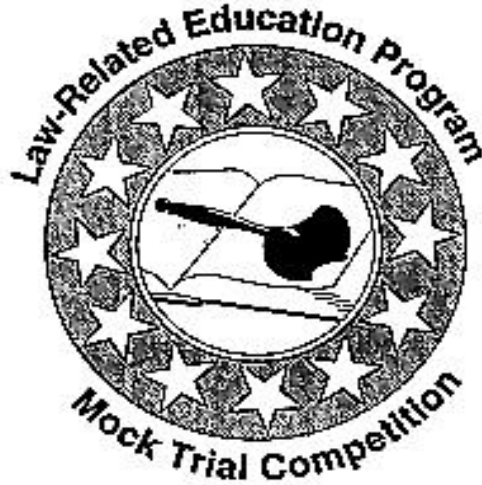


NEW HAMPSHIRE BAR ASSOCIATION Mock Trial 2003



*JAMIE B. FOOTE, a minor, by Pat Foote, the
next best friend, et al.*

v .

*J. R. MOSES, et al. and SMALLVILLE PUBLIC
SCHOOL DISTRICT*

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UNITED STATES DISTRICT COURT
Concord, New Hampshire

JAMIE B. FOOTE*, a minor, by Pat T. Foote, the next best friend, et al.

v.

Case No: NT1989

J. R. MOSES*, et al. and SMALLVILLE PUBLIC SCHOOL DISTRICT

**Please see note regarding gender of witnesses on page _____*

STIPULATED FACTS

Jamie B. Foote is a seventeen year old senior at Smallville Public High School. (She/He) is the Smallville High School Student Council President. During the summer of 2000, Jamie Foote met with other members of the Smallville High Student Council to discuss plans for special events during the 2000-2001 school year. Foote and a majority of the students (he/she) met with decided to request a homecoming dance to be held in the gym at Smallville High. These students knew that the request might cause some controversy because the Smallville School District had a "no dancing on school premises" policy. Foote and the other Council members also discussed other projects for the school year, including starting a SADD (Students Against Driving Drunk) chapter at the school.

Smallville High School is part of the Smallville Public School District. Smallville has a population of approximately 5,000. There are about 500 students in grades 9-12 at the high school. The school district, as established by state law, is nearly 100 years old. It is governed by a seven-member school board elected by eligible voters of the Smallville District.

In September of 2000, Foote and a small group of students, mainly some student council members, met with the Smallville High Principal, I. M. Arder, to request planning a homecoming dance at the high school. Principal Arder reminded the students of School Board Policy 707, expressly prohibiting school-sponsored dances. The principal read the students the policy as published in the Smallville Student Handbook, "School dances are not authorized and school premises shall not be used for purposes of conducting a dance." Foote and the other students protested claiming the policy was unfair, but the principal said (he/she) had to enforce Board policy; and therefore the homecoming dance request was denied. The principal said that only the school board could change the policy.

Foote and several other students started a petition drive to gain support for changing the school board policy. The students gathered several hundred signatures from students, parents, and others supporting a change in school board policy to permit responsibly planned dances on school premises. After receiving some complaints about the petition fervor disrupting normal school routine, Principal Arder questioned Foote about the necessity of having a petition drive that was interfering with education at Smallville High. Foote informed Arder that (he/she) and the other students were exercising their constitutional right to petition the government (i.e., the school board) for a redress of grievances and in this case Foote said the students are using their citizenship skills to attempt to change the "no dancing" policy of the governing school board. The principal suggested that (he/she) might need to halt Foote's petition drive and place restrictions on the time, place and manner of gathering signatures. Foote told the principal that those restrictions would be unconstitutional.

Foote met with some of the students and a few supporting parents to discuss Arder's complaint and comments about the petition drive. The group decided to voluntarily suspend the petition drive and present their petitions to School Board President J. R. Moses at the Board's October meeting.

At the Board meeting, Foote rose from the audience, raising (his/her) hand to get President Moses' attention, then Foote yelled that (she/he) wanted to speak. President Moses refused to recognize Foote at the public meeting. When Foote persisted, President Moses informed (him/her) that (he/she) needed to request in advance a place on the Board's agenda. Nearly fifty people had crowded into the Board's meeting room, and most appeared to support Foote's right to speak. Foote's (father/mother), Pat Foote, approached the standing microphone and asked to be recognized. President Moses asked the other Board members to move to suspend the regular rules of order and allow (Mr./Ms.) Foote to speak. The Board so moved. President Moses informed (Mr./Ms.) Foote that the Board normally allows fifteen minutes for a public forum at the conclusion of regular board business, but since the rules had been suspended, (he/she) could speak.

(Mr./Ms.) Foote identified (himself/herself) as a resident of Smallville, a taxpayer, and the parent of Jamie Foote. (He/She) held up several petitions representing hundreds of signatures supporting a change in the "no dancing on school premises" policy. (He/She) asked the Board to seriously consider the desire from so many for a change. (He/She) gestured to the students at the Board meeting and asked the Board to please allow these young people an opportunity to celebrate homecoming by having a dance at the high school gym. (He/She) reminded the Board that the gym is used for other after school events, like the Smallville High basketball games. Foote said many parents believe homecoming should be a fun, wholesome experience held at the high school, not off at some hall across town, or even worse, in another town or city. Many in the audience applauded (Mr./Ms.) Foote's comments. President Moses thanked (Mr./Ms.) Foote for (his/her) remarks, and (she/he) told (him/her) the petitions and issue would be reviewed by the Board in executive session. Some in the audience yelled for the Board to change the policy now, but Moses gavelled the meeting

to order and continued with regular Board business. Several in the audience left, including the Footes. The public meeting was adjourned, and the Board went into executive session.

In executive session, the Board discussed the petitions and the request to change the policy. After some discussion, the Board voted to table the request until the November meeting. President Moses asked Principal Arder, who was present in the executive session, to address the issue at the November meeting.

During the remainder of October and into November, the community was buzzing with discussion and debate, sometimes heated, about the "no dancing" policy. ~~Two community leaders, who are also ministers of large church congregations, requested a place on the November Board meeting.~~ Terry Tribe, a former candidate for the Smallville School Board and currently professor of constitutional law, ~~also~~ requested a place on the agenda.

The November Board meeting had an overflow crowd. The Board moved the meeting to the high school gym. ~~The ministers, the Reverend Billy Bob Purdy and Reverend Sam Braggert, who are also leaders of the Gospel Alliance, presented to each Board member a position paper signed by them supporting School Board Policy 707, (see exhibit, "Gospel Alliance Position Paper on the Issue of Dancing on School Property"). Reverends Purdy and Braggert addressed the Board and reviewed the key points of the position paper. They were interrupted several times by applause and shouts of "amen" from the audience. At the conclusion of their presentation, the reverends raised their arms upward and asked all who supported keeping School Board Policy 707 to please stand. It appeared that more than two thirds of those at the meeting responded to the reverends' request by standing. The reverends thanked their supporters, then sat down. President Moses and all but one Board member acknowledged that they were members of the churches representing the Gospel Alliance.~~ Terry Tribe was recognized ~~next~~, and proceeded to address the Board.

Tribe reminded the Board that (she/he) had once been a candidate for the School Board. (She/He) had publicly supported changing the school board policy to permit dances on school premises. Tribe said (she/he) knew that certain members of the community, including Reverends Purdy and Braggert and others from the Gospel Alliance, had openly disagreed with Tribe's position on school dancing. Tribe said (his/her) support of dancing probably cost (him/her) the election. Tribe told the Board that (he/she) had recently accepted a position on the faculty of the State University's School of Law and ~~(He/She) said~~ (he/she) was currently teaching courses in constitutional law, ~~and had recently published an article on "Recent Legal Trends Involving Religious Issues In Public Schools."~~ Tribe had been following the dancing controversy in the news. (He/She) had contacted the Foote family and discussed the issue with several students and parents who explained their efforts trying to change the policy. ~~Tribe told the Board that their opposition to dancing on school premises is clearly an expression of the anti-dancing sentiment of some of the local churches. Therefore, the Board, in maintaining Policy 707, is in effect establishing a particular religious belief and~~

~~practice in the public school. According to Tribe, School Board Policy 707 violated the "establishment clause" of the First Amendment and is therefore unconstitutional. A few in the audience applauded, others booed. Some Board members said strong religious beliefs are a part of the community, and the school is part of that community. Many "amens" were shouted from the audience. President Moses gavelled the meeting to order.~~

Moses asked Principal Arder to address the issue. Principal Arder said he would be opposed to changing the policy on dancing. Arder claimed that the efforts to change the policy have already caused heated debates and disruption at school. Furthermore, if dancing is permitted on school premises, the Board and school administration would have to consider many other issues such as supervision, costs to keep the school premises open and clean, as well as the related problems that occur in dance settings (i.e., alcohol and drug abuse, fights, promiscuity, etc.). Principal Arder said the students needed to get their minds back on their studies, and to stop causing disruptions and using school settings to plan these dance parties. Arder said Smallville had done very well without any dancing at the schools. Arder also reminded the Board of his/her role on the School Law Committee of the State Association of Secondary School Administrators (SASSA). Arder said that schools retained the power to make decisions regarding what are appropriate school functions and that the courts supported the public school's authority in these matters. Arder discussed Supreme Court cases concerning searches and seizures and administrative control of school-sponsored functions, like school assemblies and school newspapers. Arder also said that the dancing issue is divisive, pitting students against students and in some cases, parents against their own children. Peace and harmony must be restored to Smallville, Arder loudly proclaimed.

After hearing from all of the speakers, Board member Lois Lane, recommended that the Board take no action on the school policy. Noting no opposition from other Board members, President Moses stated that the policy would remain in effect. Jamie Foote shouted that supporters of changing the policy would not be silenced, they would return.

In late November, Foote and other members of the SADD chapter submitted an application requesting to rent the high school cafeteria for a SADD fundraising dance. The Board denied the rental request informing Foote that Policy 707 clearly states, "... school premises shall not be used for purposes of conducting a dance."

At the December Board meeting's public forum portion, Terry Tribe asked the Board to reconsider the SADD rental request of the high school cafeteria. Tribe reminded the Board that other organizations rented school facilities under the District's Rental-Use policy, and this denial to the SADD chapter amounts to a violation of freedom of association, due process and equal protection of the U.S. Constitution. Tribe asked that the Board respond to this request as soon as possible. President Moses said the Board would consider the request after hearing from any other speakers during the public forum. Next, Chris Goode approached the

microphone to speak. (Mr./Ms.) Goode, a sixteen-year-old student and Secretary of the Smallville High Student Council, presented petitions in support of Policy 707. (He/She) also told about attending a high school dance while visiting (his/her) cousin in the big city of Metropolis. (He/She) said the experience was shocking and embarrassing. Some at the dance openly smoked marijuana, others were drinking alcohol, there was at least one fight, and the music and "dirty dancing" were suggestive and embarrassing. (He/She) said Smallville High did not need these problems. Furthermore, (he/she) said some students would feel peer pressured to attend the dances at the high school and this would cause more problems with parents who did not want their sons and daughters dancing. Chris said Jamie Foote did not speak for (him/her) and many other students. (Mr./Ms.) Goode was the last speaker to come forward during the public forum.

