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## Regulating Off-Campus Student Expression: Mahanoy Area School District v. B.L.: The Good News for College Student Journalists

Leslie Klein

Associate Professor, Journalism (courtesy appointment at the School of Law) *University of Georgia*

Jonathan Peters

Associate Professor, Journalism (courtesy appointment at the School of Law) *University of Georgia School of Law*, [jonathan.peters@uga.edu](mailto:jonathan.peters@uga.edu)



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**REGULATING OFF-CAMPUS STUDENT EXPRESSION:  
*MAHANAY AREA SCHOOL DISTRICT v. B.L.***

**The Good News For College Student Journalists**

Leslie Klein<sup>\*</sup> & Jonathan Peters<sup>\*\*</sup>

**ABSTRACT**

This essay argues that the 2021 U.S. Supreme Court case *Mahanoy Area School District v. B.L.* protects off-campus college student journalism (if not published in a school-sponsored outlet) from school censorship and punishment—thanks to the majority opinion's reliance on *in loco parentis* principles. In short, *Mahanoy* made clear that K-12 students generally have diminished First Amendment rights on campus because parents have delegated to teachers and staff some of their supervisory authority. That reasoning applies with less force when students speak off campus, and it applies with no force if the speaker is a legal adult, as nearly all college students are. The consequences are far-reaching because the lower courts, for more than a decade, have expanded the authority of colleges and universities to punish students for off-campus speech, while at the same time college student journalists have been playing an increasingly critical role in meeting the news needs of their communities. This essay begins by providing context about the major Supreme Court cases that have established how student expression is regulated. Then the essay discusses the facts and reasoning of *Mahanoy*, followed by the history of the *in loco parentis* doctrine and its

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<sup>\*</sup> Leslie Klein is the Carter Research Fellow at the Grady College of Journalism and Mass Communication at the University of Georgia. She is a former public high school teacher at Florida State University Schools, in Tallahassee, where she taught English, language arts, and journalism. She also advised the award-winning student newspaper *The Tomahawk Talk* and the award-winning student yearbook *The Renegade*. She is an active member of the Law and Policy Division of the Association for Education in Journalism and Mass Communication, as well as the Journalism Education Association.

<sup>\*\*</sup> Jonathan Peters is a media law professor at the University of Georgia, where he is the chair of the Department of Journalism and a faculty member in the School of Law. His research focuses on media law and has appeared in journals published by the law schools at Berkeley, Harvard, NYU, Virginia, and North Carolina, among others. He is a coauthor of the book *The Law of Public Communication*, and by invitation he has blogged about the First Amendment for the *Harvard Law Review* and *Harvard Law & Policy Review*. Peters is a frequent commentator on media law issues for *The New York Times*, *The Washington Post*, *Vanity Fair*, CNN, NBC, CBS, and NPR. He has been a consultant on press rights for the U.N. Development Programme, and he is a member of OSCE-ODIHR Panel of Experts on Freedom of Peaceful Assembly and Association, which is part of the Organization for Security and Co-operation in Europe and its Office for Democratic Institutions and Human Rights.

application to public colleges and universities. All of which leads to the conclusion that *Mahanoy*, intentionally or not, through its use of *in loco parentis* principles, is highly protective of off-campus college student journalism.

### INTRODUCTION

At first glance, the Supreme Court case *Mahanoy Area School District v. B.L.*, decided in 2021, may not appear to have significant implications for college student journalists.<sup>1</sup> After all, the facts involved a high school freshman who was suspended from her cheerleading team for sending profane Snapchats to her friends to vent her frustrations with school and life.<sup>2</sup> But a closer analysis of the majority and concurring opinions, which both address the extent to which public school officials may regulate off-campus student speech, reveals that *Mahanoy* is actually good news for college student journalists because of its use of *in loco parentis* principles. In short, *Mahanoy* said that K-12 students have diminished First Amendment rights when they are in school because parents have delegated to teachers and staff some of their supervisory authority.<sup>3</sup> That authority applies with less force when students speak off campus, and critically it applies with no force if the speaker is a legal adult, as nearly all college students are.<sup>4</sup> This has far-reaching consequences because, for more than a decade, the lower courts have expanded the authority of state colleges and universities to punish students for their off-campus speech.<sup>5</sup>

At the same time, college student journalists have been playing a critical role in meeting their communities' news needs.<sup>6</sup> In a number of states, there are more students than full-time

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<sup>1</sup> See *Mahanoy Area Sch. Dist. v. B.L.*, 141 S. Ct. 2038 (2021).

<sup>2</sup> *Id.* at 2040.

<sup>3</sup> *Id.* at 2046.

<sup>4</sup> Frank D. LoMonte, *The Supreme Court's Cheerleader Decision Has Something to Frustrate and Disappoint Everyone*, SLATE (June 25, 2021, 12:07 PM), <https://slate.com/technology/2021/06/supreme-court-snapchat-cheerleader-student-speech-rights.html>.

<sup>5</sup> See, e.g., *Keefe v. Adams*, 840 F.3d 523 (8th Cir. 2016); *Yoder v. Univ. of Louisville*, 526 Fed. Appx. 537 (6th Cir. 2013); *Tatro v. Univ. of Minn.*, 816 N.W.2d 509 (Minn. 2012).

<sup>6</sup> Jonathan Peters and Frank D. LoMonte, *College Journalists Need Free Speech More Than Ever*, THE ATLANTIC (March 1, 2013), <https://www.theatlantic.com/national/archive/2013/03/college-journalists-need-free-speech-more-than-ever/273634/>.

journalists covering the legislature,<sup>7</sup> and, in some towns, a college media outlet is the only source of news.<sup>8</sup> Student journalists often report important stories not reported in other media, too, because of their special access to campus and to fellow students as well as faculty and staff.<sup>9</sup>

Recently, for example, college student journalists have been profiles in honest and courageous reporting during the COVID pandemic.<sup>10</sup> They have exposed campus outbreaks and raised questions about reopening plans.<sup>11</sup> They have documented social-distancing violations on and off campus.<sup>12</sup> They have followed and explained fast-breaking changes to instructional modes and public events.<sup>13</sup> They have demanded transparency from administrators.<sup>14</sup> Through it all, they have told the story of the human experience. At the University of North Carolina-Chapel Hill, the independent *Daily Tar Heel* published a biting editorial under the headline “UNC has a clusterfuck on its

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<sup>7</sup> Anna Schiffbauer, *Under the Dome: As Professional News Outlets Vacate State Capitols Because of Budget Constraints, Student Journalists Move in to Fill the Gap*, SPLC (March 24, 2015), <https://splc.org/2015/03/under-the-dome-2/>.

