10-1971

Grayned v. City of Rockford

Lewis F. Powell Jr.

Chicago & Rockford ordinances ~~limited~~ prohibited any picketing (except by labor organizations) within 150 ft. of primary & secondary schools during, & 1/2 hr before & after, school hours.

CC7 held Chicago ordinance invalid on its face.

Ill. Supt. Ct held identical Rockford ord. valid.

Only a single, peaceful picket involved in Chicago case.

A demonstration of 200 people, peacefully, in the Rockford case.

BENCH MEMO

No. 70-87 OT 1971

Police Department of the City of Chicago v. Mosley

Certiorari to CA 7 (Hastings, Kiley & Kerner)

No. 70-5106 OT 1971

Grayned v. City of Rockford

Appeal from the Supreme Court of Illinois (Ward, J.)(Schaefer, J., dissenting)

Peaceful Picketing Cases.

These two cases have been consolidated for oral argument.

Controlling Cases: Thornhill v. Alabama, 310 US 88 (1940); Cox v. Louisiana, 379 US 559 (1965); Amalgamated Food Employees Union v. Logan Valley Plaza, Inc., 391 US 308 (1968).

In No. 70-87, Police Department v. Mosley, resp Mosley sought an injunction in the USDC for ND Illinois against the enforcement of a Chicago ordinance which prohibited picketing on a public way within 150 feet of a public school building. The USDC granted petr's motion for summary judgment and dismissed the complaint. CA 7 reversed, holding the ordinance unconstitutional on its face for overbreadth. This Court granted certiorari at the instance of the Police Department of the City of Chicago.

In No. 70-5106, Grayned v. City of Rockford, petr Grayned was convicted, after jury trial in the Circuit Court of Winnebago County, Illinois, of violating two Rockford ordinances, one of which prohibited picketing on a public way within 150 feet of a public school building, and one of which prohibited making or assisting in the making of any noise or diversion which tends to disturb the peace or good order of a school session, while on public or private grounds adjacent to a public school building. Petr Grayned was sentenced to a $25 fine for violating each ordinance. The Supreme Court of Illinois affirmed, over the dissent of Justice (now Chief Justice) Schaefer. This Court granted certiorari at the instance of [illegible] Grayned.

QUESTIONS PRESENTED

(1) Whether an ordinance which prohibits picketing by a lone, peaceful picket on a public way within 150 feet of a public school while the school is in session, and ½ hour before and after the school session, is unconstitutional on its face?

(2) Whether an ordinance which prohibits [illegible] picketing on a public way within 150 feet of a public school while the school is in session, but exempts from its coverage picketing in connection with a labor

dispute, sets up a classification which works a denial of equal protection of the laws?

(3) Whether an ordinance which prohibits "picketing or demonstrating" within 150 feet of a public school is unconstitutionally vague?

(4) Whether an ordinance which prohibits the willful making of "any noise or diversion which disturbs or tends to disturb the peace or good order of /a/ school session or class" is unconstitutionally vague?

STATUTES

Municipal Code of Chicago, Section 193-1(i):

> A person commits disorderly conduct when he knowingly:
>
> * * *
>
> (i) Pickets or demonstrates on a public way within 150 feet of any primary or secondary school building while the school is in session and one-half hour before the school is in session and one-half hour after the school session has been concluded, provided that this subsection does not prohibit the peaceful picketing of any school involved in a labor dispute.

Code of Ordinances of the City of Rockford, Section 18.1:

> A person commits disorderly conduct when he knowingly:
>
> * * *
>
> (i) Pickets or demonstrates on a public way within 150 feet of any primary or secondary school building while the school is in session and one-half hour before the school is in session and one-half hour after the school session has been concluded, provided that this subsection does not prohibit the peaceful picketing of any school involved in a labor dispute . . . .

Code of Ordinances of the City of Rockford, Section 19.2(a)

> That no person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session, shall willfully make or assist in the making of any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof.

FACTS

In No. 70-87, Police Department of the City of Chicago v. Mosley:

From early September, 1967 to April 4, 1968, resp Mosley, a federal postal employee, frequently walked upon the public sidewalk adjoining Jones Commercial High School in Chicago carrying a sign that read, "Jones High School practices black discrimination. Jones High School has a black quota." On April 5, 1968, the City of Chicago adopted the ordinance prohibiting picketing within 150 feet of a public school. Resp, upon seeing a newspaper announcement of the ordinance, contacted the petr Chicago Police Department; upon inquiry he was advised that he would be arrested if he continued to picket the school. Resp commenced the instant action for an injunction against enforcement of the ordinance. Petr Chicago Police Department admitted that at all times resp's actions were peaceful and orderly, that he never interrupted the free flow of traffic to and from the school, and that they had no reason to believe that his activities would lead to acts which were not peaceful, orderly, and quiet.

In No. 70-5106, Grayned v. City of Rockford:

On April, 25, 1969, a demonstration was held in front of a high school in the city of Rockford. Petr Grayned, along with 40 others out of a crowd of approximately 200, was arrested. The demonstration was peaceful and orderly. The demonstrators

sought addition of courses in Negro history, hiring of more Negro teachers, use of black student cheer leaders; in addition, they protested discriminatory treatment of black students and lack of representation of black students in school organizations.

Issues

The major issues are the constitutionality of the ordinance prohibiting picketing within 150 feet of a school during school hours, and the constitutionality of the classifications set up as a result of exempting labor picketing (equal protection). CA 7 held the ordinance unconstitutional on its face; the Illinois Supreme Court held the ordinance constitutional on its face and as applied to the mass picketing involved in Grayned.

The vagueness issue presented in Grayned is insubstantial as to "pickets or demonstrates" but is a substantial question as to "any noise or diversion which disturbs or tends to disturb the peace or good order" of a school session or class.

Contentions

The parties approach the [redacted] question of the constitutionality of the statute as an "overbreadth question", a question of the constitutionality of the statute on its face rather than as applied to the conduct involved in each case. Rather than detail the contentions of the parties, which should be fairly clear by now, I will deal with those contentions when discussing the issues. Rather than treat the cases separately in all instances of the following discussion, I will refer to them as "the citizens" and [redacted] "the governments."

DISCUSSION

The starting point for considering the constitutionality of the statute is Thornhill v. Alabama, 310 US 88 (1940). The Court in Thornhill considered an Alabama state statute which made it unlawful for any person to "picket" a place of business for the purpose of injuring its lawful business "without just cause or legal excuse." Noting that the statute would "prohibit a single individual from walking slowly and peacefully back and forth on the public sidewalk in front of the premises of an employer, without speaking to anyone, carrying a sign or placard," the Court declared the statute unconstitutional on its face. The statute was held unconstitutional because its scope was too broad (overbreadth), in that it prohibited conduct that was constitutionally protected. That protected conduct was the peaceful picketing, the free expression of views on a matter of public concern. Since the scope of the statute prohibited expression that would not occasion imminent and aggravated danger to community interests, it intruded into an area of constitutionally protected expression beyond governmental regulation, and was therefore held unconstitutional on its face.

