FREE SPEECH AND MUSIC

A TEACHER'S GUIDE TO

FREEDOM Sings
FIRST AMENDMENT CENTER

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1207 18th Avenue South
Nashville, TN 37212
(615) 321-9588
www.freedomforum.org

Author: Jean Patman
Editor: Natilee Duning
Design: S.Watson
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INTRODUCTION

By Ken Paulson
Executive director, First Amendment Center

Most Americans cherish the freedoms they are guaranteed by the First Amendment, particularly free speech. But when that speech is controversial, and when it's conveyed via popular culture or the arts, we find our collective commitment to freedom tested.

At the First Amendment Center, we strive to remind Americans of the pivotal role our fundamental freedoms of expression have played in shaping this nation. Unlike other governments that have been toppled by racial and religious divisions, this nation was founded on respect for a wide range of viewpoints and faiths, a factor that has given the United States a special heritage and unique stability.

The First Amendment allows us to say what's on our minds. That freedom doesn't disappear just because the message has a backbeat.

This teacher's guide to music censorship over the past 50 years is intended to illustrate to students that the First Amendment doesn't just protect the speech of the press and of politicians. It also protects music, dance, theater, poetry and film. In fact, it protects all creative expression that gives life flavor.

Despite this country's respect for individual expression, there's often little tolerance for unpalatable songs. In a recent survey, 40 percent said musicians should not be allowed to sing songs that others might find offensive.

Perhaps the lightweight nature of some of the tunes leads people to forget that lyrics are constitutionally protected. The First Amendment allows us to say what's on our minds. That freedom doesn't disappear just because the message has a backbeat.

The question of whether music should be censored to conform to mainstream tastes is an ongoing matter of much debate. But while people of good faith differ on the question, they all agree that music has the power to help shape opinions — and life.

This guide should help teachers set the stage for a lively educational look at why freedom to make music matters. The guide's exercises can also be a powerful tool for teaching students about censorship and the basic liberties identified in the First Amendment.

These lessons take a participatory approach, encouraging student discussion, role-playing and projects. The proposed questions are suggested as discussion points, although teachers are encouraged to develop their own questions in line with their knowledge of students' abilities and interests.

B A C K G R O U N D Q & A

Question: What is the First Amendment and where does it come from?

Answer: The First Amendment consists of 45 words added to the Constitution of the United States by the founding fathers:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

It was primarily crafted by James Madison as one of 10 amendments known as the Bill of Rights. This document set the tone for the relationship between the U.S. government and the American people, a relationship in which the people's civil rights would be as paramount as the rights of the governing body. By adding the Bill of Rights to the Constitution, the founding fathers basically restrained the government's ability to interfere in the lives of citizens.

Question: What do the words of the First Amendment mean?

Answer: The First Amendment's establishment clause prevents government from establishing an official religion. You have the freedom to attend — or not attend — the church of your choice. The free exercise clause guarantees you the freedom of conscience to believe or not believe as you wish.

The freedom of speech clause protects all forms of speech, including artistic, literary, musical, political, religious and commercial speech.

The freedom of press clause enables you to obtain information from many independent sources — newspapers, books, TV, radio, the Internet — without governmental intervention or control.

The right-to-assemble clause allows you to join any group you please, whether for political, religious, social or recreational purposes. By organizing groups, you can spread ideas more effectively. Your right to petition the government for "redress of grievances" means you have the right to ask the government to fix problems or correct errors.

Question: What does the First Amendment effectively do?

Answer: Basically, the First Amendment allows us to judge the difference between good ideas and bad ones by providing a protected, public space in which competing ideas can prove their worth — and within which equally valuable ideas can coexist.

The First Amendment gives us the right to hear all sides of every issue and to make our own judgments without governmental interference or control.

The First Amendment creates a climate that allows us as individuals to speak and write our minds, worship as we choose, gather together for peaceful purposes and ask the government to right the wrongs we see in society.

The First Amendment gives us a chance to debate, to disagree, to learn and to grow. While those who created the First Amendment could never have envisioned the appeal of Eminem, Ice-T or Marilyn Manson, they clearly envisioned what freedom means.

They recognized that if you create a society in which all are free to challenge authority, to ask questions, to say — or sing — what they want, you provide an escape valve for the kinds of pressures that have damaged, even destroyed, other nations.

Question: Are there limits to these freedoms?

Answer: Of course there are. No one has the right to give away military secrets, scream in the library, shout over a bullhorn in the middle of the night. You cannot lie under oath or utter obscenities. You cannot print untruths that damage someone's reputation. You cannot protest in a manner that violates another's freedom or life. To reduce the possible negative consequences related to the exercise of First Amendment rights, courts have placed some time, place and manner restrictions on these freedoms.

Question: Do students have First Amendment rights in school?

Answer: In general, the courts have held that school is a special setting. Students do have substantial First Amendment rights, but those rights can be limited if doing so is deemed necessary to maintain a safe environment in which all can learn.

Three landmark rulings by the U.S. Supreme Court are most often cited on the subject of student rights in school.

In *Tinker v. Des Moines, Iowa, School District*, the court declared more than 30 years ago that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gates." Thus was the Tinker standard established, which says that school officials may not censor student expression unless such expression creates a substantial disruption or material interference with school activities.

The court also made several broad statements about student rights in *Tinker*, among them:

- Under the Constitution, free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact.
- State-operated schools may not be enclaves of totalitarianism.
- School officials do not possess absolute authority over their students.

In *Bethel School Dist. No. 403 v. Fraser* and *Hazelwood School Dist. v. Kuhlmeier*, the court subsequently reined in student expression. In *Fraser*, the court ruled that school officials had not violated the First Amendment rights of a student by suspending him for three days after he delivered a nominating speech laced with sexual metaphors before a student assembly. Similarly in *Hazelwood*, the court ruled that school officials can censor school-sponsored student expression, in this case, a student newspaper, if they have an overriding and legitimate educational reason for doing so.

Question: What is censorship?

Answer: Censorship is the suppression of ideas, information and expression that individuals, groups or government officials find objectionable or dangerous. Censors use the power of the state or government to impose on everyone their view of what is truthful and appropriate, or offensive and objectionable. The effect of censorship is to prevent others from reading or viewing "objectionable" material and making up their own minds about it.

Question: Is there a difference between violations of First Amendment rights and private and corporate acts of censorship?

Answer: There's a big difference. The First Amendment provides that government cannot limit our rights of free expression. But the First Amendment also allows individuals and companies to set their own standards about content. In other words, while the government cannot censor a CD that officials find objectionable, Wal-Mart can refuse to carry the CD because its content is inconsistent with Wal-Mart's business philosophy. Individuals who find such corporate policies objectionable can exercise their own right to free speech by sharing their views with company executives.

Question: What is obscenity, what is pornography and what is protected under the First Amendment?

Answer: In legal terms, obscenity is speech that appeals to prurient interests as judged by contemporary standards; that depicts or describes sexual conduct in a patently offensive way; and that, taken as a whole, lacks serious literary, artistic, political or scientific value.

Pornography is a much broader term, usually applying to depictions of sexual behavior and often for the purposes of sexual arousal — but not always, such as when the purpose is medical or scientific or literary or artistic. There is no legal definition of pornography, per se, other than that attached to the phrase "child pornography," which essentially refers to obscenity associated with the sexual exploitation of children.

The term "pornography" encompasses everything from mild erotica to obscenity, low trash to high art. The term is often used interchangeably with the term "obscenity" to refer to things that opponents of sexual speech in public life consider indecent, lewd or depraved.

Because the distinction between "porn" and "obscenity" is often blurred in public discourse, people automatically think that pornography is illegal and unprotected by the First Amendment. But a rigorous legal test is used to determine whether or not something is obscene.

THE LESSON PLAN

This lesson plan is designed to be delivered over a number of days, or teachers can select the parts to which they think their students will best respond. The first part deals with music and censorship, the second part with the First Amendment and the values it teaches.

