106 S.Ct. 3159
Supreme Court of the United States

BETHEL SCHOOL DISTRICT NO. 403, et al., Petitioners
v.
Matthew N. FRASER, a Minor and E.L. Fraser, Guardian Ad Litem.

No. 84–1667.
|
Argued March 3, 1986.
|
Decided July 7, 1986.

Synopsis
Student filed civil rights action after he was disciplined for language used in nominating speech at student assembly. The United States District Court for the Western District of Washington, Jack E. Tanner, J., issued declaratory judgment that school district violated student's rights and awarded student $278 in damages and $12,750 as costs and attorney fees. School District appealed. The Court of Appeals, 755 F.2d 1356,affirmed. Following grant of certiorari, the Supreme Court, Chief Justice Burger, held that: (1) school district acted entirely within its permissible authority in imposing sanctions upon student in response to his offensively lewd and indecent speech, which had no claim to First Amendment protection, and (2) school disciplinary rule proscribing obscene language and free speech admonitions of teachers gave adequate warnings to student that his lewd speech could subject him to sanctions.

Reversed.

[redacted]

****3160** *Syllabus*[*]

Respondent public high school student (hereafter respondent) delivered a speech nominating a fellow student for a student elective office at a voluntary assembly that was held during school hours as part of a school-sponsored educational program in self-government, and that was attended by approximately 600 students, many of whom were 14-year-olds. During the entire speech, respondent referred to his candidate in terms of an elaborate, graphic, and explicit sexual metaphor. Some of the students at the assembly hooted and yelled during the speech, some mimicked the sexual activities alluded to in the speech, and others appeared to be bewildered and embarrassed. Prior to delivering the speech, respondent discussed it with several teachers, two of whom advised him that it was inappropriate and should not be given. The morning after the assembly, the Assistant Principal called respondent into her office and notified him that the school considered his speech to have been a violation of the school's "disruptive-conduct rule," which prohibited conduct that substantially interfered with the educational process, including the use of obscene, profane language or gestures. Respondent was given copies of teacher reports of his conduct, and was given a chance to explain his conduct. After he admitted that he deliberately used sexual innuendo in the speech, he was informed that he would be suspended for three days, and that his name would be removed from the list of candidates for graduation speaker at the school's commencement exercises. Review of the disciplinary action through petitioner School District's grievance procedures resulted in affirmance of the discipline, but respondent was allowed to return to school after serving only two days of his suspension. Respondent, by his father (also a respondent) as guardian ad litem, then filed suit in Federal District Court, alleging a violation of his First Amendment right to freedom of speech and seeking injunctive relief and damages under 42 U.S.C. § 1983.

[redacted]

Held:

1. The First Amendment did not prevent the School District from disciplining respondent for giving the offensively lewd and indecent speech at the assembly. *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 distinguished. Under the First Amendment, the use of an offensive ****3161** form of expression may not be prohibited to adults making what the speaker considers a political point, but it does not follow that the same

latitude must be permitted to children in a public school. It is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse. Nothing in the Constitution prohibits the states from insisting that certain modes of expression are inappropriate and subject to sanctions. The inculcation of these values is truly the work of the school, and the determination of what manner of speech is inappropriate properly rests with the school board. First Amendment jurisprudence recognizes an interest in protecting minors from exposure to vulgar and offensive spoken language, *FCC v. Pacifica Foundation*, 438 U.S. 726, 98 S.Ct. 3026, 57 L.Ed.2d 1073, as well as 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, *Ginsberg v. New York*, 390 U.S. 629, 88 S.Ct. 1274, 20 L.Ed.2d 195. Petitioner School District acted entirely within its permissible authority in imposing sanctions upon respondent in response to his offensively lewd and indecent speech, which had no claim to First Amendment protection. Pp. 3163–3166.

[redacted]

755 F.2d 1356, reversed.

BURGER, C.J., delivered the opinion of the Court, in which WHITE, POWELL, REHNQUIST, and O'CONNOR, JJ., joined. BRENNAN, J., filed an opinion concurring in the judgment, *post,* p. ——. BLACKMUN, J., concurred in the result. MARSHALL, J., *post,* p. ——, and STEVENS, J., *post,* p. —— filed dissenting opinions.

