NOTES

Shen v. Albany Unified School District: An Articulation of the Boundaries of Student Speech in the Social Media Era

I. OVERVIEW OF THE CASE

The Albany Unified School District (AUSD) expelled and suspended ten Albany High School (AHS) students after discovering their involvement with an Instagram account containing racist and offensive content.[1] All ten of the students, including the creator, followed the private Instagram account @yungcavage (Account).[2] The Account depicted photos of African American AHS students and teachers superimposed on highly offensive, derogatory content.[3] The posts included a photo of black women being compared to gorillas, a post with the caption "Ku klux starter pack," as well as a photo with AHS affiliates with nooses drawn around their necks saying, "I'm on the edge of bringing my rope to school on Monday."[4]

After the contents of the Account became public, AHS students gathered in the school's hallways crying, yelling, and causing other disturbances.[5] Some students were too upset to attend class, while others disrupted class discussions to speak about the Account.[6] Construing several of the posts as threats of violence, the school contacted the local police.[7] AUSD also called several mental health counselors to AHS to speak with distraught students.[8] Subsequently, AUSD expelled the Account's creator and suspended the nine other AHS students involved.[9]

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1. Shen v. Albany Unified Sch. Dist., No. 43 in 3:17-cv-02478-JD, 2017 WL 5890089, at *1-2 (N.D. Cal. Nov. 29, 2017). Instagram is a social media platform used by over one billion people in which users share photos and videos with their "followers." Users can "interact with posts [they] care about with likes and comments." *See* Instagram, Inc., Apple App Store.
2. *Shen*, 2017 WL 5890089 at *1-2.
3. *Id.* at *2.
4. *Id.*
5. *Id.* at *3.
6. *Id.* at *8.
7. *Id.*
8. *Id.*
9. *Id.* at *3.

The ten disciplined students filed independent claims in the District Court for the Northern District of California against AUSD alleging the district's actions violated their rights to due process under state and federal law.[10] The District Court limited its decision to the issues arising under the First Amendment.[11] In the noted case, the United States District Court for the Northern District of California *held* that the First Amendment permits a public school to discipline its students for disruptive and derogatory Internet speech *only* when the speech targets or depicts a specific school affiliate. *Shen v. Albany Unified School District*, No. 43 in 3:17-cv-02478-JD, 2017 WL 5890089 (N.D. Cal. Nov. 29, 2017).

II. BACKGROUND

The First Amendment of the United States Constitution states, "Congress shall make no law . . . abridging the freedom of speech, or of the press."[12] The government may not "prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."[13] It is established law that students possess a First Amendment right to free speech in public schools, absent a constitutionally valid exception.[14] In *Tinker v. Des Moines Independent Community School District*, the Supreme Court highlighted the importance of freedom of expression in public schools.[15] In that case, the public school board disciplined a group of students who attended school wearing black armbands to demonstrate opposition to the Vietnam War.[16] The school argued that sanctions were necessary to avoid controversy among the students.[17] However, the Court held that the school could not discipline its students for silent and passive expression of political opinion in order to avoid mere discomfort and unpleasantness.[18] The students' expression in *Tinker* did not disturb school activities nor did it collide with the rights of the other students to be let alone.[19] Therefore, the Court's decision established precedent that a public school may only sanction its students for expression that causes material

10. *Id.* at *1.
11. *Id.*
12. U.S. CONST. amend. I.
13. Texas v. Johnson, 491 U.S. 397, 414 (1989).
14. Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1969).
15. *Id.* at 504.
16. *Id.*
17. *Id.* at 510.
18. *Id.* at 509.
19. *Id.* at 508, 510.

disruption to school activities or that impinges on the rights of other students to be secure and be let alone.[20]

In 1986, the Supreme Court narrowed the boundaries of permissible student speech.[21] In *Bethel School District No. 403 v. Fraser*, a public school sanctioned a student for using an "elaborate, graphic, and explicit sexual metaphor" to describe a classmate during a school assembly.[22] The other students reacted by "hoot[ing]" and yelling obscenities.[23] The Court distinguished the sexually explicit speech in *Bethel* from the silent expression of anti-war sentiment in *Tinker*.[24] It found that the reactions to the speech in *Bethel* should not be likened to the lack of disruption to school activities in *Tinker*.[25] Thus, the Court held that a school board may sanction students for certain conduct or speech "wholly inconsistent with the 'fundamental values' of public school education."[26] Further, the Court highlighted the valuable role of schools in educating socially appropriate behavior, stating "schools must teach by example the shared values of a civilized social order."[27] The Court concluded that a public school may discipline its students for sexually explicit speech that materially and substantially hinders a school from enforcing "civilized" behavior.[28]

