

U.S. SUPREME COURT CASES EVERY SCHOOL BOARD MEMBER SHOULD KNOW

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"THE PUBLIC SCHOOL HAS SERVED AS THE SINGLE MOST SIGNIFICANT SITE OF CONSTITUTIONAL INTERPRETATION WITHIN THE NATION'S HISTORY."
JUSTIN DRIVER, THE SCHOOLHOUSE GATE, PUBLIC EDUCATION, THE SUPREME COURT AND THE BATTLE FOR THE AMERICAN MIND

“THE SCHOOLROOM IS THE FIRST OPPORTUNITY MOST CITIZENS HAVE TO EXPERIENCE THE POWER OF GOVERNMENT” JUSTICE JOHN PAUL STEVENS.

FOURTEENTH AMENDMENT, SECTION 1

- ▶ All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

PARENTAL RIGHTS

MEYER V. NEBRASKA (1923)

- ▶ Arose out of post WWI animosity against all things German
- ▶ 1919 Nebraska criminal law: "No person, individually or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language."
- ▶ Meyer taught at parochial school. DA observed 4th grade student reading from Bible in German. Meyer charged and convicted of violating the act. Conviction upheld by Nebraska Supreme Court. Appealed to USSC.
- ▶ USSC stated that the "liberty" protected by the Due Process clause "denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men".

MEYER V. NEBRASKA (1923) CONT.

- ▶ “[Meyer] taught this language in school as part of his occupation. His right thus to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the amendment.”
- ▶ "Evidently the Legislature has attempted materially to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own."
- ▶ "That the state may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution – a desirable end cannot be promoted by prohibited means."

PIERCE V. SOCIETY OF SISTERS (1925)

- ▶ Dealt with another post WWI law enacted out of concern about the influence of immigrants and foreign values. Oregon passed law requiring all children between age 8-16 to attend public school. Law aimed at eliminating parochial schools, including primarily catholic schools.
- ▶ USSC unanimously held the law unconstitutional. “Under the doctrine of *Meyer v. Nebraska*, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control: as often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

COMPULSORY SCHOOL ATTENDANCE? PARENTAL CONTROL OF CURRICULUM?

- ▶ Meyer: “The power of the State to compel attendance at some school and to make reasonable regulation for all schools... is not questioned. Nor has challenge been made to the State’s power to prescribe the curriculum for institutions which it supports.”
- ▶ Pierce: “No question is raised concerning the power of the State reasonably to regulate all schools, to inspect, supervise, and examine them, their teachers and pupils; to require... that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.”
- ▶ Epperson v. Arkansas: state has “undoubted right to prescribe curriculum for its public schools.”
- ▶ States’ right to control curriculum is not absolute if it impinges on constitutional rights of citizens.

FIRST AMENDMENT
FREE SPEECH
STUDENTS



WEST VIRGINIA STATE BOARD OF EDUCATION V. BARNETTE (1943)

- ▶ WWII era case. In 1942, West Virginia passed a law requiring students to salute the flag and recite the pledge of allegiance. Refusal leads to expulsion. Jehovah's Witnesses refused on religious grounds. Jehovah's Witnesses in Germany had been sent to concentration camps for refusing to salute Nazi flag. Not a religious freedom case/but a free speech case.
- ▶ The case is made difficult not because the principles of its decision are obscure but because the flag involved is our own. Nevertheless, we apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization. To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds. We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

*WEST VIRGINIA STATE BOARD OF EDUCATION
V. BARNETTE (1943) CONT.*

- ▶ “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. If there are any circumstances which permit an exception, they do not now occur to us.”

TINKER v. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT (1969)

- ▶ High school students planned to wear black armbands to protest the Vietnam war. School learned of planned protest and implemented a policy to deter participation. Three students, including 13 year old Mary Beth Tinker, wore armbands and were sent home. No disruption occurred at the school due to the armbands.
- ▶ Did the school's prohibition of the armbands (symbolic speech) violate the First Amendment?
- ▶ 7-2 Decision Against School. The Court held that students did not lose their First Amendment rights to freedom of speech when they stepped onto school property; and Armbands were pure speech which could not be infringed without proving that speech would *"materially and substantially" interfere with the operation of the school.*
- ▶ Became known as the "substantial disruption" test which still governs the free speech rights of students in public schools.