<sup>8</sup> Dan Levin, *When the Student Newspaper Is the Only Daily Paper in Town*, N.Y. TIMES (Oct. 19, 2019), <https://www.nytimes.com/2019/10/19/us/news-desert-ann-arbor-michigan.html>.

<sup>9</sup> Amelia Nierenberg, *Covid Is the Big Story on Campus. College Reporters Have the Scoop*, N.Y. TIMES (Nov. 20, 2020), <https://www.nytimes.com/2020/11/04/us/college-journalists-covid.html>.

<sup>10</sup> Jonathan Peters, *The Legal Landscape for Frontline Student Journalists*, COLUM. JOURNALISM REV. (Oct. 20, 2020), [https://www.cjr.org/covering\\_the\\_pandemic/covid-19-pandemic-student-journalists.php](https://www.cjr.org/covering_the_pandemic/covid-19-pandemic-student-journalists.php).

<sup>11</sup> See, e.g., Matthew Fischetti and Trace Miller, *NYU's Rubin Hall Placed Under Mandatory Quarantine*, WASH. SQUARE NEWS (Sept. 14, 2020), <https://nyunews.com/news/2020/09/14/nyu-covid-outbreak-rubin-hall/>; Elissa Nadworny and Lauren Migaki, *'We're Living The News': Student Journalists Are Owning The College Reopening Story*, WABE (Aug. 27, 2020), <https://www.wabe.org/we-re-living-the-news-student-journalists-are-owning-the-college-reopening-story/>.

<sup>12</sup> See, e.g., Erin Kenney, *11 UGA Greek Fraternities Fined \$24,000 for Violating Social Distancing Guidelines*, THE RED & BLACK (Sept. 17, 2020), <https://bit.ly/3qWFio6>.

<sup>13</sup> See, e.g., Sage Smith, *Virtual Instruction for Iowa State Classes to Extend Through End of Spring Semester*, IOWA ST. DAILY (March 18, 2020), <https://iowastatedaily.com/240203/news/virtual-instruction-for-iowa-state-classes-to-extend-through-end-of-spring-semester/>; Blaise Mesa, *Breaking: Commencement Canceled; Manifest May Go Virtual*, THE COLUM. CHRON. (March 23, 2020), <https://columbiachronicle.com/breaking-commencement-canceled-manifest-may-go-virtual>.

<sup>14</sup> See, e.g., Editorial Staff, *Editorial: We Need Transparency as Students, Journalists*, THE DAILY GAMECOCK (Sept. 21, 2020, 12:09 AM), <https://www.dailygamecock.com/article/2020/09/editorial-we-need-transparency-as-students-journalists>.

hands” after virus clusters were discovered in campus housing.<sup>15</sup> At the University of Missouri, student journalists for *The Maneater*, also independent, reported that two students had been hospitalized with COVID-19, which was contrary to statements made by school officials and magnified by the university’s instructions to staff members to “publicly support” all university decisions regarding COVID-19.<sup>16</sup>

College student journalists are making vital contributions to public knowledge, and their work is frequently produced off campus—through independent publications and websites and through social-media platforms, all allowing student journalists and ordinary students alike to commit acts of journalism using Twitter and Instagram.<sup>17</sup> Such off-campus journalism is indispensable because the Supreme Court has granted school officials expansive authority to regulate what may be published in school-sponsored student media,<sup>18</sup> an authority that a growing number of lower courts have extended to post-secondary institutions.<sup>19</sup> However, thanks to its use of *in loco parentis* principles, *Mahanoy* is a “bright-red slam-the-brakes light for colleges,” holding effectively that off-campus college student journalism—provided it is not published in school-sponsored student media—is not subject to school censorship or punishment.<sup>20</sup> This essay explores and explains why.

Part I provides context by covering the major Supreme Court cases that set out how student expression is regulated at public schools. Part II discusses the facts and reasoning of *Mahanoy*, with a focus on its majority and concurring opinions. Part III includes a history of the *in loco parentis* doctrine and its application to colleges and universities. And, finally, the conclusion shows that *Mahanoy*, with its reliance on *in loco parentis*, will generally protect off-campus college student journalism from school censorship and punishment.

## I. MAJOR SUPREME COURT CASES ON STUDENT EXPRESSION

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<sup>15</sup> *North Carolina’s Flagship University Moves Online After 130 Covid-19 Cases*, THE GUARDIAN (Aug. 17, 2020, 5:40 PM), <https://www.theguardian.com/us-news/2020/aug/17/north-carolina-university-moves-online-covid-19>.

<sup>16</sup> Nierenberg, *supra* note 9.

<sup>17</sup> *Workshop: Using Social Media as a Journalist & Advocate*, SPLC (Feb. 8, 2022), <https://splc.org/2022/02/using-social-media-as-a-journalist-advocate/>.

<sup>18</sup> *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988).

<sup>19</sup> See, e.g., *Ward v. Polite*, 667 F.3d 727 (6th Cir. 2012); *Hosty v. Carter*, 412 F.3d 731 (7th Cir. 2005) (en banc); *Axson-Flynn v. Johnson*, 356 F.3d 1277 (10th Cir. 2004); *Ala. Student Party v. Student Gov’t Ass’n*, 867 F.2d 1344 (11th Cir. 1989).

<sup>20</sup> LoMonte, *supra* note 4.

It is helpful to start with a wide view and some context regarding how student expression is regulated at public schools. The Supreme Court embarked upon its modern jurisprudence<sup>21</sup> in 1969 with its landmark decision in *Tinker v. Des Moines Independent Community School District*.<sup>22</sup> The case began in 1965 when three students were suspended after wearing black armbands to school in protest of the U.S.'s involvement in the Vietnam War.<sup>23</sup> The students and their parents filed a suit in the U.S. District Court for the Southern District of Iowa seeking nominal damages and an injunction, arguing that the school had violated their speech rights by forbidding them to wear the armbands.<sup>24</sup> The district court dismissed the case on the grounds that the school was within its rights to ask the students to remove the armbands to prevent disturbance.<sup>25</sup> The U.S. Court of Appeals for the Eighth Circuit affirmed the decision, without opinion.<sup>26</sup> The students then appealed to the U.S. Supreme Court, which reversed.<sup>27</sup>

Justice Abe Fortas, writing for the majority, said that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”<sup>28</sup> Further, the Court held that “[i]n the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.”<sup>29</sup> This created what is now known as the *Tinker* standard, under which on-campus student expression is protected unless it “materially disrupts classwork or involves substantial disorder or invasion of the rights of others.”<sup>30</sup> Schools must demonstrate (1) “more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint,”<sup>31</sup> and (2) more

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<sup>21</sup> Prior to *Tinker*, the Supreme Court noted in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 637 (1943) that schools perform “important, delicate, and highly discretionary functions” but must comply with the Constitution in performing them. The Court observed that the expressive rights of minors are subject to “scrupulous protection” to ensure we don’t “strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.”