Since picketing does contain elements other than "pure speech," it can be the subject of governmental regulation. Hughes v. Superior Court, 339 US 460 (1950). There is no doubt that the time, place, and manner of picketing can be the subject of appropriate regulations. In Cox v. Louisiana, 379 US 559 (1965), for example, this Court dealt with a Louisiana statute which provided:

> Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or

> court officer, in the discharge of his duty pickets or parades in or near a building housing a court of the State of Louisiana . . . shall be fined . . . or imprisoned . . . .

The Court characterized the statute as "narrowly drawn to punish specific conduct that infringes a substantial state interest in protecting the judicial process," and held it constitutional on its face (although convictions for violating the statute were reversed). The Cox statute differs from the instant statute in that it is more narrowly drawn, prohibiting only the kinds of picketing (picketing with intent to obstruct justice) directly related to the state interest which the statute sought to protect.

Since picketing involves protected exercise of first amendment rights, as this Court noted in Food Employees v. Logan Valley Plaza, Inc., 391 US 308, 313 (1968):

> We start from the premise that peaceful picketing carried on in a location open generally to the public is, absent other factors involving the purpose or manner of the picketing, protected by the First Amendment,

any restriction on picketing, statutory or otherwise, must be narrowly drawn, so as not to infringe the legitimate exercise of 1st amendment rights while protecting the state interest sought to be protected. This case is not a Logan Valley case, however, because use of public ways rather than private property is involved. As the Court noted in Logan Valley, "streets, sidewalks, parks, and other similar public places are so historically associated with the exercise of First Amendment rights that access to them for the purpose of exercising such rights cannot constitutionally be denied broadly and absolutely." 391 US at 315. See also Hague v. CIO, 307 US 495, 515-16 (1939).

The governments take the position that Thornhill has been

substantially eroded over time. It has not. Thornhill recognized that picketing could be prohibited or regulated in certain instances, and subsequent cases have merely defined the circumstances under which restriction is permissible. The Court has held that picketing which has an unlawful purpose can be prohibited, that picketing in the context of serious violence can be prohibited if the picketing in the past generated the violence, that mass picketing which unreasonably interferes with free ingress and egress to or from buildings, or which unreasonably obstructs use of the streets or sidewalks, can be prohibited, etc. See, e.g., Int'l Brotherhood v. Vogt, Inc., 354 US 284 (1957); Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 US 287 (1941); Cameron v. Johnson, 390 US 611 (1968).

In terms of statutory restrictions on picketing, the restrictions must be narrowly drawn to deal with abuses of picketing. Injunctions are different because they are tailored to a factual situation; thus precedents in the injunction area are not really relevant to problems of overbreadth.

The governments justify the ordinance on the ground that it creates a reasonable buffer zone around the schools, one that prevents violence and distractions, yet permits those inside the buffer zone to be aware of the picketing (this latter point seems to undercut the first two points). They contend that the ordinances are narrowly limited, being limited both in time and in place. Chicago, however, makes one argument that strikes me as being a damaging admission from their standpoint. Chicago states that the ordinance is directed toward the recent "widespread disorders at schools." If that is indeed what the ordinance is designed to prevent, then it could surely be accomplished by means less drastic than the instant ordinance, whose scope is so

broad as to prevent picketing by a solitary picket who, the Chicago Police Department concedes, posed no danger of foreseeable disorderly consequences. Examples of more narrowly drawn ordinances are ordinances which prohibit picketing with intent to disrupt the opeartion of the publice schools (like the ordinance upheld in Cox), ordinances which prohibit mass picketing in the immediate vicinity of public schools, ordinances that require a certain distance between pickets so as to effectively limit the size of crowds around public buildings, ordinances which permit the local governing body to prohibit picketing around public schools when it determines that such picketing would create a threat of imminent violence, etc., etc. In other words, the City of Chicago can deal with the substantive problem of "widespread disorders at schools" in a variety of ways which will not impinge on Mosley's exercise of his first amendment rights on the public ways. To the extent that there is only an apprehension of possible disturbances, and the ordinance is regarded as a prophylactic measure, this Court stated in Tinker v. Des Moines Independent Community School District, 393 US 503, 508 (1969), that "in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression."

On the equal protection issue, the governments argue that exemption of picketing when the school is involved in a labor dispute was necessary because federal law has pre-empted the area of labor relations. This is frivolous, because the National Labor Relations Act exemptes states and their political subdivisions from the definition of "employer." The governments argue that the classification should be upheld because it is not "arbitrary;" in other words, they argue that the Court should apply

the "reasonableness" rather than the "compelling state interest" standard of equal protection review. However, where fundamental rights are involved, such as the 1st amendment right involved here, the Court has generally applied the stricter standard of review. This would seem particularly appropriate here, for the state is effectively differentiating between subjects which may and may not be discussed on the public streets. Insofar as there being a compelling state interest behind the distinction, I see none. In fact, strikes by public employees are against the law in Illinois. This being the case, it does not even seem "reasonable" to allow an exception for labor pickets who are, if on strike, engaging in unlawful conduct. And, indeed, as the citizens note, if tranquility in the schools is the object of the statute, it is difficult to understand why labor picketing might be less harmful from that standpoint than "private" picketing.

On the vagueness issue, I see nothing unconstitutionally vague about "pickets or demonstrates." The phrase "any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class" does, however, lack specificity. To be unconstitutionally vague, however, a statute or statutory phrase must be more than somewhat unspecific. It must either fail to provide a comprehensible normative standard of behavior, or lend itself to such a degree of on-the-spot administrative interpretation as to allow the enforcement authorities to pick and choose among expressions of view that will be permitted on the streets. See Cox v. Louisiana, 379 US 559, 568-69; Coates v. Cincinnati, 402 US 611, 613-14 (1971). While the statute could well be held void-for-vagueness on its face, there is the problem here that the conduct involved (a demonstration by 200 persons

in front of the school - this is Grayned only) may be within the range of acts constitutionally subject to proscription and clearly forbidden by the ordinance. In other words, the statute (ordinance) may be vague as applied to certain acts, but would not be vague as applied to the demonstration in question. Statutes regulating speech are often subjected to vagueness analysis "on their faces," while statutes regulating conduct are often subject to vagueness analysis "as applied." Since elements of speech are involved in the picketing, and the ordinance by its terms can clearly reach speech and picketing, this may be an appropriate case for facial analysis.

Conclusion: Especially on the overbreadth and vagueness issues, I find this a very close case. The equal protection arguments advanced on behalf of the governments appear singularly weak to me. On balance, I think that I am inclined toward the citizens on the overbreadth issue as well. There is no real problem with choosing between "overbroad on its face" and "overbroad as applied" approaches to proper 1st amendment analysis in Mosley, because the picketing involved their is protected picketing in its most pristine form - a solitary, peaceful picket, on a public way. In other words, if the lesser standard of "overbroad as applied" were adopted, Mr. Mosley would surely be in the category of those as to whom the ordinance is "overbroad as applied," if anyone is in the category. XXXXXXXX Otherwise stated, if the ordinance is overbroad as to anyone, it is surely overbroad as to Mr. Mosley.

