Good bong hits 4 jesus:school speech and constitutional conflict research paper e...

Experience, Belief

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“ It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate”. Such was the opening assertion of the United States Supreme Court in deciding the landmark case of Tinker v. Des Moines Independent Community School District, decided in 1969. What followed in the constitutional history of what came to be known as “ school speech” involves a number of cases that have essentially followed Tinker’s holding, only modifying its nuances and contemplating the ever-changing concern of the state over the welfare of its students and their role in the overarching marketplace of ideas. The First Amendment is at the heart of this discussion, as it guarantees freedom of expression in public schools, and allows for the free flow of ideas, beliefs, and ideologies between citizens of the United States, although admittedly young and inexperienced in the workings of the outside world. School speech

thus traces its colorful pedigree from the 1960s, to the present, a length of time wherein the Supreme Court has clarified the nuances in the free speech rights of students in public schools. In the process, it has also enunciated a speech-protective precedent in cases of school speech – a precedent that may be reconsidered in light of the new means by which students may express themselves through digital technology and the Internet.

West Virginia State Board of Education v. Barnette

While acknowledging the importance of Tinker v. Des Moines in any discussion of student free speech rights, there is perhaps one prior case that is worthy of mention in the present discussion. This case, West Virginia State Board of Education v. Barnette (1943), dealt with the issue of religious belief as a form of speech. The plaintiffs had adopted a resolution that required all students to salute the American flag, and that refusing to do would result in corresponding repercussions. The defendants Barnettes sued the school, arguing that they were Jehova's Witnesses, and that their religious beliefs prevented them from complying with the Board's resolution, resulting in the expulsion of their children from public school. In June 14, 1943, the Court ruled for the Barnettes. While acknowledging that the State has the duty and obligation to ensure the instruction and education of American identity, the Court noted that "[h]erewe are dealing with a compulsion of students to declare a belief. They are not merely made acquainted with the flag salute so that they may be informed as to what it is or even what it means" (West Virginia State Board of Education v. Barnette 631). There were no functions of school officials that may be permitted to limit the Bill of Rights, according

to the Court, which added that:

“ If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein” (642).

In so ruling, the Supreme Court cemented the principle that school officials may not trample upon their students’ right to freedom of speech, even though such trampling is done in accordance with the State’s power to instill patriotic ideals. Moreover, the Court overturned the precedent in Minersville School District v. Gobitis, handed down three years prior, where the majority opinion stated that the Jehova’s Witnesses were not entitled to the free exercise of their religion when the recitation of the pledge of allegiance advanced the cause of social conformity and patriotism (Morgan 282).

Tinker v. Des Moines Independent Community District

Twenty years after Barnette, another case put school speech into the forefront of United States Constitutional conflict: Tinker v. Des Moines Independent Community School District. Widely recognized as a landmark case for school speech, Tinker still stands today as the pinnacle of student speech rights (Brenton 1211). In Tinker, the plaintiffs were a group of public high school and elementary school students who were protesting against the war in Vietnam, and moving to publicize their support for a truce. When school officials learned of the students’ proposed activities, they enacted a policy prohibiting students from wearing armbands during school. The students nevertheless wore their black armbands and were suspended. The

school officials argued that the prohibitions on the arm bands were valid since there was a possibility that they might cause a disruption. Noting that there were no evidence of disruption with the rights of others, the Court held that the suspensions violated the First Amendment. Tinker's main holding was that, although students do not shed their First Amendment rights once they are within public school premises, these rights must be " applied in light of the special characteristics of the school environment" (Tinker v. Des Moines 506). The Supreme Court declared that " the wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it" (505). Public schools, in particular, according to the Court, may not stifle student speech simply because it expresses a viewpoint contrary to the school's in matters that are controversial:

" In our system, state-operated schools may not be enclaves of totalitarianismIn our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. . . . 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" (511).

If the student expresses his opinions without " materially and substantially interfering with the requirements of appropriate discipline in the operation of the school" and without colliding with the rights of others", then such student is well within his right to free speech and expression (512-513). The Court thus adopted a standard of " material disruption", which called for the protection of student speech unless such speech would substantially

interfere with the work of the school or impinge upon the rights of fellow students.

