"[F]ree speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact."

TINKER v. DES MOINES SCHOOL DISTRICT

393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969).

A small group of teen-aged students in Des Moines planned to wear black armbands to classes to protest the war in Vietnam. Hearing about the plan, school principals decided to forbid wearing armbands and to suspend students who disobeyed the order. Several students defied the principals' edict and were suspended. Their families sought an injunction from a U.S. district court forbidding the principals and the school district to discipline the children for their symbolic protest. The parents lost in the district court. That decision was affirmed by an equally divided court of appeals. The parents sought and obtained certiorari from the Supreme Court.

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

I

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). Cf. 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. Cf. Cox v. Louisiana (1965); Adderly 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. This has been the unmistakable holding of this Court for almost 50 years. In Meyer v. Nebraska (1923), and Bartels v. Iowa (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. See also Pierce v. Society of Sisters (1925); *Barnette*; Wieman v. Updegraff (1952) (concurring opinion); Sweezy v. New Hampshire (1957); Shelton v. Tucker (1960); Keyishian v. Board of Regents (1967); Epperson v. Arkansas (1968).

In *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 ... 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. See *Epperson, Meyer*. 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, to hair style, or

deportment. 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 ....

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.

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. ...

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 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. ...

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. ...

Reversed and remanded.

Mr. Justice **STEWART,** concurring ....

Mr. Justice **WHITE,** concurring.

While I join the Court's opinion, I deem it appropriate to note ... 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 ....

Mr. Justice **BLACK,** dissenting ....

... 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 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 (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 pleases and when he pleases. This Court has already rejected such a notion. In Cox v. Louisiana (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."

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. ... [T]he 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. ...

The United States District Court refused to hold that the state school order violated the First and Fourteenth Amendments. Holding that the protest was akin to speech, which is protected by the First and Fourteenth Amendments, that court held that the school order was "reasonable" and hence constitutional. ... Two cases upon which the Court today heavily relies for striking down this school order used this test of reasonableness, Meyer v. Nebraska (1923), and Bartels v. Iowa (1923) .... 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, 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, Coppage, Adkins, Burns*, 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 "unreasonable," "arbitrary," "irrational," "contrary to fundamental 'decency,' " or some other such flexible term without precise boundaries. 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 .... Other cases cited by the Court do not, as implied, follow the McReynolds reasonableness doctrine. West Virginia v. Barnette, clearly reject[ed] the "reasonableness" test .... Neither Thornhill v. Alabama; Stromberg v. California; Edwards v. South Carolina; nor Brown v. Louisiana 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. ...

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. ... 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 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 ....

... 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 systems 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 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.

Editors' Notes

Clark v. Community for Creative Non-Violence (1984) sustained a District of Columbia ordinance that banned sleeping in public parks. A group advocating increased public assistance for the homeless had claimed they were exercising their rights to engage in symbolic speech by camping out in parks around the White House. For the majority, Justice White wrote that, even if sleeping in a park overnight was "expressive conduct to some extent protected by the First Amendment," it was subject to reasonable governmental regulation. He then applied the rule of Cantwell v. Connecticut (1940; reprinted below, p. 1014) that government could regulate "the time, place, and manner" of public demonstrations as long as its administration was neutral as to content of the message the demonstrators wished to convey. Here, White found, regulation "narrowly focuses on the Government's substantial interest in maintaining the parks in the heart of our capital in an attractive and intact condition, readily available to the millions of people who wish to see and enjoy them."