Mahanoy Area School District v. B.L.*, a.k.a. the Case of the Foul-Mouthed Cheerleader.

Mary Beth Tinker in 2013. Tinker was just 13 when she spoke out against the Vietnam War by wearing a black armband to her Iowa school in 1965. When the school suspended her, she took her free speech case all the way to the US Supreme Court and won. Manuel Balce Ceneta

The US Supreme Court does not spend every waking hour refusing to stay executions or hand-wringing about the antitrust statutes of America's collegiate sports monopoly, the NCAA.

On April 28, the Berobed Ones will allow themselves a moment of fun. I am looking forward to hearing the oral arguments in *Mahanoy Area School District v. B.L.*, a.k.a. the Case of the Foul-Mouthed Cheerleader.

"B.L." is the cheerleader in question, who, after being turned down for a Pennsylvania high school varsity squad, vented with a pal at the local mall. B.L. posted a Snapchat picture captioned with "Words Not Printed in Family Newspapers" and depicting "Gestures Fritzed Out on the Evening News." Her response was perhaps a bit over the top — she did make the junior varsity, after all — but all too human.

A copy of the supposedly ephemeral Snapchat pic found its way to humorless school administrators, who suspended her from cheerleading for a year. After winning in both district and appeals courts, B.L. now finds herself on the highest courthouse steps in the land.

What's at stake here, legally? The justices will determine whether the 50-plus-year-old "Tinker" standard, established in the 1969 Supreme Court case "Tinker v. Des Moines," applies to B.L.'s hijinks. In *Tinker*, a principal disciplined students for wearing anti-Vietnam black armbands in school. The students and their parents sued the school district and won.

Writing for the majority, Justice Abe Fortas noted that the students were not disrupting school activities, and that "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

"I think of [Mahanoy] as the inverse of the *Tinker* case," said Ilya Shapiro, a vice president at the Cato Institute, which filed a pro-B.L. brief. In *Tinker*, the litigation concerned on-campus activity. "Here the activity at issue was off campus, not at a school-supervised event, and not on a school website," Shapiro said in an interview. "The legal issue is how far does the school's supervisory authority extend?"

What about the famous 2007 Supreme Court case *Morse v. Frederick*? That was when the still-new Chief Justice John Roberts, writing the majority opinion, tut-tutted that schoolboy Joseph

Frederick's "cryptic" banner, "Bong Hits 4 Jesus," unfurled at a school event, could be "reasonably regarded as promoting illegal drug use."

My hero David Souter joined with Ruth Bader Ginsburg and John Stevens in a reasoned dissent: "No one seriously maintains that drug advocacy (much less Frederick's ridiculous sign) comes within the vanishingly small category of speech that can be prohibited because of its feared consequences," wrote Stevens.

Are the justices wasting their time with the aggrieved cheerleader? Shapiro thinks not. Since the onset of the coronavirus pandemic, with tens of millions of students "attending" schools from home, it's hard to figure out if the proverbial schoolhouse door exists anymore. "The court is going to be forced to grapple with all sorts of new First Amendment issues," Shapiro explained, "because so much activity now takes place online."

I don't have a vote, but I know where my sympathies lie: always, always with young people making mistakes. If I have a regret in life, it's that I didn't make more youthful mistakes and on a grander scale. (To be fair, becoming a journalist certainly qualifies.) I couldn't agree more with B.L.: There are some days you want to say, "To heck with everything!" Although those were not her exact words.

People take the Supreme Court oh-so-seriously, and they should. But here's a chance for the justices to do the right thing and give themselves pleasure in the doing. Remember: The angels are in heaven because they take themselves lightly.