THEODORE ROOSEVELT INN OF COURT

"CYBERSTALKING AND CYBERBULLYING: CYBER DANGERS OF THE 21ST CENTURY"

Will be held on February 7, 2019 at 5:30PM

Nassau County Bar Association
15th & West Streets
Mineola, New York

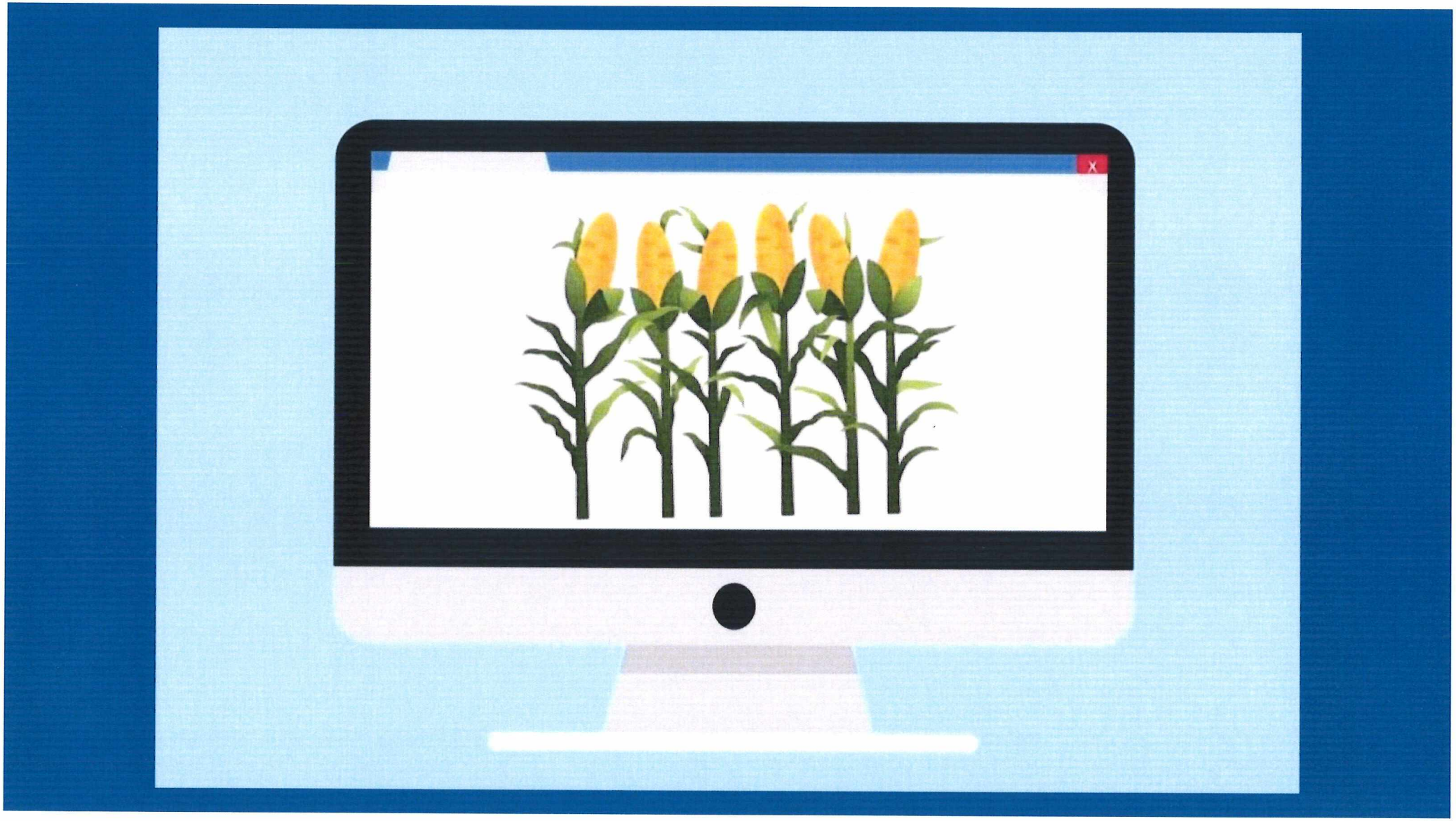
4208675

OUTLINE

I.	CYBERSTALKING	30 minutes
II.	CYBERBULLYING Recent cases in the news, State and Local Legislation	10 minutes
III.	Shen v. Albany Unified School District A dramatic presentation	30 minutes
IV.	Modes of Cyberbullying and how schools treat them	20 minutes
V.	True or False questions	10 minutes
VI.	Biographies	

A Power Point Presentation

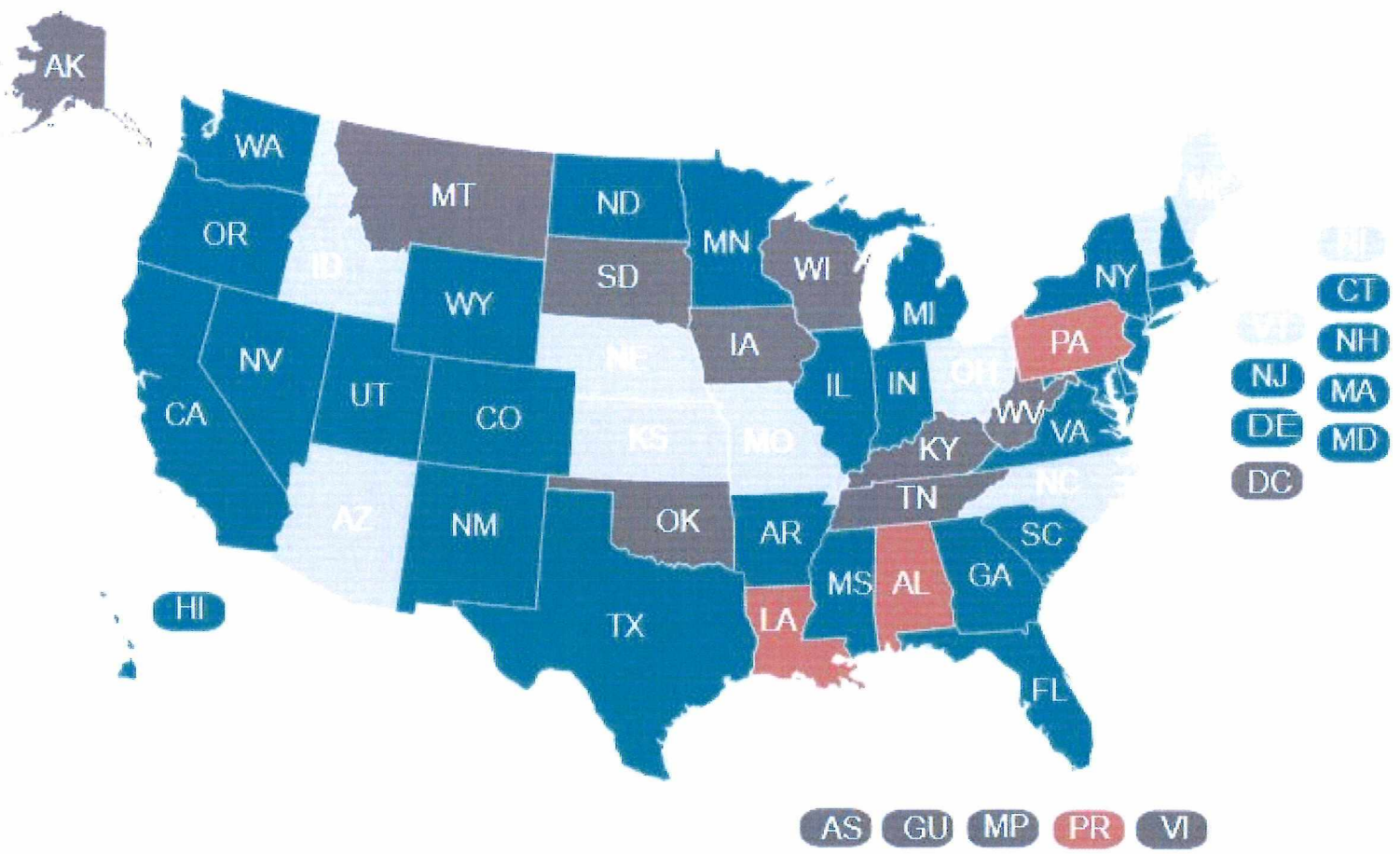
Cyberstalking and Cyberbullying



Some examples of cyberstalking tactics include:

- Sending intimidating or harassing emails from an assortment of email accounts.
- Hacking into a victim's online accounts and changing the victim's account settings.
- Creating false online accounts, impersonating the victim or attempting to establish contact with the victim by using a false persona.
- Signing up for numerous online mailing lists and services using a victim's name and email address.

2017 Cybersecurity Legislation



LEGEND:

- Enacted
- Adopted
- Introduced
- No legislation

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What Must Be Shown Under 18 U.S.C. § 2261A?

First, the defendant must possess either the intent "to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or intimidate, or cause substantial emotional distress to a person in another State," **or** the intent to place that person "in reasonable fear of the death of, or serious bodily injury to that person, a member of the immediate family . . . of that person, or a spouse or intimate partner of that person."

Second, the defendant must pursue that intention through a "course of conduct," defined as "a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose," that makes use of a facility of interstate commerce.

Finally, the defendant's conduct must in fact "cause[ ] substantial emotional distress to [the intended victim] or place[ ] that person in reasonable fear of the death of, or serious bodily injury to any of the persons described" above.

United States v. Shrader, 675 F.3d 300, 309-10 (4th Cir. 2012).

United States v. Shrader Facts:

West Virginia: D.S. and Shrader enter into a relationship for two years.

After D.S. breaks off relationship, Shrader shoots and kills D.S.'s mother. Shrader arrested and sentenced.

D.S. marries R.S., and they move to Texas.

Shrader released on parole and locates the Texas home of D.S.

Shrader makes series of phone calls to D.S. – In one phone call, Shrader tells D.S., "I need to talk to your kids before we die."

D.S. and R.S. fear for their lives and their children's lives.

Shrader sends letter to Texas home of D.S., warning D.S. about possible physical violence against her: "From the date you receive this, I am allowing two (2) weeks or 14 days to pass before I initiate my next step."

D.S. and R.S. secure criminal complaint against Shrader.

NY Penal Law § 240.25

"A person is guilty of **harassment in the first degree** when he or she intentionally and repeatedly harasses another person by following such person in or about a public place or places or by engaging in a course of conduct or by repeatedly committing acts which places such person in reasonable fear of physical injury."

Harassment in the first degree is a class B misdemeanor.

Harass – "'[H]arass' means to knowingly place another person in reasonable fear of death or serious bodily injury to himself or to a member of his immediate family...." *United States v. Stewart*, No. 98-50372, 2000 U.S. App. LEXIS 41080, at *41-42 (5th Cir. Jan. 6, 2000).

Course of Conduct – An isolated incident does not constitute a course of conduct to support a finding of harassment in the first degree. *Ebony J. v. Clarence D.*, 46 A.D.3d 309, 847 N.Y.S.2d 523, 524 (2007).

NY Penal Law § 240.26

"A person is guilty of **harassment in the second degree** when, with intent to harass, annoy or alarm another person:

1. He or she strikes, shoves, kicks or otherwise subjects such other person to physical contact, or attempts or threatens to do the same; or

2. He or she follows a person in or about a public place or places; or

3. He or she engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose."

Harassment in the second degree is a violation.

People v. Singh Facts & Holding:

Defendant telephoned a government agency, spoke with an employee, and threatened to start killing judges and lawyers.

No allegation that the employee was personally threatened by defendant, that defendant knew the name of the person who answered the phone, or that defendant identified any particular individual by name.

Court dismissed the charge of harassment in the second degree because 240.26 requires that the recipient of the threat and the target of the threat be one and the same individual.

People v. Singh, 187 Misc. 2d 465, 722 N.Y.S.2d 368 (Crim. Ct. 2001)

NY Penal Law § 250.00 - Eavesdropping

'Wiretapping' means the intentional overhearing or recording of a telephonic or telegraphic communication by a person other than a sender or receiver thereof, without the consent of either the sender or receiver, by means of any instrument, device or equipment....

'Mechanical overhearing of a conversation' means the intentional overhearing or recording of a conversation or discussion, without the consent of at least one party thereto, by a person not present thereat, by means of any instrument, device or equipment....

'Intercepting or accessing of an electronic communication' and **'intentionally intercepted or accessed'** mean the intentional acquiring, receiving, collecting, overhearing, or recording of an electronic communication, without the consent of the sender or intended receiver thereof, by means of any instrument, device or equipment, except when used by a telephone company in the ordinary course of its business or when necessary to protect the rights or property of such company."

Cordless telephone conversations, partially broadcast over ordinary radio waves, are protected from warrantless interception under Penal Law 250.00. *People v Fata*, 159 A.D.2d 180 (N.Y. App. Div. 2d Dep't).

Penal Law § 250.40 - Unlawful Surveillance

'Place and time when a person has a reasonable expectation of privacy' means a place and time when a reasonable person would believe that he or she could fully disrobe in privacy.....

'Broadcast' means electronically transmitting a visual image with the intent that it be viewed by a person.

'Disseminate' means to give, provide, lend, deliver, mail, send, forward, transfer or transmit, electronically or otherwise to another person.

'Publish' means to ... (d) disseminate with the intent that an image or images be posted, presented, displayed, exhibited, circulated, advertised or made accessible, electronically or otherwise and to make such image or images available to the public."

People v. Morriale Facts & Holding:

Facts:

Defendant used a camera phone to videotape himself having sexual intercourse with the victim without her knowledge.

Defendant sent the videos to his own email account without her knowledge.

Held:

Defendant's alleged transmission of the video to himself did not constitute dissemination as defined under Penal Law § 250.40(5).

People v. Morriale, 2008 NY Slip Op 28214, ¶ 1, 20 Misc. 3d 558, 859 N.Y.S.2d 559 (Crim Ct.)

NY Penal Law § 250.45

"A person is guilty of **unlawful surveillance in the second degree** when:

For his or her own, or another person's amusement, entertainment, or profit, or for the purpose of degrading or abusing a person, he or she intentionally uses or installs, or permits the utilization or installation of an imaging device to surreptitiously view, broadcast or record a person dressing or undressing or the sexual or other intimate parts of such person at a place and time when such person has a reasonable expectation of privacy, without such person's knowledge or consent;"

Unlawful surveillance in the second degree is a class E felony.

NY Penal Law § 250.50

"A person is guilty of **unlawful surveillance in the first degree** when he or she commits the crime of unlawful surveillance in the second degree and has been previously convicted within the past ten years of unlawful surveillance in the first or second degree."

Unlawful surveillance in the first degree is a class D felony.

NY Penal Law § 250.55

"A person is guilty of dissemination of an **unlawful surveillance image in the second degree** when he or she, with knowledge of the unlawful conduct by which an image or images of the sexual or other intimate parts of another person or persons were obtained and such unlawful conduct would satisfy the essential elements of the crime of unlawful surveillance in the first or second degree"

Dissemination of an unlawful surveillance image in the second degree is a class A misdemeanor.

NY Penal Law § 250.60

"A person is guilty of dissemination of an **unlawful surveillance image in the first degree** when:

He or she, with knowledge of the unlawful conduct by which an image or images of the sexual or other intimate parts of another person or persons were obtained and such unlawful conduct would satisfy the essential elements of the crime of unlawful surveillance in the first or second degree, sells or publishes such image or images;"

Dissemination of an unlawful surveillance image in the first degree is a class E felony.

Cyberbullying v. Cyberstalking (Generally)

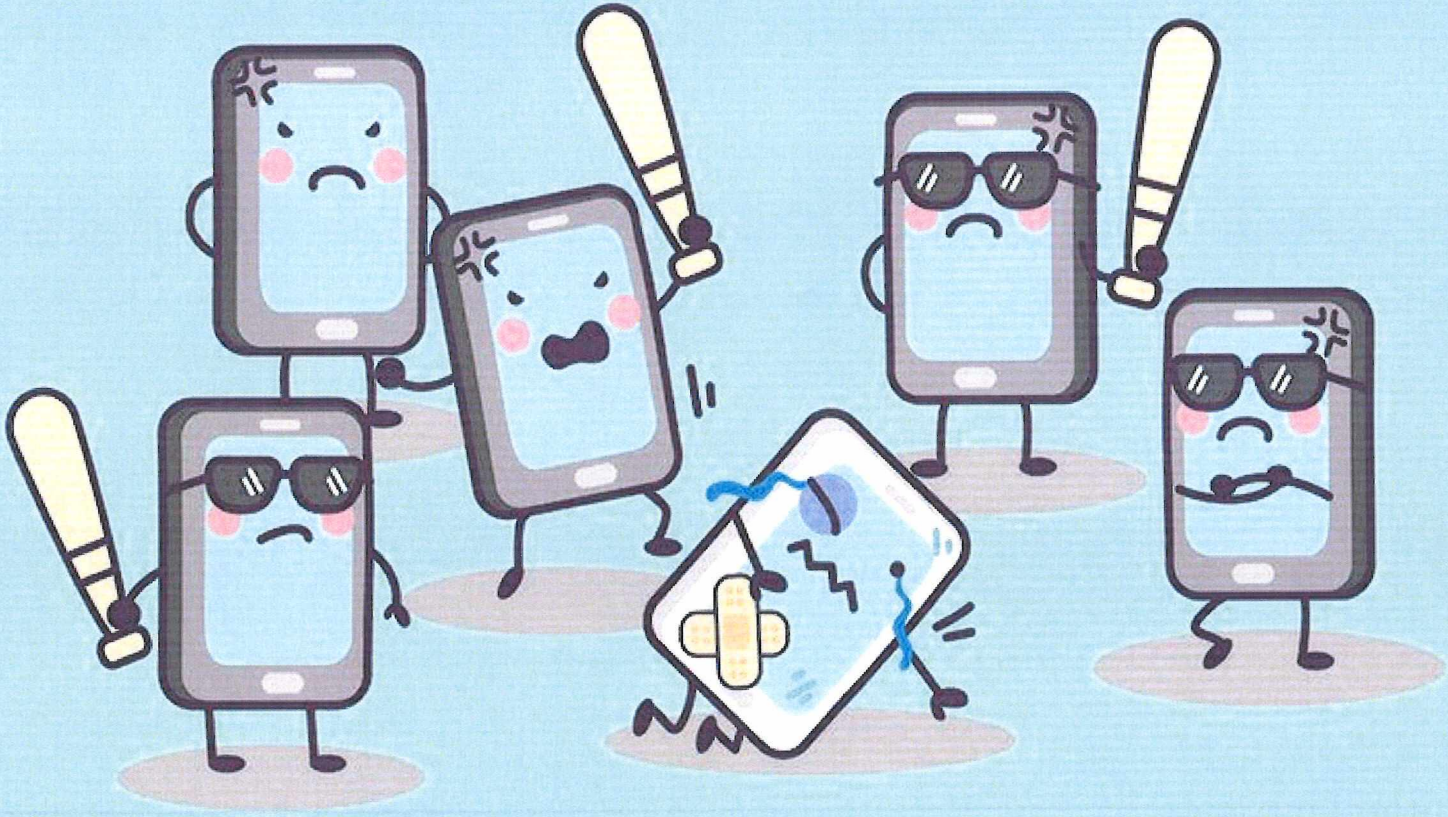
Cyberbullying:

- Pertains to intimidating or harassing emails, instant messages, or website entries.
- Repeated attempts to target a specific person by directly contacting them, or indirectly using or disseminating their personal information.
- Among children.

Cyberstalking:

- Using the Internet or other electronic means to stalk a victim.
- Generally refers to a pattern of intimidating or malicious behaviors.
- The behavior must pose a credible threat of harm to the victim.
- Among adults.

Cyber Bullying



Cyberbullying Statistics

- In 2015, the National Center for Education Statistics and Bureau of Justice statistics indicated that nationwide, about 21% of students ages 12-18 experience bullying.
- In 2015, the Youth Risk Behavior Surveillance System indicated that an estimated 16% of high school students were bullied electronically in the 12 months prior to the survey.
- Youth who report both being bullied and bullying others have the highest rates of negative mental health outcomes, including depression, anxiety and suicidal thoughts.
- 36 states include provisions in their education codes prohibiting cyberbullying or bullying using electronic media. 30 states specify that schools have jurisdiction over off-campus behavior if it creates a hostile school environment.
- Youth with disabilities, learning differences, sexual/gender identity differences or cultural differences are often most vulnerable to bullying.

School District's Scope and Jurisdiction

- Today, the majority of bullying takes the form of cyberbullying, typically happening off-campus.

- Because of this, school districts must balance a student's First Amendment rights versus a need for discipline.

- Absent federal laws on cyberbullying, the Courts provide a standard for interpretation based on Tinker.

Example Legislation

New Jersey passed the "Anti-bullying Bill of Rights" after Tyler Clementi committed suicide when a video of his homosexual encounter was disseminated on the Internet. He was unaware that he was being recorded

Massachusetts passed harsher anti-bullying legislation after Phoebe Prince committed suicide when students at her school bullied her for months in-person and online.

- In an effort to promote national anti-bullying legislation, "Phoebe's Law" has been proposed (but not yet enacted).

Cyberbullying: Causes of Action

- **42 USC §1983 - Civil action for deprivation of rights**
  - Must show: (1) Particular D's had actual knowledge that the misconduct in question was directed at an individual because of their protected status, and (2) that the administrators were deliberately indifferent to the misconduct.
  - A school board may be liable in damages where their own deliberate indifference effectively caused the discrimination

- **First Amendment Claim (most common cause of action)**
  - Conduct by student, in or out of class, which for any reason, whether it stems from time, place or type of behavior, materially disrupts classwork or involves substantial disorder or invasion of rights of others is not immunized by constitutional guarantee of freedom of speech

New York Statutes

- **Dignity for All Students Act**
  - Intended to serve as a model code for school districts to implement school board policies to 'afford for all students in public schools an environment free of discrimination and harassment' caused by 'bullying, taunting or intimidation.
- **Individuals with Disabilities Education Act (Federal)**
  - States have an affirmative obligation to provide a basic floor of opportunity for all children with disabilities.
- **Suffolk's local cyberbullying laws**
  - Enacted in 2010, Suffolk's criminal code now includes definitions of and penalties pertaining to cyberbullying of minors.