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Opinion

Chief Justice BURGER delivered the opinion of the Court.

We granted certiorari to decide whether the First Amendment prevents a school district from disciplining a high school student for giving a lewd speech at a school assembly.

I

A

On April 26, 1983, respondent Matthew N. Fraser, a student at Bethel High School in Pierce County, Washington, delivered a speech nominating a fellow student for student elective office. Approximately 600 high school students, many of whom were 14-year-olds, 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. Students who elected not to attend the assembly were required to report to study hall. During the entire speech, Fraser referred ***678** to his candidate in terms of an elaborate, graphic, and explicit sexual metaphor.

Two of Fraser's teachers, with whom he discussed the contents of his speech in advance, informed him that the speech was "inappropriate and that he probably should not deliver it," App. 30, and that his delivery of the speech might have "severe consequences." *Id.*, at 61.

During Fraser's delivery of the speech, a school counselor observed the reaction of students to the speech. Some students ****3162** hooted and yelled; some by gestures graphically simulated the sexual activities pointedly alluded to in respondent's speech. Other students appeared to be bewildered and embarrassed by the speech. One teacher reported that on the day following the speech, she found it necessary to forgo a portion of the scheduled class lesson in order to discuss the speech with the class. *Id.*, at 41–44.

A Bethel High School disciplinary rule prohibiting the use of obscene language in the school provides:

> "Conduct which materially and substantially interferes with the educational process is prohibited, including the use of obscene, profane language or gestures."

The morning after the assembly, the Assistant Principal called Fraser into her office and notified him that the school considered his speech to have been a violation of this rule. Fraser was presented with copies of five letters submitted by teachers, describing his conduct at the assembly; he was given a chance to explain his conduct, and he admitted to having given the speech described and that he deliberately used sexual innuendo in the speech. Fraser was then informed that he would be suspended for three days, and that his name would be removed from the list of candidates for graduation speaker at the school's commencement exercises.

Fraser sought review of this disciplinary action through the School District's grievance procedures. The hearing officer determined that the speech given by respondent was "indecent, lewd, and offensive to the modesty and decency of ***679** many of the students and faculty in attendance at the assembly." The examiner determined that the speech fell within the ordinary meaning of "obscene," as used in the disruptive-conduct rule, and affirmed the discipline in its entirety. Fraser served two days of his suspension, and was allowed to return to school on the third day.

B

Respondent, by his father as guardian ad litem, then brought this action in the United States District Court for the Western District of Washington. Respondent alleged a violation of his First Amendment right to freedom of speech and sought both injunctive relief and monetary damages under 42 U.S.C. § 1983.

[redacted]

We granted certiorari, 474 U.S. 814, 106 S.Ct. 56, 88 L.Ed.2d 45 (1985). We reverse.

II

This Court acknowledged in *Tinker v. Des Moines Independent Community School Dist., supra,* that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.,* 393 U.S., at 506, 89 S.Ct., at 736. The Court of Appeals read that case as precluding any discipline of Fraser for indecent speech and lewd conduct in the school assembly. That court appears to have proceeded on the theory that the use of lewd and obscene speech in order to make what the speaker considered to be a point in a nominating speech for a fellow student was essentially the same as the wearing of an armband in *Tinker* as a form of protest or the expression of a political position.

The marked distinction between the political "message" of the armbands in *Tinker* and the sexual content of respondent's speech in this case seems to have been given little weight by the Court of Appeals. In upholding the students' right to engage in a nondisruptive, passive expression of a political viewpoint in *Tinker,* this Court was careful to note that the case did "not concern speech or action that intrudes upon the work of the schools or the rights of other students." *Id.,* at 508, 89 S.Ct., at 737.

***681** It is against this background that we turn to consider the level of First Amendment protection accorded to Fraser's utterances and actions before an official high school assembly attended by 600 students.