<sup>22</sup> *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).

<sup>23</sup> *Id.* at 504.

<sup>24</sup> *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 258 F. Supp. 971 (S.D. Iowa 1966), *aff’d*, 383 F.2d 988 (8th Cir. 1967), *rev’d*, 393 U.S. 503 (1969).

<sup>25</sup> *Id.*

<sup>26</sup> *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 383 F.2d 988 (8th Cir. 1967), *rev’d*, 393 U.S. 503 (1969).

<sup>27</sup> *Tinker*, 393 U.S. at 514.

<sup>28</sup> *Id.* at 506.

<sup>29</sup> *Id.* at 511.

<sup>30</sup> *Id.* at 513.

<sup>31</sup> *Id.* at 509.

than “undifferentiated fear or apprehension of disturbance.”<sup>32</sup> *Tinker*, then, effectively affirmed broad student speech rights while recognizing a narrow exception for student speech that schools may regulate.<sup>33</sup>

After *Tinker*, the Supreme Court further limited the protections for other types of on-campus student expression.<sup>34</sup> These limits are based on the general principle that “the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings.”<sup>35</sup> In *Bethel School District No. 403 v. Fraser*, decided in 1986, the Supreme Court created a categorical exception for speech that is vulgar or offensive. Matthew Fraser, a high school student, was suspended after giving a speech in front of the student body that referred to another student in an “elaborate, graphic, and explicit sexual metaphor.”<sup>36</sup> Fraser first appealed through the school board’s grievance procedures, but the punishment was upheld.<sup>37</sup> He and his father then filed a suit in the U.S. District Court for the Western District of Washington, claiming that his First Amendment rights had been abridged. The court agreed, holding that the suspension violated his freedom of speech.<sup>38</sup> The U.S. Court of Appeals for the Ninth Circuit affirmed,<sup>39</sup> and the case later reached the Supreme Court, where the decision was reversed.<sup>40</sup>

The majority concluded that school administrators have the right to limit student speech because it is their public duty to educate students in civility, ultimately reasoning that “[t]he undoubted freedom to advocate unpopular and controversial

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<sup>32</sup> *Id.* at 508.

<sup>33</sup> For more analysis of *Tinker* and its implications, see Joseph Russomanno, *Dissent Yesterday and Today: The Tinker Case and Its Legacy*, 11 COMM’N. L. POL’Y 367, 367–91 (2006); Nadine Strossen, *Keeping the Constitution Inside the Schoolhouse Gate—Students’ Rights Thirty Years After Tinker v. Des Moines Independent Community School District*, 48 DRAKE L. REV. 445, 445–72 (2000); Frank D. LoMonte, *Shrinking Tinker: Students Are “Persons” Under Our Constitution—Except When They Aren’t*, 58 AM. U. L. REV. 1323, 1323–59 (2009); Clay Calvert, *Tinker’s Midlife Crisis: Tattered and Transgressed but Still Standing*, 58 AM. U. L. REV. 1167, 1167–91 (2009).

<sup>34</sup> Rory Allen Weeks, *The First Amendment, Public School Students, and the Need for Clear Limits on School Officials’ Authority Over Off-Campus Student Speech*, 46 GA. L. REV. 1157, 1157–93 (2012); Shannon M. Raley, *Tweaking Tinker: Redefining an Outdated Standard for the Internet Era*, 59 CLEV. ST. L. REV. 773, 773–99 (2011).

<sup>35</sup> *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 682 (1986).

<sup>36</sup> *Id.* at 678.

<sup>37</sup> *Id.* at 678–79.

<sup>38</sup> *Id.* at 679. The oral opinion, findings of fact, conclusions of law, and judgment of the Western District of Washington are unreported.

<sup>39</sup> *Fraser v. Bethel Sch. Dist. No. 403*, 755 F.2d 1356 (9th Cir. 1985).

<sup>40</sup> *Bethel*, 478 U.S. at 680.

views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior."<sup>41</sup> To those ends, the Court relied<sup>42</sup> on cases such as *Federal Communications Commission v. Pacifica Foundation*, in which the majority held that broadcasting has limited First Amendment protection partly because it is "uniquely accessible to children,"<sup>43</sup> and *Ginsberg v. New York*,<sup>44</sup> in which the majority upheld a state law making it a crime to give minors access to certain sexual materials. The *Bethel* court used those cases to make the general points that the government's power to regulate the conduct of minors reaches beyond the scope of its power over adults, and that the government's power to regulate is enhanced where the interests of minors are involved.<sup>45</sup>

Two years later, the Supreme Court ruled that schools can restrict some student speech in school-sponsored activities. In *Hazelwood School District v. Kuhlmeier*,<sup>46</sup> several high school journalists sued their school district after their principal removed pages of the student newspaper, *The Spectrum*, during the pre-publication editing and review process.<sup>47</sup> The pages featured two stories: one detailing experiences of teenage pregnancy and the other considering the impact of divorce on students.<sup>48</sup> The principal believed the articles were inappropriate and should not be published.<sup>49</sup> The students, in turn, filed a suit alleging that their First Amendment rights had been violated, seeking money damages and injunctive relief.<sup>50</sup> The U.S. District Court for the Eastern District of Missouri ruled against the students and

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<sup>41</sup> *Id.* at 681.

<sup>42</sup> *Id.* at 684.

<sup>43</sup> 438 U.S. 726, 749 (1978).

<sup>44</sup> 390 U.S. 629 (1968).

<sup>45</sup> For more analysis of *Bethel* and its implications, see Sara Slaff, *Silencing Student Speech: Bethel School District No. 403 v. Fraser*, 37 AM. U. L. REV. 203 (1987); Therese Thibodeaux, *Bethel School District No. 403 v. Fraser: The Supreme Court Supports School in Sanctioning Student for Sexual Innuendo in Speech*, 33 LOY. L. REV. 516 (1987); Robert Block, *Students' Shrinking First Amendment Rights in the Public Schools: Bethel School District. No. 403 v. Fraser*, 35 DEPAUL L. REV. 739, 739-62 (1986); Phoebe Graubard, *The Expanded Role of School Administrators and Governing Boards in First Amendment Student Speech Disputes: Bethel School District No. 403 v. Fraser*, 17 GOLDEN GATE U. L. REV. 257, 257-78 (1987).