The Supreme Court has not yet addressed First Amendment protection regarding off-campus or online student speech.[29] However, the Court of Appeals for the Ninth Circuit and its sister circuits have addressed online student conduct on a circumstance-specific basis.[30] Courts do not have a universal test to define limitations of online student speech.[31] However, Ninth Circuit precedent states that a school may sanction student speech that threatens the security of a school's operation.[32] This

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20. *Id.* at 513-14.
21. Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 685-86 (1986).
22. *Id.* at 677-78.
23. *Id.* at 678.
24. *Id.* at 680, 685.
25. *Id.* at 680.
26. *Id.* at 685-86.
27. *Id.* at 683.
28. *See id*. at 684-86.
29. *See* Morse v. Frederick, 551 U.S. 393, 396 (2007); Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 262 (1988).
30. C.R. v. Eugene Sch. Dist. 4J, 835 F.3d 1142, 1150 (9th Cir. 2016); S.J.W. v. Lee's Summit R-7 Sch. Dist., 696 F.3d 771, 777 (8th Cir. 2012); Kowalski v. Berkeley Cty. Schs., 652 F.3d 565, 573 (4th Cir. 2011); LaVine v. Blaine Sch. Dist., 257 F.3d 981, 990 (9th Cir. 2001). *See generally* Wynar v. Douglas Cty. Sch. Dist., 728 F.3d 1062, 1064-65 (9th Cir. 2013).
31. *Wynar*, 728 F.3d at 1069.
32. *C.R.*, 835 F.3d at 1152-53; *LaVine*, 257 F.3d at 990-91; *see Wynar*, 728 F.3d at 1069.

leaves lower courts with significant discretion in the application and interpretation of First Amendment protection of online student speech.[33]

In *C.R. v. Eugene School District 4J*, the Court of Appeals for the Ninth Circuit held that off-campus student speech that is closely tied to a school is subject to discipline by that school's administrators.[34] In *C.R.*, a group of students sexually harassed several of their disabled classmates after following them home from school.[35] Because the students were in close "temporal and physical proximity" to the school, the court found that the speech had a close connection to the school.[36] Thus, the school was justified in implementing sanctions against the participating students for their off-campus offensive speech.[37]

The Ninth Circuit has also held that Internet speech is subject to school sanctions when it poses a "real risk" to the school.[38] In *Wynar v. Douglas County School District*, a public school expelled one of its students after the student sent a series of violent and threatening instant messages on MySpace.[39] The messages included statements such as, "i have a sweet gun," and, "i just cant decide who will be on my hit list."[40] The student referred to Hitler as a "hero" in several of the messages and suggested the date of the shooting be April 20, Hitler's birthday and the date of the Columbine massacre.[41] While the messages were sent outside of school, they directly referenced the school and several of its students.[42] The school's administrators believed the students' safety was at risk and feared a "substantial disruption" of school activities if the contents of the messages were revealed.[43] The administrators' concern for school safety was further heightened when they learned that the plaintiff owned several

33. *LaVine*, 257 F.3d at 990-91; *see Wynar*, 728 F.3d at 1069. *See generally C.R.*, 835 F.3d at 1152-53.

34. *C.R.*, 835 F.3d at 1150-51.

35. *Id.* at 1146.

36. *Id.* at 1151-52.

37. *Id.* at 1153.

38. *Wynar*, 728 F.3d at 1065 (9th Cir. 2013); *see also LaVine*, 257 F.3d at 992 (holding that a public school should receive deference in connection with the safety of their students even when freedom of expression is involved.).

39. *Wynar*, 728 F.3d at 1065-66.

40. *Id.*

41. *Id.*; *Columbine Shooting*, HISTORY.COM, http://www.history.com/topics/1990s/columbine-high-school-shootings (last updated Oct. 3, 2018) (stating that on April 20, 1999, two students at Columbine High School in Littleton, Colorado, went on a shooting spree, killing thirteen and wounding more than twenty of their classmates and teachers).

42. *Wynar*, 728 F.3d at 1067, 1070-71.