Fearing possible litigation by Tribe and the Foote forces, President Moses moved the Board to executive session. After a long executive session, the Board returned to the open session and voted to stop all "outsider" rentals of school buildings until the matter could be studied further.

At the January meeting, after hearing from Principal Arder about additional problems of outside rentals of school facilities, the Board voted to formally repeal the Rental Use Policy and adopt a new No Use Policy (Policy 1166), eliminating all "outsider" rentals of the school's buildings for any purpose. The No Use Policy permits use of the school facilities for school-sponsored activities only.

Foote once again approached Principal Arder and asked that (he/she) please consider sponsoring a SADD fundraising dance as a school-sponsored activity. Arder strongly reminded Foote of Policy 707 prohibiting school-sponsored dances. Arder told Foote that (he/she) hoped this controversy could be ended because the dancing issue was disrupting the educational environment of the school and community. Foote suggested that the conflict might have to be resolved by our courts. ~~Foote also wrote a strong "Letter to the Editor" of the school-sponsored newspaper, the Smallville High Times, criticizing the School Board's actions regarding prohibiting dancing on school premises. Principal Arder refused to allow the letter to be printed, explaining to Foote that the Supreme Court granted school officials the power to restrict student expression that would be disruptive and inappropriate for the school setting. Foote again expressed dismay. (She/He) said (she/he) wanted to study those Supreme Court decisions.~~

In early February, Foote and some other students, with the support of their parents filed a petition in federal court suing the Smallville School District and its Board members claiming that School Board Policy 707 violates ~~the establishment clause~~, the free speech clause and freedom of association, as protected by the First Amendment to the United States Constitution. Furthermore, the change in the School Rental Use Policy amounts to a denial of due process and equal protection as protected by the Fourteenth Amendment of the U.S. Constitution.

CLAIMS

PETITIONER'S CLAIMS

Comes now the plaintiffs, Jamie and Pat Foote and others, aggrieved by the unconstitutional actions of the Smallville Public School District, and moves this Honorable Court to:

- ~~1. — Declare School Board Policy 707 to be in violation of the establishment clause of the First Amendment of the U.S. Constitution, and to enjoin the Smallville School Board from enforcing Policy 707.~~
2. Declare Policy 707 and the No Use Policy 1166, to be in violation of the freedom of association protected by the First Amendment of the U.S. Constitution.
3. Declare the Smallville School Board's action adopting Policy 1166 to be in violation of the due process and equal protection clause of the Fourteenth Amendment, and to enjoin the School Board from enforcing Policy 1166, and to order a reinstatement of the Smallville School Rental Use Policy.
- ~~4. — Declare Principal Arder's removal of Petitioner Jamie B. Foote's "Letter to the Editor" of the Smallville High Times to be in violation of the free speech clause of the First Amendment, and to enjoin Principal Arder from prohibiting the letter's publication in the Smallville High Times.~~

DEFENDANT'S CLAIMS

Comes now the defendants J. R. Moses and the members of the Smallville School Board, and moves this Honorable Court to uphold the validity of Policy 707 and 1166, as well as the actions of Principal I. M. Arder, by affirming the following claims:

- ~~1. — Policy 707 is not promoting an "inherently religious" practice, and therefore the policy and Board action does not violate the establishment clause of the First Amendment.~~
2. Policy 707 and Policy 1166 limiting the use of school facilities to school-sponsored activities do not violate any individual or groups freedom of association as protected by the First Amendment. Individuals and groups are free to legally associate throughout the Smallville Community.
3. Policy 1166 has been enacted by the legally enacted Smallville School Board as empowered by the state, and acting in compliance with the due process clause of the Fourteenth Amendment and said policy does not deprive any person life, liberty, or property. Furthermore, Policy 1166 applies to all "outsiders" and therefore does not violate the equal protection clause of the Fourteenth Amendment.
- ~~4. Principal Arder's decision to remove Jamie Foote's inflammatory and potentially disruptive letter to the editor of the school sponsored Smallville High Times was an exercise of the principal's authority to properly supervise school sponsored activities, and is not in violation of the free speech clause of the First Amendment.~~

IN SUPPORT OF THEIR RESPECTIVE CASES, THE FOLLOWING WITNESSES* WILL BE CALLED:

WITNESSES FOR PETITIONER

Jamie B. Foote, Petitioner, Student, and President of Smallville High School Student Council

Pat T. Foote, Petitioner and Parent of Jamie B. Foote

Terry Tribe, Professor of Law, and Former Candidate for Smallville School Board

WITNESSES FOR DEFENDANTS

J. R. Moses, Defendant, President of Smallville School Board

I. M. Arder, Principal of Smallville Public High School and Chairperson of the School Law Committee, State Association of Secondary School Administrators

Chris Goode, Student, and Secretary of Smallville High School Student Council

**The gender of witnesses may be determined by each individual team unless the gender is otherwise specified. Please notify opposing counsel of the gender of your witnesses and make all appropriate gender adjustments in witness' statements and examinations, opening statement and closing argument.*

EXHIBITS

The parties have stipulated to the authenticity of each of the following exhibits, as well as the authenticity of all witness statements:

- School Board Policy 707 and School Board Policy 1166

~~? "Rock Around that Old Time Religion," Letter to the Editor, Smallville High Times~~

~~? Gospel Alliance Position Paper Supporting Policy 707~~

EXHIBIT _____

SCHOOL BOARD POLICY 707

School Dances. School dances are not authorized and school premises shall not be used for purposes of conducting a dance.

EXHIBIT _____

SCHOOL BOARD POLICY 1166

No Use Policy. School facilities may be used only for school-sponsored activities. All "outsider" rentals of school facilities are hereby prohibited.

EXHIBIT _____

~~"ROCK AROUND THAT OLD TIME RELIGION"~~

~~Letter to the Editor
Smallville High Times~~

~~This is an open letter to the hysteric hypocrites with their gobbledegook gospel. Yes, we've got trouble right here at Smallville, but it does not start with dancing. The trouble is the Gospel Alliance and the junior Jesus freaks here at Smallville High trying to shove their narrow minded religion into our hearts and minds. They already control J. R. Moses and the majority of the School Board, and last year they tried to take over our Student Council. Principal Arder is their obedient servant enforcing the anti dancing dogma of the Gospel Alliance. How an allegedly intelligent educator can blindly follow this bigoted gospel is beyond my understanding. Maybe Arder fears the wrath of the Alliance.~~

~~Is dancing at Smallville High the burning issue of our times? I thought the Bible encouraged care for the poor, the homeless and the hungry. I suggest that the Gospel Alliance and their youthful followers re-examine the scripture. I sure don't recall reading, "Thou Shall Not Dance," yet I here them preaching the message. Who knows? Maybe God gets down and rocks around that old time religion.~~

~~We are not forcing anyone to dance. We are only asking to use the school premises to engage in a clearly lawful recreational activity dancing. School premises are used for all sorts of activities, such as basketball, volleyball, even a rifle club. We should have the right to use school facilities for dances.~~

~~If Moses and the School Board continue to refuse our requests to repeal Policy 707, then Arder better be prepared for real trouble at Smallville High. We'll dance in the streets as we go on strike. Free at last, free to dance!~~

~~Forever free,~~

~~Jamie B. Foote
Student Council President~~

~~EXHIBIT _____~~

Re: Gospel Alliance Position Paper on Policy 707

Dear Board Members:

We, the Gospel Alliance of Smallville, wish to make known our position on the issue of dancing being permitted on School Property. We believe that there are five areas that should be considered on this matter:

1. First, the matter of duplication. Dancing is already available to those who wish to participate at the community center within our community, as well as in other counties. Why duplicate the same activity for no real purpose?

2. Secondly, the matter of responsibility. The School System should not have to be responsible for the conduct of the students participating in dancing and subsequent activities surrounding dancing. There would have to be monitors at any of these dances. Why should school teachers, administrators, et al. be required to attend any more functions than are already required?

3. Thirdly, the matter of time. Students participating in dances would be adding just one more activity to take them away from their studies. There are already enough extra-curricular activities for the students to be involved in with the emphasis on sports competition. Why distract students from their important academic studies?

4. Fourthly, the matter of social involvement. There is no merit in trying to justify dancing as a socially edifying activity. There are more profitable and proper ways for students to interact on a social basis. Why pressure students into feeling that dancing is the social thing to do?

5. Fifthly, the matter of moral conduct. From past history it is common knowledge that dancing involves other activities that are counterproductive and are considered unacceptable behavior in our community. Alcoholic consumption, to the point of 'legal' drunkenness, access to drugs and related paraphernalia would bring reproach upon our school's reputation. This would also negate the positive influence that the introduction of the SADD Chapter in the Smallville School System would potentially have. Also the problem of teenage pregnancy would be at greater risk if these dancing circumstances were permitted to exist. We, as a community, need to learn lessons from other school systems that have seen and experienced the problems that have transpired due to the granting of permission for dancing on school property. Why provide a climate and opportunity for immoral conduct and dangerous consequences?

We, the Gospel Alliance of Smallville, appreciate the School Board giving of their valuable time to this seemingly minor issue in view of the heavy responsibilities involved in the area of educating the future citizens of this community and state.

Thank you for your attention to our concerns in the matter of dancing on school property. We urge the Board to maintain Policy 707 or the benefit of the school and community.

Sincerely,

Ministers of the Gospel Alliance

Reverend Billy Bob Purdy, President

Reverend Sam Braggert, Secretary

LEGAL INFORMATION THAT MAY BE USED IN PREPARING THIS MOCK TRIAL CASE

CONSTITUTION OF THE UNITED STATES

Amendment 1. (Ratified, 1791)

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.

Amendment XIV. (Ratified, 1868)

Section 1. All persons born or naturalized in the United States and, subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United State; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The following are excerpts from case law concerning the legal issues raised in this mock trial case. This is only a portion or summary of the opinions in each cited case. The entire case (including majority, concurring and dissenting opinions) may be read in preparation for the mock trial.

Everson v. Board of Education, 330 U.S. 1, 67 S.Ct. 504 (1947)

~~The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbelief, for church attendance or nonattendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by Jaws was intended to erect a "wall of separation between Church and State."~~

***McCullum v. Board of Education*, 333 U.S. 203, 68 S.Ct. 461, 92 L.Ed. 649 (1948)**

Held that a Champaign, Illinois public school released time program violated the establishment clause. Here not only are the state's tax supported public school buildings used for the dissemination of religious doctrines. The State also affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the state's compulsory public school machinery.

Designed to serve as perhaps the most powerful agency for promoting cohesion among the heterogeneous democratic people, the public school must keep scrupulously free from entanglement in the strife of sects

Neighborhoods differ in racial, religious and cultural compositions. It must be expected that they will adopt different customs which will give emphasis to different values and will induce different experiments. And it must be expected that, no matter what practice prevails, there will be many discontented and possibly belligerent minorities. We must leave some flexibility to meet local conditions, some chance to progress by trial and error.

The task of separating the secular from the religious in education is one of magnitude, intricacy and delicacy. To lay down a sweeping constitutional doctrine . . . is to decree a uniform, rigid and if we are consistent, an unchanging standard for countless school boards representing and serving highly localized groups which not only differ from each other but which themselves from time to time change attitudes. It seems to me that to do so is to allow zeal for our own ideas of what is good in public instruction to induce us to accept the role of a super board of education for every school district in the nation.