CEP

1/19/72

Police Dept (Chicago) v. Mosley 70-87

Grayned v. City of Rockford 70-5106

Disorderly conduct ordinances - no picketing within 150' of a School. 7 CC held ordinance void on its face: "overly broad." (Chicago case)

Same ordinance sustained by Sup. Ct. (Rockford case) Schaefer dissented on equal protection point.

Tentative View: Both ordinances bad because of invidious classification (labor picketing exception) but not ~~subject to~~ otherwise invalid. (See Schaefer's opinion)

Barnett (for Mosley)

Mosley - a sole picket - peaceful.

Ordinance void under Thornhill v. Ala.

No Ct. decision based on "place" alone has been found

In Cox there was a purpose - e.g. disrupting court.

This is a fairly significant admission.

Admits that this statute would be OK if it follow form of Cox statute - e.g. referred to disrupting a school

Chief refers to Fed. statute as to demonstrating with ~~to~~ 500 ft. of an Embassy

Admits that an ordinance prohibiting picketing in a school bldg would be valid - without any requirement of a showing disruption

70-81 Cont.
70-5106

Miss Hall (for Grayned in Rockford Case)
(demonstration by 200 – 40 arrested)

Makes no distinction between two cases.

She argues ordinance would be invalid even if drawn to apply only if 50 or more persons demonstrated.

Mr. Carey (City of Chicago)

Ordinance is reasonable as to time & place.

Ordinance is not a ban on 1st Amend. Rts. It applies only to limited area for a limited time.

Adderly v Fla & Cox v. La.

Legislative History →

Ordinance was passed because of demonstrations were taken place at number of schools to which Black students were being bussed.

Weak argument

Labor exemption: no labor picketing had occurred. Also labor picketing at schools is prohibited in Ill.; Thus State could protect school

× × × ×

Morley was directing picketing for student consumption – no other purpose as he insisted on doing this during School hours.

Conf. 1/21/72

Court .....
Argued ..1/19/72....., *19*...
Submitted ....., *19*...

Voted on....., *19*...
Assigned ....., *19*...
Announced ....., *19*...

No. 70-87
70-5106

L.F.P.

POLICE DEPARTMENT OF CHICAGO v. MOSLEY

vs.

GRAYNED v. ROCKFORD

1/24/72

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING	
		G	D	N	POST	DIS	AFF	REV	AFF	G	D			
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Rehnquist, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Powell, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Blackmun, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Marshall, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
White, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Stewart, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Brennan, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Douglas, J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Burger, Ch. J.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 24, 1972

70-87, Police Dept. v. Mosley

Dear Thurgood,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

5/24/72 CEP

MEMORANDUM TO MR. JUSTICE POWELL

Re: No. 70-87, Police Department of the City of Chicago v. Mosley

This case involves the Chicago city ordinance which prohibits picketing within 150 feet of a school building during school hours, but exempts "peaceful picketing of any school involved in a labor dispute."

You voted to affirm CA 7, striking the statute down on equal protection grounds. Marshall's opinion for the Court does precisely this. You noted that the exemption for labor picketing is "irrational."

JOIN MARSHALL CEP

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 25, 1972

RE: No. 70-87 - Police Department of the City of Chicago, et al. v. Mosley

Dear Thurgood:

I agree.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 25, 1972

Dear Thurgood:

Please join me in your opinion in No. 70-87 - Police Dept. v. Mosley.

W. O. D.

Mr. Justice Marshall

cc: Conference

May 25, 1972

Re: No. 70-87 Police Department of the City of Chicago v. Mosley

Dear Thurgood:

Please join me in your opinion of the Court.

Sincerely,

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 5, 1972

Re: No. 70-87 - Police Department of the City of Chicago v. Mosley

Dear Thurgood:

Please join me.

Sincerely,

Byron

Mr. Justice Marshall

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 6, 1972

Re: No. 70-87 - Police Department of Chicago
v. Mosley

Dear Thurgood:

I have withheld my vote in this case because I wanted to see what was forthcoming in the companion case, No. 70-5106 - Grayned v. City of Rockford. I have assumed that you intend to bring both opinions down together. If this assumption is incorrect, please let me know.

Sincerely,

HAB.

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 6, 1972

Re: No. 70-87 - Chicago v. Mosley

Dear Thurgood:

Your opinion has convinced me that even under my view of the equal protection clause, there is no basis for the labor union exception to this picketing ordinance. Since I can't join in some of the broader statements in your opinion, will you show me as concurring in the result.

Sincerely,

WHR

Mr. Justice Marshall

Copies to the Conference

6/13/72 CEP

Join

MEMORANDUM TO MR. JUSTICE POWELL

Re: No. 70-5106, Grayned v. City of Rockford

This is the companion case to No. 70-87, Police Department of the City of Chicago v. Mosley. The case is being treated separately because, in addition to a conviction for violating a constitutionally infirm statute prohibiting picketing within 150 feet of a school but exempting labor picketing, it involves a conviction for violating an anti-noise statute. Marshall has circulated an opinion for the Court, affirming the conviction for violating the anti-noise statute. White has joined. WOD has circulated a dissent.

Appellant challenged the anti-noise statute only on its face -- not as applied to him. This challenge was two-pronged; appellant contended that the statute was unconstitutionally vague and overbroad. Marshall's opinion rejects both of these arguments. WOD dissents on the ground that there was no evidence that appellant made any noise; this issue is not before the Court since appellant only challenged the statute on its face.

The opinion is by far too long, but seems correct. You voted to affirm the anti-noise conviction.

JOIN MARSHALL CEP

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 13, 1972

Re: No. 70-5106 - Graymed v. City of Rockford

Dear Thurgood:

Please join me.

Sincerely,

Mr. Justice Marshall

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 13, 1972

70-5106 - Grayned v. Rockford

Dear Thurgood,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 13, 1972

Re: No. 70-87 - Police Department of Chicago
v. Mosley

Dear Thurgood:

Please join me with Bill Rehnquist as concurring in the result.

Sincerely,

H. A. B.

Mr. Justice Marshall

cc: The Conference

June 14, 1972

Re: No. 70-5106 Grayned v. City of Rockford

Dear Thurgood:

Please join me.

Sincerely,

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 14, 1972

Re: No. 70-5106 - Grayned v. City of Rockford

Dear Thurgood:

Please join me.

Sincerely,

WHR

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 14, 1972

RE: No. 70-5106 - Grayned v. City of Rockford

Dear Thurgood:

I agree.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 14, 1972

Re: No. 70-5106 - Grayned v. City of Rockford

Dear Thurgood:

Will you please not at the end of your opinion something along the following lines:

> "Mr. Justice Blackmun joins in the judgment and in Part I of the opinion of the Court. He concurs in the result as to Part II of the opinion."

With the half victory for the appellant, I suppose we shall be confronted with a question of costs. I do not know whether we should consider this now, so that it will not be delayed over the summer. In any event, I shall be guided by your recommendation as to this.

Sincerely,

H.A.B.

