

2)

1. What arguments can Paloma make in support of her First and Fourteenth amendment claims?

Standing

In order for an individual to bring a case to federal court, he/she must have standing which includes an injury in fact, traceability and redressability.

Injury in Fact

A plaintiff must suffer an injury in fact. Here, Paloma (P) was suspended for 10 days of school when she refused to follow the rule for students and comply with District's (D) request for not wearing long sleeves to cover her tattoo or have it removed. Therefore, P suffered an injury by being suspended and violation of her individual fundamental rights

Traceability

The injury in fact must be traceable to an act conducted by a governmental entity. Here, D (a school district in State X) had adopted the rule which P refused to comply with resulting in her injury of suspension from school. Therefore, there is traceability to a governmental conduct

Redressability

The interest in issue can be redressed by the relief requested. Here, P brought a declaratory relief action challenging the validity of D's policy. A favorable court decision declaring the policy as violation of the 1st and 14th Amendment would redress P's action.

Therefore, there is redressability

State Action

State action is when the alleged violation of the Constitution -in this case 1st and 14th- was conducted by a governmental entity. Here, as mentioned above, D, an entity of State X which is a government entity adopted the policy that is being challenged.

Therefore, there is state action.

First Amendment

The First Amendment of the Constitution as applied to the states through the 14th Amendment,

provides "congress shall make no law ...that abridges the right of the freedom of speech..."

Content-Based v. Content Neutral.

Content based regulation. restricts the speech that is subject-based or viewpoint-based, and will be subject to strict scrutiny. Strict Scrutiny requires the government to show that the regulation is necessary to advance a compelling government interest, and its narrowly tailored with the least restrictive means to achieve the interest.

Content neutral regulation is restriction that is unrelated to speech, but is subject to intermediate scrutiny which is the government must show that the regulation is substantially-related to an important government interest, and narrowly tailored and leaves open ample alternatives for communication.

Here, D's adopted rule prohibits wearing a label, insignia, words, colors, signs or symbols that reflect gang-related activities'. This rule restricts the subject (reflect gang-related activities) or viewpoint of a student (supports gang activity) who happens to be wearing any of the list above. Therefore, D's policy is content-based and subject to strict scrutiny.

D would argue that it has a compelling government interest of reducing gang violence in its high schools. It will further argue that this interest is to protect students from engaging in violence as confirmed by law enforcement through gang confrontations. P would argue that restricting insignias, words or tattoos (in her case) is not narrowly tailored-that there are more regulations that are a more reasonable fit. P would argue that instead of restrict these expressive means of one's viewpoint, D could instead have rules about congregating with other gang members in school, or violation against behaving aggressively towards other students.

Therefore, because D's policy is content-based, the restriction to advance the government interest is not narrowly tailored and there are restrictive means.

D's rule is therefore, unconstitutional.

Symbolic Speech

Symbolic speech is an act or conduct that communicates an idea.

Here, P has a tattoo of a dove which is communicating an idea that of her "self-expression" as a peaceful person. Therefore, this is protected speech as long as it does not promote criminal advocacy, fighting words or obscene speech.

deemed it as a gang symbol which includes "birds". The abridgment of P having a tattoo simply because it is a type of bird is a violation of her free speech right. D's

restriction on P's tattoo will fail strict scrutiny.

D's rule is unconstitutional for infringing on P's right to symbolic speech

Prior Restraint

Prior restraint is when the regulation restricts speech before its publication.

Here, D's rule is prohibiting students from wearing any label, insignia or words, colors, signs etc. This restraining their speech or communication before it happens, and would be considered a prior restraint.

It also appears that the District officials and law enforcement has the unfettered discretion to decide what constitutes a gang-related symbol. There is also no way to appeal their decision.

Therefore, D's rule is a prior restraint to speech

Overbreadth

Overbreadth is when the regulation restricts both constitutionally protected speech as well as unprotected speech.

Here, D's rule is restrict protected speech or labels and words that are meant for peaceful communication (like Ps dove tattoo), as well as gang-related speech that invokes violence.

Therefore, D's rule is overbroad

Vagueness

Vagueness of the regulation is if a reasonable person must guess at its meaning, therefore, not giving reasonable notice to the speech or conduct that is prohibited.

Here, the rule prohibits symbols that reflect "gang-related activities"- this wording is vague because the average person unfamiliar with gang activity would not know specific things that are gang symbols. The police thought P's tattoo "sounded" like a gang symbol. P has a tattoo of a dove but she is not familiar with a gang uses "birds" as a symbol of their group.

Fourteenth Amendment-

The fourteenth Amendment as applied to the states provide, 'nor shall any State deprive a person of life, liberty and property without due process.

Substantive Due Process (SDP)

If a restriction infringes on a fundamental right or a 1st Amendment right, then it will be subject to strict scrutiny. The government will have to show that the regulation is necessary to achieve a compelling interest and narrowly tailored with the least restrictive means.

Here, P's right to expression by wearing a tattoo of a dove has been infringed on. Therefore, the restriction infringing on her right to express that she is a peaceful person violated her due process rights and will be subject to strict scrutiny. The D's government interest of preventing gang violence is not compelling enough because it is not narrowly tailored. Therefore, P will have an argument under SDP in support of her Fourteenth Amendment claim.

Procedural Due Process

Procedural Due Process involves notice, opportunity to be heard, and a neutral fact finder.

Here, P would claim that she was not given notice or an opportunity to be heard by a neutral fact finder because she was suspended when she refused to cover her tattoo or remove it. P could have been given an opportunity to tell the school officials that her 'dove' is a symbol that she is a peaceful person, not a gang symbol.

P also has the freedom to be unrestrained in her movement (liberty rights). By suspending her for 10 days, P is unable to go to school to study and to learn.

Therefore, P can support her argument that her 14th Amendment was violated through the violation of procedural due process.

Equal Protection (EP)

Equal Protection as applied to the states through the 14th Amendment, prohibits government from abridging one's fundamental rights to privacy or 1st Amendment protections.

Fundamental rights

Here, P would have a claim under the fundamental right prong of the equal protection clause (rather than the classification prong). P would claim that her right to free speech has been restricted. Therefore, under the EP clause, D's rule will be subject to strict scrutiny and will fail. It will fail the SDP argument.

2. Will either or both of District's arguments in support of its motion to dismiss paloma' lawsuit be successful?

Justiciability

In order for a case to be heard in federal court, it must not be moot (must also have ripeness and standing as noted above).

Mootness

A case is moot if it is no longer a case or active controversy.

Ground One:

Here, D is claiming that P's lawsuit is moot because she is no longer a high school student.

Here, even though P has now graduated, there might be other students who are still in high school in District's high schools who share the same issue as P. The controversy continues as to whether D's policy that infringes on a students right to free speech and due process rights. If not addressed by the court now, future suits can ensue bringing the same challenges as P's suit.

Therefore, P's suit is not moot and the court should not dismiss the suit for this first ground.

Ground Two.

Here, D claims that P's suit is moot because d has now redefined "gang-related activities" in its rule making it consistent with criminal code of State X. It is not explicit in the fact what the criminal code states if the code is vague and overbroad as D's policy. If the criminal code abridges a student's 1st amendment right or due process right, then it will be subjected to the same scrutiny as D's current policy.

Therefore, the controversy could continue and the case is not moot.

District would not be successful in its motion to dismiss because the case is not moot.

Question #2 Final Word Count = 1538

END OF EXAM