

West Virginia v Barnette, 1943

Justice Jackson writing for the majority:

It is also to be noted that the compulsory flag salute and pledge requires affirmation of a belief and an attitude of mind. It is not clear whether the regulation contemplates that pupils forego any contrary convictions of their own and become unwilling converts to the prescribed ceremony, or whether it will be acceptable if they simulate assent by words without belief, and by a gesture barren of meaning. It is now a commonplace that censorship or suppression of expression of opinion is tolerated by our Constitution only when the expression presents a clear and present danger of action of a kind the state is empowered to prevent and punish.² It would seem that involuntary affirmation could be commanded only on even more immediate and urgent grounds than silence. But here, the power of compulsion is invoked without any allegation that remaining passive during a flag salute ritual creates a clear and present danger that would justify an effort even to muffle expression. To sustain the compulsory flag salute, we are required to say that a Bill of Rights which guards the individual's right to speak his own mind left it open to public authorities to compel him to utter what is not in his mind.

Whether the First Amendment to the Constitution will permit officials to order observance of ritual of this nature does not depend upon whether as a voluntary exercise we would think it to be good, bad or merely innocuous. Any credo of nationalism is likely to include what some disapprove or to omit what others think essential, and to give off different overtones as it takes on different accents or interpretations. If official power exists to coerce acceptance of any patriotic creed, what it shall contain cannot be decided by courts, but must be largely discretionary with the ordaining authority, whose power to prescribe would no doubt include power to amend. Hence, validity of the asserted power to force an American citizen publicly to profess any statement of belief, or to engage in any ceremony of assent to one, presents....

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.

Tinker v. Des Moines Independent, 1969

After attending a protest on the Vietnam War with their parents in 1965, a group of students decided to express their views in school by wearing black armbands emblazoned with a peace symbol. The school board heard about the protest and, before it took place, banned the wearing of the armbands. When they defied this policy, Marybeth Tinker, her brother John, and their friend John Eckhardt were suspended. The Tinkers sued, claiming that the ban amounted to an unconstitutional “prior restraint,” and were represented by the local ACLU affiliate. Tinker is an important precedent that extended symbolic speech to the educational setting. Justice Fortas reasoned: “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. . . . In our system, state-operated schools may not be enclaves of totalitarianism.” Fortas’ opinion hinged on the salient fact that the Tinkers’ symbolic speech involved a peaceful and passive demonstration. Citing the precedent of *Burnside v. Byars*, he found that the armbands did not “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.” In a stinging dissent, Justice Hugo Black (1886–1971) characterized the facts quite differently. He noted that a math teacher’s lesson was “practically ‘wrecked’ ” because of the disruption caused by Marybeth’s armband protest. Moreover, Black argued that the Court’s judicial activism in Tinker usurped the authority of local school boards and undermined school discipline. Although Tinker is still on the books, it has been narrowed by subsequent opinions involving speech in the educational setting such as *Bethel v. Fraser* (1986) and *Morse v. Frederick* (2007) It is worth noting that although Justice Black was renowned as a First Amendment absolutist who opposed any restriction on speech, he interpreted “speech” quite literally as spoken or written words. He was therefore unwilling to extend the same kind of absolute protection to “symbolic” expression that did not involve written or spoken words. He also regarded the education setting as inappropriate for the same First Amendment protection as other public settings.

MR. JUSTICE FORTAS delivered the opinion of the Court. 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 v. Barnette* (1943), *Stromberg v. California* (1931), *Thornhill v. Alabama* (1940), *Edwards v. South Carolina* (1963), *Brown v. Louisiana* (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” which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment (*Cox v. Louisiana*, 1965); *Adderley v. Florida*, 1966). 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. . . . In *West Virginia v. Barnette*, 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. 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. Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities. . . . [In this case,] 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. 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*, 1949), and our history says that it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society. 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*, 1966). 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. 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. 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. 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 of armbands did not extend to these. Instead, a particular symbol—black armbands worn to exhibit opposition to this nation’s involvement 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. 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. . . . In *Meyer v. Nebraska*, 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 entrusted 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 state without doing violence to both letter and spirit of the Constitution. . .

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. This is not only an inevitable 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 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*). 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. 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. . . . 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. 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.