It is idle to pretend that this task is one for which we can find in the Constitution one word to help us as judges to decide where the secular ends and the sectarian begins in education. Nor can we find guidance in any other legal source. It is a matter on which we can find no law but our own prepossessions. If with no surer legal guidance we are to take up and decide every variation of this controversy, raised by persons not subject to penalty or tax but who are dissatisfied with the ways schools are dealing with the problem, we are likely to have much business of the sort. And, more importantly, we are likely to make the legal wall of separation between church and state as winding as the famous serpentine wall designed by Mr. Jefferson for the University he founded.

***Engel v. Vitale*, 370 U.S. 421, 82 S.Ct. 1261, 8 L.Ed.2d 601 (1962)**

— The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobservant individuals or not. This is not to say of course, that laws

officially prescribing a particular form of religious worship do not involve coercion of such individuals. When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain. But the purposes underlying the Establishment Clause go much further than that. Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion. Another purpose of the Establishment Clause rested upon an awareness of the historical fact that governmentally established religions and religious persecutions go hand in hand.

***School District v. Schempp*, 374 U.S. 203, 83 S.Ct. 1560, 10 L.Ed. 2d 844 (1963)**

These cases were brought by parents and their children in public schools—*Schempp*, by Unitarians in Abington Township, Pa.; *Murray* by "professed atheists" in Baltimore, MD.—challenging reading of the Bible (without comment) and recitation of the Lord's Prayer as part of daily opening exercises in the schools. In *Schempp*, various students read passages they selected from any version of the Bible. Mr. Schempp testified that "specific religious doctrines purveyed by a literal reading of the Bible" were contrary to the family's religious beliefs. One expert testified that portions of the New Testament were offensive to "Jewish tradition" and "if read without explanation, they could be psychologically harmful to the child and had caused a divisive force within the social media of the school". A defense expert testified that "the Bible was non-sectarian within the Christian faiths." Mr. Schempp had decided against having his children excused from the exercise (as they could be) because he believed that "children's relationships with their teachers and classmates would be adversely affected." In *Murray*, the child was excused on request of the parent.

—The wholesome "neutrality" [toward religion] of which this Court's cases speak, stems from a recognition of the teachings of history that powerful sects or groups might bring about a fusion of governmental and religious functions or a concert of dependency or one upon the other to the end that official support of the State or Federal Government would be placed behind the tenets of one or of all orthodoxy's. This the Establishment Clause prohibits. And a further reason for neutrality is found in the Free Exercise Clause, which recognizes the value of religious training, teaching and observance and, more particularly, the right of every person to freely choose his own course with reference thereto, free of any compulsion from the state. This the Free Exercise Clause guarantees. Thus, as we have seen, the two clauses may overlap. The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the structures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion. *Everson*; *McGowan v. Maryland*. The Free Exercise Clause[s] purpose is to secure religious liberty in the

~~individual by prohibiting any invasions thereof by civil authority. Hence it is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his religion. The distinction between the two clauses is apparent—a violation of the Free Exercise Clause is predicated on coercion while the Establishment Clause violation need not be so attended.~~

~~Finally, we cannot accept that the concept of neutrality, which does not permit a State to require a religious exercise even with the consent of the majority of those affected, collides with the majority's right to free exercise of religion. While the Free Exercise Clause clearly prohibits the use of state action to deny the right of free exercise to *anyone*, it has never meant that a majority could use the machinery of the State to practice its beliefs.---~~

~~***Epperson v. Arkansas, 393 U.S. 97, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968)***~~

~~Government may not "promote one religion or religious theory against another or even against the militant opposite."~~

John F. Tinker and Mary Beth Tinker, Minors, etc., et al., v. Des Moines Independent Community School District, et al., 89 S. Ct. 733 (1969)

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, 67 L.Ed. 1042, 43 S. Ct. 625, 29 ALR 1446 (1923), and *Bartels v. Iowa*, 262 U.S. 404, 67 L. Ed. 1047, 43 S. Ct. 628 (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. See also *Pierce v. Society of Sisters*, 268 U.S. 510, 69 L. Ed. 1070, 45 S. Ct. 571, 39 ALR 468 (1925); *West Virginia v. Barnette*, 319 U.S. 624, 87 L. Ed. 1628, 63 S.Ct. 1178, 147 ALR 674 (1943); *McCullum v. Board of Education*, 333 U.S. 203, 92 L. Ed. 649, 68 S.Ct. 461, 2 ALR2d 1338 (1948); *Wieman v. Updegraff*, 344 U.S. 183, 195, 97 L. Ed. 216, 73 S.Ct. 215 (1952) (concurring opinion); *Sweezy v. New Hampshire* 354 U.S. 234, 1 L. Ed. 2d 1311, 77 S.Ct. 1203 (1957); *Shelton v. Tucker*, 364 U.S. 479, 487, 5 L. Ed. 2d 231, 236, 81, S.Ct. 247 (1960); *Engel v. Vitale*, 370 U.S. 421, 8 L.Ed. 2d 601, 82 S.Ct. 1261 (1962); *Keyishian v. Board of Regents*, 385 U.S. 589, 603, 17 L.Ed. 2d 629, 640, 87 S.Ct. 675 (1967); *Epperson v. Arkansas*, 393 U.S. 97, 21 L. Ed. 2d 228, 89 S.Ct. 266 (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, 87 L. Ed. at 1637, 147 ALR 674.

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 not finding and no showing that engaging in of 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 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.

In *Keyishian v. Board of Regents*, 385 U.S. 589, 603, 17 L. Ed. 2d 629, 640, 87 S. Ct. 675, 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, 5 L.Ed.2d 231, at 236, 81 S.Ct. 247]. The classroom is peculiarly the market place 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 tongue, 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. 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 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 interfering 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 (CA5th 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 comers of a pamphlet, or to supervised and ordained discussion in a school classroom.

~~*Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed 2d 745 (1971)~~

~~Every analysis in this area (i.e., establishment clause cases) must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion.~~

~~To determine whether the government entanglement with religion is excessive, we must examine the character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority.~~

~~*McDaniel v. Paty*, 435 U.S. 618, 98 S.Ct. 1322, 55 L.Ed. 2d 593 (1978)~~

~~Government may not inquire into the religious beliefs and motivations of office holders - it may not remove them from office merely for making public statements regarding religion, or question whether their legislative actions stem from religious conviction.~~

~~That public debate of religious ideas, like any other, may arouse emotion, may incite, may foment religious divisiveness and strife does not rob it of constitutional protection. The mere fact that a purpose of the~~

~~Establishment Clause is to reduce or eliminate religious divisiveness or strife, does not place religious discussion, association, or political participation in a status less preferred than rights of discussion, association, and political participation generally. 'Adherents of particular faiths and individual churches frequently take strong positions on public issues including . . . vigorous advocacy of legal or constitutional positions. Of course, churches as much as secular bodies and private citizens have that right.'~~

~~The State's goal of preventing sectarian bickering and strife may not be accomplished by regulating religious speech and political association. The Establishment Clause does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals and therefore subject to unique disabilities.~~

~~In short, government may not as a goal promote "safe thinking" with respect to religion and fence out from political participation those, such as ministers, whom it regards as over involved in religion. Religionists no less than members of any other group enjoy the full measure of protection afforded speech, association, and political activity generally. The Establishment Clause, properly understood, is a shield against any attempt by government to inhibit religion as it has done here . . . It may not be used as a sword to justify repression of religion or its adherents from any aspect of public life.~~

Stone v. Graham, 449 U.S. 39, 101 S.Ct. 192, 66 L.Ed.2d 199 (1980)

~~— Held that a Kentucky statute requiring "the posting of a copy of the Ten commandments, purchased with private contributions, on the wall of each public classroom in the State," with the notation at the bottom that "The secular application of the Ten Commandments is clearly seen in its adoption as the fundamental legal code of Western Civilization and the Common Law of the United States" had "no secular legislative purpose": "The Ten Commandments is undeniably a Sacred text in the Jewish and Christian faiths, and no legislative recitation of a supposed secular purpose can blind us to that fact. Posting of religious texts on the wall serves no educational function. If the posted copies of the Ten Commandments are to have any effect at all, it will be to induce the school children to read, meditate upon, perhaps to venerate and obey, the Commandments. However desirable this might be as a matter of private devotion, it is not a permissible state objective under the Establishment Clause."~~

Marsh v. Chambers, 463 U.S. 783, 103 S.Ct. 3330, 77 L.Ed.2d 1019 (1983)

~~Upheld the practice of opening each day of the Nebraska legislature with a prayer by a chaplain (since 1965, a Presbyterian minister) paid by the state (\$319.75 per month when the legislature is in session) as being "deeply embedded in the history and tradition of this country." The Court pointed, inter alia, to the practice in the colonies (including Virginia after adopting its Declaration of Rights which has been "considered~~

the precursor of both the Free Exercise and Establishment Clauses"), to the opening invocations in federal courts (including the Supreme Court), and to the Continental Congress and First Congress: "Clearly the men who wrote the First Amendment Religion Clause did not view paid legislative chaplains and opening prayers as a violation of that Amendment, for the practice of opening sessions with prayer has continued without interruption ever since that early session of Congress. It has also been followed consistently in most of the states." Although "standing alone, historical patterns cannot justify contemporary violations of constitutional guarantees, in this context, historical evidence sheds light not only on what the draftsmen intended the Establishment Clause to mean, but also on how they thought that Clause applied to the practice authorized by the First Congress. Their actions reveal their intent."

***Lynch v. Donnelly*, 465 U.S. 668, 104 S.Ct., 1355, 79 L.Ed.2d 604 (1984)**

There is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789. Long before Independence, a day of Thanksgiving was celebrated as a religious holiday to give thanks for the bounties of Nature as gifts from God. President Washington and his successors proclaimed Thanksgiving, with all its religious overtones, a day of national celebration and Congress made it a National Holiday more than a century ago. That holiday has not lost its theme of expressing thanks for Divine aid any more than has Christmas lost its religious significance.

Executive Order and other official announcements of Presidents and of the Congress have proclaimed both Christmas and Thanksgiving National Holidays in religious terms and it has long been the practice that federal employees are released from duties on these National Holidays, while being paid from the same public revenues that provide the compensation of the Chaplains of the Senate and the House and the military services. Thus, it is clear that Government has long recognized—indeed it has subsidized holidays with religious significance.

Other examples of reference to our religious heritage are found in the statutorily prescribed national motto "In God We Trust," and in the language "One nation under God," as part of the Pledge of Allegiance.

Art galleries supported by public revenue display religious paintings of the 15th and 16th centuries, predominantly inspired by one religious faith. The National gallery in Washington, maintained with Government support, for example, has long exhibited masterpieces with religious messages, notably the Last Supper, and paintings depicting the birth of Christ, the Crucifixion, and the Resurrection, among many others with explicit Christian themes and messages. The very chamber in which oral arguments on this case were heard is decorated with a notable and permanent—not seasonal—symbol of religion: Moses with Ten Commandments. Congress has long provided chapels in the Capitol for religious worship and meditation and has directed the President to proclaim a National Day of Prayer each year. Presidential Proclamations and

messages have also been issued to commemorate the Jewish Heritage Week and the Jewish High Holy Days. One cannot look at even this brief resume without finding that our history is pervaded by expressions of religious beliefs.

