

Handout 6

Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675 (1986).

Factual overview

This is an actual case, decided by the U.S. Supreme Court in 1986.

At a school assembly, Matthew Fraser gave a speech to nominate a fellow student for student council. Students were required to either attend the assembly or go to study hall. The assembly was part of a school-sponsored educational program in self-government.

During his entire speech, Fraser referred to his candidate in terms of an elaborate sexual metaphor:

“I know a man who is firm. He’s firm in his pants, he’s firm in his shirt, his character is firm. But most ... of all, his belief in you, the students of Bethel, is firm. [He] is a man who takes his point and pounds it in. If necessary, he’ll take an issue and nail it to the wall. He doesn’t attack things in spurts. He drives hard, pushing and pushing until finally he succeeds. [He] is a man who will go to the very end—even the climax—for each and every one of you... He’ll never come between you and the best our high school can be.”

Fraser had discussed this speech with two teachers beforehand, and both teachers told him that his speech was inappropriate and that he should probably not deliver it.

During the speech, some students hooted and yelled, some made sexual gestures, and some seemed bewildered and embarrassed. One teacher reported that the next day, she had to interrupt her lesson plan in order to discuss the speech with the class.

The school had a rule that prohibited the use of obscene, profane language or gestures. When confronted by the Assistant Principal, Fraser admitted that he deliberately used sexual innuendo in the speech. As punishment, the school declared that he would be suspended for three days, and his name would be removed from the list of candidates to be a speaker at graduation.

The dispute

- The student said: Suspending me for my speech was a violation of my First Amendment right to freedom of speech.
- The school officials said: The school may choose to punish speech that is lewd, indecent, or disruptive to the educational process.

Opinion

Chief Justice BURGER delivered the opinion of the Court.

[P]ublic education must prepare pupils for citizenship in the Republic. ... It must inculcate¹ the habits and manners of civility...

These fundamental values ... 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 sensibilities² 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 discourse³ in a democratic society requires consideration for the personal sensibilities of the other participants and audiences...

[T]he constitutional rights of students in public school are not automatically coextensive⁴ with the rights of adults in other settings...

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. ... The inculcation of these values is truly the work of the schools. 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 deportment⁵ 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,⁶ indecent, or offensive speech...

This Court's First Amendment jurisprudence⁷ 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... These cases recognize the obvious concern on the part of parents, and school authorities acting *in loco parentis*,⁸ to protect children -- especially a captive audience -- from exposure to sexually explicit, indecent, or lewd speech...

¹ *Inculcate* - instill; persistently teach

² *Sensibilities* - emotional responses

³ *Discourse* - spoken or written conversations or debates

⁴ *Coextensive* - to the same extent or amount; equal

⁵ *Deportment* - behavior

⁶ *Lewd* - crude and offensive in a sexual way

⁷ *Jurisprudence* - way of thinking about the law about the law

⁸ *In loco parentis* - in place of the parents

We hold that [the] School District acted entirely within its permissible authority in imposing sanctions⁹ 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's¹⁰ 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 school education.

⁹ *Sanctions* - penalties

¹⁰ *Respondent* - in this case, the Court is referring to Fraser, the student.