

2)

1. What arguments can P make in support of her first and fourteenth amendment claims?

The protections of the 1st and 14th amendment could apply to Paloma

The selective incorporation doctrine 1st amendment and 14th amendment

The first amendment protects the right to free speech, but only federally. Implied in the due process clause of the 14th amendment's liberty aspect, all rights that apply federally can be selectively incorporated so as to apply to the states.

Thus the rights, of the 1st amendment can be applied to the states through the 14th amendment as discussed below.

State action doctrine.

The state action doctrine only protects against government, or in this case, state actions. The 1st amendment does not protect against private actions. Thus, since the action is regarding a public school district policy, the protections of the 1st amendment can be discussed and apply accordingly as discussed below.

Here, the public school district created the policy, since the district is part of state x, this constitutes state action, thus the rights of 1st amendment could extend

rights of children

minors have no rights under the constitution, as they cannot have standing in court, but derivative suits can be brought by their parents. Here it is unclear how old Paloma is at the time she is in high school and may not be able to bring a suit and would need a parent to do so if she is not of age. In addition, children do not have a right to free speech in school as it is not a public forum as will be discussed below in the section regarding public forums. P also refused to wear long sleeves, which was her solution to the issue but did not.

Protections of the 1st amendment

The first amendment protects the rights of people in the US of their right to free speech. The state is authorized to place reasonable time place and manner restrictions

on free speech. The rule for free speech is that content based restrictions on free speech must survive strict scrutiny, and content neutral based restrictions must survive rational basis review.

SS

Strict scrutiny requires that a law will be struck down unless it can show a compelling reason for upholding the law, that serves an important government purpose, or in other words is narrowly tailored to be the least restrictive means of upholding the important government purpose. It is the highest level of judicial review of the court.

RB

Rational basis requires that a law be rationally related to a legitimate governmental purpose. This is an incredibly low standard, and is almost always met. Thus, it is the lowest standard of judicial review.

Public forum

There are certain spaces that are fundamentally part of the government's history as public spaces/public forum for exercising free speech. There are traditional public forums, limited public forums, and non-public forums. Traditional public forums, are spaces that have been considered public spaces for discourse since time immemorial, such as public parks, sidewalks, or the outside of public university campuses, steps outside public buildings. Limited public forums are spaces that are private spaces that are temporarily designated as public spaces or otherwise subject to other limitations, such as private fairgrounds for a political rally, or inside of public schools. Non-public forums are areas that are privately owned and do not have the protections of the first amendment.

Vagueness/Overbreadth/Prior Restraints

Laws that are vague or overbreadth can be struck down on that basis.

Here the law is "no student shall wear any labels insignia words colors or symbols that reflect gang related activities." Violation of this policy will be immediately suspended or expelled from school. It could be argued that the law is so broad since it includes words colors and symbols that it could be so broad as to apply to any type of speech, and could be struck down on its basis. Comically Paloma, the Spanish word for dove, involves a dove tattoo, the statute goes so far as to include speech that has existed for several years for her own self

expression as peaceful person. This shows that on the basis of vagueness and overbreadth this law could be struck down for being overly inclusive beyond its intent to reduce gang violence.

Standing

The court is designed and has the explicit power to hear cases and controversies, and may not issue advisory opinions. In order for a case to be heard in a court it must show a specific injury, caused by the alleged conduct, which can be redressed by the court. Standing may be obtained as a taxpayer, but cannot allege standing based on a general grievance, the injury must be particular to the party seeking to bring the action.

ripeness and mootness

prudential Standing also requires the case be ripe for trial at the time case is filed, and cannot be based on a prospective injury unless it can be shown that the injury is imminent. The injury must be actual, and at least must have a some possibility that it was caused by the conduct alleged. This is required for the case to be ripe. A case also requires that the issue not be moot by the time issue makes it before the court. For a case to become moot, the court would lose its ability to redress the issue being posed before the court, this would cause the court to have nothing to say once the case was before the court. There is an exception for cases that are likely to be repeated again as was the case in the landmark abortion case *roe v. wade*.

Here, P was suspended for the last ten days of school, but it is unclear as to what her particular injury to give her standing could be. She cites no emotional, or physical distress, her only statement is she lost 10 days of school, which schools have the discretion to do with good cause. The injury derived from 10 days of missed school is unclear, especially since she graduated, and attended the college of her choice. Thus, without an injury for which the court can redress it is unclear if this case is ripe for hearing, as it is likely moot with the court having nothing to do.

That said, it could be argued that this will keep reoccurring since the law is so broad, and could be recurring, for this reason we have the public forum analysis as discussed below

Content/viewpoint based Restrictions must survive strict scrutiny.

Here, the statute is to reduce gang violence in high schools, and it includes consultation with local police to identify gang violence as between westsideers and eastsiders. The law itself is content/viewpoint of all symbols and related with gang related activities. This is specific to the content of gang related symbols, and is not a time place and manner restriction. Thus for a content based restriction on free speech it must show it is the least restrictive means for this compelling/importnat government purpose. Here, protection of the children and reduction of

gang violence is a compelling reason because it is about whether student will be subject to violence in their own schools and in their community, this is incredibly important. Here, Paloma had a tattoo of a bird, that is related to one of the gangs. That said since the statement is so broad, and includes, insignia words colors signs and symbols as discussed it is incredibly broad, and is seemingly not the least restrictive means for achieving its purpose. Thus, the law will likely not survive strict scrutiny.

That said, if applied it would survive because it a legitimate interest in of reducing gang violence, and reducing their advertising is reasonably related. But since the law is not content neutral, or a reasonable Time place or manner restriction it does not apply. On the other hand it could be argued that the students cannot wear anything during school hours, it could be argued that this is a time based restriction, but it would still fail since it is specifically for content regarding gangs and anything advancing the gang related viewpoint. Therefore the statute will likely be struck down and Paloma will not be able to bring her claim.

Public forum Exception

here the public school district is a high school, as Paloma is a high school senior of an unknown age. The inside of a high school is not a traditional public forum as defined above by having a history of being public forum since time immemorial, in addition the school retains reasonable discretion as to the conduct of its students to protect them and the learning environment. Thus, the basis that it happened in the school might be enough for the school to do so.

2. Will either of the districts arguments in support of its motion to dismiss Paloma's lawsuit be successful?

a) Paloma is no longer a high school student

Standing

injury causation, redressability

ripeness

mootness

See rules above

Here, there is no specific injury as stated above, and now that paloma is no longer in highschool it is even more remote and time from the incident. As discussed above she did not suffer and in jury since she graduated and went to her school of choice. Taht siad, as stated above absent b it seems likely that this suit will reoccur, and there could be standing on the basis of reoccurrence. It is hard to tell if her action will be dismsed based on her not beign a highschool student. The injury is missing, thus there might be a better student who has suffered, to better bring a suit to strick down the law.

b) Distract has no redefined gang related activities in its rule in a manner consistent with State x'scriminal code.

mootness

Here, gang related activities ahs been redefined in adcrodance with a criminal code. Thus it is unclear as to what the court would do absent any facts of this new criminal code, it is unclear if P's request is notw moot. If the law was changed substantially she could have no injury, and there could be no basis for a reoccurring injury. Thus it is unclear as to whether the her case will be dissmised, It would largely depend if the now revised statue also applies to p or if aresonable rquestion of fact or law could be here.

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END OF EXAM