This history may help explain why the Court consistently has declined to take a rigid, absolutist view of the Establishment Clause. In the line drawing process we have often found it useful to inquire whether the challenged law or conduct has a secular purpose, whether its principal or primary effect is to advance or inhibit religion, and whether it creates an excessive entanglement of government with religion. But we have repeatedly emphasized our unwillingness to be confined to any single test or criterion in this sensitive area we did not, for example, consider that analysis relevant in *Marsh*.

In this case, the focus of our inquiry must be on the crèche in the context of the Christmas season. For example, [*Schempp*] specifically noted that nothing in the Court's holding was intended to "indicate that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment." Focus exclusively on the religious component of any activity would inevitably lead to its invalidation under the Establishment clause.

The Court has invalidated legislation or governmental action on the ground that a secular purpose was lacking, but only when it has concluded there was no question that the statute or activity was motivated wholly by religious considerations. See, e.g., *Stone; Epperson; Schempp; Engel*. Even where the benefits to religion were substantial, as in *Everson; Allen; Walz; Tilton*, we saw a secular purpose and no conflict with the Establishment Clause.

***Grand Rapids School District v. Ball*, 105 S.Ct. 3216, 87 L.Ed.2d 267 (1985)**

Since *Everson*, we have often grappled with the problem of state aid to nonpublic, religious schools. In all of these cases, our goal has been to give meaning to the sparse language and broad purposes of the Establishment Clause, while not unduly infringing on the ability of the States to provide for the education of schoolchildren which is surely a praiseworthy purpose. But our cases have consistently recognized that even such a praiseworthy, secular purpose cannot validate government aid to parochial schools when the aid has the effect of promoting a single religion or religion generally or when the aid unduly entangles the government in matter religious. The three part test first articulated in [*Lemon*] must be viewed as setting the precise limits to the necessary constitutional inquiry, but serve[s] only as guidelines with which to identify instances in which the objectives of the Establishment Clause have been impaired. We have particularly relied on *Lemon* in every case involving the sensitive relationship between government and religion in the education of our children.

~~Our cases have recognized that the Establishment Clause guards against more than direct, state-funded efforts to indoctrinate youngsters in specific religious beliefs. An important concern of the effects test is whether the symbolic union of church and state effected by the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices. The symbolism of a union between church and state is most likely to influence children of tender years, whose experience is limited and whose beliefs consequently are the function of environment as much as of free and voluntary choice.~~

***Bethel School District No. 403, et al. v. Matthew N. Fraser, a minor and E. L. Fraser, Guardian ad litem*, 478 U.S. 675, 106 S.Ct. 3159, 92 L.Ed 2d 549 (1986)**

The role and purpose of the American public school system was well described by two historians, saying "public education must prepare pupils for citizenship in the Republic . . . It must inculcate the habits and manners of civility as values in themselves conducive to happiness and as indispensable to the practice of self government in the community and the nation." C. Beard & M. Beard, *New Basic History of the United States*, 228 (1968). In *Ambach v. Norwich*, 441 U.S. 68, 76-77, 60 L.Ed. 49, 99 S.Ct. 1589 (1979), we echoed the essence of this statement of the objectives of public education as the "inculcation of fundamental values necessary to the maintenance of a democratic political system."

These fundamental values of "habits and manners of civility" essential to a democratic society must, of course, include tolerance of divergent political and religious views, even when the views expressed may be unpopular. But these "fundamental values" must also take into account consideration of the sensibilities of others, and, in the case of school, the sensibilities of fellow students. The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior. Even the most heated political discourse in a democratic society requires consideration for the personal sensibilities of the other participants and audiences.

The First Amendment guarantees wide freedom in matters of adult public discourse. A sharply divided Court upheld the right to express an antidraft viewpoint in a public place, albeit in terms highly offensive to most citizens. See *Cohen v. California*, 403 U.S. 15, 29 L.Ed 2d 284, 91 S.Ct. 1780 (1971). It does not follow however, that simply because the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, that the same latitude must be permitted to children in a public school. In *New Jersey v. T. L. O.*, 469 U.S. 325, 83 L.Ed. 2d 720, 105 S.Ct. 733 (1985), we reaffirmed that the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings.

Surely it is a highly appropriate *function of* public school education to prohibit the use of vulgar and offensive terms in public discourse. Indeed, the "fundamental values necessary to the maintenance of a democratic political system" disfavor the use of terms of debate highly offensive or highly threatening to others. Nothing in the Constitution prohibits the states from *insisting that* certain modes of expression are inappropriate and subject to sanctions. The inculcation of these values is truly the "work of the schools." *Tinker*, 383 U.S., at 508, 21 L.Ed. 2d 731, 89 S.Ct. 733, 49 Ohio Ops 2d 222; see *Ambach v. Norwick*, supra. The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board.

The process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class; schools must teach by example the shared values of a civilized social order. Consciously or otherwise, teachers (and indeed the older students) demonstrate the appropriate form of civil discourse and political expression by their conduct and deportment in and out of class. Inescapably, like parents, they are role models.

This Court's First Amendment jurisprudence has acknowledged limitations on the otherwise absolute interest of the speaker in reaching an unlimited audience where the speech is sexually explicit and the audience may include children. In *Ginsberg v. New York*, 390 U.S. 629, 20 L.Ed. 2d 195, 88 S.Ct. 1274, 44 Ohio Ops 2d 339 (1968) this Court upheld a New York statute banning the sale of sexually oriented material to minors, even though the material in question was entitled to First Amendment protection with respect to adults. And in addressing the question whether the First Amendment places any limit on the authority of public schools to remove books from a public school library, all Members of the Court, otherwise sharply divided, acknowledged that the school board has the authority to remove books that are vulgar. *Board of Education v. Pico*, 457 U.S. 853, 871-872, 73 L.Ed. 435, 102 S.Ct. 2799 (1982) (plurality opinion); id., at 879-881, 73 L.Ed. 2d 435, 102 S.Ct. 2799 (Blackmun, J., concurring); id., at 918-920, 73 L.Ed. 2d 435, 102 S.Ct. 2799 (Rehnquist, J., dissenting). These cases recognize the obvious concern on the part of parents, and school authorities acting *in loco parentis* to protect children, especially in a captive audience, from exposure to sexually explicit, indecent, or lewd speech.

~~*Edwards v. Aguillard*, 107 S.Ct. 2573 (1987)~~

~~Held that a Louisiana statute, which forbade "the teaching of the theory of evolution in public schools unless accompanied by instruction in 'creation science,'" had "no clear secular purpose". True, the Act's stated purpose is to protect academic freedom. While the Court is normally deferential to a State's articulation of a secular purpose, it is required that the statement of such purpose be sincere and not a sham. See *Jaffree*; *Stone v. Graham*; *Schempp*. . . . The law violates the Establishment Clause of the First~~

~~Amendment because it seeks to employ the symbolic and financial support of government to achieve a religious purpose.~~

~~***Bowen v. Kendrick, 108 S.Ct. 2562 (2000)***~~

~~Held that the Adolescent Family Life Act (AFLA), which grants funds to a variety of public and private agencies (including religious organizations) to provide counseling for prevention of adolescent sexual relations and care for pregnant adolescents and adolescent parents, did not, on its face, violate the establishment clause:~~

~~—"AFLA was motivated primarily, if not entirely, by a legitimate secular purpose the elimination or reduction of social and economic problems caused by teenage sexuality, pregnancy, and parenthood. Although two of its stated purposes are to promote self discipline and other prudent approaches to the problem of adolescent premarital sexual relations," and to 'promote adoption as an alternative,' this approach is not inherently religious, although it may coincide with the approach taken by certain religions."~~

Hazelwood School District, et al., v. Cathy Kuhlmeier, et al., 108 S.Ct. C1. 5762, 98 L.Ed. 2d 592 (2000)

Students in the public schools do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker*, supra, at 506. They cannot be punished merely for expressing their personal views on the school premises whether "in the cafeteria, or on the playing field, or on the campus during the authorized hours," *Id.*, at 512-513-unless school authorities have reason to believe that such expression will "substantially interfere with the work of the school or impinge upon the rights of other students" *Id.*, at 509.

We have nonetheless recognized that the First Amendment rights of students in the public schools "are not automatically coextensive with the rights of adults in other settings," *Bethel School District No. 403 v. Fraser*, 478 U.S. 675, (1986), and must be "applied in light of the special characteristics of the school environment." *Tinker*, supra, at 506; cf. *New Jersey v. T. L. O.*, 469 U.S. 325, 341-343 (1985). A school need not tolerate student speech that is inconsistent with its "basic educational mission," *Fraser*, supra, even though the government could not censor similar speech outside the school. Accordingly, we held in *Fraser* that a student could be disciplined for having delivered a speech that was "sexually explicit" but not legally obscene at an official school assembly, because the school was entitled to "disassociate itself" from the speech in a manner that would demonstrate to others that such vulgarity is "wholly inconsistent with the 'fundamental values' of public school education." We thus recognized that "the determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board," rather than with the federal courts. It is in this context that respondents' First Amendment claims must be considered.

We deal first with the question whether Spectrum may appropriately be characterized as a forum for public expression. The public schools do not possess all of the attributes of streets, parks, and other traditional public forums that "time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague v. CIO*, 307 U.S. 496, 515 (1939). Cf. *Widmar v. Vincent*, 454 U.S. 263, 267-268, n. 5 (1981). Hence, school facilities may be deemed to be public forums only if school authorities have "by policy or by practice" opened those facilities "for indiscriminate use by the general public," *Perry Education Assn. V. Perry Local Educators' Assn*, 460 U.S. 37, 47 (1983), or by some segment of the public, such as student organizations. *Id.*, at 46, n. 7 (citing *Widmar v. Vincent*). If the facilities have instead been reserved for other intended purposes, "communicative or otherwise," then no public forum has been created, and school officials may impose reasonable restrictions on the speech of students, teachers, and other members of the school community.

The question whether the First Amendment requires a school to tolerate particular student speech, the question that we addressed in *Tinker* is different from the question whether the First Amendment requires a school affirmatively to promote particular student speech. The former question addresses educators' ability to silence a student's personal expression that happens to occur on the school premises. The latter question concerns educators' authority over school-sponsored publications, theatrical productions, and other expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school. These activities may fairly be characterized as part of the school curriculum, whether or not they occur in a traditional classroom setting, so long as they are supervised by faculty members and designed to impart particular knowledge or skills to student participants and audiences.

Educators are entitled to exercise greater control over this second form of student expression to assure that participants learn whatever lessons the activity is designed to teach, that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, and that the views of the individual speaker are not erroneously attributed to the school. Hence, a school may, in its capacity as publisher of a school newspaper or producer of a school play, "disassociate itself," *Fraser*, not only from speech that would "substantially interfere with its work . . . or impinge upon the rights of other students," *Tinker*, 393 U.S., at 509, but also from speech that is for example, ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences. In addition, a school must be able to take into account the emotional maturity of the intended audience in determining whether to disseminate student speech on potentially sensitive topics, which might range from the existence of Santa Claus in an elementary school setting to the particulars of teenage sexual activity in a high school setting. A school must also retain the authority to refuse to sponsor student speech that might reasonably be perceived to advocate drug or alcohol use, irresponsible sex, or conduct otherwise inconsistent with "the shared values of a civilized

social order," *Fraser* supra, at _), or to associate the school with any position other than neutrality on matters of political controversy. Otherwise, the schools would be unduly constrained from fulfilling their role as "a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment." *Brown v. Board of Education*, 347 U.S. 483, 493 (1954).

