

Hypothetical Case

In May 2015, Christopher Breen, was an 18-year-old senior at Lakeview High School in Boise, Idaho. Two weeks before the end of classes, Breen wore a t-shirt to school with the letters “ILUVTOFU” printed across the chest. Roughly one hour into the school day, while walking between classes, Breen was stopped by a teacher and escorted to the office of Dawn Florio, the school principal. Breen was told to wait outside the office door while the teacher spoke with the principal.

After roughly ten minutes, Fiorio summoned Breen into her office and informed him that he was being suspended for five days for violating school policy. Breen questioned Fiorio’s decision, and demanded to know what he had done wrong.

“Your shirt,” Fiorio explained. “That’s what’s wrong.”

Breen pressed Fiorio for a better explanation. “I’m not allowed to be a vegetarian?” he asked.

“Excuse me?” Fiorio replied.

“There’s a rule against saying that I love tofu?” he asked.

Incredulous, Fiorio fired back: “Chris, I don’t know if you think you’re being funny or smart or what. But nobody is buying it. Everyone knows what your shirt says. And ‘I love to eff you’ is clearly a violation of school policy. You know the rules. It’s in the handbook. We’ve been over this before. Five days. See you next week.”

With that, Breen stormed out of Fiorio’s office and drove home. That night, he relayed the story to his parents, who immediately called their family attorney. As an admissions representative at a local college, Breen’s mother knew that a five-day suspension could jeopardize her son’s spot in the incoming class at the University of Idaho. She relayed this concern to the lawyer, who agreed that it was a serious matter, and that they needed to call the principal first thing in the morning.

The next day, the Breen family attorney contacted Principal Fiorio as planned. The lawyer attempted to have Breen’s suspension overturned, but Fiorio was adamant. “Look, everyone knows Chris is the furthest thing from a vegetarian,” Fiorio said. “I’ve never seen him eating tofu. I don’t even think he knows what tofu is. He’s a clever kid, but he got busted here. End of story.”

The Breens’ attorney held his ground as well. As he explained to Fiorio, Breen had inherited the shirt from an ex-girlfriend, who was a committed animal rights activist. It had never occurred to Chris, according to the attorney, that the message could be taken as sexually suggestive. “He had no idea that it could be taken to say, ‘eff you,’” the lawyer insisted. “He just didn’t see it that way.”

“I’m not buying it,” Fiorio snapped back. “I had about ten kids in my office that morning telling me that some student was wearing an x-rated shirt. And teachers too—they told me about it as well. One of them even had to stop class because the kids wouldn’t shut up about the shirt. Totally inappropriate. Totally disruptive. Case closed.” “I disagree,” replied the Breen family lawyer. “There’s no way that shirt violates any school policy. Just because a few students and teachers have dirty minds, that doesn’t mean Chris has to be held responsible.” Fiorio would

not back down, however. “Let me remind you,” she told the attorney, “that this school isn’t made up of a thousand Chris Breens. We’ve got religious kids, conservative kids from all over the district. And to them, ‘eff you’ or ‘fuck you’ or whatever the shirt says is just offensive.”

Later that day, when the Breens learned that the suspension was upheld, they decided to take legal action. They sued Fiorio and the school district for violating Chris’s right to free speech. Specifically, the Breens made the following claims. First, they charged that the Lakeview school policies against obscene and disruptive behavior were impermissibly vague. Second, they charged that even if those policies were constitutional as they were written, Fiorio’s application of them to Chris’s situation was an unconstitutional violation of his First Amendment rights to free speech.

Lakeview is a public high school with nearly 1,500 students who range in age from 14 to 18. Like many suburban public schools, it increasingly struggles with discipline problems—particularly around issues of drug use and sex—among its students. To combat these problems, the Lakeview school board adopted stricter policies regarding student behavior in 2010. Those new policies were publicized to the students via a printed handbook, which was distributed on the first day of classes each year, and via the school’s website.

The two policies in question in this case are Rule 10 and Rule 14.

Rule 10, which governs disruptive behavior, reads as follows:

“Any student whose behavior causes, or could reasonably be expected to cause, disruption or disorder during school hours or at any sanctioned school event is subject to punishment in the form of detention or suspension of no less than one day and no more than ten days.”

Rule 14, meanwhile, covers obscenity:

“Students are prohibited from engaging in indecent, patently offensive, or obscene behavior. Any student who engages in indecent, patently offensive, or obscene behavior—including (but not limited to) using profane language, making sexually explicit gestures, or engaging in sexually suggestive conduct in any way—is subject to punishment in the form of detention or suspension of no less than one day and no more than ten days.”

The school handbook also has several rules devoted to dress code, but they are not being contested here. Those rules deal with clothing that is either too revealing or too tattered to be considered “appropriate attire” during school hours.

The case was filed in Idaho state court, where a trial judge ruled in favor of the Breens and ordered Chris’s suspension to be expunged from his record. The school district appealed to the Idaho Supreme Court, which reversed the trial court and held that the school’s policies and Fiorio’s actions were both constitutionally sound. The Breens appealed that ruling and the U.S. Supreme Court agreed to take the case.

You are the “swing” justice on the U.S. Supreme Court for the case of *Breen v. Fiorio*. Four justices will side with the school and the principal; four others want to rule for Breen. Your vote, therefore, will make the majority in either direction, and you are designated to write the majority opinion. Your goal is to craft a plausible, persuasive, and realistic majority opinion in this case. You must cite cases from class to support your answers. There is no right answer, but all answers must be logical and supported with case law.