<sup>46</sup> *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988).

<sup>47</sup> *Id.* at 262-64.

<sup>48</sup> *Id.* at 263.

<sup>49</sup> *Id.* at 263-64.

<sup>50</sup> *Kuhlmeier v. Hazelwood Sch. Dist.*, 596 F. Supp. 1422 (E.D. Mo. 1984); *Kuhlmeier v. Hazelwood Sch. Dist.*, 607 F. Supp. 1450 (E.D. Mo. 1985).



observed that “school officials may impose restraints on students’ speech in activities that are ‘an integral part of the school’s educational function.’”<sup>51</sup> The U.S. Court of Appeals for the Eighth Circuit reversed, citing *The Spectrum*’s status as a public forum.<sup>52</sup>

Ultimately, the Supreme Court found that the student paper was *not* a public forum, either by policy or practice, and reversed again. As the majority put it, “Educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities, so long as their actions are reasonably related to legitimate pedagogical concerns.”<sup>53</sup> *The Spectrum* was written and edited by students in a journalism course at the school and was funded by the school district; therefore, it was not a public forum. Moreover, the Court held that where a school is acting as a publisher, it may dissociate itself from student speech that would “substantially interfere with [its] work . . . or impinge upon the rights of other students,” as well as from speech that is “ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences.”<sup>54</sup> Consequently, *Hazelwood* set the precedent that some school-sponsored student expression could be regulated more strictly than other on-campus student expression.<sup>55</sup>

Finally, in 2007, the Supreme Court held that schools may regulate student expression that teachers or administrators “reasonably regard as promoting illegal drug use.”<sup>56</sup> In *Morse v. Frederick*, the 5–4 majority ruled that “[t]he First Amendment does not require schools to tolerate at school events student expression that contributes to [the dangers of illegal drug use].”<sup>57</sup> Students at a high school in Juneau, Alaska, were permitted to

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<sup>51</sup> *Hazelwood*, 484 U.S. at 264.

<sup>52</sup> *Kuhlmeier v. Hazelwood Sch. Dist.*, 795 F.2d 1368 (8th Cir. 1986).

<sup>53</sup> *Hazelwood*, 484 U.S. at 273.

<sup>54</sup> *Id.* at 271.

<sup>55</sup> For more analysis of *Hazelwood* and its implications, see Frank D. LoMonte, *The Key Word Is Student: Hazelwood Censorship Crashes the Ivy-Covered Gates*, 11 FIRST AMEND. L. REV. 305, 305–63 (2013); J. Marc Abrams & S. Mark Goodman, *End of an Era? The Decline of Student Press Rights in the Wake of Hazelwood School District v. Kuhlmeier*, 1988 DUKE L.J. 706 (1988); Carol S. Lomicky, *Analysis of High School Newspaper Editorials Before and After Hazelwood School District v. Kuhlmeier: A Content Analysis Case Study*, 29 J.L. & EDUC. 463 (2000); Emily Gold Waldman, *Returning to Hazelwood’s Core: A New Approach to Restrictions on School-Sponsored Speech*, 60 FLA. L. REV. 63 (2008).

<sup>56</sup> *Morse v. Frederick*, 551 U.S. 393, 408 (2007).

<sup>57</sup> *Id.* at 410.

leave class as an approved event or class trip to observe the 2002 Winter Olympics torch relay from a nearby street, while teachers and administrators supervised the students.<sup>58</sup> One of them, Joseph Frederick, stood with his friends across the street from the school and held up a banner that read “BONG HiTS 4 JESUS.”<sup>59</sup> He was suspended after refusing to comply with his principal’s order to take down the banner.<sup>60</sup>

Frederick filed a suit in the U.S. District Court for the District of Alaska, alleging that his First Amendment rights had been violated, but the court granted summary judgment in the principal’s favor, saying she “had the authority, if not the obligation, to stop such messages at a school-sanctioned activity.”<sup>61</sup> The Ninth Circuit reversed and cited *Tinker*, finding that there was no evidence that the banner was substantially disruptive.<sup>62</sup> The Supreme Court reversed again, concluding that because the banner did not contain political speech and the school had a compelling interest in dissuading drug use among students, the principal was within her rights not only to ask Frederick to take the banner down but also to suspend him when he did not do so.<sup>63</sup> Notably, Chief Justice John Roberts, writing for the majority, emphasized that Frederick was “in the midst of his fellow students, during school hours, at a school-sanctioned activity,” adding, “There is some uncertainty at the outer boundaries as to when courts should apply school-speech precedents, but not on these facts.”<sup>64</sup>

## II. *MAHANOV V. B.L.* AND REGULATING OFF-CAMPUS STUDENT EXPRESSION

That “uncertainty at the outer boundaries” was the focus of *Mahanoy Area School District v. B.L.*, the most recent Supreme

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<sup>58</sup> *Id.* at 397.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 396.

<sup>61</sup> *Frederick v. Morse*, No. J 02–008 CV(JWS), 2003 WL 25274689, at \*5 (D. Alaska May 27, 2003).

<sup>62</sup> *Frederick v. Morse*, 439 F.3d 1114, 1123, 1125 (9th Cir. 2006).

<sup>63</sup> *Morse*, 551 U.S. at 409–10.

<sup>64</sup> *Id.* at 401. For more analysis of *Morse* and its implications, see Clay Calvert, *Misuse and Abuse of Morse v. Frederick by Lower Courts: Stretching the High Court's Ruling Too Far to Censor Student Expression*, 32 SEATTLE U. L. REV. 1 (2008); Brannon P. Denning & Molly C. Taylor, *Morse v. Frederick and the Regulation of Student Cyberspeech*, 35 HASTINGS CONST. L.Q. 835 (2008); Erwin Chemerinsky, *How Will Morse v. Frederick Be Applied?*, 12 LEWIS & CLARK L. REV. 17 (2008); Mark W. Cordes, *Making Sense of High School Speech After Morse v. Frederick*, 17 WM. & MARY BILL RTS. J. 657 (2009); Emily Gold Waldman, *No Jokes About Dope: Morse v. Frederick's Educational Rationale*, 81 UMKC L. REV. 685 (2013).

