TEACHING AMERICAN HISTORY

READING PACKET FOR OCTOBER 14TH, 2023 | THE FIRST AMENDMENT IN THE CLASSROOM

Core Reading 1: *West Virginia State Board of Education v. Barnette* (1943)
Source: *Religious Liberty*, edited by Ken Masugi

Just three years after the first "flag salute" case, Minersville School District v. Gobitis, *in which the Court ruled 7 to 1 that states could require participation by public school students in flag salutes even in the face of their religious objections, the Supreme Court reversed that decision in* West Virginia State Board of Education v. Barnette. *Writing for the Court in* Gobitis, *Justice Felix Frankfurter argued that the "ultimate foundation of a free society is the binding tie of cohesive sentiment. ... The flag is the symbol of our national unity, transcending all internal differences, however large...." New Justices Robert H. Jackson and James F. Byrnes helped form the majority in* Barnette, *along with Justices Hugo L. Black and William O. Douglas, who switched their votes. Justice Jackson wrote here for a 6–3 majority against the compulsory flag salute. Setting aside the reasoning in* Gobitis, *the Court concluded that the Fourteenth Amendment's Due Process Clause guarantees residents of states the First Amendment's protections of freedom of speech and free exercise of religion. Of particular significance in this decision is its application of the "discrete and insular minority" doctrine. The Court asserted its authority to protect minorities whose rights might otherwise be violated by the power of majorities.*

We include the dissent of Justice Frankfurter. We omit the concurring opinion of Justices Black and Douglas, in which they explain why their opinion changed. We omit as well the concurring opinion of Justice Frank Murphy and the dissenting opinion of Justice Owen Roberts.

MR. JUSTICE JACKSON delivered the opinion of the Court.

Following the decision by this Court on June 3, 1940, in *Minersville School District v. Gobitis,* the West Virginia Legislature amended its statutes to require all schools therein to conduct courses of instruction in history, civics, and in the Constitutions of the United States and of the state "for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of Americanism, and increasing the knowledge of the organization and machinery of the government."...

The Board of Education on January 9, 1942, adopted a resolution containing recitals taken largely from the Court's *Gobitis* opinion and ordering that the salute to the flag become "a regular part of the program of activities in the public schools". ... What is now required is the "stiff-arm" salute, the saluter to keep the right hand raised with palm turned up while the following is repeated:

> I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands; one Nation, indivisible, with liberty and justice for all.

Failure to conform is "insubordination," dealt with by expulsion....

Appellees, citizens of the United States and of West Virginia, brought suit in the United States District Court for themselves and others similarly situated asking its injunction to restrain enforcement of these laws and regulations against Jehovah's Witnesses. ... [The] religious beliefs [of the Witnesses] include a literal version of Exodus, Chapter 20, verses 4 and 5, which says:

> Thou shalt not make unto thee any graven image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; thou shalt not bow down thyself to them nor serve them.

They consider that the flag is an "image" within this command. For this reason, they refuse to salute it....

... The sole conflict [here] is between authority and rights of the individual. The state asserts power to condition access to public education on making a prescribed sign and profession and at the same time to coerce attendance by punishing both parent and child. The latter stand on a right of self-determination in matters that touch individual opinion and personal attitude.

As the present chief justice said in dissent in the *Gobitis* case, the state may "require teaching by instruction and study of all in our history and in the structure and organization of our government, including the guaranties of civil liberty, which tend to inspire patriotism and love of country." Here, however, we are dealing with a compulsion of students to declare a belief. They are not merely made acquainted with the flag salute so that they may be informed as to what it is or even what it means. The issue here is whether this slow and easily neglected route to aroused loyalties constitutionally may be short-cut by substituting a compulsory salute and slogan....