III

The role and purpose of the American public school system were well described by two historians, who stated: "[P]ublic education must prepare pupils for citizenship in the Republic.... It must inculcate the habits and manners of civility as values in themselves conducive to happiness and as indispensable to the practice of self-government in the community and the nation." C. Beard & M. Beard, New Basic History of the United States 228 (1968). In *Ambach v. Norwick,* 441 U.S. 68, 76–77, 99 S.Ct. 1589, 1594, 60 L.Ed.2d 49 (1979), we echoed the essence of this statement of the objectives of public education as the "inculcat[ion of] fundamental values necessary to the maintenance of a democratic political system."

These fundamental values of "habits and manners of civility" essential to a democratic society must, of course, include tolerance of divergent political and religious views, even when the views expressed may be unpopular. But these "fundamental values" must also take into account consideration of the sensibilities of others, and, in the case of a school, the sensibilities of fellow students. The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior. Even the most heated political discourse in a democratic society requires consideration for the personal sensibilities of the other participants and audiences.

In our Nation's legislative halls, where some of the most vigorous political debates in our society are carried on, there are rules prohibiting the use of expressions offensive to other participants in the debate. The Manual of Parliamentary ***682** Practice, drafted by Thomas Jefferson and adopted by the House of Representatives to govern the proceedings in that body, prohibits the use of "impertinent" speech during debate and likewise provides that "[n]o person is to use indecent language against the proceedings of the House." Jefferson's Manual of Parliamentary Practice §§ 359, 360, reprinted in Manual ****3164** and Rules of House of Representatives, H.R.Doc. No. 97–271, pp. 158–159 (1982); see *id.,* at 111, n. *a* (Jefferson's Manual governs the House in all cases to which it applies). The Rules of Debate applicable in the Senate likewise provide that a Senator may be called to order for imputing improper motives to another Senator or for referring offensively to any state. See Senate Procedure, S.Doc. No. 97–2, Rule XIX, pp. 568–569, 588–591 (1981). Senators have been censured for abusive language directed at other Senators. See Senate Election, Expulsion and Censure Cases from 1793 to 1972, S.Doc. No. 92–7, pp. 95–98 (1972) (Sens. McLaurin and Tillman); *id.,* at 152–153 (Sen. McCarthy). Can it be that what is proscribed in the halls of Congress is beyond the reach of school officials to regulate?

The First Amendment guarantees wide freedom in matters of adult public discourse. A sharply divided Court upheld the right to express an antidraft viewpoint in a public place, albeit in terms highly offensive to most citizens. See *Cohen v. California,* 403 U.S. 15, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971). It does not follow, however, that simply because the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, the same latitude must be permitted to children in a public school. In *New Jersey v. T.L.O.,* 469 U.S. 325, 340–342, 105 S.Ct. 733, 742–743, 83 L.Ed.2d 720 (1985), we reaffirmed that the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings. As cogently expressed by Judge Newman, "the First Amendment gives a high school student the classroom right to wear Tinker's

armband, but not Cohen's jacket." ***683** *Thomas v. Board of Education, Granville Central School Dist.*, 607 F.2d 1043, 1057 (CA2 1979) (opinion concurring in result).

Surely it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse. Indeed, the "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. Nothing in the Constitution prohibits the states from insisting that certain modes of expression are inappropriate and subject to sanctions. The inculcation of these values is truly the "work of the schools." *Tinker*, 393 U.S., at 508, 89 S.Ct., at 737; see *Ambach v. Norwick*, *supra*. The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board.

The process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class; schools must teach by example the shared values of a civilized social order. Consciously or otherwise, teachers—and indeed the older students—demonstrate the appropriate form of civil discourse and political expression by their conduct and deportment in and out of class. Inescapably, like parents, they are role models. The schools, as instruments of the state, may determine that the essential lessons of civil, mature conduct cannot be conveyed in a school that tolerates lewd, indecent, or offensive speech and conduct such as that indulged in by this confused boy.

