Grayned Vs. City of Rockford

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Appeal No. : 408 U.S. 104

Appellant : Grayned

Respondent : City of Rockford

Judgement :

Grayned v. City of Rockford - 408 U.S. 104 (1972)
U.S. Supreme Court Grayned v. City of Rockford, 408 U.S. 104 (1972)

Grayned v. City of Rockford

No. 70-5106

Argued January 19, 1972

Decided June 26, 1972

408 U.S. 104

APPEAL FROM THE SUPREME COURT OF ILLINOIS

SYLLABUS

1. Anti-picketing ordinance, virtually identical with one invalidated as violative of equal protection in *Police Department of Chicago v. Mosley, ante,* p. 408 U. S. 92 , is likewise invalid. P. 408 U. S. 107 .

2. Anti-noise ordinance prohibiting a person while on grounds adjacent to a building in which a school is in session from willfully making a noise or diversion that disturbs or tends to disturb the peace or good order of the school session is not unconstitutionally vague or overbroad. The ordinance is not vague, since, with fair warning, it prohibits only actual or imminent, and willful, interference with normal school activity, and is not a broad invitation to discriminatory enforcement. *Cox v. Louisiana,* 379 U. S. 536 ; *Coates v. Cincinnati,* 402 U. S. 611 , distinguished. The ordinance is not overbroad as unduly interfering with First Amendment rights since expressive activity is prohibited only if it "materially disrupts classwork." *Tinker v. Des Moines School District,* 393 U. S. 503 , 393 U. S. 513 . Pp. 408 U. S. 107 -121.

46 Ill.2d 492, 263 N.E.2d 866, affirmed in part and reversed in part.

MARSHALL, J., delivered the opinion of the Court, in which BURGER, C.J., and BRENNAN, STEWART, WHITE, POWELL, and REHNQUIST, JJ., joined. BLACKMUN, J., filed a statement joining in the judgment and in Part I of the Court's opinion and concurring in the result as to Part IL of the opinion, *post,* p. 408 U. S. 121 . DOUGLAS, J., filed an opinion dissenting in part and joining in Part I of the Court's opinion, *post,* p. 408 U. S. 121 .

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MR. JUSTICE MARSHALL delivered the opinion of the Court.

Appellant Richard Grayned was convicted or his part in a demonstration in front of West Senior High School in Rockford, Illinois. Negro students at the school had first presented their grievances to school administrators. When the principal took no action on crucial complaints, 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

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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. [Footnote 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. Ill.Sup.Ct.Rule 302. 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 492, 263 N.E.2d 866 (1970). 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.

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I

At the time of appellant's arrest and conviction, Rockford's anti-picketing 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 subsection does not prohibit the peaceful picketing of any school involved in a labor dispute. . . ."

Code of Ordinances, c. 28, 18.1(i). This ordinance is identical to the Chicago disorderly conduct ordinance we have today considered in *Police Department of Chicago v. Mosley, ante,* p. 408 U. S. 92 . For the reasons given in *Mosley,* we agree with dissenting Justice Schaefer below, and hold that 18.1(i) violates the Equal Protection Clause of the Fourteenth Amendment. Appellant's conviction under this invalid ordinance must be reversed. [Footnote 2]

II

The anti-noise 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 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. . . ."

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. [Footnote 3] Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. [Footnote 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. [Footnote 5] Third, but related, where a vague statute "abut[s] upon sensitive areas of basic First Amendment freedoms," [Footnote 6] it "operates to inhibit the exercise of [those] freedoms." [Footnote 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." [Footnote 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 proscribed conduct was not sufficiently specified and that police were given too broad a discretion in determining whether conduct was proscribed."

46 Ill.2d at 494, 263 N.E.2d at 867. Although it referred to other, similar statutes it had recently construed and upheld, the court

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below did not elaborate on the meaning of the anti-noise ordinance. [Footnote 9] In this situation, as Mr. Justice Frankfurter put it, we must "extrapolate its allowable meaning." [Footnote 10] Here, we are "relegated . . . to the words of the ordinance itself," [Footnote 11] to the interpretations the court below has given to analogous statutes, [Footnote 12] and, perhaps to some degree, to the interpretation of the statute given by those charged with enforcing it. [Footnote 13] "Extrapolation," of course, is a delicate task, for it is not within our power to construe and narrow state laws. [Footnote 14]

With that warning, we find no unconstitutional vagueness in the anti-noise ordinance. Condemned to the use of words, we can never expect mathematical certainty from our language. [Footnote 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) (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

