Stark County Teaching American History Grant

Stark County Educational Service Center
2100 38th Street NW
Canton, Ohio 44709

THE BILL OF RIGHTS: RESOLVING CONFLICTS AND DIFFERENCES

Grade level: 11-12

Created by Mrs. Gross at R. G. Drage Career Technical Center

Duration: 5 days

Overview

Students will experience the processes of persuasion, compromise, consensus building and negotiation and how these skills contribute to the resolution of conflicts and differences as they study and participate in the creation of the Bill of Rights. Students will refer to the Mayflower Compact, Magna Carta, the English bill of Rights, colonial charters and state constitutions to help them see how the Framers came to their decisions based on the "common good of all" as they worked together at the Constitutional Convention in 1787.

Throughout the week, students will use primary sources, computers, the Smartboard (interactive whiteboard), graphic organizers, video/Internet access and a webquest.

Current Ohio Academic Content Standards

GOVERNMENT
Students use knowledge of the purposes, structures and processes of political systems at the local, state, national and international levels to understand that people create systems of government as structures of power and authority to provide order, maintain stability, and promote the general welfare.
BENCHMARK A: Evaluate, take and defend positions about issues concerning the alignment of the characteristics of American democracy with realities in the United States today.

Role of Government: 1. Analyze the actions of the U.S. government and evaluate the extent to which those actions reflect characteristics of American democracy and help to serve the public good.

3. Describe the changing relationships among the branches of the national government, and evaluate applications of the principles of separation of powers and checks and balances for serving the public good and protecting individual rights.

BENCHMARK B: Explain how the U.S. Constitution has evolved including its philosophical foundations, amendments and court interpretations.

Rules and Laws: 3. Explain the key arguments made for and against the ratification of the Constitution and illustrate how those arguments influence contemporary political debate.

Relevant Revised Ohio Academic Content Standards

AMERICAN GOVERNMENT
Theme: How the American People govern themselves at national, state and local levels of government.
Topic: Civic Participation and Skills. Democratic government is enhanced when individuals exercise the skills to effectively participate in civic affairs.

Content Statement: 4. The processes of persuasion, compromise, consensus building and negotiation contribute to the resolution of conflicts and differences.

Topic: Role of the People. The government of the United States protects the freedoms of its people and provides opportunities for citizens to participate in the political process.

Content Statement: 16. In the United States, people have rights which protect them from undue government interference. Rights carry responsibilities which help define how people use their rights and which require respect for the rights of others.

HISTORICAL BACKGROUND NARRATIVE

The original U.S. Constitution, as proposed in 1787 in Philadelphia and as ratified by the states, contained very few individual rights guarantees, as the framers were primarily focused on establishing the machinery for an effective federal government. A proposal by delegate Charles Pinckney to include several rights guarantees (including "liberty of the press" and a ban on quartering soldiers in private homes) was submitted to the Committee on Detail on August 20, 1787, but the Committee did not adopt any of Pinckney's recommendations. The matter came up before the Convention on September 12, 1787 and, following a brief debate, proposals to include a Bill or Rights in the Constitution were rejected. As adopted, the Constitution included only a few specific rights guarantees: protection against states impairing the obligation of contracts (Art. I, Section 10), provisions that prohibit both the federal and state governments from enforcing *ex post facto laws* (laws that allow punishment for an action that was not criminal at the time it was undertaken) and provisions barring *bills of attainder* (legislative determinations of guilt and punishment) (Art. I, Sections 9 and 10). The framers, notably James Madison, its principal architect, believed that the Constitution protected liberty primarily through its division of powers that made it difficult for an oppressive majority to form and capture power to be used against minorities. Delegates also probably feared that a debate over liberty guarantees might prolong or even threaten the fiercely-debated compromises that had been made over the long hot summer of 1787.

In the ratification debate, Anti-Federalists opposed to the Constitution, complained that the new system threatened liberties, and suggested that if the delegates had truly cared about protecting individual rights, they would have included provisions that accomplished that. With ratification in serious doubt, Federalists announced a willingness to take up the matter of a series of amendments, to be called the Bill of Rights, soon after ratification and the First Congress comes into session. The concession was undoubtedly necessary to secure the Constitution's hard-fought ratification. Thomas Jefferson, who did not attend the Constitutional Convention, in a December 1787 letter to Madison called the omission of a Bill of Rights a major mistake: "A bill of rights is what the people are entitled to against every government on earth."

James Madison was skeptical of the value of a listing of rights, calling it a "parchment barrier." (Madison's preference at the Convention to safeguard liberties was by giving Congress an unlimited veto over state laws and creating a joint executive-judicial council of revision that could veto federal laws.) Despite his skepticism, by the fall of 1788, Madison believed that a declaration of rights should be added to the Constitution. Its value, in Madison's view, was in part educational, in part as a vehicle that might be used to rally people against a future oppressive government, and finally--in an argument borrowed from Thomas Jefferson--Madison argued that a declaration of rights would help install the judiciary as "guardians" of individual rights against the other branches. When the First Congress met in 1789, James

Madison, a congressman from Virginia, took upon himself the task of drafting a proposed Bill of Rights. He considered his efforts "a nauseous project." His original set of proposed amendments included some that were either rejected or substantially modified by Congress, and one (dealing with apportionment of the House) that was not ratified by the required three-fourths of the state legislatures. Some of the rejections were very significant, such as the decision not to adopt Madison's proposal to extend free speech protections to the states, and others somewhat less important (such as the dropping of Madison's language that required *unanimous* jury verdicts for convictions in all federal cases).

Some members of Congress argued that a listing of rights of the people was a silly exercise, in that all the listed rights inherently belonged to citizens, and nothing in the Constitution gave the Congress the power to take them away. It was even suggested that the Bill of Rights might reduce liberty by giving force to the argument that all rights not specifically listed could be infringed upon. In part to counter this concern, the Ninth Amendment was included providing that "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage other rights retained by the people." Decades later, the Ninth Amendment would be pointed to by some judges, such as Justice Goldberg in his opinion in *Griswold v Connecticut* (a case recognizing a right of privacy that included a right to use contraceptives), as a justification for giving a broad and liberty-protective reading to the specifically enumerated rights. Others, such as rejected Supreme Court nominee Robert Bork, would dismiss the Ninth Amendment as analogous to "an inkblot on the Constitution," a provision so unclear in its significance that judges should essentially read it out of the Constitution.

Most of the protections of the Bill of Rights eventually would be extended to *state infringements* as well federal infringements through the "doctrine of incorporation" beginning in the early to mid-1900s. The doctrine rests on interpreting the Due Process Clause of the Fourteenth Amendment as prohibiting states, as well as the federal government, from infringing on the most fundamental liberties of its citizens.

In the end, we owe opponents of the Constitution a debt of gratitude, for without their complaints, there would be no Bill of Rights. Thomas Jefferson wrote, "There has just been opposition enough" to force adoption of a Bill of Rights, but not to drain the federal government of its essential "energy." George Washington agreed: "They have given the rights of man a full and fair discussion, and explained them in so clear and forcible manner as cannot fail to make a lasting impression."

ENDURING UNDERSTANDING

Democracies often must balance the need to establish and maintain order with the need to maintain and protect the freedom of individuals

Participants in government use the skills of persuasion, compromise, consensus building and negotiation to resolve conflicts and differences.

ESSENTIAL QUESTIONS

How much freedom is appropriate for citizens to sacrifice in order to maintain law and order?

What are the options available to citizens participating in government to resolving conflicts and differences?

INSTRUCTIONAL STRATEGIES: **(Each task takes approximately one 40 minute class period)**

TASK ONE:

Pre-test: What do we know and what do we need to know? Have students complete the "Shaping the New Nation" crossword puzzle. **(Appendix A1 and A2)**

Watch a 15-minute video entitled *"The American Revolution: From Colonies to Constitution: Shaping the New Nation."* www.streaming.discoveryeducation.com This program looks at some of the inspirations for America's democracy and shows how they came to be embodied in the laws and government of the United States. Included is Judeo-Christian morality, the French Enlightenment, the English Parliamentary system, the Magna Carta, and the Mayflower Compact. The program examines the problems faced by America's founders and examines some of the issues debated as the Constitution, the structure of the new government, and the Bill of Rights were hammered out.

Post-test…what do we know? After students watch the video have them complete the "Shaping the New Nation" post-test. **(Appendix B1, B2)**

TASK TWO:

Students will use textbooks as well as information found on the site http://const4kids.forums.commonground entitled "Selected Arguments of Anti-Federalists, and Rebuttle (arguments are attached). They will then fill in the arguments of the Federalists and Anti-Federalists on their worksheets. **(Appendix C1, C2 and F)**

As a class students will discuss the information they placed on their charts and put up all the information they have gathered on the "class example" that is on the board. (Have students volunteer to place information on the board). Once they have listed all of the possible pieces of information, they will update our individual charts.