Standard for a School District's Jurisdiction

- When determining whether school districts have jurisdiction over cyberbullying which occurs outside of school, courts have generally applied the *Tinker* standard which analyzes the conduct of the 'bully' to see if it would 'materially or substantially interfere with or disrupt the work of the school', or 'might reasonably lead school authorities to forecast substantial disruption of or material interference with school activities.'

- The Fourth Circuit added a 'sufficient nexus test' to their analysis

Now, for our skit

Within the Courts scope?

- Parents of a middle school student brought a 1983 action against the school board and superintendent, alleging First Amendment violations arising from the semester-long suspension of that student's AOL Instant Messenger (AIM), where the student's icon associated with his profile contained an image depicting a gun being shot at one of his professors with blood spatter coming out of the professor. The professor was told about the icon by another student and reported it to school officials.

Wisniewski v. Bd. Of Educ. Of Weedsport Cent. Sch. Dist., 494 F.3d 34 (2d Cir. 2007).

Public Blog Posts

- Mother of a high school student sued her school district for disqualifying her daughter from running for senior class secretary after she posted a "vulgar" and "misleading" message about the cancellation of a school event on her public blog.

- The court stated, "a student may be disciplined for expressive conduct, even conduct occurring off school grounds, when this conduct "would foreseeably create a risk of substantial disruption within the school environment," at least when it was similarly foreseeable that the off-campus expression might also reach campus.

***Doninger v. Niehoff*, 527 F.3d 41 (2d Cir. 2008).**

Instant Messages

- The court cited the Tinker standard, and found that the student's conduct posed a reasonably foreseeable risk that the icon would come to the attention of school authorities, and that it would materially and substantially disrupt the work and discipline of the school.

- The court also found that even though the conduct by the student occurred off of school property, that does not necessarily insulate him from school discipline because off-campus conduct can create a foreseeable risk of substantial disruption within a school.

Text Messages

- Parents of a high school student filed a 1983 action against the school district alleging First amendment violations from wrongful suspension based on out of school texts with another student containing threats/description of violence against a third student.

- The court cited the Second Circuit's framework presented in *Wieniewski*, and reasoned "that a student may be disciplined for off- campus speech that is reasonably understood as urging or favoring violent conduct where (1) there was a reasonably foreseeable risk that the speech would come to the attention of school officials, and (2) there was a reasonably foreseeable risk that it would materially and substantially disrupt the work and discipline of the school."

***Bradford v. Norwich City Sch. Dist.*, 54 F. Supp. 3d 177 (N.D.N.Y. 2014).**

Public Blog Posts

- When determining the scope of the school district, the court reasoned that 'territoriality is not necessarily a useful concept in determining the limit of a school's authority' where students are routinely participating in school activities on and off campus with the use of electronic communications.

- The Second Circuit agreed with the district court's determination that the blog post, although created off-campus, was intended to reach the campus and therefore it was reasonably foreseeable that other students in the district would view the blog and school administrators would become aware of it.

- Further, the court followed the framework set up in *Wisniewski* and determined that the blog post foreseeably created a risk of substantial disruption within the school environment. It also determined that it was foreseeable in this context that school operations might well be disrupted further by the need to correct misinformation as a consequence of Avery's post.

Websites

- High school student brought a §1983 action against her school district claiming First Amendment Free Speech violations and 14th Amendment Due Process violations after she was suspended for creating a webpage ridiculing another student and inviting other students to participate.

Websites

- The court applied the *Tinker* standard, and determined that the student's speech caused a material disruption and is immune from First Amendment protection. The court also added a "sufficient nexus test", which inquired whether the nexus of speech in question to the school's "pedagogical interests was sufficiently strong to justify the action taken by school officials" in disciplining the student for cyberbullying.

- Further, the court reasoned that the webpage was reasonably expected to reach the school or impact the school environment, and therefore the high school administrators could regulate and punish the conduct. The court stated, "where speech has a sufficient nexus with the school, the Constitution is not written to hinder school administrators' good faith efforts to address the problem."

True or False - Cyberstalking

- Signing up for numerous online mailing lists and services using a victim's name and email address is a form of cyberstalking.

- Intentionally recording another person over the telephone without the consent of the speaker or intended receiver violates New York State's Eavesdropping statute.

- Cyberstalking statutes apply to youth and adults alike.

True or False - Cyberbullying

- There is no federal statute addressing cyberbullying.
- The First Amendment protects against all off campus speech.
- Suffolk County's criminal code includes provisions for cyberbullying of minors.

THE END

B

U.S. Department of Education

Analysis of State Bullying Laws and Policies

II. Analysis of State Bullying Legislation

The Columbine High School shooting in Littleton, Colo., was the first nationally visible incident of student-perpetrated school violence that was presumed to be tied to a history of bullying victimization (Greene & Ross, 2005). In the aftermath of the school shooting and in reaction to a local bullying-related suicide in the state, Georgia became the first state to pass bullying legislation requiring schools to implement character education programs to address bullying prevention (Associated Press, 2009). Since that time, there has been a proliferation of new laws at the state level that define acts of bullying in the school context and establish school or district policies prohibiting bullying behavior.

Key Findings

- **From 1999 to 2010, more than 120 bills were enacted by state legislatures nationally that have either introduced or amended education or criminal justice statutes to address bullying and related behaviors in schools.**
- **Forty-five state laws direct school districts to adopt bullying policies.**
- **Forty-two state laws contain clear statements prohibiting students from bullying. Three states prohibit bullying without defining the prohibited actions or behaviors.**
- **Most states frame legislation as law governing "bullying," "bullying and harassment," or "bullying, harassment, or intimidation" using terms interchangeably. Nine states distinguish between "bullying" and "harassment" and define them separately under the law. Two states only address "harassment" as it pertains to behavior in schools, with no mention of "bullying."**
- **Thirty-six states now include provisions in their education codes prohibiting cyberbullying or bullying using electronic media.**
- **Thirteen states specify that schools have jurisdiction over off-campus bullying behavior if it creates a hostile school environment.**
- **The most commonly covered components in legislation are requirements to develop district policies, statements of scope defining school jurisdiction over bullying acts, definitions of prohibited behavior, and disciplinary consequences. Procedural components in laws are more likely to involve direct mandates, whereas programmatic components (e.g., training and prevention) are often prescribed using discretionary language.**
- **The least expansive state laws outline district requirements to develop local bullying policies without specifying policy content.**

As of April of 2011, 46 states nationally had enacted bullying laws. North Dakota was the most recent to take action with the passage of *Assembly Bill 216,* which was signed into law in April 2011.

ARCHIVED INFORMATION

U.S. Education Department Releases Analysis of State Bullying Laws and Policies

DECEMBER 6, 2011

Contact: Press Office, (202) 401-1576, press@ed.gov (mailto: press@ed.gov)

The U.S. Department of Education released today *Analysis of State Bullying Laws and Policies*, a new report summarizing current approaches in the 46 states with anti-bullying laws and the 41 states that have created anti-bullying policies as models for schools.

The report shows the prevalence of state efforts to combat bullying over the last several years. From 1999 to 2010, more than 120 bills were enacted by state legislatures from across the country to either introduce or amend statutes that address bullying and related behaviors in schools. Twenty-one new bills were enacted in 2010 and eight additional bills were signed into law through April 30, 2011.

More Resources

State Bullying Laws and Policies Report (http://www2.ed.gov/about/offices/list/opepd/ppss/reports.html#state-bullying-laws)

Out of the 46 states with anti-bullying laws in place, 36 have provisions that prohibit cyber bullying and 13 have statutes that grant schools the authority to address off-campus behavior that creates a hostile school environment.

"Every state should have effective bullying prevention efforts in place to protect children inside and outside of school," said U.S. Secretary of Education Arne Duncan. "This report reveals that while most states have enacted legislation around this important issue, a great deal of work remains to ensure adults are doing everything possible to keep our kids safe."

The first Federal Partners in Bullying Prevention Summit, hosted in August 2010 by the Department and other federal agencies, exposed an information gap regarding anti-bullying laws and policies across the country. The summit brought together government officials, researchers, policymakers, and education practitioners to explore strategies to combat bullying in schools. To address this information gap and respond to requests for technical assistance, the Department composed *Anti-Bullying Policies: Examples of Provisions in State Laws*, a guidance document outlining common key components of state anti-bullying laws.

Following the Summit, the Department's Policy and Program Studies Service contracted researchers to compile the analysis on state laws and policies. In preparing the report, researchers reviewed and coded legislation and policy documents in every state across the country along with an additional sample of 20 local school districts. The report sought to address the extent to which states' bullying laws and model policies contained the key components identified in the December guidance. A follow-up study will aim to identify how state laws translate into practice at the school level.

To learn about more key findings and to read the full report, visit http://www2.ed.gov/about/offices/list/opepd/ppss/reports.html#safe (http://www2.ed.gov/about/offices/list/opepd/ppss/reports.html#safe).

Tags: Bullying (/category/keyword/bullying) Press Releases (/news/press-releases)

How Do I Find...?

- Student loans, forgiveness (http://www2.ed.gov/fund/grants-college.html?src=rn)
- College accreditation (http://www.ed.gov/accreditation?src=rn)
- Every Student Succeeds Act (ESSA) (http://www.ed.gov/essa?src=rn)
- FERPA (http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html?src=rn)
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C

Suffolk County Law

Chapter 538: Internet Crimes

[HISTORY: Adopted by the Suffolk County Legislature as indicated in article histories. Amendments noted where applicable. Uncodified sections of local laws amending these provisions are included at the end of this chapter.]

GENERAL REFERENCES
Human rights — See Ch. 528.

538a Uncod LL Pro

Article I: Cyberbullying of Minors

[Adopted 6-22-2010 by L.L. No. 36-2010 (Ch. 327B, Art. I, of the 1985 Code)]

§ 538-1 Legislative intent.

A. This Legislature hereby finds and determines that bullying is a long-standing problem among school-aged children in Suffolk County and throughout the nation.

B. This Legislature also finds and determines that, with the advent of technology, bullying has transformed from a predominantly school-based issue into a broader societal problem.

C. This Legislature further finds and determines that cyberbullying, which consists of repeated nonphysical bullying behaviors transmitted by electronic means, is the newest form of harassment.

D. This Legislature finds that cyberbullying is rampant: 42% of children in the fourth through eighth grades surveyed in a recent poll reported being bullied online.

E. This Legislature determines that cyberbullying follows its victims everywhere they go, can occur as frequently as the aggressor desires, and can take place at any time of the day or night, as it is perpetrated online and/or through text and picture messages on cellular phones and handheld devices.

F. This Legislature also finds that perpetrators of cyberbullying are often more extreme in the threats and taunts they inflict on their victims, as they do not actually see their victim's emotional reaction to the abuse and believe they are anonymous.

G. This Legislature further finds that victims of cyberbullying suffer very real and serious harm as a result of these incidents, often showing signs of depression, anxiety, social isolation, nervousness when interacting with technology, low self-esteem, and declining school performance.

H. This Legislature also determines that, in some cases, victims attempt or commit suicide in part because of the cyberbullying they have endured.

I. This Legislature further determines that several states have enacted laws criminalizing cyberbullying, but, to date, the New York State Legislature has failed to address this problem.

J. This Legislature finds that Suffolk County should do everything in its power to protect its school-aged residents from such reprehensible behavior.

K. Therefore, the purpose of this article is to ban the cyberbullying of minors in the County of Suffolk.

§ 538-2 Definitions.

As used in this article, the following terms shall have the meanings indicated:

CYBERBULLYING
Engaging in a course of conduct or repeatedly committing acts of abusive behavior over a period of time, with the intent to coerce, intimidate, harass or cause substantial emotional distress to a person, and which serve no legitimate purpose, by

communicating or causing a communication to be sent by mechanical or electronic means, posting statements on the Internet or through a computer network. Acts of abusive behavior shall include, but not be limited to: taunting; threatening; intimidating; insulting; tormenting; humiliating; disseminating embarrassing or sexually explicit photographs, either actual or modified, of a minor; disseminating the private, personal or sexual information, either factual or false, of a minor; or sending hate mail.

MINOR

Any natural person or individual under the age of 19.

PERSON

Any natural person or individual.

§ 538-3 **Prohibitions.**

No person shall engage in cyberbullying against a minor in the County of Suffolk.

§ 538-4 **Penalties for offenses.**

Any person who knowingly violates the provisions of this article shall be guilty of an unclassified misdemeanor punishable by a fine of up to $1,000 and/or up to one year's imprisonment.

§ 538-5 **Applicability.**

This article shall apply to all actions occurring on or after the effective date of this article.

§ 538-6 **Reverse preemption.**

This article shall be null and void on the day that statewide or federal legislation goes into effect incorporating either the same or substantially similar provisions as are contained in this article or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Suffolk. The County Legislature may determine via mere resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.

Article II: Cyberstalking

[Adopted 6-22-2010 by L.L. No. 37-2010 (Ch. 327B, Art. II, of the 1985 Code)]

§ 538-7 **Legislative intent.**

A. This Legislature hereby finds and determines that stalking and harassment are serious crimes that frequently put victims in fear for their physical safety.

B. This Legislature also finds and determines that, traditionally, crimes of stalking and harassment are committed through the mail, on telephones or in close physical proximity to the victim.

C. This Legislature further finds and determines that, due to advances in technology, stalking and harassment are increasingly occurring through the use of the Internet and perpetrators can obtain increased information regarding the whereabouts and activities of their victims at any given moment.

D. This Legislature finds that online stalking and harassment behaviors, now known as "cyberstalking," are repeated acts of nonphysical harassment against adults which are transmitted by electronic means.

E. This Legislature also finds that cyberstalking can occur at any time, anywhere and can be perpetrated by individuals far away from the physical location of their victims, as it is perpetrated online and/or through text and picture messages on cellular phones and handheld devices.

F. This Legislature determines that cyberstalking has been shown to cause significant psychological trauma to victims.

G. This Legislature also finds that cyberstalking behavior frequently escalates into off-line stalking and harassment, with victims frequently enduring harassing and repeated phone calls, threats, obscene mail, vandalism, trespassing and physical assault.

H. This Legislature further finds that the victims of cyberstalking suffer real and serious harm, including, but not limited to, anxiety, hyper-vigilance, nightmares, changed eating and sleeping habits, and fear for their safety.

I. This Legislature also determines that a few states have enacted laws criminalizing cyberstalking, but, to date, the New York State Legislature has failed to address this problem.

J. This Legislature further determines that Suffolk County should do everything in its power to protect its residents from such dangerous behavior which provides a gateway for the commission of further crimes.

K. Therefore, the purpose of this article is to prohibit the cyberstalking of adults in the County of Suffolk.

§ 538-8 **Definitions.**

As used in this article, the following terms shall have the meanings indicated:

ADULT
Any natural person or individual age 19 or over.

CYBERSTALKING
Engaging in a course of conduct or repeatedly committing acts of abusive behavior over a period of time, with the intent to coerce, intimidate, harass or cause substantial emotional distress to a person, and which serve no legitimate purpose, by communication or causing a communication to be sent by mechanical or electronic means, posting statements on the Internet or through a computer network. Acts of abusive behavior shall include, but not be limited to: threatening; intimidating; tormenting; humiliating; disseminating embarrassing or sexually explicit photographs, either actual or modified, of a person without his or her permission; or disseminating the private, personal or sexual information of a person without his or her permission.

PERSON
Any natural person or individual.

§ 538-9 **Prohibitions.**

No person shall engage in cyberstalking against an adult in the County of Suffolk.

§ 538-10 **Penalties for offenses.**

Any person who knowingly violates the provisions of this article shall be guilty of an unclassified misdemeanor punishable by a fine of up to $1,000 and/or up to one year's imprisonment.

§ 538-11 **Applicability.**

This article shall apply to all actions occurring on or after the effective date of this article.

§ 538-12 **Reverse preemption.**

This article shall be null and void on the day that statewide or federal legislation goes into effect incorporating either the same or substantially similar provisions as are contained in this article or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Suffolk. The County Legislature may determine via mere resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.

D

Shen

Students Suspended for Participation in Instagram Group

The 2017 decision by the U.S. District Court for the Northern District of California, in the Ninth Circuit, in *Shen v. Albany Unified School District*, underscores that the prevalence of social media applications is changing the societal and educational landscape.[1] *Shen* called into question whether public school students' social media posts, outside of the school day and off of school premises, escape the school's disciplinary aegis under the protection of the United States Constitution's First Amendment. The court's decision in the case sustained the students' expulsion and suspensions from school, finding that their speech was not beyond the reach of the school administration's disciplinary aegis.

Facts of the Case

In November 2016, Albany Unified School District public high school student C.E. created an Instagram group and added several other students to the private account with the handle @ yungcavage (this account has since been disabled and removed.). From inception until the group became public in March 2017, there were between 30 to 40 posts shared within the group.

Most photos targeted female African American students and/or an African American basketball coach from the students' school. Many of the photos included drawn-on nooses, Ku Klux Klan references, images of slaves hanging, comparisons of African American females to gorillas and otherwise racist, threatening, and derogatory comments. None of the photos were taken with the subjects' knowledge. In total, ten different students and at least one employee/coach were depicted in the account without their knowledge. Several of the photos were taken during school events.

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The account became known beyond the private group in March 2017 when Plaintiff John Doe, one member of the private Instagram group, showed some of the posts to two of the targeted students.

Of the at least nine students initially added to the Instagram group, some posted photos, some commented with support, and some clicked "like," indicating assent. One student added to the group never posted, commented or clicked like.

The secret group came to light in March 2017, four months after its inception. As word spread through the school, some students including those whose photos had been taken and defaced without their knowledge were "visibly distraught," crying and screaming in the hallways and classes. Some expressed their fear of returning to school. C.E. was expelled and the other students were suspended. They subsequently brought claims against the school district, asserting that their First Amendment rights of free speech were violated.

Upon consolidated motions for summary judgment, the court considered only the First Amendment claims brought by plaintiff students from the Instagram group.

First Amendment Considerations and the District Court's Decision

It is a bedrock principle under the First Amendment that the government cannot prohibit or penalize the expression of an idea simply because society finds the idea itself offensive or disagreeable. However, it is also well-settled since the Supreme Court's decision in *Tinker v. Des Moines Independent Community School District*,[2] and in *Hazelwood School District v. Kuhlmeier*,[3] that although students have First Amendment rights, students' school-related speech and school-sponsored speech, respectively, can be curtailed and excepted from the more broad First Amendment framework. *Tinker* established that although "students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,"[4] school speech may constitutionally be restricted and disciplined when it risks a substantial disruption of the school environment or violates the rights of other students to be secure. Moreover, in *Wynar v. Douglas County School District*, the Ninth Circuit Court of Appeals held that, under *Tinker*, school officials do not have to wait for the disruption or invasion to take place; they may act prophylactically if it is reasonable under the circumstances.[5] In *Bethel School District v. Fraser*, the United States Supreme Court held that "Constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings."[6]

It is also well-settled since the Supreme Court's decision in *Hazelwood,* that school-sponsored speech and association (such as via school-sponsored newspapers, teams, public address systems or loudspeaker announcements) can be curtailed and excepted from the more broad First Amendment framework. *Hazelwood* holds that school-sponsored student speech may be limited, so long as the censorship is reasonably related to the legitimate pedagogical concerns of a school district to prohibit speech that would materially and substantially disrupt classwork and discipline in the school district.[7]

In the *Shen* decision, the U.S. District Court for the Northern District

of California determined that the Instagram account and the offensive posts, comments and likes were not school-sponsored speech, since students created the account and posted without the aegis of their school. Yet, even though the activity on the Instagram account took place outside of the school day, off of school premises and without school aegis, the court found that the suspended students' free speech under *Tinker* was not constitutionally protected, with the exception of one of the students. The students in the Instagram group claimed that their posts, comments, and likes were private and took place outside of school. They further argued that their posts, comments, and likes did not interfere with the rights of others or cause substantial disruption at school. Yet, applying the *Tinker* and *Wynar* analyses, the court found that the speech was both potentially substantially disruptive and violative of other students' rights to be secure, and thus overrode the suspended students' reasonable expectation of privacy.[8]

The court rejected the suspended students' claims, with the exception of the one student who had been added to the Instagram group but had never clicked "like" in assent, never commented, nor posted any content to the group. The court reasoned that this passive student who neither sought entry into the Instagram group, nor posted content, posted comment, nor clicked "like" was protected as a reader. The court determined that was the only student suspended in error. The court stated with regard to this student, "[i]t is not clear how any student would have known that online access or viewing alone could result in a suspension, and it is even less clear how a suspension for those reasons squares with our traditional ideas of freedom of thought, due process, and fairness. Giving schools the power to control what students are permitted to look at online is a deeply problematic proposition."[9]

However, regarding the remaining suspended students, the court found that their online Instagram posts, comments, and likes required a circumstance-specific balancing inquiry to determine whether the school administration permissibly employed discipline for off-campus speech. In the Ninth Circuit, where *Shen v Albany* was decided, the Court of Appeals also held in *C.R. v. Eugene School District* that "schools must achieve a balance between protecting the safety and well-being of their students and respecting those same students' constitutional rights."[10]

The Court's Reasoning

The court's circumstance-specific inquiry considered two factors: nexus and foreseeability, i.e. was the students' speech connected to school and was it likely to damage the school environment. The court declined to choose between the two approaches, noting that both factors rely on a fact-specific evaluation of the speech's close connection with the school to permit administration discipline.[11]

See SUSPENDED, Page 22

SUSPENDED ...