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 15, 1972

No. 70-5106 -- Grayned v. City of Rockford

Dear Thurgood:

Please join me in the above case. I have an impression that I have previously joined you, but I cannot put my finger to the carbon. In any event, let this fill any deficiencies.

Regards,

WEB

Mr. Justice Marshall

Copies to Conference

THE C. J.	W. O. D.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.
					1/25/72			
join re- 5106 TM 6/15/72	join TM 5/25/72	join TM 5/25/72	join TM 5/24/72	join TM 6/5/72		join in result 6/1/72	join TM 5/25/72	join ~~WHR~~ TM 6/6/72
	dissent in 70-5106 6/14/72	join TM 5106 6/14/72	join TM 70-5106 6/13/72	join TM 70-5111 6/13/72		join Part I concur in Part II TM 6/14/72	join TM 5106 6/14/72	join TM 6/14/72
					70-87 Police Dept. of Chicago v. Mosley 70-5106 Grayned v. City of Rockford			

Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
✓Mr. Justice Powell
Mr. Justice Rehnquist

From: Marshall, J.

Circulated: 6/10

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70–5106

Richard Grayned, Appellant, *v.* City of Rockford. } On Appeal from the Supreme Court of Illinois.

Reviewed 6/13-14 Joins

[June —, 1972]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Appellant Richard Grayned was convicted for his part in a demonstration in front of West Senior High School in Rockford, Illinois. Negro students at the school had presented their grievances to school administrators, who then gave an unsatisfactory response. At that point, a more public demonstration of protest was planned. On April 25, 1969, approximately 200 people—students, their family members, and friends—gathered next to the school grounds. Appellant, whose brother and twin sisters were attending the school, was part of this group. The demonstrators marched around on a sidewalk about 100 feet from the school building, which was set back from the street. Many carried signs which summarized the grievances: "Black cheerleaders to cheer too"; "Black history with black teachers"; "Equal rights, Negro counselors." Others, without placards, made the "power to the people" sign with their upraised and clenched fists.

In other respects, the evidence at appellant's trial was sharply contradictory. Government witnesses reported that the demonstrators repeatedly cheered, chanted, baited policemen, and made other noise that was audible in the school; that hundreds of students

were distracted from their school activities and lined the classroom windows to watch the demonstration; that some demonstrators successfully yelled to their friends to leave the school building and join the demonstration; that uncontrolled latenesses after period changes in the school were far greater than usual, with late students admitting that they had been watching the demonstration; and that, in general, orderly school procedure was disrupted. Defense witnesses claimed that the demonstrators were at all times quiet and orderly; that they did not seek to violate the law, but only to "make a point"; that the only noise was made by policemen using loudspeakers; that almost no students were noticeable at the schoolhouse windows; and that orderly school procedure was not disrupted.

After warning the demonstrators, the police arrested 40 of them, including appellant.[1] For participating in the demonstration, Grayned was tried and convicted of violating two Rockford ordinances, hereinafter referred to as the "anti-picketing" ordinance and the "anti-noise" ordinance. A $25 fine was imposed for each violation. Since Grayned challenged the constitutionality of each ordinance, he appealed directly to the Supreme Court of Illinois. He claimed that the ordinances were invalid on their face, but did not urge that, as applied to him, the ordinances had punished constitutionally protected activity. The Supreme Court of Illinois held that both ordinances were constitutional on their face. 46 Ill. 2d

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[1] Police officers testified that "there was no way of picking out any one in particular" while making arrests. Record, p. 66. However, apparently only males were arrested. Record, p. 65, 135, 147. Since appellant's sole claim in this appeal is that he was convicted under facially unconstitutional ordinances, there is no occasion for us to evaluate either the propriety of these selective arrests or the sufficiency of evidence that appellant himself actually engaged in conduct within the terms of the ordinances.

486. (1970). Grayned appealed to us, repeating his challenge to the facial constitutionality of both ordinances. We noted probable jurisdiction, 404 U. S. 820 (1971). We conclude that the "anti-picketing" ordinance is unconstitutional, but affirm the court below with respect to the "anti-noise" ordinance.

I

At the time of appellant's arrest and conviction, Rockford's antipicketing ordinance provided that

> "A person commits disorderly conduct when he knowingly:
> "(i) Pickets or demonstrates on a public way within 150 feet of any primary or secondary school building while the school is in session and one-half hour before the school is in session and one-half hour after the school session has been concluded, provided that this this subsection does not prohibit the peaceful picketing of any school involved in a labor dispute . . . ." Code of Ordinances, c. 28, § 18.1 (i).

With the exception of a single unimportant word, this ordinance is identical to the Chicago disorderly conduct ordinance we have today considered in *Conlisk* v. *Mosley, ante.* For the reasons given in *Mosley,* we agree with the dissenting Judge Schaefer below, and hold that § 18 (i) violates the Equal Protection Clause of the Fourteenth Amendment. Appellant's conviction under this invalid ordinance must be reversed.[2]

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[2] In November 1971, the anti-picketing ordinance was amended to delete the labor picketing proviso. As Rockford notes, "This amendment and deletion had, of course, no effect on Appellant's personal situation." Brief, p. 2. Necessarily, we must consider the facial constitutionality of the ordinance in effect when appellant was arrested and convicted.

II

The antinoise ordinance reads, in pertinent part, as follows:

> "[N]o person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session, shall wilfully make or assist in making a noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof . . . ." Code of Ordinances, c. 28, § 19.2 (a).

Appellant claims that, on its face, this ordinance is both vague and overbroad, and therefore unconstitutional. We conclude, however, that the ordinance suffers from neither of these related infirmities.

A. Vagueness

It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning.[3] Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those

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[3] *E. g., Papachristou* v. *City of Jacksonville,* 405 U. S. 156, 162 (1972); *Cramp* v. *Board of Public Instruction,* 368 U. S. 278, 287 (1961); *United States* v. *Harriss,* 347 U. S. 612, 617 (1954); *Jordan* v. *De George,* 341 U. S. 223, 230–232 (1951); *Lanzetta* v. *New Jersey,* 306 U. S. 451, 453 (1939); *Connally* v. *General Construction Co.,* 269 U. S. 385, 391 (1926); *United States* v. *Cohen Grocery Co.,* 255 U. S. 81 (1921); *International Harvester Co.* v. *Kentucky,* 234 U. S. 219 (1914).

who apply them.[4] A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.[5] Third, but related, where a vague statute "abut[s] upon sensitive areas of basic First Amendment freedoms,"[6] it "operates to inhibit the exercise of [those] freedoms."[7] Uncertain meanings inevitably lead citizens to " 'steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden areas were clearly marked."[8]

Although the question is close, we conclude that the "anti-noise" ordinance is not impermissibly vague. The court below rejected appellant's arguments "that pro-

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[4] *E. g., Papachristou* v. *City of Jacksonville, supra; Coates* v. *Cincinnati,* 402 U. S. 611 (1971); *Gregory* v. *Chicago,* 394 U. S. 111, 120 (1969) (Black, J., concurring); *Ashton* v. *Kentucky,* 384 U. S. 195, 200 (1966); *Giaccio* v. *Pennsylvania,* 382 U. S. 399 (1966); *Shuttlesworth* v. *Birmingham,* 382 U. S. 87, 90–91 (1965); *Cox* v. *Louisiana,* 379 U. S. 536 (1965); *Kunz* v. *New York,* 340 U. S. 290 (1951); *Saia* v. *New York,* 334 U. S. 558, 559–560 (1948); *Thornhill* v. *Alabama,* 310 U. S. 88, 97 (1940); *Lovell* v. *Griffin,* 303 U. S. 444 (1938); *Herndon* v. *Lowry,* 301 U. S. 242, 261–264 (1937).