TASK THREE:
As a class, students will use their chart "Foundations of American Rights" to decide what parts of our own Bill of Rights is taken from the **Magna Carta 1215**.
Students will then get into study teams. Each team is given a copy of **the English Bill of Rights** 1689 and the **Virginia Declaration of Rights 1776** to see what information in these documents appears in our Bill of Rights and place this information on our charts. **(Appendix D1 and 2)**

Finally, as a class, they will discuss their findings to determine what historic documents influenced the **U. S. Bill of Rights** 1791 and make sure our "Foundation of American Rights" charts are correct.

TASK FOUR:
Getting into study groups, the students will review a Supreme Court Case handout entitled ***Tinker et al. v. Des Moines Independent Community School District et al.***

A. First students will read over the case and complete a "cause and effect" organizer (handout). Then together they will write a summary of their findings citing what amendment(s) is being upheld. We will then discuss the case as a class to make sure we understand the cause and effect and the court's decision.
B. Finally, the students will be asked to think about the Court's ruling and answer the following questions that we will further discuss (relaxed debate forum).
   1. Why is it important for students to have freedom of speech?
   2. How should that freedom be limited?
   3. What responsibilities go along with it?

TASK FIVE:
Students will use their computers to access the www.sunnylandsclassroom.org site. They will then go to the "Civics Games" and click on the *Tinker v. Des Moines* case. Following the directions provided, and going at their individual pace, students will complete the exercise.

As students progress through the court case they can **earn points** by properly defining terms, correctly answering questions about the case, choosing to be the plaintiff/defendant in the case and answering questions that imply cause and effect, etc. The following breakdown in points demonstrates levels of success in understanding the Bill of Rights and this particular case. The **earned points** breakdown:

4070 – 3700 points = A
3699 – 3375 points = B
3374 – 3000 points = C
2999 – 2650 points = D
2649 and below pt. = F

RESOURCES AND MATERIALS:

Computers

Video/Internet Access

Tinker case Timeline **(Appendix E1, E2)**

Federalist versus Anti-Federalists: Part I: *http://www/const4kids.forums* **(Appendix F)**

Video "*The American Revolution: From Colonies to Constitution: Shaping the New Nation.*"

Webquest of Tinker v. Des Moines et al.: http://sunnylandsclassroom.org

Primary documents obtained from *http://avalon.law.yale.edu*

- Copy of the Magna Carta (1215) **(Appendix G)**
- Copy of the English Bill of Rights (1689) **(Appendix H)**
- Copy of the Virginia Declaration of Rights (1776) **(Appendix I)**
- Copy of the Bill of Rights (1791) **(Appendix J)**

Copy of Tinker et al. v. Des Moines Independent Community School District et al.: *http://law.cornell.edu.supct.* **(Appendix K)**

ASSESSMENTS

The video *Shaping a New Nation pre-test*-post-test (Task One) **(Appendix A1, A2 and Appendix B1,2))**

Federalist/Anti-federalist Position Chart (Task Two) **(Appendix C1 and 2)**

Foundations of American Rights Chart (Task Three)

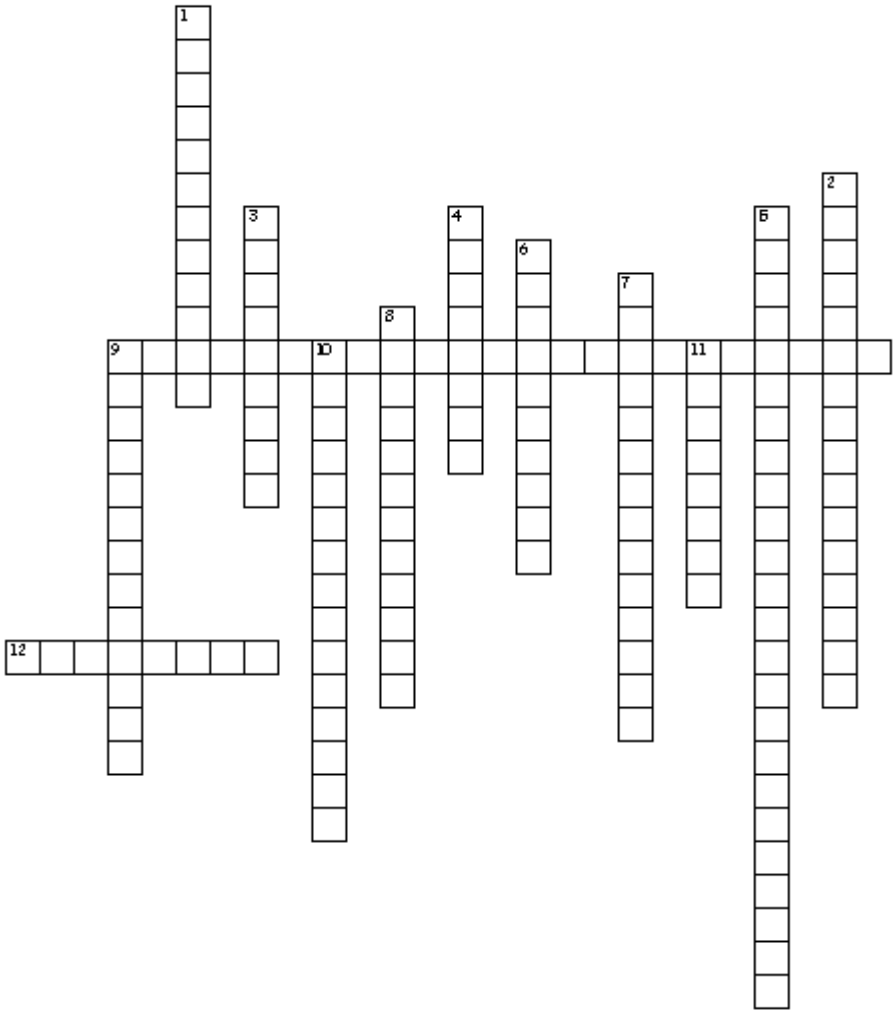
Supreme Court and the Bill of Rights Assignment (Task Four)

Supreme Court case webquest assessment (Task Five)

Appendices

Appendix A1

Shaping a New Nation…Pre-test



Across
9. the first constitution in America during the 1780s
12. the main job of the U. S. Congress

Down
1. the first ten amendments to the Constitution
2. first document of self-government in America
3. government by the people
4. where the branches of government are described
5. held in Philadelphia in 1787
6. written in 1215 and gave rise to England's Parliament
7. interprets the laws
8. the highest law of the land in the U.S.
9. democracy first appeared here
10. enforces the laws
11. a nation where citizens elect people to represent them in government

Appendix A2

Shaping a New Nation…Pre-test…Answer Key

Across
9. the first constitution in America during the 1780s…Articles of confederation
12. the main job of the U. S. Congress…interpret laws

Down
1. the first ten amendments to the Constitution…Bill of Rights
2. first document of self-government in America…Mayflower compact
3. government by the people…Republic
4. where the branches of government are described…Articles
5. held in Philadelphia in 1787…Constitutional Convention
6. written in 1215 and gave rise to England's Parliament…Magna Carta
7. interprets the laws…Judicial Branch
8. the highest law of the land in the U.S….Constitution
9. democracy first appeared here…Ancient Greece
10. enforces the laws…Executive Branch
11. a nation where citizens elect people to represent them in government…Republic

Appendix B1

Shaping the New Nation…Post-test

Matching

_____ Chief Executive	**A. Meeting where the new framework for the U.S. government was produced**
_____ First U.S. self-government document	**B. House of Representatives**
_____ Veto	**C. Supreme Court**
_____ Part of legislative branch of U.S. government	**D. Ninth Amendment to the Constitution**
_____ Highest part of Judicial branch	**E. Introduction to the U.S. Constitution**
_____ Model for U.S. Congress	**F. U.S. president**
_____ Part of the Bill of Rights	**G. Ancient Athens, Greece**
_____ Preamble	**H. Mayflower Compact**
_____ Democracy's birthplace	**I. English Parliament**
_____ Constitutional Convention	**J. To prohibit the enactment of a law**

True or False…Circle the Correct Answer

TRUE OR FALSE? The Articles of confederation gave the states less power than the federal gov't.

TRUE OR FALSE? Under the U.S. Constitution, the federal government has four main branches.

TRUE OR FALSE? The idea of having a senate came from Ancient Rome.

TRUE OR FALSE? The Magna Carta was intended to increase the power of kings.

TRUE OR FALSE? The Age of Reason (Enlightenment) was a time of great achievement in science and mathematics.