TINKER v. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT (1969) CONT.

- ▶ "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."
- ▶ "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 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."

BETHEL SCHOOL DISTRICT NO. 403 v. FRASER (1986)

- ▶ While speaking at a school assembly a student used a graphic sexual metaphor. School District suspended the student pursuant to its rule prohibiting conduct that substantially interferes with the educational process.
- ▶ 7-2 Decision for the school. The court distinguished the political speech in *Tinker* from speech that was inconsistent with “the fundamental values of public school education.”
- ▶ "Conduct which materially and substantially interferes with the educational process is prohibited, including the use of *obscene, profane language or gestures.*"

HAZELWOOD V. KUHLMEIER (1988)

- ▶ A school paper, written and edited by students, submitted a draft to the school principal. Principal determined that two articles (divorce and teen pregnancy) were inappropriate and ordered that the articles not be printed.
- ▶ Can a school censor student speech in a school sponsored publication?
- ▶ 5-3 Decision for the School. The court held that the First Amendment does not require a school to endorse or otherwise authorize speech disseminated in a school sponsored publication.
- ▶ "Educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities," the Court said, "so long as their actions are *reasonably related to legitimate [educational] concerns.*"

MORSE v. FREDRICK (2007)

- ▶ At a school-supervised event, a student held up a banner with the message "Bong Hits 4 Jesus." The student's principal took away the banner and suspended the student for ten days.
- ▶ Can a school prohibit certain speech at school-supervised events?
- ▶ 5-4 Decision for School. The Court held that students' right to political speech in school does not extend to pro-drug messages that undermine the school's mission to discourage drug use.

FIRST AMENDMENT
FREE SPEECH
EMPLOYEES

PICKERING V. BOARD OF EDUCATION (1968)

- ▶ Marvin Pickering was a HS teacher who wrote a letter to the editor criticizing the Board and Superintendent's handling of a bond issue. He was terminated for conduct "detrimental to the efficient operation and administration of the schools"
- ▶ Supreme Court recognized the tension between protecting First Amendment rights of public employees and the competing need for orderly school administration.
- ▶ Court created a balancing test to weigh the interest of "a citizen, in commenting upon matters of public concern and the interests of the state, as an employer in promoting the efficiency of the public services it performs through its employees."

PICKERING BALANCING TEST

- ▶ Is the employee speaking as a public citizen or pursuant to official duties?
- ▶ Does the speech relate to a matter of public concern or private concern based on its content, form, and context?
- ▶ Do the interests of the employee as a private citizen in commenting on matters of public concern outweigh the interests of the public employer in promoting the efficiency of the public services it performs?

FOURTH AMENDMENT RIGHT TO BE
FREE OF UNREASONABLE SEARCHES
AND SEIZURES

NEW JERSEY V. T.L.O (1985)

- ▶ T.L.O. was a high school student and school officials searched her purse suspecting she has cigarettes after she was caught smoking in the bathroom. School officials discovered cigarettes, a small amount of marijuana, and a list containing the names of students that owed T.L.O. money
- ▶ Supreme Court had to decide whether the search was reasonable under the 4th Amendment. It employed a balancing between the legitimate expectation of privacy of an individual, including a child, and the school's interest in maintaining order and discipline. Court held that a school could perform a search based on a "reasonable suspicion" that a school rule was broken.
- ▶ Because T.L.O was seen smoking, school officials had "reasonable suspicion" that she possessed cigarettes in her purse, which justified the search.

STANDARD FOR STUDENT SEARCHES IN PUBLIC SCHOOLS

- ▶ Reasonable suspicion is satisfied when two conditions exist: (1) the search is justified at its inception, meaning that there are reasonable grounds for suspecting that the search will reveal evidence that the individual student has violated or is violating the law or school rules, and (2) the search is reasonably related in scope to the circumstances that justified the search, meaning that the measures used to conduct the search are reasonably related to the objectives of the search and that the search is not excessively intrusive in light of the student's age and sex and the nature of the offense.