43. *Id.* at 1070.

firearms.[44] Because the threats were "alarming and explosive," the court decided that the school did not need to wait for an actual disruption before taking disciplinary action.[45] It found that it was reasonably foreseeable that the student's speech would disrupt the school.[46] Furthermore, the court concluded that the threat of a school shooting impinges on the rights of students to be secure and to be let alone under *Tinker*.[47] In *Wynar*, the court declined to establish a "one size fits all" approach to evaluate students' Internet speech.[48] However, the court found that a public school has broad authority to discipline its students in moments of exigency.[49]

The Fifth Circuit has also addressed off-campus student speech originating on the Internet.[50] In *Bell v. Itawamba County School Board* the court held that threatening online speech "directed" at a public school may be subject to disciplinary action.[51] It acknowledged that technology created new challenges for public schools, "confounding previously delineated boundaries of permissible regulations."[52] In *Bell*, the court analyzed a student's rap recording.[53] The rap contained offensive, vulgar language and threats of violence directed at the school, its teachers, and its community, posing a real risk of disruption to school activities.[54] The court concluded that the school's disciplinary action against the student was permissible under the First Amendment.[55] To support its conclusion, the court cited the recent rise of violence in schools including specific instances in which "students have signaled potential violence through speech, writings, or actions, and then carried out violence against school communities, after school administrators and parents failed to properly identify warning signs."[56]

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44. *Id.* at 1070-71.
45. *Id.* at 1070.
46. *Id.*
47. *Id.* at 1072 (citing Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 508 (1969)).
48. *Id*. at 1069.
49. *Wynar*, 728 F.3d at 1069; *see also* Layschock v. Hermitage Sch. Dist., 650 F.3d 205, 207-09, 216, 219-20 (3d Cir. 2011) (holding that a student who created a fake social media profile mocking his principal was protected under the First Amendment because it was merely "lewd or offensive" expressive speech, it did not cause a substantial disruption to the school, and it was not perceived as a threat to the school's safety).
50. *Wynar*, 728 F.3d at 1064-65. *See generally* Bell v. Itawamba Cty. Sch. Bd., 799 F.3d 379, 394 (5th Cir. 2015).
51. *Bell*, 799 F.3d at 383.
52. *Id*. at 392.
53. *See id.*
54. *Id*. at 400.
55. *Id.*
56. *Id.* at 399.

In comparison, the Court of Appeals for the Fourth Circuit has held that online student speech may be subject to school sanctions when there is a sufficient nexus between the speech and the school.[57] In *Kowalski v. Berkeley County Schools*, a public school imposed disciplinary measures after a student created a webpage to ridicule a classmate.[58] The student argued that the school unlawfully imposed sanctions because the online activity occurred outside of school.[59] The court found that, while the student "pushed her computer's keys in her home . . . she knew that the electronic response" would reach or impact the school.[60] Thus, the court concluded that the connection between the speech and the school permitted the public school to impose sanctions for the student's Internet-based speech.[61]

Similarly, the Court of Appeals for the Eighth Circuit held that off-campus speech was subject to school sanctions if it was "reasonably foreseeable that the speech [would] reach the school community."[62] In *S.J.W. ex rel. Wilson v. Lee's Summit R-7 School District*, the court considered a student-made, public website containing sexually degrading and racist comments about classmates identified by name.[63] The court found that while the speech was off-campus, it was directed at the public school; thus, the court found that it was reasonably foreseeable that the speech would be brought to the attention of school authorities and create a substantial risk of disruption to the school's environment.[64] Due to the foreseeability that the website would become public to the school, the online content constituted school speech subject to disciplinary action.[65]

III. COURT'S DECISION

The United States District Court for the Northern District of California applied the holdings in *Tinker* and *Wynar* to Instagram posts about a public school student's classmates and teachers.[66] First, the court

57. Kowalski v. Berkeley Cty. Schs., 652 F.3d 565, 573 (4th Cir. 2011).
58. *Id.* at 567-69.
59. *Id.* at 570-71.
60. *Id.* at 573.
61. *Id.* at 574.
62. *See* S.J.W. *ex rel.* Wilson v. Lee's Summit R-7 Sch. Dist., 696 F.3d 771, 777 (8th Cir. 2012) (citing D.J.M. *ex rel.* D.M. v. Hannibal Pub. Sch. Dist. No. 60, 647 F.3d 754, 766 (8th Cir. 2011).
63. *S.J.W.*, 696 F.3d at 773.
64. *Id.*
65. *Id.*
66. *See* Shen v. Albany Unified Sch. Dist., No. 43 in 3:17-cv-02478-JD, 2017 WL 5890089, at *6 (N.D. Cal. Nov. 29, 2017); Wynar v. Douglas Cty. Sch. Dist., 728 F.3d 1062, 1067 (9th Cir. 2013).

