IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. [redacted] 21

JOHN F. TINKER and MARY BETH TINKER, minors, by their father and next friend, LEONARD TINKER, and CHRISTOPHER ECKHARDT, minor, by his father and next friend, WILLIAM ECKHARDT,

Petitioners,

vs.

THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, THE BOARD OF DIRECTORS OF THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, ORA E. NIFFENEGGER, MRS. MARY GREFE, ARTHUR DAVIS, L. ROBERT KECK, GEORGE CAUDILL, JOHN R. HAYDON, MERLE F. SCHLAMPP, DWIGHT DAVIS, ELMER BETZ, GERALD JACKSON, MELVIN BOWEN, DONALD WETTER, CHESTER PRATT, CHARLES ROWLEY, RAYMOND PETERSON, RICHARD MOBERLY, VERA TARMANN, LEO WILLADSEN, DONALD BLACKMAN, VELMA CROSS AND ELLSWORTH E. LORY,

Respondents.

RESPONDENTS' BRIEF OPPOSING ISSUANCE OF WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 1034

JOHN F. TINKER, et al.,

Petitioners,

vs.

DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, et al.,

Respondents.

RESPONDENTS' BRIEF OPPOSING ISSUANCE OF WRIT OF CERTIORARI

Respondents pray that this United States Supreme Court not issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit, entered in the above-entitled case on November 3, 1967.

STATUTE INVOLVED

Under the heading "Statute Involved" petitioners quote Section 282.4, Code of Iowa, 1966.

The instant case was actually brought pursuant to the provisions of 42 U.S.C., Section 1983, which reads:

> "Every person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R.S. Sec. 1979."

PETITIONERS' STATEMENT OF QUESTION

Respondents believe petitioners' statement of question presented is incorrect in that it assumes that if the challenged rule had not been adopted and enforced then there would have been no interference at all with the education process and assumes that the school rules which in any manner limit the right of free speech or expression must be reviewed in the light of what did happen, after the enforcement was successful, or in the light of what the court now believes would have happened had the rule not been promulgated and enforced. Respondents submit that secondary school authorities are surely not obliged to let events take their course before adopting rules and regulations.

Christopher Eckhardt, plaintiff, arrived in school wearing a black arm band for the express purpose of challenging the rule. He was promptly sent home when he refused to take it off. (R. 26-28.) Plaintiff John Tinker wore his arm band for a part of a morning session. The first class after lunch he was sent home. (R. 13-15.) Plaintiff Mary Elizabeth Tinker wore her arm band to Warren Harding Junior High School and was sent home during the first class after lunch. The plaintiffs demonstrated to promote

their own point of view. They sought attention and welcomed questions. (R. 19.) Obviously, if their purposes were achieved they would have of necessity interfered with the management and operation of the schools and with the discipline and decorum thereof. The regulation was pronounced in advance and made known to all students prior to the time the plaintiffs or any other students wore them. (R. 10.) It is a fair inference that many more students would have worn them had not the regulation been made known to them. Surely it cannot be assumed that had the regulation not been promulgated and enforced that there would have been no disruption of the discipline and decorum of the various schools involved

STATEMENT OF THE CASE

At all times material, the plaintiff, John Tinker was fifteen years of age and a student in North High School, Des Moines, Iowa. His sister, Mary Beth Tinker, was thirteen years of age, and was a student in Warren Harding Junior High School, Des Moines, Iowa. The other minor plaintiff, Christopher Eckhardt, was sixteen years of age and a student at Roosevelt High School in Des Moines, Iowa, all of said schools being within the Des Moines Independent Community School District.

The three students, by their next friend, brought this action, claiming that they were deprived of their right of free speech in violation of the First and Fourteenth Amendments to the Constitution of the United States. Their action is based on 42 U.S.C., Section 1983.

The defendants are the Des Moines Independent Community School District and the individual members of the Board of Directors thereof, together with the superintendent of schools and other teachers and administrative offi-

cials of the Des Moines Independent Community School District. The plaintiffs sought injunctive relief and nominal damages against all defendants. (R. 7.) The plaintiffs were each suspended from school because they wore black arm bands in violation of a school regulation. (R. 10.) The case was tried in the United States District Court for the Southern District of Iowa, the Honorable Roy L. Stephenson presiding, and the court held among other things:

> "The school officials must be given a wide discretion and if, under the circumstances, a disturbance in school discipline is reasonably to be anticipated, actions which are reasonably calculated to prevent such a disruption must be upheld by the Court. In the case now before the Court, the regulation of the defendant school district was, under the circumstances, reasonable and did not deprive the plaintiffs of their constitutional right to freedom of speech." (R. 45.)

