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1. PALOMA'S CLAIMS AGAINST THE DISTRICT

State Action

The 14th Amendment makes the Bill of Rights applicable to the states. In order to bring her constitutional claims against the District, there must be state action. Here the District is making policy and engaging in decisions that a government body would do so they are engaging and becoming entangled with state issues so there is state action.

Standing

Paloma's standing will be discussed under #2 below. In order to bring her suit in federal court, she must meet the standing requirements

First Amendment - Free Speech Claim

The First Amendment grants all citizens the right to free speech. Any statutes or regulations that affect the content of speech are subject to strict scrutiny and are invalid unless they are necessary to a compelling state interest and are narrowly tailored to achieve that objective with the least restrictive means.

Prior Restraint

A prior restraint of speech is almost always per se invalid under the First Amendment because it is precluding speech before it even happens. In applying the strict scrutiny test, the school's interest in reducing gang violence is a compelling interest but the restriction itself is not the least restrictive means of achieving that objective. The regulation seeks to ban all gang colors, words, slang, insignia and symbols worn by students. The school could find other ways to reduce gang violence besides a prior restraint on speech - for example, they could require all students to wear a uniform or prescribed outfits which would be a less restrictive means. The gang prohibition would be considered a prior restraint on speech and therefore would be unconstitutional.

Vagueness

A regulation is void for vagueness if it is not clear with exactly what the prohibited speech is. An individual must be able to know what he or she can or cannot do. Here, the regulations are

vague because it does not define exactly what gang symbols are prohibited.

Overbreadth

A content-based regulation can be unconstitutional if it is over broad in that regulates more conduct than it should - both protected and unprotected speech. For example, banning a color or symbols that have nothing to do with gang affiliations can be captured by this regulation as it was with Paloma's dove tattoo.

Symbolic Speech

Symbolic speech is non-verbal communication or expression. Here, regulating things like t-shirts and tattoos would be considered symbolic speech. Symbolic speech is what the District is regulating here. This type of regulation would be subject to strict scrutiny as noted above and it would fail because the regulation is not the least restrictive means to achieve the goal.

Freedom of Association

The First Amendment allows people to associate freely and not be punished or singled out. Here, as noted above in Free Speech, the policy is invalid because it is overbroad.

Paloma's 14th Amendment Claims

The 14th Amendment protects a person's right to life, liberty and property and to equal protection under the laws.

Due Process

Paloma will seek to file a due process claim against the District for expelling her when she refused to wear long sleeves. The question for the court to decide is whether Paloma was entitled to an evidentiary hearing before she was suspended. The courts apply a balancing test to determine how much process is due. Here, we already noted the District's interest in reducing gang violence and Paloma's interest in freedom of expression. Paloma has the stronger interest and therefore, on balance, she should have been given an opportunity to be heard before she was suspended.

Equal Protection

Equal protection is a claim that applies where two or more groups are being treated differently. Here we have discrimination of the East Siders and West Siders.

2. DISTRICT'S ARGUMENTS IN SUPPORT OF ITS MOTION TO DISMISS

Paloma's Standing

For Paloma to have standing, she must have suffered an actual, imminent injury that was caused by the defendant and is capable of being redressed. Paloma suffered the injury (i.e., suspension) and it was caused by the District. The question is whether it is capable of being redressed now that she no longer a student. The answer is the that the only way her injury could be redressed is a monetary award, However, Paloma seeks a declaratory judgment that the policy is invalid. Paloma does not have standing for the type of relief she is seeking since she is no longer impacted by the policy.

New Definition of "Gang-Related Activities"

The new regulation is not valid because the District is seeking to punish group membership as a criminal activities in a manner outside the criminal justice system and without the protections afforded to a criminal defendant.

Question #2 Final Word Count = 780

END OF EXAM