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noisy or diversionary [Footnote 16] activity that 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. [Footnote 17] Were we left with just the words of the ordinance, we might be troubled by the imprecision of the phrase "tends to disturb." [Footnote 18] However, in *Chicago v. Meyer,* 44 Ill.2d 1, 4, 23 N.E.2d 400, 402 (1969), and *Chicago v. Gregory,* 39 Ill.2d 47, 233 N.E.2d 422 (1968), *reversed on other grounds,* 394 U. S. 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 , 394 U. S. 116 -117, 394 U. S. 121 -122 (1969) (Black, J., concurring). [Footnote 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 Supreme Court of Illinois would interpret the Rockford ordinance to prohibit only actual

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or imminent interference with the "peace or good order" of the school. [Footnote 20]

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 statute written specifically 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 those to whom [it] is directed." [Footnote 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 "delineates its reach in words of common understanding." *Id.* at 390 U. S. 616 .

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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. [Footnote 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."

In contrast, Rockford's anti-noise ordinance does not permit punishment for the expression of an unpopular point of view, and it contains no broad invitation to subjective or discriminatory enforcement. Rockford does not claim the broad power to punish all "noises" and "diversions." [Footnote 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 the disruption that occurs and the "noise or diversion"; and (3) the acts be

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"willfully" done. [Footnote 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." [Footnote 25] 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. [Footnote 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. [Footnote 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 overbreadth challenge. [Footnote 28] The crucial question, then, is

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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 thought between citizens, and discussing public questions."

" *Hague v. CIO,* 307 U. S. 496 , 307 U. S. 515 (1939)."

Kunz v. New York, 340 U. S. 290 , 340 U. S. 293 (1951). *See Shuttlesworth v. Birmingham,* 394 U. S. 147 , 394 U. S. 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. [Footnote 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. [Footnote 30] For example, two parades cannot march on the same street simultaneously, and government may allow only one. *Cox v. New Hampshire,* 312 U. S. 569 , 312 U. S. 576 (1941). A demonstration or parade on a large street during rush hour

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might put an intolerable burden on the essential flow of traffic, and for that reason could be prohibited. *Cox v. Louisiana,* 379 U.S. at 379 U. S. 554 . If overamplified loudspeakers assault the citizenry, government may turn them down. *Kovacs v. Cooper,* 336 U. S. 77 (1949); *Saia v. New York,* 334 U. S. 558 , 334 U. S. 562 (1948). Subject to such reasonable regulation, however, peaceful demonstrations in public places are protected by the First Amendment. [Footnote 31] Of course, where demonstrations turn violent, they lose their protected quality as expression under the First Amendment. [Footnote 32]

The nature of a place, "the pattern of its normal activities, dictate the kinds of regulations of time, place, and manner that are reasonable." [Footnote 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 a regulation, we must weigh heavily the fact that communication is involved; [Footnote 34] the regulation must be narrowly

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tailored to further the State's legitimate interest. [Footnote 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. . . . [Footnote 36]"

Free expression "must not, in the guise of regulation, be abridged or denied." [Footnote 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 393 U. S. 506 . *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 393 U. S. 512 , we concluded that free expression could not be barred from the school campus. We made clear that "undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression," *id.* at 393 U. S. 508 , [Footnote 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 viewpoint," *id.* at 393 U. S. 509 . But we nowhere suggested that students, teachers, or anyone else has an absolute constitutional right to use

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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 393 U. S. 513 . The wearing of armbands was protected in *Tinker* 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 393 U. S. 514 . *Compare Burnside v. Byars,* 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,* 393 U.S. at 393 U. S. 513 . [Footnote 39]

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. [Footnote 40] Without interfering with normal school activities,

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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 picket disrupts anything related to the school, at least on a public sidewalk open to pedestrians. [Footnote 41] On the other hand, schools could hardly tolerate boisterous demonstrators who drown out classroom conversation, make studying impossible, block entrances, or incite children to leave the schoolhouse. [Footnote 42]

Rockford's anti-noise 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 broad prophylactic ordinance, [Footnote 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.

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And the ordinance gives no license to punish anyone because of what he is saying. [Footnote 44]

We recognize that the ordinance prohibits some picketing that is neither violent nor physically obstructive. Noisy demonstrations that 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 a school, while classes are in session, it may be prohibited. [Footnote 45] The anti-noise ordinance imposes no such restriction on expressive activity 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, [Footnote 46] 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

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picketing "in such a manner as to obstruct or unreasonably interfere with free ingress or egress to and from any . . . county . . . courthouses." [Footnote 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, here in order to protect the schools. [Footnote 48] Such a reasonable regulation is not inconsistent with the First and Fourteenth Amendments. [Footnote 49] The anti-noise ordinance is not invalid on its face. [Footnote 50]

The judgment is

Affirmed in part and reversed in part.