Continued From Page 8

Reasoning that the posters and targeted students in the group and in the Instagram photos were students and personnel at the same school, that the activities posted were school activities, the court found sufficient connection between the students' posts and the school community based upon the likelihood that the overlap between school students, personnel, and activities would negatively affect the school community. Given that the posts were connected in person and content to the school community, and deeply offensive and threatening, it was likely and foreseeable that they would seep into and affect the school community, especially given that they "appear to have been related to ongoing social tensions at school, which again increased the likelihood their speech would reach and disturb the campus."[12]

The *Shen* court rejected the suspended students claim that even if considered school-related, the Instagram posts were self-contained, private and not disruptive. The court reasoned that plaintiffs had little reason to believe their conduct would stay secret when they could not control who was allowed to follow the account at all. The plaintiff students' claim that the school community was not affected was rejected by the court. "Plaintiffs try to minimize the level of disruption by blaming the District for overreacting, but it is clear that with or without the intervention of school officials, the students who learned about the @yungcavage account had very strong reactions to it while at school. That the disruption fell short of a full-scale riot is also of no moment."[13]

Applications in the Second Circuit

Here in the Second Circuit, the circumstance-specific inquiry of whether to characterize speech as school speech under school disciplinary aegis is not categorized as merely nexus or foreseeability, but, also, under *DeFabio v. East Hampton Union Free School District,* as an "'affirmative duty' of school administrators to not only ameliorate the harmful effects of disruption to the school community but to prevent them from happening in the first place."[14] "If school officials had to wait for an actual disruption [to impose discipline] school officials would be between the proverbial rock and the hard place: either they allow disruption to occur, or they are guilty of a constitutional violation. Such a rule is not required by *Tinker* and would be disastrous public policy; requiring school officials to wait until disruption actually occurred before investigating would cripple the officials' ability to maintain order."[15]

In 2012, the majority decision of a divided Second Circuit Court of Appeals held in *Cuff v. Valley Central School Disrict.* that "we have held that the relevant inquiry is whether 'the record demonstrate[s] facts which might reasonably have lead school authorities to forecast substantial disruption of or material interference with school activities.'"[16] This does not require school administrators to prove that actual disruption occurred or that substantial disruption was inevitable. Rather, the question "is an objective one, focusing on the reasonableness of the school administration's response, not on the intent of the student."[17] "It is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse."[18]

Implications

The *Shen* case was decided based on what appear to be "easy" facts insofar as all the students in the Instagram group were enrolled at the same high school. The court did not contemplate whether the circumstance-specific inquiry into nexus above stated would have yielded a different result if the students were from multiple schools.

Neither did the age of the students become an issue, i.e., whether younger children would have received the same degree of discipline for problematic social media posts. Another aspect the *Shen* court did not reach or need to contemplate was special needs, i.e., whether students with classified special education needs posts would still have been suspended for similar posts if the matter had reached a manifestation hearing and proved that their participation in the Instagram group was related to the underlying disability.

When *Shen,* is juxtaposed with the Second Circuit's analysis, there is not necessarily a conflict in standard, i.e., nexus/foreseeability vs. affirmative duty, so much as a reconcilable trend toward increased latitude for and deference to school administrator decisions and a concomitant increase in curtailed and fettered student speech.

Given current events—the increasing role of social media applications, the increasing tensions regarding identity politics, spikes in hate crimes, incidents of bullying and school shootings, even absent a documented historical antecedent in the community, it is likely that school administrators will continue to act prophylactically, i.e., suspend now, be reviewed later. Whether phrased as an "affirmative duty" as in the Second Circuit, or "nexus" and "reasonable foreseeability" of the U.S. District Court for the Northern District of California, these cases likely mean more latitude for school administrators, more fettered student speech, and an attendant likelihood of increased legal challenges to school districts' disciplinary decisions after-the-fact.

Rebecca Sassouni is a member of the Nassau County Bar Association Education Law Committee, where she has co-presented several C.L.E.s. Her practice is limited to representation of students of all ages, in all school settings, with disabilities, disciplinary matters, tuition reimbursements, and/or students who are being bullied. Ms. Sassouni may be reached via rsedlaw@gmail.com and LinkedIn.

1. *Shen v. Albany Unified Sch. Dist.*, No. 3:17-cv-02478, 2017 U.S. Dist. LEXIS 196340 (N.D. Cal., Nov. 29, 2017).
2. 393 U.S. 503 (1969).
3. 484 U.S. 260 (1980).
4. *Tinker*, 393 U.S. at 506.
5. 723 F.3d 1062 (2013).
6. 478 U.S. 675 675 (1986).
7. 484 U.S. 260 (1988).
8. *Shen v. Albany Unified Sch. Dist.*, 2017 U.S. Dist. LEXIS 196340 at 11.
9. *Id* at 8.
10. 835 F. 3d 1142, 1148 (2016).
11. *Shen* at 11.
12. *Id.* at 14.
13. *Id.* at 14.
14. 658 F.Supp.2d 461 (2009).
15. *Id.* at 464 (quoting, 9th Circuit, *LaVine v. Blaine School. Dist.*, 257 F.3d 981 (2001)).
16. 677 F.3d 109, 113 (2012).
17. *Id.*
18. *Id.*

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United States District Court, N.D. California.

Philip SHEN, et al., Plaintiffs,
v.
ALBANY UNIFIED SCHOOL DISTRICT, et al., Defendants.
Rick Roe, et al., Plaintiffs,
v.
Albany Unified School District, et al., Defendants.
C. E., Plaintiff,
v.
Albany Unified School District, et al., Defendants.

Case Nos. 3:17-cv-02478-JD (lead case), 3:17-cv-02767-JD, 3:17-cv-03657-JD
|
Signed 08/24/2018

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ORDER RE MOTION TO DISMISS CONSOLIDATED COMPLAINT

Re: Dkt. No. 128

JAMES DONATO, United States District Judge

*1 These related cases arise out of disciplinary actions taken by Albany Unified School District ("AUSD" or "the District") in response to racist and derogatory content posted on an Instagram account by several students at Albany High School ("AHS"). The factual background is discussed in detail in the Court's summary judgment order, which provides the context for this motion to dismiss order. *Shen v. Albany Unified Sch. Dist.*, No. 3:17-CV-02478-JD, 2017 WL 5890089 (N.D. Cal. Nov. 29, 2017). To summarize, plaintiff C.E. created the account in November 2016 and gave access to a group of AHS students. In March 2017, the AHS student body and school personnel discovered the account and its contents. AUSD expelled C.E. and suspended the other students involved. AUSD also sponsored a variety of events in response to the situation, including a "restorative justice" session that culminated in threats, and in some cases physical assaults, against the disciplined students and their families.

Ten disciplined students filed four separate lawsuits alleging violations of free speech and due process under the federal constitution and California state law, and sued the District and its officials to set aside the disciplinary actions, among other relief. The lawsuits were related, and the parties agreed to resolve their First Amendment and related state law claims through early summary judgment motions. On summary judgment, the Court examined each plaintiff's involvement in the Instagram account and found that some, but not all, had been appropriately disciplined. One plaintiff settled with defendants while the motions were under consideration. *See* Dkt. No. 34 in Case No. 17-3418.

After the Court ruled on the free speech issues, plaintiffs filed two separate amended complaints. Philip Shen, Nima Kormi, Michael Bales, Kevin Chen, Nick Noe, and C.E. filed a first amended complaint, Dkt. No. 112, and John Doe, Rick Roe, and Paul Poe filed a second amended complaint, Dkt. No. 84 in Case No. 17-2767. Soon thereafter, six of the nine settled with the District and dismissed their claims. *See* Dkt. Nos. 160, 161, 162 (Nima Kormi, Michael Bales, and Nick Noe); Dkt. No. 119 (Case No. 17-2767) (John Doe, Rick Roe, and Paul Poe).

Three plaintiffs now remain in the case: Philip Shen, Kevin Chen, and C.E. The operative complaint is the consolidated first amended complaint filed at Dkt. No. 112 in the lead case. The District has moved to dismiss the complaint. Dkt. No. 128. The motion is granted in part and denied in part.

LEGAL STANDARDS

Straightforward standards govern the application of Rule 12(b)(6). To meet the pleading requirements of Rule 8(a) and to survive a Rule 12(b)(6) motion to dismiss, a claim

must provide "a short and plain statement ... showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2), including "enough facts to state a claim ... that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible on its face if, accepting all factual allegations as true and construing them in the light most favorable to the plaintiff, the Court can reasonably infer that the defendant is liable for the misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The plausibility analysis is "context-specific" and not only invites but "requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679.

DISCUSSION

***2** The complaint alleges seventeen distinct causes of action against the District, various AHS and AUSD officials in their personal and official capacities, the AUSD Board of Education (BOE), and members of the BOE in their personal and official capacities.

I. The Federal Constitutional Claims

Claims 1, 3, 5, 7, and 9 allege that defendants violated plaintiffs' federal constitutional rights. Only Claim 1 is pleaded as a Section 1983 claim, and the remaining claims do not mention Section 1983. The parties in their filings appear to treat all five claims as predicated on Section 1983, and the Court will do the same.

As an initial matter, none of these claims survive against the District, the BOE, or the individual defendants in their official capacities. These defendants cannot be held liable for money damages or prospective relief under Section 1983 unless plaintiffs identify a municipal policy, long-standing custom or practice, or decision by a "final policymaker" that caused their injuries. *Ellins v. City of Sierra Madre*, 710 F.3d 1049, 1066 (9th Cir. 2013); *Los Angeles Cty., Cal. v. Humphries*, 562 U.S. 29, 34 (2010); *see Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 694 (1978). Nor can the individual defendants be held liable in their official capacities unless plaintiffs establish that a municipal "policy or custom ... played a part in the violation of federal law." *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). Plaintiffs must plausibly allege a municipal policy, custom or practice, or decision by a final policymaker at the pleading stage. *AE ex rel. Hernandez v. Cty. of Tulare*, 666 F.3d 631, 637 (9th Cir. 2012). They have not done so. Nor have plaintiffs meaningfully pursued in the amended complaint a ratification theory against the public entities, or argued for one in their motion papers. *Christie v. Iopa*, 176 F.3d 1231, 1239 (9th Cir. 1999) (ratification requires "knowledge of an unconstitutional act" as well as approval). These claims are dismissed without prejudice, and the rest of the order addresses the Section 1983 claims against only the individual defendants in their personal capacities.

A. Claim 1: First Amendment

Claim 1 alleges violations of plaintiffs' First Amendment rights. The Court found on summary judgment that the District did not infringe Chen's, Shen's, or C.E.'s federal or state speech rights by disciplining them. Claim 1 is dismissed with prejudice.

B. Claims 3 and 9: Procedural Due Process

In Claim 3, Shen and Chen allege that defendants violated their federal due process rights by arbitrarily extending their suspensions beyond the term set out in AUSD's disciplinary policies. In Claim 9, C.E. alleges that his federal due process rights were violated because his expulsion hearing was tainted by apparent and actual bias.

Because plaintiffs do not allege that they have exhausted administrative and judicial remedies, these claims will be dismissed. C.E. appealed his expulsion to the Alameda Board of Education, which upheld the BOE's expulsion decision. But C.E. admits that he "has pursued no further appeals or lawsuits in State Court related to his expulsion." Dkt. No. 112 at 17. The Ninth Circuit recently determined that the failure to exhaust judicial remedies precludes a Section 1983 claim in the circumstances of this case. *Doe v. Regents of the Univ. of California*, 891 F.3d 1147, 1154 (9th Cir. 2018). This court must "give preclusive effect to a state administrative decision if the California courts would do so. In California, ... [a] party must exhaust judicial remedies by filing a § 1094.5 petition, the exclusive and 'established process for judicial review' of an agency decision." *Id.* at 1155 (quoting *Johnson v. City of Loma Linda*, 24 Cal. 4th 61, 70 (2000)). A school's disciplinary decisions are precisely "the sort of

'adjudicatory, quasi-judicial decision' that is subject to the judicial exhaustion requirement." *Id.* (quoting *Y.K.A. Indus., Inc. v. Redev. Agency of San Jose*, 174 Cal. App. 4th 339, 361 (2009)).

***3** Shen and Chen do not allege that they appealed their suspensions to the Alameda Board of Education, and they appear to concede that they in fact did not appeal. Dkt. No. 134 at 5. Their claims are dismissed without prejudice because the time to file a writ appears to be open. *See Doe v. Regents of the Univ. of California Regents*, 891 F.3d at 1155. n.8.

C. Claim 5: Fourth Amendment

In Claim 5, Shen alleges that defendants violated the Fourth Amendment by: (1) forcing him to "march through the high school" and "line[ ] up in full view of all or most of the student body where the student body was allowed to hurl obscenities, scream profanities, and jeer at the Plaintiffs;" and (2) "lur[ing] [him] to a 'restorative justice session' while AUSD.... emailed the student body and the general public inciting a demonstration immediately outside.... [and] failed to provide any means of crowd control or protection." Dkt. No. 112 at 23-24. Shen alleges that he "had to escape in fear for [his] safety" and that he was "punched in the head and torso and sustained bruising and lacerations to his head and face" in the process. *Id.*

Shen has stated a plausible claim for unreasonable seizure. "It is clear that the Fourth Amendment applies in the school environment.... [and] extends to seizures by or at the direction of school officials." *Doe ex rel. Doe v. Hawaii Dep't of Educ.*, 334 F.3d 906, 908 (9th Cir. 2003). A seizure takes place "when there is a restraint on liberty to the degree that a reasonable person would not feel free to leave" and "violates the Fourth Amendment if it is objectively unreasonable under the circumstances. In applying the Fourth Amendment in the school context, the reasonableness of the seizure must be considered in light of the educational objectives [the school] was trying to achieve." *Id.* at 909 (internal citations omitted).

Shen says that defendants compelled him to parade through school while schoolmates shouted and verbally abused him, and "lured" him to a "restorative justice session" during which a crowd of protestors physically threatened and in fact injured him. The facts as alleged plausibly indicate that a reasonable student in Shen's position would not have felt free to disregard defendants' instructions, and that defendants' orchestration of these restorative justice events was objectively unreasonable under the circumstances. Dismissal is denied.

D. Claim 7: Substantive Due Process

Claim 7 relies on many of the same factual allegations as Claim 5. Shen contends that AUSD violated his federal substantive due process rights under a theory of "state-created danger." He adds that AUSD created "a dangerous situation by promoting the student demonstration, inciting the demonstrators with false stories of a 'noose,' notifying demonstrators when and where Plaintiffs were participating in a restorative justice section [sic], then failing to protect the Plaintiffs' identities and their safety." Dkt. No. 112 at 26.

It is well-established that state officials may be liable under the Fourteenth Amendment's substantive due process clause "in a variety of circumstances, for their roles in creating or exposing individuals to danger they otherwise would not have faced." *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1062 (9th Cir. 2006). Recently, our circuit found that attendees of a Trump political rally stated a plausible substantive due process claim for state-created danger where San Jose police officers allegedly "directed them into [a] mob of violent [anti-Trump] protestors" and "were beaten, victimized by theft, and/or had objects such as bottles and eggs thrown at them" as a result. *Hernandez v. City of San Jose*, 897 F.3d 1125, ——, 2018 WL 3597324, at *2 (internal quotations and modifications omitted).

***4** Like the plaintiffs in *Hernandez*, Shen states a plausible substantive due process claim by alleging that defendants acted with deliberate indifference, and possibly even malice, in exposing him to danger he would not have otherwise faced by riling up the community, publishing the time and location of the restorative justice meeting, and failing to protect him from demonstrators who became physically violent and struck him. Dismissal is denied.

II. The California Constitutional Claims

Claims 2, 4, 6, 8, and 10 are predicated on the same factual allegations and legal theories as Claims 1, 3, 5, 7, 9,

restated under the California state constitution. Claim 2 is dismissed with prejudice for the same reasons that Claim 1 is dismissed with prejudice: the Court found on summary judgment that the District did not violate Shen's, Chen's, or C.E.'s federal or state free speech rights by disciplining them. Claims 4 (federal Claim 3) and 10 (federal Claim 9) are dismissed for the same reason of failure to allege exhaustion of administrative and judicial remedies.

Claim 6 is based on the same factual allegations as Claim 5 (the Fourth Amendment claim), and invokes Article I, Section 7(a) of the California Constitution, which provides, "A person may not be deprived of life, liberty, or property without due process of law." Section 7(a) appears ill-suited to support an unreasonable seizure theory. Unreasonable seizures are covered by Section 13 of the California constitution. Section 7(a) on its face protects against the deprivation of liberty without due process of law, and the Ninth Circuit has cautioned that school-related claims for excessive force are appropriately brought as Fourth Amendment claims and not as substantive due process claims. *Doe ex rel. Doe v. Hawaii Dep't of Educ.*, 334 F.3d at 908-09. Claim 6 is dismissed without prejudice.

Claim 8 is based on the same factual allegations as Claim 7 (the claim for substantive due process), and also invokes Section 7(a). Defendants argue that Section 7(a) does not support an action for money damages under the facts alleged. In *Katzberg v. Regents of Univ. of California*, 29 Cal. 4th 300, 317-18 (2002), the California Supreme Court determined that Section 7(a) neither affirmatively authorizes nor affirmatively forecloses a damages action. Whether a plaintiff can recover money damages under Section 7(a) turns on "the 'constitutional tort' analysis adopted by *Bivens* and its progeny." *Id.* at 317. That inquiry looks to "whether an adequate remedy exists, the extent to which a constitutional tort action would change established tort law, and the nature and significance of the constitutional provision," as well as "the existence of any special factors counseling hesitation in recognizing a damages action, including deference to legislative judgment, avoidance of adverse policy consequences, considerations of government fiscal policy, practical issues of proof, and the competence of courts to assess particular types of damages." *Id.*

As this language indicates, the analysis under *Katzberg* is a complicated issue. Defendants have not done it justice by making what is effectively a passing reference to it in their briefs, and the Court declines to take it up in that underdeveloped form. If warranted, defendants may this argument again on a subsequent occasion.

III. Common Law Claims

Claims 11 through 16 allege common law claims for negligence, negligent supervision, intentional infliction of emotional distress, false arrest/false imprisonment, negligent training and supervision, and negligent infliction of emotional distress.

***5** To the extent that these claims seek to impose direct liability on the public entity defendants (the District and the BOE), they must be dismissed because they do not specify any applicable statutory or constitutional duties. Under the California Torts Claim act, "A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person," except as provided by statute. Cal. Gov't Code § 815.

To the extent that these claims allege vicarious liability for the public entity defendants, or direct liability for the individual defendants, they are subject to dismissal because plaintiffs fail to show that their causes of action "lie[ ] outside the breadth of any applicable statutory immunity." *Keyes v. Santa Clara Valley Water Dist.*, 128 Cal. App. 3d 882, 886 (Ct. App. 1982). The individual defendants' direct liability and the public entity defendants' vicarious liability turns on whether the individual defendants' actions were discretionary or not. *See* Cal. Gov't Code § 815.2 ("A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative," but "[e]xcept as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability"); Cal. Gov't Code § 820.2 ("Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him,

whether or not such discretion be abused"). Section 820.2 "protects 'basic policy decisions,' but does not protect 'operational' or 'ministerial' decisions that merely implement a basic policy decision." *Martinez v. City of Los Angeles*, 141 F.3d 1373, 1379 (9th Cir. 1998) (quoting *Johnson v. State of California*, 69 Cal.2d 782, 796 (1968)). Nowhere in the pleadings or the papers do either of the parties discuss whether individual defendants' actions were discretionary or not for purposes of Section 820.2. *Compare with Giraldo v. Dep't of Corr. & Rehab.*, 168 Cal. App. 4th 231, 240 (2008) (prisoner plaintiff alleged correctional officers were performing non-discretionary, ministerial functions under Section 820.2).

Because claims 11 through 16 are predicated only on non-statutory and non-constitutional duties, and because plaintiffs do not allege that individual defendants' actions were merely "operational" or "ministerial" in nature for purposes of Section 820.2, they are dismissed with leave to amend.

Claim 17 is dismissed with prejudice pursuant to the parties' stipulation. Dkt. No. 175.

CONCLUSION

These claims are dismissed with prejudice: 1, 2, and 17. These claims are dismissed with leave to amend: 3, 4, 6, 9, 10, 11-16. Dismissal is denied for these claims: 5 and 7, only to the extent that Claims 5 and 7 are alleged against the individual defendants in their personal capacities, and 8. An amended complaint is due by **September 14, 2018**. Failure to amend by that date will result in dismissal with prejudice under Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

All Citations

Slip Copy, 2018 WL 4053482

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Case Law

KeyCite Yellow Flag - Negative Treatment
Declined to Extend by Morse v. Frederick, U.S., June 25, 2007

89 S.Ct. 733
Supreme Court of the United States

John F. TINKER and Mary Beth Tinker, Minors, etc., et al., Petitioners,
v.
DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT et al.

No. 21.
|
Argued Nov. 12, 1968.
|
Decided Feb. 24, 1969.

Synopsis

Action against school district, its board of directors and certain administrative officials and teachers to recover nominal damages and obtain an injunction against enforcement of a regulation promulgated by principals of schools prohibiting wearing of black armbands by students while on school facilities. The United States District Court for the Southern District of Iowa, Central Division, 258 F.Supp. 971, dismissed complaint and plaintiffs appealed. The Court of Appeals for the Eighth Circuit, 383 F.2d 988, considered the case en banc and affirmed without opinion when it was equally divided and certiorari was granted. The United States Supreme Court, Mr. Justice Fortas, held that, in absence of demonstration of any facts which might reasonably have led school authorities to forecast substantial disruption of, or material interference with, school activities or any showing that disturbances or disorders on school premises in fact occurred when students wore black armbands on their sleeves to exhibit their disapproval of Vietnam hostilities, regulation prohibiting wearing armbands to schools and providing for suspension of any student refusing to remove such was an unconstitutional denial of students' right of expression of opinion.

Reversed and remanded.

Mr. Justice Black and Mr. Justice Harlan dissented.

West Headnotes (20)

[1] **Constitutional Law**
Symbolic speech

Wearing of armband for purpose of expressing certain views is type of symbolic act that is within free speech clause of First Amendment. U.S.C.A.Const. Amend. 1.

203 Cases that cite this headnote

[2] **Constitutional Law**
Freedom of Speech, Expression, and Press

Pure speech is entitled to comprehensive protection under the First Amendment. U.S.C.A.Const. Amend. 1.

48 Cases that cite this headnote

[3] **Constitutional Law**
Student Speech or Conduct

Constitutional Law
Employees

First Amendment rights, applied in light of special characteristics of school environment, are available to teachers and students. U.S.C.A.Const. Amend. 1.

319 Cases that cite this headnote

[4] **Constitutional Law**
Student Speech or Conduct

Constitutional Law
Employees

Neither students nor teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. U.S.C.A.Const. Amend. 1.

415 Cases that cite this headnote

[5] **Education**
Control and Discipline

State and school authorities have comprehensive authority, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools.

73 Cases that cite this headnote

[6] **Constitutional Law**
Disorderly conduct

Undifferentiated fear or apprehension of disturbance is not enough to overcome right to freedom of expression. U.S.C.A.Const. Amend. 1.

