

Constitutional Precedents on Student Speech

From *Palmer ex rel. Palmer v. Waxahachie Indep. Sch. Dist.*, 579 F.3d 502, 507 (5th Cir. 2009).

The Supreme Court has issued four major opinions on public school regulation of student speech. First, in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), a public school punished students who wore black armbands to school to protest the Vietnam War. *Id.* at 504. The Court confirmed that “students [do not] shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,” *id.* at 506, and “[i]n the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.” *Id.* at 511. Schools can restrict student speech only if it materially interferes with or disrupts the school's operation, *id.* at 512, and cannot “suppress ‘expressions of feelings with which they do not wish to contend.’ ” *Id.* at 511 (citing *Burnside v. Byars*, 363 F.2d 744, 749 (5th Cir.1966)).

Since *Tinker*, every Supreme Court decision looking at student speech has expanded the kinds of speech schools can regulate. In *Bethel School District No. 403 v. Fraser*, 478 U.S. 675, 687(1986), the Court ruled that schools can prohibit “sexually explicit, indecent, or lewd speech.” The Court held in *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 271–73 (1988), that schools can also regulate school-sponsored speech.

Finally, in *Morse v. Frederick*, 551 U.S. 393 (2007), the Court determined that schools can prohibit “[s]peech advocating illegal drug use.” *Id.* at 2638 (Alito, J., concurring).

Palmer argues that under these decision, he wins on the merits. Reading *Tinker*, *Fraser*, *Hazelwood*, and *Morse* together, Palmer believes the Court has established a bright-line rule that schools cannot restrict speech that is not disruptive, lewd, school-sponsored, or drug-related. If this were the rule, Palmer indeed would prevail, because the District has stipulated that his shirts do not fall into any of these categories. Palmer's proposed categorical rule, however, is flawed, because it fails to include another type of student speech restriction that schools can institute: content-neutral regulations.” [In this case the court upheld the constitutionality of a dress code that disallowed wording on T-shirts except for small logos and school-sponsored shirts.]