Court case regarding student expression.<sup>65</sup> It required the justices to consider whether off-campus student speech should be regulated under the same standards as on-campus student speech.<sup>66</sup> The respondent, Brandi Levy, attended Mahanoy Area High School, a public school in Pennsylvania.<sup>67</sup> As a freshman, she tried out for the varsity cheerleading team and a local private softball team.<sup>68</sup> When she did not make the cheerleading team or get her preferred softball position, she used the social media application Snapchat to complain to her friends.<sup>69</sup> Levy posted two photos to her Snapchat story that were only viewable for 24 hours by her approximately 250 Snapchat friends.<sup>70</sup> The first photo was of Levy and her friend with their middle fingers raised to the camera, and it included the caption “Fuck school fuck softball fuck cheer fuck everything.”<sup>71</sup> The second photo was blank but had the caption “Love how me and [another student] get told we need a year of jv before we make varsity but tha[t] doesn’t matter to anyone else?”<sup>72</sup> Both photos were taken and posted at the Cocoa Hut, a convenience store in Mahanoy City.<sup>73</sup>

Members of the cheerleading team viewed the photos, and at least one member took a picture of the photos to share with other team members.<sup>74</sup> The photos were also shown to the cheerleading coaches, who discussed them with the school principal.<sup>75</sup> Then, supported by the athletic director, principal, superintendent, and school board, the coaches decided that Levy’s use of profanity violated the team’s rules, and she was suspended from the junior varsity team (on which she had earned a spot) for the coming year.<sup>76</sup> In turn, Levy and her parents filed a suit in the U.S. District Court for the Middle District of Pennsylvania alleging that the punishment violated Levy’s First Amendment rights.<sup>77</sup>

The district court granted a preliminary injunction that ordered the school to allow Levy to return to the cheerleading

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<sup>65</sup> Mahanoy Area Sch. Dist. v. Levy *ex rel.* B.L., 141 S. Ct. 2038 (2021).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 2043.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Levy *ex rel.* B.L. v. Mahanoy Area Sch. Dist., 376 F. Supp.3d 429, 433 (M.D. Pa. 2019).

team.<sup>78</sup> The court also held that under *Tinker* the Snapchat posts had not caused substantial disruption of normal school activities and, therefore, found that Levy's punishment violated the First Amendment.<sup>79</sup> The case was brought to the U.S. Court of Appeals for the Third Circuit, which affirmed.<sup>80</sup> The court held that while there was no evidence Levy's speech caused a substantial disruption of school activities, the *Tinker* standard should not apply because it was a matter of off-campus speech.<sup>81</sup> The Third Circuit held that because the photos constituted off-campus speech, the school could not discipline Levy.<sup>82</sup> The school district asked the Supreme Court to review the case and decide whether *Tinker* applies to off-campus student speech.<sup>83</sup>

The majority opinion, written by Justice Stephen Breyer, held that public schools may have a special interest in regulating *some* off-campus student speech, but the interests offered by the school in this case were not sufficient to overcome Levy's interest in free expression.<sup>84</sup> More specifically, the Court noted certain types of speech and behavior that schools may have a special interest in regulating: (1) severe bullying or harassment; (2) threats aimed at teachers or students; (3) the failure to follow rules during online school activities; and (4) breaches of school security devices.<sup>85</sup>

The majority acknowledged that speech is not necessarily off-campus just because a student is not on physical school property, observing that remote learning and extra-curricular activities can extend the boundaries of on-campus activity.<sup>86</sup> The Court declined, however, to set a black-letter rule regarding what constitutes off-campus student speech and how that speech may

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<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 444–45.

<sup>80</sup> Levy *ex rel.* B.L. v. Mahanoy Area Sch. Dist., 964 F.3d 170 (3d Cir. 2020).

<sup>81</sup> *Id.* at 178.

<sup>82</sup> *Id.*

<sup>83</sup> Because the *Mahanoy* case came down so recently, there is not yet much published scholarship on it, but several articles analyzing its implications are worthy of noting: David L. Hudson Jr., Mahanoy Area School District v. B.L.: *The Court Protects Student Social Media but Leaves Unanswered Questions*, 2021 CATO SUP. CT. REV. 93 (2021); Jenny Diamond Cheng, *Deciding Not to Decide: Mahanoy Area School District v. B.L. and the Supreme Court's Ambivalence Towards Student Speech Rights*, 74 VAND. L. REV. EN BANC 511 (2021); Victoria Bonds, *Tinkering with the Schoolhouse Gate: The Future of Student Speech After Mahanoy Area School District v. B.L.*, 42 LOY. L.A. ENT. L. REV. 83 (2022); Meghan K. Lawrence, *Tinker Stays Home: Student Freedom of Expression in Virtual Learning Platforms*, 101 B.U.L. REV. 2249 (2021).

<sup>84</sup> Mahanoy Area Sch. Dist. v. Levy *ex rel.* B.L., 141 S. Ct. 2038, 2045 (2021).

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

be regulated by public schools.<sup>87</sup> Justice Breyer wrote that the Court “hesitate[s] to determine precisely which of many school-related off-campus activities belong on such a list” and “how such a list might vary, depending upon a student’s age, the nature of the school’s off-campus activity, or the impact upon the school itself.”<sup>88</sup> Instead, the Court outlined three features of off-campus student speech that would diminish the authority of school officials to regulate such speech—to be considered in this case and in future litigation.<sup>89</sup>

First, the Court determined that schools rarely stand *in loco parentis* (i.e., in place of parents) for off-campus student speech because geographically that speech will normally fall to the regulation of a student’s actual parents.<sup>90</sup> Second, because regulating off-campus and on-campus student speech would result in the regulation of *all* student speech in a 24-hour period, “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.”<sup>91</sup> Third, because the public schools have a material interest in protecting unpopular student expression as “the nurseries of democracy,” the majority reasoned that schools have an inherent interest in not regulating unpopular speech, particularly if it takes place off campus.<sup>92</sup>

Applying those considerations to Levy’s case, the Court held that the school violated her First Amendment rights by suspending her from the cheerleading squad.<sup>93</sup> The majority concluded that Levy’s Snapchats amounted to criticism of her school’s rules and that they did not involve characteristics (e.g., threats, severe bullying, or harassment) placing them outside First Amendment protection.<sup>94</sup> Moreover, the Court held that the circumstances of Levy’s speech *did* diminish the school’s interest in regulating it.<sup>95</sup> Her Snapchats were sent outside of school hours, off campus, using a personal cellphone, to an audience of friends.<sup>96</sup> As a result, the Court found that the school did not stand *in loco parentis* because “there is no reason to believe B.L.’s parents had delegated to school officials their own control

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<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 2046.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 2040.