Bethel School District No. 403 v. Fraser

Tinker’s precedent was, unsurprisingly, met with controversy. Some constitutional theorists and academic commentators argued that Tinker’s standard should be lessened to allow schools to regulate speech that merely distracts other students “ for the sake of better promoting the school’s varied basic missions and purposes” (Wright 109). But others defend the holding, arguing that the Tinker precedent is based on the principle that schools are a peculiar part of the “ marketplace of ideas”, providing young citizens with the opportunity for debate and rational discussion that may help them transition as productive members of society (Sekulow and Zimmerman 1251). It was not until 1986, however, that the Supreme Court was given the chance to either overturn or uphold Tinker, and this time the cause for controversy was neither political nor ideological, but obscene.

In Bethel School District No. 403 v. Fraser, a high school student delivered a speech nominating a student for the student government at a school-sponsored assembly. If the students chose not to attend the assembly, they were compelled to instead go to a study hall. The speech in question was filled with sexual innuendo, and was delivered to an audience of almost six hundred students, most of whom were fourteen years old (Bethel School District v. Fraser 677). Unsurprisingly, the speech elicited a raucous response from the students: “[S]ome students hooted and yelled; some by gestures graphically simulated the sexual activities pointedly alluded to in [his] speech” (678). For violating school policy against obscene language, the

student who delivered the speech, Matthew Fraser, was suspended.

In this case, the Court held in favor of the school, differentiating the Tinker doctrine in that it involved primarily political speech. In contrast, Fraser infringed upon the prohibition on obscenity, a legitimate concern of the State. It explained that “[t]he marked distinction between the political ‘ message’ of the armbands in Tinker and the sexual content of respondent’s speech in this case” and observed that it had, in the past, acknowledged the significance of protecting children from sexually explicit, offensive, and indecent speech (Sekulow and Zimmerman 1252). The Court, moreover, cited the peculiar role of public schools as institutional avenues for debate, but that “[e]ven the most heated political discourse in a democratic society requires consideration for the personal sensibilities of the other participants and audiences” (681).

Hazelwood School District v. Kuhlmeier

The cases that have so far been discussed mainly involve speech that is immediate and expressive, dealing as they were with personal utterances, actions, and expressions of belief. But what about speech that is printed? The Supreme Court had the opportunity to answer this question in Hazelwood School District v. Kuhlmeier. In this case, a high school principal withheld two articles – one dealing with teen pregnancy and another dealing with divorce – that were to be published in the school-sponsored student newspaper. The Court in the present case declined to apply the Tinker standard, instead stating that schools and their representatives do not violate the First Amendment by implementing editorial control over student

speech in school-sponsored expressive activities as long as their actions are reasonably related to valid educational concerns (Hazelwood School District v. Kuhlmeier 273). The school, according to the Court, has the authority to disassociate itself “ not only from speech that would ‘ substantially interfere with [its] workor impinge upon the rights of other students’, but also from speech that is, for example, ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences” (271). The Court thus upheld the withdrawal of the two articles in question. Justices Brennan, Marshall, and Blackmun dissented, arguing that the student speech involved – taking into consideration its publication in a noncurricular context – is less likely to disrupt any legitimate pedagogical purpose. Moreover, they argued that no person could reasonably believe that the articles, being personal opinions in themselves, bear the imprimatur of the school.

Rosenberger v. Rector & Visitors of University of Virginia

The Supreme Court, by the late 1980s, has so far decided on the protections that political speech and obscene speech enjoy in the landscape of American constitutional law. Religious speech, however, was another matter. In Rosenberger v. Rector & Visitors of University of Virginia, what was involved was the distribution of funds to student organizations at the University. The University had set up a fund to support extracurricular student activities, but had denied Ron Rosenberger, and the Christian magazine he was part of, a share of the fund. The University rejected their request on the grounds that the publication had sought funding for a religious activity.