[5] At least where First Amendment interests are affected, a precise statute "evincing a legislative judgment that certain specific conduct be . . . proscribed," *Edwards* v. *South Carolina,* 372 U. S. 229, 236 (1963), assures us that the legislature has focussed on the First Amendment interests and determined that other governmental policies compel regulation. See Kalven, The Concept of the Public Forum, 1965 Sup. Ct. Rev. 1, 32; *Garner* v. *Louisiana,* 368 U. S. 157, 200, 202 (1961) (Harlan, J., concurring).

[6] *Baggett* v. *Bullitt,* 377 U. S. 360, 372 (1964).

[7] *Cramp* v. *Board of Public Instruction,* 368 U. S. 278, 287 (1961).

[8] *Baggett* v. *Bullitt,* 377 U. S. 360, 372, 372 (1964), quoting *Speiser* v. *Randall,* 357 U. S. 513, 526. See *Ashton* v. *Kentucky,* 384 U. S. 195, 200–201 (1966); *Dombrowski* v. *Pfister,* 380 U. S. 479, 486 (1965); *Smith* v. *California,* 361 U. S. 147, 150–152 (1959). *Winters* v. *New York,* 333 U. S. 507 (1948); *Stromberg* v. *California,* 283 U. S. 359, 369 (1931).

scribed conduct was not sufficiently specified and that police were given too broad a discretion in determining whether conduct was proscribed." 46 Ill. 2d 492, 494 (1970). Although it referred to other, similar statutes it had recently construed and upheld, the court below did not elaborate on the meaning of the "anti-noise" ordinance.[9] In this situation, as Justice Frankfurter put it, we must "extrapolate its allowable meaning." [10] Here, we are "relegated to the words of the ordinance itself," [11] to the interpretations the court below has given to analagous statutes,[12] and, perhaps to some degree, to the interpretation of the statute given by those charged with enforcing it.[13] Extrapolation, of course, a delicate task, for it is not within our power to construe and narrow state laws.[14]

With that warning, we find no unconstitutional vagueness in the antinoise ordinance. Condemned to the use of words, we can never expect mathematical certainty from our language.[15] The words of the Rockford ordinance are marked by "flexibility and reasonable breadth, rather than meticulous specificity," *Esteban* v. *Central Missouri State College,* 415 F. 2d 1077, 1088 (CA8 1969)

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[9] The trial magistrate simply charged the jury in the words of the ordinance. The complaint and verdict form used slightly different language. See n. 24, *infra.*

[10] *Garner* v. *Louisiana,* 368 U. S. 157, 174 (1961) (concurring opinion).

[11] *Ceates* v. *Cincinnati,* 402 U. S. 611, 614 (1971).

[12] *E. g., Gooding* v. *Wilson,* — U. S. — (1972).

[13] *E. g., Lake Carriers Association* v. *MacMillian,* — U. S. —, — (1972); *Cole* v. *Richardson,* — U. S. — (1972); *Ehlert* v. *United States,* 402 U. S. 99, 195 (1971); cf. *Poe* v. *Ullman,* 367 U. S. 497 (1961).

[14] *United States* v. *37 Photographs,* 402 U. S. 363, 369 (1971).

[15] It will always be true that the fertile legal "imagination can conjure up hypothetical cases in which the meaning of [disputed] terms will be a nice question." *American Communications Association* v. *Douds,* 339 U. S. 382, 412 (1950).

(BLACKMUN, J.), cert. denied, 398 U. S. 965 (1970), but we think it is clear what the ordinance as a whole prohibits. Designed, according to its preamble, "for the protection of Schools," the ordinance forbids deliberately noisy or diversionary [16] activity which disrupts or is about to disrupt normal school activities. It forbids this willful activity at fixed times—when school is in session—and at a sufficiently fixed place—"adjacent" to the school.[17] Were we left with just the words of the ordinance, we might be troubled by the imprecision of the phrase "tends to disturb." [18] However, in *Chicago* v. *Meyer,* 44 Ill. 1, 4 (1969), and *Chicago* v. *Gregory,* 39 Ill. 2d 47 (1968), reversed on other grounds, 394 U. S. 111 (1969), the Supreme Court of Illinois construed a Chicago ordinance prohibiting, *inter alia,* a "diversion tending to disturb the peace," and held that it permitted conviction only where there was "*imminent* threat of violence." (Emphasis supplied.) See *Gregory* v. *Chicago,* 394 U. S. 111, 116–117, 121–122 (1969) (Black, J., concurring).[19] Since *Meyer* was specifically cited in the opinion below, and it in turn drew heavily on *Gregory,* we think it proper to conclude that the Su-

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[16] "Diversion" is defined by Webster's Third New International Dictionary as "the act or an instance of diverting from one course [or use] to another . . . : the act or an instance of diverting (as the mind or attention) from some activity or concern . . . : a turning aside . . . : something that turns the mind from serious concerns or ordinary matters and relaxes or amuses."

[17] Cf. *Cox* v. *Louisiana,* 379 U. S. 559, 568–569 (1965) ("near" the courthouse not impermissibly vague).

[18] See *Gregory* v. *Chicago,* 394 U. S. 111, 119–120 (Black, J., concurring); *Gooding* v. *Wilson,* — U. S., —, — (1972); *Craig* v. *Harney,* 331 U. S. 367 (1947); cf. *Chaplinsky* v. *New Hampshire,* 315 U. S. 568 (1942) (statute punishing "fighting words," which have a "*direct* tendency to cause acts of violence," upheld); *Street* v. *New York,* 394 U. S. 576, 592 (1969).

[19] Cf. *Terminiello* v. *Chicago,* 400 Ill. 23 (1948), reversed on other grounds, 337 U. S. 1, 6 (1949).

preme Court of Illinois would interpret the Rockford ordinance to prohibit only actual or imminent interference with the "peace or good order" of the school.

Although the prohibited quantum of disturbance is not specified in the ordinance, it is apparent from the statute's announced purpose that the measure is whether normal school activity has been or is about to be disrupted. We do not have here a vague, general "breach of the peace" ordinance, but a specific statute for the school context, where the prohibited disturbances are easily measured by their impact on the normal activities of the school. Given this "particular context," the ordinance gives "fair notice to whom [it] is directed." [21] Although the Rockford ordinance may not be as precise as the statute we upheld in *Cameron* v. *Johnson,* 390 U. S. 611 (1968)—which prohibited picketing "in such a manner as to obstruct or unreasonably interfere with free ingress or egress to and from" any courthouse—we think that, as in *Cameron,* the ordinance here clearly

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[20] Some intermediate appellate courts in Illinois appear to have interpreted the phrase "tending to" out of the Chicago ordinance entirely, at least in some contexts. *Chicago* v. *Hansen,* 86 N. E. 2d 415, 337 Ill. App. 663 (1949); *Chicago* v. *Holmes,* 88 N. E. 2d 744, 339 Ill. App. 146 (1949); *Chicago* v. *Nesbitt,* 153 N. E. 259, 19 Ill. App. 2d 220 (1958); but cf. *Chicago* v. *Williams,* 195 N. E. 2d 425 (1963).