I. Music Censorship

1. Have a student read the following anecdote out loud in class:

Singer/songwriter K.T. Oslin told the following story at the opening of the First Amendment Center's new headquarters on the Vanderbilt University campus in Nashville in 1993:

A decade ago, I wrote a song about older women and younger men. Must have been on my mind at the time. The song was called 'Younger Men.' My song had just been released; it was struggling to find its audience, and I personally was calling radio stations to talk about the song.

The first call I made was to a radio station program director who told me, 'Yes, I know this record, and no, I'm not going to play it.'

When I asked why, he said, 'I think a song about older women with younger men might offend my male listeners.'

I said, 'Are you telling me you've played it and received complaints?'

'No, I think it might offend my male listeners.'

I want to make it clear to you there are no swear words in my little song, not even a 'hell' or a 'damn.' Nobody gets drunk, steals or cheats. It's just about love.

Then I asked the man, 'Are you currently playing the song, "The Girls All Get Prettier at Closing Time"?'

He said yes.

I said, 'You don't think that's offensive to female listeners?'

He hung up.

I have learned that all of us in America are subject to someone else's opinion of what is correct speech and what is not. But, thank God, I can make up my own mind about that as well.

I continue to write what I want because I can speak as I please in America, thanks to the First Amendment.

"I continue to write what I want because I can speak as I please in America, thanks to the First Amendment."

— K.T. Oslin

2. Begin with some general questions about the First Amendment and censorship.

    1. What does the First Amendment protect?
    2. Does the First Amendment prevent government from banning a song?
    3. Does the First Amendment prevent radio from banning a song?
    4. Does the First Amendment prevent a store like Wal-Mart from banning sales of a song?
    5. Name the First Amendment freedom that applies to music.
    6. What is censorship?

3. Move on to some specific questions that call on the students' own experiences.

    1. What is the impact or meaning of music in your life?
    2. Do you think music can move an entire generation or even a country? How?
    3. Can you recall an instance of music censorship in your life? At home? In music stores? At the movies? Other settings? What did you do about it, if anything?
    4. Is there a limit to the kinds of music you would want to hear in public spaces?

4. Next, look at the history of music and encourage the students to:

    1. Determine whether there are differences in the music from decade to decade.
    2. Determine whether music censorship issues have changed over time. What was controversial in the '50s? What was controversial in the '90s? Who did the censoring in the '50s? Who does the censoring now?
    3. Discuss what all these differences mean.

5. Before playing the music, divide the students into three groups for role-playing: community leaders, parents and teenagers.

6. Play the songs.

    Choose as many or as few as you like, depending on your classroom needs. We have selected 10 of them, and included a sample of the lyrics, because these songs best reflect the issues of their times.

7. After each song, ask each group to talk about:

    1. The theme of the song.
    2. What it says about the times.
    3. Whether it's objectionable (depending on the role you as a group member have been assigned to play).
    4. If it is, why is it objectionable?
    5. What should you do about it? How should you handle the situation?

8. Have a general discussion about the themes of the songs:

    1. Compare the messages in the '90s "Wasteland of the Free" and the '60s "Eve of Destruction."
    2. Contrast the two Elvis songs for their messages. Discuss how they define their decades.
    3. Examine the events and changes that took place in America in the years between 1967 — when Janis Ian recorded "Society's Child" about interracial romance and received death threats — and 1969, when Elvis' song about injustice,"In the Ghetto," became a hit.

9. Play "This Land Is Your Land."

    This selection strikingly illustrates how passion and politics can combine in a song to move an entire generation, continuing to move people even today. Woody Guthrie, who lived through the Great Depression and the Great Dust Bowl, wrote this song and recorded it in 1940 after traveling the country and finding that the wealth was held by only a handful.

    1. Have students talk about what this song means to them.
    2. Compare the lyrics to those of "God Bless America." How does each song reflect the writer's sense of the state of the nation?

10. Show the video of the Freedom Sings concert.

    (NOTE: Not all the songs on the CD are on the video.)

II. Follow-Up Discussion

1. Discuss what the students have just learned about censorship. How do these issues relate to today's music? Discuss the labeling and rating regulations that apply to the sale of music to teens.

2. Ask students to define the lines they draw for the music they listen to. Does Eminem cross the line? What about Ice-T? Marilyn Manson?

3. Discuss whether and how music can have a negative or positive impact on social behavior and morals. Use "We Shall Overcome" as an example. Have students list others.

4. Ask the students to draw up a list of the benefits of free speech.

5. Broaden the discussion to include the other First Amendment freedoms. See what other types of censorship issues students can come up with.

6. Discuss how teenagers today express their individuality.

7. Explore with students why society may find innovation threatening.

III. Follow-up Exercises

1. Have students bring in recordings by some of their favorite music groups, and lead a class discussion on who they like and who they don't. Make a chart and have them track their specific reasons for likes and dislikes. Have them vote on which groups they would ban and ask them to explain why.

2. Have groups or individual students prepare a mock presentation to argue for or against allowing a controversial music group to perform at the school. Remind them to anticipate possible objections from community members, including parents, teachers, religious leaders, students and school administrators.

3. Discuss the seminal student case, *Tinker v. Des Moines School District*. Ask students to argue both sides of the issue.

4. Define the First Amendment freedoms with the class. Then assign students, or groups of students, to research and bring to class examples they see of each freedom being exercised at school or in the community.

5. Hold "Lose A Freedom" day.

    1. Start by bringing in a newspaper that you have censored by blacking out a few stories.

    2. Have your students choose a "freedom to lose for the day."
       Examples:
       - No talking in the cafeteria (freedom of speech).
       - No writing anything not assigned by the teacher (freedom of the press).
       - No gathering of more than two students at a time (freedom of assembly).

    3. Follow up with:
       - A class discussion on how the students felt about losing rights.
       - Then have each choose a right he or she would give up. Allow them to explain their reasons.
       - Divide the class into groups according to the rights they chose to give up. Have each group brainstorm to come up with reasons why giving up the right they chose would change their lives and the lives of those around them.

A HISTORY OF MUSIC

From rock to rap, country to hip-hop, the meaning behind the music has provoked both censorship and suppression. From the early banning of jukeboxes to the blacklisting of controversial songs to the voluntary labeling of lyrics, the actions against music have taken many forms.

Here is a capsule history of half a century of sounds, and some of the furies they triggered.

THE '50s

America was at peace after World War II. History paints this as a time of general innocence, wholesome family values and massive suburban growth.

Singer Patti Page hit the top of the charts with "How Much Is That Doggie In the Window?" Singers Perry Como and Pat Boone were the "feel good" crooners of the day.

But restless teenagers, not old enough to remember the war or appreciate the peace, wanted something to kick-start their lives. A Cleveland DJ named Alan Freed came up with the answer. Freed had been playing black rhythm-and-blues sounds, and when he moved to New York to present live performances that later were televised, he called the music rock 'n' roll. Among its top stars were Elvis Presley, Little Richard, Buddy Holly, Chuck Berry and Jerry Lee Lewis.

Rock 'n' roll became the revolution of its time. With its pulsing beat and suggestive lyrics, it shook up a lot more than the charts. And by introducing black music to a society still so segregated that most establishments had "whites only" signs, it set off an additional firestorm of reaction.

From the early banning of jukeboxes to the blacklisting of controversial songs to the voluntary labeling of lyrics, the actions against music have taken many forms.

controversies over the music:

- In 1953, six counties in South Carolina passed legislation outlawing any jukebox within hearing distance of a church.
- In 1954, "Good Rockin' Tonight," recorded by Elvis Presley, quickly appeared on a list of objectionable records compiled by the Juvenile Delinquency and Crime Commission in Houston, which urged that it be banned on radio and in record stores.
- In 1955, CBS canceled Alan Freed's "Rock 'n' Roll Dance Party" after a camera showed black singer Frankie Lymon dancing with a white girl.
- In 1956, the parks department in San Antonio, Texas, removed all the rock 'n' roll records from jukeboxes by swimming pools.
- In 1957, TV showman Ed Sullivan instructed his camera crew to record Elvis Presley only from the waist up so the singer wouldn't offend American sensibilities when he swiveled his hips. Presley was also considered controversial because his lyrics seemed much too suggestive to an older generation.
- In 1958, the Mutual Broadcasting System dropped all rock 'n' roll from its network music programs.