analyzed whether the posts fell under the under the scope of the First Amendment.[67] Second, the court addressed whether the posts were school speech under *Wynar*.[68] Finally, the court considered whether the school's actions were proper under *Tinker*.[69]

The court first addressed whether the Instagram posts, comments on the posts, and any "likes" were protected under the scope of the First Amendment.[70] It found that the posts and comments were protected speech because they were considered original content.[71] Those who liked the posts broadcasted "expression[s] of agreement, approval, or enjoyment," which is protected by the First Amendment.[72] Furthermore, the student who followed the Account but did not comment or "like" any of the posts was also protected under the First Amendment as a reader with the right to receive information.[73]

After coming to the conclusion that the Instagram posts and the activity associated with those posts fell under the scope of the First Amendment, the court then addressed whether the school district was permitted to discipline the AHS students for online speech.[74] In order to evaluate this issue, the court applied two tests used by the Ninth Circuit in *Wynar*: the "nexus" test and the "reasonable foreseeability" test.[75]

The court concluded that the posts had a sufficient nexus to AHS.[76] Like the online speech in *Kowalski*, the Account here included the AHS community as its "subject and addressees";[77] AHS students followed the Account, and AHS students and teachers were featured in the posts.[78] The court highlighted that pictures of school activities taken on campus closely connected the online speech with the school; thus, the court concluded there was sufficient nexus between the Instagram posts and the school.[79]

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67. *Shen*, 2017 WL 5890089, at *5-8.
68. *Id.*
69. *Id.*
70. *Id.* at *5 ("On the Instagram phone application, a user can like an image either by tapping a heart-shaped icon under the post or by double-tapping the image itself. A notification goes out to the poster that someone has liked his or her post, and the like is also visible to anyone else who can see the post.").
71. *Id.*
72. *Id.*
73. *Id.*; *see* Griswold v. Connecticut, 381 U.S. 479, 482 (1969) (holding that freedom of speech includes "not only the right to utter or to print" but also to read).
74. *Shen*, 2017 WL 5890089, at *5.
75. *Id.*
76. *Id.*
77. *Id.*
78. *Id.*
79. *Id.*

The court reached a similar result when it applied the "reasonable foreseeability" test.[80] It evaluated whether the overall circumstances made it reasonably foreseeable that a student's speech would reach and disrupt the school.[81] The court found that because the Account referred to specific AHS activities and AHS students by name, there was a substantial likelihood of school disruption.[82] Further, at the time the posts were uploaded, there was already ongoing racial tension at AHS.[83] Given this tension, the court concluded that it was reasonably foreseeable that the Account's contents would disturb the school.[84]

The ten students (Plaintiffs) argued that the Account activity should not be considered school speech because they intended the Account to remain private.[85] The court quickly rejected this argument.[86] It stated, "[I]t is common knowledge that little, if anything, posted online ever stays a secret for very long, even with the use of privacy protections."[87]

The Plaintiffs also argued that the Account did not constitute school speech because it did not contain sexual harassment verbiage like in *C.R.* nor did it contain explicit threats of physical violence under *Wynar*.[88] Again, the court rejected the Plaintiffs' argument finding that school speech is not limited to the case-specific facts in *C.R.* and *Wynar*.[89] The court stated that "schools are responsible for preventing not only acts of violence or assault, but also harassment and bullying."[90]

Lastly, because the Account contained school speech, the court applied the holding in *Tinker* to assess the constitutionality of the disciplinary measures taken by AUSD against the AHSstudents.[91] Under *Tinker*, a public school may discipline a student for speech that "materially disrupts classwork" or involves the "invasion of the rights of others."[92]

In *Shen*, there was significant distruption within the school after the Account was revealed to the student body.[93] Students gathered in the

80. *Id.* at *7.
81. *Id.*
82. *Id.*
83. *Id.*
84. *Id.*
85. *Id.*
86. *Id.*
87. *Id.*
88. *Id.*
89. *Id.*
90. *Id.*
91. *Id.* at *8.
92. *Id.* (citing Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 513 (1969)).
93. *Id.* at *9.

hallways crying and yelling.[94] Some students were too upset to attend class, while others interrupted class discussion to speak about the Account.[95] Additionally, the school was forced to contact the local police because some posts were construed as threats of violence.[96] The disruption was so severe that AUSD called mental health professionals to speak with upset students.[97] Based on these facts, the court found that the creator of the Account incited a material and substantial disruption under *Tinker*.[98] Therefore, the expulsion of the creator by AUSD did not constitute a violation of the First Amendment.[99]