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.

[Footnote 1]

Police officers testified that "there was no way of picking out anyone in particular" while making arrests. Report of Proceedings in Circuit Court, 17th Judicial Circuit, Winnebago County 66. However, apparently only males were arrested. *Id.* at 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. MR. JUSTICE DOUGLAS, in concluding that appellant's particular behavior was protected by the First Amendment, reaches a question not presented by the parties here or in the court below. *See* Tr. of Oral Arg. 16-17; Jurisdictional Statement 3; *City of Rockford v. Grayned,* 46 Ill.2d 492, 494, 263 N.E.2d 866, 867 (1970).

[Footnote 2]

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

[Footnote 3]

E.g., Papachristou v. City of Jacksonville, 405 U. S. 156 , 405 U. S. 162 (1972); *Cramp v. Board of Public Instruction,* 368 U. S. 278 , 368 U. S. 287 (1961); *United States v. Harriss,* 347 U. S. 612 , 347 U. S. 617 (1954); *Jordan v. De George,* 341 U. S. 223 , 341 U. S. 230 -232 (1951); *Lanzetta v. New Jersey,* 306 U. S. 451 , 306 U. S. 453 (1939); *Connally v. General Construction Co.,* 269 U. S. 385 , 269 U. S. 391 (1926); *United States v. Cohen Grocery Co.,* 255 U. S. 81 , 255 U. S. 89 (1921); *International Harvester Co. v. Kentucky,* 234 U. S. 216 , 234 U. S. 223 -224 (1914).

[Footnote 4]

E.g., Papachristou v. City of Jacksonville, supra; Coates v. Cincinnati, 402 U. S. 611 , 402 U. S. 614 (1971); *Gregory v. Chicago,* 394 U. S. 111 , 394 U. S. 120 (1969) (Black, J., concurring); *Interstate Circuit v. Dallas,* 390 U. S. 676 , 390 U. S. 684 -685 (1968); *Ashton v. Kentucky,* 384 U. S. 195 , 384 U. S. 200 (1966); *Giaccio v. Pennsylvania,* 382 U. S. 399 (1966); *Shuttlesworth v. Birmingham,* 382 U. S. 87 , 382 U. S. 90 -91 (1965); *Kunz v. New York,* 340 U. S. 290 (1951); *Saia v. New York,* 334 U. S. 558 , 334 U. S. 559 -560 (1948); *Thornhill v. Alabama,* 310 U. S. 88 , 310 U. S. 97 -98 (1940); *Herndon v. Lowry,* 301 U. S. 242 , 301 U. S. 261 -264 (1937).

[Footnote 5]

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 , 372 U. S. 236 (1963), assures us that the legislature has focused on the First Amendment interests and determined that other governmental policies compel regulation. *See* Kalven, The Concept of the Public Forum: *Cox v. Louisiana,* 1965 Sup.Ct.Rev. 1, 32; *Garner v. Louisiana,* 368 U. S. 157 , 200, 368 U. S. 202 (1961) (Harlan, J., concurring in judgment).

[Footnote 6]

Baggett v. Bullitt, 377 U. S. 360 , 377 U. S. 372 (1964).

[Footnote 7]

Cramp v. Board of Public Instruction, 368 U.S. at 368 U. S. 287 .

[Footnote 8]

Baggett v. Bullitt, supra, at 377 U. S. 372 , quoting *Speiser v. Randall,* 357 U. S. 513 , 357 U. S. 526 (1958). *See Interstate Circuit v. Dallas, supra,* at 390 U. S. 684 ; *Ashton v. Kentucky, supra,* at 384 U. S. 195 , 384 U. S. 200 -201; *Dombrowski v. Pfister,* 380 U. S. 479 , 380 U. S. 486 (1965); *Smith v. California,* 361 U. S. 147 , 361 U. S. 150 -152 (1959); *Winters v. New York,* 333 U. S. 507 (1948); *Stromberg v. California,* 283 U. S. 359 , 283 U. S. 369

(1931).

[Footnote 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.*

[Footnote 10]

Garner v. Louisiana, 368 U.S. at 368 U. S. 174 (concurring in judgment).

[Footnote 11]

Coates v. Cincinnati, 402 U.S. at 402 U. S. 614 .