Accordingly, we conclude that the standard articulated in *Tinker* for determining when a school may punish students expression need not also be the standard for determining when a school may refuse to lend its name and resource to the dissemination of student expression. Instead, we hold that educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.

This standard is consistent with our often expressed view that the education of the Nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges. See, e.g., *Board of Education of Hendrick Hudson Central School Dist. v. Rowley*, 458 U.S. 176, 208 (1982); *Wood v. Strickland*, 420 U.S. 308, 326 (1975); *Epperson v. Arkansas* 393 U.S. 97, 104 (1968). It is only when the decision to censor a school-sponsored publication, theatrical production, or other vehicle of student expression has no valid educational purpose that the First Amendment is so "directly and sharply implicated," as to require judicial intervention to protect students' constitutional rights.

STATEMENT OF JAMIE B. FOOTE

Petitioner and Witness for the Plaintiffs

My name is Jamie Foote. I am seventeen years old and a senior at Smallville Public High School. I am serving as Student Council President at Smallville. I was elected president in a close race at the end of my junior year. My main opponent for Student Council President was Jessie Goode. Jessie's (brother/sister), Chris, was elected Secretary of the Student Council.

Both Goodes, along with some other students, ran on a platform supporting School Board Policy 707 ~~and other actions promoting religion. The Goodes also advocated setting aside a moment of silence each morning to allow students, who wish, to have a time for voluntary, silent prayer. Their platform advocated placing a copy of the Ten Commandments on the wall in each classroom. They also called for a strict dress code, including banning young men from wearing earrings.~~

I did not want to be President just to oppose Policy 707. Sure I support repealing the policy, and I believe school facilities should be available for responsible dances, but there are many other concerns for the student body. On the other hand, I did strongly oppose the Goode platform. ~~I vigorously support the First Amendment, including freedom of religion. But schools should not be forced to promote the Goode's religious beliefs. Mandatory moments of silence for prayer have no place in the public schools. A person may say a prayer at anytime, and I'm sure many, students do, especially before tests. If a student wants to carry around a copy of the Ten Commandments, or even a Bible, that's his or her right, but the school should not advertise the Ten Commandments by hanging them in the classrooms. If the school hangs the Ten Commandments, should the school be required to hang other religious messages from the Moslems' Koran or the Hebrew Talmud, or what about a message from the Church of Satan or an Atheist Creed?~~ My differences with the Goodes on these various issues were apparent in the Student Council election campaign, but after the election I thought the issues would be put behind us as we began planning for the next school year. Maybe the Goodes and some of their supporters are still upset at my victory. I know they were particularly upset that I received support from some of the 'heavy metal' crowd. I had stood up for their right to have multi-colored spiked hair, and the right of guys to wear earrings if they desire. I was only supporting freedom of expression as protected by the First Amendment.

I am not a rebel rouser, but I am not going to back down to the Goodes or the ~~Bible-toting~~ School Board members. Look, we began the school year with sincere intentions and great plans.

During the summer, I called a meeting of some of the Student Council members, and other interested students, to make plans for the next school year. I had several items for the group to consider. When I ran for president, I pledged to at least give all groups and individuals a voice, to have their complaints and suggestions for changes heard. So our group discussed several items, including changing the school dress code, changing

the school team's name from "Rebel" and our Rebel emblem from the "Stars and Bars" to a name and symbol that might be less offensive to some of our students, and modifying the grade point average requirement to be eligible to participate in extra-curricular activities. We appointed subcommittees to study these issues. We agreed to immediately seek support from the school administration for helping to establish a Student Against Driving Drunk (SADD) chapter at Smallville High. The group also agreed to ask the principal permission to have our homecoming dance at the high school. I said I would make an appointment to see Principal Arder about the SADD chapter and the homecoming dance. Several students volunteered to go with me.

We met with Principal Arder in September. While Arder supported our SADD chapter, Arder firmly opposed the dance proposal. Arder even read us Policy 707. When I said the policy was unfair, Arder told me that the policy is the rule, and only the School Board could change the rule. ~~I told Arder that some of the School Board members supported the policy because they think dancing is sinful. Arder said everyone, including Board members, have the right to their beliefs. Angrily, I said the School Board did not have the right to impose their religious beliefs on the rest of us.~~

Myself and other students began a petition drive to repeal Policy 707. We got hundreds of signatures from students, parents, and others around Smallville. We never did anything to disrupt school. We passed the petitions around before and after classes, in the cafeteria, and on school buses. Some students even went uptown and got signatures from persons in the business area of town.

Principal Arder called me to the office and told me the petition drive was causing disruptions in school. According to Arder, some teachers had complained about students passing petitions around at the beginning of their classes. I informed Arder that we were exercising our constitutional right to petition our School Board for a change in policy. Arder said I was pushing this constitutional rights stuff too far. Arder said (he/she) has to maintain an orderly educational environment where students can learn and teachers can teach without disruption. Arder threatened to restrict our petition drive to a table in the cafeteria. I told Arder that I thought the restriction was unconstitutional. It would be like letting us use the auditorium for a speech, but not letting us use microphones and speakers. Arder said I had much to learn about rights with responsibilities. Then Arder sent me back to class.

After school, I called some students about meeting to discuss Arder's threat. Some of the students, along with some parents, met at John Scopes' place to discuss our next step. We decided that we had enough signatures to present to the School Board, and we agreed to make the presentation at the Board's October meeting.

Several supporters of repealing Policy 707 showed up at the Board meeting. Soon after the meeting was gavelled to order, I raised my hand. The Board President, J. R. Moses, acted as though (he/she) did not see me. I started waving my arms, but I still was not recognized. Then I yelled out, "President Moses, I have

some petitions. We're not going away until we're recognized." Moses used his gavel again, I stopped shouting and Moses said something about me not being on the Board agenda. No one told me that I had to make a formal request to speak. When I complained about not having a chance to speak out, President Moses threatened to have me removed. While I was exchanging words with Moses, Pat Foote, my (mother/father), approached the standing microphone. (She/He) asked President Moses if (she/he) might be allowed to speak.

After some formal parliamentary maneuvering, Moses recognized my (mother/father). Wow, I was proud of my (mom/dad). Most people in Smallville don't know this, but my (mother/father) used to be in a traveling rock band, the Wilborns. My (mother/father) held up the petitions and handed them over to President Moses. With strong sincerity, (she/he) pleaded for the Board to repeal Policy 707, and to let us have our first ever homecoming dance at school. (She/He) made so much sense. At the conclusion of (his/her) remarks, many in the audience applauded and cheered. Some yelled for the Board to vote for the repeal. The Board went on with other business, and then moved to some sort of executive session. Most of us left the meeting disappointed that the Board had not acted.

We were resolved not to give up. Smallville went wild about our efforts. People seemed very opinionated about the "dancing at school" issue. We mainly heard from those favoring a change in the policy. But I know some residents were very critical of our efforts to change the policy. ~~One of my friends, Holden Caulfield, told me that Reverend Purdy prayed for the souls at Sunday service of those sinners working to change Policy 707. Caulfield said J. R. Moses was right there saying "amen" when Purdy prayed for our redemption. This is another case of certain community leaders trying to impose their old fashioned religion on the rest of us.~~

I attended the November Board meeting. ~~The ministers from the Gospel Alliance packed the meeting with church members supporting Policy 707. I expected a pretty big turn-out because I knew the ministers had been asking their members to attend the Board meeting and show support for the Gospel Alliance's efforts to keep Policy 707. I even went to Reverend Braggert's church the Sunday before the Board meeting. The Goodes go to that church. I was sitting in the back of the church, but I could hear everything said from the pulpit. I heard Braggert preach about the trouble and troublemakers in Smallville. Braggert warned that servants of sin were trying to force their ways into Smallville public schools. Braggert went on and on shouting about dancing not having any place at Smallville High, and that dancing leads to immoral conduct the ways of the devil: drunkenness, drugs, even teenage pregnancy. Most of the things Braggert talked about were presented at the Board meeting in some position paper from the Gospel Alliance.~~

~~The Board members seemed to be hand in hand with the Gospel Alliance and all of their followers.~~ I sure was glad Professor Tribe spoke out at the Board meeting. With Professor Tribe's help, we became more determined than ever to change the "no dancing" policy.

Our next move was to submit a request to the Board to rent the school cafeteria for a SADD fundraising dance. The Board denied our request claiming that the use of the school cafeteria for a dance would violate Policy 707. This seemed really unfair since the Board has allowed other groups ~~like YAC (Youth Alliance for Christ)~~, to rent school facilities for meetings and things after school.

Professor Tribe returned and addressed the board at the December meeting challenging them, claiming that they were not applying the school rental-use policy fairly or equally. Tribe made so much sense that the Board changed their entire policy to a No-Use Policy for all groups.

We were not giving up. ~~We live in a democracy, and we were trying to change the religious dictates of the School Board and their obedient servant, Principal Arder.~~ I confronted Arder once again and asked for assistance in sponsoring our SADD fundraising dance. I told (him/her) how we could get more young people involved in SADD if we had the dance at Smallville High.

Arder went off on me yelling about Policy 707, and how I was trying to deliberately provoke (him/her). (He/She) also complained that we were causing too many disruptions in the school. According to Arder, we were ruining peaceful times in Smallville. (He/She) told me if I'd drop the dancing drive, others would follow my lead, and Smallville could return to peace and quiet, and we could all get back to the basics at school.

~~Of course I disagreed with Arder, but instead of arguing while (he/she) was in a state of rage, I decided to express my side by writing a "Letter to the Editor" of our school newspaper, the Smallville High Times~~

~~When my letter didn't appear in the next issue of the paper, I went to the student editor, Leslie Smart, and asked her why it was left out. She said Principal Arder reviews all issues of the newspaper and Arder removed my letter. When I confronted Arder about (his/her) heavy handed censorship, Arder informed me that (he/she) had a responsibility to review school sponsored functions, even our school newspaper, to make sure the content is appropriate for Smallville students. I said, "That's unconstitutional. You're denying us freedom of the press." Arder bragged that this time even the U.S. Supreme Court agrees with (his/her) editorial power. Arder told me to look up the case if I didn't believe (him/her). Professor Tribe helped me get a copy of the case. I read it, and believe me, all of the Justices would not agree with Arder I'm sure of that.~~

I've learned a lot from this experience and our efforts. Professor Tribe has helped me better understand our rights and responsibilities. Terry gave me my own pocket-sized edition of the U.S. Constitution. With the help of others, including our parents and Tribe, I know we can take our case to court to help secure justice and protect the rights of all at Smallville High.

STATEMENT OF PAT T. FOOTE

Witness for the Plaintiff

My name is Pat T. Foote. I am a single parent. I live with my seventeen year old (son/daughter), Jamie, at 3115 Rolling Stone Drive in Smallville. I work at Muddy Waters, a local bar and grill.