Next, the court discussed the Plaintiffs who commented and/or "liked" the posts.[100] Like in *Tinker*, the court differentiated between the Plaintiffs who expressed approval of posts depicting specific AHS affiliates and those who expressed approval of generally offensive content.[101] The court found that the students who demonstrated approval of the posts featuring photos or references to specific AHS students meaningfully contributed to the school disruption under *Tinker*.[102]

Furthermore, by posting comments and likes on posts targeting specific individuals, the Plaintiffs "clearly interfered with 'the rights of other students to be secure and to be let alone.'"[103] These likes and comments created significant threats to the targeted AHS students' "sense of physical, as well as emotional and psychological security."[104] The court found that students have a "right to enjoy an education in a civil, secure, and safe school environment," one that is free from abrasive and offensive comments about race, ethnicity, or physical appearance.[105] It held that commenters and likers who expressed approval for offensive and threatening posts referencing or depicting specific individuals "impermissibly interfered" with the rights of other students to be let alone; thus, AUSD was authorized to enforce sanctions against them.[106]

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94. *Id.*
95. *Id.*
96. *Id.*
97. *Id.* at *8.
98. *Id.*
99. *Id.*
100. *Id.*
101. *Id.* at *8, *10.
102. *Id.* at *9.
103. *Id.* (citing Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 508 (1969)).
104. *Id.* at *9 (citing C.R. v. Eugene Sch. Dist. 4J, 835 F.3d 1142, 1152 (9th Cir. 2016)).
105. *Id.* at *10.
106. *Id.* at *9-10.

The court rejected the Plaintiffs' argument that they "liked" the posts "casually and thoughtlessly."[107] In other words, the Plaintiffs claimed they did not approve of the posts, and they were not paying attention to the content.[108] The central question to this Court was whether the activity interfered with the rights of other AHS students.[109] The court found that while these students may have retroactively disapprove of the Account, the Plaintiffs' online activity still interfered with other students' rights to be secure and let alone.[110]

The court then considered the sanctions imposed on the Plaintiffs who neither "approved of [n]or adopted any content" targeting specific AHS students.[111] One of the four Plaintiffs followed the Account but did not "like," comment, or otherwise demonstrate approval of the Account's contents.[112] Whereas, another Plaintiff commented "this account is racism solely directed at black people" followed by a laughing face emoji.[113] A second Plaintiff commented, "Pls tell me who's the owner to this amazing account."[114] The third Plaintiff commented, "I hope I never end up on this account."[115] All three Plaintiffs' comments were attached to posts containing generally offensive or racist content, but did not reference AHS nor any of its affiliates.[116]

The court highlighted the fact that endorsement of "speech that is offensive or noxious at a general level differs from . . . speech that specifically targets individual students."[117] The disruption caused by the generally offensive speech was not enough under *Tinker's* material and substantial interference requirement.[118] Furthermore, while the speech may have been hurtful and unsettling to the Plaintiffs' classmates, the comments did not "affirmatively" infringe upon the rights of the other AHS students to be secure and let alone.[119] Therefore, any disciplinary action taken against the four students who did not demonstrate approval

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107. *Id.* at *10.
108. *Id.*
109. *Id.*
110. *Id.*
111. *Id.*
112. *Id.* at *2, *5, *10.
113. *Id.* at *10.
114. *Id.*
115. *Id.*
116. *Id.*
117. *Id.* at *10.
118. *Id.* (quoting Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 513 (1969)).
119. *Id.*

for content targeted at specific AHS students could not be disciplined under the First Amendment.[120]

This Court held that a public school may discipline its students for their speech within a private online social media forum.[121] The creator and five Plaintiffs who endorsed targeted content were all properly disciplined for their online speech.[122] However, the four Plaintiffs who were considered by the court to be generally offensive contributors were permitted to express views that others may find hurtful and unsettling under the First Amendment.[123]

IV. ANALYSIS

The court's decision in *Shen* demonstrates the confrontation of a student's First Amendment rights on the Internet with a public school's duty to provide a safe and secure educational environment. Public schools must do more to ensure the rights of its students are respected.

