



FRONT LINE

PRIORITIES

Keeping Student Speech Free

A crucial First Amendment fight goes from Snapchat to the Supreme Court.

The ACLU won an important legal battle over the speech rights of young people this year. In June, the Supreme Court sided with the ACLU's client in *Mahanoy Area School District v. B.L.*, stating that schools must respect students' rights to express themselves outside of school. The ruling will have a far-reaching impact on the social and political lives of 50 million public school students.

Over Memorial Day weekend, in 2017, Brandi Levy, a high school freshman in eastern Pennsylvania, sent a Snapchat to her friends that expressed her frustration with not making the varsity cheerleading squad. "Fuck cheer...fuck everything," she proclaimed. Another student took a photo of the message, showed it to a cheerleading coach, and the school responded by suspending Levy from the squad for a year. The ACLU of Pennsylvania filed a First Amendment suit on her behalf, arguing that the school could not punish a student for speech expressed on her own time outside of

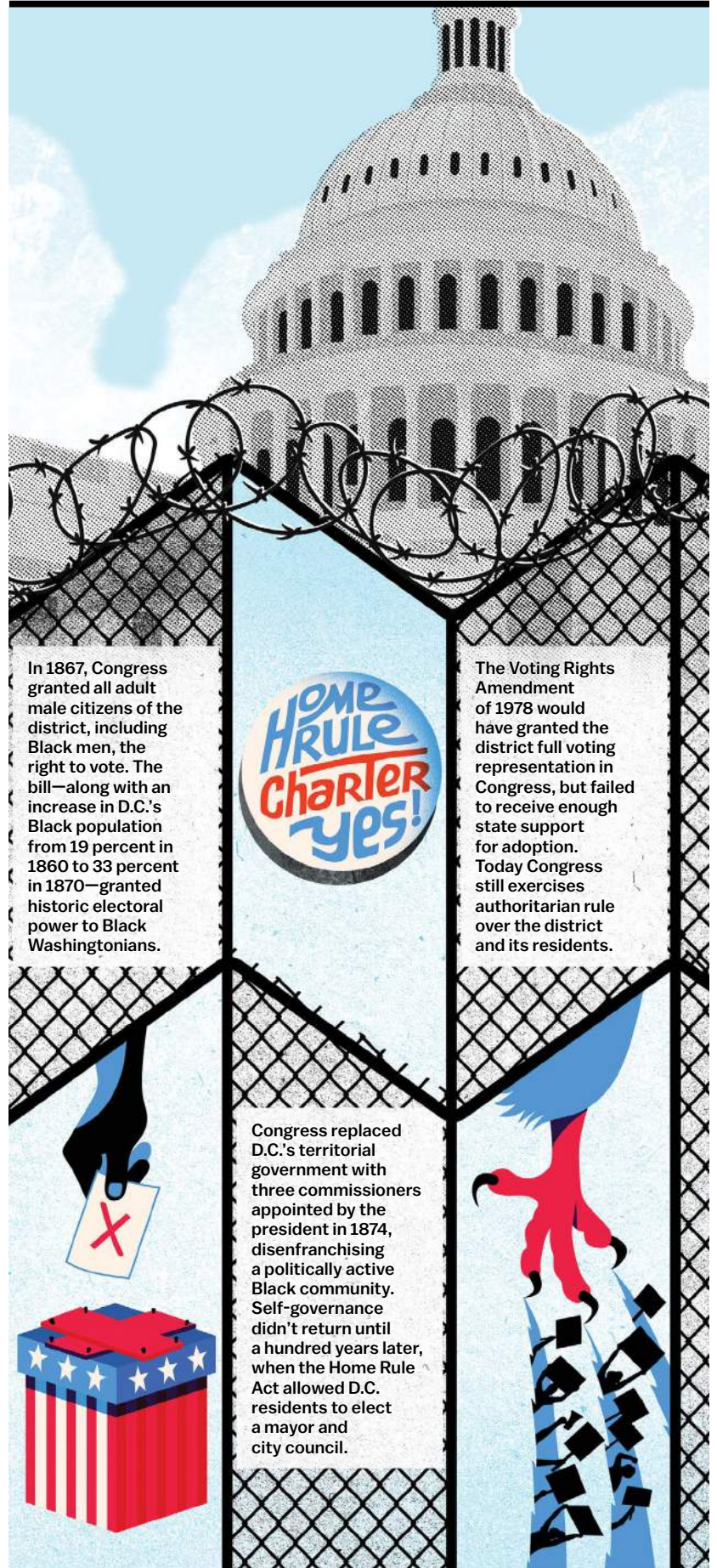
CONTINUED FROM PAGE 5

school. “This expression may seem trivial,” says ACLU Legal Director David Cole, who argued the case before the court in late April, “but what the school argued was that students should never be free to engage in speech that is unaccountable to the principal of the school. It’s about whether students have *anywhere* that they can speak freely.”

The ACLU first tilled this ground in the landmark 1969 case *Tinker v. Des Moines Independent Community School District*, which established that public school students have First Amendment rights at school, unless their speech disrupts the educational process. Over the years, exceptions have been added to *Tinker*, and in this latest case, the court considered whether to extend the in-school tests to off-campus speech. It was a chilling prospect in an age when young people’s speech outside of school is often accessible to school authorities via social media, which is why organizations across the ideological spectrum supported the ACLU’s stance. While both sides arguing the case agreed that schools aren’t barred from disciplining student behavior off campus or online that threatens violence or engages in harassment or bullying, this case didn’t involve any of those elements. “Schools can deal with off-campus bullying in keeping with the First Amendment,” says Cole. “What they can’t do is punish off-campus speech because they deem it controversial, vulgar, or inappropriate.”

Allowing *Tinker*’s broad disruption standard to apply outside of campus would have allowed schools to censor any student who engages in speech that is unpopular or critical of the school. Administrators could wield this power in ways that punish those with whom they disagree, and could do so in racially biased ways. “The most distressing examples of censorship that we’ve seen recently involve students of color who got suspended for criticizing racist statements by their fellow students,” says ACLU of Pennsylvania’s Legal Director Vic Walczak, who has filed half a dozen such off-campus student speech cases over the last 22 years. “Schools already misuse their authority in discriminatory ways, so why would anybody think they’re going to use it in a fairer way if you extend their authority off campus?”

Whenever schools have overreached, the ACLU has prioritized the protection of student speech rights fundamental not to any one political position or cause but to all. “We were there at the beginning, and we’re here today,” says Cole. “If you look around the country at cases protecting students’ free speech rights, the vast majority of them are handled by the ACLU—this is our bread-and-butter work.” —JAY A. FERNANDEZ



In 1867, Congress granted all adult male citizens of the district, including Black men, the right to vote. The bill—along with an increase in D.C.’s Black population from 19 percent in 1860 to 33 percent in 1870—granted historic electoral power to Black Washingtonians.

The Voting Rights Amendment of 1978 would have granted the district full voting representation in Congress, but failed to receive enough state support for adoption. Today Congress still exercises authoritarian rule over the district and its residents.

Congress replaced D.C.’s territorial government with three commissioners appointed by the president in 1874, disenfranchising a politically active Black community. Self-governance didn’t return until a hundred years later, when the Home Rule Act allowed D.C. residents to elect a mayor and city council.