THE '60s

It was a decade of dramatic changes. The civil rights movement was gathering steam, the Cold War had begun and a series of assassinations — of President John F. Kennedy, his brother Robert and Martin Luther King Jr. — rocked the nation's sense of sanity. The country also became embroiled in the bitter and unpopular war in Vietnam, which gave rise to a vehement anti-war movement at home and divided Americans as never before.

The music reflected the times. By the beginning of the decade, some of rock's biggest stars had receded from view, replaced by crooners like Pat Boone and Frankie Avalon, whose chart-topping hits were tamed and softened versions of the rock that once ruled.

But the fledgling folk music of the '50s was beginning to blossom, leading to the rising popularity of the Kingston Trio and The Brothers Four. This gave momentum to new and thought-provoking performers like Bob Dylan, Joan Baez and Phil Ochs, performers whose music encompassed social themes and protest. As the Vietnam war heated up, musicians married the electric guitar to folk and protest music, developing anthems that attacked the war.

Then, in 1964, came the Beatles — and a second rock 'n' roll revolution began.

The Beatles' music, along with that of the Rolling Stones, the Dave Clark Five and a host of bands collectively known as the British Invasion, coincided with the Baby Boom generation's coming into its own. The new rock transformed the cultural landscape because the songs appealed to so many.

Motown by then was also in high gear. Smoky Robinson, Diana Ross and the Supremes and The Temptations were superstars.

controversies over the music:

- In 1962, a New York bishop forbade Catholic school students from listening to Chubby Checker's "The Twist," which he considered lewd.
- In 1965, the Stones' "I Can't Get No Satisfaction" was banned from radio because the lyrics were considered too suggestive.
- In 1967, the Stones had to change the lyrics of "Let's Spend the Night Together" to "let's spend some time together" in order to appear on the "Ed Sullivan Show."
- In 1968, an El Paso station refused to play any Bob Dylan songs because station executives couldn't understand the lyrics.
- In 1969, half the radio stations that played Top 40 hits refused to play "The Ballad of John and Yoko" by Lennon and Yoko Ono, because they considered the lyrics blasphemous.

THE '70s

The decade began with the Vietnam War still raging. The anti-war movement, a mainstay on many U.S. campuses, was fueled by the killing of four students at Kent State University in Ohio by National Guardsmen who had been brought on campus to control a protest demonstration.

But when the war finally wound down, the mood of the people — tired from all the mayhem and upheaval — took a hedonistic turn. In the new atmosphere of party time, disco was born, and a whole generation celebrated on the dance floor. Donna Summer and the Bee Gees ruled.

Mainstream rock itself had become a cookie-cutter, corporate kind of thing; bands like Journey and Boston made pleasant Muzak. And into the opening came punk and New Wave, energetic rock stripped to its basics.

controversies over the music:

- In 1971, the FCC sent threatening letters to all radio stations for playing rock music that glorified drugs.
- In 1972, John Denver's "Rocky Mountain High" was banned on radio because stations feared the "high" referred to drugs.
- In 1975, Loretta Lynn's "The Pill" broke with traditional country music by making blatant reference to birth control.
- In 1977, the Rev. Jesse Jackson decried disco music, saying much of the music promoted promiscuity and drug use.
- In 1979, Frank Zappa's "Jewish Princess" sparked vocal protests from the B'nai B'rith Anti-Defamation League.

80s THE '80s

It was a decade of economic growth, a time for making money. The Cold War was ending and would be over before the decade was out. Wall Street ruled.

President Ronald Reagan's "trickle down economics," complete with major tax cuts, gave the country a sense of wealth, but the national budget went through the roof to pay for the largest peacetime military buildup in history. Consumers went on spending sprees; credit-card debt shot up. Then the stock market plummeted in the worst recession since the Great Depression.

The music continued to mirror society's changes. Disco came to an inglorious end; Studio 54, which had showcased the sound, was shuttered. Taking disco's place were new sounds: hip-hop and rap. Although these genres would soon dominate the musical landscape, even radio stations wouldn't go near them in the beginning.

MTV started up during this time, and it too refused to showcase rap. In fact, MTV was accused of racism when it first aired because it played only white artists. It finally aired Michael Jackson videos because he was so widely popular.

controversies over the music:

- In 1980, a Des Moines Iowa group of church teenagers, organized by a youth minister, conducted a record burning, torching albums by the Beatles, Ravi Shankar and Peter Frampton, as well as the "Grease" soundtrack.

- In 1981, a municipal judge in Newark, Ohio, banned rock concerts at a local park because they posed a public nuisance.

- In 1984, U.S. Surgeon General C. Everett Koop spoke out against rock music, insisting that it glorified pornography and violence.

- In 1985, Tipper Gore, wife of then-Senator Al Gore, and 20 wives of influential politicians and businessmen formed the Parents' Music Resource Center, which campaigned successfully for a voluntary parental warning label advising record content.

- In 1988, a faculty advisor at a Newark, N.J., student radio station banned all heavy metal from the playlists, fearing it would cause young listeners to commit suicide.

THE '90s

It was a decade of connections. Computers and the Internet began to sweep the country. Wealth generated by this "New Economy" exceeded all previous records. Consumerism hit new highs.

And random violence seemed to heighten, capped by a number of high-profile shootings in schools.

This time, there were many who blamed music for stirring the violence. Misfortunes and violent deaths of rap artists mirrored an audibly rising anger in rap lyrics. But rap ruled nevertheless, essentially supplanting rock 'n' roll as the commercially successful revolution of its time.

The rest of the music scene became fragmented. Early bands and Nirvana sought to revive a guitar-based version of early rock 'n' roll. Later groups like 'N Sync and the Spice Girls relied on harmony and choreography to carry their acts.

As the '90s closed, an unprecedented diversity of music became available via the Internet.

controversies over the music:

- In 1990, six states — Florida, Indiana, Ohio, Pennsylvania, Tennessee and Wisconsin — declared 2 Live Crew's album "Nasty As They Wanna Be" obscene.

- In 1992, police organizations across the country protested Ice-T's song "Cop Killer."

- In 1997, Ozzfest '97, a gathering of heavy-metal and shock rock bands at the Meadowlands in New Jersey, was held up when officials refused to sell tickets unless shock rocker Marilyn Manson was taken off the bill. A federal judge ruled that the show, and Manson, could go on.

- In 1998, Florida legislators withheld funding from a public radio station because they objected to several songs being played on the station.

- In 1998, state legislators in Washington and Georgia narrowly defeated measures that made it a crime to sell to minors recordings labeled with parental warning stickers.

- In 1999, police organizations nationwide protested a concert featuring Rage Against The Machine, the Beastie Boys and Bad Religion, a fund-raiser for death-row inmate Mumia Abu-Jamal, who was convicted of killing a police officer.

THE SONGS

The CD and video for this teacher's guide were recorded at a Freedom Sings concert at the Bluebird Café in Nashville, Tenn. Freedom Sings is an ongoing series of concerts held by the First Amendment Center to celebrate freedom of expression through music and to remind us that the First Amendment protects all free expression, including the power and passion of song.

These songs were all written in the last half of the 20th century and tackle the contemporary issues of their times. Some have been subject to government suppression or broadcast censorship. Others are anthems designed to provoke political thought or encourage social change. Together they form a remarkable look at popular music at its most provocative. They also provide a poetic window into America's cultural shifts as the country moved from war to peace and back to war once more, fighting for freedom not just on the great battlefields of history but on the streets of towns and cities.

Although the CD itself is recorded sequentially from the concert, what follows are the 10 songs suggested for class discussion arranged by decade, along with a sample of their lyrics. The remaining songs from the CD are listed afterwards.

Freedom Sings is an ongoing series of concerts held annually by the First Amendment Center to celebrate freedom of expression through music and to remind us that the First Amendment protects all free expression, including the power and passion of song.