<sup>93</sup> *Id.* at 2047–48.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 2047.

<sup>96</sup> *Id.*

of B.L.’s behavior at the Cocoa Hut.”<sup>97</sup> Moreover, Levy’s posts neither identified the school nor targeted a member of the school community,<sup>98</sup> and, based on the factual record, there was no evidence of substantial disruption of normal school activities.<sup>99</sup> The majority opinion closed by noting that “[i]t might be tempting to dismiss B.L.’s words as unworthy of . . . robust First Amendment protections . . . , [but] sometimes it is necessary to protect the superfluous in order to preserve the necessary.”<sup>100</sup>

Justice Clarence Thomas filed a lone dissent that explored the First Amendment’s ordinary meaning at the time of the Fourteenth Amendment’s ratification, ultimately asserting that schools historically had expansive discretion to discipline students—and, therefore, Levy’s suspension from the cheerleading team was permissible.<sup>101</sup> In his concurring opinion, Justice Samuel Alito, joined by Justice Neil Gorsuch, discussed in greater detail the doctrine of *in loco parentis*.<sup>102</sup> He noted that during the Founding era, a father implicitly consented for his child to give up some of the child’s free-expression rights when enrolling the child in education.<sup>103</sup> Justice Alito went on to explain that whether a school can regulate particular types of off-campus student expression is an issue of whether parents, under the given circumstances, could reasonably be understood to have delegated that authority to the school (he provided as examples online instruction and transportation to and from the school).<sup>104</sup> As one legal commentary put it: “[T]he concurrence relied on the early conceptions of the *in loco parentis* doctrine to strike a

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 2048.

<sup>101</sup> *Id.* at 2059 (Thomas, J., dissenting). Thomas also wrote that “a more searching review reveals that schools historically could discipline students in circumstances like those presented here.” *Id.* He added that “the majority fails to consider whether schools often will have more authority, not less, to discipline students who transmit speech through social media.” *Id.* at 2062. He asserted, too, that schools could more easily restrict the speech of students “who are active in extracurricular programs [and] have a greater potential, by virtue of their participation, to harm those programs.” *Id.* And he reasoned that the majority opinion was “untethered from any textual or historical foundation,” leaving the lower courts to figure out how to apply the *Mahanoy* framework. *Id.* at 2061, 2063.

<sup>102</sup> *Id.* at 2048 (Alito, J., concurring).

<sup>103</sup> *Id.* at 2051 (quoting 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND \*453 (1765)).

<sup>104</sup> *Id.* at 2054.

middle ground between the dissent's historical and the majority's doctrinal approaches."<sup>105</sup>

### III. *IN LOCO PARENTIS* AND HIGHER EDUCATION

The *in loco parentis* doctrine is derived from English common law and the eighteenth-century writings of William Blackstone, who first used the term when he observed:

[The father] may also delegate part of his parental authority . . . to the tutor or schoolmaster of his child; who is then *in loco parentis*, and has such a portion of the power of the parent committed to his charge, . . . that of restraint and correction, as may be necessary to answer the purposes for which he is employed.<sup>106</sup>

Applied to modern times in the United States, as Justice Alito wrote in his concurrence, this is a doctrine of "inferred parental consent to a public school's exercise of a degree of authority that is commensurate with the task that the parents ask the school to perform."<sup>107</sup> In practice, courts in the twentieth century frequently construed *in loco parentis* as a source of plenary power for K-12 schools, allowing them to conduct and justify, for example, invasive searches<sup>108</sup> and corporal punishment.<sup>109</sup>

At the post-secondary level, early American colleges were modeled after those in England, meaning they played a paternalistic role in housing and educating students, with a distinct emphasis on virtuous moral development.<sup>110</sup> It was not until after the Civil War that colleges began to transform into the universities that we know today that focus on research and

<sup>105</sup> *First Amendment—Free Speech—Public Schools—Mahanoy v. B.L.*, 135 HARV. L. REV. 353, 358 (2021).

<sup>106</sup> 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, \*441 (1765).

<sup>107</sup> *Mahanoy Area Sch. Dist. v. Levy ex rel. B.L.*, 141 S. Ct. 2038, 2052 (2021) (Alito, J., concurring).

<sup>108</sup> *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995) (affirming a policy of mandatory random drug testing for public school student athletes); *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (affirming a practice of warrantless searches for cigarettes and drugs in public schools).

<sup>109</sup> *Ingraham v. Wright*, 430 U.S. 651 (1977) (affirming a practice of disciplinary corporal punishment of public school students); see also William C. Nevin, *In the Weeds with Thomas: Morse, In Loco Parentis, Corporal Punishment, and the Narrowest View of Student Speech Rights*, 2014 B.Y.U. EDUC. & L.J. 249 (2014).

<sup>110</sup> Brian Jackson, *Lingering Legacy of In Loco Parentis: An Historical Survey and Proposal for Reform*, 44 VAND. L. REV. 1135, 1136 (1991).

instructional curricula.<sup>111</sup> With that in mind, the doctrine's use at the post-secondary level in the U.S. traces back to the 1886 case *People v. Wheaton College*, in which a student at a private college was suspended for joining a secret society in violation of campus rules.<sup>112</sup> The Supreme Court of Illinois ruled in the college's favor, writing that colleges had been given the discretionary power to "regulate the discipline of their college in such manner as they deem proper, and so long as their rules violate neither divine nor human law, we have no more authority to interfere than we have to control the domestic discipline of a father in his family."<sup>113</sup> Although the opinion did not explicitly discuss or reference *in loco parentis*, it clearly channeled the doctrine's underlying theory by recognizing that the college's broad authority was similar to that of a parent.<sup>114</sup>

*In loco parentis* made its first explicit appearance at the post-secondary level in *Gott v. Berea College*, a 1913 case in which several students were expelled from a private liberal arts college for violating an institutional rule prohibiting its enrolled students from eating at off-campus restaurants.<sup>115</sup> A restaurant owner, whose establishment was across the street from campus, challenged the rule on the basis that punishing students for eating there unlawfully harmed his business.<sup>116</sup> Ultimately, the Kentucky Court of Appeals ruled that colleges could set conduct guidelines for their students because "[c]ollege authorities stand *in loco parentis* concerning the physical and moral welfare and mental training of the pupils," and the doctrine of *in loco parentis* granted them the authority to "make any rule or regulation for the government, or betterment of their pupils that a parent could for the same purpose."<sup>117</sup>

*In loco parentis* reappeared, explicitly, 11 years later in the 1924 case *John B. Stetson University v. Hunt*.<sup>118</sup> A student sued her private university for a deprivation of due process after she was summarily suspended for "ringing cow bells and parading in the halls of the dormitory at forbidden hours, cutting the lights, and such other events as were subversive of the discipline and rules

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<sup>111</sup> *Id.* at 1141.