There is no doubt that, in connection with the pledges, the flag salute is a form of utterance. Symbolism is a primitive but effective way of communicating ideas. The use of an emblem or flag to symbolize some system, idea, institution, or personality is a short-cut from mind to mind. Causes and nations, political parties, lodges, and ecclesiastical groups seek to knit the loyalty of their followings to a flag or banner, a color or design. The state announces rank, function, and authority through crowns and maces, uniforms and black robes; the church speaks through the cross, the crucifix, the altar and shrine, and clerical raiment. Symbols of state often convey political ideas, just as religious symbols come to convey theological ones. Associated with many of these symbols are appropriate gestures of acceptance or respect: a salute, a bowed or bared head, a bended knee. A person gets from a symbol the meaning he puts into it, and what is one man's comfort and inspiration is another's jest and scorn.

... Here, it is the state that employs a flag as a symbol of adherence to government as presently organized. It requires the individual to communicate by word and sign his acceptance of the political ideas it thus bespeaks. Objection to this form of communication, when coerced, is an old one, well known to the framers of the Bill of Rights.

It is also to be noted that the compulsory flag salute and pledge requires affirmation of a belief and an attitude of mind. It is not clear whether the regulation contemplates that pupils forego any contrary convictions of their own and become unwilling converts to the prescribed ceremony, or whether it will be acceptable if they simulate assent by words without belief, and by a gesture barren of meaning. It is now a commonplace that censorship or suppression of expression of opinion is tolerated by our Constitution only when the expression presents a clear and present danger of action of a kind the state is empowered to prevent and punish. It would seem that involuntary affirmation could be commanded only on even more immediate and urgent grounds than silence. But here, the power of compulsion is invoked without any allegation that remaining passive during a flag salute ritual creates a clear and present danger that would justify an effort even to muffle expression. To sustain the compulsory flag salute, we are required to say that a Bill of Rights which guards the individual's right to speak his own mind left it open to public authorities to compel him to utter what is not in his mind.

Whether the First Amendment to the Constitution will permit officials to order observance of ritual of this nature does not depend upon whether as a voluntary exercise we would think it to be good, bad or merely innocuous. Any credo of nationalism is likely to include what some disapprove or to omit what others think essential, and to give off different overtones as it takes on different accents or interpretations. If official power exists to coerce acceptance of any patriotic creed, what it shall contain cannot be decided by courts, but must be largely discretionary with the ordaining authority, whose power to prescribe would no doubt include power to amend. Hence, validity of the asserted power to force an American citizen publicly to profess any statement of belief, or to engage in any ceremony of assent to one, presents questions of power that must be considered independently of any idea we may have as to the utility of the ceremony in question.

Nor does the issue, as we see it, turn on one's possession of particular religious views or the sincerity with which they are held. While religion supplies appellees' motive for enduring the discomforts of making the issue in this case, many citizens who do not share these religious views hold such a compulsory rite to infringe constitutional liberty of the individual. It is not necessary to inquire whether nonconformist beliefs will exempt from the duty to salute unless we first find power to make the salute a legal duty.

The *Gobitis* decision, however, assumed, as did the argument in that case and in this, that power exists in the state to impose the flag salute discipline upon school children in general. The Court only examined and rejected a claim based on religious beliefs of immunity from an unquestioned general rule. The question which underlies the flag salute controversy is whether such a ceremony so touching matters of opinion and political attitude may be imposed upon the individual by official authority under powers committed to any political organization under our Constitution. We examine, rather than assume

existence of, this power, and, against this broader definition of issues in this case, reexamine specific grounds assigned for the *Gobitis* decision. [In portions of the opinion that we omit, Jackson disputed Frankfurter's main claims in *Gobitis* about governmental authority, the Court's power, and the meaning of the Fourteenth Amendment's Due Process Clause.]

...

Lastly, and this is the very heart of the *Gobitis* opinion, it reasons that "National unity is the basis of national security," that the authorities have "the right to select appropriate means for its attainment," and hence reaches the conclusion that such compulsory measures toward "national unity" are constitutional. Upon the verity of this assumption depends our answer in this case.