The Circuit Court affirmed without opinion. (Petitioners' Petition 9a.)

The events leading up to the adoption of the regulation in question were as follows:

On Saturday, December 11, 1965, a meeting was held at the home of William Eckhardt, father of plaintiff, Christopher Eckhardt. The meeting was attended by college students and adults. Some of the students were members of the Students for Democratic Society (S.D.S.) and many of the people attending had previously participated in a peace march in Washington, D. C., protesting the war in Viet Nam. (S.R. 10-11.) None of the plaintiffs actually attended this meeting at the Eckhardt home, but both Mr. and Mrs. Eckhardt and Mrs. Tinker attended. (R. 11, 12, 29, S.R. 10-11.) Plaintiff Christopher Eckhardt and his mother had participated in the Washington demonstration. (R. 26, 29.)

This initial meeting was also attended by Bruce Clark and Ross Peterson (R. 30), both of whom were students at Roosevelt High School and both of whom were actively involved in the arm band situation although not plaintiffs in this case. (R. 11, 20, 27, 30) (Plaintiffs' Ex. 4; R. 36, S.R. 25-28.) One of the proposals at the December 11, 1965 meeting was that students and others wear black arm bands to support the truce by Senator Kennedy and to mourn the deaths in Viet Nam.

Thereafter, there was a December 12th meeting, also at the Eckhardt home, attended by Christopher Eckhardt, Bruce Clark, Ross Peterson, and others, when the wearing of the arm bands was again discussed. (R. 30.)

The national news media indicated the arm bands' original intent was in protest of the United States Government policy. The matter of wearing arm bands was in the national news media at this time and on Monday, December 13th, Ross Peterson, a student at Roosevelt High School approached his journalism teacher about writing an article for the school paper relating to Viet Nam. The matter was deferred and discussed with other administrative officials, and on December 14th a meeting of the principals of the Des Moines School System was called by Mr. Peterson, the director of secondary education. It was decided that the wearing of the arm bands would be prohibited and it was thereafter that the regulation was announced to the students. (Plaintiffs' Ex. 4, R. 37, S.R. 25-28.) This plaintiffs' Exhibit 4 is a written report from the Director of Secondary Education to the Superintendent of Schools outlining the events in some detail and listing a number of the reasons considered by the principals in adopting the regulation. Out of a total of approximately 18,000 high school and junior high school students only

five were suspended for wearing black arm bands contrary to the regulation. They include the three plaintiffs and two other Roosevelt High School Students. (R. 36, Plaintiffs' Ex. 4, R. 37, S.R. 25-28.)

On the morning of Thursday, December 15th, plaintiff Christopher Eckhardt appeared at the Roosevelt High School wearing an arm band. After taking his coat off at his locker, he went directly to the principal's office, because he knew that he was in violation of the rule. On the way he talked with one student, who asked him about it, and he told him why he was wearing it, and also told him that he knew he was in violation of the rule. On arrival at the principal's office he was asked by Mr. Blackman, the vice-principal, to remove the arm band, he refused and was suspended. (R. 26-28.) He testified that he wore the black arm band to school as a matter of protest of the war in Viet Nam and to hope for a Christmas truce, and that he hoped to influence public opinion toward his views. (R. 29-30.)

Plaintiff Mary Elizabeth Tinker, age 13, attended Warren Harding Junior High School on Thursday morning, December 16th, wearing a black arm band. A number of students during the morning, in class and between classes, asked her about it and there was some conversation, and she had one girl sign a petition. The first class after lunch she was sent to the principal's office, removed the arm band on request, but later was sent home, and her parents were asked to return for consultation with the officials. (R. 21-24.) On the same day that she wore the arm band, her brother Paul, who was eight, and her sister Hope, who was eleven, also went to school wearing arm bands. (R. 16-24.)