Appendix B2

Shaping the New Nation…Post-test…Answer Key

C

H

J

B

C

I

D

E

G

A

FALSE

FALSE

TRUE

FALSE

TRUE

Appendix C1

ARGUMENTS OF THE ANTI-FEDERALISTS, AND REBUTTALS OF THE FEDERALISTS…60 PTS

DESPITE THE FACT THE FEDERALISTS AND THE ANTI-FEDERALISTS HAD OPPOSING VIEWS OF THE CONSTITUTION, BOTH WERE HEADED FOR A COMMON GOAL. THIS GOAL WAS FORMING A GOVERNMENT THAT COULD RUN THE COUNTRY AND AT THE SAME TIME PROTECT THE RIGHTS OF THE PEOPLE AND AVOID TYRANNY.

ARGUMENT	ANTI-FEDERALISTS	FEDERALISTS
REPUBLICAN GOVERNMENTS **CENTRALIZED OR INDIVIDUAL** **STATES**		
THE SUPREMACY CLAUSE		
THE NECESSARY AND PROPER **CLAUSE**		

BRANCHES AND CHECKS AND BALANCES		
TYRANNY **STATES AND PEOPLE'S RIGHTS**		
BILL OF RIGHTS		

Appendix C2
Answer Key

ARGUMENTS OF THE ANTI-FEDERALISTS, AND REBUTTALS OF THE FEDERALISTS…60 PTS

DESPITE THE FACT THE FEDERALISTS AND THE ANTI-FEDERALISTS HAD OPPOSING VIEWS OF THE CONSTITUTION, BOTH WERE HEADED FOR A COMMON GOAL. THIS GOAL WAS FORMING A GOVERNMENT THAT COULD RUN THE COUNTRY AND AT THE SAME TIME PROTECT THE RIGHTS OF THE PEOPLE AND AVOID TYRANNY.

ARGUMENT	ANTI-FEDERALISTS	FEDERALISTS
REPUBLICAN GOVERNMENTS **CENTRALIZED OR INDIVIDUAL** **STATES**	History has shown that the republican form of government works best in small areas, where the citizens are similar in wealth and values. Those people are more likely to have the civic virtues necessary for working towards the common good of their area. These United States cover a vast amount of territory, and includes very diverse people with many different interests. They will not be able to agree on what is necessary for the good of all states.	History has shown that small republics are destroyed by the self-serving interests of a few, rather than all working towards the common good. An organized central government with checks and balances and with power divided between the federal and state governments will work. This form of government will make it difficult for special interest groups to pursue their objectives against the will of the people.
THE SUPREMACY CLAUSE	Under the Constitution as written, too much power is given to the federal government, and too much power is taken away from the states. The *Supremacy Clause* makes all federal laws superior to the laws of each state, opening the door to the destruction of state sovereignty.	The federal government will have more power under the new Constitution than it did under the Articles of Confederation; however, those powers are limited. The only tasks the federal government may address are those that affect the nation as a whole, such as defense, trade, and currency. A strong central government is necessary in order to complete those tasks. The Constitution will protect the governments of the individual states.
THE NECESSARY AND PROPER **CLAUSE**	The *Necessary and Proper Clause* is too vague, and can be interpreted in too many ways. This clause gives too much power to the federal	The *Necessary and Proper Clause* is needed, so that the federal government is able to address the tasks for which it is

	government – there are many dangers of the federal government using this clause to gain more power over the states and individuals. There must be a list clearly defining the powers of the federal government, in order to place clear limits upon it.	responsible.
BRANCHES AND CHECKS AND BALANCES	The Constitution provides the Executive branch of the federal government with too much power, enabling it to potentially become a form of monarchy.	The Executive branch of the federal government needs to be strong, so that it can perform its duties. The federal government is divided into three branches, with checks and balances, so that no one branch can overpower the others.
TYRANNY **STATES AND PEOPLE'S RIGHTS**	A free and republic government must have the active involvement of the people it represents. The seat of the federal government is too far away from the majority of the people, which prevents them from being active participants. This can lead to tyranny.	The federal government will be effective and fair in protecting the rights of the states and of the people, thus earning their trust. The limits imposed upon the federal government through the separation of powers and checks and balances will prevent it from becoming tyrannical.
BILL OF RIGHTS	There is no list of rights held by the people and states in the Constitution. Such a list is necessary to protect the people from abuses by the federal government.	There is no need for a list of rights guaranteed to the individual and the states. The powers of the federal government are limited, and to include such a listing would suggest that the individual can only expect to have those rights listed protected.

Appendix D1

FOUNDATIONS OF AMERICAN RIGHTS…30 points				
RIGHTS	**SOURCES**			
Trial by Jury				•
Due process	•			•
Private property	•			•
No unreasonable search and seizures				•
No cruel punishment				•
No excessive bail or fines				•
Right to bear arms				•
Right to petition				•
Freedom of speech				•
Freedom of press				•
Freedom of religion				•
	The Magna Carta (1215)	*The English Bill of Rights (1689)*	*The Virginia Declaration of Rights (1776)*	*The Bill of Rights (1791)*

Appendix D2
Answer Key

FOUNDATIONS OF AMERICAN RIGHTS…30 points				
RIGHTS	**SOURCES**			
Trial by Jury		•		•
Due process	•	•		•
Private property	•			•
No unreasonable search and seizures			•	•
No cruel punishment		•	•	•
No excessive bail or fines		•		•
Right to bear arms		•		•
Right to petition		•		•
Freedom of speech			•	•
Freedom of press			•	•
Freedom of religion			•	•
	The Magna Carta (1215)	*The English Bill of Rights (1689)*	*The Virginia Declaration of Rights (1776)*	*The Bill of Rights (1791)*

Appendix E1

The Tinker Case…Timeline

Cause and Effect of Protest:
Cause and Effect of suspension:
Cause and Effect of District Court Decision:
Cause and Effect of Court of Appeals Decision:
Cause and Effect of Supreme Court Decision:

Appendix E2
Answer Key

The Tinker Case…Timeline

Cause and Effect of Protest:

Cause: John Tinker (15), Christopher Eckhardt (16), and Mary Beth Tinker (13), decide to wear black armbands to school on December 16 through December 31 to protest the United Sates involvement in the Vietnam War.

Effect: Schools became aware of the plan to wear armbands and on December 14 they met and adopted a policy that any student wearing an armband to school would be asked to remove it and refusal to do so would result in suspension until they return with no armband

Cause and Effect of suspension:

Cause: On December 16 students work black armbands to their schools…

Effect: were subsequently sent home and suspended.

Cause and Effect of District Court Decision:

Cause: Fathers sued.

Effect: Complaint filed in U.S. District Court citing amendment 1 (freedom of speech, and amendment 14 (equal protection under the law…students' rights…protects citizens against state – students protected against school board.

District Court dismissed the complaint citing:

- Disrupted classed/learning process
- Upheld armband rule
- Schools no place for political demonstrations

Cause and Effect of Court of Appeals Decision:

Cause: Fathers appealed

Effect: Appeals court upheld lower court's decision

Cause and Effect of Supreme Court Decision:

Cause: Petitioned U.S. Supreme Court to hear the case (1 in 35 chance of being chosen) citing:

- Armbands a form of speech
- No interference to learning
- Students DO have basic rights to free speech

Effect: In a 7-2 decision the Supreme Court ruled that students had the right to wear armbands to school to protest the Vietnam War. According to Justice Abe Fortas: "It can hardly be argued that students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate…students in school as well as out of school are 'persons' under our constitution"

STUDENTS WILL NOW THINK ABOUT AND DEBATE THE QUESTIONS ASKED AT THE END OF THIS EXERCISE…Why is it important for students to have freedom of speech? How should that freedom be limited? What responsibilities go along with it?

The debate will deal with this lesson's essential questions:

- How much freedom is appropriate for citizens to sacrifice in order to maintain law and order?
- What are the limits, if any, when trying to contribute to the resolution of conflicts and differences?

Appendix F

Federalists versus Anti-Federalists – Part I

The Constitutional Convention was convened in Philadelphia, Pennsylvania in May 1787. The purpose of the Constitution was to replace the Articles of Confederation with a more effective form of governance – a Constitutional Republic. The Constitution was completed in September, 1787.

James Madison, the "father of the Constitution," developed the plan for having the states ratify (approve) the new governing document. Instead of having the legislature of each state vote to ratify the Constitution, Madison had each state set up a special convention to allow the voters to elect delegates to attend their state's ratifying convention. This followed along with the ideal set forth in the Preamble – "We the People…do ordain and establish this Constitution for the United States of America." Per Article VII, only nine states were required to approve the Constitution. The Framers were unsure that all thirteen would unanimously agree.

It not ratified immediately upon completion, however. Why? There were many disagreements over what was NOT in the Constitution. The seven articles established the branches of government and specified the powers given to each branch, set the rules for the relationships among the states, the process for admitting new states, detailed the process for amending the Constitution, made the Constitution the supreme law, and explained how the Constitution was to be ratified by at least nine of the states. So, what was missing, that caused several American citizens to question the new governing document? There was no listing of guaranteed individual rights, and many believed that the federal government could grow too large and too powerful.