142 Cases that cite this headnote

[7] **Constitutional Law**
Education

In order for the state, in person of school officials, to justify prohibition of particular expression of opinion, it must be able to show that its action was caused by something more than mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. U.S.C.A.Const. Amend. 1.

91 Cases that cite this headnote

[8] **Constitutional Law**
Disruption, disturbance, or interference in general

Education
Speech and assembly;demonstrations

Where there is no finding and no showing that exercise of forbidden right of expression of opinion would materially and substantially interfere with requirements of appropriate discipline in operation of school, the prohibition cannot be sustained. U.S.C.A.Const. Amend. 1.

282 Cases that cite this headnote

[9] **Constitutional Law**
Disruption, disturbance, or interference in general

Prohibition by school authorities of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with school work or discipline, is not constitutionally permissible. U.S.C.A.Const. Amend. 1.

96 Cases that cite this headnote

[10] **Education**
Authority in general

School officials do not possess absolute authority over their students.

18 Cases that cite this headnote

[11] **Education**
Reasonableness and validity in general

Students in school as well as out of school are "persons" under Constitution and are possessed of fundamental rights which state must respect, just as they themselves must respect their obligations to the state.

50 Cases that cite this headnote

[12] **Constitutional Law**
Student Speech or Conduct

Students may not be regarded as closed-circuit recipients of only that which state chooses to communicate, and they may not be confined to expression of those sentiments that are officially approved. U.S.C.A.Const. Amend. 1.

54 Cases that cite this headnote

[13] **Constitutional Law**
Student Speech or Conduct

In absence of specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. U.S.C.A.Const. Amend. 1.

47 Cases that cite this headnote

[14] **Constitutional Law**
Education

School officials cannot suppress expressions of feelings with which they do not wish to contend. U.S.C.A.Const. Amend. 1.

4 Cases that cite this headnote

[15] **Education**
Control and Use in General

School is "public place" and its dedication to specific uses does not imply that constitutional rights of persons entitled to be there are to be gauged as if premises were purely private property.

30 Cases that cite this headnote

[16] **Constitutional Law**
Student Speech or Conduct

Student's right to express opinion does not embrace merely classroom hours and when he is in cafeteria, on playing field, or on campus during authorized hours, he may express his opinions, even on controversial subject like conflict in Vietnam, if he does so without materially and substantially interfering with appropriate discipline in operation of the school and without colliding with rights of others. U.S.C.A.Const. Amend. 1.

415 Cases that cite this headnote

[17] **Constitutional Law**
Disruption, disturbance, or interference in general

Conduct by 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 rights of others is not immunized by constitutional guaranty of freedom of speech. U.S.C.A.Const. Amend. 1.

289 Cases that cite this headnote

[18] **Constitutional Law**
Freedom of Speech, Expression, and Press

Under Constitution, free speech is not right that is given only to be so circumscribed that it exists in principle but not in fact. U.S.C.A.Const. Amend. 1.

4 Cases that cite this headnote

[19] **Constitutional Law**
Reasonableness

Constitutional prohibition against abridgment of right to free speech by Congress and states permits reasonable regulation of speech-connected activities in carefully restricted circumstances. U.S.C.A.Const. Amend. 1.

29 Cases that cite this headnote

[20] **Constitutional Law**
Dress and grooming

In absence of demonstration of any facts which might reasonably have led school authorities to forecast substantial disruption of, or material interference with, school activities or any showing that disturbances or disorders on school premises in fact occurred when students wore on their sleeves black armbands to exhibit their disapproval of Vietnam hostilities, regulation, adopted by school principals, prohibiting wearing armbands in schools and providing for suspension of any student refusing to remove such was an unconstitutional denial of students' right of expression of opinion. U.S.C.A.Const. Amends. 1, 14; 42 U.S.C.A. § 1983.

467 Cases that cite this headnote

Attorneys and Law Firms

****735** ***503** Dan Johnston, Des Moines, Iowa, for petitioners.

Allan A. Herrick, Des Moines, Iowa, for respondents.

Opinion

***504** Mr. Justice FORTAS delivered the opinion of the Court.

Petitioner John F. Tinker, 15 years old, and petitioner Christopher Eckhardt, 16 years old, attended high schools in Des Moines, Iowa. Petitioner Mary Beth Tinker, John's sister, was a 13-year-old student in junior high school.

In December 1965, a group of adults and students in Des Moines held a meeting at the Eckhardt home. The group determined to publicize their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands during the holiday season and by fasting on December 16 and New Year's Eve. Petitioners and their parents had previously engaged in similar activities, and they decided to participate in the program.

The principals of the Des Moines schools became aware of the plan to wear armbands. On December 14, 1965, they met and adopted a policy that any student wearing an armband to school would be asked to remove it, and if he refused he would be suspended until he returned without the armband. Petitioners were aware of the regulation that the school authorities adopted.

On December 16, Mary Beth and Christopher wore black armbands to their schools. John Tinker wore his armband the next day. They were all sent home and suspended from school until they would come back without their armbands. They did not return to school until after the planned period for wearing armbands had expired—that is, until after New Year's Day.

This complaint was filed in the United States District Court by petitioners, through their fathers, under s 1983 of Title 42 of the United States Code. It prayed for an injunction restraining the respondent school officials and the respondent members of the board of directors of the school district from disciplining the petitioners, and it sought nominal damages. After an evidentiary hearing the District Court dismissed the complaint. It upheld ***505** the constitutionality of the school authorities' action on the ground that it was reasonable in order to prevent disturbance of school disipline. 258 F.Supp. 971 (1966). The court referred to but expressly declined to follow the Fifth Circuit's holding in a similar case that the wearing of symbols like the armbands cannot be prohibited unless it 'materially and substantially interfere(s) with the requirements of appropriate discipline in the operation of the school.' Burnside v. Byars, 363 F.2d 744, 749 (1966). [1]

On appeal, the Court of Appeals for the Eighth Circuit considered the case en banc. The court was equally divided, and the District Court's decision was accordingly affirmed, without opinion, 383 F.2d 988 (1967). We granted certiorari. 390 U.S. 942, 88 S.Ct. 1050, 19 L.Ed.2d 1130 (1968).

****736 I.**

[1] **[2]** The District Court recognized that the wearing of an armband for the purpose of expressing certain views is the type of symbolic act that is within the Free Speech Clause of the First Amendment. See West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943); Stromberg v. California, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 (1931). Cf. Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940); Edwards v. South Carolina, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697 (1963); Brown v. Louisiana, 383 U.S. 131, 86 S.Ct. 719, 15 L.Ed.2d 637 (1966). As we shall discuss, the wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to 'pure speech' ***506** which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment. Cf. Cox v. Louisiana, 379 U.S. 536, 555, 85 S.Ct. 453, 464, 13 L.Ed.2d 471 (1965); Adderley v. Florida, 385 U.S. 39, 87 S.Ct. 242, 17 L.Ed.2d 149 (1966).

[3] **[4]** First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years. In Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923), and Bartels v. Iowa, 262 U.S. 404, 43 S.Ct. 628, 67

L.Ed. 1047 (1923), this Court, in opinions by Mr. Justice McReynolds, held that the Due Process Clause of the Fourteenth Amendment prevents States from forbidding the teaching of a foreign language to young students. Statutes to this effect, the Court held, unconstitutionally interfere with the liberty of teacher, student, and parent. [2]

See also ***507** Pierce v. Society of Sisters, etc., 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925); West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943); Illinois ex rel. McCollum v. Board of Education of School Dist. No. 71, 333 U.S. 203, 68 S.Ct. 461, 92 L.Ed. 649 (1948); Wieman v. Updegraff, 344 U.S. 183, 195, 73 S.Ct. 215, 220, 97 L.Ed. 216 (1952) (concurring opinion); Sweezy v. New Hampshire, 354 U.S. 234, 77 S.Ct. 1203, 1 L.Ed.2d 1311 (1957); Shelton v. Tucker, 364 U.S. 479, 487, 81 S.Ct. 247, 251, 5 L.Ed.2d 231 (1960); Engel v. Vitale, 370 U.S. 421, 82 S.Ct. 1261, 8 L.Ed.2d 601 (1962); Keyishian v. Board of Regents, 385 U.S. 589, 603, 87 S.Ct. 675, 683, 17 L.Ed.2d 629 (1967); Epperson v. Arkansas, 393 U.S. 97, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968).

****737** **[5]** In West Virginia State Board of Education v. Barnette, supra, this Court held that under the First Amendment, the student in public school may not be compelled to salute the flag. Speaking through Mr. Justice Jackson, the Court said:

'The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.' 319 U.S., at 637, 63 S.Ct. at 1185.

On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools. See Epperson v. Arkansas, supra, 393 U.S. at 104, 89 S.Ct. at 270; Meyer v. Nebraska, supra, 262 U.S. at 402, 43 S.Ct. at 627. Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities.

II.

The problem posed by the present case does not relate to regulation of the length of skirts or the type of clothing, ***508** to hair style, or deportment. Cf. Ferrell v. Dallas Independent School District, 392 F.2d 697 (C.A.5th Cir. 1968); Pugsley v. Sellmeyer, 158 Ark. 247, 250 S.W. 538, 30 A.L.R. 1212 (1923). It does not concern aggressive, disruptive action or even group demonstrations. Our problem involves direct, primary First Amendment rights akin to 'pure speech.'

The school officials banned and sought to punish petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. There is here no evidence whatever of petitioners' interference, actual or nascent, with the schools' work or of collision with the rights of other students to be secure and to be let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the schools or the rights of other students.

Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them. There is no indication that the work of the schools or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises.

[6] The District Court concluded that the action of the school authorities was reasonable because it was based upon their fear of a disturbance from the wearing of the armbands. But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an

argument or cause a disturbance. But our Constitution says we must take this risk, Terminiello v. Chicago, 337 U.S. 1, 69 S.Ct. 894, 93 L.Ed. 1131 (1949); and our history says that it is this sort of hazardous freedom—this kind of openness—that is ***509** the basis of our national strength and of the independence and vigor of Americans ****738** who grow up and live in this relatively permissive, often disputatious, society.

[7] **[8]** In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would 'materially and substantially interfere with the requirements of appropriate discipline in the operation of the school,' the prohibition cannot be sustained. Burnside v. Byars, supra, 363 F.2d at 749.

In the present case, the District Court made no such finding, and our independent examination of the record fails to yield evidence that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students. Even an official memorandum prepared after the suspension that listed the reasons for the ban on wearing the armbands made no reference to the anticipation of such disruption.[3]

***510** On the contrary, the action of the school authorities appears to have been based upon an urgent wish to avoid the controversy which might result from the expression, even by the silent symbol of armbands, of opposition to this Nation's part in the conflagration in Vietnam.[4] It is revealing, in this respect, that the meeting at which the school principals decided to issue the contested regulation was called in response to a student's statement to the journalism teacher in one of the schools that he wanted to write an article on Vietnam and have it published in the school paper. (The student was dissuaded.[5])

[9] It is also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance. The record shows that students in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron Cross, traditionally a symbol of Nazism. The order prohibiting the wearing ****739** of armbands did not extend to these. Instead, a particular symbol—black armbands worn to exhibit opposition to this Nation's involvement ***511** in Vietnam—was singled out for prohibition. Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible.

[10] **[11]** **[12]** **[13]** **[14]** 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 are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. As Judge Gewin, speaking for the Fifth Circuit, said, school officials cannot suppress 'expressions of feelings with which they do not wish to contend.' Burnside v. Byars, supra, 363 F.2d at 749.

In Meyer v. Nebraska, supra, 262 U.S. at 402, 43 S.Ct. at 627, Mr. Justice McReynolds expressed this Nation's repudiation of the principle that a State might so conduct its schools as to 'foster a homogeneous people.' He said:

> 'In order to submerge the individual and develop ideal citizens, Sparta assembled the males at seven into barracks and intrusted their subsequent education and training to official guardians. Although such measures have been deliberately approved by men of great genius, their ideas touching the relation between individual and State were wholly different from those upon which our institutions rest; and it hardly will be

> affirmed that any Legislature could impose such restrictions upon the people of a *512 state without doing violence to both letter and spirit of the Constitution.'

This principle has been repeated by this Court of numerous occasions during the intervening years. In Keyishian v. Board of Regents, 385 U.S. 589, 603, 87 S.Ct. 675, 683, 17 L.Ed.2d 629, Mr. Justice Brennan, speaking for the Court, said:
"The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.' Shelton v. Tucker, (364 U.S. 479), at 487 (81 S.Ct. 247, 5 L.Ed.2d 231). The classroom is peculiarly the 'marketplace of ideas.' The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, (rather) than through any kind of authoritative selection."

[15] [16] [17] The principle of these cases is not confined to the supervised and ordained discussion which takes place in the classroom. The principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students.[6] This is not only an inevitable **740 part of the process of attending school; it is also an important part of the educational process. A student's rights, therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on *513 the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if 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. Burnside v. Byars, supra, 363 F.2d at 749. But conduct 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. Cf. Blackwell v. Issaquena County Board of Education, 363 F.2d 749 (C.A.5th Cir. 1966).

[18] [19] Under our Constitution, free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact. Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots. The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says. We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances. But we do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom.

If a regulation were adopted by school officials forbidding discussion of the Vietnam conflict, or the expression by any student of opposition to it anywhere on school property except as part of a prescribed classroom exercise, it would be obvious that the regulation would violate the constitutional rights of students, at least if it could not be justified by a showing that the students' activities would materially and substantially disrupt the work and discipline of the school. Cf. *514 Hammond v. South Carolina State College, 272 F.Supp. 947 (D.C.S.C.1967) (orderly protest meeting on state college campus); Dickey v. Alabama State Board of Education, 273 F.Supp. 613 (D.C.M.D.Ala.1967) (expulsion of student editor of college newspaper). In the circumstances of the present case, the prohibition of the silent, passive 'witness of the armbands,' as one of the children called it, is no less offensive to the constitution's guarantees.

[20] As we have discussed, the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred. These petitioners merely went about their ordained rounds in school. Their deviation consisted only in wearing on their sleeve a band of black cloth, not more than two inches wide. They wore it to exhibit their disapproval of the Vietnam hostilities and their advocacy of a truce, to make their views known, and, by their example, to influence others to adopt them. They neither interrupted school activities nor sought to intrude in the

school affairs or the lives of others. They caused discussion outside of the classrooms, but no interference with work and no disorder. In the circumstances, our Constitution does not permit officials of the State to deny their form of expression.

**741 We express no opinion as to the form of relief which should be granted, this being a matter for the lower courts to determine. We reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.

Mr. Justice STEWART, concurring.

Although I agree with much of what is said in the Court's opinion, and with its judgment in this case, I *515 cannot share the Court's uncritical assumption that, school discipline aside, the First Amendment rights of children are co-extensive with those of adults. Indeed, I had thought the Court decided otherwise just last Term in Ginsberg v. New York, 390 U.S. 629, 88 S.Ct. 1274, 20 L.Ed.2d 195. I continue to hold the view I expressed in that case: '(A) State may permissibly determine that, at least in some precisely delineated areas, a child—like someone in a captive audience—is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees.' Id., at 649—650, 88 S.Ct. at 1285—1286 (concurring in result.) Cf. Prince v. Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645.

Mr. Justice WHITE, concurring.

While I join the Court's opinion, I deem it appropriate to note, first, that the Court continues to recognize a distinction between communicating by words and communicating by acts or conduct which sufficiently impinges on some valid state interest; and, second, that I do not subscribe to everything the Court of Appeals said about free speech in its opinion in Burnside v. Byars, 363 F.2d 744, 748 (C.A.5th Cir. 1966), a case relied upon by the Court in the matter now before us.

Mr. Justice BLACK, dissenting.

The Court's holding in this case ushers in what I deem to be an entirely new era in which the power to control pupils by the elected 'officials of state supported public schools * * *' in the United States is in ultimate effect transferred to the Supreme Court.[1] The Court brought *516 this particular case here on a petition for certiorari urging that the First and Fourteenth Amendments protect the right of school pupils to express their political views all the way 'from kindergarten through high school.' Here the constitutional right to 'political expression' asserted was a right to wear black armbands during school hours and at classes in order to demonstrate to the other students that the petitioners were mourning because of the death of United States soldiers in Vietnam and to protest that war which they were against. Ordered to refrain from wearing the armbands in school by the elected school officials and the teachers vested with state authority to do so, apparently only seven out of the school system's 18,000 pupils deliberately refused to obey the order. One defying pupil was Paul Tinker, 8 years old, who was in the second grade; another, Hope Tinker, was 11 years old and in the fifth grade; a third member of the Tinker family was 13, in the eighth grade; and a fourth member of the same family was John Tinker, 15 years old, an 11th grade high school pupil. Their father, a Methodist minister without a church, is paid a salary by the American Friends Service Committee. Another student who defied the school order and insisted on wearing an armband in school was Christopher Eckhardt, an 11th grade pupil and a petitioner in this case. His mother is an official in the Women's International League for Peace and Freedom.

As I read the Court's opinion it relies upon the following grounds for holding **742 unconstitutional the judgment of the Des Moines school officials and the two courts below. First, the Court concludes that the wearing of armbands is 'symbolic speech' which is 'akin to 'pure speech" and therefore protected by the First and Fourteenth Amendments. Secondly, the Court decides that the public schools are an appropriate place to exercise 'symbolic speech' as long as normal school functions *517 are not 'unreasonably' disrupted. Finally, the Court arrogates to itself, rather than to the State's elected officials charged with running the schools, the decision as to which school disciplinary regulations are 'reasonable.'

Assuming that the Court is correct in holding that the conduct of wearing armbands for the purpose of conveying political ideas is protected by the First Amendment, cf., e.g., Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 69 S.Ct. 684, 93 L.Ed. 834 (1949), the crucial remaining questions are whether students and

teachers may use the schools at their whim as a platform for the exercise of free speech—'symbolic' or 'pure'—and whether the courts will allocate to themselves the function of deciding how the pupils' school day will be spent. While I have always believed that under the First and Fourteenth Amendments neither the State nor the Federal Government has any authority to regulate or censor the content of speech, I have never believed that any person has a right to give speeches or engage in demonstrations where he pleased and when he pleases. This Court has already rejected such a notion. In Cox v. Louisiana, 379 U.S. 536, 554, 85 S.Ct. 453, 464, 13 L.Ed.2d 471 (1965), for example, the Court clearly stated that the rights of free speech and assembly 'do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time.'

While the record does not show that any of these armband students shouted, used profane language, or were violent in any manner, detailed testimony by some of them shows their armbands caused comments, warnings by other students, the poking of fun at them, and a warning by an older football player that other, nonprotesting students had better let them alone. There is also evidence that a teacher of mathematics had his lesson period practically 'wrecked' chiefly by disputes with Mary Beth Tinker, who wore her armband for her 'demonstration.' ***518** Even a casual reading of the record shows that this armband did divert students' minds from their regular lessons, and that talk, comments, etc., made John Tinker 'self-conscious' in attending school with his armband. While the absence of obscene remarks or boisterous and loud disorder perhaps justifies the Court's statement that the few armband students did not actually 'disrupt' the classwork, I think the record overwhelmingly shows that the armbands did exactly what the elected school officials and principals foresaw they would, that is, took the students' minds off their classwork and diverted them to thoughts about the highly emotional subject of the Vietnam war. And I repeat that if the time has come when pupils of state-supported schools, kindergartens, grammar schools, or high schools, can defy and flout orders of school officials to keep their minds on their own schoolwork, it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary. The next logical step, it appears to me, would be to hold unconstitutional laws that bar pupils under 21 or 18 from voting, or from being elected members of the boards of education. [2]

The United States District Court refused to hold that the state school order violated the First and Fourteenth Amendments. 258 F.Supp. 971. Holding that the protest was akin to speech, ****743** which is protected by the First ***519** and Fourteenth Amendments, that court held that the school order was 'reasonable' and hence constitutional. There was at one time a line of cases holding 'reasonableness' as the court saw it to be the test of a 'due process' violation. Two cases upon which the Court today heavily relies for striking down this school order used this test of reasonableness, Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923), and Bartels v. Iowa, 262 U.S. 404, 43 S.Ct. 628, 67 L.Ed. 1047 (1923). The opinions in both cases were written by Mr. Justice McReynolds; Mr. Justice Holmes, who opposed this reasonableness test, dissented from the holdings as did Mr. Justice Sutherland. This constitutional test of reasonableness prevailed in this Court for a season. It was this test that brought on President Franklin Roosevelt's well-known Court fight. His proposed legislation did not pass, but the fight left the 'reasonableness' constitutional test dead on the battlefield, so much so that this Court in Ferguson v. Skrupa, 372 U.S. 726, 729, 730, 83 S.Ct. 1028, 1030—1031, 10 L.Ed.2d 93, after a thorough review of the old cases, was able to conclude in 1963:

'There was a time when the Due Process Clause was used by this Court to strike down laws which were thought unreasonable, that is, unwise or incompatible with some particular economic or social philosophy.

* * * * * *

'The doctrine that prevailed in Lochner (Lochner v. New York, 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937), Coppage (Coppage v. Kansas, 236 U.S. 1, 35 S.Ct. 240, 59 L.Ed. 441), Adkins (Adkins v. Children's Hospital, 261 U.S. 525, 43 S.Ct. 394, 67 L.Ed. 785), Burns (Jay Burns Baking Co. v. Bryan, 264 U.S. 504, 44 S.Ct. 412, 68 L.Ed. 813), and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded.'