Bethel School District v. Fraser, 1986

In the spring of 1983, at an official school event, Matthew Fraser delivered a speech nominating a friend as an officer for study body government. The speech, which was laced with sexual innuendo and double entendre, was presented to an auditorium of about six hundred students, ages fourteen years old and older. Fraser had discussed the speech with several teachers before the assembly. Two of them found it “inappropriate” and advised against it. He disregarded a warning that it could have “severe consequences.” After giving the speech, he was notified that he had broken the school’s “disruptive rule of conduct” policy, which stated: “Conduct which materially and substantially interferes with the educational process is prohibited, including the use of obscene, profane language or gestures.” Fraser then admitted that he had intentionally used sexual innuendo. The school suspended him for two days and banned him from speaking at the forthcoming graduation. He sued, and the district court decided in his favor, ruling that the school’s code of conduct was unduly vague and overly broad. This decision was affirmed by the Ninth Circuit Court.

The Supreme Court then reversed by a vote of 7–2. In his opinion for the Court, Chief Justice Warren Burger (1907–1995) distinguished between the passive political expression of the armbands in *Tinker v. Des Moines* (Document 11) and Fraser’s lewd and sexually charged message. Though *Tinker* was not overturned in *Bethel*, it was narrowed by tilting the scale in favor of state authorities. The decision granted local school boards wider latitude in maintaining appropriate discipline and civil discourse in the classroom setting. Not surprisingly, Burger cited Justice Black’s caustic dissent in *Tinker*. In addition to Burger’s opinion, excerpts from the dissenting opinions of Justice John Harlan Marshall (1889–1971) and Justice John Paul Stevens (1920–2019) are included.

The pervasive sexual innuendo in Fraser’s speech was plainly offensive to both teachers and students—indeed, to any mature person. By glorifying male sexuality, and in its verbal content, the speech was acutely insulting to teenage girl students. The speech could well be seriously damaging to its less mature audience, many of whom were only fourteen years old and on the threshold of awareness of human sexuality. Some students were reported as bewildered by the speech and the reaction of mimicry it provoked.

This Court's First Amendment jurisprudence has acknowledged limitations on the otherwise absolute interest of the speaker in reaching an unlimited audience where the speech is sexually explicit and the audience may include children. In *Ginsberg v. New York* (1968), this Court upheld a New York statute banning the sale of sexually oriented material to minors, even though the material in question was entitled to First Amendment protection with respect to adults. And in addressing the question whether the First Amendment places any limit on the authority of public schools to remove books from a public school library, all members of the Court, otherwise sharply divided, acknowledged that the school board has the authority to remove books that are vulgar (*Board of Education v. Pico*, 1982; plurality opinion). These cases recognize the obvious concern on the part of parents, and school authorities acting in loco parentis, to protect children especially in a captive audience—from exposure to sexually explicit, indecent, or lewd speech.

We have also recognized an interest in protecting minors from exposure to vulgar and offensive spoken language. In *FCC v. Pacifica Foundation* (1978),⁴ we dealt with the power of the Federal Communications Commission to regulate a radio broadcast described as “indecent but not obscene.” There the Court reviewed an administrative condemnation of the radio broadcast of a self-styled “humorist” who described his own performance as being in “the words you couldn't say on the public, ah, airwaves, um, the ones you definitely wouldn't say ever.” The Commission concluded that “certain words depicted sexual and excretory activities in a patently offensive manner, [and] noted that they ‘were broadcast at a time when children were undoubtedly in the audience.’ ” . . . The plurality opinion went on to reject the radio station's assertion of a First Amendment right to broadcast vulgarity: “These words offend for the same reasons that obscenity offends. Their place in the hierarchy of First Amendment values was aptly sketched by Mr. Justice Murphy when he said: ‘[S]uch utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality’ (Chaplinsky v. New Hampshire).”

We hold that petitioner⁶ School District acted entirely within its permissible authority in imposing sanctions upon Fraser in response to his offensively lewd and indecent speech. Unlike the sanctions imposed on the students wearing armbands in *Tinker*, the penalties imposed in this

case were unrelated to any political viewpoint. The First Amendment does not prevent the school officials from determining that to permit a vulgar and lewd speech such as respondent's would undermine the school's basic educational mission. A high school assembly or classroom is no place for a sexually explicit monologue directed toward an unsuspecting audience of teenage students. Accordingly, it was perfectly appropriate for the school to disassociate itself to make the point to the pupils that vulgar speech and lewd conduct is wholly inconsistent with the "fundamental values" of public school education. Justice Black, dissenting in *Tinker*, made a point that is especially relevant in this case: "I wish therefore, . . . to disclaim 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."