The Declaration of Independence eloquently phrased the beliefs and values of our Founding Fathers: that life, liberty, and the pursuit of happiness are the fundamental rights of all people from birth. These basic rights are not given by the government, and good government may not deprive the people of those rights. In fact, the role of government is to protect the people's free exercise of their rights:

- That to secure these rights, Governments are instituted among Men – *Thomas Jefferson*

The American colonists had learned to distrust a strong, centralized government under British rule. The various Acts, Writs, and excessive punitive taxes passed by Parliament after the French and Indian War took liberties and freedom away from the colonists. Their loss of liberty, combined with having their grievances to Parliament ignored, spurred the American movement for Independence.

The Framers of the Constitution established the three branches of federal government with *specifically enumerated powers*. The purpose for this was that **if it was not in the Constitution, then the government does not have that power**. The Constitution was not written to give people rights, but to establish a limited central government that had clearly defined and limited powers; thus, protecting the people by keeping out government interference with individual liberties.

However, many Americans still distrusted the document and the centralized government it created. These **Anti-Federalists** included George Mason, Patrick Henry, Richard Henry Lee, John Hancock, Samuel Adams, and Edmund Randolph. All of these men were leaders in the War for Independence, and were (with the exception of Randolph) signers of the Declaration of Independence. They held that the new federal government would grow and take more powers than were expressly given to it. The absence of a list of the rights of the individual was viewed as an open-door for the federal government to suppress the rights to life, liberty, and property.

The **Federalists** - those in support of the new government – anticipated the objections of the Anti-Federalists, and had a head start in the campaign to gain public support for states' ratification of the Constitution. The Federalists wrote a series of 85 articles that were published in New York newspapers. These *Federalist Papers*, written under the pen-name *Publius* (a Roman leader and supporter of the Roman Republic) by Alexander Hamilton, James Madison, and John Jay, explained how the new government was specifically limited in its powers and contained checks and balances between the three branches.

The Anti-Federalists also produced articles (using pen-names such as Brutus and Cato – defenders of the Roman Republic against Julius Caesar), expressing the reasons for opposition to ratification of the Constitution. One such argument by *Brutus* (Judge Robert Yates of New York) stressed that the Supreme Court could easily abuse its powers, since the justices were outside the control "both of the people and the legislature" and were not subject to being "corrected by any power above them." It was not only conceivable, but highly likely, that Supreme Court justices could interpret clauses of the Constitution however they saw fit. Brutus objected to the fact that the justification for removing judges did not include their giving judgment that exceeded their constitutional authority – which would pave the way to judicial tyranny.

Anti-Federalists opposed ratification the Constitution because the checks and balances on federal power would be overridden by unrestrained interpretations of the government's role in promoting the "general welfare" and other clauses, creating a federal government that would abuse the specifically listed powers, and claim more power than it was originally given. They warned that the government that would evolve under the Constitution would infringe on the individual's rights.

The debates for and against ratification of the Constitution lasted ten months.

Appendix F (continued)
Selected Arguments of Anti-Federalists, and Rebuttal

Arguments of the Anti-Federalists, and Rebuttals of the Federalists

- ***Anti-Federalists***:

History has shown that the republican form of government works best in small areas, where the citizens are similar in wealth and values. Those people are more likely to have the civic virtues necessary for working towards the common good of their area. These United States cover a vast amount of territory, and includes very diverse people with many different interests. They will not be able to agree on what is necessary for the good of all states.

- ***Federalists:***

History has shown that small republics are destroyed by the self-serving interests of a few, rather than all working towards the common good. An organized central government with checks and balances and with power divided between the federal and state governments will work. This form of government will make it difficult for special interest groups to pursue their objectives against the will of the people.

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- ***Anti-Federalists***:

Under the Constitution as written, too much power is given to the federal government, and too much power is taken away from the states. The *Supremacy Clause* makes all federal laws superior to the laws of each state, opening the door to the destruction of state sovereignty.

- ***Federalists****:*

The federal government will have more power under the new Constitution than it did under the Articles of Confederation; however, those powers are limited. The only tasks the federal government may address are those that affect the nation as a whole, such as defense, trade, and currency. A strong central government is necessary in order to complete those tasks. The Constitution will protect the governments of the individual states.

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- ***Anti-Federalists***:

The *Necessary and Proper Clause* is too vague, and can be interpreted in too many ways. This clause gives too much power to the federal government – there are many dangers of the federal government using this clause to gain more power over the states and individuals. There must be a list clearly defining the powers of the federal government, in order to place clear limits upon it.

- ***Federalists****:*

The *Necessary and Proper Clause* is needed, so that the federal government is able to address the tasks for which it is responsible.

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- ***Anti-Federalists***:

The Constitution provides the Executive branch of the federal government with too much power, enabling it to potentially become a form of monarchy.

- ***Federalists****:*

The Executive branch of the federal government needs to be strong, so that it can perform its duties. The federal government is divided into three branches, with checks and balances, so that no one branch can overpower the others.

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- ***Anti-Federalists***:

A free and republic government must have the active involvement of the people it represents. The seat of the federal government is too far away from the majority of the people, which prevents them from being active participants. This can lead to tyranny.

- ***Federalists****:*

The federal government will be effective and fair in protecting the rights of the states and of the people, thus earning their trust. The limits imposed upon the federal government through the separation of powers and checks and balances will prevent it from becoming tyrannical.

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- ***Anti-Federalists****:*

There is no list of rights held by the people and states in the Constitution. Such a list is necessary to protect the people from abuses by the federal government.

- ***Federalists****:*

There is no need for a list of rights guaranteed to the individual and the states. The powers of the federal government are limited, and to include such a listing would suggest that the individual can only expect to have those rights listed protected.

Appendix G

Magna Carta 1215

Preamble:

John, by the grace of God, king of England, lord of Ireland, duke of Normandy and Aquitaine, and count of Anjou, to the archbishop, bishops, abbots, earls, barons, justiciaries, foresters, sheriffs, stewards, servants, and to all his bailiffs and liege subjects, greetings. Know that, having regard to God and for the salvation of our soul, and those of all our ancestors and heirs, and unto the honor of God and the advancement of his holy Church and for the rectifying of our realm, we have granted as underwritten by advice of our venerable fathers, Stephen, archbishop of Canterbury, primate of all England and cardinal of the holy Roman Church, Henry, archbishop of Dublin, William of London, Peter of Winchester, Jocelyn of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, Benedict of Rochester, bishops; of Master Pandulf, subdeacon and member of the household of our lord the Pope, of brother Aymeric (master of the Knights of the Temple in England), and of the illustrious men William Marshal, earl of Pembroke, William, earl of Salisbury, William, earl of Warenne, William, earl of Arundel, Alan of Galloway (constable of Scotland), Waren Fitz Gerold, Peter Fitz Herbert, Hubert De Burgh (seneschal of Poitou), Hugh de Neville, Matthew Fitz Herbert, Thomas Basset, Alan Basset, Philip d'Aubigny, Robert of Roppesley, John Marshal, John Fitz Hugh, and others, our liegemen.

1. In the first place we have granted to God, and by this our present charter confirmed for us and our heirs forever that the English Church shall be free, and shall have her rights entire, and her liberties inviolate; and we will that it be thus observed; which is apparent from this that the freedom of elections, which is reckoned most important and very essential to the English Church, we, of our pure and unconstrained will, did grant, and did by our charter confirm and did obtain the ratification of the same from our lord, Pope Innocent III, before the quarrel arose between us and our barons: and this we will observe, and our will is that it be observed in good faith by our heirs forever. We have also granted to all freemen of our kingdom, for us and our heirs forever, all the underwritten liberties, to be had and held by them and their heirs, of us and our heirs forever.

2. If any of our earls or barons, or others holding of us in chief by military service shall have died, and at the time of his death his heir shall be full of age and owe "relief", he shall have his inheritance by the old relief, to wit, the heir or heirs of an earl, for the whole baroncy of an earl by L100; the heir or heirs of a baron, L100 for a whole barony; the heir or heirs of a knight, 100s, at most, and whoever owes less let him give less, according to the ancient custom of fees.

3. If, however, the heir of any one of the aforesaid has been under age and in wardship, let him have his inheritance without relief and without fine when he comes of age.

4. The guardian of the land of an heir who is thus under age, shall take from the land of the heir nothing but reasonable produce, reasonable customs, and reasonable services, and that without destruction or waste of men or goods; and if we have committed the wardship of the lands of any

such minor to the sheriff, or to any other who is responsible to us for its issues, and he has made destruction or waster of what he holds in wardship, we will take of him amends, and the land shall be committed to two lawful and discreet men of that fee, who shall be responsible for the issues to us or to him to whom we shall assign them; and if we have given or sold the wardship of any such land to anyone and he has therein made destruction or waste, he shall lose that wardship, and it shall be transferred to two lawful and discreet men of that fief, who shall be responsible to us in like manner as aforesaid.