The Ferguson case totally repudiated the old reasonableness-due process test, the doctrine that judges

have the power to hold laws unconstitutional upon the belief of judges that they 'shock the conscience' or that they are *520 'unreasonable,' 'arbitrary,' 'irrational,' 'contrary to fundamental 'decency,'' or some other flexible term without precise bound-aries. I have many times expressed my opposition to that concept on the ground that it gives judges power to strike down any law they do not like. If the majority of the Court today, by agreeing to the opinion of my Brother FORTAS, is resurrecting that old reasonableness-due process test, I think the constitutional change should be plainly, unequivocally, and forthrightly stated for the benefit of the bench and bar. It will be a sad day for the country, I believe, when the present-day Court returns to the McReynolds due process concept. Other cases cited by the Court do not, as implied, follow the McReynolds reasonableness doctrine. West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S.Ct. 1178, 1179, 87 L.Ed. 1628, clearly rejecting the 'reasonableness' test, held that the Fourteenth Amendment made the First applicable to the States, and that the two forbade a State to compel little schoolchildren to salute the United States flag when they had religious scruples against doing so.[3] Neither **744 Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093; Stromberg v. California, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117; *521 Edwards v. South Carolina, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697; nor Brown v. Louisiana, 383 U.S. 131, 86 S.Ct. 719, 15 L.Ed.2d 637, related to schoolchildren at all, and none of these cases embraced Mr. Justice McReynolds' reasonableness test; and Thornhill, Edwards, and Brown relied on the vagueness of state statutes under scrutiny to hold them unconstitutional. Cox v. Louisiana, 379 U.S. 536, 555, 85 S.Ct. 453, 464, 13 L.Ed.2d 471, and Adderley v. Florida, 385 U.S. 39, 87 S.Ct. 242, 17 L.Ed.2d 149, cited by the Court as a 'compare,' indicating, I suppose, that these two cases are no longer the law, were not rested to the slightest extent on the Meyer and Bartels 'reasonableness-due process-McReynolds' constitutional test.

I deny, therefore, that it has been the 'unmistakable holding of this Court for almost 50 years' that 'students' and 'teachers' take with them into the 'schoolhouse gate' constitutional rights to 'freedom of speech or expression.' Even Meyer did not hold that. It makes no reference to 'symbolic speech' at all; what it did was to strike down as 'unreasonable' and therefore unconstitutional a Nebraska law barring the teaching of the German language before the children reached the eighth grade. One can well agree with Mr. Justice Holmes and Mr. Justice Sutherland, as I do, that such a law was no more unreasonable than it would be to bar the teaching of Latin and Greek to pupils who have not reached the eighth grade. In fact, I think the majority's reason for invalidating the Nebraska law was that it did not like it or in legal jargon that it 'shocked the Court's conscience,' 'offended its sense of justice, or' was 'contrary to fundamental concepts of the English-speaking world,' as the Court has sometimes said. See, e.g. Rochin v. California, 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed. 183, and Irvine v. California, 347 U.S. 128, 74 S.Ct. 381, 98 L.Ed. 561. The truth is that a teacher of kindergarten, grammar school, or high school pupils no more carries into a school with him a complete right to freedom of speech and expression than an anti-Catholic or anti-Semite carries with him a complete freedom of *522 speech and religion into a Catholic church or Jewish synagogue. Nor does a person carry with him into the United States Senate or House, or into the Supreme Court, or any other court, a complete constitutional right to go into those places contrary to their rules and speak his mind on any subject he pleases. It is a myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases. Our Court has decided precisely the opposite. See, e.g., Cox v. Louisiana, 379 U.S. 536, 555, 85 S.Ct. 453, 464, 13 L.Ed.2d 471; Adderley v. Florida, 385 U.S. 39, 87 S.Ct. 242, 17 L.Ed. 149.

In my view, teachers in state-controlled public schools are hired to teach there. Although Mr. Justice McReynolds may have intimated to the contrary in Meyer v. Nebraska, supra, certainly a teacher is not paid to go into school and teach **745 subjects the State does not hire him to teach as a part of its selected curriculum. Nor are public school students sent to the schools at public expense to broadcast political or any other views to educate and inform the public. The original idea of schools, which I do not believe is yet abandoned as worthless or not of date, was that children had not yet reached the point of experience and wisdom which enabled them to teach all of their elders. It may be that the Nation has outworn the old-fashioned

slogan that 'children are to be seen not heard,' but one may, I hope, be permitted to harbor the thought that taxpayers send children to school on the premise that at their age they need to learn, not teach.

The true principles on this whole subject were in my judgment spoken by Mr. Justice McKenna for the Court in Waugh v. Mississippi University in 237 U.S. 589, 596—597, 35 S.Ct. 720, 723, 59 L.Ed. 1131. The State had there passed a law barring students from peaceably assembling in Greek letter fraternities and providing that students who joined them could be expelled from school. This law would appear on the surface to run afoul of the First Amendment's ***523** freedom of assembly clause. The law was attacked as violative of due process and of the privileges and immunities clause and as a deprivation of property and of liberty, under the Fourteenth Amendment. It was argued that the fraternity made its members more moral, taught discipline, and inspired its members to study harder and to obey better the rules of discipline and order. This Court rejected all the 'fervid' pleas of the fraternities' advocates and decided unanimously against these Fourteenth Amendment arguments. The Court in its next to the last paragraph made this statement which has complete relevance for us today:

'It is said that the fraternity to which complainant belongs is a moral and of itself a disciplinary force. This need not be denied. But whether such membership makes against discipline was for the State of Mississippi to determine. It is to be remembered that the University was established by the state and is under the control of the state, and the enactment of the statute may have been induced by the opinion that membership in the prohibited societies divided the attention of the students and distracted from that singleness of purpose which the State desired to exist in its public educational institutions. It is not for us to entertain conjectures in opposition to the views of the state and annul its regulations upon disputable considerations of their wisdom or necessity.' (Emphasis supplied.)

It was on the foregoing argument that this Court sustained the power of Mississippi to curtail the First Amendment's right of peaceable assembly. And the same reasons are equally applicable to curtailing in the States' public schools the right to complete freedom of expression. Iowa's public schools, like Mississippi's university, are operated to give students an opportunity to learn, not to talk politics by actual speech, or by 'symbolic' ***524** speech. And, as I have pointed out before, the record amply shows that public protest in the school classes against the Vietnam war 'distracted from that singleness of purpose which the state (here Iowa) desired to exist in its public educational institutions.' Here the Court should accord Iowa educational institutions the same right to determine for themselves to what extent free expression should be allowed in its schools as it accorded Mississippi with reference to freedom of assembly. But even if the record were silent as to protests against the Vietnam war distracting students from their assigned class work, members of this Court, like all other citizens, know, without being told, that the disputes over the wisdom of the Vietnam war have disrupted and divided this country as few ****746** other issues over have. Of course students, like other people, cannot concentrate on lesser issues when black armbands are being ostentatiously displayed in their presence to call attention to the wounded and dead of the war, some of the wounded and the dead being their friends and neighbors. It was, of course, to distract the attention of other students that some students insisted up to the very point of their own suspension from school that they were determined to sit in school with their symbolic armbands.

Change has been said to be truly the law of life but sometimes the old and the tried and true are worth holding. The schools of this Nation have undoubtedly contributed to giving us tranquility and to making us a more law-abiding people. Uncontrolled and uncontrollable liberty is an enemy to domestic peace. We cannot close our eyes to the fact that some of the country's greatest problems are crimes committed by the youth, too many of school age. School discipline, like parental discipline, is an integral and important part of training our children to be good citizens—to be better citizens. Here a very small number of students have crisply and summarily ***525** refused to obey a school order designed to give pupils who want to learn the opportunity to do so. One does not need to be a prophet or the son of a prophet to know that after the Court's holding today some students in Iowa schools and indeed in all schools will be ready, able, and willing to defy their teachers on practically all orders. This is the more unfortunate for the schools since groups of students all over the land are already running loose, conducting break-ins, sit-ins, lie-ins, and smash-ins. Many of these student groups, as is all too familiar to all who read the newspapers and watch the television news programs, have already engaged in rioting, property seizures, and destruction. They have picketed

schools to force students not to cross their picket lines and have too often violently attacked earnest but frightened students who wanted an education that the pickets did not want them to get. Students engaged in such activities are apparently confident that they know far more about how to operate public school systems than do their parents, teachers, and elected school officials. It is no answer to say that the particular students here have not yet reached such high points in their demands to attend classes in order to exercise their political pressures. Turned loose with lawsuits for damages and injunctions against their teachers as they are here, it is nothing but wishful thinking to imagine that young, immature students will not soon believe it is their right to control the schools rather than the right of the States that collect the taxes to hire the teachers for the benefit of the pupils. This case, therefore, wholly without constitutional reasons in my judgment, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students. I, for one, am not fully persuaded that school pupils are wise enough, even with this Court's expert help from Washington, to run the 23,390 public school ***526** systems[4] in our 50 States. I wish, therefore, wholly to disclaim any purpose on my part to hold that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students. I dissent.

Mr. Justice HARLAN, dissenting.

I certainly agree that state public school authorities in the discharge of their responsibilities are not wholly exempt from the requirements of the Fourteenth Amendment respecting the freedoms of expression and association. At the same time I am reluctant to believe that there is any disagreement between the majority and myself on the proposition ****747** that school officials should be accorded the widest authority in maintaining discipline and good order in their institutions. To translate that proposition into a workable constitutional rule, I would, in cases like this, cast upon those complaining the burden of showing that a particular school measure was motivated by other than legitimate school concerns—for example, a desire to prohibit the expression of an unpopular point of view, while permitting expression of the dominant opinion.

Finding nothing in this record which impugns the good faith of respondents in promulgating the armband regulation, I would affirm the judgment below.

All Citations

393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731, 49 O.O.2d 222

Footnotes

1 In Burnside, the Fifth Circuit ordered that high school authorities be enjoined from enforcing a regulation forbidding students to wear 'freedom buttons.' It is instructive that in Blackwell v. Issaquena County Board of Education, 363 F.2d 749 (1966), the same panel on the same day reached the opposite result on different facts. It declined to enjoin enforcement of such a regulation in another high school where the students wearing freedom buttons harassed students who did not wear them and created much disturbance.

2 Hamilton v. Regents of University of California, 293 U.S. 245, 55 S.Ct. 197, 79 L.Ed. 343 (1934), is sometimes cited for the broad proposition that the State may attach conditions to attendance at a state university that require individuals to violate their religious convictions. The case involved dismissal of members of a religious denomination from a land grant college for refusal to participate in military training. Narrowly viewed, the case turns upon the Court's conclusion that merely requiring a student to participate in school training in military 'science' could not conflict with his constitutionally protected freedom of conscience. The decision cannot be taken as establishing that the State may impose and enforce any conditions that it chooses upon attendance at public institutions of learning, however violative they may be of fundamental constitutional guarantees. See, e.g., West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943); Dixon v. Alabama State Board of Education, 294 F.2d 150 (C.A.5th Cir. 1961); Knight v. State Board of Education, 200 F.Supp. 174 (D.C.M.D.Tenn.1961); Dickey v. Alabama State Board of Education, 273 F.Supp. 613 (D.C.M.D.Ala.1967). See also Note, Unconstitutional Conditions, 73 Harv.L.Rev. 1595 (1960); Note, Academic Freedom, 81 Harv.L.Rev. 1045 (1968).

3 The only suggestions of fear of disorder in the report are these:

'A former student of one of our high schools was killed in Viet Nam. Some of his friends are still in school and it was felt that if any kind of a demonstration existed, it might evolve into something which would be difficult to control.'
'Students at one of the high schools were heard to say they would wear arm bands of other colors if the black bands prevailed.'
Moreover, the testimony of school authorities at trial indicates that it was not fear of disruption that motivated the regulation prohibiting the armbands; and regulation was directed against 'the principle of the demonstration' itself. School authorities simply felt that 'the schools are no place for demonstrations,' and if the students 'didn't like the way our elected officials were handling things, it should be handled with the ballot box and not in the halls of our public schools.'

4 The District Court found that the school authorities, in prohibiting black armbands, were influenced by the fact that '(t)he Viet Nam war and the involvement of the United States therein has been the subject of a major controversy for some time. When the arm band regulation involved herein was promulgated, debate over the Viet Nam war had become vehement in many localities. A protest march against the war had been recently held in Washington, D.C. A wave of draft card burning incidents protesting the war had swept the country. At that time two highly publicized draft card burning cases were pending in this Court. Both individuals supporting the war and those opposing it were quite vocal in expressing their views.' 258 F.Supp., at 972—973.

5 After the principals' meeting, the director of secondary education and the principal of the high school informed the student that the principals were opposed to publication of his article. They reported that 'we felt that it was a very friendly conversation, although we did not feel that we had convinced the student that our decision was a just one.'

6 In Hammond v. South Carolina State College, 272 F.Supp. 947 (D.C.S.C.1967), District Judge Hemphill had before him a case involving a meeting on campus of 300 students to express their views on school practices. He pointed out that a school is not like a hospital or a jail enclosure. Cf. Cox v. Louisiana, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965); Adderley v. Florida, 385 U.S. 39, 87 S.Ct. 242, 17 L.Ed.2d 149 (1966). It is a public place, and its dedication to specific uses does not imply that the constitutional rights of persons entitled to be there are to be gauged as if the premises were purely private property. Cf. Edwards v. South Carolina, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697 (1963); Brown v. Louisiana, 383 U.S. 131, 86 S.Ct. 719, 15 L.Ed.2d 637 (1966).

1 The petition for certiorari here presented this single question:
'Whether the First and Fourteenth Amendments permit officials of state supported public schools to prohibit students from wearing symbols of political views within school premises where the symbols are not disruptive of school discipline or decorum.'

2 The following Associated Press article appeared in the Washington Evening Star, January 11, 1969, p. A—2, col. 1:
'BELLINGHAM, Mass. (AP)—Todd R. Hennessy, 16, has filed nominating papers to run for town park commissioner in the March election.
"I can see nothing illegal in the youth's seeking the elective office,' said Lee Ambler, the town counsel. 'But I can't overlook the possibility that if he is elected any legal contract entered into by the park commissioner would be void because he is a juvenile.'
'Todd is a junior in Mount St. Charles Academy, where he has a top scholastic record.'

3 In Cantwell v. Connecticut, 310 U.S. 296, 303—304, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940), this Court said:
'The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws. The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.'

4 Statistical Abstract of the United States (1968), Table No. 578, p. 406.

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383 F.2d 988
United States Court of Appeals Eighth Circuit.

John F. TINKER and Mary Beth Tinker, Minors, by Their Father and Next Friend, Leonard Tinker, and Christopher Eckhardt, Minor, by His Father and Next Friend, William Eckhardt, Appellants,

v.

The DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT et al., Appellees.

No. 18642.
|
Nov. 3, 1967.

Synopsis

Appeal from the United States District Court for the Southern District of Iowa; Roy L. Stephenson, Chief Judge.

Attorneys and Law Firms

Dan L. Johnston, Jesse, LeTourneau & Johnston, Des Moines, Iowa, for appellants.

Allan A. Herrick and Philip C. Lovrien, of Herrick, Langdon, Sandblom & Belin, Des Moines, Iowa, for appellee; Herschel G. Langdon and Richard G. Langdon, Des Moines, Iowa, on the brief.

Before VOGEL, Chief Judge, and VAN OOSTERHOUT, MATTHES, BLACKMUN, MEHAFFY, GIBSON, LAY and HEANEY, Circuit Judges, sitting en banc.

Opinion

PER CURIAM.

This is an appeal from a judgment entered September 1, 1966, by the United States District Court for the Southern District of Iowa, Central Division, dismissing plaintiffs' complaint, based upon 42 U.S.C.A. § 1983, seeking an injunction and nominal damages against defendants, the Des Moines Independent Community School District, the individual members of its Board of Directors, its superintendent and various principals and teachers thereof, for suspending plaintiffs from school for wearing arm bands protesting the Viet Nam war, in violation of a school regulation promulgated by administrative officials of the School District proscribing the wearing of such arm bands. 258 F.Supp. 971. Following argument before a regular panel of this court, the case was reargued and submitted to the court en banc.

The judgment below is affirmed by an equally divided court.

All Citations

383 F.2d 988 (Mem)

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258 F.Supp. 971
United States District Court
S.D. Iowa, Central Division.

John F. TINKER and Mary Beth Tinker, minors, by their father and next friend, Leonard Tinker and Christopher Eckhardt, minor, by his father and next friend, William Eckhardt, Plaintiffs,

v.

The DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT et al., Defendants.

Civ. No. 7-1810-C-1.
|
Sept. 1, 1966.

Synopsis
Action against a school district, its board of directors and certain administrative officials and teachers to recover nominal damages and obtain an injunction against enforcement of a regulation promulgated by the school district prohibiting wearing of black arm bands on school facilities. The District Court, Roy L. Stephenson, Chief Judge, held that regulation of the school district promulgated to prevent disturbance of disciplined atmosphere required for classroom study was, under the circumstances, reasonable, and did not deprive plaintiff of constitutional right to freedom of speech.

Judgment for defendants in accordance with opinion.

West Headnotes (7)

[1] **Constitutional Law**
First Amendment

An individual's right of free speech if protected against state infringement by due process clause of the Fourteenth Amendment. U.S.C.A.Const. Amends. 1, 14.

2 Cases that cite this headnote

[2] **Constitutional Law**
Symbolic speech

Wearing of an arm band for the purpose of expressing certain views is a symbolic act falling within protection of the First Amendment's free speech clause. U.S.C.A.Const. Amend. 1.

Cases that cite this headnote

[3] **Constitutional Law**
Exercise of police power;relationship to governmental interest or public welfare

Abridgement of speech by a state regulation must always be considered in terms of the object the regulation is attempting to accomplish and the abridgement of speech that actually occurs. U.S.C.A.Const. Amend. 1.

Cases that cite this headnote

[4] **Constitutional Law**
Education

Education
Control and Discipline

Education
Speech and assembly;demonstrations

Officials of a school district have a responsibility for maintaining a scholarly, disciplined atmosphere within a classroom, and unless actions of school officials in attempting to carry out such responsibility are unreasonable, court should not interfere on basis of abridgement of free speech. U.S.C.A.Const. Amend.

Cases that cite this headnote

[5] **Courts**
Decisions in other circuits

While decisions of a Court of Appeals in another circuit are entitled to respect and should not be brushed aside lightly, they are not binding upon district court sitting in a different circuit.

1 Cases that cite this headnote

[6] **Education**
Speech and assembly;demonstrations

Injunction
Students

School officials must be given a wide discretion and if, under the circumstances, a disturbance of school discipline is reasonably to be anticipated, actions reasonably calculated to prevent such a disruption must be upheld by the court and not enjoined on basis of unwarranted restriction of freedom of speech. U.S.C.A.Const. Amend. 1.

2 Cases that cite this headnote

[7] **Constitutional Law**
Dress and grooming

Education
Speech and assembly;demonstrations

Regulation of a school district forbidding the wearing of arm bands on school facilities was, under the circumstances, a reasonable regulation for maintaining a scholarly and disciplined atmosphere within the classroom, and such regulation did not deprive students of their constitutional right to freedom of speech. U.S.C.A.Const. Amend. 1.

2 Cases that cite this headnote

Attorneys and Law Firms

*971 Dan Johnston, Des Moines, Ia., for plaintiffs.

Allan A. Herrick and Philip C. Lovrien, Des Moines, Ia., for defendants.

Opinion

MEMORANDUM OPINION

STEPHENSON, Chief Judge.

The plaintiffs instituted this action against the Des Moines Independent *972 Community School District Its Board of Directors and certain administrative officials and teachers thereof in an attempt to recover nominal damages and obtain an injunction pursuant to the provisions of 42 U.S.C. § 1983. Jurisdiction exists under 28 U.S.C. § 1343.

The events giving rise to this controversy took place in December 1965. During the second week of that month, it came to the attention of certain school officials that several students intended to wear black arm bands for the purpose of expressing their beliefs relating to the war in Viet Nam. A regulation was then promulgated by officials of the defendant school district prohibiting the wearing of arm bands on school facilities. After the regulation had been established, the plaintiffs, John Tinker, Mary Beth Tinker and Christopher Eckhardt, wore black arm bands to their respective schools. [1] Each of the plaintiffs testified that their purpose in wearing the arm bands was to mourn those who had died in the Viet Nam war and to support Senator Robert F. Kennedy's proposal that the truce proposed for Christmas Day, 1965, be extended indefinitely. The plaintiffs herein were all aware of the regulation prohibiting the wearing of arm bands when they wore them to school. After being in their schools for varying lengths of time, each plaintiff was sent home by school officials for violating the regulation prohibiting the wearing of arm bands on school premises. Each plaintiff returned to school following the Christmas holidays. They did not wear arm bands at that time.

[1] [2] [3] The question which now must be determined is whether the action of officials of the defendant school district forbidding the wearing of arm bands on school facilities deprived the plaintiffs of constitutional rights secured by the freedom of speech clause of the first amendment. An individual's right of free speech is protected against state infringement by the due process clause of the fourteenth amendment. Gitlow v. People of State of New York, 268 U.S. 652, 45 S.Ct. 625, 69 L.Ed. 1138 (1925). The wearing of an arm band for the purpose of expressing certain views is a symbolic act and falls within the protection of the first amendment's free speech clause. West Virginia State Bd. of Educ. v. Burnette, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943); Stromberg v People of State of California, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 (1931). However, the protections of that clause are not absolute. See, e.g., Dennis v. United States, 341 U.S. 494, 503, 71

S.Ct. 857, 95 L.Ed. 1137 (1951); Near v. State of Minnesota, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357 (1931); Pocket Books, Inc. v. Walsh,204 F.Supp. 297 (D.Conn.1962). The abridgment of speech by a state regulation must always be considered in terms of the object the regulation is attempting to accomplish and the abridgment of speech that actually occurs. 'In each case (courts) must ask whether the gravity of the 'evil', discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger.' United States v. Dennis, 183 F.2d 201, 212 (2d Cir. 1950).

[4] Officials of the defendant school district have the responsibility for maintaining a scholarly, disciplined atmosphere within the classroom. These officials not only have a right, they have an obligation to prevent anything which might be disruptive of such an atmosphere. Unless the actions of school officials in this connection are unreasonable, the Courts should not interfere.

The Viet Nam war and the involvement of the United States therein has been the subject of a major controversy for some time. When the arm band regulation involved herein was promulgated, ***973** debate over the Viet Nam war had become vehement in many localities. A protest march against the war had been recently held in Washington, D.C. A ware of draft card burning incidents protesting the war had swept the country. At that time two highly publicized draft card burning cases were pending in this Court. Both individuals supporting the war and those opposing it were quite vocal in expressing their views. This was demonstrated during the school board's hearing on the arm band regulation. At this hearing, the school board voted in support of the rule prohibiting the wearing of arm bands on school premises. It is against this background that the Court must review the reasonableness of the regulation.

A subject should never be excluded from the classroom merely because it is controversial. It is not unreasonable, however, to regulate the introduction and discussion of such subjects in the classroom. The avowed purpose of the plaintiffs in this instance was to express their views on a controversial subject by wearing black arm bands in the schools. While the arm bands themselves may not be disruptive, the reactions and comments from other students as a result of the arm bands would be likely to disturb the disciplined atmosphere required for any classroom. It was not unreasonable in this instance for school officials to anticipate that the wearing of arm bands would create some type of classroom disturbance. The school officials involved had a reasonable basis for adopting the arm band regulation.

