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

[Footnote 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.

[Footnote 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).

[Footnote 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 armbands 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."

[Footnote 4]

The District Court found that the school authorities, in prohibiting black armbands, were influenced by the fact that

"[t]he Viet Nam war and the involvement of the United States therein has been the subject of a major controversy for some time. When the armband 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 92-973.

[Footnote 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."

[Footnote 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).

[Footnote 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."

[Footnote 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."

[Footnote 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."

[Footnote 4]

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