The plaintiff John Tinker, a student at North High School, did not wear an arm band until Friday, December

17th. (R. 12.) There was conversation in the halls and classrooms with other students, some of which was friendly and some of which was not. (R. 13-14.) At lunchtime some of the students made uncomplimentary remarks for about ten minutes. Four or five of them were standing milling around. He testified that there were no threats to him or anything, and that finally a football player told the kids to leave him alone, that everyone had their own opinion. (R. 13-14.) Some of the students at the lunchroom referred to him as "Commie" and other things of that nature. (R. 19.) When he went to his first class after lunch he was sent to the principal's office, and when he refused to take off the arm band he was sent home. (R. 15.)

John Tinker testified, "I didn't anticipate the rule would forbid me from wearing the arm band outside of school, I was concerned about being able to wear it to school, because I didn't see anything wrong about it. I didn't think it was all that bad. In fact, I thought it was kind of good, that's why I was going to wear it. I wanted to wear it as many days in school as I could." (R. 17.) He further testified, "I suppose I was attracting some attention by wearing the arm band. I wanted students and everybody else that saw it to know I was wearing it, and I welcomed questions at school while I was wearing it. My parents and I are generally against the policy of the government in Viet Nam. By wearing the arm band I suppose I would have hoped to influence public opinion about the matter of Viet Nam, to call attention to it; to influence people to believe as I did about it." (R. 18.)

The Board of Directors deferred action at the December 21, 1965 meeting for the purpose of obtaining advice of counsel and making further investigation. Further investigation was made and advice obtained and on the first

Monday of January, 1966, the Board voted to uphold the administrative policy set by the school officials. (S.R. 9.) Ora Niffenegger, who was then President of the School Board of the Des Moines Independent Community School District, testified that at the January meeting, "Our boardroom was filled to overflowing. There were a few signs present, and on several occasions it was a little bit touch and go as far as maintaining order, but we did get through." In other words, there were some demonstrations from people locally, and apparently from outside the city. (R. 38.) Leonard Tinker, father of plaintiff John Tinker, stated in his deposition:

> "I was present at the meeting of the School Board following that, the 21st. I would not question the newspaper accounts that there were about two hundred students and adults that attended the meeting. Professor Sawyer was not employed, he happened to be at the meeting because he was secured. He agreed to serve as a spokesman for the group. The papers state there was a picket line formed outside the board office. I don't question that." (S.R. 15.)

QUESTION PRESENTED

Whether the school regulations forbidding students to wear arm bands in school in support of their beliefs concerning the war in Viet Nam was so unreasonable and arbitrary in the light of the facts existing as to be a violation of the students' right of free speech and expression granted to them under the First and Fourteenth Amendments to the Constitution.

REASONS FOR NOT GRANTING THE WRIT

Petitioners' contention that the Eighth Circuit's decision in the instant case is in conflict with the prior case of *Burnside* v. *Byars,* 363 F.2d 744, 5th Cir. 1966, is unfounded.

There is no real conflict between the two cases. In each case, the court recognizes the right of the school authorities to enforce reasonable regulations. In *Burnside,* supra, on page 748, the court said:

> "Therefore, a reasonable regulation is one which measurably contributes to the maintenance of order and decorum within the education system."

In *Burnside,* supra, the high school students in an all negro high school in Philadelphia, Mississippi, were wearing Freedom Buttons saying, "One man, One vote". There was nothing potentially disruptive or inflammatory about this in the light of the facts appearing in the record in the case. Therefore, the Fifth Circuit held that the regulation was not reasonable. The record in that case disclosed that large numbers of students wore the buttons even after the regulation forbidding them had been announced, but that it did not cause any serious disruption of the decorum or the discipline of the school. This, of course, served to buttress their judgment that the regulation was not in fact reasonable, and this was the basis on which the same circuit distinguished the case of *Blackwell, et al.* v. *Issaquena Bd. of Education, et al.,* 363 F.2d 749, Fifth Cir. 1966, which case was decided simultaneously with the case of *Burnside* v. *Byars,* supra. In short, in the case of *Burnside* v. *Byars,* supra, the Fifth Circuit held that under the facts and circumstances of that case the regulation was not reasonable in that the act which it forbade would not disrupt the discipline in the school. Their view of the matter was supported by the subsequent events.

In the instant case, the rule against wearing the black arm bands was promulgated under entirely different circumstances, which were well expressed by the trial court in its opinion as follows:

> "The 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. This was demonstrated during the school board's hearing on the arm band regulation. At this hearing, the school board voted in support of the rule prohibiting the wearing of the arm bands on school premises. It is against this background that the Court must review the reasonableness of the regulation." (R. 43.)