National unity, as an end which officials may foster by persuasion and example, is not in question. The problem is whether, under our Constitution, compulsion as here employed is a permissible means for its achievement.

Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good, as well as by evil, men. Nationalism is a relatively recent phenomenon, but, at other times and places, the ends have been racial or territorial security, support of a dynasty or regime, and particular plans for saving souls. As first and moderate methods to attain unity have failed, those bent on its accomplishment must resort to an ever-increasing severity. As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be. Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing. Ultimate futility of such attempts to compel coherence is the lesson of every such effort, from the Roman drive to stamp out Christianity as a disturber of its pagan unity; the Inquisition as a means to religious and dynastic unity; the Siberian exiles as a means to Russian unity; down to the fast failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.

It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings. There is no mysticism in the American concept of the state or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority.

The case is made difficult not because the principles of its decision are obscure, but because the flag involved is our own. Nevertheless, we apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization. To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous, instead of a compulsory routine, is to make an unflattering estimate of the appeal of our institutions to free minds. We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the state as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us....

MR. JUSTICE FRANKFURTER, dissenting:

One who belongs to the most vilified and persecuted minority in history is not likely to be insensible to the freedoms guaranteed by our Constitution. Were my purely personal attitude relevant, I should wholeheartedly associate myself with the general libertarian views in the Court's opinion, representing, as they do, the thought and action of a lifetime. But, as judges, we are neither Jew nor Gentile, neither Catholic nor agnostic. We owe equal attachment to the Constitution, and are equally bound by our judicial obligations whether we derive our citizenship from the earliest or the latest immigrants to these

shores. ... It can never be emphasized too much that one's own opinion about the wisdom or evil of a law should be excluded altogether when one is doing one's duty on the bench. The only opinion of our own even looking in that direction that is material is our opinion whether legislators could, in reason, have enacted such a law. In the light of all the circumstances, including the history of this question in this Court, it would require more daring than I possess to deny that reasonable legislators could have taken the action which is before us for review. Most unwillingly, therefore, I must differ from my brethren with regard to legislation like this. I cannot bring my mind to believe that the "liberty" secured by the Due Process Clause gives this Court authority to deny to the State of West Virginia the attainment of that which we all recognize as a legitimate legislative end, namely, the promotion of good citizenship, by employment of the means here chosen....

The admonition that judicial self-restraint alone limits arbitrary exercise of our authority is relevant every time we are asked to nullify legislation. The Constitution does not give us greater veto power when dealing with one phase of "liberty" than with another, or when dealing with grade school regulations than with college regulations that offend conscience, as was the case in *Hamilton v. Regents* 293 U.S. 245. In neither situation is our function comparable to that of a legislature, nor are we free to act as though we were a super-legislature. Judicial self-restraint is equally necessary whenever an exercise of political or legislative power is challenged. There is no warrant in the constitutional basis of this Court's authority for attributing different roles to it depending upon the nature of the challenge to the legislation. Our power does not vary according to the particular provision of the Bill of Rights which is invoked. The right not to have property taken without just compensation has, so far as the scope of judicial power is concerned, the same constitutional dignity as the right to be protected against unreasonable searches and seizures, and the latter has no less claim than freedom of the press or freedom of speech or religious freedom. In no instance is this Court the primary protector of the particular liberty that is invoked....

When Mr. Justice Holmes, speaking for this Court, wrote that "it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts," he went to the very essence of our constitutional system and the democratic conception of our society. He did not mean that for only some phases of civil government this Court was not to supplant legislatures and sit in judgment upon the right or wrong of a challenged measure. He was stating the comprehensive judicial duty and role of this Court in our constitutional scheme whenever legislation is sought to be nullified on any ground, namely, that responsibility for legislation lies with legislatures, answerable as they are directly to the people, and this Court's only and very narrow function is to determine whether, within the broad grant of authority vested in legislatures, they have exercised a judgment for which reasonable justification can be offered....