Respondent contends that the circumstances of his suspension violated due process because he had no way of knowing that the delivery of the speech in question would subject him to disciplinary sanctions. This argument is wholly without merit. We have recognized that "maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship" (*New Jersey v. T.L.O.*). Given the school's need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational process, the school disciplinary rules need not be as detailed as a criminal code, which imposes criminal sanctions.

Morse v. Frederick, 2007

Principal Deborah Morse arranged for her students at Juneau Douglas High School in Alaska to watch the passing of the Olympic Torch Relay that was bound for the Winter Games in Salt Lake City. Although the event took place off school property on a nearby street, it was officially sponsored and supervised by the school. On January 24, 2002, when the torchbearer and camera crew went by, Joseph Frederick, a senior, along with some of his friends, unfolded a fourteen-foot banner that read: “BONG HiTS 4 JESUS.” Principal Morse ran across the street and directed them to take the banner down. Frederick alone refused. He was suspended for ten days for violating the school drug policy. In response to this action, Frederick sued for damages in a federal court, claiming that Morse had infringed upon his right to free speech. He lost, but upon appeal, the Ninth Circuit Court reversed and ruled in his favor. *Morse v. Frederick* provides the most recent, controlling precedent on free speech in the educational setting. Chief Justice John Roberts (1955–), writing for a 5–4 majority (Justice Stephen Breyer [1938–] concurred and dissented in part), reversed the Ninth Circuit Court’s ruling, thereby affirming the school’s authority to restrict a pro-drug message. While Roberts claimed that his reasoning in *Morse v. Frederick* was consistent with the precedents of *Tinker v. Des Moines* (1969, Document 11), *Bethel v. Fraser* (1986), and *Hazelwood v. Kuhlmeier* (1988), Justice Clarence Thomas (1948–) disagreed. In his concurring opinion, Thomas argued that *Tinker* should be overturned. Taken together, *Bethel*, *Hazelwood*, and *Morse* have narrowed *Tinker*, thereby providing greater discretion for local school boards to restrict speech in the secondary-school educational setting.

As Morse later explained in a declaration, when she saw the sign, she thought that “the reference to a ‘bong hit’ would be widely understood by high school students and others as referring to smoking marijuana.” She further believed that “display of the banner would be construed by students, district personnel, parents, and others witnessing the display of the banner, as advocating or promoting illegal drug use”—in violation of school policy. ... (“I told Frederick and the other members of his group to put the banner down because I felt that it violated the [school] policy against displaying . . . material that advertises or promotes use of illegal drugs”).

We agree with Morse. . . .

The question thus becomes whether a principal may, consistent with the First Amendment, restrict student speech at a school event, when that speech is reasonably viewed as promoting illegal drug use. We hold that she may.

In *Tinker*, this Court made clear that “First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students.” *Tinker* involved a group of high school students who decided to wear black armbands to protest the Vietnam War. School officials learned of the plan and then adopted a policy prohibiting students from wearing armbands. When several students nonetheless wore armbands to school, they were suspended. The students sued, claiming that their First Amendment rights had been violated, and this Court agreed.

Tinker held that student expression may not be suppressed unless school officials reasonably conclude that it will “materially and substantially disrupt the work and discipline of the school.” The essential facts of *Tinker* are quite stark, implicating concerns at the heart of the First Amendment. The students sought to engage in political speech, using the armbands to express 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.” Political speech, of course, is “at the core of what the First Amendment is designed to protect” (*Virginia v. Black*, 2003).⁴ The only interest the Court discerned underlying the school’s actions was the “mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular view point,” or “an urgent wish to avoid the controversy which might result from the expression” (*Tinker*). That interest was not enough to justify banning “a silent, passive expression of opinion, unaccompanied by any disorder or disturbance.”

This Court’s next student speech case was *Fraser*. Matthew Fraser was suspended for delivering a speech before a high school assembly in which he employed what this Court called “an elaborate, graphic, and explicit sexual metaphor.” Analyzing the case under *Tinker*, the district court and Court of Appeals found no disruption, and therefore no basis for disciplining Fraser. This Court reversed, holding that the “School District acted entirely within its permissible

authority in imposing sanctions upon Fraser in response to his offensively lewd and indecent speech.”