The instant case and *Burnside,* supra, were both decided in the light of the circumstances then existing. Respondents submit that it can not be assumed that the Fifth Circuit, given the exact facts and circumstances that existed in the instant case, would have decided it any differently than did the Eighth Circuit. In short, there is no conflict between the two circuits which would justify the granting of the Writ of Certiorari in this case.

If the Fifth Circuit decision in *Burnside,* supra, must be construed to hold that school authorities may not exercise reasonable judgment in the light of surrounding circumstances in promulgating a rule, even though it may to some extent limit the right of speech and expression, but must wait until school discipline and decorum has been disrupted before attempting to take any kind of action at all, then it is in conflict with the Eighth Circuit decision in this case, but it is surely clearly in error.

The instant case does not conflict with prior applicable decisions of the United States Supreme Court. The law

in Iowa and elsewhere gives school authorities the right to adopt reasonable rules and regulations governing the conduct of the pupils. If the regulation is reasonable in the light of existing facts and circumstances the Court may not question the discretion vested in the school authorities. It is not for the courts to consider whether the rule in retrospect was wise or expedient so long as it was a reasonable exercise of the discretion vested in the school authorities. *The Board of Directors of the Independent School District of Waterloo, Iowa* v. *Ronald Green,* 147 N.W.2d 854; Iowa, 1967; *Kinzer* v. *Independent School District,* 129 Iowa 441, 105 N.W. 686; *Pugsley* v. *Sellmeyer, et al.,* 158 Ark. 247, 257 S.W. 538; *Stromberg* v. *French,* 236 N.W. 477 (N. Dak.); *Burnside* v. *Byars,* 363 F.2d 744 (5th Cir. 1966); *Blackwell* v. *Issaquena County Board of Education,* 363 F.2d 749 (5th Cir. 1966).

In *Green,* supra, on page 858, the Iowa Supreme Court said:

> "The courts of this state are not concerned with the wisdom of discretionary acts on the part of school boards in adopting rules and regulations governing the operation, management and conduct of our schools.
>
> "Stated otherwise it is not for us to concern ourselves with the matter of expediency of a given board rule. The duty of all courts, regardless of personal views or individual philosophies, is to uphold a school regulation unless it is clearly arbitrary and unreasonable. Any other approach would result in confusion detrimental to the management progress, and efficient operation of our public school system. It would in effect serve to place operational policies of our schools in the hands of the courts which would be clearly wrong if not unconstitutional."

Even the Fifth Circuit in the case of *Burnside* v. *Byars,* 363 F.2d 744, relied on by petitioners,

> "In formulating regulations, including those pertaining to the discipline of school children, school officials have a wide latitude of discretion. But the school is always bound by the requirement that the rules and regulations must be reasonable. It is not for us to consider whether such rules are wise or expedient but merely whether they are a reasonable exercise of the power and discretion of the school authorities."

It is universally recognized that in operating a public secondary school system the absolute right to speak or demonstrate, which would be perfectly valid at another time and at another place, cannot be tolerated in the school system. No doubt, some school systems permit the exercise of free speech under circumstances that another school system, in the exercise of a reasonable discretion, forbids. Surely, the school authorities must have some leeway. In the instant case, the students were not wearing the arm bands for the purpose of a quiet affirmation of their beliefs and principles. They were wearing them for the avowed purpose of calling attention to their beliefs.

In *Pugsley* v. *Sellmeyer*, 158 Ark. 247, 257 S.W. 538, the plaintiff was suspended from school for violating a school rule forbidding the use of face paint or cosmetics. She brought mandamus to require her admission to school notwithstanding her refusal to obey the rule. The Supreme Court of Arkansas affirmed the lower court's decision denying the writ, and the court stated:

> "The courts will not interfere with the exercise of discretion by school directors in matters confided by law to their judgment, unless there is a clear abuse of the discretion or a violation of the law. . . . The Question, therefore, is not whether we approve this rule as one we would have made as directors of the district, nor are we required to know whether it was essential to the maintenance of discipline. On the contrary, we must uphold the rule unless we find that

> the directors have clearly abused their discretion and the rule is not one reasonably calculated to effect the purpose intended of promoting discipline in the schools."