5. The guardian, moreover, so long as he has the wardship of the land, shall keep up the houses, parks, fishponds, stanks, mills, and other things pertaining to the land, out of the issues of the same land; and he shall restore to the heir, when he has come to full age, all his land, stocked with ploughs and wainage, according as the season of husbandry shall require, and the issues of the land can reasonable bear.

6. Heirs shall be married without disparagement, yet so that before the marriage takes place the nearest in blood to that heir shall have notice.

7. A widow, after the death of her husband, shall forthwith and without difficulty have her marriage portion and inheritance; nor shall she give anything for her dower, or for her marriage portion, or for the inheritance which her husband and she held on the day of the death of that husband; and she may remain in the house of her husband for forty days after his death, within which time her dower shall be assigned to her.

8. No widow shall be compelled to marry, so long as she prefers to live without a husband; provided always that she gives security not to marry without our consent, if she holds of us, or without the consent of the lord of whom she holds, if she holds of another.

9. Neither we nor our bailiffs will seize any land or rent for any debt, as long as the chattels of the debtor are sufficient to repay the debt; nor shall the sureties of the debtor be distrained so long as the principal debtor is able to satisfy the debt; and if the principal debtor shall fail to pay the debt, having nothing wherewith to pay it, then the sureties shall answer for the debt; and let them have the lands and rents of the debtor, if they desire them, until they are indemnified for the debt which they have paid for him, unless the principal debtor can show proof that he is discharged thereof as against the said sureties.

10. If one who has borrowed from the Jews any sum, great or small, die before that loan be repaid, the debt shall not bear interest while the heir is under age, of whomsoever he may hold; and if the debt fall into our hands, we will not take anything except the principal sum contained in the bond.

11. And if anyone die indebted to the Jews, his wife shall have her dower and pay nothing of that debt; and if any children of the deceased are left under age, necessaries shall be provided for them in keeping with the holding of the deceased; and out of the residue the debt shall be paid, reserving, however, service due to feudal lords; in like manner let it be done touching debts due to others than Jews.

12. No scutage not aid shall be imposed on our kingdom, unless by common counsel of our kingdom, except for ransoming our person, for making our eldest son a knight, and for once marrying our eldest daughter; and for these there shall not be levied more than a reasonable aid. In like manner it shall be done concerning aids from the city of London.

13. And the city of London shall have all it ancient liberties and free customs, as well by land as by water; furthermore, we decree and grant that all other cities, boroughs, towns, and ports shall have all their liberties and free customs.

14. And for obtaining the common counsel of the kingdom anent the assessing of an aid (except in the three cases aforesaid) or of a scutage, we will cause to be summoned the archbishops, bishops, abbots, earls, and greater barons, severally by our letters; and we will moveover cause to be summoned generally, through our sheriffs and bailiffs, and others who hold of us in chief, for a fixed date, namely, after the expiry of at least forty days, and at a fixed place; and in all letters of such summons we will specify the reason of the summons. And when the summons has thus been made, the business shall proceed on the day appointed, according to the counsel of such as are present, although not all who were summoned have come.

15. We will not for the future grant to anyone license to take an aid from his own free tenants, except to ransom his person, to make his eldest son a knight, and once to marry his eldest daughter; and on each of these occasions there shall be levied only a reasonable aid.

16. No one shall be distrained for performance of greater service for a knight's fee, or for any other free tenement, than is due therefrom.

17. Common pleas shall not follow our court, but shall be held in some fixed place.

18. Inquests of novel disseisin, of mort d'ancestor, and of darrein presentment shall not be held elsewhere than in their own county courts, and that in manner following; We, or, if we should be out of the realm, our chief justiciar, will send two justiciaries through every county four times a year, who shall alone with four knights of the county chosen by the county, hold the said assizes in the county court, on the day and in the place of meeting of that court.

19. And if any of the said assizes cannot be taken on the day of the county court, let there remain of the knights and freeholders, who were present at the county court on that day, as many as may be required for the efficient making of judgments, according as the business be more or less.

20. A freeman shall not be amerced for a slight offense, except in accordance with the degree of the offense; and for a grave offense he shall be amerced in accordance with the gravity of the offense, yet saving always his "contentment"; and a merchant in the same way, saving his "merchandise"; and a villein shall be amerced in the same way, saving his "wainage" if they have fallen into our mercy: and none of the aforesaid amercements shall be imposed except by the oath of honest men of the neighborhood.

21. Earls and barons shall not be amerced except through their peers, and only in accordance with the degree of the offense.

22. A clerk shall not be amerced in respect of his lay holding except after the manner of the others aforesaid; further, he shall not be amerced in accordance with the extent of his ecclesiastical benefice.

23. No village or individual shall be compelled to make bridges at river banks, except those who from of old were legally bound to do so.

24. No sheriff, constable, coroners, or others of our bailiffs, shall hold pleas of our Crown.

25. All counties, hundred, wapentakes, and trithings (except our demesne manors) shall remain at the old rents, and without any additional payment.

26. If anyone holding of us a lay fief shall die, and our sheriff or bailiff shall exhibit our letters patent of summons for a debt which the deceased owed us, it shall be lawful for our sheriff or bailiff to attach and enroll the chattels of the deceased, found upon the lay fief, to the value of that debt, at the sight of law worthy men, provided always that nothing whatever be thence removed until the debt which is evident shall be fully paid to us; and the residue shall be left to the executors to fulfill the will of the deceased; and if there be nothing due from him to us, all the chattels shall go to the deceased, saving to his wife and children their reasonable shares.

27. If any freeman shall die intestate, his chattels shall be distributed by the hands of his nearest kinsfolk and friends, under supervision of the Church, saving to every one the debts which the deceased owed to him.

28. No constable or other bailiff of ours shall take corn or other provisions from anyone without immediately tendering money therefor, unless he can have postponement thereof by permission of the seller.

29. No constable shall compel any knight to give money in lieu of castle-guard, when he is willing to perform it in his own person, or (if he himself cannot do it from any reasonable cause) then by another responsible man. Further, if we have led or sent him upon military service, he shall be relieved from guard in proportion to the time during which he has been on service because of us.

30. No sheriff or bailiff of ours, or other person, shall take the horses or carts of any freeman for transport duty, against the will of the said freeman.

31. Neither we nor our bailiffs shall take, for our castles or for any other work of ours, wood which is not ours, against the will of the owner of that wood.

32. We will not retain beyond one year and one day, the lands those who have been convicted of felony, and the lands shall thereafter be handed over to the lords of the fiefs.

33. All kydells for the future shall be removed altogether from Thames and Medway, and throughout all England, except upon the seashore.

34. The writ which is called praecipe shall not for the future be issued to anyone, regarding any tenement whereby a freeman may lose his court.

35. Let there be one measure of wine throughout our whole realm; and one measure of ale; and one measure of corn, to wit, "the London quarter"; and one width of cloth (whether dyed, or russet, or "halberget"), to wit, two ells within the selvedges; of weights also let it be as of measures.

36. Nothing in future shall be given or taken for awrit of inquisition of life or limbs, but freely it shall be granted, and never denied.

37. If anyone holds of us by fee-farm, either by socage or by burage, or of any other land by knight's service, we will not (by reason of that fee-farm, socage, or burgage), have the wardship of the heir, or of such land of his as if of the fief of that other; nor shall we have wardship of that fee-farm, socage, or burgage, unless such fee-farm owes knight's service. We will not by reason of any small serjeancy which anyone may hold of us by the service of rendering to us knives, arrows, or the like, have wardship of his heir or of the land which he holds of another lord by knight's service.

38. No bailiff for the future shall, upon his own unsupported complaint, put anyone to his "law", without credible witnesses brought for this purposes.

39. No freemen shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.

40. To no one will we sell, to no one will we refuse or delay, right or justice.

41. All merchants shall have safe and secure exit from England, and entry to England, with the right to tarry there and to move about as well by land as by water, for buying and selling by the ancient and right customs, quit from all evil tolls, except (in time of war) such merchants as are of the land at war with us. And if such are found in our land at the beginning of the war, they shall be detained, without injury to their bodies or goods, until information be received by us, or by our chief justiciar, how the merchants of our land found in the land at war with us are treated; and if our men are safe there, the others shall be safe in our land.

42. It shall be lawful in future for anyone (excepting always those imprisoned or outlawed in accordance with the law of the kingdom, and natives of any country at war with us, and merchants, who shall be treated as if above provided) to leave our kingdom and to return, safe and secure by land and water, except for a short period in time of war, on grounds of public policy- reserving always the allegiance due to us.