In its brief, the city of Rockford indicates that its sole concern is with *actual* disruption. "[A] court and jury [is] charged with the duty of determining whether . . . a school *has been disrupted* and that the defendant's conduct, no matter what it was, caused or contributed to cause the disruption." Appellee's Brief, p. 16. This was the theory on which the city tried appellant's case to the jury. Record pp. 12–13, although the jury was instructed in the words of the ordinance. As already noted, *supra,* n. 1, no challenge is made here to the Rockford ordinance as applied in this case.

[21] *American Communications Association* v. *Douds,* 339 U. S. 382, 412 (1950).

"delineates its reach in words of common understanding." *Id.*, at 616.

Cox v. *Louisiana*, 379 U. S. 536 (1965), and *Coates* v. *Cincinnati*, 402 U. S. 611 (1971), on which appellant particularly relies, presented completely different situations. In *Cox*, a general breach of the peace ordinance had been construed by state courts to mean "to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet." The Court correctly concluded that, as construed, the ordinance permitted persons to be punished for merely expressing unpopular views.[22] In *Coates*, the ordinance punished the sidewalk assembly of three or more persons who "conduct themselves in a manner annoying to persons passing by . . . ." We held, in part, that the ordinance was impermissibly vague because enforcement depended on the completely subjective standard of "annoyance."

Rockford's anti-noise ordinance contains no broad invitation to subjective or discriminatory enforcement. Rockford does not claim the broad power to punish all "noises" and "diversions."[23] The vagueness of these terms, by themselves, is dispelled by the ordinance's requirements that (1) the "noise or diversion" be actually incompatible with normal school activity; (2) there be a demonstrated causality between that disruption and

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[22] Cf. *Edwards* v. *South Carolina*, 372 U. S. 229 (1963); *Cantwell* v. *Connecticut*, 310 U. S. 296, 308 (1940). Similarly, in numerous other cases, we have condemned broadly worded licensing ordinances which grant such standardless discretion to public officials that they are free to censor ideas and enforce their own personal preferences. *Shuttlesworth* v. *Birmingham*, 394 U. S. 147 (1969); *Staub* v. *City Baxley*, 355 U. S. 313 (1958); *Saia* v. *New York*, 334 U. S. 558 (1948); *Schneider* v. *State*, 308 U. S. 147, 163–164 (1939); *Lovell* v. *Griffin*, 303 U. S. 444 (1938); *Hague* v. *CIO*, 307 U. S. 496 (1939).

[23] Cf. *Cox* v. *Louisiana*, 379 U. S. 536, 546–550 (1965); *Edwards* v. *South Carolina*, 372 U. S. 229, 223 (1963).

the "noise or diversion"; and (3) the acts be "wilfully" done.[24] "Undesirables" or their annoying" conduct may not be punished. The ordinance does not permit people to "stand on a public sidewalk . . . only at the whim of any police officer."[25] The ordinance does not permit punishment for the expression of an unpopular point of view. Rather, there must be demonstrated interference with school activities. As always, enforcement requires the exercise of some degree of police judgment, but, as confined, that degree of judgment here is permissible. The Rockford City Council has made the basic policy choices, and has given fair warning as to what is prohibited. "[T]he ordinance defines boundaries sufficiently distinct" for citizens, policemen, juries, and appellate judges.[26] It is not impermissibly vague.

B. Overbreadth

A clear and precise enactment may nevertheless be "overbroad" if in its reach it prohibits constitutionally protected conduct.[27] Although appellant does not claim that, as applied to him, the anti-noise ordinance has punished protected expressive activity, he claims that the ordinance is overbroad on its face. Because overbroad laws, like vague ones, deter privileged activity, our cases firmly establish appellant's standing to raise an over-

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[24] Tracking the complaint, the jury verdict found Grayned guilty of "Wilfully causing diversion of good order of public school in session, in that while on school grounds and while school was in session, did wilfully make and assist in the making of a diversion which tended to disturb the peace and good order of the school session and class thereof."

[25] *Shuttlesworth* v. *Birmingham,* 382 U. S. 87, 90 (1965).

[26] *Chicago* v. *Fort,* 46 Ill. 2d 12, 16 (1970), a case cited in the opinion below.

[27] See *Zwicker* v. *Koota,* 389 U. S. 241, 249–250 (1967), and cases cited.

breadth challenge.[28] The crucial question, then, is whether the ordinance sweeps within its prohibitions what may not be punished under the First and Fourteenth Amendments. Specifically, appellant contends that the Rockford ordinance unduly interferes with First and Fourteenth Amendment rights to picket on a public sidewalk near a school. We disagree.

"In considering the right of a municipality to control the use of public streets for the expression of religious [or political] views, we start with the words of Mr. Justice Roberts that 'Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.' *Hague* v. *CIO,* 307 U. S. 496, 515 (1939)." *Kunz* v. *New York,* 340 U. S. 290, 293 (1951). See *Shuttlesworth* v. *Birmingham,* 394 U. S. 147, 152 (1969). The right to use a public place for expressive activity may be restricted only for weighty reasons.

Clearly, government has no power to restrict such activity because of its message.[29] Our cases make equally clear, however, that reasonable "time, place and manner" regulations may be necessary to further significant governmental interests, and are permitted.[30] For example,

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[28] *E. g., Gooding* v. *Wilson,* — U. S. — (1972); *Coates* v. *Cincinnati,* 402 U. S. 611, 616 (1971); *Dombrowski* v. *Pfister,* 380 U. S. 479, 486 (1965), and cases cited; *Kunz* v. *New York,* 340 U. S. 290 (1951).

[29] *Conlisk* v. *Mosley, ante,* — U. S. — (1972).