... [T]he Framers of the Constitution denied ... legislative powers to the federal judiciary. They chose instead to insulate the judiciary from the legislative function. They did not grant to this Court supervision over legislation....

We are not reviewing merely the action of a local school board. The flag salute requirement in this case comes before us with the full authority of the State of West Virginia. We are, in fact, passing judgment on "the power of the state as a whole." Practically, we are passing upon the political power of each of the forty-eight states. Moreover, since the First Amendment has been read into the Fourteenth, our problem is precisely the same as it would be if we had before us an act of Congress for the District of Columbia. To suggest that we are here concerned with the heedless action of some village tyrants is to distort the augustness of the constitutional issue and the reach of the consequences of our decision....

... But the real question is, who is to make such accommodations, the courts or the legislature?

This is no dry, technical matter. It cuts deep into one's conception of the democratic process—it concerns no less the practical differences between the means for making these accommodations that are open to courts and to legislatures. A court can only strike down. It can only say "This or that law is void." It cannot modify or qualify, it cannot make exceptions to a general requirement. And it strikes down not merely for a day. At least the finding of unconstitutionality ought not to have ephemeral significance unless the Constitution is to be reduced to the fugitive importance of mere legislation. When we are dealing with the Constitution of the United States, and, more particularly, with the great safeguards of the Bill of Rights, we are dealing with principles of liberty and justice "so rooted in the traditions and conscience of our people as to be ranked as fundamental"—something without which "a fair and enlightened system of justice would be impossible." *Palko v. Connecticut,* 302 U.S. 319; *Hurtado v. California*, 110 U.S. 516. If the function of this Court is to be essentially no different from that of a legislature, if the considerations governing constitutional construction are to be substantially those that

underlie legislation, then indeed judges should not have life tenure, and they should be made directly responsible to the electorate....

What one can say with assurance is that the history out of which grew constitutional provisions for religious equality and the writings of the great exponents of religious freedom—Jefferson, Madison, John Adams, Benjamin Franklin—are totally wanting in justification for a claim by dissidents of exceptional immunity from civic measures of general applicability, measures not, in fact, disguised assaults upon such dissident views. The great leaders of the American Revolution were determined to remove political support from every religious establishment. ... Religious minorities, as well as religious majorities, were to be equal in the eyes of the political state. But Jefferson and the others also knew that minorities may disrupt society. It never would have occurred to them to write into the Constitution the subordination of the general civil authority of the state to sectarian scruples.

The constitutional protection of religious freedom terminated disabilities, it did not create new privileges. It gave religious equality, not civil immunity. Its essence is freedom from conformity to religious dogma, not freedom from conformity to law because of religious dogma. Religious loyalties may be exercised without hindrance from the state, not the state may not exercise that which, except by leave of religious loyalties, is within the domain of temporal power. Otherwise, each individual could set up his own censor against obedience to laws conscientiously deemed for the public good by those whose business it is to make laws....

The essence of the religious freedom guaranteed by our Constitution is therefore this: no religion shall either receive the state's support or incur its hostility. Religion is outside the sphere of political government. This does not mean that all matters on which religious organizations or beliefs may pronounce are outside the sphere of government. Were this so, instead of the separation of church and state, there would be the subordination of the state on any matter deemed within the sovereignty of the religious conscience. Much that is the concern of temporal authority affects the spiritual interests of men. But it is not enough to strike down a nondiscriminatory law that it may hurt or offend some dissident view. It would be too easy to cite numerous prohibitions and injunctions to which laws run counter if the variant interpretations of the Bible were made the tests of obedience to law. The validity of secular laws cannot be measured by their conformity to religious doctrines. It is only in a theocratic state that ecclesiastical doctrines measure legal right or wrong.

An act compelling profession of allegiance to a religion, no matter how subtly or tenuously promoted, is bad. But an act promoting good citizenship and national allegiance is within the domain of governmental authority, and is therefore to be judged by the same considerations of power and of constitutionality as those involved in the many claims of immunity from civil obedience because of religious scruples.