[Footnote 12]

E.g., Gooding v. Wilson, 405 U. S. 518 (1972).

[Footnote 13]

E.g., Lake Carriers Assn. v. MacMullan, 406 U. S. 498 , 406 U. S. 506 -508 (1972); *Cole v. Richardson,* 405 U. S. 676 (1972); *Ehlert v. United States,* 402 U. S. 99 , 402 U. S. 105 , 402 U. S. 107 (1971); *cf. Poe v. Ullman,* 367 U. S. 497 (1961).

[Footnote 14]

United States v. 37 Photographs, 402 U. S. 363 , 402 U. S. 369 (1971).

[Footnote 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 in nice question." *American Communications Assn. v. Douds,* 339 U. S. 382 , 339 U. S. 412 (1950).

[Footnote 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."

[Footnote 17]

Cf. Cox v. Louisiana, 379 U. S. 559 , 379 U. S. 568 -569 (1965)("near" the courthouse not impermissibly vague).

[Footnote 18]

See Gregory v. Chicago, 394 U.S. at 394 U. S. 119 -120 (Black, J., concurring); *Gooding v. Wilson,* 405 U.S. at 405 U. S. 525 -527; *Craig v. Harney,* 331 U. S. 367 , 331 U. S. 372 (1947); *cf. Chaplinsky v. New Hampshire,* 315 U. S. 568 (1942) (statute punishing "fighting words," that have a "direct tendency to cause acts of violence," upheld); *Street v. New York,* 394 U. S. 576 , 394 U. S. 592 (1969).

[Footnote 19]

Cf. Chicago v. Terminiello, 400 Ill. 23, 79 N.E.2d 39 (1948), *reversed on other grounds,* 337 U. S. 1 , 337 U. S. 6 (1949).

[Footnote 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,* 337 Ill.App. 663, 86 N.E.2d 415 (1949); *Chicago v. Holmes,* 339 Ill.App. 146, 88 N.E.2d 744 (1949); *Chicago v. Nesbitt,* 19 Ill.App.2d 220, 153 N.E.2d 259 (1958); *but cf. Chicago v. Williams,* 45 Ill.App.2d 327, 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 [are] charged with the duty of determining whether or not . . . a school *has been disrupted,* and that the defendant's conduct, [no matter what it was,] caused or contributed to cause the disruption."

Brief for Appellee 16 (emphasis supplied). This was the theory on which the city tried appellant's case to the jury, Report, *supra,* n 1, at 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.

[Footnote 21]

American Communications Assn. v. Douds, 339 U.S. at 339 U. S. 412 .

[Footnote 22]

Cf. Edwards v. South Carolina, 372 U. S. 229 (1963); *Cantwell v. Connecticut,* 310 U. S. 296 , 310 U. S. 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 of Baxley,* 355 U. S. 313 (1958); *Saia v. New York,* 334 U. S. 558 (1948); *Schneider v. State,* 308 U. S. 147 , 308 U. S. 163 -164 (1939); *Lovell v. Griffin,* 303 U. S. 444 (1938); *Hague v. CIO,* 307 U. S. 496 (1939).

[Footnote 23]

Cf. Cox v. Louisiana, 379 U. S. 536 , 379 U. S. 546 -550 (1965); *Edwards v. South Carolina,* 372 U.S. at 372 U. S. 234 -237.

[Footnote 24]

Tracking the complaint, the jury verdict found Grayned guilty of

"[w]illfully 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."

[Footnote 25]

Shuttlesworth v. Birmingham, 382 U.S. at 382 U. S. 90 .

[Footnote 26]

Chicago v. Fort, 46 Ill.2d 12, 16, 262 N.E.2d 473, 476 (1970), a case cited in the opinion below.

[Footnote 27]

See Zwickler v. Koota, 389 U. S. 241 , 389 U. S. 249 -250 (1967), and cases cited.

[Footnote 28]

E.g., Gooding v. Wilson, 405 U. S. 518 (1972); *Coates v. Cincinnati,* 402 U.S. at 402 U. S. 616 ; *Dombrowski v. Pfister,* 380 U.S. at 380 U. S. 486 , and cases cited; *Kunz v. New York,* 340 U. S. 290 (1951).

[Footnote 29]

Police Department of Chicago v. Mosley, ante, p. 408 U. S. 92 .

[Footnote 30]

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

(1969).

[Footnote 31]

Police Department of Chicago v. Mosley, ante at 408 U. S. 95 -96, and cases cited.

[Footnote 32]

See generally T. Emerson, The System of Freedom of Expression 328-345 (1970).