43. If anyone holding of some escheat (such as the honor of Wallingford, Nottingham, Boulogne, Lancaster, or of other escheats which are in our hands and are baronies) shall die, his

heir shall give no other relief, and perform no other service to us than he would have done to the baron if that barony had been in the baron's hand; and we shall hold it in the same manner in which the baron held it.

44. Men who dwell without the forest need not henceforth come before our justiciaries of the forest upon a general summons, unless they are in plea, or sureties of one or more, who are attached for the forest.

45. We will appoint as justices, constables, sheriffs, or bailiffs only such as know the law of the realm and mean to observe it well.

46. All barons who have founded abbeys, concerning which they hold charters from the kings of England, or of which they have long continued possession, shall have the wardship of them, when vacant, as they ought to have.

47. All forests that have been made such in our time shall forthwith be disafforsted; and a similar course shall be followed with regard to river banks that have been placed "in defense" by us in our time.

48. All evil customs connected with forests and warrens, foresters and warreners, sheriffs and their officers, river banks and their wardens, shall immediately by inquired into in each county by twelve sworn knights of the same county chosen by the honest men of the same county, and shall, within forty days of the said inquest, be utterly abolished, so as never to be restored, provided always that we previously have intimation thereof, or our justiciar, if we should not be in England.

49. We will immediately restore all hostages and charters delivered to us by Englishmen, as sureties of the peace of faithful service.

50. We will entirely remove from their bailiwicks, the relations of Gerard of Athee (so that in future they shall have no bailiwick in England); namely, Engelard of Cigogne, Peter, Guy, and Andrew of Chanceaux, Guy of Cigogne, Geoffrey of Martigny with his brothers, Philip Mark with his brothers and his nephew Geoffrey, and the whole brood of the same.

51. As soon as peace is restored, we will banish from the kingdom all foreign born knights, crossbowmen, serjeants, and mercenary soldiers who have come with horses and arms to the kingdom's hurt.

52. If anyone has been dispossessed or removed by us, without the legal judgment of his peers, from his lands, castles, franchises, or from his right, we will immediately restore them to him; and if a dispute arise over this, then let it be decided by the five and twenty barons of whom mention is made below in the clause for securing the peace. Moreover, for all those possessions, from which anyone has, without the lawful judgment of his peers, been disseised or removed, by our father, King Henry, or by our brother, King Richard, and which we retain in our hand (or which as possessed by others, to whom we are bound to warrant them) we shall have respite until the usual term of crusaders; excepting those things about which a plea has been raised, or an inquest made by our

order, before our taking of the cross; but as soon as we return from the expedition, we will immediately grant full justice therein.

53. We shall have, moreover, the same respite and in the same manner in rendering justice concerning the disafforestation or retention of those forests which Henry our father and Richard our brother afforested, and concerning the wardship of lands which are of the fief of another (namely, such wardships as we have hitherto had by reason of a fief which anyone held of us by knight's service), and concerning abbeys founded on other fiefs than our own, in which the lord of the fee claims to have right; and when we have returned, or if we desist from our expedition, we will immediately grant full justice to all who complain of such things.

54. No one shall be arrested or imprisoned upon the appeal of a woman, for the death of any other than her husband.

55. All fines made with us unjustly and against the law of the land, and all amercements, imposed unjustly and against the law of the land, shall be entirely remitted, or else it shall be done concerning them according to the decision of the five and twenty barons whom mention is made below in the clause for securing the pease, or according to the judgment of the majority of the same, along with the aforesaid Stephen, archbishop of Canterbury, if he can be present, and such others as he may wish to bring with him for this purpose, and if he cannot be present the business shall nevertheless proceed without him, provided always that if any one or more of the aforesaid five and twenty barons are in a similar suit, they shall be removed as far as concerns this particular judgment, others being substituted in their places after having been selected by the rest of the same five and twenty for this purpose only, and after having been sworn.

56. If we have disseised or removed Welshmen from lands or liberties, or other things, without the legal judgment of their peers in England or in Wales, they shall be immediately restored to them; and if a dispute arise over this, then let it be decided in the marches by the judgment of their peers; for the tenements in England according to the law of England, for tenements in Wales according to the law of Wales, and for tenements in the marches according to the law of the marches. Welshmen shall do the same to us and ours.

57. Further, for all those possessions from which any Welshman has, without the lawful judgment of his peers, been disseised or removed by King Henry our father, or King Richard our brother, and which we retain in our hand (or which are possessed by others, and which we ought to warrant), we will have respite until the usual term of crusaders; excepting those things about which a plea has been raised or an inquest made by our order before we took the cross; but as soon as we return (or if perchance we desist from our expedition), we will immediately grant full justice in accordance with the laws of the Welsh and in relation to the foresaid regions.

58. We will immediately give up the son of Llywelyn and all the hostages of Wales, and the charters delivered to us as security for the peace.

59. We will do towards Alexander, king of Scots, concerning the return of his sisters and his hostages, and concerning his franchises, and his right, in the same manner as we shall do towards

our owher barons of England, unless it ought to be otherwise according to the charters which we hold from William his father, formerly king of Scots; and this shall be according to the judgment of his peers in our court.

60. Moreover, all these aforesaid customs and liberties, the observances of which we have granted in our kingdom as far as pertains to us towards our men, shall be observed by all of our kingdom, as well clergy as laymen, as far as pertains to them towards their men.

61. Since, moveover, for God and the amendment of our kingdom and for the better allaying of the quarrel that has arisen between us and our barons, we have granted all these concessions, desirous that they should enjoy them in complete and firm endurance forever, we give and grant to them the underwritten security, namely, that the barons choose five and twenty barons of the kingdom, whomsoever they will, who shall be bound with all their might, to observe and hold, and cause to be observed, the peace and liberties we have granted and confirmed to them by this our present Charter, so that if we, or our justiciar, or our bailiffs or any one of our officers, shall in anything be at fault towards anyone, or shall have broken any one of the articles of this peace or of this security, and the offense be notified to four barons of the foresaid five and twenty, the said four barons shall repair to us (or our justiciar, if we are out of the realm) and, laying the transgression before us, petition to have that transgression redressed without delay. And if we shall not have corrected the transgression (or, in the event of our being out of the realm, if our justiciar shall not have corrected it) within forty days, reckoning from the time it has been intimated to us (or to our justiciar, if we should be out of the realm), the four barons aforesaid shall refer that matter to the rest of the five and twenty barons, and those five and twenty barons shall, together with the community of the whole realm, distrain and distress us in all possible ways, namely, by seizing our castles, lands, possessions, and in any other way they can, until redress has been obtained as they deem fit, saving harmless our own person, and the persons of our queen and children; and when redress has been obtained, they shall resume their old relations towards us. And let whoever in the country desires it, swear to obey the orders of the said five and twenty barons for the execution of all the aforesaid matters, and along with them, to molest us to the utmost of his power; and we publicly and freely grant leave to everyone who wishes to swear, and we shall never forbid anyone to swear. All those, moveover, in the land who of themselves and of their own accord are unwilling to swear to the twenty five to help them in constraining and molesting us, we shall by our command compel the same to swear to the effect foresaid. And if any one of the five and twenty barons shall have died or departed from the land, or be incapacitated in any other manner which would prevent the foresaid provisions being carried out, those of the said twenty five barons who are left shall choose another in his place according to their own judgment, and he shall be sworn in the same way as the others. Further, in all matters, the execution of which is entrusted,to these twenty five barons, if perchance these twenty five are present and disagree about anything, or if some of them, after being summoned, are unwilling or unable to be present, that which the majority of those present ordain or command shall be held as fixed and established, exactly as if the whole twenty five had concurred in this; and the said twenty five shall swear that they will faithfully observe all that is aforesaid, and cause it to be observed with all their might. And we shall procure nothing from anyone, directly or indirectly, whereby any part of these concessions and liberties might be revoked or diminished; and

if any such things has been procured, let it be void and null, and we shall never use it personally or by another.

62. And all the will, hatreds, and bitterness that have arisen between us and our men, clergy and lay, from the date of the quarrel, we have completely remitted and pardoned to everyone. Moreover, all trespasses occasioned by the said quarrel, from Easter in the sixteenth year of our reign till the restoration of peace, we have fully remitted to all, both clergy and laymen, and completely forgiven, as far as pertains to us. And on this head, we have caused to be made for them letters testimonial patent of the lord Stephen, archbishop of Canterbury, of the lord Henry, archbishop of Dublin, of the bishops aforesaid, and of Master Pandulf as touching this security and the concessions aforesaid.

63. Wherefore we will and firmly order that the English Church be free, and that the men in our kingdom have and hold all the aforesaid liberties, rights, and concessions, well and peaceably, freely and quietly, fully and wholly, for themselves and their heirs, of us and our heirs, in all respects and in all places forever, as is aforesaid. An oath, moreover, has been taken, as well on our part as on the part of the barons, that all these conditions aforesaid shall be kept in good faith and without evil intent. Given under our hand - the above named and many others being witnesses - in the meadow which is called Runnymede, between Windsor and Staines, on the fifteenth day of June, in the seventeenth year of our reign.