TRACK 18

"This Land Is Your Land" 1940

Written and recorded by Woody Guthrie. Having lived through the Great Depression and the Great Dust Bowl, Guthrie traveled the breadth of America and wrote this song, he said, as a socialist alternative to "God Bless America." It is now a universal anthem viewed as a patriotic celebration of the nation.

It is performed by Freedom Sings performers and the audience.

This land is your land, this land is my land,
From California to the New York island,
From the redwood forest to the Gulf Stream waters,
This land was made for you and me.

Courtesy of Tro-Ludlow Music, Inc.

TRACK 6

"Good Rockin' Tonight" 1954

Written by Roy Brown and recorded by Elvis Presley in 1954. The song quickly appeared on a list of objectionable records compiled by the Juvenile Delinquency and Crime Commission in Houston, which urged that it be banned on radio and in record stores.

It is performed here by Bill Lloyd.

Well, I heard the news, there's good rockin' tonight.
Well, I heard the news, there's good rockin' tonight.
I'm gonna hold my baby just as tight as I can,
Tonight she'll know I'm a mighty, mighty man.
I heard the news, there's good rockin' tonight.

Courtesy of Fort Knox Music, Inc; Trio Music Co., Inc.

TRACK 13

"Blowin' in the Wind" 1962

Written and recorded by Bob Dylan. This was another song embraced by the anti-war movement. Throughout Dylan's career, his work has evoked strong responses. In 1975, South Korea published a list of songs that the government said contained decadent messages. "Blowin' in the Wind" was on the list because the government believed it was "leftist" or "violence-inducing."

It is performed by Tammy Rogers.

How many times must a man look up
before he can see the sky?
How many ears must one man have
before he can hear people cry?
How many deaths will it take till he knows
that too many people have died?
The answer, my friend, is blowin' in the wind.
The answer is blowin' in the wind.

Courtesy of Special Rider Music

TRACK 7

"Eve of Destruction" 1965

Written by P.F. Sloan and Steve Barri and recorded by Barry McGuire. This highly commercial protest song became a No. 1 record, despite a backlash of conservative criticism and some radio stations' refusal to play it. McGuire still performs this song, substituting references to Oklahoma City or Columbine High School for the original reference to Selma, Ala.

It is performed by Tommy Womack.

Think of all the hate there is in Red China! Then take a look around to Selma, Alabama!
Ah, you may leave here, for four days in space, but when you return, it's the same old place,
The poundin' of the drums, the pride and disgrace, you can bury your dead, but don't leave a trace,
Hate your next-door-neighbor, but don't forget to say grace.

Courtesy of Universal-MCA Music Publishing

TRACK 10

"Society's Child (Baby I've Been Thinking)" 1967

Written and recorded by Janis Ian when she was 14 years old. This song about an interracial teen-age relationship was banned by many radio stations, and Ian was heckled by outraged adults at some of her concerts.

It is performed by Beth Nielsen Chapman.

Now I could understand your tears and your shame.
She called you 'boy' instead of your name.
When she wouldn't let you inside,
Then she turned and said,
"But, honey, he's not our kind."

Courtesy of Taosongs Two, Administered by Bug

TRACK 4

"The Pusher" 1968

Written by Hoyt Axton and recorded by Steppenwolf. Despite the huge concern about the drug culture of the late '60s, this attack on hard drugs was not welcomed as a public service announcement. The record received little airplay and was widely criticized.

It is performed by Steppenwolf lead singer John Kay.

Well now, if I were the president of this land,
You know I'd declare total war on the pusher man.
I'd cut him if he stands and I'd shoot him if he'd run,
And I'd kill him with my Bible and my razor and my gun.

Courtesy of Irving Music, Inc.

TRACK 11

"In the Ghetto" 1969

Written by Mac Davis and recorded by Elvis Presley. This extraordinary song about the difficulties of escaping ghetto life was originally subtitled "The Vicious Circle." It was a sign of the times that some in Presley's camp thought the song was too political to record and advised Presley against taking the risk.

It is performed by Radney Foster and Bill Lloyd.

People, don't you understand, the child needs a helping hand,
or he'll grow to be an angry young man someday.

Take a look at you and me. Are we too blind to see,
or do we simply turn our heads and look the other way?

Courtesy of Elvis Presley Music, Inc.

TRACK 9

"Okie from Muskogee" 1969

Written and recorded by Merle Haggard. Not all the politically oriented music of the '60s came from the left. This song became an anthem for the "silent majority," and President Richard Nixon invited Haggard to sing at the White House.

It is performed by Rodney Crowell.

We don't smoke marijuana in Muskogee;
We don't take our trips on LSD.
We don't burn our draft cards down on Main Street;
We like livin' right, and bein' free.

Courtesy of Tree Publishing Company

TRACK 2

"Ohio" 1970

Written by Neil Young, recorded by Crosby, Stills, Nash & Young. This song was written immediately after four students were killed by National Guardsmen at Kent State University during an anti-war protest. The song entered the charts just five weeks after the shootings and became the 14th best-selling record in the nation.

It is performed by Greg Trooper.

Gonna get down to it, soldiers are cutting us down.
Should have been done long ago.
What if you knew her and found her dead on the ground?
How can you run when you know?

Courtesy of Broken Arrow Music Corp.

TRACK 8

"Wasteland of the Free" 1996

Written and recorded by Iris DeMent. In 1997, Florida State Sen. John Grant led a battle to cut off $104,000 in state funding for a public radio station because he particularly objected to this and other songs.

It is performed by Kevin Welch.

We got little kids with guns fighting inner-city wars,
And what do we do, we put these little kids behind them prison doors.
We crown ourselves an advanced civilization.
But that sounds like crap to me,
Feel like I'm living in the wasteland of the free.

Courtesy of Songs of Iris

Additional Cuts on the CD

TRACK 12

"Where Have All the Flowers Gone" 1961

Written by Pete Seeger and recorded by a wide range of artists. This song was an anthem for the anti-war movement in the '60s. Although it was never banned, there was a backlash against much of Seeger's work.
It is performed by Don Henry, Kim Richey and Bill Lloyd.

TRACK 5

"Street Fighting Man" 1968

Written by Mick Jagger and Keith Richards and performed by the Rolling Stones. This song was banned by many radio stations in 1968 because of the civil unrest throughout the country. In Chicago, in particular, the city refused to play the song during the Democratic National Convention, fearing it would incite violence.
It is performed by Dan Baird.

TRACK 16

"Fight The Power" 1989

Written by Ronzo Cartwright, Glen Cummings, Tim Brooks and Dave DePriest, recorded by Public Enemy. This song, which was a major element in Spike Lee's film "Do the Right Thing," illustrates the political power of rap music.
It is performed by Stone Deep.

TRACK 14

"Bigot's Graveyard" 1999

Written by Chip Taylor. Although Taylor is best known as the writer of "Wild Thing" and "Angel of the Morning," he is also an accomplished performer. Taylor said that some of his early and suggestive rock hits were never banned because censors failed to read between the lines. There is no such subtlety here. This is an ironic look at racial intolerance.
It is performed by Chip Taylor.

TRACK 15

"Beautiful Fool" 1991

Written by Don Henry and recorded by Kathy Mattea. This touching tribute to Martin Luther King Jr. is reminiscent of Dion's "Abraham, Martin and John."
It is performed by Don Henry and Kim Richey.

TRACK 17

"Christmas in Washington" 1997

Written and recorded by Steve Earle. He wrote this song after watching the 1996 election night returns. Fittingly, Earle performed this at The Bluebird Cafe on the anniversary of Woody Guthrie's birth.
It is performed by Steve Earle.

A D D E N D U M

The U.S. Supreme Court's decision in *TINKER v. DES MOINES SCHOOL DIST.,* 393 U.S. 503 (1969)

TINKER ET AL. v. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT ET AL.
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.
No. 21.
Argued November 12, 1968.
Decided February 24, 1969.