[30] *Cox* v. *New Hampshire,* 312 U. S. 569, 575–576 (1941); *Kunz* v. *New York,* 340 U. S. 290, 293–294 (1951); *Poulos* v. *New Hampshire,* 345 U. S. 395, 398 (1953); *Cox* v. *Louisiana,* 379 U. S. 536, 554–555 (1965); *Cox* v. *Louisiana,* 379 U. S. 559 (1965); *Adderly* v. *Florida,* 385 U. S. 39, 46–48 (1966); *Food Employees* v. *Logan Valley,* 391 U. S. 308, 320–321 (1968); *Shuttlesworth* v. *Birmingham,* 394 U. S. 147 (1969).

two parades cannot march on the same street simultaneously, and government may allow only one. *Cox* v. *New Hampshire,* 312 U. S. 569, 576 (1941). A demonstration or parade on a large street during rush hour might put an intolerable burden on the essential flow of traffic, and could be prohibited. *Cox* v. *Louisiana,* 379 U. S. 536, 554 (1965). Overamplified loudspeakers might assault the citizenry, and government may turn them down. *Kovacs* v. *Cooper,* 336 U. S. 77 (1949); *Saia* v. *New York,* 334 U. S. 558, 562 (1948). Subject to such reasonable regulation, however, peaceful demonstrations in public places are protected by the First Amendment.[31] Of course, where demonstrations turn violent, they lose their protected quality as expression under the First Amendment.[32]

The nature of a place, "the pattern of its normal activities, dictates the kinds of regulations of time, place, and manner that are reasonable." [33] Although a silent vigil may not unduly interfere with a public library, *Brown* v. *Louisiana,* 383 U. S. 131 (1966), making a speech in the reading room almost certainly would. That same speech should be perfectly appropriate in a park. The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time. Our cases make clear that in assessing the reasonableness of regulation, we must weigh heavily the fact that com-

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[31] *Conlisk* v. *Mosley, ante,* — U. S. —, — (1972), and cases cited.

[32] See Emerson, The System of Freedom of Expression 328–345 (1970).

[33] Wright, The Constitution on the Campus, 22 Vand. L. Rev. 1027, 1042 (1969). Cf. *Cox* v. *Louisiana,* 379 U. S. 559 (1965); *Adderly* v. *Florida,* 385 U. S. 39 (1966); *Food Employees* v. *Logan Valley,* 391 U. S. 308 (1968); *Tinker* v. *Des Moines School District,* 393 U. S. 503 (1969).

munication is involved;[34] the regulation must be narrowly tailored to further the State's legitimate interest.[35] "Access to [the streets, sidewalks, parks, and other similar public places] for the purpose of exercising [First Amendment rights] cannot constitutionally be denied broadly . . . ." [36] Free expression "must not, in the guise of regulation, be abridged or denied." [37]

In light of these general principles, we do not think that Rockford's ordinance is an unconstitutional regulation of activity around a school. Our touchstone is *Tinker* v. *Des Moines School District,* 393 U. S. 503 (1969), in which we considered the question of how to accommodate First Amendment rights with the "special characteristics of the school environment." *Id.,* at 507. *Tinker* held that the Des Moines School District could not punish students for wearing black armbands to school in protest of the Vietnam War. Recognizing that "wide exposure to . . . robust exchange of ideas" is an "important part of the educational process" and should be nurtured, *id.,* at 512, we concluded that free expression could not be barred from the school campus. We made clear that "undifferentiated fear or apprehension is not enough to overcome the right to freedom of ex-

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[34] *E. g., Schneider* v. *State,* 308 U. S. 147 (1939); *Talley* v. *California,* 362 U. S. 60 (1960); *Saia* v. *New York,* 334 U. S. 558, 562 (1948); *Cox* v. *New Hampshire,* 312 U. S. 569, 574 (1941); *Hague* v. *CIO,* 307 U. S. 496, 516 (1939). See generally, Kalven, The Concept of the Public Forum, The Supreme Court Review 1965.

[35] *Cantwell* v. *Connecticut,* 310 U. S. 296, 307 (1940); *De Jonge* v. *Oregon,* 299 U. S. 353, 364–365 (1937); *Schneider* v. *State,* 308 U. S. 147, 164 (1939); *Cox* v. *Louisiana,* 379 U. S. 559, 562–564 (1965). Cf. *Shelton* v. *Tucker,* 364 U. S. 479, 488 (1960); *NAACP* v. *Button,* 371 U. S. 415, 438 (1963).

[36] *Food Employees* v. *Logan Valley Plaza,* 391 U. S. 308, 315 (1968).

[37] *Hague* v. *CIO,* 307 U. S. 496, 515–516 (1939).

pression," *id.*, at 508,[38] and that particular expressive activity could not be prohibited because of a "mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular view," *id.*, at 509. But we nowhere suggested that students, teachers, or anyone else has an absolute constitutional right to use all parts of a school building or its immediate environs for his unlimited expressive purposes. Expressive activity could certainly be restricted, but only if the forbidden conduct "materially disrupts classwork or involves substantial disorder or invasion of the rights of others." *Id.*, at 513. The wearing of armbands was protected in *Tinker* only because the students "neither interrupted school activities nor sought to intrude in the school affairs or the lives of others. They caused discussion outside of the classrooms, but no interference with work and no disorder." *Id.*, at 514. Compare *Burnside* v. *Byers*, 363 F. 2d 744 (CA5 1966), and *Butts* v. *Dallas Ind. School District*, 436 F. 2d 728 (CA5 1971), with *Blackwell* v. *Issaquena County Board of Education*, 363 F. 2d 749 (CA5 1966).

Just as *Tinker* made clear that school property may not be declared off-limits for expressive activity by students, we think it clear that the public sidewalk adjacent to school grounds may not be declared off-limits for expressive activity by members of the public. But in each case, expressive activity may be prohibited if it "materially disrupts classwork or involves substantial disorder or invasion of the rights of others." *Tinker* v. *Des Moines School District, supra*, 393 U. S., at 513.[39]

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[38] Cf. *Hague* v. *CIO*, 307 U. S. 496, 516 (1939).

[39] In *Tinker* itself we recognized that the principle of that case was not limited to expressive activity within the school building itself. *Id.*, at 512 n. 6, 513–514. See *Esteban* v. *Central Missouri State College*, 415 F. 2d 1077 (CA8 1969) (BLACKMUN, J.), cert. denied, 398 U. S. 965 (1970); *Jones* v. *Board of Regents*, 436 F. 2d

We would be ignoring reality if we did not recognize that the public schools in a community are important institutions, and are often the focus of significant grievances.[40] Without interfering with normal school activities, daytime picketing and handbilling on public grounds near a school can effectively publicize those grievances to pedestrians, school visitors, and deliverymen, as well as to teachers, administrators, and students. Some picketing to that end will be quiet and peaceful, and will in no way disturb the normal functioning of the school. For example, it would be highly unusual if the classic expressive gesture of the solitary picketer disrupts anything related to the school, at least on a public sidewalk open to pedestrians.[41] On the other hand, schools could hardly tolerate boisterous demonstrators who drown out classroom conversation, make studying impossible, block entrances, incite children to leave the schoolhouse, or otherwise disrupt normal school activities.[42]

Rockford's antinoise ordinance goes no further than *Tinker* says a municipality may go to prevent interference with its schools. It is narrowly tailored to further Rockford's compelling interest in having an undisrupted school session conducive to the students' learning, and does not unnecessarily interfere with First Amendment rights. Far from having an impermissibly

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618 (CA9 1970); *Hammond* v. *South Carolina State College,* 272 F. Supp. 947 (S. C. 1967) cited in *Tinker.*

[40] Cf. *Thornhill* v. *Alabama,* 310 U. S. 88, 102 (1940). It goes without saying that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider* v. *State,* 308 U. S. 147, 163 (1939).

