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1. Paloma's (P) Arguments in support of Constitutional Claims

First Amendment Claim

The First Amendment to the US Constitution protects individuals from punishment by the government for their free expression, which is better known as the right of Free Speech. Speech can include oral or written words, symbols, art, and any other expressing designed to convey a message by the speaker.

Here, P has a dove tattooed on her wrist, which she asserts represents her message that she is a peaceful person. P has had this tattoos for several years. As a symbol of peace the dove is P's expression that she identifies as a peaceful person. The dove tattoo is P's speech.

Government Actors

The constitutional amendments protect individuals from adverse action by government actors. Here, District (D) is a public school district. Because public school districts are funded and operated by local governments, D is a government actor.

Individual

P is an individual human and is therefore protected by the US constitution and all the amendments.

Fundamental Rights

Free Speech is a fundamental right and will be analyzed under Strict Scrutiny. Strict scrutiny requires that the government has the burden of proof to show that the restriction on free speech serves a compelling government interest and the restriction is narrowly tailored. Additionally, if the restriction concerns content, it will be presumed a violation unless it is only a time, place, and manner restriction which are analyzed under intermediate scrutiny, that the restriction serves an important government interest and is not overly broad.

Here the dove tattoo is a free expression and is a fundamental right.

Compelling government Interest

The school policy wants to reduce violence from gang confrontations. There are no facts to indicate that this violence has been occurring on campus or involved high school students. However after consulting police, the school made a new rules banning "label, insignia, words,

colors, signs or symbols that reflect gang-related activities." Schools generally have an interest in maintaining safe violence free campuses. This is a compelling interest. However the restriction must be narrowly tailored.

Narrowly tailored to Achieve that interest

A restriction that is addressing a compelling government interest must not be overly broad, vague, or so encompassing as to also restrain legal speech. The restraint must also achieve the compelling interest that it is designed to address.

Overbroad and vague

Here, the school rule is very broad. It covers all "labels, insignia, words, colors, signs or symbols that reflect gang-related activities". However it does not describe which of those broad categories "reflect gang-related activities". It does not define the word "reflect" nor does it define what "gang-related activities" are. Under this rule it appears that the school has discretion to ban all types of expression in any of the broad listed categories.

Potentially all students and staff could be in violation on any given day for wearing a color or picture or graphic on their bodies or clothes or jewelry. Gangs often adopt primary colors. Should we ban all primary colors? Gangs often adopt common symbols. Should we ban all symbols. This rule is overly broad and vague because it is impossible for a reasonable person to know what would violate it. The D consulted with local police who said one gang uses bird symbols. Which birds? All Birds? So a bird lover can never wear a bird shirt or bird jewelry or tattoo?

Here the police said "it sounds like a Westsider gang symbol". This means that the verbal description alone is all that the police evaluated and they did not even see the tattoo. There are no facts to indicate that this particular dove is a gang symbol. Or even if it is, just because P likes this dove, does not mean P is in a gang. The facts state P has never been associated with a gang, including Westsiders or Eastsiders. Without more evidence this tattoo is simply P's free expression of her peacefulness and doves are a well known sign of peace. "Sounds like" is not a fair or unbiased or rational analysis and there is no evidence to back up the schools determination or the police determination that the dove is a gang symbol just because some gangs use birds as a symbol. Birds is another broad category and banning all bird expressions is unconstitutional.

This rule is not narrowly tailored to achieve a compelling government interest and is both vague and overbroad, therefore it is unconstitutional.

Additionally the government can not make an act illegal and punish the person who did the act when it was legal

Here, the dove tattoo has been on P for several years. It did not violate the rules when she got it. It is permanent and it is unreasonable to expect her to cover a meaningful tattoo or incur the big expense of removing it. The tattoo itself should be grandfathered in and P should not be punished or forced to remove it.

Fourteenth Amendment Claim

The Fourteenth amendment guarantees due process of law to individuals and it makes all the other amendments applicable to the states. Here the school district is in State X and is operated by the state so the amendments, such as the first amendment are applicable to State X.

Due Process

Citizens shall not have their life, liberty, or property taken away by the government without Due process which requires fair notice and a process to challenge the restriction. Here, P was not given fair notice that her tattoo would be illegal because the new school rule does not specifically define it as illegal (see overbroad and vague arguments above). One day her tattoo is fine and the next, after D consults with police, she is told it is not.

A tattoo is not like jewelry or clothing that can be changed easily. It cost money to get and even more money to remove. If D forces P to remove it they are taking her liberty to freely express her peacefulness and her money (cost to remove). There are no facts to indicate that there is an appeal process that P may access to have the schools decision reconsidered. Without redressability of a fairly arbitrary and discretionary decision by the school and police (that doves are gang symbols), other than a law suit, there is not due process.

P's rights to notice and appeal of the schools decisions are a violation of due process.

T (D) Arguments in support of Motion to Dismiss P's suit

Likelihood of Success of D's Argument that P's suit is moot because P no longer attends high school

Federal courts may hear cases or controversies, but the moving party must have standing. Standing includes ripeness, lack of mootness and ongoing case or controversy that remains in dispute for the entire process of the case in federal court.

Ripeness

Ripeness is when the issue in dispute is ready to be resolved because the individual has suffered or continues to suffer a particularized injury. Here, P was told to cover her tattoo, or remove it or be suspended. P was a senior. Because she refused to do as she was told she was suspended for the last 10 days of school in her senior year. Though she was allowed to graduate, P missed out on all the traditional last days of school celebrations and activities that high school seniors typically have. P can never go back in time and get that time back or get those memories back with her friends. P has suffered a particularized injury because she refused to allow the school to force her to remove her freedom of expression in the form of a dove tattoo.

Yes it is true that P graduated, but to ban her case because she is no longer a student would mean that schools could freely discriminate or violate the rights of high school seniors with impunity because the student could not sue them after graduating. This would create a gross miscarriage of justice. Just because a citizen is no longer being injured does not invalidate the injury that occurred because the D violated P's first amendment fundamental rights.

This case is ripe and the controversy is real because P was injured by the rule, therefore the D is unlikely to succeed using this argument that P is no longer a high school student to obtain a dismissal of the case.

Likelihood of Success of D's Argument that P's suit is moot because the school code now is consistent with State X's criminal code

Mootness

Mootness occurs when case or controversy is not longer at issue and has resolved.

Here the D claims that it rewrote its rule to comply with State X Code's definition of "gang related activities". While this may remedy one part of the vague overbroad rule by defining what is gang related, it does not remedy the other part of the rule that lists every possible category of color, picture, signs labels or symbol or other visual free expressions. By listing all these broad categories, the rule still has the effect of banning anything in the word that some official (also not defined) can have discretion (not limited) to arbitrarily ban because "it sounds like a Westsider gang symbol."

This case is not moot because the vagueness and over-broadness of what are gang symbols is still not remedied by the new rule. The only remedy so far is that "gang related activities" has been defined to fit State X statutes.

Mere compliance with law is not a bar to constitutional claims

While D asserts that the rule now complies with State X law, this is a defense, but not dispositive proof that the school rule is not violating the constitution. It is possible that even State X law is a violation, though P is not challenging State X law in this action. Additionally as analyzed above, the revision fixes one but not both vague and overbroad issues.

This claim is not moot and therefore D is unlikely to prevail on this argument to obtain a dismissal of the case.

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