

Harper v. Poway Unified School District, 445 F.3d 1166 (2006)
(9th Circuit Court of Appeals)

Facts

Poway High School has had a history of conflict among its students over issues of sexual orientation. The year before this incident (2003), the school permitted a student group, called Gay-Straight Alliance, to hold a “Day of Silence” at the school intended to teach tolerance of others, particularly those of a different sexual orientation.

The next year the same student group sought to hold another “Day of Silence.” On the date it was held, a student named Tyler Chase Harper wore a t-shirt that read on the front: “BE ASHAMED, OUR SCHOOL HAS EMBRACED WHAT GOD HAS CONDEMNED,” while the back stated: “HOMOSEXUALITY IS SHAMEFUL ‘Romans 1:27.’”

Harper’s teacher noticed his shirt and several students talking about its message in class. He explained to Harper that the shirt was “inflammatory” and that it violated the dress code. Harper refused to remove his shirt and asked to speak to an administrator. Harper went to the school office and was told that he could return to class if he removed his shirt. He refused. The principal did not want to suspend him, so instead he remained in the office for the rest of the school day. He received full credit for the school day and was not suspended.

Harper sued the school district in federal district court alleging that the school had violated his right to free speech and his right to free exercise of religion (among other claims not addressed here).

Handout Questions

- 1) If you were the attorney for Tyler Harper, what arguments would you make to support the position that the school violated his right to free speech by not allowing him to wear his shirt?
 - a) What arguments would you make to support the position that the school violated his right to free exercise of religion?

- 2) If you were the attorney for the school district, what arguments would you make to support the position that the school did not violate Harper's constitutional rights?
- 3) If you were Harper's teacher or principle, would you have made him remove his shirt?
 - a) Would you have taken further steps than Poway High School (for example, suspend Harper)?
 - b) Would you have taken no action because of Harper's right to free speech?
- 4) Change the facts. The second period teacher saw Harper arguing with another student about his shirt in the hallway before class and was afraid that the fight would become physical if he did not intervene. Does this scenario change your answers, or arguments in the questions above? Why?
- 5) After reading the actual case, answer the following:
 - a) How did the 9th Circuit Court rule?
 - b) What reasons did the court give to justify its decision?
 - c) Do you agree?
 - i. What reasons did you find most convincing, and what reasons were not?
 - d) What authority did the court cite for its holding? Did the earlier cases have similar facts? Does it matter?

Procedure

What happened in the lower court?

Harper filed the lawsuit in federal district court on June 2, 2004, against named individuals for Poway USD in both individual and official capacities. He alleged five federal causes of action: (1) free speech; (2) free exercise of religion; (3) Establishment Clause; (4) Equal Protection Clause; and (5) a state law claim based on the California Civil Code. Poway filed a motion to dismiss, and Harper replied by filing a motion for a preliminary injunction seeking to stop the school from "continuing [its] violation of [his] constitutional rights."

The district court denied Harper's preliminary injunction and granted the school's motion to dismiss Harper's causes of action under the equal protection, the due process, and the state law claims. His first three 1st Amendment claims would have continued to trial, but Harper filed an interlocutory appeal from the denial of a preliminary injunction. The 9th Circuit Court reviewed the district court's ruling.

Arguments

Harper's Argument

Harper contends that his speech is protected under prior Supreme Court decisions as an expression of his religious and political ideas. Therefore, Poway violated his constitutional rights by prohibiting him from wearing his t-shirt. He argued that Poway's actions and policies amount to viewpoint discrimination, and Poway's dress code and speech policies are overboard.

Poway USD's Arguments

Under *Tinker v. Des Moines*, 393 US 503 (1969), the school was permitted to regulate Harper's speech because his speech was materially disruptive to the learning environment and infringed on the rights of other students.

Who Won?

The 9th Circuit Court ruled in favor of Poway USD, finding that the school officials did not violate Harper's constitutional rights.

How the Court Explained Its Decision

The courts have construed the 1st Amendment as applied to public schools in a manner that attempts to strike a balance between the free speech rights of students and the special need to maintain a safe, secure and effective learning environment. Under *Tinker*, a student's rights may be curtailed under two circumstances: (1) when it would impinge on the rights of other students, and (2) when the speech would result in a substantial disruption of, or material interference with, school activities. In this case, Poway's prohibition of Harper's t-shirt was constitutionally permissible because the t-shirt interfered with the rights of other students to be in a safe and secure learning environment.

This prohibition is permissible, even if it amounts to viewpoint discrimination, if the speech violates the rights of other students. Furthermore, a school does not have to tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside the school. The school has the right to teach civic responsibility and tolerance as part of its basic educational mission.