Each user's freedom on social media has created a greater opportunity for abuse; users of all ages can share conspiracy theories, hurtful gossip, or disturbing images. The exploitation of social media by school-aged Americans is a problem that must be addressed. Today's students have the world at their fingertips. Digital media has facilitated communication as well as the wide dissemination of information. Furthermore, social media sites offer every American a powerful platform from which they can express their interests. For example, some users enjoy heated political debate threads on Twitter; while others exclusively post photos of avocado toast on Instagram.

If the role of public schools is to "teach by example the shared values of a civilized social order," instructing students how to responsibly use the Internet is crucial.[124] More importantly, schools must ensure history is taught with a degree of empathy by highlighting the institution of slavery from the perspective of the enslaved or the era of Jim Crow from the perspective of the oppressed. School administrators should emphasize that, while students have the right to speak freely, their actions and words have consequences.

But a school can only teach what its students are willing and able to learn. Important lessons often fall on deaf ears. Thus, public schools must

120. *Id.*
121. *Id.* at *4, *8-10.
122. *Id.* at *9.
123. *Id.*
124. *See* Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 683 (1986).

be prepared to respond when student speech is repugnant to "civilized social order;" but this response should also respect the right to freedom of speech.[125]

Students should be free to form their own beliefs and opinions based on the factual information their school provides. At the same time, students should be taught to respectfully interact and debate controversial issues with their classmates. Without this liberty, students will be ill-prepared to enter a society built on the freedom of expression. In *Shen,* the court strikes a balance between a public school's authority to discipline students for their misuse of the Internet while respecting students' right to free speech under the First Amendment.[126] The court's ruling provides space for schools to sanction students' Internet speech when it matters most—when it targets a specific individual and puts that individual's safety or right "to be let alone" in jeopardy.[127]

The creator of the Account incited immense disruption in the school after he posted images of AHS students to broadcast his offensive and racist views.[128] His actions resulted in intense uproar, fear, and devastation among the student body, especially for the students who were specifically targeted by these posts.[129] Any reasonable person would agree that this conduct was abhorrent, vile, and absolutely unacceptable. Yet, even the most disagreeable people retain the right to express their views under the First Amendment. Chief Justice Roberts articulates this important balance between the freedom of speech and its potential for a harmful impact:

> Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and—as it did here—inflict great pain. . . . [W]e cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate.[130]

By sanctioning all students involved with the Account, AUSD attempted to send a message to the student body that racism—at any level—is intolerable.[131] Though well-intentioned, the school was misguided in its effort. By punishing the four "generally offensive" contributors of the Account, the school demonstrated a clear attempt to stifle public debate on racism and chill students' freedom of speech on the

125. *See id.*
126. *Shen*, 2017 WL 5890089, at *8-10.
127. *Id.* at *10.
128. *Id.* at *9.
129. *Id.* at *8.
130. Synder v. Phelps, 562 U.S. 443, 460-61 (2011).
131. *Shen*, 2017 WL 5890089, at *8-10.

Internet.[132] Furthermore, the school missed a valuable teaching opportunity to show its students the power of their own words. The force of a principled and righteous voice over hateful words is more powerful than any disciplinary measure AHS could have implemented. Instead of silencing distasteful opinions, students should be encouraged to thoughtfully debate and exchange ideas; and, if necessary, battle hateful ideologies by providing facts and imploring compassion.

While AUSD exceeded its authority in sanctioning all generally offensive contributors of the Account, the school district acted responsibly when it took swift action against the student speech that directly threatened individual students' sense of safety or right to be secure.[133] No matter the underlying subject matter or ideology, a public school must be able to thwart or punish the singling out of a particular individual. The Constitution does not permit a public school to punish a student based on his expression of unsavory beliefs; however, a school has the power to punish conduct that directly compromises another student's access to a safe and nondiscriminatory public education.[134]

The court's holding in *Shen* should serve as an instructive tool to public schools across the country. Schools must do more to educate students about the consequences of student speech both on- and off-campus. They must address the tactics of social media users spreading hate and ignorance, and the responsibility of students to counteract harmful speech on the Internet. Furthermore, schools cannot skirt their responsibility to ethically teach students about some of the darkest chapters in American history and how these events continue to impact our society.

As students will likely continue to abuse social media, courts are tasked with drawing a balance between students' right to the freedom of speech and the right to be let alone. Until the Supreme Court directly addresses the issue of online student-speech, the court's decision in *Shen* provides an astute application of current law informing both public schools and students of their rights, responsibilities, and obligations when using social media.

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132. *Id.*; *see Synder*, 562 U.S. at 460-61.
133. *Shen*, 2017 WL 5890089, at *3, *8.
134. *See* U.S. CONST. amend. I.

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