For present purposes, it is enough to distill from Fraser two basic principles. First, Fraser’s holding demonstrates that “the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings.” Had Fraser delivered the same speech in a public forum outside the school context, it would have been protected. See *Cohen v. California* (1971).⁵ In school, however, Fraser’s First Amendment rights were circumscribed “in light of the special characteristics of the school environment.” Second, Fraser established that the mode of analysis set forth in *Tinker* is not absolute. Whatever approach Fraser employed, it certainly did not conduct the “substantial disruption” analysis prescribed by *Tinker*.

Our most recent student speech case, *Kuhlmeier*, concerned “expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school.” Staff members of a high school newspaper sued their school when it chose not to publish two of their articles. The Court of Appeals analyzed the case under *Tinker*, ruling in favor of the students because it found no evidence of material disruption to classwork or school discipline. This Court reversed, holding 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.”

Kuhlmeier does not control this case because no one would reasonably believe that Frederick’s banner bore the school’s imprimatur. The case is nevertheless instructive because it confirms both principles cited above. *Kuhlmeier* acknowledged that schools may regulate some speech “even though the government could not censor similar speech outside the school.”

Congress has declared that part of a school’s job is educating students about the dangers of illegal drug use. It has provided billions of dollars to support state and local drug-prevention programs, and required that schools receiving federal funds under the Safe and Drug-Free

Schools and Communities Act of 1994 certify that their drug prevention programs “convey a clear and consistent message that . . . the illegal use of drugs [is] wrong and harmful.”

Thousands of school boards throughout the country—including JDHS— have adopted policies aimed at effectuating this message. Those school boards know that peer pressure is perhaps “the single most important factor leading schoolchildren to take drugs,” and that students are more likely to use drugs when the norms in school appear to tolerate such behavior. Student speech celebrating illegal drug use at a school event, in the presence of school administrators and teachers, thus poses a particular challenge for school officials working to protect those entrusted to their care from the dangers of drug abuse.

The “special characteristics of the school environment” (Tinker), and the governmental interest in stopping student drug abuse—reflected in the policies of Congress and myriad school boards, including JDHS—allow schools to restrict student expression that they reasonably regard as promoting illegal drug use. Tinker warned that schools may not prohibit student speech because of “undifferentiated fear or apprehension of disturbance” or “a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.” The danger here is far more serious and palpable. The particular concern to prevent student drug abuse at issue here, embodied in established school policy, extends well beyond an abstract desire to avoid controversy.

Petitioners urge us to adopt the broader rule that Frederick’s speech is proscribable because it is plainly “offensive” as that term is used in Fraser. 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. The concern here is not that Frederick’s speech was offensive, but that it was reasonably viewed as promoting illegal drug use.

Although accusing this decision of doing “serious violence to the First Amendment” by authorizing “viewpoint discrimination,” the dissent concludes that “it might well be appropriate to tolerate some targeted viewpoint discrimination in this unique setting.” Nor do we understand the dissent to take the position that schools are required to tolerate student advocacy of illegal

drug use at school events, even if that advocacy falls short of inviting “imminent” lawless action (“it is possible that our rigid imminence requirement ought to be relaxed at schools”). And even the dissent recognizes that the issues here are close enough that the principal should not be held liable in damages, but should instead enjoy qualified immunity for her actions. Stripped of rhetorical flourishes, then, the debate between the dissent and this opinion is less about constitutional first principles than about whether Frederick’s banner constitutes promotion of illegal drug use. We have explained our view that it does. The dissent’s contrary view on that relatively narrow question hardly justifies sounding the First Amendment bugle.

School principals have a difficult job, and a vitally important one. When Frederick suddenly and unexpectedly unfurled his banner, Morse had to decide to act—or not act—on the spot. It was reasonable for her to conclude that the banner promoted illegal drug use—in violation of established school policy—and that failing to act would send a powerful message to the students in her charge, including Frederick, about how serious the school was about the dangers of illegal drug use. The First Amendment does not require schools to tolerate at school events student expression that contributes to those dangers. The judgment of the United States Court of Appeals for the Ninth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion. It is so ordered.