That claims are pressed on behalf of sincere religious convictions does not, of itself, establish their constitutional validity. Nor does waving the banner of religious freedom relieve us from examining into the power we are asked to deny the states. Otherwise, the doctrine of separation of church and state, so cardinal in the history of this nation and for the liberty of our people, would mean not the disestablishment of a state church, but the establishment of all churches, and of all religious groups.

The subjection of dissidents to the general requirement of saluting the flag, as a measure conducive to the training of children in good citizenship, is very far from being the first instance of exacting obedience to general laws that have offended deep religious scruples. Compulsory vaccination, food inspection regulations, the obligation to bear arms, testimonial duties, compulsory medical treatment, these are but illustrations of conduct that has often been—compelled in the enforcement of legislation of general applicability even though the religious consciences of particular individuals rebelled at the exaction.

Law is concerned with external behavior, and not with the inner life of man. It rests in large measure upon compulsion. Socrates lives in history partly because he gave his life for the conviction that duty of obedience to secular law does not presuppose consent to its enactment or belief in its virtue. The consent upon which free government rests is the consent that comes from sharing in the process of making and unmaking laws. The state is not shut out from a domain because the individual conscience may deny the state's claim. The individual conscience may profess what faith it chooses. It may affirm and promote that faith—in the language of the Constitution, it may "exercise" it freely—but it cannot thereby restrict community action through political organs in matters of community concern, so long as the action is not asserted in a

discriminatory way, either openly or by stealth. One may have the right to practice one's religion and at the same time owe the duty of formal obedience to laws that run counter to one's belief. Compelling belief implies denial of opportunity to combat it and to assert dissident views. Such compulsion is one thing. Quite another matter is submission to conformity of action while denying its wisdom or virtue, and with ample opportunity for seeking its change or abrogation....

... [I]f religious scruples afford immunity from civic obedience to laws, they may be invoked by the religious beliefs of any individual even though he holds no membership in any sect or organized denomination. Certainly this Court cannot be called upon to determine what claims of conscience should be recognized, and what should be rejected as satisfying the "religion" which the Constitution protects. That would, indeed, resurrect the very discriminatory treatment of religion which the Constitution sought forever to forbid....

Consider the controversial issue of compulsory Bible reading in public schools....

These questions assume increasing importance in view of the steady growth of parochial schools, both in number and in population. I am not borrowing trouble by adumbrating these issues, nor am I parading horrible examples of the consequences of today's decision....

These questions are not lightly stirred. They touch the most delicate issues, and their solution challenges the best wisdom of political and religious statesmen. But it presents awful possibilities to try to encase the solution of these problems within the rigid prohibitions of unconstitutionality....

That which to the majority may seem essential for the welfare of the state may offend the consciences of a minority. But, so long as no inroads are made upon the actual exercise of religion by the minority, to deny the political power of the majority to enact laws concerned with civil matters, simply because they may offend the consciences of a minority, really means that the conscience of a minority are more sacred and more enshrined in the Constitution than the consciences of a majority....

... [S]urely only flippancy could be responsible for the suggestion that constitutional validity of a requirement to salute our flag implies equal validity of a requirement to salute a dictator. The significance of a symbol lies in what it represents. To reject the swastika does not imply rejection of the cross. And so it bears repetition to say that it mocks reason and denies our whole history to find in the allowance of a requirement to salute our flag on fitting occasions the seeds of sanction for obeisance to a leader. To deny the power to employ educational symbols is to say that the state's system may not stimulate the imagination because this may lead to unwise stimulation....

... Saluting the flag suppresses no belief, nor curbs it. Children and their parents may believe what they please, avow their belief and practice it. It is not even remotely suggested that the requirement for saluting the flag involves the slightest restriction against the fullest opportunity on the part both of the children and of their parents to disavow, as publicly as they choose to do so, the meaning that others attach to the gesture of salute. All channels of affirmative free expression are open to both children and parents....

