



Members Only

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Freedom Of Speech In High Schools

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Federal courts have ruled on the issue of public school students' freedom of speech under the First Amendment to the U.S. Constitution. This Members' Brief examines the three key cases on this subject handed down by the U.S. Supreme Court: *Tinker v. Des Moines Independent Community School District*, *Bethel School District No. 403 v. Fraser*, and *Hazelwood School District v. Kuhlmeier*.

While *Tinker* occurred almost three decades ago, the U.S. Supreme Court's ruling in this case has been cited in numerous other court decisions since then and has never been overturned. *Fraser* and *Hazelwood* have also been discussed widely in subsequent cases and law journals. In addition, this Members' Brief discusses *Poling v. Murphy*, a case decided by the United States Court of Appeals for the Sixth Circuit, which includes Ohio. In that case, the Court of Appeals followed U.S. Supreme Court decisions on the issue of students' First Amendment rights.

In general, the federal courts have held that public school students enjoy freedom of speech under the First Amendment, but are not entitled to disrupt classwork or invade the rights of others. For the purpose of teaching civility, schools have been authorized to discipline students who use vulgar and offensive terms in public discourse at school even though adults in other settings have the freedom of expression to use offensive terms when making a political point. A school has greater authority to regulate a student's speech that is part of a school-sponsored activity than speech outside the classroom.

Tinker v. Des Moines

The United States Supreme Court in 1969 ruled against a school district's regulation of certain student expression in *Tinker v. Des Moines*.¹

In December 1965, Des Moines, Iowa, public school principals adopted a policy that students who wore black armbands to protest U.S. involvement in the Vietnam War would be asked to remove the armbands and suspended

The U.S. Supreme Court and lower federal courts have ruled on the issue of the right of public high school students to freedom of speech.

Students have the right of free speech, but are not entitled to disrupt classwork or invade the rights of others.



In Tinker the Supreme Court upheld the right of students to wear black armbands to protest U.S. involvement in the Vietnam War.

Students and teachers do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.

Conduct that materially disrupts classwork or involves substantial disorder or invasion of the rights of others is not immunized by the constitutional guarantee of freedom of speech.

if they refused. A suspension would not be lifted until the student returned to school without the armband. Students ignored the policy and were indefinitely suspended from school. Two high school students and one junior high school student brought suit against the school district, arguing that the principals' actions violated their First Amendment right of free speech.

A district court ruled in favor of the principals, and the Eighth Circuit Court of Appeals affirmed the district court's ruling. However, the U.S. Supreme Court decided in favor of the students. The Supreme Court held that the principals' actions did indeed violate the students' First Amendment rights, stating that "[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."² The Court further stated:

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They possess fundamental rights which the State must respect, just as they themselves must respect their obligations to the State.³

Although the Court held that students enjoy constitutional rights, it imposed conditions on students' freedom of speech. The Court stated that a student may express himself or herself:

[I]f he does so without "materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school" and without colliding with the rights of others. . . . [C]onduct by the student, in class or out of it, which for any reason--whether it stems from time, place, or type of behavior--materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech.⁴

The Court held the students' actions were permissible. It stated that "[T]he District Court recognized that the wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it."⁵

Bethel v. Fraser

The U.S. Supreme Court in 1986 ruled in favor of a school district in *Bethel v. Fraser*,⁶ holding that the district's rule against obscene language was not a violation of students' right of freedom of speech.

Matthew Fraser, a high school student in Bethel, Washington, gave a nominating speech in the school assembly hall supporting a fellow student for student elective office. Students were required to attend the assembly or report to study hall. The speech contained sexual innuendo that school authorities interpreted as being in direct violation of the school's prohibition against



use of obscene and profane language and gestures. Fraser was suspended for three days and his name was removed from a list of potential commencement speakers.⁷ He brought suit in federal court, claiming that the school's actions violated his First Amendment rights of freedom of speech. A district court ruled in favor of Fraser; on appeal, the Ninth circuit affirmed.

The U.S. Supreme Court reversed the decision of the lower courts, finding no violation of the First Amendment. The Court distinguished a ruled against using obscenities from a prohibition against wearing armbands to express disapproval of U.S. foreign policy, concluding that "the penalties imposed in this case were unrelated to any political viewpoint."⁸ Although the Court cited a previous case in which it had upheld an adult's right to express an antidraft viewpoint in a public space in terms offensive to others, it stated that "[i]t does not follow, however, that simply because the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, the same latitude must be permitted to children in a public school."⁹ The Court stressed the need for schools to teach students civility, arguing that "[s]urely it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse."¹⁰

The Court noted:

The schools, as instruments of the state, may determine that the essential

lessons of civil, mature conduct cannot be conveyed in a school that tolerates lewd, indecent, or offensive speech and conduct such as that indulged in by this confused boy. . . . A high school assembly or classroom is no place for a sexually explicit monologue directed towards an unsuspecting audience of teenage students. Accordingly, it was perfectly appropriate for the school to disassociate itself to make the point to the pupils that vulgar speech and lewd conduct is wholly inconsistent with the "fundamental values" of public school education.¹¹

Hazelwood v. Kuhlmeier

In *Hazelwood v. Kuhlmeier*¹² the U.S. Supreme Court ruled in favor of a school's editorial control over the content of student speech in school-sponsored activities.