Jamie is a senior at Smallville High. I'm very proud of Jamie. Jamie's been an honor roll student, and now is serving as Student Council President. I'm not saying Jamie's perfect. (He/She) gets high spirited and real charged up when (he/she) thinks anyone is trampling on our fundamental freedoms. Sometimes I have to get on Jamie to calm down and take it easy. I tell (him/her) that you can't change the world overnight.

I do support Jamie and the other students in trying to change Policy 707. I remember when Jamie and some of the other students met over at our place this past summer. I heard them discuss plans to ask about changing the dancing policy. Then really wanted to have their homecoming dance at Smallville. I know a lot of parents would like to see the kids stay at Smallville High for the homecoming dance. We worry when they have to drive clear to another county just to find a hall or place for their dance, and then it's not even chaperoned.

Jamie and the other students were real disappointed when Principal Arder turned them down. Jamie was not going to sit still. (He/She) helped to start a petition drive to try to get the School Board to change Policy 707. I was one of the first to sign the petition. I even took one of the petitions down to work. Many of the Muddy Waters customers signed it. ~~We have live music at work on weekends, and some of the customers dance. They know there's no connection between dancing and doing bad. Those are the thoughts of the ole time religion group, the Gospel Alliance, and they sure have the School Board under their spell.~~

I really wasn't going to get all involved in this issue, but I did agree to go with Jamie to the October Board meeting. Jamie started out real proper, being quiet and raising (his/her) hand. The Board President, J. R. Moses, just seemed to ignore (him/her). Jamie finally had to yell out to get Moses' attention. I thought they were going to order Jamie thrown out. I was very upset with the way Moses was treating Jamie, so I went to the microphone to give (him/her) a piece of my mind. I tapped the microphone to make sure it was on and asked to be recognized. After they passed some special motion, Moses informed me that I could speak.

I told them I was Jamie's parent. I also let them know I was a taxpayer and that I had worked hard in helping to pass some of our school tax and bond levies. I held up a whole hand full of signed petitions. I placed the petitions in front of Moses and told the Board that several hundred Smallville residents had signed the petitions to repeal Policy 707. I pleaded with the Board to give these young people a chance to celebrate their homecoming by having a dance at Smallville High. I said I and other parents would be happy to help plan and chaperone the dance. Several parents in the audience nodded in agreement. I told them about parents' concerns about our children driving so far for their off campus dances. I also said it was unfair that the school

gym could be used for basketball ~~games and some of those Gospel Alliance Youth Fellowship rallies~~, and yet our good students could not ~~even~~ have a ~~clean, wholesome~~ dance in the gym. Several people in the audience applauded my comments, but we didn't seem to change any minds of the School Board members. Some of the Board members said students could go to dances off campus, like over at the community center. I told them the community center is much too small for a big dance. Besides with only one center in Smallville, it seems like it is always reserved.

I also told the Board members that I thought the school administration was unreasonable in refusing to allow students to post or make announcements about after school dances. I remembered last year when the students wanted to let everyone know where the homecoming dance was going to be held, Principal Arder informed Jamie and the student homecoming committee that school premises may not be used to promote dancing, even dances off-campus. President Moses said the Board had directed Principal Arder to deny all requests about making announcements of after school dances. Moses said, in the opinion of the School Board, Policy 707 implied that school premises should not be used to promote or encourage dances, on or off campus. ~~I'll tell you, this Board goes out of its way to follow the religious dogma of the Gospel Alliance.~~

~~I think the Board members are afraid of the political clout of the Gospel Alliance. Even if they wanted to repeal Policy 707, they know what happened to Terry Tribe when Tribe spoke out against 707 when (he/she) was a School Board candidate. If the Gospel Alliance had their way, they would probably shut down Muddy Waters.~~

Look, all of this talk about rock music causing teens to become mean monsters, sex fiends, and dope heads is sheer hysteria. I used to play in a rock band. We even traveled around the state doing engagements. Sure there are people in rock bands who use and abuse drugs and alcohol. There have also been some wild happenings at rock concerts, but bad things happen everywhere, ~~even with Bible-toting, gospel-spouting churchgoers. We have all heard the news reports about many church leaders who have had their own personal problems with drugs, sexual encounters, and outright cheating and fraud. Immoral conduct goes far beyond the boundaries of Metropolis and rock music. We lived in Metropolis before moving to Smallville. Believe me, the same problems, from alcohol and drug abuse to teenage pregnancy exist right here in Smallville, dancing or no dancing.~~

~~I know that this School Board supports Policy 707 because they believe dancing is the devil's doings. They and the Gospel Alliance claim dancing is sinful. Jamie and Professor Tribe have taught me that it's unconstitutional for a public school to force religious views on others.~~

Policy 707 should be repealed. We tried other channels to change the policy, but the School Board has not been responsive. I have been thinking about trying to start a PADD (Parents Against Driving Drunk) chapter at Smallville. I thought we could have a kick-off fundraising non-alcoholic party at Smallville High, but

with this new No Use Policy for outside groups, we wouldn't even be able to use the school facilities for this worthwhile initiative.

The School Board's actions have been unreasonable, and we had no alternative but to seek relief in court. We sure hope this court will help our young people see that the Constitution also applies to them.

STATEMENT OF TERRY TRIBE

Witness for the Plaintiff

My name is Terry Tribe. I live at 77 Cambridge Place in Smallville. I am on staff at the State University School of Law. I teach courses in constitutional and school law. I have a master of science degree in educational administration and social foundations of education, and a J.D., (i.e., Doctor of Jurisprudence) degree as well. I have written and published several works on the First Amendment, including "~~The Establishment Clause and the First Amendment~~" and a recent law review article, "~~Recent Legal Trends Involving Religious Issues in Public Schools.~~"

I have been interested in Smallville's public school system. My keen interest and observations led me to believe that the Smallville public school's were far behind modern educational systems. The School Board seemed fixed on maintaining old parochial traditions, ignoring the fact that Smallville's youth can be the leaders of the twenty-first century. My concerns for improving our public schools became the focus of my campaign as a candidate for the Smallville School Board.

~~Even before my campaign, I was well aware of the influence of certain religious elements in Smallville public schools.~~ In addition to teaching at the law school, I also teach some school law graduate courses at the State University School of Education. ~~Some of the Smallville teachers who enrolled in my school law class told me about religious practices in the schools, like morning prayers being said over the public address system, members of the Gospel Alliance offering free Bibles to students in school, invocations and benedictions being given at school sponsored functions, like graduation ceremonies.~~

I decided to offer my services as a substitute teacher to the Smallville School District. I thought I could get an inside view of the school system. I probably substituted a dozen or so times during the school year about three years ago. I taught at all grade levels, elementary, middle and high school. ~~I noticed religious practices at all levels. One elementary school began with a moment of silence with the principal urging everyone to use the moment for prayer. At one of the middle schools, one of the pastors from the Gospel Alliance and some high school students who are members of Youth Alliance for Christ, spoke to the students in an auditorium session urging the young people to resist the temptations of drugs, alcohol and premarital sex. The students were urged to form a YAC chapter at the middle school, and the high school students stood at the exits of the auditorium and offered Bibles to students as they left. During my substituting experience, I also noted nativity scenes being used in school displays during December, and I also observed ministers from the Gospel Alliance giving the invocation and benediction at a National Honor Society ceremony and at the graduation ceremony. I am a great believer in religious freedom, but religious favoritism has no place in our public schools.~~

I saw too much emphasis on simplistic preaching and blind obedience to authority, and not enough nurturing of critical thinking skills in the Smallville school system. As a concerned taxpayer and professional educator, I decided to seek election to the School Board. So I filed as a candidate for the Smallville School Board, and began an active campaign.

~~Some of the local churches sponsor "candidates' forums" and invite School Board candidates to speak and answer questions. I felt I was at a disadvantage since many members of the current School Board are active in the local churches. I am sure I was considered an outsider since I did not belong to any church in Smallville. Once in a while, I attend and sometimes speak at the Unitarian Thomas Jefferson Fellowship near the university campus, but I'm not a regular churchgoer.~~

~~At one of the candidates' forums attended by J. R. Moses, Lois Lane, and myself, we were asked our position on Policy 707 and how we felt about school-sponsored dances in general. Moses and Lane quickly stated their continued support for 707 and Moses talked about the problems caused by dancing, and said the public schools should not be contributing to these problems by sponsoring dances. Moses received many "amens" from the audience as he/she deplored the evils of dancing.~~

My turn to respond was next. I took a swallow and deep breath, and although I knew the audience would probably not be receptive as I expressed my opposition to Policy 707. I said I respected the differences of opinion between some School Board members and myself, and I believed we could disagree without being disagreeable. I informed the audience that I felt Policy 707 was not a major issue in the campaign, but if I were asked to vote on repealing 707, I would vote to change the policy. I am not sure if the school should put much time in planning or sponsoring school dances, but I certainly do not believe we should have a blanket prohibition on permitting the use of school facilities for dances by responsible groups, like letting the SADD chapter have a fundraising dance. ~~When pressed by someone in the audience who asked if I was supporting the devil's devious ways, I said I thought the anti-dancing policy tended to favor certain religious beliefs, and schools should not be supporting one religious belief over another, or over those who have no religious preference. I then got carried away and informed the audience that other religious practices, like morning moments of silence for voluntary prayer, had no place in our public schools. Schools should not support religious practices, such action amounts to a violation of the establishment clause of the First Amendment of the U.S. Constitution. I could see from the expression on many faces in the audience, I was speaking heresy.~~

I am sure my strong adherence to constitutional principles cost me a victory in the election. ~~The Gospel Alliance members are strong voters and the Alliance issued kind of a report card on where the candidates stood on such issues as dancing on school premises, voluntary prayer in school, and equal access of school facilities for all groups including religious clubs.~~ My views were noted along with the other candidates. I may have lost the election, but we may yet win the war for respecting the Constitution.

I continued to maintain an interest in the school system, and I have worked for passage of the school tax and bond issues. I am still disturbed by many of the Board's policies. The "no dancing on school premises" controversy did not surprise me when I heard about it.

Soon after the conflict became public, I contacted the Foote family to offer my assistance in helping the group of concerned students and parents to develop a plan of action. We met and I was asked to make a statement at the November meeting. I followed proper procedure and asked to be placed on the Board agenda.