Mahanoy v. BL, 2021

JUSTICE BREYER delivered the opinion of the Court.

A public high school student used, and transmitted to her Snapchat friends, vulgar language and gestures criticizing both the school and the school's cheerleading team. The student's speech took place outside of school hours and away from the school's campus. In response, the school suspended the student for a year from the cheerleading team. We must decide whether the Court of Appeals for the Third Circuit correctly held that the school's decision violated the First Amendment. Although we do not agree with the reasoning of the Third Circuit panel's majority, we do agree with its conclusion that the school's disciplinary action violated the First Amendment.

I A B. L. (who, together with her parents, is a respondent in this case) was a student at Mahanoy Area High School, a public school in Mahanoy City, Pennsylvania. At the end of her freshman year, B. L. tried out for a position on the 2 MAHANROY AREA SCHOOL DIST. v. B. L. Opinion of the Court school's varsity cheerleading squad and for right fielder on a private softball team. She did not make the varsity cheerleading team or get her preferred softball position, but she was offered a spot on the cheerleading squad's junior varsity team. B. L. did not accept the coach's decision with good grace, particularly because the squad coaches had placed an entering freshman on the varsity team. That weekend, B. L. and a friend visited the Cocoa Hut, a local convenience store. There, B. L. used her smartphone to post two photos on Snapchat, a social media application that allows users to post photos and videos that disappear after a set period of time. B. L. posted the images to her Snapchat "story," a feature of the application that allows any person in the user's "friend" group (B. L. had about 250 "friends") to view the images for a 24 hour period. The first image B. L. posted showed B. L. and a friend with middle fingers raised; it bore the caption: "Fuck school fuck softball fuck cheer fuck everything." App. 20. The second image was blank but for a caption, which read: "Love how me and [another student] get told we need a year of JV before we make varsity but tha[t] doesn't matter to anyone else?" The caption also contained an upside-down smileyface emoji. Id., at 21. B. L.'s Snapchat "friends" included other Mahanoy Area High School students, some of whom also belonged to

the cheerleading squad. At least one of them, using a separate cellphone, took pictures of B. L.'s posts and shared them with other members of the cheerleading squad. One of the students who received these photos showed them to her mother (who was a cheerleading squad coach), and the images spread. That week, several cheerleaders and other students approached the cheerleading coaches "visibly upset" about B. L.'s posts. *Id.*, at 83–84. Questions about the posts persisted during an Algebra class taught by one of the two coaches. *Id.*, at 83. After discussing the matter with the school principal, the Cite as: 594 U. S. ____ (2021) 3 Opinion of the Court coaches decided that because the posts used profanity in connection with a school extracurricular activity, they violated team and school rules. As a result, the coaches suspended B. L. from the junior varsity cheerleading squad for the upcoming year. B. L.'s subsequent apologies did not move school officials. The school's athletic director, principal, superintendent, and school board, all affirmed B. L.'s suspension from the team. In response, B. L., together with her parents, filed this lawsuit in Federal District Court.....

We have made clear that students do not "shed their constitutional rights to freedom of speech or expression," even "at the school house gate." *Tinker*, 393 U. S., at 506; see Cite as: 594 U. S. ____ (2021) 5 Opinion of the Court also *Brown v. Entertainment Merchants Assn.*, 564 U. S. 786, 794 (2011) ("[M]inors are entitled to a significant measure of First Amendment protection" (alteration in original; internal quotation marks omitted)). But we have also made clear that courts must apply the First Amendment "in light of the special characteristics of the school environment." *Hazelwood School Dist. v. Kuhlmeier*, 484 U. S. 260, 266 (1988) (internal quotation mark omitted). One such characteristic, which we have stressed, is the fact that schools at times stand in loco parentis, i.e., in the place of parents. See *Bethel School Dist. No. 403 v. Fraser*, 478 U. S. 675, 684 (1986). This Court has previously outlined three specific categories of student speech that schools may regulate in certain circumstances: (1) "indecent," "lewd," or "vulgar" speech uttered during a school assembly on school grounds, see *id.*, at 685; (2) speech, uttered during a class trip, that promotes "illegal drug use," see *Morse v. Frederick*, 551 U. S. 393, 409 (2007); and (3) speech that others may reasonably perceive as "bear[ing] the imprimatur of the school," such as that appearing in a school-sponsored newspaper, see *Kuhlmeier*, 484 U. S., at 271.