Of course, patriotism cannot be enforced by the flag salute. But neither can the liberal spirit be enforced by judicial invalidation of illiberal legislation. Our constant preoccupation with the constitutionality of legislation, rather than with its wisdom, tends to preoccupation of the American mind with a false value. The tendency of focusing attention on constitutionality is to make constitutionality synonymous with wisdom, to regard a law as all right if it is constitutional. Such an attitude is a great enemy of liberalism. Particularly in legislation affecting freedom of thought and freedom of speech, much which should offend a free-spirited society is constitutional. Reliance for the most precious interests of civilization, therefore, must be found outside of their vindication in courts of law. Only a persistent positive translation of the faith of a free society into the convictions and habits and action of a community is the ultimate reliance against unabated temptations to fetter the human spirit.

Core Reading 2: *Tinker v. Des Moines Independent Community School District* (1969)
Source: *Free Speech*, edited by Joseph Fornieri

After attending a protest on the Vietnam War with their parents in 1965, a group of students decided to express their views in school by wearing black armbands emblazoned with a peace symbol. The school board heard about the protest and, before it took place, banned the wearing of the armbands. When they defied this policy, Marybeth Tinker, her brother John, and their friend John Eckhardt were suspended. The Tinkers sued, claiming that the ban amounted to an unconstitutional "prior restraint," and were represented by the local ACLU affiliate.

Tinker *is an important precedent that extended symbolic speech to the educational setting. Justice Fortas reasoned: "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. . . . In our system, state-operated schools may not be enclaves of totalitarianism." Fortas' opinion hinged on the salient fact that the* Tinkers' *symbolic speech involved a peaceful and passive demonstration. Citing the precedent of* Burnside v. Byars, *he found that the armbands did not "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school." In a stinging dissent, Justice Hugo Black (1886–1971) characterized the facts quite differently. He noted that a math teacher's lesson was "practically 'wrecked' " because of the disruption caused by Marybeth's armband protest. Moreover, Black argued that the Court's judicial activism in* Tinker *usurped the authority of local school boards and undermined school discipline. Although* Tinker *is still on the books, it has been narrowed by subsequent opinions involving speech in the educational setting such as* Bethel v. Fraser *(1986) and* Morse v. Frederick *(2007).*

It is worth noting that although Justice Black was renowned as a First Amendment absolutist who opposed any restriction on speech, he interpreted "speech" quite literally as spoken or written words. He was therefore unwilling to extend the same kind of absolute protection to "symbolic" expression that did not involve written or spoken words. He also regarded the education setting as inappropriate for the same First Amendment protection as other public settings.

MR. JUSTICE FORTAS delivered the opinion of the Court.

The district court recognized that the wearing of an armband for the purpose of expressing certain views is the type of symbolic act that is within the free speech clause of the First Amendment. As we shall discuss, the wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to "pure speech" which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment .

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. . . .

In *West Virginia v. Barnette*, 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.

On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of the states and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools. Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities. . . .

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

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

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

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

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

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

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

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school, as well as out of school, are "persons" under our Constitution. They are possessed of fundamental rights which the state must respect, just as they themselves must respect their obligations to the state. In our system, students may not be regarded as closed-circuit recipients of only that which the state chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. . . .

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

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

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 interfer[ing] with the requirements of appropriate discipline in the operation of the school" and without colliding with the rights of others. 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.

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

As we have discussed, the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred. These petitioners merely went about their ordained rounds in school. Their deviation consisted only in wearing on their sleeve a band of black cloth, not more than two inches wide. They wore it to exhibit their disapproval of the Vietnam hostilities and their advocacy of a truce, to make their views known, and, by their example, to influence others to adopt them. They neither interrupted school activities nor sought to intrude in the school affairs or the lives of others. They caused discussion outside of the classrooms, but no interference with work and no disorder. In the circumstances, our Constitution does not permit officials of the state to deny their form of expression.

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

Reversed and remanded.