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. See App. 77–81. The speech could well be seriously damaging to its less mature audience, many of whom were only 14 years old and on the threshold of awareness of human sexuality. Some students were reported as ***684** 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 ****3165** the audience may include children. In *Ginsberg v. New York*, 390 U.S. 629, 88 S.Ct. 1274, 20 L.Ed.2d 195 (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*, 457 U.S. 853, 871–872, 102 S.Ct. 2799, 2814–2815, 73 L.Ed.2d 435 (1982) (plurality opinion); *id.*, at 879–881, 102 S.Ct., at 2814–2815 (BLACKMUN, J., concurring in part and in judgment); *id.*, at 918–920, 102 S.Ct., at 2834–2835 (REHNQUIST, J., dissenting). 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*, 438 U.S. 726, 98 S.Ct. 3026, 57 L.Ed.2d 1073 (1978), 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." *Id.*, at 729, 98 S.Ct., at 3030; see also *id.*, at 751–755, 98 S.Ct., at 3041–3043 (Appendix to opinion of the Court). The Commission concluded that "certain words depicted sexual and excretory activitites in a patently offensive manner, [and] noted ***685** that they 'were broadcast at a time when children were undoubtedly in the audience.' " The Commission issued an order declaring that the radio station was guilty of broadcasting indecent language in violation of 18 U.S.C. § 1464. 438 U.S., at 732, 98 S.Ct., at 3031. The Court of Appeals set aside the Commission's determination, and we reversed, reinstating the Commission's citation of the station. We concluded that the broadcast was properly considered "obscene, indecent, or profane" within the meaning of the statute. 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*, 315 U.S. [568], at 572 [62 S.Ct. 766, at 769, 86 L.Ed. 1031 (1942)]." *Id.*, at 746, 98 S.Ct., at 3039.

We hold that petitioner 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 towards 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 ***686** school education. Justice ****3166** 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." 393 U.S., at 526, 89 S.Ct., at 746.

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.*, 469 U.S., at 340, 105 S.Ct., at 742. 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. Cf. *Arnett v. Kennedy*, 416 U.S. 134, 161, 94 S.Ct. 1633, 1647–1648, 40 L.Ed.2d 15 (1974) (REHNQUIST, J., concurring). Two days' suspension from school does not rise to the level of a penal sanction calling for the full panoply of procedural due process protections applicable to a criminal prosecution. Cf. *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975). The school disciplinary rule proscribing "obscene" language and the prespeech admonitions of teachers gave adequate warning to Fraser that his lewd speech could subject him to sanctions.[*]

***687** The judgment of the Court of Appeals for the Ninth Circuit is

Reversed.

IV

Footnotes

[redacted]

1 In the course of its opinion, the Court makes certain remarks concerning the authority of school officials to regulate student language in public schools. For example, the Court notes that "[n]othing in the Constitution prohibits the states from insisting that certain modes of expression are inappropriate and subject to sanctions." *Ante,* at 3165. These statements obviously do not, and indeed given our prior precedents could not, refer to the government's authority generally to regulate the language used in public debate outside of the school environment.

2 The Court speculates that the speech was "insulting" to female students, and "seriously damaging" to 14-year-olds, so that school officials could legitimately suppress such expression in order to protect these groups. *Ante,* at 3165. There is no evidence in the record that any students, male or female, found the speech "insulting." And while it was not unreasonable for school officials to conclude that respondent's remarks were inappropriate for a school-sponsored assembly, the language respondent used does not even approach the sexually explicit speech regulated in *Ginsberg v. New York,* 390 U.S. 629, 88 S.Ct. 1274, 20

L.Ed.2d 195 (1968), or the indecent speech banned in *FCC v. Pacifica Foundation,* 438 U.S. 726, 98 S.Ct. 3026, 57 L.Ed.2d 1073 (1978). Indeed, to my mind, respondent's speech was no more "obscene," "lewd," or "sexually explicit" than the bulk of programs currently appearing on prime time television or in the local cinema. Thus, I disagree with the Court's suggestion that school officials could punish respondent's speech out of a need to protect younger students.

3 Respondent served two days' suspension and had his name removed from the list of candidates for graduation speaker at the school's commencement exercises, although he was eventually permitted to speak at the graduation. While I find this punishment somewhat severe in light of the nature of respondent's transgression, I cannot conclude that school officials exceeded the bounds of their disciplinary authority.

