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1. Palomas 1st amendment (1A) and 14th amendment (14A) claims

1A

Congress shall make no law abridging the rights which is incorporated to the states via the 14A.

Prior Restrain

Any prior restrain on speech is disfavored unless there is imminent societal harm, here the rule although not an administrative order or injunction works as a prior restrain as it designed to stop speech before it occurs. Thus it is a prior restrain.

Vauguess

Any regulation is vague to person with ordinary intelligence will have to guess at its meaning and application. Here, the regulation is vague as it doesn't define with particularity and 'gang-relating activities' can mean different things to different people. Thus, the regulation is vague

Overbroad

Any regulation is over broad if it restricts more speech than necessary and restricts speech that are protected under the constitution along with unprotected speech. Here, gang related activities could be an violent activity, or other activities specially prohibited by constitution discussed below, however it also restricts, right to individual symbolic expression which is protect under constituiton. Hence,the regulation is void for over broad

Unfettered Discretion

Here Paloma was expelled for having a small tattoo showing that the District officials has large discretion over controlling regulating the rule. Generally the regulation of an speech an be left at the discretion of the public officials and there has be concrete guidelines to follow. Here, there seems none, therefore the regulation is void.

Content Based v. Content Neutral Restriction

Here, the District has adopted an content based restriction, which need to pass the Strict Scrutiny. The regulation is based on content of speech which bans speech on the basis of content therefore it must be necessary to further an compelling interest.

Here the regulation stems after consultation with local law enforcement agencies to stop

violence, which seems an important interest, however compelling interest are those which are related to national security matters. Further banning speech doesn't seem to be the least restrictive measure, narrowly tailored towards achieving that interest as there can be other ways to serve the interest by effective more state action, as the state is sole holder of police power and must exercise to protect health, welfare, and morals of its citizens, instead the regulation puts the onus on the students who are merely victims of the gang related violence and have no role in maintaining public order. Further more incentives can be provided to students who drift away towards violence, to prevent them from being innocent agents. Therefore the regulation does not meet the standards of strict scrutiny and are void.

Certain Content based speech such as Defamation, Obscenity, Fighting Words, Unlawful Advocacy and True threats are prohibited speech. Here it could be argued that the due to the violence between two gangs there and after consultation with local officials the regulation is put in place but the effect doesn't to be to stop that unprotected speech but to regulate content of students, who are innocent to the gang rivalries.

14A-EPC Made applicable to the to Federal government via the 5A DPC

The regulation breaches EPC if it treats similarly placed persons differently, or targets a particular class of persons. The regulation is discriminatory if it is applied in a discriminatory manner, has motive or enacted, there has be intentional infringement for heightened scrutiny.

Here, it can be argued that the minority black communities are most affected by gang violence and therefore the School District, although the facts are insufficient is located in a gang violence related area and thus majority of school going kids belong to minorities and therefore the regulation relates to an suspect class. Such categorization will trigger strict scrutiny and as explained above the regulation does-not stand such scrutiny. Otherwise, the regulation as explained above breached Palomas fundamental rights which further triggers strict scrutiny and will be in violation of the constitutional guaranteed rights.

5A DPC applicable to sates via the 14A prevents intentional infringement of persons life, liberty and property.

Paloma can argue that her liberty interests are taken away without due process. The could will apply Matthews factors to balance and determine how much process was sue. It will balance persons interest in process, government interest in efficiency and value of safeguard. The suspension of Paloma for having a tattoo itself is sufficient to show that there was no due process and that the value of safeguard is high and therefore there needs to be a proper mechanism for students who are underage, therefore representation/guardian is needed to have notice and hearing before determining whether the was any breach. Here there are no

safeguards , thus it infringes her due process rights.

Therefore, Paloma can definitely raise constitutionality of regulation on the grounds of 1A and 14A of the constitution and support her claims, however in order to be successful she must have standing.

2. Motion to Dismiss

A. Standing

For standing there has to be injury in fact, causation and redressibility

Here, Paloma is a former student of the District, however she is only seeking declaratory action. But she is bringing the action after many years from the alleged incident which caused her to be on the receiving end of the regulation. It was be argued that there is a continuous breach however she cannot claim third person standing on behalf of those subject to regulation. The she is not subject to the regulation the action is ripe for redressibility. The action however is valid under 11A as it is filed against not against the state but the district, and seeking declaratory relief. Thus this argument will be successful.

B. "Gang Related Activities"

The regulation is content related regulation so changing the definition might remove the vagueness element but still the regulation must pass strict scrutiny. Therefore although the District will be successful in its motion to dismiss it will not be because of change of definition but because Paloma has no standing. Further being consistent with Criminal Code doesn't protect the regulation from being unconstitutional. Thus they will not succeed on this grounds.

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END OF EXAM