The conduct of pupils which directly relates to and affects management of the school and its efficiency is a matter within the sphere of regulation by school authorities and if the regulation is reasonable in the light of existing circumstances then it should be allowed to stand. The fact that it may in some degree limit the right of free expression on the part of some students does not require or permit the courts to apply some different ruling.

The right of free speech or freedom of expression (including the right to demonstrate) is not an absolute right, but must be weighed against the other legitimate government and public interests. In the case at bar, the other legitimate interests are the right and duty of the school authorities to maintain order in the school, and to operate the schools efficiently according to an established curriculum.

The balancing of the interests rule has been applied under many different facts and circumstances. In *American Communications Associations* v. *Douds,* 339 U.S. 382, 70 S.Ct. 674 (1950), the United States Supreme Court upheld the provisions of the N.L.R.B. Act, which required that officials of labor unions file an affidavit that they were not members of the communist party. Justice Vinson, in his opinion, stated:

> "When particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional, partial abridgment of speech, the duty of the courts is to determine which of these two conflicting interests demands the greater protection under the particular circumstances presented."

In *Cox* v. *New Hampshire,* 312 U.S. 569, 61 S.Ct. 772 (1941), the United States Supreme Court upheld a New Hampshire conviction of Jehovah's Witnesses, who were convicted for violating a state statute prohibiting a parade or procession upon a public street without a special license. The Jehovah's Witnesses contended that the statute was an invalid infringement upon their First and Fourteenth Amendment rights of free speech, press, religion, and assembly. Upholding their conviction, the Supreme Court said:

> "Civil liberties as guaranteed by the Constitution imply the existence of an organized society, maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses."

The proposition that people have a constitutional right to express their views by way of demonstration or otherwise, however and wherever they please was rejected in the *Cox* case, supra, and again rejected in the very recent case of *Adderley* v. *The State of Florida,* 87 S.Ct. 242 (1966). In the Adderley case, the petitioners and other persons were convicted of trespass under a Florida statute. They congregated and demonstrated on State property in front of the county jail. Justice Black, who delivered the opinion of the Court said:

> "The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated. For this reason there is no merit to the petitioners' argument that they had a constitutional right to stay on the property, over the jail custodian's objections, because this 'area chosen for peaceful civil rights demonstration was not only "reasonable" but also particularly appropriate * * *'. Such an argument has as its major unarticulated premises the assumption that people who want to propagandize protests or views have a constitutional right to do so whenever and

> however and wherever they please. That concept of constitutional law was vigorously and forthrightfully rejected in two of the cases petitioners rely on *Cox* v. *State of Louisiana,* supra, at 545-555 and 563-564, 85 S.Ct. at 464 and 480. We reject it again. The United States Constitution does not forbid a State to control the use of its own property for its own lawful nondiscriminatory purpose."

In *Konigsberg* v. *State Bar of California,* 366 U.S. 36, 81 S.Ct. 997 (1961), Konigsberg refused to answer questions asked by the Bar Committee of the State of California relative to his qualifications. The Bar Committee refused to certify him on the grounds that his refusal to answer had obstructed a full investigation into his qualifications. The Supreme Court held that it was a valid governmental purpose to require proof of good moral character and that the Bar Association could require him to respond to the questions put to him without violation of the First and Fourteenth Amendments to the United States Constitution. While this case involves the right not to speak, the application of the balancing test is relevant to the case at bar. It is further relevant in that it involves action taken by a nonlegislative body. Beginning on page 50 of 366 U.S. and page 1006 of 81 S.Ct. Rep., Justice Harlan speaking for the Court said:

> "At the outset we reject the view that freedom of speech and association (N.A.A.C.P. v. State of Alabama ex rel. Patterson, 357 U.S. 449, 460, 78 S.Ct. 1163, 1170, 2 L.Ed. 1488) as protected by the First and Fourteenth Amendments, are 'absolutes' not only in the undoubted sense that where the constitutional protection exists it must prevail, but also in the sense that the scope of that protection must be gathered solely from a literal reading of the First Amendment. Throughout its history this Court has consistently recognized at least two ways in which constitutionally protected freedom of speech is narrower than an un-

> limited license to talk. On the one hand, certain forms of speech, or speech in certain contexts, has been considered outside the scope of constitutional protection (Citing cases . . .). *On the other hand, general regulatory statutes, not intended to control the content of speech, but incidentally limiting its unfettered exercise, have not been regarded as the type of law the First or Fourteenth Amendment forbade Congress or the States to pass, when they have been found justified by subordinating valid governmental interests, a prerequisite to constitutionality which has necessarily involved a weighing of the governmental interest involved.*" (Emphasis supplied.)