<sup>112</sup> 40 Ill. 186 (1866).

<sup>113</sup> *Id.* at 187.

<sup>114</sup> *Id.* at 187–88.

<sup>115</sup> 156 Ky. 376 (1913).

<sup>116</sup> *Id.* at 205–06.

<sup>117</sup> *Id.* at 206.

<sup>118</sup> 88 Fla. 510 (1924).



of the University.”<sup>119</sup> The Florida Supreme Court, citing *Gott*, ruled for the university and upheld the suspension, reasoning:

As to mental training, moral and physical discipline and welfare of the pupils, college authorities stand *in loco parentis* and in their discretion may make any regulation for their government which a parent could make for the same purpose, and so long as such regulations do not violate divine or human law, courts have no more authority to interfere than they have to control the domestic discipline of a father in his family.<sup>120</sup>

Eventually, the doctrine of *in loco parentis* fell out of favor at colleges and universities around the time of the rise of student protests in the 1960s that prompted courts nationwide to reconsider students’ fundamental rights at their post-secondary institutions,<sup>121</sup> including those guaranteed by the First Amendment.<sup>122</sup> These shifts in how the courts viewed the responsibilities of college and university authorities had the effect of extending to students unprecedented autonomy to regulate their own affairs.<sup>123</sup> Then came the ratification of the 26<sup>th</sup> Amendment in 1971 that lowered the voting age to 18.<sup>124</sup> Colleges and universities could no longer use the age of majority as a rationale to act in the place of students’ parents.<sup>125</sup> In his concurrence in the 1972 case *Healy v. James*, Justice William O. Douglas contextualized the free-speech rights of college students, stating:

Students—who, by reason of the Twenty-sixth Amendment, become eligible to vote when 18 years of age—are adults who are members of the college or university community. Their interests and concerns are often quite different from those of the faculty. They . . . have values, views, and

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<sup>119</sup> *Id.* at 515.

<sup>120</sup> *Id.* at 513 (emphasis added).

<sup>121</sup> Philip Lee, *The Curious Life of in Loco Parentis at American Universities*, 8 HIGHER EDUC. IN REV. 65 (2011).

<sup>122</sup> *Id.* at 73–74.

<sup>123</sup> *Id.*

<sup>124</sup> U.S. CONST. amend. XXVI.

<sup>125</sup> See Lee, *supra* note 121, at 76.

ideologies that are at war with the ones which the college has traditionally espoused or indoctrinated.<sup>126</sup>

The U.S. Court of Appeals for the Third Circuit said something similar in *Bradshaw v. Rawlings* in 1979: “At one time, exercising their rights and duties *In loco parentis*, colleges were able to impose strict regulations. But today students vigorously claim the right to define and regulate their own lives . . . [They] have reached the age of majority and are capable of protecting their own self interests.”<sup>127</sup> The Third Circuit went on to underscore that college and university students could legally vote, marry, make a will, serve as a guardian, register as a public accountant, practice veterinary medicine, and so on.<sup>128</sup> As a result of these and other developments, such students had come to be “identified with an expansive bundle of individual and social interests and [to] possess discrete rights not held by college students from decades past.”<sup>129</sup> Further, the Third Circuit observed that the “campus revolutions of the late sixties and early seventies were a direct attack by the students on rigid controls by the colleges and were . . . [a] demand for more . . . rights,” adding, “In general, the students succeeded . . . in acquiring a new status at colleges throughout the country.”<sup>130</sup>

Since the 1970s, state and federal courts alike have continued to reject the application of *in loco parentis* principles at the post-secondary level. In a 1990 case involving a private liberal arts college, the Supreme Court of Pennsylvania found that it would be “inappropriate” in modern times to invoke *in loco parentis* in higher education.<sup>131</sup> As the Court found, quoting *Bradshaw*:

Whatever may have been its responsibility in an earlier era, the authoritarian role of today's college administrations has been notably diluted in recent decades. Trustees, administrators, and faculties have been required to yield to the expanding rights and privileges of their students.<sup>132</sup>

<sup>126</sup> 408 U.S. 169, 197 (1972) (Douglas, J., concurring).

<sup>127</sup> 612 F.2d 135, 140 (3d Cir. 1979).

<sup>128</sup> *Id.* at 139.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Alumni Ass'n v. Sullivan*, 572 A.2d 1209, 1213 (Pa. 1990).

<sup>132</sup> *Id.* (quoting *Bradshaw*, 612 F.2d at 138).

Two years later, a student sued Lehigh University after she became inebriated at on-campus fraternity parties and injured herself in a fall.<sup>133</sup> She alleged, among other claims, that the private school's "Social Policy" regarding alcohol use was a written promise to act *in loco parentis* to protect students from harm at on-campus social functions.<sup>134</sup> The U.S. District Court for the Eastern District of Pennsylvania ruled for Lehigh, finding that to require the university to supervise all of its students "would render null and void the freedoms won by adult students and place Lehigh *in loco parentis* . . . . Lehigh's position, and rightly so, was to assume . . . the adult students were responsible enough to make their own decisions."<sup>135</sup>

In a similar case involving the University of Delaware, the Supreme Court of Delaware acknowledged in 1991 that colleges and universities have a duty to protect their students by regulating dangerous activities on campus, but, at the same time, the Court concluded that "the concept of university control based on the doctrine of *in loco parentis* has all but disappeared in the face of the realities of modern college life" and that to the extent "the doctrine . . . is still viable, its application is limited to claims against high school authorities."<sup>136</sup>

In 2010, the Third Circuit reiterated that *in loco parentis* does not apply to post-secondary institutions. A student sued the University of the Virgin Islands for charging him with violating its student code of conduct after he harassed a person who had accused his friend of rape.<sup>137</sup> The Court wrote that "[t]he idea that public universities exercise strict control over students via an *in loco parentis* relationship has decayed to the point of irrelevance."<sup>138</sup> This echoed an Eighth Circuit opinion from 2003, in which the three-judge panel commented that "since the late 1970s, the general rule is that no special relationship exists between a college and its own students."<sup>139</sup> All of which is to say: Although the Supreme Court has not directly ruled on the use of *in loco parentis* on college and university campuses, there is a substantial body of law developed by the lower courts in the past 50 years that rejects such uses.