~~The Gospel Alliance group packed the Board meeting. Reverends Braggert and Purdy delivered a powerful position paper to the Board members clearly stating the Alliance's support of Policy 707. My experience as a school board candidate demonstrated the power and political clout of the Gospel Alliance. They certainly have influence with this School Board. After Braggert and Purdy spoke, I was recognized.~~

~~I told the Board that, in my opinion as a constitutional scholar and with knowledge of establishment clause controversies, this "no dancing" policy clearly favors certain religious beliefs. I referred to the Gospel Alliance position paper to support my point. I said Policy 707 is a violation of the "establishment clause" of the First Amendment. There were some "boos" from the audience, others applauded. President Moses said that Smallville is a conservative community with strong religious beliefs. Moses said there is nothing wrong with religion influencing public policy. After all, we have laws making murder a crime and the Ten Commandments also state "Thou Shall Not Kill," does that mean our criminal laws violate the establishment clause, Moses asked. Before I could answer, Moses went on saying we had all better hope and pray that God is never separated from our schools and community. I told Moses that his logic was warped, but I didn't argue with (him/her). You can't reason with religious fanatics.~~

Principal Arder ~~also~~ spoke at the meeting. Arder discussed all of the problems that would accompany permitting dances on school premises. Arder also suggested that public school authorities have enormous power and that the Supreme Court supported their powerful position. Arder discussed the majority opinion of the U.S. Supreme Court in *New Jersey v. T.L.O.* dealing with searches and seizures in public schools, and the *Hazelwood East v. Kuhlmeier* case concerning control over school-sponsored publications, like school newspapers. These are very controversial decisions, but more importantly, they have nothing to do with dancing on school premises. ~~In most of the recent "establishment clause" cases, the Supreme Court has struck down religious practices in our public schools. In *Wallace v. Jaffree*, the Court ruled that a law authorizing a one minute period of silence "for meditation or voluntary prayer" in public schools is unconstitutional. The Court concluded in *Stone v. Graham* that posting of the Ten Commandments in public school classrooms violates the establishment clause and is therefore unconstitutional. In *Edwards v. Aguillard*, Justice Brennan declared that a Louisiana law requiring the teaching of 'creation science,' along~~

~~with evolution, was just a sham to try to force the teaching of the biblical story of creation in public schools. This sham was also declared unconstitutional. The cases and rulings go on and on. The highest court in the nation has made it clear, any practice that favors or promotes religion in public schools is unconstitutional. As a matter of act, in *Lemon v. Kurtzman*, the Court suggested that cases involving establishment clause controversies may be resolved by examining the answer to three questions: First, does the government action have a secular purpose? Second, does the government action advance or inhibit religion? Third, does the government action create an excessive entanglement with religion? A yes answer to any of these questions means the action violates the establishment clause and is therefore unconstitutional.~~

~~—————Apply the *Lemon* test (i.e., purpose, effect and entanglement) to Policy 707. The purpose and effect of the "no dancing" policy is supporting the anti dancing, religious beliefs of certain churches, like members of the Gospel Alliance. Maintaining the "no dancing" position has caused the School Board to entangle itself in reversing the school's long-standing Rental Use Policy to a No Use Policy.~~

When I tried to help the SADD chapter gain permission to rent the school cafeteria for a fundraising dance, we were turned down. When I confronted Moses with the fact that the Board was not giving equal access to the SADD chapter as they did other groups, the Board maneuvered and voted to end the entire Rental Use Policy. This abrupt policy change is intended to maintain Policy 707 and keep dancing off school campuses. The quick and secretive manner in which this was done, and the No Use Policy itself, violates due process and equal protection as guaranteed by the Fourteenth Amendment of the U.S. Constitution.

~~We are a nation of vast and varied religious beliefs. The framers of our early state constitutions, the United States Constitution, and our federal Bill of Rights recognized the explosive problems that could occur if one religion was given government favoritism over another. Thomas Jefferson's "Bill for Religious Freedom" declared "no man shall be compelled to request or support any religious worship, place, or ministry whatsoever." Even the Constitution prohibits religious tests. Article VI concludes, "no religious test shall ever be required as a qualification to any office or public trust under the United States."~~

~~I am confident this court will uphold this historic separation of church and state and declare Policy 707 unconstitutional.~~

STATEMENT OF J. R. MOSES

Defendant and Witness for the Defense

My name is J. R. Moses. I am a life long resident of Smallville. I am completing my third term as a member of the Smallville School Board. Currently, I am serving as President of the School Board. In addition to my duties on the School Board, I own and operate the PTL real estate agency in Smallville.

We are real proud of the Smallville school system. We're like one big family. Oh, we have our squabbles like any family, but we seem to always come together to work in the interest of providing quality education for our youngsters.

I became aware of this dancing controversy when Principal Arder contacted me about Jamie Foote and some other students requesting permission to have a homecoming dance at Smallville. I was pleased that Principal Arder met with the students to carefully explain why the request would be denied. Policy 707 expressly prohibits dancing on our school premises. Smallville has had this policy for as long as I can remember.

A short time later, Principal Arder called me and informed me that Foote and some other students were circulating petitions to present to the School Board calling for us to repeal 707. We've had petitions before. I remember when some of the elementary students gathered signatures to have junk food in the school lunchroom. I wasn't worried about the petitions, although Principal Arder said some of the efforts were causing some distractions and disruptions. Arder assured me that (he/she) would take care of the situation.

Foote and several students, along with a few parents, showed up at the October meeting. I reviewed the agenda and noticed there was no request from Foote to address the Board. We place a notice in the local newspaper reminding persons who have business before our Board to formally request a place on our meeting agenda.

Soon after the meeting began, Jamie Foote started jumping up and down, shouting to be recognized. I gaveled the meeting to order and was about to have young Foote removed until (he/she) calmed down; but before I could act, Pat Foote got to the microphone and asked to be recognized. (He/She) was very courteous. (He/She) presented the signed petitions to us. We listened to (his/her) pleadings on behalf of those students wanting school dances. We thanked (him/her) for (his/her) comments, and we discussed the issue in our executive session. We did not take any action on 707 at the meeting, but I did ask Principal Arder to prepare a report on the issue at our November meeting.

It didn't take long for word to spread about the petition request and our decision to address the issue at our November meeting. This issue seemed to be the topic of conversation just about everywhere, especially after the news media jumped on the issue.

With my real estate business, I am well aware of many happenings in Smallville. Some of my customers told me about a lively discussion uptown at Muddy Waters with people shouting to repeal 707 ~~and to let the saints dance in heaven. I guess the spirits let them get carried away. I know my own minister, Reverend Purdy even discussed the issue at our Sunday services; although I have to admit, I wasn't really paying close attention.~~

Several residents spoke at the November meeting, including ~~Reverends Purdy and Braggert. Purdy and Braggert are leaders of the Gospel Alliance, and they presented each of the Board members with a position paper favoring Policy 707. We thanked the Gospel Alliance for their concern.~~

~~We next heard from Terry Tribe. Tribe reminded everyone about being a former candidate for School Board. Tribe claimed that (he/she) lost the election because (he/she) supported repealing Policy 707. (He/She) accused the Gospel Alliance of campaigning to defeat (him/her). Then Tribe started preaching about Policy 707 advancing the religious beliefs of certain churches. Tribe said the policy establishes a preference for certain religious practices over those not opposed to dancing; therefore, our policy is unconstitutional. I finally got a word in and told Tribe I was raised to respect Commandments like "Thou Shall Not Kill" and "Thou Shall Not Steal," so does that mean that the government should not have laws against robbery and murder because such laws advance certain religious beliefs? I went on to remind Tribe that the highest civil court in the land, the Supreme Court, opened with the amonition, "God Save This Honorable Court." I told Tribe if (he/she) had (his/her) way, we would probably be forced to do away with our December holiday display in the town square because we include a nativity scene. I went further and said we had all better worry if we removed our moral convictions from our daily actions. I do get upset about attacks like Tribe's. After all, the Gospel Alliance has supported civil rights legislation and laws to help the homeless. Some of our lawmakers, who voted for those laws, are from Gospel Alliance churches. Does this mean those laws violate the establishment clause of the Constitution? Let's be sensible about all of this. Do we turn all government functions over to people who have no religious or moral beliefs? I pray not.~~

Quite frankly, I believe Tribe is responsible for stirring up this controversy. Tribe is still bitter about losing the School Board election. (He/She) just does not seem willing to abide by the will of the community. It's like the dancing issue. If people don't like Policy 707, let them take their case to the ballot box and elect a new School Board. This complaint should not be taking up valuable court time.

We also heard from the Student Council Secretary, Chris Goode. (She/He) presented petitions supporting Policy 707. Chris also shared some horror stories about some school dances (he/she) attended while visiting relatives in Metropolis.

I also had Principal Arder address the dancing issue at the November meeting. Arder informed us about the disruptions that had been caused at school by all of the controversy over the dancing issue. Arder also told

us about the additional expenses we would have to face if we permitted dancing on school premises such as staff supervision, extra custodial services, etc. Arder described the problems other schools faced with dancing on school campuses such as illegal drinking and drug use, sexual encounters, fights and near riots. Arder also talked about the U.S. Supreme Court recognizing the need for public school authorities to maintain control and provide for a safe learning environment for our young people.

After hearing from everyone and thoroughly discussing this issue, Board member Lane moved that the Board take no action; therefore, maintain Policy 707. Her motion passed unanimously.

Tribe was not going to give up. (He/She) continued to exploit the situation by getting the Footes and others to keep pushing the issue. Just before the end of November, the Board received a request from the SADD chapter to rent the school cafeteria for a SADD fundraising dance. Foote presented the request. The Board formally rejected the request explaining that Policy 707 expressly prohibits any and all dances on school premises.

At our next Board meeting, Tribe showed up again and demanded that the Board reverse its decision and grant the rental request to SADD. Tribe tried to suggest that we were being unfair in permitting some groups to rent the school facilities, but denying this request just because dancing is involved. Other groups had never asked us to take action that would violate our school policies. Our able and competent School Board legal counsel had advised us that Tribe might be maneuvering us into a lawsuit. Concerned about possible litigation, we took up Tribe's request on behalf of SADD in executive session. Following the executive session, we returned to the open meeting and voted unanimously to temporarily stop all "outsider" rentals of school facilities. We announced that we would take the matter up again at our January Board meeting.

At the January meeting, Principal Arder described on going problems with rentals to outside groups. This was not the first time we had heard about outside groups causing problems and extra costs to the school system. After some discussion and an acknowledgement that outsiders could go elsewhere to find facilities, we voted to repeal our Rental Use Policy and replaced it with Policy 1160, formally ending all "outsider" rentals. School facilities would only be available for school-sponsored events.

Principal Arder later told me that Jamie Foote wanted the school to sponsor the SADD fundraising dance. Properly so, Principal Arder once again reminded Foote that Policy 707 prohibits the use of school facilities for dancing. SADD could have a dance elsewhere. ~~Arder also told me about this libelous letter that Foote wrote to the editor of the school newspaper. Wisely, Arder decided to not print the letter in the newspaper.~~

I certainly hope we can resolve this dancing controversy quickly. We need to focus our attention on important educational issues that will improve our Smallville schools. We still consider Foote and all the other students as part of our big family. We just need to work together and stop this divisiveness.

STATEMENT OF CHRIS GOODE

Witness for the Defendants

My name is Chris Goode. I am a sixteen year old student at Smallville High. I am also this year's Student Council Secretary. I was elected last spring.

My brother, Jessie, was a candidate for President. Several of our friends, ~~who are also active in the Youth Alliance for Christ~~, joined us in running together for offices and as representatives on the Student Council. We ran as a team.

