



Bethel School District No. 403 v. Fraser (1986)

The Supreme Court case that clarified the application of the First Amendment freedom of speech in public schools

Background

In December 1965, three students in Des Moines, Iowa, planned to protest the Vietnam War by silently wearing black armbands to school. The school administration heard about the plan and **forbade** the protest, warning students they would be suspended if they participated. Mary Beth Tinker, John Tinker, and Christopher Eckhardt wore the armbands anyway and, as promised, the school sent them home. In response, the students' families sued the school district for violations of their **First Amendment** freedom of speech. In 1968, the case reached the Supreme Court of the United States on appeal from the U.S. Court of Appeals for the 8th Circuit. The next year, the Court held in a 7-2 decision that the school suspensions were unconstitutional, as students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." According to the Court, schools must prove that suppressed student speech "materially and substantially interferes" with the educational environment. *Tinker v. Des Moines* became a landmark **precedent** case for the treatment of free speech in schools.

Facts

On April 26, 1983, Matthew Fraser delivered a minute-long speech at a school-sponsored assembly to nominate a classmate for student body vice president at Bethel High School in Spanaway, Washington. Before the assembly, two teachers warned Fraser that he could face "severe consequences" for giving the speech, which described the candidate using graphic sexual metaphors. Fraser delivered the speech anyway, and his candidate won the election with 90 percent of the vote. Consequently, the Assistant Principal told Fraser he violated a school rule that prohibited any conduct that interferes with the educational process, including **obscene** language. The school suspended Fraser for three days and banned him from being considered as the graduation speaker. As a two-time recipient of the debate team state championship's "Top Speaker" award, Fraser was the top contender for that role. He appealed his punishment to the school district. The hearing officer determined Fraser's "indecent, lewd" speech fell within the ordinary meaning of "obscene," upholding the suspension.

Fraser's family brought his case to the U.S. District Court for the Western District of Washington, claiming the school violated his First Amendment right to free speech. The District Court ruled in his favor, holding the school rule was "unconstitutionally vague and overbroad." Furthermore, the court held the school violated Fraser's **Fourteenth Amendment** right to **Due Process** when it disqualified him as a potential graduation speaker "because the disciplinary rule makes no mention of such removal as a possible sanction." The ruling awarded Fraser monetary damages and allowed

him to speak at graduation after his peers elected him by write-in vote. The Court of Appeals for the Ninth Circuit cited *Tinker* when it affirmed the District Court decision. Bethel School District appealed the Ninth Circuit holding and the Supreme Court of the United States heard the case on March 3, 1986.

Issue

1. Does the First Amendment prevent a school district from disciplining a high school student for giving an “offensively **lewd** and indecent” speech at a school-sponsored assembly?

Summary

In a 7-2 decision, the Court reversed the lower courts’ decisions and held that the First Amendment allows a school district to discipline lewd and vulgar speech. Chief Justice Warren Burger wrote for the majority, concluding that vulgar speech was “*inconsistent with the fundamental values of public school education*” and that restricting students from using such language in school did not violate the First Amendment. The Court further distinguished Fraser’s case from previous rulings, describing “*the marked distinction between the political ‘message’ of the armbands in Tinker and the sexual content of respondent’s speech in this case.*” Additionally, the majority noted that “*Senators have been censured for abusive language directed at other Senators,*” strengthening the holding that school officials can regulate offensive student speech. Justices Thurgood Marshall and John Paul Stevens **dissented** in the case. Justice Marshall argued that “*the School District failed to demonstrate that the respondent’s remarks were indeed disruptive,*” as required by the *Tinker* precedent. Justice Stevens, on the other hand, questioned whether a “*group of judges who are at least two generations and 3,000 miles away from the scene of the crime*” were in the best position to determine what would offend Fraser’s audience.

Precedent Set

The *Bethel* decision affirmed public schools’ ability to limit lewd and indecent speech to preserve safe educational environments. The Court applied a similar interpretation two years later in *Hazelwood School District v. Kuhlmeier* (1988), a case involving **censorship** of high school newspapers. The majority cited *Bethel*, saying the “*constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings.*” As a result, school-sponsored newspapers may be reviewed and, in some cases, censored by school administrators the same way *Bethel* limited speech. While the lower court decisions in *Bethel* and *Hazelwood* relied heavily on the precedent set by *Tinker*, the Supreme Court holdings narrowed *Tinker* without overturning it.

Additional Context

Since the mid-1900s, the Court has considered how to preserve a safe and productive learning environment in schools while clarifying student protections under the Bill of Rights. Before *Tinker*, *Bethel*, and *Hazelwood*, the landmark decision in *West Virginia State Board of Education v. Barnette* (1943) laid a foundation for evaluating free speech in schools. In that case, the Supreme Court struck down

a state law that required all public school students to salute the American flag in a daily classroom routine, noting that “*remaining passive during a flag salute ritual*” does not create “*clear and present danger*.” More recently, in *Morse v. Frederick* (2007), the Court found that school leadership can prohibit student speech which promotes illegal drug use. Citing both *Bethel* and *Hazelwood* as precedent, the majority affirmed “*that schools may take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use*.” As seen in *Bethel*, the decision focused on balancing student rights with a safe educational setting.

Discussion Questions

1. Explain the precedent set by *Tinker v. Des Moines*.
2. Describe the difference in the Court’s interpretation of student expression in *Tinker* and *Bethel*. Why was *Tinker*’s speech protected, while *Fraser*’s was limited?
3. How did the Court’s interpretation of the application of the First Amendment in school settings change over time?
4. How is the effort to balance social order with individual freedom reflected in the *Bethel* decision?
5. How does Justice Stevens’ dissent challenge the Supreme Court’s role in reviewing student speech cases?
6. The Supreme Court held in *Bethel* and subsequent cases that students’ constitutional rights are limited within a school setting because schools have a responsibility to maintain a safe and productive learning environment. As a student, how does this make you feel?

Extension Activity

Read the case summary for *Tinker v. Des Moines* and respond to the following AP-style prompt.

1. Identify the constitutional clause that is common to both *Tinker v. Des Moines* (1969) and *Bethel v. Fraser* (1986).
2. Explain how the facts in *Tinker v. Des Moines* and *Bethel v. Fraser* led to different holdings.
3. Explain how the holding in *Bethel v. Fraser* affects the concept of individual rights.

Vocabulary

- **forbade** – refuse to allow (something)
- **First Amendment** – “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances”
- **precedent** – a court decision that is considered an authority and influences future decisions
- **obscene** – offensive, rude, or shocking, usually because of being too obviously related to sex or showing sex
- **Fourteenth Amendment** – ratified in 1868, granted citizenship to all persons born or naturalized in the United States—including formerly enslaved people—and guaranteed all

persons “equal protection of the laws”

- **Due Process** – fair treatment through the normal judicial system
- **lewd** – behavior, speech, or images that are sexual in an offensive, vulgar, or indecent way
- **respondent** – the party against whom a petition is filed, typically in an appellate court or the Supreme Court
- **censured** – a formal, public reprimand adopted by a majority vote in either the House of Representatives or the Senate against a member for misconduct
- **dissented** – having issued a formal written expression that articulates a justice's different point of view on major or minor issues in a case that rejects the result reached by the majority
- **censorship** – the suppression or regulation of speech, communication, or information

Special thanks to scholar and law professor Lisa Hoppenjans for her review, feedback, and additional information.