On the other hand, the plaintiffs' freedom of speech is infringed upon only to a limited extent. They are still free to wear arm bands off school premises. In addition, the plaintiffs are free to express their views on the Viet Nam war during any orderly discussion of that subject. It is vitally important that the interest of students such as the plaintiffs in current affairs be encouraged whenever possible. In this instance, however, it is the disciplined atmosphere of the classroom, not the plaintiffs' right to wear arm bands on school premises, which is entitled to the protection of the law.

[5] [6] [7] Plaintiffs cite two recent opinions from the Court of Appeals for the Fifth Circuit in support of their position. Burnside v. Byars, 5th Cir., 363 F.2d 744, July 21, 1966; Blackwell v. Essaquena County Board of Education, 5th Cir., 363 F.2d 749, July 21, 1966. These cases involved the wearing of 'freedom buttons' in Mississippi schools. In holding in one of the cases that the school regulation prohibiting the wearing of such buttons was not reasonable, the Court stated that school officials 'cannot infringe on their students' right to free and unrestricted expression as guaranteed to them under the First Amendment to the Constitution, where the exercise of such rights in the school buildings and schoolrooms do not materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.' Burnside v. Byars, supra, 363 F.2d at 749. While the decisions of the Court of Appeals for the Fifth Circuit are entitled to respect and should not be brushed aside lightly, they are not binding upon this Court. John Deere Co. v. Graham, 333 F.2d 529 (8th Cir. 1965). After due consideration, it is the view of the Court that actions of school officials in this realm should not be limited to those instances where there is a material or substantial interference with school discipline. School officials must be given a wide discretion and if, under the circumstances, a disturbance in school discipline is reasonably to be anticipated, actions which are reasonably calculated to prevent such a disruption must be upheld by the Court. In the case now before the Court, the regulation of the defendant school district was, under the circumstances,

reasonable and did not deprive the plaintiffs of their constitutional right to freedom of speech.

The plaintiff's request for an injunction and nominal damages are denied. Judgment will be entered accordingly.

All Citations

258 F.Supp. 971

Footnotes

1 Plaintiff John F. Tinker, age 15, attended North High; plaintiff Mary Beth Tinker, age 13, attended Warren Harding Junior High; plaintiff Christopher Eckhardt, age 15, attended Roosevelt High; Paul and Hope Tinker, age 8 and 11 respectively, younger brother and sister of plaintiffs John and Mary Beth Tinker also wore arm bands to their respective schools.

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KeyCite Yellow Flag - Negative Treatment
Superseded by Statute as Stated in Pyle By and Through Pyle v. South Hadley School Committee, D.Mass., August 26, 1994

108 S.Ct. 562
Supreme Court of the United States

HAZELWOOD SCHOOL DISTRICT, et al., Petitioners
v.
Cathy KUHLMEIER et al.

No. 86–836.
|
Argued Oct. 13, 1987.
|
Decided Jan. 13, 1988.

Synopsis
Staff members of high school newspaper filed First Amendment action seeking injunctive relief, money damages and declaration that First Amendment rights were violated by censorship of certain articles. The United States District Court for the Eastern District of Missouri, John F. Nangle, Chief Judge, denied injunctive relief, 596 F.Supp. 1422, and held that students' First Amendment rights were not violated, 607 F.Supp. 1450. Students appealed. The Court of Appeals, Heaney, Circuit Judge, reversed, 795 F.2d 1368. Defendants petitioned for writ of certiorari. The Supreme Court, Justice White, held that: (1) high school paper that was published by students in journalism class did not qualify as "public forum," so that school officials retained right to impose reasonable restrictions on student speech in paper, and (2) high school principal's decision to excise two pages from student newspaper, on ground that articles unfairly impinged on privacy rights of pregnant students and others, did not violate students' speech rights.

Judgment of Court of Appeals reversed.

Justice Brennan, dissented and filed opinion, in which Justice Marshall and Justice Blackmun joined.

Opinion on remand, 840 F.2d 596.

West Headnotes (11)

[1] **Constitutional Law**
Student Speech or Conduct

Students in public schools do not shed constitutional rights to freedom of speech or expression at schoolhouse gate. U.S.C.A. Const.Amend. 1.

65 Cases that cite this headnote

[2] **Constitutional Law**
Student Speech or Conduct

School need not tolerate student speech that is inconsistent with its basic educational mission, even though government could not censor similar speech outside school. U.S.C.A. Const.Amend. 1.

108 Cases that cite this headnote

[3] **Constitutional Law**
Student organizations

School facility may be deemed "public forum," for purpose of First Amendment, only if school authorities have, by policy or practice, opened facility for indiscriminate use by general public or by some segment of public, such as student organizations. U.S.C.A. Const.Amend. 1.

119 Cases that cite this headnote

[4] **Constitutional Law**
Student publications

Education
Publications

High school newspaper that was published by journalism students could not be characterized as "public forum," so that school officials retained right to impose reasonable restrictions on speech that went into newspaper, where students publishing newspaper received grades and academic credit for their performance, and journalism

teacher retained final authority with respect to almost every aspect of production and publication. U.S.C.A. Const.Amend. 1.

184 Cases that cite this headnote

[5] **Constitutional Law**
Student Speech or Conduct

Educators are entitled to exercise greater control over school-sponsored student expression than over students' personal speech, in order to assure that participants learn whatever lessons expressive activity is designed to teach, that readers or listeners are not exposed to material which may be inappropriate for their level of maturity, and that views of individual speaker are not erroneously attributed to school. U.S.C.A. Const.Amend. 1.

197 Cases that cite this headnote

[6] **Education**
Speech and assembly;demonstrations

School must be able to set high standards for student speech that is disseminated under its auspices and may refuse to disseminate speech that does not meet those standards. U.S.C.A. Const.Amend. 1.

3 Cases that cite this headnote

[7] **Education**
Speech and assembly;demonstrations

School must be able to take into account the emotional maturity of intended audience, in deciding whether to disseminate school-sponsored student speech on potentially sensitive topics. U.S.C.A. Const.Amend. 1.

18 Cases that cite this headnote

[8] **Education**
Speech and assembly;demonstrations

School may refuse to sponsor student speech which might reasonably be perceived to advocate conduct inconsistent with shared values of civilized social order, or which associates school with any position other than neutrality on matters of political controversy. U.S.C.A. Const.Amend. 1.

21 Cases that cite this headnote

[9] **Constitutional Law**
Student Speech or Conduct

Educators do not offend First Amendment by exercising editorial control over style and content of student speech in school-sponsored expressive activities, as long as their actions are reasonably related to legitimate pedagogical concerns. U.S.C.A. Const.Amend. 1.

347 Cases that cite this headnote

[10] **Constitutional Law**
Student Speech or Conduct

Constitutional Law
Student publications

It is only when decision to censor school-sponsored publication, theatrical production, or other vehicle of student expression has no valid educational purpose that judicial intervention is required to protect students' free speech rights. U.S.C.A. Const.Amend. 1.

66 Cases that cite this headnote

[11] **Constitutional Law**
Student publications

Education
Publications

High school principal's decision to excise two pages from student newspaper, on ground that articles located on pages unfairly impinged on privacy rights of pregnant students and others, did not impermissibly interfere with students' free speech rights, where students published paper as part of high school curriculum, and principal reasonably believed that articles could not have been modified in time to permit publication of paper before school term had ended. U.S.C.A. Const.Amend. 1.

75 Cases that cite this headnote

**564 *Syllabus* *

*260 Respondents, former high school students who were staff members of the school's newspaper, filed suit in Federal District Court against petitioners, the school district and school officials, alleging that respondents' First Amendment rights were violated by the deletion from a certain issue of the paper of two pages that included an article describing school students' experiences with pregnancy and another article discussing the impact of divorce on students at the school. The newspaper was written and edited by a journalism class, as part of the school's curriculum. Pursuant to the school's practice, the teacher in charge of the paper submitted page proofs to the school's principal, who objected to the pregnancy story because the pregnant students, although not named, might be identified from the text, and because he believed that the article's references to sexual activity and birth control were inappropriate for some of the younger students. The principal objected to the divorce article because the page proofs he was furnished identified by name (deleted by the teacher from the final version) a student who complained of her father's conduct, and the principal believed that the student's parents should have been given an opportunity to respond to the remarks or to consent to their publication. Believing that there was no time to make necessary changes in the articles if the paper was to be issued before the end of the school year, the principal directed that the pages on which they appeared be withheld from publication even though other, unobjectionable articles were included on such pages. The District Court held that no First Amendment violation had occurred. The Court of Appeals reversed.

Held: Respondents' First Amendment rights were not violated. Pp. 567–572.

(a) First Amendment rights of students in the public schools are not automatically coextensive with the rights of adults in other settings, and must be applied in light of the special characteristics of the school environment. A school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside the school. Pp. 567–568.

(b) The school newspaper here cannot be characterized as a forum for public expression. School facilities may be deemed to be public forums *261 only if school authorities have by policy or by practice opened the 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. The school officials in this case did not deviate from their policy that the newspaper's production was to be part of the educational curriculum and a regular classroom activity under the journalism teacher's control as to almost every aspect of publication. The officials did not evince any intent to open the paper's pages to indiscriminate use by its student reporters and editors, or by the student body generally. Accordingly, school officials were entitled to regulate **565 the paper's contents in any reasonable manner. Pp. 567–569.

(c) The standard for determining when a school may punish student expression that happens to occur on school premises is not the standard for determining when a school may refuse to lend its name and resources to the dissemination of student expression. *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731, distinguished. 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. Pp. 569–571.

(d) The school principal acted reasonably in this case in requiring the deletion of the pregnancy article, the divorce article, and the other articles that were to appear on the same pages of the newspaper. Pp. 571–572.

795 F.2d 1368 (CA8 1986), reversed.

WHITE, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and STEVENS, O'CONNOR, and SCALIA, JJ., joined. BRENNAN, J., filed a dissenting

opinion, in which MARSHALL and BLACKMUN, JJ., joined, *post,* p. ——.

Attorneys and Law Firms

Robert P. Baine, Jr., argued the cause for petitioners. With him on the briefs were *John Gianoulakis* and *Robert T. Haar.*

Leslie D. Edwards argued the cause and filed a brief for respondents.*

* *Ronald A. Zumbrun* and *Anthony T. Caso* filed a brief for the Pacific Legal Foundation as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *Janet L. Benshoof, John A. Powell, Steven R. Shapiro,* and *Frank Susman;* for the American Society of Newspaper Editors et al. by *Richard M. Schmidt, Jr.;* for People for the American Way by *Marvin E. Frankel;* for the NOW Legal Defense and Education Fund et al. by *Martha L. Minow, Sarah E. Burns,* and *Marsha Levick;* for the Planned Parenthood Federation of America, Inc., et al. by *Eve W. Paul;* and for the Student Press Law Center et al. by *J. Marc Abrams.*

Briefs of *amici curiae* were filed for the National School Boards Association et al. by *Gwendolyn H. Gregory, August W. Steinhilber, Thomas A. Shannon,* and *Ivan B. Gluckman;* and for the School Board of Dade County, Florida, by *Frank A. Howard, Jr.*, and *Johnny Brown.*

Opinion

***262** Justice WHITE delivered the opinion of the Court.

This case concerns the extent to which educators may exercise editorial control over the contents of a high school newspaper produced as part of the school's journalism curriculum.

I

Petitioners are the Hazelwood School District in St. Louis County, Missouri; various school officials; Robert Eugene Reynolds, the principal of Hazelwood East High School; and Howard Emerson, a teacher in the school district. Respondents are three former Hazelwood East students who were staff members of Spectrum, the school newspaper. They contend that school officials violated their First Amendment rights by deleting two pages of articles from the May 13, 1983, issue of Spectrum.

Spectrum was written and edited by the Journalism II class at Hazelwood East. The newspaper was published every three weeks or so during the 1982–1983 school year. More than 4,500 copies of the newspaper were distributed during that year to students, school personnel, and members of the community.

The Board of Education allocated funds from its annual budget for the printing of Spectrum. These funds were supplemented by proceeds from sales of the newspaper. The printing expenses during the 1982–1983 school year totaled $4,668.50; revenue from sales was $1,166.84. The other costs associated with the newspaper—such as supplies, textbooks, ***263** and a portion of the journalism teacher's salary—were borne entirely by the Board.

The Journalism II course was taught by Robert Stergos for most of the 1982–1983 academic year. Stergos left Hazelwood East to take a job in private industry on April 29, 1983, when the May 13 edition of Spectrum was nearing completion, and petitioner Emerson took his place as newspaper adviser for the remaining weeks of the term.

The practice at Hazelwood East during the spring 1983 semester was for the journalism teacher to submit page proofs of each Spectrum issue to Principal Reynolds for his review prior to publication. On May 10, Emerson delivered the proofs of the May 13 edition to Reynolds, who objected to two of the articles scheduled to appear in that edition. One of the stories described three Hazelwood East students' experiences with pregnancy; the other discussed ****566** the impact of divorce on students at the school.

Reynolds was concerned that, although the pregnancy story used false names "to keep the identity of these girls a secret," the pregnant students still might be identifiable from the text. He also believed that the article's references to sexual activity and birth control were inappropriate for some of the younger students at the school. In addition, Reynolds was concerned that a student identified by name in the divorce story had complained that her father "wasn't spending enough time with my mom, my sister and I"

prior to the divorce, "was always out of town on business or out late playing cards with the guys," and "always argued about everything" with her mother. App. to Pet. for Cert. 38. Reynolds believed that the student's parents should have been given an opportunity to respond to these remarks or to consent to their publication. He was unaware that Emerson had deleted the student's name from the final version of the article.

Reynolds believed that there was no time to make the necessary changes in the stories before the scheduled press run ***264** and that the newspaper would not appear before the end of the school year if printing were delayed to any significant extent. He concluded that his only options under the circumstances were to publish a four-page newspaper instead of the planned six-page newspaper, eliminating the two pages on which the offending stories appeared, or to publish no newspaper at all. Accordingly, he directed Emerson to withhold from publication the two pages containing the stories on pregnancy and divorce. [1] He informed his superiors of the decision, and they concurred.

Respondents subsequently commenced this action in the United States District Court for the Eastern District of Missouri seeking a declaration that their First Amendment rights had been violated, injunctive relief, and monetary damages. After a bench trial, the District Court denied an injunction, holding that no First Amendment violation had occurred. 607 F.Supp. 1450 (1985).

The District Court concluded that school officials may impose restraints on students' speech in activities that are " 'an integral part of the school's educational function' "—including the publication of a school-sponsored newspaper by a journalism class—so long as their decision has " 'a substantial and reasonable basis.' " *Id.*, at 1466 (quoting *Frasca v. Andrews,* 463 F.Supp. 1043, 1052 (EDNY 1979)). The court found that Principal Reynolds' concern that the pregnant students' anonymity would be lost and their privacy invaded was "legitimate and reasonable," given "the small number of pregnant students at Hazelwood East and several identifying characteristics that were disclosed in the article." 607 F.Supp., at 1466. The court held that Reynolds' action was also justified "to avoid the impression that [the school] endorses ***265** the sexual norms of the subjects" and to shield younger students from exposure to unsuitable material. *Ibid.* The deletion of the article on divorce was seen by the court as a reasonable response to the invasion of privacy concerns raised by the named student's remarks. Because the article did not indicate that the student's parents had been offered an opportunity to respond to her allegations, said the court, there was cause for "serious doubt that the article complied with the rules of fairness which are standard in the field of journalism and which were covered in the textbook used in the Journalism II class." *Id.*, at 1467. Furthermore, the court concluded that Reynolds was justified in deleting two full pages of the newspaper, instead of deleting only the pregnancy and divorce stories or requiring ****567** that those stories be modified to address his concerns, based on his "reasonable belief that he had to make an immediate decision and that there was no time to make modifications to the articles in question." *Id.*, at 1466.

The Court of Appeals for the Eighth Circuit reversed. 795 F.2d 1368 (1986). The court held at the outset that Spectrum was not only "a part of the school adopted curriculum," *id.*, at 1373, but also a public forum, because the newspaper was "intended to be and operated as a conduit for student viewpoint." *Id.*, at 1372. The court then concluded that Spectrum's status as a public forum precluded school officials from censoring its contents except when " 'necessary to avoid material and substantial interference with school work or discipline ... or the rights of others.' " *Id.*, at 1374 (quoting *Tinker v. Des Moines Independent Community School Dist.,* 393 U.S. 503, 511, 89 S.Ct. 733, 739, 21 L.Ed.2d 731 (1969)).

The Court of Appeals found "no evidence in the record that the principal could have reasonably forecast that the censored articles or any materials in the censored articles would have materially disrupted classwork or given rise to substantial disorder in the school." 795 F.2d, at 1375. School officials were entitled to censor the articles on the ground that ***266** they invaded the rights of others, according to the court, only if publication of the articles could have resulted in tort liability to the school. The court concluded that no tort action for libel or invasion of privacy could have been maintained against the school by the subjects of the two articles or by their families. Accordingly, the court held that school officials had

violated respondents' First Amendment rights by deleting the two pages of the newspaper.

We granted certiorari, 479 U.S. 1053, 107 S.Ct. 926, 93 L.Ed.2d 978 (1987), and we now reverse.

II

[1] Students in the public schools do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker, supra,* 393 U.S., at 506, 89 S.Ct., at 736. They cannot be punished merely for expressing their personal views on the school premises—whether "in the cafeteria, or on the playing field, or on the campus during the authorized hours," 393 U.S., at 512–513, 89 S.Ct., at 739–740—unless school authorities have reason to believe that such expression will "substantially interfere with the work of the school or impinge upon the rights of other students." *Id.*, at 509, 89 S.Ct., at 738.

[2] We have nonetheless recognized that the First Amendment rights of students in the public schools "are not automatically coextensive with the rights of adults in other settings," *Bethel School District No. 403 v. Fraser,* 478 U.S. 675, 682, 106 S.Ct. 3159, 3164, 92 L.Ed.2d 549 (1986), and must be "applied in light of the special characteristics of the school environment." *Tinker, supra,* 393 U.S., at 506, 89 S.Ct., at 736; cf. *New Jersey v. T.L.O.*, 469 U.S. 325, 341–343, 105 S.Ct. 733, 743–744, 83 L.Ed.2d 720 (1985). A school need not tolerate student speech that is inconsistent with its "basic educational mission," *Fraser, supra,* 478 U.S., at 685, 106 S.Ct., at 3165, even though the government could not censor similar speech outside the school. Accordingly, we held in *Fraser* that a student could be disciplined for having delivered a speech that was "sexually explicit" but not legally obscene at an official school assembly, because the school was entitled to "disassociate itself" from the speech in a manner ***267** that would demonstrate to others that such vulgarity is "wholly inconsistent with the 'fundamental values' of public school education." 478 U.S., at 685–686, 106 S.Ct., at 3165. We thus recognized that "[t]he determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board," *id.*, at 683, 106 S.Ct., at 3164, rather than with the ****568** federal courts. It is in this context that respondents' First Amendment claims must be considered.

A

[3] We deal first with the question whether Spectrum may appropriately be characterized as a forum for public expression. The public schools do not possess all of the attributes of streets, parks, and other traditional public forums that "time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague v. CIO,* 307 U.S. 496, 515, 59 S.Ct. 954, 964, 83 L.Ed. 1423 (1939). Cf. *Widmar v. Vincent,* 454 U.S. 263, 267–268, n. 5, 102 S.Ct. 269, 273, n. 5, 70 L.Ed.2d 440 (1981). Hence, school 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," *Perry Education Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 47, 103 S.Ct. 948, 956, 74 L.Ed.2d 794 (1983), or by some segment of the public, such as student organizations. *Id.*, at 46, n. 7, 103 S.Ct., at 955, n. 7 (citing *Widmar v. Vincent*). 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. 460 U.S., at 46, n. 7, 103 S.Ct., at 955, n. 7. "The government does not create a public forum by inaction or by permitting limited discourse, but only by intentionally opening a nontraditional forum for public discourse." *Cornelius v. NAACP Legal Defense & Educational Fund, Inc.*, 473 U.S. 788, 802, 105 S.Ct. 3439, 3449, 87 L.Ed.2d 567 (1985).

***268** [4] The policy of school officials toward Spectrum was reflected in Hazelwood School Board Policy 348.51 and the Hazelwood East Curriculum Guide. Board Policy 348.51 provided that "[s]chool sponsored publications are developed within the adopted curriculum and its educational implications in regular classroom activities." App. 22. The Hazelwood East Curriculum Guide described the Journalism II course as

a "laboratory situation in which the students publish the school newspaper applying skills they have learned in Journalism I." *Id.,* at 11. The lessons that were to be learned from the Journalism II course, according to the Curriculum Guide, included development of journalistic skills under deadline pressure, "the legal, moral, and ethical restrictions imposed upon journalists within the school community," and "responsibility and acceptance of criticism for articles of opinion." *Ibid.* Journalism II was taught by a faculty member during regular class hours. Students received grades and academic credit for their performance in the course.

School officials did not deviate in practice from their policy that production of Spectrum was to be part of the educational curriculum and a "regular classroom activit[y]." The District Court found that Robert Stergos, the journalism teacher during most of the 1982–1983 school year, "both had the authority to exercise and in fact exercised a great deal of control over *Spectrum.*" 607 F.Supp., at 1453. For example, Stergos selected the editors of the newspaper, scheduled publication dates, decided the number of pages for each issue, assigned story ideas to class members, advised students on the development of their stories, reviewed the use of quotations, edited stories, selected and edited the letters to the editor, and dealt with the printing company. Many of these decisions were made without consultation with the Journalism II students. The District Court thus found it "clear that Mr. Stergos was the final authority with respect to almost every aspect of the production and publication of *Spectrum,* including its content." *Ibid.* Moreover, after ***269** each Spectrum issue had been finally approved by Stergos or his successor, the issue still had to be reviewed by Principal Reynolds prior to publication. Respondents' assertion that ****569** they had believed that they could publish "practically anything" in Spectrum was therefore dismissed by the District Court as simply "not credible." *Id.,* at 1456. These factual findings are amply supported by the record, and were not rejected as clearly erroneous by the Court of Appeals.