The principal of a high school in St. Louis County, Missouri extracted two articles from the school's newspaper prepared by a journalism class before the paper's publication. The articles discussed teenage pregnancy and the effect of divorce on high school students. Three students from the journalism class brought suit against the school district, claiming the principal's actions violated their First Amendment rights. A district court denied the injunction sought by the students, but the Eighth Circuit Court of Appeals reversed. The U.S. Supreme Court reversed the Court of Appeals' decision, finding that the principal's actions did not violate the First Amendment.

In authorizing the principal to censor the school newspaper, the U.S.

The Supreme Court ruled in Fraser that a school district's rule against obscene language was not a violation of students' right of freedom of speech.

A school is permitted editorial control over the content of a school-sponsored student newspaper.



“Educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.”

Supreme Court differentiated a school tolerating student speech from a school affirmatively promoting student speech. The *Tinker* decision was seen as answering the question of whether a school may silence a student's personal expression that happens to occur at school, i.e., tolerating the student's non-disruptive speech. In this case, the Court held that the school newspaper was school-sponsored and, therefore, could be perceived as having the school's stamp of approval. The Court concluded:

*[T]he standard articulated in Tinker for determining when a school may punish student expression need not also be the standard for determining when a school may refuse to lend its name and resources to the dissemination of student expression. Instead, we hold that educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.*¹³

Consistent with its decision in *Fraser*, the Court also held that the First Amendment rights of students in public schools are not necessarily identical to those rights of persons speaking in a public forum. The Court argued:

[S]chool facilities may be deemed to be public forums only if school authorities have “by policy or by practice” opened those facilities “for indiscriminate use by the general public,” . . . or by some segment of

*the public, such as student organizations. . . . If the facilities have instead been reserved for other intended purposes, “communicative or otherwise,” then no public forum has been created, and school officials may impose reasonable restrictions on the speech of students, teachers, and other members of the school community.*¹⁴

The Court determined that in this case, the school newspaper was not a public forum, but part of the course work in a journalism class.

Poling v. Murphy

In *Poling v. Murphy*,¹⁵ the U.S. Court of Appeals for the Sixth Circuit (Kentucky, Michigan, Ohio, and Tennessee) in 1989 employed the logic of *Tinker*, *Fraser*, and *Hazelwood* to support its decision to uphold a district court's summary judgment in favor of a school district.

Dean Poling, a high school student at Unicoi County High School in Tennessee, gave a speech for his student council presidency campaign at a school assembly. Attendance was mandatory for all members of the student body who did not have an excused absence. The speech had been submitted to one of two faculty sponsors of the student council for review, according to campaign procedure, prior to the assembly. The faculty sponsor affirmed that Poling's speech would be acceptable if he changed a sentence referring to “the administration's iron grip.” Poling revised the speech, but instead of removing the contested phrase he



rephrased the sentence and included a comment about an assistant principal that the principal characterized as “inappropriate, disruptive of school discipline, and in bad taste.”¹⁶ Poling was consequently disqualified from the election. A lawsuit was then filed against the school administrators alleging violations of the First and Fourteenth Amendments.¹⁷

The district court granted a summary judgment in the school administrators' favor. Poling then appealed to the Sixth Circuit Court of Appeals, where the district court's decision was upheld. The Court, quoting from *Tinker* and *Fraser*, restated the status of students' First Amendment rights:

*It is true, to be sure, that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,” and “[s]chool officials do not possess absolute authority over their students.” . . . It also remains true, however, that the Federal Constitution does not compel “teachers, parents, and elected school officials to surrender control of the American public school system to public school students.” . . . Limitations on speech that would be unconstitutional outside the schoolhouse are not necessarily unconstitutional within it.*¹⁸

Relying on the *Hazelwood* decision, the Court held that the student election was a school-sponsored event, thus giving the school regulatory authority over students' speeches. The Court concluded that Poling's punishment was reasonably related to “legitimate pedagogical concerns” because “[t]he art of stating one's views without indulging in personalities and without unnecessarily hurting the feelings of others surely has a legitimate place in any high school curriculum. . . .”¹⁹

Endnotes

- 1 *Tinker v. Des Moines*, 393 U.S. 503, 89 S. Ct. 733 (1969).
- 2 *Id.* at 506.
- 3 *Id.* at 511.
- 4 *Id.* at 513.
- 5 *Id.* at 505.
- 6 *Bethel School District No. 403 v. Fraser*, 478 U.S. 675, 106 S. Ct. 3159 (1986).
- 7 Fraser served only two days of the suspension and was permitted to deliver a speech at the commencement ceremony after a district court issued an injunction.
- 8 *Id.* at 685.
- 9 *Id.* at 682.
- 10 *Id.* at 683.
- 11 *Id.* at 685.
- 12 *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 108 S. Ct. 562 (1988).
- 13 *Id.* at 272-273.
- 14 *Id.* at 267.
- 15 *Poling v. Murphy*, 872 F.2d 757 (6th Cir. 1989). The U.S. Supreme Court denied certiorari, 493 U.S. 1021 (1990).

The Sixth Circuit held in Poling that a school may regulate the content of speeches in a school election.



16 *Id.* at 759.

17 Poling contended that his punishment, removal from the student council presidency election, violated the Fourteenth Amendment's prohibition against depriving a person of life, liberty, or property without due process of law. The Circuit Court denied the claim, arguing that he had not shown any deprivation of life, liberty, or property within the meaning of the Fourteenth Amendment. The Court also stated that, even if he had been deprived of a constitutionally protected liberty or property interest, the Fourteenth Amendment's due process clause would have been satisfied by an appeal to the local board of education. Poling had not appealed to the board. *Id.* at 764.

18 *Id.* at 762.

19 *Id.* at 763.

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