VERNONIA SCHOOL DISTRICT 47J V. ACTON (1995)

- ▶ The Vernonia School District of Oregon adopted the Student Athlete Drug Policy. This authorized random urinalysis drug testing of its student athletes. Acton, a student, was denied participation in his school's football program when he and his parents refused to consent to testing.
- ▶ Does random drug testing high school athletes violate the reasonable search and seizure clause of the Fourth Amendment? No.
- ▶ 6-3 decision for School District. The reasonableness of a search is judged by "balancing the intrusion on the individual's Fourth Amendment against the promotion of legitimate governmental interests." In the case of high school athletes who are under State supervision during school hours, they are subject to greater control than over free adults. The privacy interests compromised by urine samples are negligible since the conditions of collection are similar to public restrooms, and the results are viewed only by limited authorities. Furthermore, the governmental concern over the safety of minors under their supervision overrides the minimal, if any, intrusion in student-athletes' privacy.

BOARD OF ED. OF INDEPENDENT SCHOOL DIST. NO. 92 OF POTTAWATOMIE CTY.V. EARLS (2002)

- ▶ School District in Oklahoma adopted The Students Activities Drug Testing Policy, which required all middle and high school students to consent to urinalysis testing for drugs in order to participate in competitive extracurricular activities. Two Tecumseh High School students and their parents brought suit, alleging the policy violated the Fourth Amendment.
- ▶ In 5-4 opinion, USSC stated that the School board's policy requiring all students who participated in competitive extracurricular activities to submit to drug testing was a reasonable means of furthering the school district's important interest in preventing and deterring drug use among its schoolchildren, and therefore did not violate Fourth Amendment; students affected by policy had a limited expectation of privacy, degree of intrusion caused by policy was negligible given the method of collection of urine samples, and the only consequence of a failed drug test was to limit student's privilege of participating in extracurricular activities.

FIRST AMENDMENT: FREE EXERCISE OF RELIGION

WISCONSIN V. YODER (1971)

- ▶ Amish parents convicted of violating Wisconsin's compulsory school attendance law by declining to send children to public or private school after 8th grade. Evidence showed that defendants had sincerely held religious belief that high school attendance was contrary to the Amish religion and endangered the student's salvation.
- ▶ Held: The state's interest in universal education is not totally free from a balancing process when it infringes on other fundamental interests, like the free exercise clause of the 1st Amendment.
- ▶ The Amish defendants demonstrated the sincerity of their belief and the adequacy of their alternative mode of continuing informal education as meeting the state's interest in compulsory education. The state could not compel attendance beyond 8th grade in these circumstances.

FIRST AMENDMENT: ESTABLISHMENT CLAUSE

- ▶ Prohibits the government from making any law “respecting an establishment of religion.” This clause not only forbids the government from establishing an official religion, but also prohibits government actions that unduly favor one religion over another. It also prohibits the government from unduly preferring religion over non-religion, or non-religion over religion.

LEMON V. KURTZMAN (1971)

- ▶ PA and RI passed law that provided for the state to pay for aspects of non-secular, non-public education. Some taxpayers sued alleging that the statute violated the separation of church and state described in the establishment clause.
- ▶ The Court held that a statute must pass a three-pronged test in order to avoid violating the Establishment Clause. The statute must have a secular legislative purpose, its principal or primary effect must be one that neither promotes nor inhibits religion, and it must not foster “excessive government entanglement with religion.”
- ▶ USSC held that the statutes constituted an excessive government entanglement with religion. In the Rhode Island program, the amount of oversight of teachers and curricula required to ensure that there is no unnecessary injection of religion into secular topics would require the government to become excessively involved in the nuances of religious education.

MORE ESTABLISHMENT CLAUSE CASES

- ▶ Engel v. Vitale (1962)-- Court held that NY law authorizing a short, non-denominational, voluntary prayer at the start of the school day violated Establishment clause.
- ▶ Abington v. Schempp; (1963)-- PA law requiring public schools to read from the bible at the beginning of each day violated the EC.
- ▶ Epperson v. Arkansas (1968)-- Statute that prohibited public school teachers from teaching, or using textbooks that teach, evolution was enacted to further the beliefs of a particular religion and violated the EC.
- ▶ Edwards v. Aguillard (1986)-- LA law which mandated teaching of “creation science” along with the theory of evolution violated EC using Lemon Test.
- ▶ Lee v. Weisman (1992)-- Rabbi invited to speak at HS graduation. Court held that gov’t involvement in case created a “state-sponsored and state-directed religious exercise in a public school” which create subtle and indirect coercion that violates the EC.
- ▶ Santa Fe Independent School District v. Doe (2000)-- District policy permitted student-led, student-initiated prayer at football games over PA system. Court found a violation of EC because the prayers were public speech authorized by gov’t policy, at school sponsored events, with a perceived and actual school endorsement of the prayer.
- ▶ Edwards v. Aguillard; Louisiana law that prohibited the teaching of the theory of evolution in public schools unless that instruction also included the teaching of Biblically-based creation science. USSC found that this law violated Establishment Clause, applicable to states via Fourteenth Amendment.