JUSTICE STEWART, concurring.

Although I agree with much of what is said in the Court's opinion, and with its judgment in this case, I cannot share the Court's uncritical assumption that, school discipline aside, the First Amendment rights of children are coextensive with those of adults. . . .

JUSTICE BLACK, dissenting.

The Court's holding in this case ushers in what I deem to be an entirely new era in which the power to control pupils by the elected "officials of state-supported public schools . . ." in the United States is in ultimate effect transferred to the Supreme

Court. The Court brought this particular case here on a petition for certiorari urging that the First and Fourteenth Amendments protect the right of school pupils to express their political views all the way "from kindergarten through high school." Here, the constitutional right to "political expression" asserted was a right to wear black armbands during school hours and at classes in order to demonstrate to the other students that the petitioners were mourning because of the death of United States soldiers in Vietnam and to protest that war which they were against. Ordered to refrain from wearing the armbands in school by the elected school officials and the teachers vested with state authority to do so, apparently only 7 out of the school system's 18,000 pupils deliberately refused to obey the order. . . .

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

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

While the record does not show that any of these armband students shouted, used profane language, or were violent in any manner, detailed testimony by some of them shows their armbands caused comments, warnings by other students, the poking of fun at them, and a warning by an older football player that other non-protesting students had better let them alone. There is also evidence that a teacher of mathematics had his lesson period practically "wrecked," chiefly by disputes with Mary Beth Tinker, who wore her armband for her "demonstration."

Even a casual reading of the record shows that this armband did divert students' minds from their regular lessons, and that talk, comments, etc., made John Tinker "self-conscious" in attending school with his armband. While the absence of obscene remarks or boisterous and loud disorder perhaps justifies the Court's statement that the few armband students did not actually "disrupt" the classwork, I think the record overwhelmingly shows that the armbands did exactly what the elected school officials and principals foresaw they would, that is, took the students' minds off their classwork and diverted them to thoughts about the highly emotional subject of the Vietnam War. And I repeat that, if the time has come when pupils of state-supported schools, kindergartens, grammar schools, or high schools can defy and flout orders of school officials to keep their minds on their own schoolwork, it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary. The next logical step, it appears to me, would be to hold unconstitutional laws that bar pupils under twenty-one or eighteen from voting, or from being elected members of the boards of education. . . .

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

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

Core Reading 3: Morse v. Frederick (2007)
Source: *Free Speech*, edited by Joseph Fornieri

Principal Deborah Morse arranged for her students at Juneau Douglas High School in Alaska to watch the passing of the Olympic Torch Relay that was bound for the Winter Games in Salt Lake City. Although the event took place off school property on a nearby street, it was officially sponsored and supervised by the school. On January 24, 2002, when the torchbearer and camera crew went by, Joseph Frederick, a senior, along with some of his friends, unfolded a fourteen-foot banner that read: "BONG HiTS 4 JESUS." Principal Morse ran across the street and directed them to take the banner down. Frederick alone refused. He was suspended for ten days for violating the school drug policy. In response to this action, Frederick sued for damages in a federal court, claiming that Morse had infringed upon his right to free speech. He lost, but upon appeal, the Ninth Circuit Court reversed and ruled in his favor.

Morse v. Frederick *provides the most recent, controlling precedent on free speech in the educational setting. Chief Justice John Roberts (1955–), writing for a 5–4 majority (Justice Stephen Breyer [1938–] concurred and dissented in part), reversed the Ninth Circuit Court's ruling, thereby affirming the school's authority to restrict a pro-drug message. While Roberts claimed that his reasoning in* Morse v. Frederick *was consistent with the precedents of* Tinker v. Des Moines *(1969),* Bethel v. Fraser *(1986), and* Hazelwood v. Kuhlmeier *(1988), Justice Clarence Thomas (1948–) disagreed. In his concurring opinion, Thomas argued that* Tinker *should be overturned. Taken together,* Bethel, Hazelwood, *and* Morse *have narrowed* Tinker, *thereby providing greater discretion for local school boards to restrict speech in the secondary-school educational setting.*

Chief Justice Roberts delivered the opinion of the Court....