[41] Cf. *Jones* v. *Board of Regents,* 436 F. 2d 618 (CA9 1970).

[42] See *Esteban* v. *Central Missouri State College,* 415 F. 2d 1077 (CA8 1968) (BLACKMUN, J.), cert. denied. 398 U. S. 965 (1970); *Barker* v. *Hardway,* 283 F. Supp. 228 (SD W. Va., 1968), aff'd, 399 F. 2d 638 (CA4 1968), cert denied, 394 U. S. 905 (1969) (Fortas, J., concurring).

broad prophylactic ordinance,[43] Rockford punishes only conduct which disrupts or is about to disrupt normal school activities. That decision is made, as it should be, on an individualized basis, given the particular fact situation. Peaceful picketing which does not interfere with the ordinary functioning of the school is permitted, as it must be. And the ordinance gives no license to punish anyone because of what he is saying.[44]

We recognize that the ordinance prohibits some picketing which is neither violent nor physically obstructive. Noisy demonstrations which disrupt or are incompatible with normal school activities are obviously within the ordinance's reach. Such expressive conduct may be constitutionally protected at other places or other times, cf. *Edwards* v. *South Carolina,* 372 U. S. 229 (1963); *Cox* v. *Louisiana,* 379 U. S. 536 (1965), but next to school, while classes are in session, it may be prohibited.[45] The antinoise ordinance imposes no such restriction on expression, before or after the school session, while the student/faculty "audience" enters and leaves the school.

In *Cox* v. *Louisiana,* 379 U. S. 559 (1965), this Court indicated that, because of the special nature of the place,[46]

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[43] Cf. *Jones* v. *Board of Regents,* 436 F. 2d 618 (CA9 1970); *Hamond* v. *South Carolina State College,* 272 F. Supp. 947 (S. C. 1967).

[44] Cf. *Scoville* v. *Board of Education,* 425 F. 2d 10 (CA7), cert. denied, 400 U. S. 826 (1970); *Dickey* v. *Alabama State Board of Education,* 273 F. Supp. 613 (MD Ala. 1967) (cited in *Tinker*).

[45] Different considerations, of course, apply in different circumstances. For example, restrictions appropriate to a single building high school during class hours would be inappropriate in many open areas on a college campus, just as an assembly which is permitted outside a dormitory would be inappropriate in the middle of a mathematics class.

[46] Noting the need "to assure that the administration of justice at all stages is free from outside control and influence," we emphasized

persons could be constitutionally prohibited from picketing "in or near" a courthouse "with the intent of interfering with, obstructing, or impeding the administration of justice. Likewise, in *Cameron* v. *Johnson,* 390 U. S. 611 (1968), we upheld a statute prohibiting picketing "in such a manner as to obstruct or unreasonably interfere with free ingress or egress to or from any . . . county . . . courthouses."[47] As in those two cases, Rockford's modest restriction on some peaceful picketing represents a considered and specific legislative judgment that some kinds of expressive activity should be restricted at a particular time and place in order to protect the schools.[48] Such a reasonable regulation is not inconsistent with the First and Fourteenth Amendments. Cf. *Adderly* v. *Florida,* 385 U. S. 39 (1966).[49] The anti-noise ordinance is not invalid on its face.[50]

The judgment is

Affirmed in part, Reversed in part.

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that "a State may protect against the possibility of a conclusion by the public . . . [that a] judge's action was in part a product of intimidation and did not flow only from the fair and orderly working of the judicial process." *Id.,* at 562, 565.

[47] Quoting *Schneider* v. *State,* 308 U. S. 147, 161, we noted that "such activity bears no necessary relationship to the freedom to . . . distribute information or opinion." *Id.,* at 617.

[48] Cf. *Garner* v. *Louisiana,* 368 U. S. 157, 202–203 (1961) (Harlan, J., concurring).

[49] In *Adderly,* the Court held that demonstrators could be barred from jailhouse grounds not ordinarily open to the public, at least where the demonstration obstructed the jail driveway and interfered with the functioning of the jail. In *Tinker* we noted that "a school is not like a hospital or a jail enclosure." 393 U. S. 503, 512 n. 6 (1969).

[50] It is possible, of course, that there will be unconstitutional applications; but that is not a matter which presently concerns us. See *Shuttlesworth* v. *Birmingham,* 382 U. S. 87, 91 (1965).

change throughout

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

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SUPREME COURT OF THE UNITED STATES

No. 70-5106

Richard Grayned, Appellant, v. City of Rockford. } On Appeal from the Supreme Court of Illinois.

[June —, 1972]

MR. JUSTICE DOUGLAS, dissenting in part.

While I join Part I of the Court's opinion, I would also reverse the appellant's conviction under the antinoise ordinance.

The municipal ordinance on which this case turns is § 19.2 (a) which provides in relevant part:

> "That no person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session, shall willfully make or assist in the making of any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof."

Appellant was one of 200 people picketing a school and carrying signs promoting a Black cause—"Black cheerleaders, to cheer too," "Black history with black teachers," "We want our rights" and the like. Appellant, however, did not himself carry a picket sign. There was no evidence that he yelled or made any noise whatsoever. Indeed, the evidence reveals that appellant simply marched quietly and on one occasion raised his arm in the "power to the people" salute.

The picketers were mostly students; but they included former students, parents of students, and concerned citizens. They had made proposals to the school board on their demands and were turned down. Hence the picketing. The picketing was mostly by black students who were counselled and advised by a faculty member of the

school. The school contained 1,800 students. Those counselling the students advised they must be quiet, walk hand in hand, no whispering, no talking.

Twenty-five policemen were stationed nearby. There was noise but most of it was produced by the police who used loudspeakers to explain the local ordinance and to announce that arrests might be made. The picketing did not stop and some 40 demonstrators, including appellant, were arrested.

The picketing lasted 20 to 30 minutes and some students went to the windows of the classrooms to observe it. It is not clear how many there were. The picketing was, however, orderly or as one officer testified "very orderly." There was no violence. And appellant made no noise whatever.

What Mr. Justice Roberts said in *Hague* v. *CIO*, 307 U. S. 496, 515–516, has never been questioned:

> "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied."

We held in *Cox* v. *Louisiana*, 379 U. S. 536, 544–545, that a State could not infringe a person's right of free

speech and free assembly by convicting him under a "disturbing the peace" ordinance where all that the students in that case did was to protest segregation and discrimination against Blacks by peaceably assembling and marching to the courthouse where they sang, prayed, and listened to a speech, but where there was no violence, no rioting, no boisterous conduct.

The school where the present picketing occurred was the center of a racial conflict. Most of the picketers were indeed students in the school. The dispute doubtless disturbed the school; and the blaring of the loudspeakers of the police was certainly a "noise or diversion" in the meaning of the ordinance. But there was no evidence that appellant was noisy or boisterous or rowdy. He walked quietly and in an orderly manner. As I read this record the disruptive force loosened at this school was an issue dealing with race—an issue that is preeminently one for solution by First Amendment means. That is all that was done here; and the entire picketing, including appellant's part in it, was done in the best First Amendment tradition.