EQUAL PROTECTION OF THE LAW

BROWN V. BOARD OF EDUCATION (1954)

- ▶ Class actions originating in the four states of Kansas, South Carolina, Virginia, and Delaware., by which African American plaintiffs sought to obtain admission to public schools on a nonsegregated basis.
- ▶ The plaintiffs contended that segregated public schools are not 'equal' and cannot be made 'equal,' and that hence they are deprived of the equal protection of the laws. The separate but equal doctrine prevailed at the time.
- ▶ Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? Yes.
- ▶ Unanimous decision. The Supreme Court held that "separate but equal" facilities are inherently unequal and violate the protections of the Equal Protection Clause of the Fourteenth Amendment. The Court reasoned that the segregation of public education based on race instilled a sense of inferiority that had a hugely detrimental effect on the education and personal growth of African American children. Supreme Court announced that such segregation is a denial of the equal protection of the laws.

SAN ANTONIO INDEPENDENT SCHOOL DISTRICT V. RODRIGUEZ (1973)

- ▶ TX law funded schools in part on local property taxes with the result that wealthier areas had much more funding per child than poorer areas. Suit brought alleging a violation of the Equal Protection Clause.
- ▶ 5-4 decision for School District. USSC held that there was no fundamental right to education in the U.S. Constitution and that being “poor” was not a “suspect classification. A finding that education was a fundamental right or that being poor was a suspect classification would have required the court to look at the law with “strict scrutiny” which would require the government to have passed the law to further a compelling government interest” and must have narrowly tailored the law to achieve that interest.
- ▶ Because the law didn’t implicate a fundamental right or suspect classification, the law only had to bear a rational relationship to a legitimate state purpose. USSC held that the law assured a basic education for every child and allowed for local control which were rational reasons for the law.

PLYLER V. DOE (1981)

- ▶ TX statute withheld state funds from any school district for education of children not “legally admitted” into the US, and authorizes denying enrollment. Parents of illegal immigrant students sued under the Equal Protection clause which applies to “any person within [a state’s] jurisdiction.”
- ▶ 5-4 decision. Court held that even though education is not a fundamental constitutional right, and undocumented resident immigrants are not a “suspect class,” the law violated the equal protection clause because it failed the rational basis test.
- ▶ Law would impose a lifetime hardship on a class of children through no fault of their own and would impose costs on the nation as a whole. Education is more important than other gov’t benefits. TX could not show that by excluding undocumented children will improve the overall quality of education in the state.
- ▶ Government may not engage in any practice to deter or discourage the right of a student to attend public school.

PROCEDURAL DUE PROCESS: STUDENTS

GOSS v. LOPEZ (1974)

- ▶ Nine public school students were suspended for 10 days without an opportunity to address the disciplinary issues at a preliminary hearing.
- ▶ Due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his version. Generally, notice and hearing should precede the student's removal from school, since the hearing may almost immediately follow the misconduct, but if prior notice and hearing are not feasible, as where the student's presence endangers persons or property or threatens disruption of the academic process, thus justifying immediate removal from school, the necessary notice and hearing should follow as soon as practicable.

PROCEDURAL DUE PROCESS: EMPLOYEES

CLEVELAND BOARD OF EDUCATION v. LOUDERMILL (1985)

- ▶ After discovering that a security guard lied about a felony conviction on his application the board of education fired the employee. State law provided that certain employees could only be fired for cause and that the employee could ask for a hearing to review the termination. Terminated security guard was given a hearing after his termination but his termination was upheld.
- ▶ Is post-termination hearing sufficient due process under the Fourteenth Amendment?
- ▶ 8-1 Against School. State law gave Loudermill a property right in his employment. The court held that due process requires adequate notice and opportunity to respond before a property interest can be taken away. Because the hearing occurred after the interest was taken away it did not satisfy due process requirements.

QUESTIONS?

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