Petitioners, three public school pupils in Des Moines, Iowa, were suspended from school for wearing black armbands to protest the Government's policy in Vietnam. They sought nominal damages and an injunction against a regulation that the respondents had promulgated banning the wearing of armbands. The District Court dismissed the complaint on the ground that the regulation was within the Board's power, despite the absence of any finding of substantial interference with the conduct of school activities. The Court of Appeals, sitting en banc, affirmed by an equally divided court. Held:

1. In wearing armbands, the petitioners were quiet and passive. They were not disruptive and did not impinge upon the rights of others. In these circumstances, their conduct was within the protection of the Free Speech Clause of the First Amendment and the Due Process Clause of the Fourteenth. Pp. 505-506.

2. First Amendment rights are available to teachers and students, subject to application in light of the special characteristics of the school environment. Pp. 506-507.

3. A prohibition against expression of opinion, without any evidence that the rule is necessary to avoid substantial interference with school discipline or the rights of others, is not permissible under the First and Fourteenth Amendments. Pp. 507-514.

383 F.2d 988, reversed and remanded.

Dan L. Johnston argued the cause for petitioners. With him on the brief were Melvin L. Wulf and David N. Ellenhorn.

Allan A. Herrick argued the cause for respondents. With him on the brief were Herschel G. Langdon and David W. Belin.

Charles Morgan, Jr., filed a brief for the United States National Student Association, as amicus curiae, urging reversal. [393 U.S. 503, 504]

MR. JUSTICE FORTAS delivered the opinion of the Court.
Petitioner John F. Tinker, 15 years old, and petitioner Christopher Eckhardt, 16 years old, attended high schools in Des Moines, Iowa. Petitioner Mary Beth Tinker, John's sister, was a 13-year-old student in junior high school.

In December 1965, a group of adults and students in Des Moines held a meeting at the Eckhardt home. The group determined to publicize their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands during the holiday season and by fasting on December 16 and New Year's Eve. Petitioners and their parents had previously engaged in similar activities, and they decided to participate in the program.

The principals of the Des Moines schools became aware of the plan to wear armbands. On December 14, 1965, they met and adopted a policy that any student wearing an armband to school would be asked to remove it, and if he refused he would be suspended until he returned without the armband. Petitioners were aware of the regulation that the school authorities adopted.

On December 16, Mary Beth and Christopher wore black armbands to their schools. John Tinker wore his armband the next day. They were all sent home and suspended from school until they would come back without their armbands. They did not return to school until after the planned period for wearing armbands had expired—that is, until after New Year's Day.

This complaint was filed in the United States District Court by petitioners, through their fathers, under 1983 of Title 42 of the United States Code. It prayed for an injunction restraining the respondent school officials and the respondent members of the board of directors of the school district from disciplining the petitioners, and it sought nominal damages. After an evidentiary hearing the District Court dismissed the complaint. It upheld [393 U.S. 503, 505] the constitutionality of the school authorities' action on the ground that it was reasonable in order to prevent disturbance of school discipline. 258 F. Supp. 971 (1966). The court referred to but expressly declined to follow the Fifth Circuit's holding in a similar case that the wearing of symbols like the armbands cannot be prohibited unless it "materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school." *Burnside v. Byars*, 363 F.2d 744, 749 (1966). [1]

On appeal, the Court of Appeals for the Eighth Circuit considered the case en banc. The court was equally divided, and the District Court's decision was accordingly affirmed, without opinion. 383 F.2d 988 (1967). We granted certiorari. 390 U.S. 942 (1968).

I.

The District Court recognized that the wearing of an armband for the purpose of expressing certain views is the type of symbolic act that is within the Free Speech Clause of the First Amendment. See *West Virginia v. Barnette*, 319 U.S. 624 (1943); *Stromberg v. California*, 283 U.S. 359 (1931). *Cf. Thornhill v. Alabama*, 310 U.S. 88 (1940); *Edwards v. South Carolina*, 372 U.S. 229 (1963); *Brown v. Louisiana*, 383 U.S. 131 (1966). As we shall discuss, the wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to "pure speech" [393 U.S. 503, 506] which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment. *Cf. Cox v. Louisiana*, 379 U.S. 536, 555 (1965); *Adderley v. Florida*, 385 U.S. 39 (1966).

First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years. In *Meyer v. Nebraska*, 262 U.S. 390 (1923), and *Bartels v. Iowa*, 262 U.S. 404 (1923), this Court, in opinions by Mr. Justice McReynolds, held that the Due Process Clause of the Fourteenth Amendment prevents States from forbidding the teaching of a foreign language to young students. Statutes to this effect, the Court held, unconstitutionally interfere with the liberty of teacher, student, and parent. [2] See also *Pierce v. Society of Sisters*, [393 U.S. 503, 507] 268 U.S. 510 (1925); *West Virginia v. Barnette*, 319 U.S. 624 (1943); *McCollum v. Board of Education*, 333 U.S. 203 (1948); *Wieman v. Updegraff*, 344 U.S. 183, 195 (1952) (concurring opinion); *Sweezy v. New Hampshire*, 354 U.S. 234 (1957); *Shelton v. Tucker*, 364 U.S. 479, 487 (1960); *Engel v. Vitale*, 370 U.S. 421 (1962); *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967); *Epperson v. Arkansas*, ante, p. 97 (1968).

In *West Virginia v. Barnette*, supra, this Court held that under the First Amendment, the student in public school may not be compelled to salute the flag. Speaking through Mr. Justice Jackson, the Court said:

> "The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." 319 U.S., at 637 .

On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools. See *Epperson v. Arkansas*, supra, at 104; *Meyer v. Nebraska*, supra, at 402. Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities.

II.

The problem posed by the present case does not relate to regulation of the length of skirts or the type of clothing, [393 U.S. 503, 508] to hair style, or deportment. *Cf. Ferrell v. Dallas Independent School District*, 392 F.2d 697 (1968); *Pugsley v. Sellmeyer*, 158 Ark. 247, 250 S. W. 538 (1923). It does not concern aggressive, disruptive action or even group demonstrations. Our problem involves direct, primary First Amendment rights akin to "pure speech."

The school officials banned and sought to punish petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. There is here no evidence whatever of petitioners' interference, actual or nascent, with the schools' work or of collision with the rights of other students to be secure and to be let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the schools or the rights of other students.

Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them. There is no indication that the work of the schools or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises.

The District Court concluded that the action of the school authorities was reasonable because it was based upon their fear of a disturbance from the wearing of the armbands. But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, *Terminiello v. Chicago*, 337 U.S. 1 (1949); and our history says that it is this sort of hazardous freedom—this kind of openness—that is [393 U.S. 503, 509] the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society.

In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained. *Burnside v. Byars*, supra, at 749.

In the present case, the District Court made no such finding, and our independent examination of the record fails to yield evidence that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students. Even an official memorandum prepared after the suspension that listed the reasons for the ban on wearing the armbands made no reference to the anticipation of such disruption.[3] [393 U.S.503, 510]

On the contrary, the action of the school authorities appears to have been based upon an urgent wish to avoid the controversy which might result from the expression, even by the silent symbol of armbands, of opposition to this Nation's part in the conflagration in Vietnam.[4] It is revealing, in this respect, that the meeting at which the school principals decided to issue the contested regulation was called in response to a student's statement to the journalism teacher in one of the schools that he wanted to write an article on Vietnam and have it published in the school paper. (The student was dissuaded.[5])

It is also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance. The record shows that students in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron Cross, traditionally a symbol of Nazism. The order prohibiting the wearing of armbands did not extend to these. Instead, a particular symbol—black armbands worn to exhibit opposition to this Nation's involvement [393 U.S. 503, 511] in Vietnam—was singled out for prohibition. Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible.

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. As Judge Gewin, speaking for the Fifth Circuit, said, school officials cannot suppress "expressions of feelings with which they do not wish to contend." *Burnside v. Byars*, supra, at 749.