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<sup>133</sup> *Booker v. Lehigh Univ.*, 800 F.Supp. 234, 235 (E.D. Pa. 1992).

<sup>134</sup> *Id.* at 237.

<sup>135</sup> *Id.* at 241.

<sup>136</sup> *Furek v. Univ. of Del.*, 594 A.2d 506, 516–17 (Del. 1991).

<sup>137</sup> *McCauley v. Univ. of the V.I.*, 618 F.3d 232 (3d Cir. 2010).

<sup>138</sup> *Id.* at 245.

<sup>139</sup> *Freeman v. Busch*, 349 F.3d 582, 587 (8th Cir. 2003).

#### IV. CONCLUSION

Depending on the circumstances and jurisdiction, the First Amendment rights of a college student journalist—assuming that she attends a public school—may be subject to limits (where, for example, a school-sponsored media outlet is involved). But *Mahanoy*, because of its use of *in loco parentis* principles, effectively declared that off-campus college journalism—if it is not published in a school-sponsored outlet—is beyond the reach of institutional censorship or punishment.<sup>140</sup>

The *in loco parentis* doctrine is derived from English common law and the writings of Blackstone,<sup>141</sup> but in the modern era in the United States it has evolved into a doctrine of “inferred parental consent to a public school’s exercise of a degree of authority that is commensurate with the task that the parents ask the school to perform.”<sup>142</sup> Although its use at the post-secondary level traces back to 1886,<sup>143</sup> it fell out of favor at colleges and universities in the 1970s amid widespread student protests that prompted the courts to reconsider the nature and scope of students’ rights at post-secondary institutions,<sup>144</sup> including those guaranteed by the First Amendment.<sup>145</sup> This is significant because in addressing the extent to which public school officials may regulate off-campus student speech, in *Mahanoy* the Supreme Court relied on *in loco parentis* to justify the diminution of students’ First Amendment rights in a K-12 school on the theory that parents have delegated to the school some of their supervisory authority.<sup>146</sup> In turn, Justice Breyer’s majority opinion noted that schools rarely stand in the place of parents for off-campus student speech because geographically that speech normally falls to the regulation of a student’s actual parents.<sup>147</sup> And, in any event, *in loco parentis* does not apply if the student speaker is a legal adult, as nearly all college students are.

The last 50 years of case law makes clear that *in loco parentis* cannot be used to regulate college student behavior or expression. State and federal courts alike have rejected the

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<sup>140</sup> *Mahanoy Area Sch. Dist. v. Levy ex rel B.L.*, 141 S. Ct. 2038, 2048 (2021).

<sup>141</sup> 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, \*441 (1765).

<sup>142</sup> *Mahanoy*, 141 S. Ct. at 2052.

<sup>143</sup> *People ex rel. Pratt v. Wheaton Coll.*, 40 Ill. 186 (1866).

<sup>144</sup> *Lee*, *supra* note 121, at 65.

<sup>145</sup> *Id.* at 73–74.

<sup>146</sup> *Mahanoy*, 141 S. Ct. at 2045.

<sup>147</sup> *Id.*

application of *in loco parentis* principles at the post-secondary level. Justice Douglas said that “[s]tudents—who, by reason of the Twenty-Sixth Amendment, become eligible to vote when 18 years of age—are adults.”<sup>148</sup> The Third Circuit said that college students now “possess discrete rights not held by . . . students from decades past”<sup>149</sup> and that “[t]he idea that . . . universities exercise strict control over students via an *in loco parentis* relationship has decayed to the point of irrelevance.”<sup>150</sup> The Supreme Court of Pennsylvania said that it would be “inappropriate” in modern times to invoke *in loco parentis* in higher education.<sup>151</sup> The Eastern District of Pennsylvania said that to apply *in loco parentis* to a university “would render null and void the freedoms won by adult students,”<sup>152</sup> and the Supreme Court of Delaware said that “the concept of university control based on the doctrine of *in loco parentis* has all but disappeared in the face of the realities of modern college life.”<sup>153</sup> Again, shifts in how the lower courts viewed the responsibilities of college and university authorities have had the effect of extending to post-secondary students the general autonomy to regulate their own affairs.<sup>154</sup> Colleges and universities can no longer use the age of majority as a rationale to act in the place of parents.<sup>155</sup>

The Supreme Court’s reliance on *in loco parentis* in *Mahanoy* means that off-campus college student journalism, if not published in a school-sponsored outlet, will generally be protected from institutional censorship and punishment. This is significant because the lower courts, for more than a decade, have expanded the authority of state colleges and universities to punish students for their off-campus speech. And at the same time, college student journalists have been playing a critical role in meeting their communities’ news needs, producing a large amount of it off campus through independent publications and websites and through social-media platforms like Twitter, Facebook, and YouTube. This is all the more meaningful because of Supreme Court precedent granting school officials expansive authority to regulate the content of school-sponsored

<sup>148</sup> *Healy v. James*, 408 U.S. 169, 197 (1972) (Douglas, J., concurring).

<sup>149</sup> *Bradshaw v. Rawlings*, 612 F.2d 135, 139 (3d Cir. 1979).

<sup>150</sup> *McCauley v. Univ. of the V.I.*, 618 F.3d 232, 245 (3d Cir. 2010).

<sup>151</sup> *Alumni Ass’n v. Sullivan*, 572 A.2d 1209, 1213 (Pa. 1990).

<sup>152</sup> *Booker v. Lehigh Univ.*, 800 F. Supp. 234, 241 (E.D. Pa. 1992).

<sup>153</sup> *Furek v. Univ. of Del.*, 594 A.2d 506, 516 (Del. 1991).

<sup>154</sup> *Lee*, *supra* note 121, at 73–74.

<sup>155</sup> *Id.*

student media, with a growing number of lower courts extending that authority to post-secondary institutions. However, *Mahanoy*'s use of *in loco parentis* principles promises to neutralize the effects of that authority for off-campus college student journalists, serving as a “bright-red slam-the-brakes light for colleges” that otherwise might be tempted to engage in censorship or punishment in connection with their work.<sup>156</sup>

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<sup>156</sup> LoMonte, *supra* note 4.