~~We really wanted to work for some positive changes at Smallville. For instance, some members of the Gospel Alliance had offered to purchase copies of the Ten Commandments to post in all the Smallville classrooms. It wasn't going to cost the district anything and certainly it could have a positive influence on some of the students. Some really need to be reminded. Young people are being destroyed by alcohol, drugs and violence. Believe me, dancing and all of the problems promoted by rock music, contribute to the downfall of our youth.~~

~~This whole business about keeping good, wholesome religious values out of our schools is ridiculous. Are we supposed to ignore our rich religious heritage and the importance of our religious traditions? Should we only let atheists run our schools and government?~~

~~— My parents are real active in church and politics. My mother showed me a resolution that the state party passed recognizing the United States as a Christian nation. The resolution quoted U.S. Supreme Court Justice O'Connor, who wrote a letter citing an 1892 Supreme Court decision that declared, "We are a Christian people, and the morality of the country is deeply engrafted upon Christianity." We need to renew our spiritual commitment.~~

~~— This effort by Jamie Foote and (his/her) followers to force the issue of dancing on the Smallville campus is the devil's doings. We do not need dancing at Smallville, and many other students agree with me. We've even gathered petitions supporting Policy 707.~~

I presented the Pro-Policy 707 petitions to the School Board at the December meeting. I also shared my views about the horrible problems I had experienced with school dances. While visiting relatives in Metropolis, I attended a high school dance with my cousin. Kids were getting drunk, smoking dope, and acting crazy. The music was deafening. You couldn't hear yourself think, and you certainly couldn't carry on a conversation. The words to some of the songs were vulgar and embarrassing. Some (guy/girl) with spiked, crazy colored hair and a long earring came over and said, "Hey babe, let's get down. I really want your sex." Gross me out. I saw two guys get into a fight because one slopped beer on the other. I told my cousin to take

me back to her place. Believe me, I would hate to have been the custodians assigned to clean that place up. I told the School Board that many of us did not want to bring those kind of problems to Smallville High.

~~Look, I think dancing is wrong and it's against our church's religious teachings, but if Foote and some other students are going to engage in sin, let them go to sin city, let them go elsewhere to dance. We should not be forced to support dancing at Smallville High. My family are taxpayers too.~~

If dancing is permitted on school premises, students are going to feel pressured to go. If parents oppose their children going to the dances, then you'll have big fights in the families. If you have dancing at school, it's like the school putting it's stamp of approval on dancing; and I don't think the School Board should be endorsing events that have no educational value and that will lead to serious problems.

Have you listened to some of the music or seen some of the obscene music videos. I mean, there are hit songs like "Heroin" and "Cocaine." What are we teaching our youth with these messages? Sex is openly promoted and many musical groups advocate violence, their concerts have even caused riots. Teenage suicide, pregnancies and drug and alcohol abuse are all influenced by this rock music craze. ~~I know the Gospel Alliance is trying to get the state legislature to pass a law to require warning labels on any record, tape, compact disc or music video that has lyrics advocating or encouraging concepts, like suicide, in a violent context or advocating or encouraging murder, morbid violence or the use of illegal drugs or alcohol. Will we have to have warnings at Smallville High? We may if we permit dancing.~~

Principal Arder has worked hard to maintain a high quality educational environment. Arder's decisions are not always popular. (He/She) has enforced our dress code, kept certain offensive things out of our school newspaper, and tried to maintain high standards. We should be grateful that Arder cares about the shaping of our moral conduct as well as our minds.

I sure hope this court recognizes our right to be free from the immoral influence of dancing. The public schools should not be forced to yield to ~~the devil's~~ dancing demands.

STATEMENT OF I. M. ARDER

Witness for the Defendants

My name is I. M. Arder. I am the principal at Smallville High School. I have been with the Smallville School District most of my adult life. I started as a classroom teacher. I became a coach and assistant principal at the high school about eight years ago. Four years ago I was appointed principal after Principal Gabler retired.

I have a bachelor of science degree in elementary education. I have a master's degree in educational administration from State University, and I've taken several post-graduate courses in education. As an administrator, I've had to take an interest in school law since it seems school districts are being sued so often. I have taken two graduate courses in school law, one when I was completing my masters, and more recently one taught by the education director of the bar association, a course entitled "Education and Individual Rights." I am currently chairing the School Law Committee of the State Association of Secondary School Administrators (SASSA). We have a SASSA School Law Newsletter, and we try to update administrators on recent developments in school law. Of course, most of my time is spent administering the day to day affairs at Smallville High.

In addition to supervising staff and students, I consider myself the instructional leader at Smallville. I also maintain a close working relation with the School Board. The size of Smallville allows us to know one another well and work together.

I could see this dancing controversy merging during last year's Student Council election campaign. I may have had my own personal preferences in the campaign, but I never get involved. Student Council elections are strictly up to the students. When Jamie Foote won, I figured (he/she) might be asking about having dances at the high school.

Sure enough. In September, Foote and some other students approached me about having a homecoming dance. I pulled out a copy of the Student Handbook and reminded them of Policy 707, which I read to them. I listened to their protests, but I told them the School Board set policy; and they would need to get the Board to change the policy. I do not have the power to violate School Board policy. You know we need to realize that we elect School Boards to govern our systems. As long as the School Board does not violate state or federal laws or constitutions, the Board has the power and duty to determine the direction of our school system. If people are dissatisfied with the direction or specific policies, they can lobby to persuade the Board to change direction, or they can work to elect a new School Board, that's the Democratic way. These decisions should not be dumped on our courts. I'm sure federal judges do not feel comfortable, or competent enough, to have to determine school policy. Yet, taking school cases to court seems to be at an epidemic level.

Speaking of the Democratic way, I did not oppose Jamie Foote and the other students' petition drive to repeal Policy 707. I did warn Foote that some of the students were getting carried away, disrupting classes passing around petitions, and in some cases, forcing students to sign. I suggested that the students could have a table in the school cafeteria to gather signatures during lunch. Foote became irate shouting that (he/she) had constitutional rights. I told Foote I had rights and responsibilities too, and I had to maintain a learning environment free of disruption; and if necessary, I would place limits on the petition drive. We didn't have any more serious problems with the petitions.

Foote and some supporters attended the October Board meeting. Jamie Foote became disorderly, but Pat Foote was recognized by the Board. (Mr./Ms.) Foote presented petitions to the Board calling for a repeal of 707. (He/She) also explained why some parents supported changing the "no dancing" policy. The Board did not take any action at the October meeting.

Before the next meeting, there was a lot of debate in Smallville over the dancing issue. The media really hyped up the story. Terry Tribe even got involved.

~~At the November meeting, several speakers addressed the issue. My minister, Sam Braggert, even spoke. Braggert and Reverend Purdy spoke on behalf of the Gospel Alliance. The Gospel Alliance has done a lot for our community, including the Smallville School District.~~

~~Professor Tribe also spoke. Tribe claimed that Policy 707 promotes a particular religious belief; therefore, it violates the establishment clause of the First Amendment. I listened but did not agree. As a matter of fact, as Tribe spoke I reached into my pocket for some change for the vending machine. I noticed that all of my coins had the motto, "In God We Trust." Doesn't the Constitution empower the federal government to coin all of our currency? Well, so much for strict adherence to the establishment clause.~~

When Tribe finished (his/her) remarks, President Moses asked me to speak. I said I had studied the issue carefully. First, the controversy was already causing too many disruptions at Smallville High. Furthermore, if the Board changed Policy 707 and permitted dancing, I could see many additional problems and costs. I made it clear that I feel dances invite trouble. Experience at other schools show alcohol and drug abuse, fighting, vandalism, and many other related problems that occur when kids get drunk or high. The sexual promiscuity promoted by "dirty dancing" leads to premarital sex, teen pregnancy, and in some cases, deadly diseases. I also informed the Board that after school dances would require additional staff for supervision, and we would have to have clean up crews, and hire security. I said students had enough distractions from school work-they do not need dances at school as a further distraction. I want to see students and staff back on task focusing on our instructional program.

I told the School Board that the U.S. Supreme Court has recognized the needs of public school officials to take necessary action to maintain an orderly drug-free, violence free educational setting that promotes

standards of civilized behavior. I said the Court had upheld the power of public school officials to use corporal punishment, to conduct reasonable searches of students, to discipline students for inappropriate and vulgar behavior, and to supervise and exercise control over school-sponsored functions, including school-sponsored newspapers and theatrical performances.

I said a pro-dancing position would create problems and contribute nothing to improving the quality of instruction at Smallville. The dancing issue is divisive, and if the school sides with dancing, it will further divide students, and even parents. I even found out one of my children signed Jamie Foote's petition.

The Board moved to maintain Policy 707. I hoped the issue of dancing at school was dead, but my wish was not granted.

Right after the Thanksgiving holiday, Foote and some SADD members submitted a written request to rent the high school cafeteria for a SADD fundraising dance. I did not even know about the request until Moses called me. The Board denied the request since granting it would violate Policy 707.

Moses asked me to prepare and make a report to the Board concerning the school rental policy at the next executive session following the December meeting. At the December Board's open public forum, Terry Tribe demanded that the Board grant the SADD chapter an opportunity to rent school facilities like any other outside group. Tribe was pushing hard for a confrontation. After hearing from some good students, like Chris Goode, the Board recessed and went into executive session.

President Moses asked me to report on the rental use policy. I said "outside" rentals usually ended up costing us. School equipment is often broken, bathrooms vandalized, toilet tissue stolen, and it is usually difficult to identify the culprits. I recommended abolishing all "outside" rentals. Use school facilities for school-sponsored functions. If we kept the open, outsider rental policy, sooner or later we would be confronted by some extremist groups, like the Ku Klux Klan, who would insist on their right to rent our facilities. Look what's happening with the dancing people! The Board agreed to avoid these potential conflicts by passing the No Use Policy, No. 1166.

Well, it still did not end. Foote next challenged me demanding that the school allow the SADD chapter to have a fundraising dance as a school-sponsored event. I again reminded Foote that the request could not be granted in light of Policy 707. I also informed (him/her) that the SADD chapter could find more positive, worthwhile ways to raise funds, ~~I even told Foote that the Gospel Alliance might make a contribution to the SADD chapter if they'd drop this dancing demand. Foote stormed off in anger.~~

Not long after, I read a letter Foote had written to the editor of the school newspaper. I told the editor, Leslie Smart, not to run the letter. The letter was offensive, and in my judgment, potentially libelous. Furthermore, publishing it would just stir up the students further and cause more disruptions that we certainly do not need.

When Foote found out about my decision, (he/she) threw another tantrum shouting about Constitutional rights, waving around a pocket sized Constitution. I tried to calmly explain why even the Supreme Court recognized my responsibility to supervise the contents of school-sponsored publications. My explanation didn't seem satisfactory to Foote.

Now here we are in court. I am sure this honorable court does not want to spend its time making daily decisions for our schools. For example, I made a young man change his sweatshirt the other day. The shirt had an outrageous illustration with a heavy metal band and the phrase, "Kill 'Em All." On that same day, I confiscated a Heavy Metal magazine and told another young man to pick it up in my office after school. Now should the federal courts have to make these types of decisions? I think not. These are decisions best left to the educational community and properly elected School Boards.

~~As far as the religion issue goes, the Supreme Court has upheld several practices even though some claim the practices violate the establishment clause. For example, tuition tax credits for taxpayers for school related costs in both public and private schools, or upholding bus transportation for students attending parochial schools. The line is not always clear, and we should not deny our religious roots. Even Justice Douglas acknowledged our religious heritage in *Zorach v. Clausen* concluding, "We are a religious people whose institutions presuppose a Supreme Being."~~

~~Terry Tribe claims that by not permitting dancing, we are advancing the religious belief that dancing is sinful. We do not permit birth control dispensers in our restrooms. Clearly some churches oppose the use of birth control. By not having the dispensers, are we favoring the anti-birth control religious beliefs? We could go on and on with other examples. The point is, dancing has no place on our school campuses. This is an educational decision, not governed by religious beliefs~~