The evidence relied upon by the Court of Appeals in finding Spectrum to be a public forum, see 795 F.2d, at 1372–1373, is equivocal at best. For example, Board Policy 348.51, which stated in part that "[s]chool sponsored student publications will not restrict free expression or diverse viewpoints within the rules of responsible journalism," also stated that such publications were "developed within the adopted curriculum and its educational implications." App. 22. One might reasonably infer from the full text of Policy 348.51 that school officials retained ultimate control over what constituted "responsible journalism" in a school-sponsored newspaper. Although the Statement of Policy published in the September 14, 1982, issue of Spectrum declared that "*Spectrum,* as a student-press publication, accepts all rights implied by the First Amendment," this statement, understood in the context of the paper's role in the school's curriculum, suggests at most that the administration will not interfere with the students' exercise of those First Amendment rights that attend the publication of a school-sponsored newspaper. It does not reflect an intent to expand those rights by converting a curricular newspaper into a public forum.[2] Finally, ***270** that students were permitted to exercise some authority over the contents of Spectrum was fully consistent with the Curriculum Guide objective of teaching the Journalism II students "leadership responsibilities as issue and page editors." App. 11. A decision to teach leadership skills in the context of a classroom activity hardly implies a decision to relinquish school control over that activity. In sum, the evidence relied upon by the Court of Appeals fails to demonstrate the "clear intent to create a public forum," *Cornelius,* 473 U.S., at 802, 105 S.Ct., at 3449–3450, that existed in cases in which we found public forums to have been created. See *id.,* at 802–803, 105 S.Ct., at 3449–3450 (citing *Widmar v. Vincent,* 454 U.S., at 267, 102 S.Ct., at 273; *Madison School District v. Wisconsin Employment Relations Comm'n,* 429 U.S. 167, 174, n. 6, 97 S.Ct. 421, 426, n. 6, 50 L.Ed.2d 376 (1976); *Southeastern Promotions, Ltd. v. Conrad,* 420 U.S. 546, 555, 95 S.Ct. 1239, 1245, 43 L.Ed.2d 448 (1975)). School officials did not evince either "by policy or by practice," *Perry Education Assn.,* 460 U.S., at 47, 103 S.Ct., at 956, any intent to open the pages of Spectrum to "indiscriminate use," *ibid.,* by its student reporters and editors, or by the student body generally. Instead, they "reserve[d] the forum for its intended purpos[e]," *id.,* at 46, 103 S.Ct., at 955, as a supervised learning experience for journalism students. Accordingly, school officials were entitled to regulate the contents of Spectrum in any reasonable manner. *Ibid.* It is this standard, rather than our decision in *Tinker,* that governs this case.

B

The question whether the First Amendment requires a school to tolerate particular student speech—the question that we addressed in *Tinker*—is different from the **570 question whether the First Amendment requires a school affirmatively *271 to promote particular student speech. The former question addresses educators' ability to silence a student's personal expression that happens to occur on the school premises. The latter question concerns educators' authority over school-sponsored publications, theatrical productions, and other expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school. These activities may fairly be characterized as part of the school curriculum, whether or not they occur in a traditional classroom setting, so long as they are supervised by faculty members and designed to impart particular knowledge or skills to student participants and audiences. [3]

[5] [6] [7] [8] Educators are entitled to exercise greater control over this second form of student expression to assure that participants learn whatever lessons the activity is designed to teach, that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, and that the views of the individual speaker are not erroneously attributed to the school. Hence, a school may in its capacity as publisher of a school newspaper or producer of a school play "disassociate itself," *Fraser,* 478 U.S., at 685, 106 S.Ct., at 3165, not only from speech that would "substantially interfere with [its] work ... or impinge upon the rights of other students," *Tinker,* 393 U.S., at 509, 89 S.Ct., at 738, but also from speech that is, for example, ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences. [4] A school must be able to set high standards for *272 the student speech that is disseminated under its auspices —standards that may be higher than those demanded by some newspaper publishers or theatrical producers in the "real" world—and may refuse to disseminate student speech that does not meet those standards. In addition, a school must be able to take into account the emotional maturity of the intended audience in determining whether to disseminate student speech on potentially sensitive topics, which might range from the existence of Santa Claus in an elementary school setting to the particulars of teenage sexual activity in a high school setting. A school must also retain the authority to refuse to sponsor student speech that might reasonably be perceived to advocate drug or alcohol use, irresponsible sex, or conduct otherwise inconsistent with "the shared values of a civilized social order," *Fraser, supra,* 478 U.S., at 683, 106 S.Ct., at 3164, or to associate the school with any position other than neutrality on matters of political controversy. Otherwise, the schools would be unduly constrained from fulfilling their role as "a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment." *Brown v. Board of Education,* 347 U.S. 483, 493, 74 S.Ct. 686, 691, 98 L.Ed. 873 (1954).

**571 [9] Accordingly, we conclude that the 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 *273 of student expression. [5] 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. [6]

[10] This standard is consistent with our oft-expressed view that the education of the Nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges. See, *e.g., Board of Education of Hendrick Hudson Central School Dist. v. Rowley,* 458 U.S. 176, 208, 102 S.Ct. 3034, 3051, 73 L.Ed.2d 690 (1982); *Wood v. Strickland,* 420 U.S. 308, 326, 95 S.Ct. 992, 1003, 43 L.Ed.2d 214 (1975); *Epperson v. Arkansas,* 393 U.S. 97, 104, 89 S.Ct. 266, 270, 21 L.Ed.2d 228 (1968). It is only when the decision to censor a school-sponsored publication, theatrical production, or other vehicle of student expression has no valid educational purpose that the First Amendment is so "directly and sharply implicate[d]," *ibid.,* as to require judicial intervention to protect students' constitutional rights. [7]

*274 III

[11] We also conclude that Principal Reynolds acted reasonably in requiring the deletion from the May 13 issue of Spectrum of the pregnancy article, the divorce article, and the remaining articles that were to appear on the same pages of the newspaper.

The initial paragraph of the pregnancy article declared that "[a]ll names have been changed to keep the identity of these girls a secret." The principal concluded that the students' anonymity was not adequately protected, however, given the other identifying information in the article and the small number of pregnant students at the school. Indeed, a teacher at the school credibly testified that she could positively identify at least one of the girls and possibly all three. It is likely that many students at Hazelwood East would have been at least as successful in identifying the girls. Reynolds therefore could reasonably have feared that the article violated whatever pledge of anonymity had been given to the pregnant students. In addition, he could reasonably have been concerned that the article was not sufficiently sensitive to the privacy interests of the students' boyfriends and parents, who were discussed in **572 the article but who were given no opportunity to consent to its publication or to offer a response. The article did not contain graphic accounts of sexual activity. The girls did comment in the article, however, concerning their sexual histories and their use or nonuse of birth control. It was not unreasonable for the principal to have concluded that such frank talk was inappropriate in a school-sponsored publication distributed to 14–year–old freshmen *275 and presumably taken home to be read by students' even younger brothers and sisters.

The student who was quoted by name in the version of the divorce article seen by Principal Reynolds made comments sharply critical of her father. The principal could reasonably have concluded that an individual publicly identified as an inattentive parent—indeed, as one who chose "playing cards with the guys" over home and family—was entitled to an opportunity to defend himself as a matter of journalistic fairness. These concerns were shared by both of Spectrum's faculty advisers for the 1982–1983 school year, who testified that they would not have allowed the article to be printed without deletion of the student's name. [8]

Principal Reynolds testified credibly at trial that, at the time that he reviewed the proofs of the May 13 issue during an extended telephone conversation with Emerson, he believed that there was no time to make any changes in the articles, and that the newspaper had to be printed immediately or not at all. It is true that Reynolds did not verify whether the necessary modifications could still have been made in the articles, and that Emerson did not volunteer the information that printing could be delayed until the changes were made. We nonetheless agree with the District Court that the decision to excise the two pages containing the problematic articles was reasonable given the particular circumstances of this case. These circumstances included the very recent *276 replacement of Stergos by Emerson, who may not have been entirely familiar with Spectrum editorial and production procedures, and the pressure felt by Reynolds to make an immediate decision so that students would not be deprived of the newspaper altogether.

In sum, we cannot reject as unreasonable Principal Reynolds' conclusion that neither the pregnancy article nor the divorce article was suitable for publication in Spectrum. Reynolds could reasonably have concluded that the students who had written and edited these articles had not sufficiently mastered those portions of the Journalism II curriculum that pertained to the treatment of controversial issues and personal attacks, the need to protect the privacy of individuals whose most intimate concerns are to be revealed in the newspaper, and "the legal, moral, and ethical restrictions imposed upon journalists within [a] school community" that includes adolescent subjects and readers. Finally, we conclude that the principal's decision to delete two pages of Spectrum, rather than to delete only the offending articles or to require that they be modified, was reasonable under the circumstances as he understood them. Accordingly, no violation of First Amendment rights occurred. [9]

**573 The judgment of the Court of Appeals for the Eighth Circuit is therefore

Reversed.

*277 Justice BRENNAN, with whom Justice MARSHALL and Justice BLACKMUN join, dissenting. When the young men and women of Hazelwood East High School registered for Journalism II, they expected a civics lesson. Spectrum, the newspaper they were to publish, "was not just a class exercise in which students learned to prepare papers and hone writing skills, it was a ... forum established to give students an opportunity to express their views while gaining an appreciation of their rights and responsibilities under the First Amendment to the United States Constitution...." 795 F.2d 1368, 1373 (CA8 1986). "[A]t the beginning of each school year," *id.*, at 1372, the student journalists published a Statement of Policy—tacitly approved each year by school authorities—announcing their expectation that "*Spectrum,* as a student-press publication, accepts all rights implied by the First Amendment.... Only speech that 'materially and substantially interferes with the requirements of appropriate discipline' can be found unacceptable and therefore prohibited." App. 26 (quoting *Tinker v. Des Moines Independent Community School Dist.,* 393 U.S. 503, 513, 89 S.Ct. 733, 740, 21 L.Ed.2d 731 (1969)). [1] The school board itself affirmatively guaranteed the students of Journalism II an atmosphere conducive to fostering such an appreciation and exercising the full panoply of rights associated with a free student press. "School sponsored student publications," it vowed, "will not restrict free expression or diverse viewpoints within the rules of responsible journalism." App. 22 (Board Policy 348.51).

*278 This case arose when the Hazelwood East administration breached its own promise, dashing its students' expectations. The school principal, without prior consultation or explanation, excised six articles —comprising two full pages—of the May 13, 1983, issue of Spectrum. He did so not because any of the articles would "materially and substantially interfere with the requirements of appropriate discipline," but simply because he considered two of the six "inappropriate, personal, sensitive, and unsuitable" for student consumption. 795 F.2d, at 1371.

In my view the principal broke more than just a promise. He violated the First Amendment's prohibitions against censorship of any student expression that neither disrupts classwork nor invades the rights of others, and against any censorship that is not narrowly tailored to serve its purpose.

I

Public education serves vital national interests in preparing the Nation's youth for life in our increasingly complex society and for the duties of citizenship in our democratic Republic. See *Brown v. Board of Education,* 347 U.S. 483, 493, 74 S.Ct. 686, 691, 98 L.Ed. 873 (1954). The public school conveys to our young the information and tools required not merely to survive in, but to contribute to, civilized society. It also inculcates in tomorrow's leaders the "fundamental values necessary to the maintenance of a democratic political system...." **574 *Ambach v. Norwick,* 441 U.S. 68, 77, 99 S.Ct. 1589, 1595, 60 L.Ed.2d 49 (1979). All the while, the public educator nurtures students' social and moral development by transmitting to them an official dogma of " 'community values.' " *Board of Education v. Pico,* 457 U.S. 853, 864, 102 S.Ct. 2799, 2806, 73 L.Ed.2d 435 (1982) (plurality opinion) (citation omitted).

The public educator's task is weighty and delicate indeed. It demands particularized and supremely subjective choices among diverse curricula, moral values, and political stances to teach or inculcate in students, and among various methodologies for doing so. Accordingly, we have traditionally reserved *279 the "daily operation of school systems" to the States and their local school boards. *Epperson v. Arkansas,* 393 U.S. 97, 104, 89 S.Ct. 266, 270, 21 L.Ed.2d 228 (1968); see *Board of Education v. Pico, supra,* 457 U.S., at 863–864, 102 S.Ct., at 2806. We have not, however, hesitated to intervene where their decisions run afoul of the Constitution. See *e.g., Edwards v. Aguillard,* 482 U.S. 578, 107 S.Ct. 2573, 96 L.Ed.2d 510 (1987) (striking state statute that forbade teaching of evolution in public school unless accompanied by instruction on theory of "creation science"); *Board of Education v. Pico, supra* (school board may not remove books from library shelves merely because it disapproves of ideas they express); *Epperson v. Arkansas, supra* (striking state-law prohibition against teaching Darwinian theory of evolution in public school); *West Virginia*

Board of Education v. Barnette, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943) (public school may not compel student to salute flag); *Meyer v. Nebraska,* 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923) (state law prohibiting the teaching of foreign languages in public or private schools is unconstitutional).

Free student expression undoubtedly sometimes interferes with the effectiveness of the school's pedagogical functions. Some brands of student expression do so by directly preventing the school from pursuing its pedagogical mission: The young polemic who stands on a soapbox during calculus class to deliver an eloquent political diatribe interferes with the legitimate teaching of calculus. And the student who delivers a lewd endorsement of a student-government candidate might so extremely distract an impressionable high school audience as to interfere with the orderly operation of the school. See *Bethel School Dist. No. 403 v. Fraser,* 478 U.S. 675, 106 S.Ct. 3159, 92 L.Ed.2d 549 (1986). Other student speech, however, frustrates the school's legitimate pedagogical purposes merely by expressing a message that conflicts with the school's, without directly interfering with the school's expression of its message: A student who responds to a political science teacher's question with the retort, "socialism is good," subverts the school's inculcation of the message that capitalism is better. ***280** Even the maverick who sits in class passively sporting a symbol of protest against a government policy, cf. *Tinker v. Des Moines Independent School Dist.,* 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969), or the gossip who sits in the student commons swapping stories of sexual escapade could readily muddle a clear official message condoning the government policy or condemning teenage sex. Likewise, the student newspaper that, like Spectrum, conveys a moral position at odds with the school's official stance might subvert the administration's legitimate inculcation of its own perception of community values.

If mere incompatibility with the school's pedagogical message were a constitutionally sufficient justification for the suppression of student speech, school officials could censor each of the students or student organizations in the foregoing hypotheticals, converting our public schools into "enclaves of totalitarianism," *id.,* at 511, 89 S.Ct., at 739, that "strangle the free mind at its source," *West Virginia Board of Education v. Barnette, supra,* 319 U.S., at 637, 63 S.Ct., at 1185. The First Amendment permits no such blanket censorship authority. While the "constitutional rights of students in public school are not automatically ****575** coextensive with the rights of adults in other settings," *Fraser, supra,* 478 U.S., at 682, 106 S.Ct., at 3164, students in the public schools do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," *Tinker, supra,* 393 U.S., at 506, 89 S.Ct., at 736. Just as the public on the street corner must, in the interest of fostering "enlightened opinion," *Cantwell v. Connecticut,* 310 U.S. 296, 310, 60 S.Ct. 900, 906, 84 L.Ed. 1213 (1940), tolerate speech that "tempt[s] [the listener] to throw [the speaker] off the street," *id.,* at 309, 60 S.Ct., at 906, public educators must accommodate some student expression even if it offends them or offers views or values that contradict those the school wishes to inculcate.

In *Tinker,* this Court struck the balance. We held that official censorship of student expression—there the suspension of several students until they removed their armbands protesting the Vietnam war—is unconstitutional unless the ***281** speech "materially disrupts classwork or involves substantial disorder or invasion of the rights of others...." 393 U.S., at 513, 89 S.Ct., at 740. School officials may not suppress "silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of" the speaker. *Id.,* at 508, 89 S.Ct., at 737. The "mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint," *id.,* at 509, 89 S.Ct., at 738, or an unsavory subject, *Fraser, supra,* 478 U.S., at 688–689, 106 S.Ct., at 3167–3168 (BRENNAN, J., concurring in judgment), does not justify official suppression of student speech in the high school.

This Court applied the *Tinker* test just a Term ago in *Fraser, supra,* upholding an official decision to discipline a student for delivering a lewd speech in support of a student-government candidate. The Court today casts no doubt on *Tinker*'s vitality. Instead it erects a taxonomy of school censorship, concluding that *Tinker* applies to one category and not another. On the one hand is censorship "to silence a student's personal expression that happens to occur on the school premises." *Ante,* at 569. On the other

hand is censorship of expression that arises in the context of "school-sponsored ... expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school." *Ibid.*

The Court does not, for it cannot, purport to discern from our precedents the distinction it creates. One could, I suppose, readily characterize the students' symbolic speech in *Tinker* as "personal expression that happens to [have] occur[red] on school premises," although *Tinker* did not even hint that the personal nature of the speech was of any (much less dispositive) relevance. But that same description could not by any stretch of the imagination fit Fraser's speech. He did not just "happen" to deliver his lewd speech to an ad hoc gathering on the playground. As the second paragraph of *Fraser* evinces, if ever a forum for student expression was "school-sponsored," Fraser's was:

> ***282** "Fraser ... delivered a speech nominating a fellow student for student elective office. Approximately 600 high school students ... attended the assembly. Students were required to attend the assembly or to report to the study hall. The assembly was part of a *school-sponsored* educational program in self-government." *Fraser,* 478 U.S., at 677, 106 S.Ct., at 3161 (emphasis added).

Yet, from the first sentence of its analysis, see *id.,* at 680, 106 S.Ct., at 3162–3163, *Fraser* faithfully applied *Tinker.*

Nor has this Court ever intimated a distinction between personal and school-sponsored speech in any other context. Particularly telling is this Court's heavy reliance on *Tinker* in two cases of First Amendment infringement on state college campuses. See *Papish v. University of Missouri Board of Curators,* 410 U.S. 667, 671, n. 6, 93 S.Ct. 1197, 1199, n. 6, 35 L.Ed.2d 618 (1973) (****576** *per curiam); Healy v. James,* 408 U.S. 169, 180, 189, and n. 18, 191, 92 S.Ct. 2338, 2345, 2350, and n. 18, 2351, 33 L.Ed.2d 266 (1972). One involved the expulsion of a student for lewd expression in a newspaper that she sold on campus pursuant to university authorization, see *Papish, supra,* 410 U.S., at 667–668, 93 S.Ct., at 1197–1198, and the other involved the denial of university recognition and concomitant benefits to a political student organization, see *Healy, supra,* 408 U.S., at 174, 176, 181–182, 92 S.Ct., at 2342, 2343, 2346–2347. Tracking *Tinker* 's analysis, the Court found each act of suppression unconstitutional. In neither case did this Court suggest the distinction, which the Court today finds dispositive, between school-sponsored and incidental student expression.

II

Even if we were writing on a clean slate, I would reject the Court's rationale for abandoning *Tinker* in this case. The Court offers no more than an obscure tangle of three excuses to afford educators "greater control" over school-sponsored speech than the *Tinker* test would permit: the public educator's prerogative to control curriculum; the pedagogical interest in shielding the high school audience from objectionable viewpoints and sensitive topics; and the school's need ***283** to dissociate itself from student expression. *Ante,* at 569–570. None of the excuses, once disentangled, supports the distinction that the Court draws. *Tinker* fully addresses the first concern; the second is illegitimate; and the third is readily achievable through less oppressive means.

A

The Court is certainly correct that the First Amendment permits educators "to assure that participants learn whatever lessons the activity is designed to teach...." *Ante,* at 570. That is, however, the essence of the *Tinker* test, not an excuse to abandon it. Under *Tinker,* school officials may censor only such student speech as would "materially disrup[t]" a legitimate curricular function. Manifestly, student speech is more likely to disrupt a curricular function when it arises in the context of a curricular activity—one that "is designed to teach" something—than when it arises in the context of a noncurricular activity. Thus, under *Tinker,* the school may constitutionally punish the budding political orator if he disrupts calculus class but not if he holds his tongue for the cafeteria. See *Consolidated Edison Co. v. Public Service Comm'n of New York,* 447 U.S. 530, 544–545, 100 S.Ct. 2326, 2337, 65 L.Ed.2d 319 (1980) (STEVENS, J., concurring in judgment). That is not because some more stringent standard applies in the curricular context. (After all, this Court applied the same standard whether the students in *Tinker* wore their armbands to the "classroom" or the

"cafeteria." 393 U.S., at 512, 89 S.Ct., at 740.) It is because student speech in the noncurricular context is less likely to disrupt materially any legitimate pedagogical purpose.

I fully agree with the Court that the First Amendment should afford an educator the prerogative not to sponsor the publication of a newspaper article that is "ungrammatical, poorly written, inadequately researched, biased or prejudiced," or that falls short of the "high standards for ... student speech that is disseminated under [the school's] auspices...." *Ante,* at 570. But we need not abandon *Tinker* ***284** to reach that conclusion; we need only apply it. The enumerated criteria reflect the skills that the curricular newspaper "is designed to teach." The educator may, under *Tinker,* constitutionally "censor" poor grammar, writing, or research because to reward such expression would "materially disrup[t]" the newspaper's curricular purpose.

The same cannot be said of official censorship designed to shield the *audience* or dissociate the *sponsor* from the expression. Censorship so motivated might well serve (although, as I demonstrate *infra,* at ——— – ———, cannot legitimately serve) some other school purpose. But it in no way furthers ****577** the curricular purposes of a student *newspaper,* unless one believes that the purpose of the school newspaper is to teach students that the press ought never report bad news, express unpopular views, or print a thought that might upset its sponsors. Unsurprisingly, Hazelwood East claims no such pedagogical purpose.

The Court relies on bits of testimony to portray the principal's conduct as a pedagogical lesson to Journalism II students who "had not sufficiently mastered those portions of the ... curriculum that pertained to the treatment of controversial issues and personal attacks, the need to protect the privacy of individuals ..., and 'the legal, moral, and ethical restrictions imposed upon journalists....' " *Ante,* at 572. In that regard, the Court attempts to justify censorship of the article on teenage pregnancy on the basis of the principal's judgment that (1) "the [pregnant] students' anonymity was not adequately protected," despite the article's use of aliases; and (2) the judgment that "the article was not sufficiently sensitive to the privacy interests of the students' boyfriends and parents...." *Ante,* at 571. Similarly, the Court finds in the principal's decision to censor the divorce article a journalistic lesson that the author should have given the father of one student an "opportunity to defend himself" against her charge that (in the Court's words) he "chose ***285** 'playing cards with the guys' over home and family...." *Ante,* at 572.