The fact that the subject matter of the proposed demonstration is deemed a matter of vital importance is not the criterion. Surely secondary school authorities have a right and a duty to maintain an established curriculum unimpaired by the desire of some students to promote a discussion and to attract attention concerning certain other subjects.

Petitioners throughout their petition assume that had the school authorities permitted all students to demonstrate by wearing arm bands in opposition to the war in Viet Nam that there would have been no disturbance of the education process. Under their theory the only way school authorities could ever justify any rule or regulation which in any manner limited free speech would be to wait until the education process had in fact been interrupted and then promulgate the rule.

Respondents respectfully submit that school authorities operating secondary schools have a right to exercise their own judgment and discretion in promulgating rules, including those which in some degree limit the students' right of free speech and free expression, and that the courts should not "second guess" the administrators, so

long as the regulation appeared to be reasonable under the facts and circumstances existing at the time it was adopted. Surely the fact that out of 18,000 students (R. 36), it was only necessary to suspend five students for violating the rule (S.R. 28), is a strong indication that most students viewed the rule as reasonable and proper.

Students in secondary school systems cannot be allowed to demonstrate at any and all times for or against a proposition no matter how earnestly they believe in the importance of the subject matter and the correctness of their beliefs. Concedely, the subject matter of the demonstration and the views of those seeking to demonstrate are not controlling, but it is important that school administrators and officials have a right to, in good faith, adopt rules and regulations to meet the day to day situations arising and which they have reasonable grounds to believe are necessary in order to prevent interference with the education process. As stated by the trial court, the fact that the subject matter is controversial does not in and of itself justify excluding it from the classroom, but surely the school authorities must have the right to control the curriculum and control the time and place for discussion.

Petitioners recognize that the secondary school authorities do have the right to limit the absolute right of free speech and expression when it disrupts the "education process" but it would appear that in essence they believe that this court should substitute its discretion for that of the school authorities. Respondents respectfully submit that it is for the courts to decide whether there was a reasonable basis for the rule when it was promulgated and this should not be based on what the individual members of the court might have done had they been acting as school authorities at the particular time and place.

The instant case cannot be compared to freedom of religion cases such as *West Virginia* v. *Barnette,* 319 U.S. 624 (1943), *School District* v. *Schempp,* 374 U.S. 203 (1963), and *Engel* v. *Vitale,* 370 U.S. 421 (1962), all cited by petitioners. The wearing of the black arm bands had no religious significance whatsoever. They were seeking to demonstrate in order to influence others to believe as they did relative to the war in Viet Nam. (R. 29-30, 18.) The record clearly reflects that neither petitioners nor their parents were strangers to this form of persuasion. On the contrary, the record clearly reflects that they, together with their parents, had demonstrated on a number of other occasions. (R. 12, 17, 26.) They were seeking to use the public schools, with a captive audience, as a place to promote their own beliefs. Respondents respectfully submit that the First and Fourteenth Amendments to the United States Constitution do not require school authorities to permit this kind of activity among the student body when, as in this case, there is a reasonable likelihood that it will disrupt the education process.

Petitioners suggest that the claimed conflict by the Fifth and Eighth Circuits involved a basic difference in the philosophy concerning the operation of the public schools. Respondents respectfully submit that the public schools involved in this case were created by and controlled by the State of Iowa, acting through the duly constituted school authorities. The proper role of the public schools is not something for the Supreme Court to decide. Unless there is a clear violation of the basic Federal Constitutional rights, it would seem clear that the Federal Courts should not interfere.

Some limitations on the absolute right of expression occurs daily in a public school and not even petitioners suggest that all of these limitations violate the people's

First Amendment rights. The record in this case reflects that there was no abuse of the discretion vested in the school authorities and thus no violation of the petitioners' constitutional rights.

CONCLUSION

Certiorari should not be granted in this case because A. There is no clear conflict between the decisions of the Eighth Circuit and any other circuit court of the United States; B. In any event the decisions of the trial court and the Eighth Circuit in this case are not contrary to the applicable decisions of this court.

Respectfully submitted,

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