Finally, in *Tinker*, we said schools have a special interest in regulating speech that “materially disrupts classwork or involves substantial disorder or invasion of the rights of others.” 393 U. S., at 513. These special characteristics call for special leeway when schools regulate speech that occurs under its supervision. Unlike the Third Circuit, we do not believe the special characteristics that give schools additional license to regulate student speech always disappear when a school regulates speech that takes place off campus. The school’s regulatory interests remain significant in some off-campus circumstances. The parties’ briefs, and those of amici, list several types of off-campus behavior that may call for school MAHANOY AREA SCHOOL DIST. v. B. L. Opinion of the Court regulation. These include serious or severe bullying or harassment targeting particular individuals; threats aimed at teachers or other students; the failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities; and breaches of school security devices, including material maintained within school computers. Even B. L. herself and the amici supporting her would redefine the Third Circuit’s off-campus/on-campus distinction, treating as on campus: all times when the school is responsible for the student; the school’s immediate surroundings; travel en route to and from the school; all speech taking place over school laptops or on a school’s website; speech taking place during remote learning; activities taken for school credit; and communications to school email accounts or phones. Brief for Respondents 36–37. And it may be that speech related to extracurricular activities, such as team sports, would also receive special treatment under B. L.’s proposed rule. See Tr. of Oral Arg. 71, 85. We are uncertain as to the length or content of any such list of appropriate exceptions or carve outs to the Third Circuit majority’s rule. That rule, basically, if not entirely, would deny the off-campus applicability of *Tinker*’s highly general statement about the nature of a school’s special interests. Particularly given the advent of computer-based learning, we hesitate to determine precisely which of many school-related off-campus activities belong on such a list. Neither do we now know how such a list might vary, depending upon a student’s age, the nature of the school’s off campus activity, or the impact upon the school itself. Thus, we do not now set forth a broad, highly general First Amendment rule stating just what counts as “off campus” speech and whether or how ordinary First Amendment standards must give way off campus to a school’s special need to prevent, e.g., substantial disruption of learning-related activities or the protection of those who make up a Cite as: 594 U. S. ____ (2021)

Opinion of the Court school community. We can, however, mention three features of off-campus speech that often, even if not always, distinguish schools' efforts to regulate that speech from their efforts to regulate on-campus speech. Those features diminish the strength of the unique educational characteristics that might call for special First Amendment leeway. First, a school, in relation to off-campus speech, will rarely stand in loco parentis. The doctrine of in loco parentis treats school administrators as standing in the place of students' parents under circumstances where the children's actual parents cannot protect, guide, and discipline them. Geographically speaking, off-campus speech will normally fall within the zone of parental, rather than school-related, responsibility. Second, from the student speaker's perspective, regulations of off-campus speech, when coupled with regulations of on-campus speech, include all the speech a student utters during the full 24-hour day. That means courts must be more skeptical of a school's efforts to regulate off-campus speech, for doing so may mean the student cannot engage in that kind of speech at all. When it comes to political or religious speech that occurs outside school or a school program or activity, the school will have a heavy burden to justify intervention. Third, the school itself has an interest in protecting a student's unpopular expression, especially when the expression takes place off campus. America's public schools are the nurseries of democracy. Our representative democracy only works if we protect the "marketplace of ideas." This free exchange facilitates an informed public opinion, which, when transmitted to lawmakers, helps produce laws that reflect the People's will. That protection must include the protection of unpopular ideas, for popular ideas have less need for protection. Thus, schools have a strong interest in ensuring that future generations understand the workings

MAHANOY AREA SCHOOL DIST. v. B. L. Opinion of the Court in practice of the well-known aphorism, "I disapprove of what you say, but I will defend to the death your right to say it." (Although this quote is often attributed to Voltaire, it was likely coined by an English writer, Evelyn Beatrice Hall.) Given the many different kinds of off-campus speech, the different potential school-related and circumstance-specific justifications, and the differing extent to which those justifications may call for First Amendment leeway, we can, as a general matter, say little more than this: Taken together, these three features of much off-campus speech mean that the leeway the First Amendment grants to schools in light of their special characteristics is diminished. We leave for future cases to decide where, when, and how these features mean the

speaker's off-campus location will make the critical difference. This case can, however, provide one example.