But the principal never consulted the students before censoring their work. "[T]hey learned of the deletions when the paper was released...." 795 F.2d, at 1371. Further, he explained the deletions only in the broadest of generalities. In one meeting called at the behest of seven protesting Spectrum staff members (presumably a fraction of the full class), he characterized the articles as " 'too sensitive' for 'our immature audience of readers,' " 607 F.Supp. 1450, 1459 (ED Mo.1985), and in a later meeting he deemed them simply "inappropriate, personal, sensitive and unsuitable for the newspaper," *ibid.* The Court's supposition that the principal intended (or the protesters understood) those generalities as a lesson on the nuances of journalistic responsibility is utterly incredible. If he did, a fact that neither the District Court nor the Court of Appeals found, the lesson was lost on all but the psychic Spectrum staffer.

B

The Court's second excuse for deviating from precedent is the school's interest in shielding an impressionable high school audience from material whose substance is "unsuitable for immature audiences." *Ante,* at 570 (footnote omitted). Specifically, the majority decrees that we must afford educators authority to shield high school students from exposure to "potentially sensitive topics" (like "the particulars of teenage sexual activity") or unacceptable social viewpoints (like the advocacy of "irresponsible se[x] or conduct otherwise inconsistent with 'the shared values of a civilized social order' ") through school-sponsored student activities. *Ante,* at 570 (citation omitted).

Tinker teaches us that the state educator's undeniable, and undeniably vital, mandate to inculcate moral and political values is not a general warrant to act as "thought police" stifling discussion of all but state-approved topics and advocacy of all ***286** but the official position. See also *Epperson v. Arkansas,* 393 U.S. 97, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968); *Meyer v. Nebraska,* 262 U.S. 390,

43 S.Ct. 625, 67 L.Ed. 1042 (1923). Otherwise educators could transform students into "closed-circuit recipients of only that which the State chooses to communicate," *Tinker,* 393 U.S., at 511, 89 S.Ct., at 739, and cast a perverse and impermissible "pall of orthodoxy over the classroom," *Keyishian v. Board of Regents,* 385 U.S. 589, 603, 87 S.Ct. 675, 683, 17 L.Ed.2d 629 (1967). Thus, the State cannot constitutionally prohibit its high school students from recounting in the locker room "the particulars of [their] teenage ****578** sexual activity," nor even from advocating "irresponsible se[x]" or other presumed abominations of "the shared values of a civilized social order." Even in its capacity as educator the State may not assume an Orwellian "guardianship of the public mind," *Thomas v. Collins,* 323 U.S. 516, 545, 65 S.Ct. 315, 329, 89 L.Ed. 430 (1945) (Jackson, J., concurring).

The mere fact of school sponsorship does not, as the Court suggests, license such thought control in the high school, whether through school suppression of disfavored viewpoints or through official assessment of topic sensitivity.[2] The former would constitute unabashed and unconstitutional viewpoint ***287** discrimination, see *Board of Education v. Pico,* 457 U.S., at 878–879, 102 S.Ct., at 2813–2814 (BLACKMUN, J., concurring in part and concurring in judgment), as well as an impermissible infringement of the students' " 'right to receive information and ideas,' " *id.,* at 867, 102 S.Ct., at 2808 (plurality opinion) (citations omitted); see *First National Bank v. Bellotti,* 435 U.S. 765, 783, 98 S.Ct. 1407, 1419, 55 L.Ed.2d 707 (1978).[3] Just as a school board may not purge its state-funded library of all books that " 'offen[d] [its] social, political and moral tastes,' " 457 U.S., at 858–859, 102 S.Ct., at 2804 (plurality opinion) (citation omitted), school officials may not, out of like motivation, discriminatorily excise objectionable ideas from a student publication. The State's prerogative to dissolve the student newspaper entirely (or to limit its subject matter) no more entitles it to dictate which viewpoints students may express on its pages, than the State's prerogative to close down the schoolhouse entitles it to prohibit the nondisruptive expression of antiwar sentiment within its gates.

Official censorship of student speech on the ground that it addresses "potentially sensitive topics" is, for related reasons, equally impermissible. I would not begrudge an educator the authority to limit the substantive scope of a school-sponsored publication to a certain, objectively definable topic, such as literary criticism, school sports, or an overview of the school year. Unlike those determinate limitations, "potential topic sensitivity" is a vaporous nonstandard—like " 'public welfare, peace, safety, health, decency, good order, morals or convenience,' " *Shuttlesworth v. Birmingham,* 394 U.S. 147, 150, 89 S.Ct. 935, 938, 22 L.Ed.2d 162 (1969), or " 'general welfare of citizens,' " *Staub v. Baxley,* 355 U.S. 313, 322, 78 S.Ct. 277, 282, 2 L.Ed.2d 302 (1958)—that invites manipulation to achieve ends that cannot permissibly be achieved through blatant viewpoint discrimination and chills student speech to which school officials might not ***288** object. In part because of those dangers, this Court has consistently condemned any scheme allowing a state official boundless ****579** discretion in licensing speech from a particular forum. See, *e.g., Shuttlesworth v. Birmingham, supra,* 394 U.S., at 150–151, and n. 2, 89 S.Ct., at 938–939, and n. 2; *Cox v. Louisiana,* 379 U.S. 536, 557–558, 85 S.Ct. 453, 465–466, 13 L.Ed.2d 471 (1965); *Staub v. Baxley, supra,* 355 U.S., at 322–324, 78 S.Ct., at 282–283.

The case before us aptly illustrates how readily school officials (and courts) can camouflage viewpoint discrimination as the "mere" protection of students from sensitive topics. Among the grounds that the Court advances to uphold the principal's censorship of one of the articles was the potential sensitivity of "teenage sexual activity." *Ante,* at 570. Yet the District Court specifically found that the principal "did not, as a matter of principle, oppose discussion of said topi[c] in *Spectrum.*" 607 F.Supp., at 1467. That much is also clear from the same principal's approval of the "squeal law" article on the same page, dealing forthrightly with "teenage sexuality," "the use of contraceptives by teenagers," and "teenage pregnancy," App. 4–5. If topic sensitivity were the true basis of the principal's decision, the two articles should have been equally objectionable. It is much more likely that the objectionable article was objectionable because of the viewpoint it expressed: It might have been read (as the majority apparently does) to advocate "irresponsible sex." See *ante,* at 570.

C

The sole concomitant of school sponsorship that might conceivably justify the distinction that the Court draws between sponsored and nonsponsored student expression is the risk "that the views of the individual speaker [might be] erroneously attributed to the school." *Ante,* at 570. Of course, the risk of erroneous attribution inheres in any student expression, including "personal expression" that, like the armbands in *Tinker,* "happens to occur on the school premises," *ante,* at 569. Nevertheless, the majority is certainly correct that indicia of school sponsorship increase the likelihood ***289** of such attribution, and that state educators may therefore have a legitimate interest in dissociating themselves from student speech.

But " '[e]ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.' " *Keyishian v. Board of Regents,* 385 U.S., at 602, 87 S.Ct., at 683 (quoting *Shelton v. Tucker,* 364 U.S. 479, 488, 81 S.Ct. 247, 252, 5 L.Ed.2d 231 (1960)). Dissociative means short of censorship are available to the school. It could, for example, require the student activity to publish a disclaimer, such as the "Statement of Policy" that Spectrum published each school year announcing that "[a]ll ... editorials appearing in this newspaper reflect the opinions of the *Spectrum* staff, which are not necessarily shared by the administrators or faculty of Hazelwood East," App. 26; or it could simply issue its own response clarifying the official position on the matter and explaining why the student position is wrong. Yet, without so much as acknowledging the less oppressive alternatives, the Court approves of brutal censorship.

III

Since the censorship served no legitimate pedagogical purpose, it cannot by any stretch of the imagination have been designed to prevent "materia[l] disrup[tion of] classwork," *Tinker,* 393 U.S., at 513, 89 S.Ct., at 740. Nor did the censorship fall within the category that *Tinker* described as necessary to prevent student expression from "inva[ding] the rights of others," *ibid.* If that term is to have any content, it must be limited to rights that are protected by law. "Any yardstick less exacting than [that] could result in school officials curtailing speech at the slightest fear of disturbance," 795 F.2d, at 1376, a prospect that would be completely at odds with this Court's pronouncement that the "undifferentiated ****580** fear or apprehension of disturbance is not enough [even in the public school context] to overcome the right to freedom of expression." ***290** *Tinker, supra,* 393 U.S., at 508, 89 S.Ct., at 737. And, as the Court of Appeals correctly reasoned, whatever journalistic impropriety these articles may have contained, they could not conceivably be tortious, much less criminal. See 795 F.2d, at 1375–1376.

Finally, even if the majority were correct that the principal could constitutionally have censored the objectionable material, I would emphatically object to the brutal manner in which he did so. Where "[t]he separation of legitimate from illegitimate speech calls for more sensitive tools" *Speiser v. Randall,* 357 U.S. 513, 525, 78 S.Ct. 1332, 1342, 2 L.Ed.2d 1460 (1958); see *Keyishian v. Board of Regents, supra,* 385 U.S., at 602, 87 S.Ct., at 683, the principal used a paper shredder. He objected to some material in two articles, but excised six entire articles. He did not so much as inquire into obvious alternatives, such as precise deletions or additions (one of which had already been made), rearranging the layout, or delaying publication. Such unthinking contempt for individual rights is intolerable from any state official. It is particularly insidious from one to whom the public entrusts the task of inculcating in its youth an appreciation for the cherished democratic liberties that our Constitution guarantees.

IV

The Court opens its analysis in this case by purporting to reaffirm *Tinker* 's time-tested proposition that public school students "do not 'shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.' " *Ante,* at 567 (quoting *Tinker, supra,* 393 U.S., at 506, 89 S.Ct., at 736). That is an ironic introduction to an opinion that denudes high school students of much of the First Amendment protection that *Tinker* itself

prescribed. Instead of "teach[ing] children to respect the diversity of ideas that is fundamental to the American system," *Board of Education v. Pico,* 457 U.S., at 880, 102 S.Ct., at 2814 (BLACKMUN, J., concurring in part and concurring in judgment), and "that our Constitution is a living reality, not parchment preserved under glass," ***291** *Shanley v. Northeast Independent School Dist., Bexar Cty., Tex.,* 462 F.2d 960, 972 (CA5 1972), the Court today "teach[es] youth to discount important principles of our government as mere platitudes." *West Virginia Board of Education v. Barnette,* 319 U.S., at 637, 63 S.Ct., at 1185. The young men and women of Hazelwood East expected a civics lesson, but not the one the Court teaches them today.

I dissent.

All Citations

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Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

1 The two pages deleted from the newspaper also contained articles on teenage marriage, runaways, and juvenile delinquents, as well as a general article on teenage pregnancy. Reynolds testified that he had no objection to these articles and that they were deleted only because they appeared on the same pages as the two objectionable articles.

2 The Statement also cited *Tinker v. Des Moines Independent Community School Dist.,* 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969), for the proposition that "[o]nly speech that 'materially and substantially interferes with the requirements of appropriate discipline' can be found unacceptable and therefore be prohibited." App. 26. This portion of the Statement does not, of course, even accurately reflect our holding in *Tinker.* Furthermore, the Statement nowhere expressly extended the *Tinker* standard to the news and feature articles contained in a school-sponsored newspaper. The dissent apparently finds as a fact that the Statement was published annually in Spectrum; however, the District Court was unable to conclude that the Statement appeared on more than one occasion. In any event, even if the Statement says what the dissent believes that it says, the evidence that school officials never intended to designate Spectrum as a public forum remains overwhelming.

3 The distinction that we draw between speech that is sponsored by the school and speech that is not is fully consistent with *Papish v. University of Missouri Board of Curators,* 410 U.S. 667, 93 S.Ct. 1197, 35 L.Ed.2d 618 (1973) *(per curiam)*, which involved an off-campus "underground" newspaper that school officials merely had allowed to be sold on a state university campus.

4 The dissent perceives no difference between the First Amendment analysis applied in *Tinker* and that applied in *Fraser.* We disagree. The decision in *Fraser* rested on the "vulgar," "lewd," and "plainly offensive" character of a speech delivered at an official school assembly rather than on any propensity of the speech to "materially disrup [t] classwork or involv[e] substantial disorder or invasion of the rights of others." 393 U.S., at 513, 89 S.Ct., at 740. Indeed, the *Fraser* Court cited as "especially relevant" a portion of Justice Black's dissenting opinion in *Tinker* " 'disclaim[ing] any purpose ... to hold that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students.' " 478 U.S., at 686, 106 S.Ct., at 3166 (quoting 393 U.S., at 526, 89 S.Ct., at 746). Of course, Justice Black's observations are equally relevant to the instant case.

5 We therefore need not decide whether the Court of Appeals correctly construed *Tinker* as precluding school officials from censoring student speech to avoid "invasion of the rights of others," 393 U.S., at 513, 89 S.Ct., at 740, except where that speech could result in tort liability to the school.

6 We reject respondents' suggestion that school officials be permitted to exercise prepublication control over school-sponsored publications only pursuant to specific written regulations. To require such regulations in the context of a curricular activity could unduly constrain the ability of educators to educate. We need not now decide whether such regulations are required before school officials may censor publications not sponsored by the school that students seek

to distribute on school grounds. See *Baughman v. Freienmuth,* 478 F.2d 1345 (CA4 1973); *Shanley v. Northeast Independent School Dist., Bexar Cty., Tex.,* 462 F.2d 960 (CA5 1972); *Eisner v. Stamford Board of Education,* 440 F.2d 803 (CA2 1971).

7 A number of lower federal courts have similarly recognized that educators' decisions with regard to the content of school-sponsored newspapers, dramatic productions, and other expressive activities are entitled to substantial deference. See, *e.g., Nicholson v. Board of Education, Torrance Unified School Dist.,* 682 F.2d 858 (CA9 1982); *Seyfried v. Walton,* 668 F.2d 214 (CA3 1981); *Trachtman v. Anker,* 563 F.2d 512 (CA2 1977), cert. denied, 435 U.S. 925, 98 S.Ct. 1491, 55 L.Ed.2d 519 (1978); *Frasca v. Andrews,* 463 F.Supp. 1043 (EDNY 1979). We need not now decide whether the same degree of deference is appropriate with respect to school-sponsored expressive activities at the college and university level.

8 The reasonableness of Principal Reynolds' concerns about the two articles was further substantiated by the trial testimony of Martin Duggan, a former editorial page editor of the St. Louis Globe Democrat and a former college journalism instructor and newspaper adviser. Duggan testified that the divorce story did not meet journalistic standards of fairness and balance because the father was not given an opportunity to respond, and that the pregnancy story was not appropriate for publication in a high school newspaper because it was unduly intrusive into the privacy of the girls, their parents, and their boyfriends. The District Court found Duggan to be "an objective and independent witness" whose testimony was entitled to significant weight. 607 F.Supp. 1450, 1461 (ED Mo.1985).

9 It is likely that the approach urged by the dissent would as a practical matter have far more deleterious consequences for the student press than does the approach that we adopt today. The dissent correctly acknowledges "[t]he State's prerogative to dissolve the student newspaper entirely." *Post,* at 578. It is likely that many public schools would do just that rather than open their newspapers to all student expression that does not threaten "materia[l] disrup[tion of] classwork" or violation of "rights that are protected by law," *post,* at 579, regardless of how sexually explicit, racially intemperate, or personally insulting that expression otherwise might be.

1 The Court suggests that the passage quoted in the text did not "exten [d] the *Tinker* standard to the news and feature articles contained in a school-sponsored newspaper" because the passage did not expressly mention them. *Ante,* at 569, n. 2. It is hard to imagine why the Court (or anyone else) might expect a passage that applies categorically to "a student-press publication," composed almost exclusively of "news and feature articles," to mention those categories expressly. Understandably, neither court below so limited the passage.

2 The Court quotes language in *Bethel School Dist. No. 403 v. Fraser,* 478 U.S. 675, 106 S.Ct. 3159, 92 L.Ed.2d 549 (1986), for the proposition that " '[t]he determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board.' " *Ante,* at 567 (quoting 478 U.S., at 683, 106 S.Ct., at 3164). As the discussion immediately preceding that quotation makes clear, however, the Court was referring only to the appropriateness of the *manner* in which the message is conveyed, not of the message's *content.* See, *e.g., Fraser,* 478 U.S., at 683, 106 S.Ct., at 3164 ("[T]he 'fundamental values necessary to the maintenance of a democratic political system' disfavor the use of terms of debate highly offensive or highly threatening to others"). In fact, the *Fraser* Court coupled its first mention of "society's ... interest in teaching students the boundaries of *socially appropriate behavior,*" with an acknowledgment of "[t]he undoubted freedom to advocate unpopular and controversial views in schools and *classrooms,*" *id.,* at 681, 106 S.Ct., at 3163 (emphasis added). See also *id.,* at 689, 106 S.Ct., at 3167 (BRENNAN, J., concurring in judgment) ("Nor does this case involve an attempt by school officials to ban written materials they consider 'inappropriate' for high school students" (citation omitted)).

3 Petitioners themselves concede that " '[c]ontrol over access' " to Spectrum is permissible only if " 'the distinctions drawn ... are viewpoint neutral.' " Brief for Petitioners 32 (quoting *Cornelius v. NAACP Legal Defense & Educational Fund, Inc.,* 473 U.S. 788, 806, 105 S.Ct. 3439, 3451, 87 L.Ed.2d 567 (1985)).

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Biographies

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Donnalynn Darling is the Chair of the Personal Injury group at Meyer, Suozzi, English & Klein, P.C., located in Garden City, New York. Ms. Darling's practice focuses on plaintiffs personal injury trial work, as well as trials of catastrophic tort and wrongful death cases. She represents plaintiffs who have been seriously injured or killed in auto accidents, injuries resulting from premises liability, assault and battery, rape and other intentional acts. Ms. Darling also represents workers who are injured as a result of New York State Labor Law violations in construction accidents involving falls from scaffolds, ladders and crane collapses.

Ms. Darling is also the Chair of the Education Law practice, a service created in response to increasing requests by parents of learning disabled children for assistance in securing timely educational evaluations, services and accommodations for their children in public and private school settings under federal and state law.

Ms. Darling is a former Assistant D.A. in Bronx County where she specialized in representing victims of child sexual abuse.

Ms. Darling has been named to *New York Super Lawyers* as one of the top attorneys in New York. In 2013, she was named an Access to Justice Champion by the Nassau County Bar Association and a Woman of Distinction by New York State Assemblyman Edward P. Ra. Ms. Darling has been honored as a member of the "Top 50 Women Hall of Fame" by Long Island Business News. Ms. Darling has been recognized for her commitment to providing pro bono law services by Touro Law Center and received the "Voice for All Children Award" from the Coalition Against Child Abuse & Neglect.

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Elizabeth Kase is a Partner at Abrams Fensterman where she is Chair of the Criminal Law Practice Group and Co-Chair of the Medical Marijuana Law Group. Prior to joining the firm Ms. Kase was a founding member of a boutique criminal defense firm in Garden City. Previously, she served as an Assistant District Attorney in New York County where she prosecuted hundreds of cases pertaining to narcotics, street crime, domestic violence, white collar crime and sex crimes.

Elizabeth is known as a leading criminal defense attorney on Long Island. She has defended large-scale federal and state criminal matters including public corruption cases, conspiracies, mortgage fraud, immigration fraud, embezzlement schemes, sex crimes, and narcotics cases, as well as complex DWIs. In anticipation of the emerging growth and use of medical marijuana, Elizabeth has developed specific expertise in counseling clients about the legalities and illegalities of the uses, abuses and distribution of medical marijuana under New York state and federal law.

Elizabeth has vast experience representing clients that have diagnosed mental health conditions and assisting them in navigating the criminal justice system with special care for and consideration of their unique medical needs. She has particular expertise related to offering explanation and insight through medical history and alternatives to incarceration as well as treatment options.

Elizabeth was named to Long Island Business News' (LIBN) "Top 50 Influential Women on Long Island", as well as "40 Rising Stars Under 40", the for her professional accomplishments and contributions to Long Island. Nassau County Bar Association has recognized her for her tireless work as pro bono staff attorney at The Safe Center of Long Island. Elizabeth was nominated for the position of County Court Judge and received a "Well Qualified" (highest) rating for this position from the Nassau County Bar Association as well as many civic endorsements. Elizabeth has been designated a New York Super Lawyer since 2016, a distinction earned by only 5% of the lawyers in the NY metro area. She also serves as Village Justice of Baxter Estates in Port Washington, New York.

She is a frequent lecturer and commentator on matters pertaining to criminal law, medical marijuana, evidence and social media and our youth. Elizabeth also teaches trial advocacy at Cardozo Law School. She is a graduate of Smith College where she was a Jean Picker Scholar in Government and Cardozo Law School where she was named to the Order of the Barristers and awarded the Jacob Burns Medal for her excellence in the Moot Court Honors Society.

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David Levine maintains a private practice specializing in criminal defense and guardianship matters. Over the course of his 28-year legal career, David has tried over 80 jury trials and countless non-jury proceedings.

David Levine has been a member of the Board of Zoning Appeals for the Town of North Hempstead since 2012. He had previously been a member of the Town's Ecological Commission.

Prior to 1997, David was an Assistant District Attorney in Queens County for over six years. He received a J.D. from New York Law School and a B.A. from Binghamton University.

A partial list of David's involvement in the legal community includes being Past President of both the Queens County Assistant District Attorney's Association and the Criminal Courts Bar Association of Nassau County.

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Joseph Ryan is an original member of the Theodore Roosevelt American Inn of Court established by Federal Judge George C. Pratt, as well as a former President of the Nassau County Bar Association, a former Assistant U.S. Attorney and a former Assistant Counsel to the Judicial Inquiry on Professional Conduct. His practice is mostly focused on criminal and civil litigation in the Federal Court.

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Kassandra Polanco is a second-year law student at Touro Law Center. She is a member of the Touro Law Honor Society and the Trial Advocacy and Practice Society. She is a graduate of Arcadia University, where she majored in Criminal Justice.