Appendix H

English Bill of Rights 1689

An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown

Whereas the Lords Spiritual and Temporal and Commons assembled at Westminster, lawfully, fully and freely representing all the estates of the people of this realm, did upon the thirteenth day of February in the year of our Lord one thousand six hundred eighty-eight [old style date] present unto their Majesties, then called and known by the names and style of William and Mary, prince and princess of Orange, being present in their proper persons, a certain declaration in writing made by the said Lords and Commons in the words following, viz.:

Whereas the late King James the Second, by the assistance of divers evil counsellors, judges and ministers employed by him, did endeavour to subvert and extirpate the Protestant religion and the laws and liberties of this kingdom;

By assuming and exercising a power of dispensing with and suspending of laws and the execution of laws without consent of Parliament;

By committing and prosecuting divers worthy prelates for humbly petitioning to be excused from concurring to the said assumed power;

By issuing and causing to be executed a commission under the great seal for erecting a court called the Court of Commissioners for Ecclesiastical Causes;

By levying money for and to the use of the Crown by pretence of prerogative for other time and in other manner than the same was granted by Parliament;

By raising and keeping a standing army within this kingdom in time of peace without consent of Parliament, and quartering soldiers contrary to law;

By causing several good subjects being Protestants to be disarmed at the same time when papists were both armed and employed contrary to law;

By violating the freedom of election of members to serve in Parliament;

By prosecutions in the Court of King's Bench for matters and causes cognizable only in Parliament, and by divers other arbitrary and illegal courses;

And whereas of late years partial corrupt and unqualified persons have been returned and served on juries in trials, and particularly divers jurors in trials for high treason which were not freeholders;

And excessive bail hath been required of persons committed in criminal cases to elude the benefit of the laws made for the liberty of the subjects;

And excessive fines have been imposed;

And illegal and cruel punishments inflicted;

And several grants and promises made of fines and forfeitures before any conviction or judgment against the persons upon whom the same were to be levied;

All which are utterly and directly contrary to the known laws and statutes and freedom of this realm;

And whereas the said late King James the Second having abdicated the government and the throne being thereby vacant, his Highness the prince of Orange (whom it hath pleased Almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary power) did (by the advice of the Lords Spiritual and Temporal and divers principal persons of the Commons) cause letters to be written to the Lords Spiritual and Temporal being Protestants, and other letters to the several counties, cities, universities, boroughs and cinque ports, for the choosing of such persons to represent them as were of right to be sent to Parliament, to meet and sit at Westminster upon the two and twentieth day of January in this year one thousand six hundred eighty and eight [old style date], in order to such an establishment as that their religion, laws and liberties might not again be in danger of being subverted, upon which letters elections having been accordingly made;

And thereupon the said Lords Spiritual and Temporal and Commons, pursuant to their respective letters and elections, being now assembled in a full and free representative of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid, do in the first place (as their ancestors in like case have usually done) for the vindicating and asserting their ancient rights and liberties declare

That the pretended power of suspending the laws or the execution of laws by regal authority without consent of Parliament is illegal;

That the pretended power of dispensing with laws or the execution of laws by regal authority, as it hath been assumed and exercised of late, is illegal;

That the commission for erecting the late Court of Commissioners for Ecclesiastical Causes, and all other commissions and courts of like nature, are illegal and pernicious;

That levying money for or to the use of the Crown by pretence of prerogative, without grant of Parliament, for longer time, or in other manner than the same is or shall be granted, is illegal;

That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal;

That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law;

That the subjects which are Protestants may have arms for their defence suitable to their conditions and as allowed by law;

That election of members of Parliament ought to be free;

That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament;

That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted;

That jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders;

That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void;

And that for redress of all grievances, and for the amending, strengthening and preserving of the laws, Parliaments ought to be held frequently.

And they do claim, demand and insist upon all and singular the premises as their undoubted rights and liberties, and that no declarations, judgments, doings or proceedings to the prejudice of the people in any of the said premises ought in any wise to be drawn hereafter into consequence or example; to which demand of their rights they are particularly encouraged by the declaration of his Highness the prince of Orange as being the only means for obtaining a full redress and remedy therein. Having therefore an entire confidence that his said Highness the prince of Orange will perfect the deliverance so far advanced by him, and will still preserve them from the violation of their rights which they have here asserted, and from all other attempts upon their religion, rights and liberties, the said Lords Spiritual and Temporal and Commons assembled at Westminster do resolve that William and Mary, prince and princess of Orange, be and be declared king and queen of England, France and Ireland and the dominions thereunto belonging, to hold the crown and royal dignity of the said kingdoms and dominions to them, the said prince and princess, during their lives and the life of the survivor to them, and that the sole and full exercise of the regal power be only in and executed by the said prince of Orange in the names of the said prince and princess during their joint lives, and after their deceases the said crown and royal dignity of the same kingdoms and dominions to be to the heirs of the body of the said princess, and for default of such issue to the Princess Anne of Denmark and the heirs of her body, and for default of such issue to the heirs of the body of the said prince of Orange. And the Lords Spiritual and Temporal and Commons do pray the said prince and princess to accept the same accordingly.

And that the oaths hereafter mentioned be taken by all persons of whom the oaths have allegiance and supremacy might be required by law, instead of them; and that the said oaths of allegiance and supremacy be abrogated.

I, A.B., do sincerely promise and swear that I will be faithful and bear true allegiance to their Majesties King William and Queen Mary. So help me God.

I, A.B., do swear that I do from my heart abhor, detest and abjure as impious and heretical this damnable doctrine and position, that princes excommunicated or deprived by the Pope or any authority of the see of Rome may be deposed or murdered by their subjects or any other whatsoever. And I do declare that no foreign prince, person, prelate, state or potentate hath or ought to have any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm. So help me God.

Upon which their said Majesties did accept the crown and royal dignity of the kingdoms of England, France and Ireland, and the dominions thereunto belonging, according to the resolution and desire of the said Lords and Commons contained in the said declaration. And thereupon their Majesties were pleased that the said Lords Spiritual and Temporal and Commons, being the two Houses of Parliament, should continue to sit, and with their Majesties' royal concurrence make effectual provision for the settlement of the religion, laws and liberties of this kingdom, so that the same for the future might not be in danger again of being subverted, to which the said Lords Spiritual and Temporal and Commons did agree, and proceed to act accordingly. Now in pursuance of the premises the said Lords Spiritual and Temporal and Commons in Parliament assembled, for the ratifying, confirming and establishing the said declaration and the articles, clauses, matters and things therein contained by the force of law made in due form by authority of Parliament, do pray that it may be declared and enacted that all and singular the rights and liberties asserted and claimed in the said declaration are the true, ancient and indubitable rights and liberties of the people of this kingdom, and so shall be esteemed, allowed, adjudged, deemed and taken to be; and that all and every the particulars aforesaid shall be firmly and strictly holden and observed as they are expressed in the said declaration, and all officers and ministers whatsoever shall serve their Majesties and their successors according to the same in all time to come. And the said Lords Spiritual and Temporal and Commons, seriously considering how it hath pleased Almighty God in his marvellous providence and merciful goodness to this nation to provide and preserve their said Majesties' royal persons most happily to reign over us upon the throne of their ancestors, for which they render unto him from the bottom of their hearts their humblest thanks and praises, do truly, firmly, assuredly and in the sincerity of their hearts think, and do hereby recognize, acknowledge and declare, that King James the Second having abdicated the government, and their Majesties having accepted the crown and royal dignity as aforesaid, their said Majesties did become, were, are and of right ought to be by the laws of this realm our sovereign liege lord and lady, king and queen of England, France and Ireland and the dominions thereunto belonging, in and to whose princely persons the royal state, crown and dignity of the said realms with all honours, styles, titles, regalities, prerogatives, powers, jurisdictions and authorities to the same belonging and appertaining are most fully, rightfully and entirely invested and incorporated, united and annexed. And for preventing all questions and divisions in this realm by reason of any pretended titles to the crown, and for