In *Meyer v. Nebraska*, supra, at 402, Mr. Justice McReynolds expressed this Nation's repudiation of the principle that a State might so conduct its schools as to "foster a homogeneous people." He said:

> "In order to submerge the individual and develop ideal citizens, Sparta assembled the males at seven into barracks and intrusted their subsequent education and training to official guardians. Although such measures have been deliberately approved by men of great genius, their ideas touching the relation between individual and State were wholly different from those upon which our institutions rest; and it hardly will be affirmed that any legislature could impose such restrictions upon the people of a [393 U.S. 503, 512] State without doing violence to both letter and spirit of the Constitution."

This principle has been repeated by this Court on numerous occasions during the intervening years. In *Keyishian v. Board of Regents*, 385 U.S. 589, 603 , MR. JUSTICE BRENNAN, speaking for the Court, said:

> "'The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.' *Shelton v. Tucker*, [364 U.S. 479,] at 487. The classroom is peculiarly the 'marketplace of ideas.' The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a

multitude of tongues, [rather] than through any kind of authoritative selection.'"

The principle of these cases is not confined to the supervised and ordained discussion which takes place in the classroom. The principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students.[6] This is not only an inevitable part of the process of attending school; it is also an important part of the educational process. A student's rights, therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on [393 U.S. 503, 513] the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without "materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school" and without colliding with the rights of others. *Burnside v. Byars*, supra, at 749. But conduct by the student, in class or out of it, which for any reason—whether it stems from time, place, or type of behavior—materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech. *Cf. Blackwell v. Issaquena County Board of Education*, 363 F.2d 749 (C. A. 5th Cir. 1966).

Under our Constitution, free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact. Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots. The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says. We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances. But we do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom.

If a regulation were adopted by school officials forbidding discussion of the Vietnam conflict, or the expression by any student of opposition to it anywhere on school property except as part of a prescribed classroom exercise, it would be obvious that the regulation would violate the constitutional rights of students, at least if it could not be justified by a showing that the students' activities would materially and substantially disrupt the work and discipline of the school. *Cf. Hammond* [393 U.S. 503, 514] *v. South Carolina State College*, 272 F. Supp. 947 (D.C. S. C. 1967) (orderly protest meeting on state college campus); *Dickey v. Alabama State Board of Education*, 273 F. Supp. 613 (D.C. M. D. Ala. 1967) (expulsion of student editor of college newspaper). In the circumstances of the present case, the prohibition of the silent, passive "witness of the armbands," as one of the children called it, is no less offensive to the Constitution's guarantees.

As we have discussed, the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred. These petitioners merely went about their ordained rounds in school. Their deviation consisted only in wearing on their sleeve a band of black cloth, not more than two inches wide. They wore it to exhibit their disapproval of the Vietnam hostilities and their advocacy of a truce, to make their views known, and, by their example, to influence others to adopt them. They 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. In the circumstances, our Constitution does not permit officials of the State to deny their form of expression.

We express no opinion as to the form of relief which should be granted, this being a matter for the lower courts to determine. We reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.

Footnotes

[1] *In* Burnside, *the Fifth Circuit ordered that high school authorities be enjoined from enforcing a regulation forbidding students to wear "freedom buttons." It is instructive that in* Blackwell v. Issaquena County Board of Education, *363 F.2d 749 (1966), the same panel on the same day reached the opposite result on different facts. It declined to enjoin enforcement of such a regulation in another high school where the students wearing freedom buttons harassed students who did not wear them and created much disturbance.*

[2] Hamilton v. Regents of Univ. of Cal., *293 U.S. 245 (1934), is sometimes cited for the broad proposition that the State may attach conditions to attendance at a state university that require individuals to violate their religious convictions. The case involved dismissal of members of a religious denomination from a land grant college for refusal to participate in military training. Narrowly viewed, the case turns upon the Court's conclusion that merely requiring a student to participate in school training in military "science" could not conflict with his constitutionally protected freedom of conscience. The decision cannot be taken as establishing that the State may impose and enforce any conditions that it chooses upon attendance at public institutions of learning, however violative they may be of fundamental constitutional guarantees. See, e. g.,* West Virginia v. Barnette, *319 U.S. 624 (1943);* Dixon v. Alabama State Board of Education, *294 F.2d 150 (C. A. 5th Cir. 1961);* Knight v. State Board of Education, *200 F. Supp. 174 (D.C. M. D. Tenn. 1961);* Dickey v. Alabama State Board of Education, *273 F. Supp. 613 (D.C. M. D. Ala. 1967). See also Note,* Unconstitutional Conditions, *73 Harv. L. Rev. 1595 (1960); Note,* Academic Freedom, *81 Harv. L. Rev. 1045 (1968).*

[3] *The only suggestions of fear of disorder in the report are these:*

> *"A former student of one of our high schools was killed in Viet Nam. Some of his friends are still in school and it was felt that if any kind of a demonstration existed, it might evolve into something which would be difficult to control."*
>
> *"Students at one of the high schools were heard to say they would wear arm bands of other colors if the black bands prevailed."*
>
> *Moreover, the testimony of school authorities at trial indicates that it was not fear of disruption that motivated the regulation prohibiting the armbands; the regulation was directed against "the principle of the demonstration" itself. School authorities simply felt that "the schools are no place for demonstrations," and if the students "didn't like the way our elected officials were handling things, it should be handled with the ballot box and not in the halls of our public schools."*

[4] *The District Court found that the school authorities, in prohibiting black armbands, were influenced by the fact that "[t]he Viet Nam war and the involvement of the United States therein has been the subject of a major controversy for some time. When the arm band regulation involved herein was promulgated, debate over the Viet Nam war had become vehement in many localities. A protest march against the war had been recently held in Washington, D.C. A wave of draft card burning incidents protesting the war had swept the country. At that time two highly publicized draft card burning cases were pending in this Court. Both individuals supporting the war and those opposing it were quite vocal in expressing their views." 258 F. Supp.,at 972-973.*

[5] *After the principals' meeting, the director of secondary education and the principal of the high school informed the student that the principals were opposed to publication of his article. They reported that "we felt that it was a very friendly conversation, although we did not feel that we had convinced the student that our decision was a just one."*

[6] *In* Hammond v. South Carolina State College, *272 F. Supp. 947 (D.C. S. C. 1967), District Judge Hemphill had before him a case involving a meeting on campus of 300 students to express their views on school practices. He pointed out that a school is not like a hospital or a jail*

enclosure. Cf. Cox v. Louisiana, *379 U.S. 536 (1965);* Adderley v. Florida, *385 U.S. 39 (1966). It is a public place, and its dedication to specific uses does not imply that the constitutional rights of persons entitled to be there are to be gauged as if the premises were purely private property.* Cf. Edwards v. South Carolina, *372 U.S. 229 (1963);* Brown v. Louisiana, *383 U.S. 131 (1966).*

MR. JUSTICE STEWART, concurring.

Although I agree with much of what is said in the Court's opinion, and with its judgment in this case, I [393 U.S. 503, 515] cannot share the Court's uncritical assumption that, school discipline aside, the First Amendment rights of children are co-extensive with those of adults. Indeed, I had thought the Court decided otherwise just last Term in *Ginsberg v. New York*, 390 U.S. 629 . I continue to hold the view I expressed in that case: "[A] State may permissibly determine that, at least in some precisely delineated areas, a child—like someone in a captive audience—is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees." *Id.*, at 649-650 (concurring in result). *Cf. Prince v. Massachusetts*, 321 U.S. 158 .

MR. JUSTICE WHITE, concurring.

While I join the Court's opinion, I deem it appropriate to note, first, that the Court continues to recognize a distinction between communicating by words and communicating by acts or conduct which sufficiently impinges on some valid state interest; and, second, that I do not subscribe to everything the Court of Appeals said about free speech in its opinion in *Burnside v. Byars*, 363 F.2d 744, 748 (C. A. 5th Cir. 1966), a case relied upon by the Court in the matter now before us.

MR. JUSTICE BLACK, dissenting.