The Court ruled for Rosenberger. Its decision, handed down on June 29, 1995, rested on the conclusion that the University of Virginia had created a “ limited public forum” and, therefore, could not exclude potential participants based on their viewpoint (Tramell 1962). The Court in this case had the opportunity to view the arguments in light of another important constitutional principle: that of the Establishment Clause. However, the Court treated religious expression not as religion, but as speech (Lendino 711). By treating Rosenberger’s message as “ speech”, the Court was essentially treating any form of religious expression as an ideology that can be sufficiently analyzed under free speech doctrine of the First Amendment (Lendino 711).

Morse v. Frederick

One of the most recent controversies to question Supreme Court doctrine regarding school speech was decided only in 2007. In this case, a high school allowed students to leave class to observe the Olympic Torch Relay as it proceeded along a street in front of the school. As the torchbearers passed by, Frederick Morse and his friends unfurled a large banner bearing the phrase: ‘ BONG HiTS 4 JESUS’. The principal, interpreting the banner to encourage drug use, crossed the street and told Morse to take it down since it violated school policy. When Frederick refused, the principal confiscated the banner and later suspended him for ten days for violating a school board policy prohibiting any public expression that advocates the use of illegal drugs. Frederick sued, lost in the district court, but won the appeal.
The Supreme Court, however, disagreed with the lower appeals court.

Writing the majority opinion, Justice John Roberts stated that schools have the authority to safeguard those entrusted to their care from speech that encourage illegal drug use: “ We conclude that the school officials in this case did not violate the First Amendment by confiscating the pro-drug banner and suspending the student responsible for it” (Morse v. Frederick 2622). After reviewing its previous student speech cases, the Court emphasized that deterring drug use by students is an important interest that can override First Amendment rights. The Court also considered the “ special characteristics of the school environment” in declaring that deterrence of drug abuse is a sufficient enough governmental interest that would allow schools to restrict student expression (Morse v. Frederick 2629).

Moreover, the school argued that Frederick’s speech is proscribable since it is plainly “ offensive”, in accordance with Fraser. The Court rejected that view, stating: “ We think this stretches Fraser too far; that case should not be read to encompass any speech that could fit under some definition of “ offensive”. After all, much political and religious speech might be perceived as offensive to some” (2629).

Justices Stevens, Souter, and Ginsburg dissented from Roberts’ majority opinion. They argued that Frederick’s drug reference was “ never meant to persuade anyone to do anything” (Stevens, J., dissenting at 2644). For the dissenters, Frederick’s banner was merely offensive or disagreeable – never meant to compel his fellow students to take illegal drugs or incite, for instance, a drug-infused orgy – and this did not remove the speech from the protection of the First Amendment.

The General Rule and Its Exceptions

The precedent laid down in Tinker v. Des Moines is still good law. Since being decided in 1966, the Supreme Court has not overturned it. Rather, in the cases discussed above, it has merely specified the different nuances, details, and specificities that are understandably concomitant with the right of free speech and expression. The general rule to be considered, thus, is that students who wish to express their views, however unpopular or unsavory they are for teachers and school administrators, are protected under the First Amendment. Nevertheless, there are exceptions.

The first exception is speech that materially and substantially interferes with the operation of public schools. The second exception is speech that infringes upon the rights of others. The third exception is speech that is vulgar, obscene, lewd, or plainly offensive. The fourth and final exception is that if speech is school-sponsored, according to Hazelwood v. Kuhlmeier.

Conclusion

Ideas are one of the most vital resources in any modern society. They provide avenues for new thought, better governmental policies, and scientific judgments that serve society for the better. This is why the First Amendment is also one of the most important amendments to the United States Constitution. It protects citizens against the curtailment by orthodoxy or conservative sectors of society, and promotes new and fresh ideas that are vital in any modern society. This is all the more important in a school environment, given that it is the first avenue for debate for most of our nation’s youth. Questions remain to be answered, however, how the Tinker

doctrine may fare in the realm of digital media and the Internet, where speech thrives in the free flow of binary information.

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