preserving a certainty in the succession thereof, in and upon which the unity, peace, tranquility and safety of this nation doth under God wholly consist and depend, the said Lords Spiritual and Temporal and Commons do beseech their Majesties that it may be enacted, established and declared, that the crown and regal government of the said kingdoms and dominions, with all and singular the premises thereunto belonging and appertaining, shall be and continue to their said Majesties and the survivor of them during their lives and the life of the survivor of them, and that the entire, perfect and full exercise of the regal power and government be only in and executed by his Majesty in the names of both their Majesties during their joint lives; and after their deceases the said crown and premises shall be and remain to the heirs of the body of her Majesty, and for default of such issue to her Royal Highness the Princess Anne of Denmark and the heirs of the body of his said Majesty; and thereunto the said Lords Spiritual and Temporal and Commons do in the name of all the people aforesaid most humbly and faithfully submit themselves, their heirs and posterities for ever, and do faithfully promise that they will stand to, maintain and defend their said Majesties, and also the limitation and succession of the crown herein specified and contained, to the utmost of their powers with their lives and estates against all persons whatsoever that shall attempt anything to the contrary. And whereas it hath been found by experience that it is inconsistent with the safety and welfare of this Protestant kingdom to be governed by a popish prince, or by any king or queen marrying a papist, the said Lords Spiritual and Temporal and Commons do further pray that it may be enacted, that all and every person and persons that is, are or shall be reconciled to or shall hold communion with the see or Church of Rome, or shall profess the popish religion, or shall marry a papist, shall be excluded and be for ever incapable to inherit, possess or enjoy the crown and government of this realm and Ireland and the dominions thereunto belonging or any part of the same, or to have, use or exercise any regal power, authority or jurisdiction within the same; and in all and every such case or cases the people of these realms shall be and are hereby absolved of their allegiance; and the said crown and government shall from time to time descend to and be enjoyed by such person or persons being Protestants as should have inherited and enjoyed the same in case the said person or persons so reconciled, holding communion or professing or marrying as aforesaid were naturally dead; and that every king and queen of this realm who at any time hereafter shall come to and succeed in the imperial crown of this kingdom shall on the first day of the meeting of the first Parliament next after his or her coming to the crown, sitting in his or her throne in the House of Peers in the presence of the Lords and Commons therein assembled, or at his or her coronation before such person or persons who shall administer the coronation oath to him or her at the time of his or her taking the said oath (which shall first happen), make, subscribe and audibly repeat the declaration mentioned in the statute made in the thirtieth year of the reign of King Charles the Second entitled, _An Act for the more effectual preserving the king's person and government by disabling papists from sitting in either House of Parliament._ But if it shall happen that such king or queen upon his or her succession to the crown of this realm shall be under the age of twelve years, then every such king or queen shall make, subscribe and audibly repeat the same declaration at his or her coronation or the first day of the meeting of the first Parliament as aforesaid which shall first happen after such king or queen shall have attained the said age of twelve years. All which their Majesties are contented and pleased shall be declared, enacted and established by authority of this present Parliament, and shall stand, remain and be the law of this realm for ever; and the same are by their said Majesties, by and with the advice and consent of the Lords Spiritual and Temporal and

Commons in Parliament assembled and by the authority of the same, declared, enacted and established accordingly.

II. And be it further declared and enacted by the authority aforesaid, that from and after this present session of Parliament no dispensation by _non obstante_ of or to any statute or any part thereof shall be allowed, but that the same shall be held void and of no effect, except a dispensation be allowed of in such statute, and except in such cases as shall be specially provided for by one or more bill or bills to be passed during this present session of Parliament.

III. Provided that no charter or grant or pardon granted before the three and twentieth day of October in the year of our Lord one thousand six hundred eighty-nine shall be any ways impeached or invalidated by this Act, but that the same shall be and remain of the same force and effect in law and no other than as if this Act had never been made.

Appendix I

Virginia Declaration of Rights 1776

I That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

II That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.

III That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation or community; of all the various modes and forms of government that is best, which is capable of producing the greatest degree of happiness and safety and is most effectually secured against the danger of maladministration; and that, whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter or abolish it, in such manner as shall be judged most conducive to the public weal.

IV That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which, not being descendible, neither ought the offices of magistrate, legislator, or judge be hereditary.

V That the legislative and executive powers of the state should be separate and distinct from the judicative; and, that the members of the two first may be restrained from oppression by feeling and participating the burthens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct.

VI That elections of members to serve as representatives of the people in assembly ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community have the right of suffrage and cannot be taxed or deprived of their property for public uses without their own consent or that of their representatives so elected, nor bound by any law to which they have not, in like manner, assented, for the public good.

VII That all power of suspending laws, or the execution of laws, by any authority without consent of the representatives of the people is injurious to their rights and ought not to be exercised.

VIII That in all capital or criminal prosecutions a man hath a right to demand the cause and nature of his accusation to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of his vicinage, without whose unanimous consent he

cannot be found guilty, nor can he be compelled to give evidence against himself; that no man be deprived of his liberty except by the law of the land or the judgement of his peers.

IX That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted.

X That general warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive and ought not to be granted.

XI That in controversies respecting property and in suits between man and man, the ancient trial by jury is preferable to any other and ought to be held sacred.

XII That the freedom of the press is one of the greatest bulwarks of liberty and can never be restrained but by despotic governments.

XIII That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that, in all cases, the military should be under strict subordination to, and be governed by, the civil power.

XIV That the people have a right to uniform government; and therefore, that no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof.

XV That no free government, or the blessings of liberty, can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality, and virtue and by frequent recurrence to fundamental principles.

XVI That religion, or the duty which we owe to our Creator and the manner of discharging it, can be directed by reason and conviction, not by force or violence; and therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.

Adopted unanimously June 12, 1776 Virginia Convention of Delegates drafted by Mr. George Mason

Appendix J

Constitution of the United States : Bill of Rights 1791

I - Freedom of Speech, Press, Religion and Petition

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.

II - Right to keep and bear arms

A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

III - Conditions for quarters of soldiers

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

IV - Right of search and seizure regulated

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

V - Provisons concerning prosecution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

VI - Right to a speedy trial, witnesses, etc.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

VII - Right to a trial by jury

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

VIII - Excessive bail, cruel punishment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

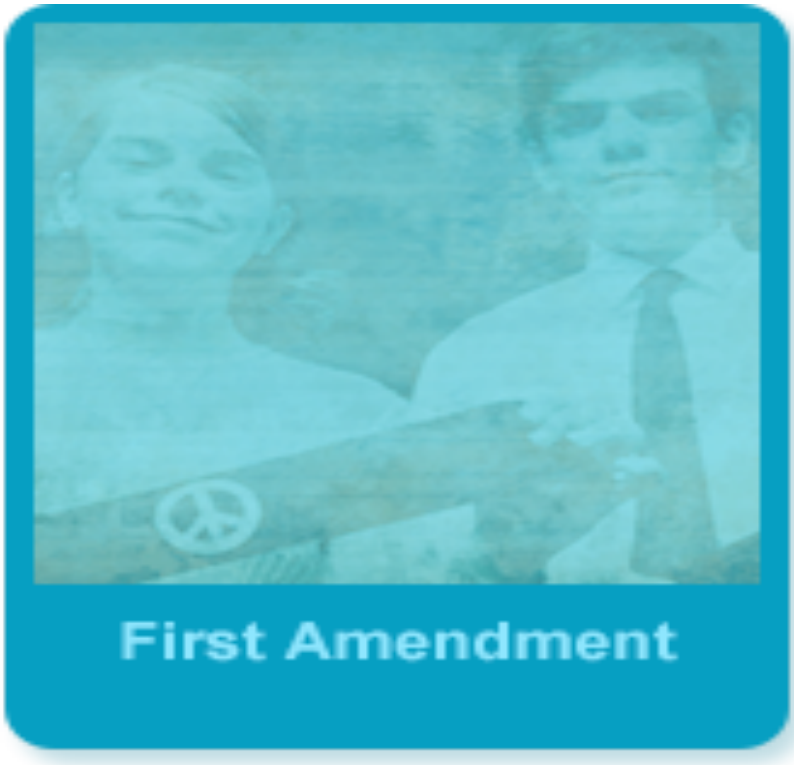
IX - Rule of construction of Constitution

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

X - Rights of the States under Constitution

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Appendix K



TINKER V. DES MOINES ET AL

HTTP://SUNNYLANDSCLASSROOM.ORG

Tinker v. Des Moines Independent Community School District

No. 21

SUPREME COURT OF THE UNITED STATES

393 U.S. 503

Argued November 12, 1968

Decided February 24, 1969

Syllabus

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.

DISPOSITION: 383 F.2d 988, reversed and remanded. [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 [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). [note 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" [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. [note 2] See also *Pierce v. Society of Sisters,* 268 U.S. 510 [507] (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, [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 [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. [note 3] [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. [note 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. [note 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 [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 [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. [note 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 [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* [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.

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 [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. [note 1] The Court brought [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 [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." [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. [note 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 [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 [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. [note 3] Neither *Thornhill v. Alabama,* 310 U.S. 88; *Stromberg v. California,* 283 U.S. 359; *Edwards* [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 [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 [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" [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 [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 [526] systems [note 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.

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.

Footnotes to the Majority Opinion

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 "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." 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).

Footnotes to Justice Black's Opinion

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.