The Court's holding in this case ushers in what I deem to be an entirely new era in which the power to control pupils by the elected "officials of state supported public schools . . ." in the United States is in ultimate effect transferred to the Supreme Court.[1] The Court brought [393 U.S. 503, 516] this particular case here on a petition for certiorari urging that the First and Fourteenth Amendments protect the right of school pupils to express their political views all the way "from kindergarten through high school." Here the constitutional right to "political expression" asserted was a right to wear black armbands during school hours and at classes in order to demonstrate to the other students that the petitioners were mourning because of the death of United States soldiers in Vietnam and to protest that war which they were against. Ordered to refrain from wearing the armbands in school by the elected school officials and the teachers vested with state authority to do so, apparently only seven out of the school system's 18,000 pupils deliberately refused to obey the order. One defying pupil was Paul Tinker, 8 years old, who was in the second grade; another, Hope Tinker, was 11 years old and in the fifth grade; a third member of the Tinker family was 13, in the eighth grade; and a fourth member of the same family was John Tinker, 15 years old, an 11th grade high school pupil. Their father, a Methodist minister without a church, is paid a salary by the American Friends Service Committee. Another student who defied the school order and insisted on wearing an armband in school was Christopher Eckhardt, an 11th grade pupil and a petitioner in this case. His mother is an official in the Women's International League for Peace and Freedom.

As I read the Court's opinion it relies upon the following grounds for holding unconstitutional the judgment of the Des Moines school officials and the two courts below. First, the Court concludes that the wearing of armbands is "symbolic speech" which is "akin to 'pure speech'" and therefore protected by the First and Fourteenth Amendments. Secondly, the Court decides that the public schools are an appropriate place to exercise "symbolic speech" as long as normal school functions [393 U.S. 503, 517] are not "unreasonably" disrupted. Finally, the Court arrogates to itself, rather than to the State's elected officials charged

with running the schools, the decision as to which school disciplinary regulations are "reasonable."

Assuming that the Court is correct in holding that the conduct of wearing armbands for the purpose of conveying political ideas is protected by the First Amendment, cf., e. g., *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490 (1949), the crucial remaining questions are whether students and teachers may use the schools at their whim as a platform for the exercise of free speech—"symbolic" or "pure"— and whether the courts will allocate to themselves the function of deciding how the pupils' school day will be spent. While I have always believed that under the First and Fourteenth Amendments neither the State nor the Federal Government has any authority to regulate or censor the content of speech, I have never believed that any person has a right to give speeches or engage in demonstrations where he pleases and when he pleases. This Court has already rejected such a notion. In *Cox v. Louisiana*, 379 U.S. 536, 554 (1965), for example, the Court clearly stated that the rights of free speech and assembly "do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time."

While the record does not show that any of these armband students shouted, used profane language, or were violent in any manner, detailed testimony by some of them shows their armbands caused comments, warnings by other students, the poking of fun at them, and a warning by an older football player that other, nonprotesting students had better let them alone. There is also evidence that a teacher of mathematics had his lesson period practically "wrecked" chiefly by disputes with Mary Beth Tinker, who wore her armband for her "demonstration." [393 U.S. 503, 518] Even a casual reading of the record shows that this armband did divert students' minds from their regular lessons, and that talk, comments, etc., made John Tinker "self-conscious" in attending school with his armband. While the absence of obscene remarks or boisterous and loud disorder perhaps justifies the Court's statement that the few armband students did not actually "disrupt" the classwork, I think the record overwhelmingly shows that the armbands did exactly what the elected school officials and principals foresaw they would, that is, took the students' minds off their classwork and diverted them to thoughts about the highly emotional subject of the Vietnam war. And I repeat that if the time has come when pupils of state-supported schools, kindergartens, grammar schools, or high schools, can defy and flout orders of school officials to keep their minds on their own schoolwork, it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary. The next logical step, it appears to me, would be to hold unconstitutional laws that bar pupils under 21 or 18 from voting, or from being elected members of the boards of education. [2]

The United States District Court refused to hold that the state school order violated the First and Fourteenth Amendments. 258 F. Supp. 971. Holding that the protest was akin to speech, which is protected by the First [393 U.S. 503, 519] and Fourteenth Amendments, that court held that the school order was "reasonable" and hence constitutional. There was at one time a line of cases holding "reasonableness" as the court saw it to be the test of a "due process" violation. Two cases upon which the Court today heavily relies for striking down this school order used this test of reasonableness, *Meyer v. Nebraska*, 262 U.S. 390 (1923), and *Bartels v. Iowa*, 262 U.S. 404 (1923). The opinions in both cases were written by Mr. Justice McReynolds; Mr. Justice Holmes, who opposed this reasonableness test, dissented from the holdings as did Mr. Justice Sutherland. This constitutional test of reasonableness prevailed in this Court for a season. It was this test that brought on President Franklin Roosevelt's well-known Court fight. His proposed legislation did not pass, but the fight left the "reasonableness" constitutional test dead on the battlefield, so much so that this Court in *Ferguson v. Skrupa*, 372 U.S. 726, 729 , 730, after a thorough review of the old cases, was able to conclude in 1963:

> "There was a time when the Due Process Clause was used by this Court to strike down laws which were thought unreasonable, that is, unwise or incompatible with some particular economic or social philosophy.

> "The doctrine that prevailed in Lochner, Coppage, Adkins, Burns, and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded."

The *Ferguson* case totally repudiated the old reasonableness-due process test, the doctrine that judges have the power to hold laws unconstitutional upon the belief of judges that they "shock the conscience" or that they are [393 U.S. 503, 520] "unreasonable," "arbitrary," "irrational," "contrary to fundamental 'decency,'" or some other such flexible term without precise boundaries. I have many times expressed my opposition to that concept on the ground that it gives judges power to strike down any law they do not like. If the majority of the Court today, by agreeing to the opinion of my Brother FORTAS, is resurrecting that old reasonableness-due process test, I think the constitutional change should be plainly, unequivocally, and forthrightly stated for the benefit of the bench and bar. It will be a sad day for the country, I believe, when the present-day Court returns to the McReynolds due process concept. Other cases cited by the Court do not, as implied, follow the McReynolds reasonableness doctrine. *West Virginia v. Barnette*, 319 U.S. 624 , clearly rejecting the "reasonableness" test, held that the Fourteenth Amendment made the First applicable to the States, and that the two forbade a State to compel little schoolchildren to salute the United States flag when they had religious scruples against doing so.[3] Neither *Thornhill v. Alabama*, 310 U.S. 88; *Stromberg v. California*, 283 U.S. 359 ; *Edwards* [393 U.S. 503, 521] *v. South Carolina*, 372 U.S. 229; nor *Brown v. Louisiana*, 383 U.S. 131 , related to schoolchildren at all, and none of these cases embraced Mr. Justice McReynolds' reasonableness test; and Thornhill, Edwards, and Brown relied on the vagueness of state statutes under scrutiny to hold them unconstitutional. *Cox v. Louisiana*, 379 U.S. 536, 555, and *Adderley v. Florida*, 385 U.S. 39 , cited by the Court as a "compare," indicating, I suppose, that these two cases are no longer the law, were not rested to the slightest extent on the Meyer and Bartels "reasonableness-due process-McReynolds" constitutional test.

I deny, therefore, that it has been the "unmistakable holding of this Court for almost 50 years" that "students" and "teachers" take with them into the "schoolhouse gate" constitutional rights to "freedom of speech or expression." Even Meyer did not hold that. It makes no reference to "symbolic speech" at all; what it did was to strike down as "unreasonable" and therefore unconstitutional a Nebraska law barring the teaching of the German language before the children reached the eighth grade. One can well agree with Mr. Justice Holmes and Mr. Justice Sutherland, as I do, that such a law was no more unreasonable than it would be to bar the teaching of Latin and Greek to pupils who have not reached the eighth grade. In fact, I think the majority's reason for invalidating the Nebraska law was that it did not like it or in legal jargon that it "shocked the Court's conscience," "offended its sense of justice," or was "contrary to fundamental concepts of the English-speaking world," as the Court has sometimes said. See, e. g., *Rochin v. California*, 342 U.S. 165 , and *Irvine v. California*, 347 U.S. 128 . The truth is that a teacher of kindergarten, grammar school, or high school pupils no more carries into a school with him a complete right to freedom of speech and expression than an anti-Catholic or anti-Semite carries with him a complete freedom of [393 U.S. 503, 522] speech and religion into a Catholic church or Jewish synagogue. Nor does a person carry with him into the United States Senate or House, or into the Supreme Court, or any other court, a complete constitutional right to go into those places contrary to their rules and speak his mind on any subject he pleases. It is a myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases. Our Court has decided precisely the opposite. See, e. g., *Cox v. Louisiana*, 379 U.S. 536, 555; *Adderley v. Florida*, 385 U.S. 39 .