[Footnote 33]

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

[Footnote 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. at 334 U. S. 562 ; *Cox v. New Hampshire,* 312 U.S. at 312 U. S. 574 ; *Hague v. CIO,* 307 U.S. at 307 U. S. 516 . *See generally* Kalven, The Concept of the Public Forum: *Cox v. Louisiana,* 1965 Sup.Ct.Rev. 1.

[Footnote 35]

De Jonge v. Oregon, 299 U. S. 353 , 299 U. S. 364 -365 (1937); *Lovell v. Griffin,* 303 U.S. at 303 U. S. 451 ; *Schneider v. State,* 308 U.S. at 308 U. S. 164 ; *Cantwell v. Connecticut,* 310 U.S. at 310 U. S. 307 ; *Cox v. Louisiana,* 379 U.S. at 379 U. S. 562 -564; *Davis v. Francois,* 395 F.2d 730 (CA5 1968). *Cf. Shelton v. Tucker,* 364 U. S. 479 , 364 U. S. 488 (1960); *NAACP v. Button,* 371 U. S. 415 , 371 U. S. 438 (1963).

[Footnote 36]

Food Employees v. Logan Valley Plaza, 391 U.S. at 391 U. S. 315 .

[Footnote 37]

Hague v. CIO, 307 U.S. at 307 U. S. 516 .

[Footnote 38]

Cf. Hague v. CIO, supra, at 307 U. S. 516 .

[Footnote 39]

In *Tinker,* we recognized that the principle of that case was not limited to expressive activity within the school building itself. *Id.* at 393 U. S. 512 n. 6, 393 U. S. 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 618 (CA9 1970); *Hammond v. South Carolina State College,* 272 F.Supp. 947 (SC 1967), cited in *Tinker.*

[Footnote 40]

Cf. Thornhill v. Alabama, 310 U.S. at 310 U. S. 102 . 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. at 308 U. S. 163 .

[Footnote 41]

Cf. Jones v. Board of Regents, supra.

[Footnote 42]

Cf. Barker v. Hardway, 283 F.Supp. 228 (SD W.Va.), *aff'd,* 399 F.2d 638 (CA4 1968), *cert. denied,* 394 U.S. 905 (1969) (Fortas, J., concurring).

[Footnote 43]

See Jones v. Board of Regents, supra; Hammond v. South Carolina State College, supra.

[Footnote 44]

Compare 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*).

[Footnote 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 that is permitted outside a dormitory would be inappropriate in the middle of a mathematics class.

[Footnote 46]

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

379 U.S. at 370 U. S. 562 , 379 U. S. 565 .

[Footnote 47]

Quoting *Schneider v. State,* 308 U.S. at 308 U. S. 161 , we noted that " *such activity bears no necessary relationship to the freedom to . . . distribute information or opinion.'" 390 U.S. at 390 U. S. 617 .*

[Footnote 48]

Cf. Garner v. Louisiana, 368 U.S. at 368 U. S. 202 -203 (Harlan, J., concurring in judgment).

[Footnote 49]

Cf. Adderley v. Florida, 385 U. S. 39 (1966). In *Adderley,* 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. at 393 U. S. 512 n. 6.

[Footnote 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. at 382 U. S. 91 , and n 1, *supra.*

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 anti-noise ordinance.

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The municipal ordinance on which this case turns is c. 28, 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 pickets 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 counseled and advised by a faculty member of the school. The school contained 1,800 students. Those counseling 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

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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 , 307 U. S. 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 , 379 U. S. 544 -545, that a State could not infringe the right of free speech and free assembly by convicting demonstrators 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 pickets 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

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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 loosed 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.

* The majority asserts that "appellant's sole claim . . . is that he was convicted under facially unconstitutional ordinances," and that there is, therefore, no occasion to consider whether his activities were protected by the First Amendment. *Ante* at 408 U. S. 106 n. 1. Appellant argues, however, that the ordinance is overly broad in that it punishes constitutionally protected activity. A statute may withstand an overbreadth attack

"only if, as authoritatively construed . . . , it is not susceptible of application to speech . . . that is protected by the First and Fourteenth Amendments."

Gooding v. Wilson, 405 U. S. 518 , 405 U. S. 520 (1972). If the ordinance applies to appellant's activities and if appellant's activities are constitutionally protected, then the ordinance is overly broad and, thus, unconstitutional. There is no merit, therefore, to the Court's suggestion that the question whether "appellant's particular behavior was protected by the First Amendment," *ante* at 408 U. S. 106 n. 1, is not presented.