In my view, teachers in state-controlled public schools are hired to teach there. Although Mr. Justice McReynolds may have intimated to the contrary in *Meyer v. Nebraska*, supra, certainly a teacher is not paid to go into school and teach subjects the State does not hire him to teach as a part of its selected curriculum. Nor are public school students sent to the schools at public expense to broadcast political or any other views to educate and inform the public. The original idea of schools, which I do not believe is yet abandoned as worthless or out of date, was that children had not yet reached the point of experience and wisdom which enabled them to teach all of their elders. It may be that the Nation has outworn the old-fashioned slogan that "children are to be seen not heard," but one may, I hope, be permitted to harbor the thought that taxpayers send children to school on

the premise that at their age they need to learn, not teach.

The true principles on this whole subject were in my judgment spoken by Mr. Justice McKenna for the Court in *Waugh v. Mississippi University* in 237 U.S. 589, 596 -597. The State had there passed a law barring students from peaceably assembling in Greek letter fraternities and providing that students who joined them could be expelled from school. This law would appear on the surface to run afoul of the First Amendment's [393 U.S. 503, 523] freedom of assembly clause. The law was attacked as violative of due process and of the privileges and immunities clause and as a deprivation of property and of liberty, under the Fourteenth Amendment. It was argued that the fraternity made its members more moral, taught discipline, and inspired its members to study harder and to obey better the rules of discipline and order. This Court rejected all the "fervid" pleas of the fraternities' advocates and decided unanimously against these Fourteenth Amendment arguments. The Court in its next to the last paragraph made this statement which has complete relevance for us today:

> "It is said that the fraternity to which complainant belongs is a moral and of itself a disciplinary force. This need not be denied. But whether such membership makes against discipline was for the State of Mississippi to determine. It is to be remembered that the University was established by the State and is under the control of the State, and the enactment of the statute may have been induced by the opinion that membership in the prohibited societies divided the attention of the students and distracted from that singleness of purpose which the State desired to exist in its public educational institutions. It is not for us to entertain conjectures in opposition to the views of the State and annul its regulations upon disputable considerations of their wisdom or necessity." (Emphasis supplied.)

It was on the foregoing argument that this Court sustained the power of Mississippi to curtail the First Amendment's right of peaceable assembly. And the same reasons are equally applicable to curtailing in the States' public schools the right to complete freedom of expression. Iowa's public schools, like Mississippi's university, are operated to give students an opportunity to learn, not to talk politics by actual speech, or by "symbolic" [393 U.S. 503, 524] speech. And, as I have pointed out before, the record amply shows that public protest in the school classes against the Vietnam war "distracted from that singleness of purpose which the State [here Iowa] desired to exist in its public educational institutions." Here the Court should accord Iowa educational institutions the same right to determine for themselves to what extent free expression should be allowed in its schools as it accorded Mississippi with reference to freedom of assembly. But even if the record were silent as to protests against the Vietnam war distracting students from their assigned class work, members of this Court, like all other citizens, know, without being told, that the disputes over the wisdom of the Vietnam war have disrupted and divided this country as few other issues ever have. Of course students, like other people, cannot concentrate on lesser issues when black armbands are being ostentatiously displayed in their presence to call attention to the wounded and dead of the war, some of the wounded and the dead being their friends and neighbors. It was, of course, to distract the attention of other students that some students insisted up to the very point of their own suspension from school that they were determined to sit in school with their symbolic armbands.

Change has been said to be truly the law of life but sometimes the old and the tried and true are worth holding. The schools of this Nation have undoubtedly contributed to giving us tranquility and to making us a more law-abiding people. Uncontrolled and uncontrollable liberty is an enemy to domestic peace. We cannot close our eyes to the fact that some of the country's greatest problems are crimes committed by the youth, too many of school age. School discipline, like parental discipline, is an integral and important part of training our children to be good citizens—to be better citizens. Here a very small number of students have crisply and summarily [393 U.S. 503, 525] refused to obey a school order designed to give pupils who want to learn the opportunity to do so. One does not need to be a prophet or the son of a prophet to know that after the Court's holding today some students in Iowa schools and indeed in all schools will be ready, able, and willing to defy their teachers on practically all orders. This is the more unfortunate for the schools since groups of students all over the land are already running loose,

conducting break-ins, sit-ins, lie-ins, and smash-ins. Many of these student groups, as is all too familiar to all who read the newspapers and watch the television news programs, have already engaged in rioting, property seizures, and destruction. They have picketed schools to force students not to cross their picket lines and have too often violently attacked earnest but frightened students who wanted an education that the pickets did not want them to get. Students engaged in such activities are apparently confident that they know far more about how to operate public school systems than do their parents, teachers, and elected school officials. It is no answer to say that the particular students here have not yet reached such high points in their demands to attend classes in order to exercise their political pressures. Turned loose with lawsuits for damages and injunctions against their teachers as they are here, it is nothing but wishful thinking to imagine that young, immature students will not soon believe it is their right to control the schools rather than the right of the States that collect the taxes to hire the teachers for the benefit of the pupils. This case, therefore, wholly without constitutional reasons in my judgment, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students. I, for one, am not fully persuaded that school pupils are wise enough, even with this Court's expert help from Washington, to run the 23,390 public school [393 U.S. 503, 526] systems 4 in our 50 States. I wish, therefore, wholly to disclaim any purpose on my part to hold that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students. I dissent.

[1] *The petition for certiorari here presented this single question:*

"Whether the First and Fourteenth Amendments permit officials of state supported public schools to prohibit students from wearing symbols of political views within school premises where the symbols are not disruptive of school discipline or decorum."

[2] *The following Associated Press article appeared in the* Washington Evening Star*, January 11, 1969, p. A-2, col.1:*

BELLINGHAM, Mass. (AP) - Todd R. Hennessy, 16, has filed nominating papers to run for town park commissioner in the March election.

"'I can see nothing illegal in the youth's seeking the elective office,' said Lee Ambler, the town counsel. 'But I can't overlook the possibility that if he is elected any legal contract entered into by the park commissioner would be void because he is a juvenile.'

"Todd is a junior in Mount St. Charles Academy, where he has a top scholastic record."

[3] *In* Cantwell v. Connecticut*, 310 U.S. 296, 303 -304 (1940), this Court said:*

"The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws. The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society."

[4] Statistical Abstract of the United States *(1968), Table No. 578, p. 406.*

MR. JUSTICE HARLAN, dissenting.

I certainly agree that state public school authorities in the discharge of their responsibilities are not wholly exempt from the

requirements of the Fourteenth Amendment respecting the freedoms of expression and association. At the same time I am reluctant to believe that there is any disagreement between the majority and myself on the proposition that school officials should be accorded the widest authority in maintaining discipline and good order in their institutions. To translate that proposition into a workable constitutional rule, I would, in cases like this, cast upon those complaining the burden of showing that a particular school measure was motivated by other than legitimate school concerns—for example, a desire to prohibit the expression of an unpopular point of view, while permitting expression of the dominant opinion.

Finding nothing in this record which impugns the good faith of respondents in promulgating the armband regulation, I would affirm the judgment below. [393 U.S. 503, 527]

The Web site www.freedomsings.org provides additional information and classroom resources for teaching about the First Amendment in relation to free-expression and student-rights issues.