Our cases make clear that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." At the same time, we have held that "the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings," and that the rights of students "must be 'applied in light of the special characteristics of the school environment.' " Consistent with these principles, we hold that schools may take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use. We conclude that the school officials in this case did not violate the First Amendment by confiscating the pro-drug banner and suspending the student responsible for it....

We granted certiorari on two questions: whether Frederick had a First Amendment right to wield his banner, and, if so, whether that right was so clearly established that the principal may be held liable for damages. We resolve the first question against Frederick, and therefore have no occasion to reach the second.

At the outset, we reject Frederick's argument that this is not a school speech case—as has every other authority to address the question. The event occurred during normal school hours. It was sanctioned by Principal Morse "as an approved social event or class trip," and the school district's rules expressly provide that pupils in "approved social events and class trips are subject to district rules for student conduct." Teachers and administrators were interspersed among the students and charged with supervising them. The high school band and cheerleaders performed. Frederick, standing among other Juneau Douglas High School (JDHS) students across the street from the school, directed his banner toward the school, making it plainly visible to most students. Under these circumstances, we agree with the superintendent that Frederick cannot "stand in the midst of his fellow students, during school hours, at a school-sanctioned activity and claim he is not at school." There is some uncertainty at the outer boundaries as to when courts should apply school-speech precedents, but not on these facts.

The message on Frederick's banner is cryptic. It is no doubt offensive to some, perhaps amusing to others. To still others, it probably means nothing at all. Frederick himself claimed "that the words were just nonsense meant to attract television cameras." But Principal Morse thought the banner would be interpreted by those viewing it as promoting illegal drug use, and that interpretation is plainly a reasonable one.

As Morse later explained in a declaration, when she saw the sign, she thought that "the reference to a 'bong hit' would be widely understood by high school students and others as referring to smoking marijuana." She further believed that "display of the banner would be construed by students, district personnel, parents, and others witnessing the display of the banner, as advocating or promoting illegal drug use"—in violation of school policy. ... ("I told Frederick and the other members of his group to put the banner down because I felt that it violated the [school] policy against displaying ... material that advertises or promotes use of illegal drugs").

We agree with Morse....

The question thus becomes whether a principal may, consistent with the First Amendment, restrict student speech at a school event, when that speech is reasonably viewed as promoting illegal drug use. We hold that she may.

In *Tinker*, this Court made clear that "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students." *Tinker* involved a group of high school students who decided to wear black armbands to protest the Vietnam War. School officials learned of the plan and then adopted a policy prohibiting students from wearing armbands. When several students nonetheless wore armbands to school, they were suspended. The students sued, claiming that their First Amendment rights had been violated, and this Court agreed.

Tinker held that student expression may not be suppressed unless school officials reasonably conclude that it will "materially and substantially disrupt the work and discipline of the school." The essential facts of *Tinker* are quite stark, implicating concerns at the heart of the First Amendment. The students sought to engage in political speech, using the armbands to express their "disapproval of the Vietnam hostilities and their advocacy of a truce, to make their views known, and, by their example, to influence others to adopt them." Political speech, of course, is "at the core of what the First Amendment is designed to protect." The only interest the Court discerned underlying the school's actions was the "mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular view point," or "an urgent wish to avoid the controversy which might result from the expression." That interest was not enough to justify banning "a silent, passive expression of opinion, unaccompanied by any disorder or disturbance."

This Court's next student speech case was *Fraser*. Matthew Fraser was suspended for delivering a speech before a high school assembly in which he employed what this Court called "an elaborate, graphic, and explicit sexual metaphor." Analyzing the case under *Tinker*, the district court and Court of Appeals found no disruption, and therefore no basis for disciplining Fraser. This Court reversed, holding that the "School District acted entirely within its permissible authority in imposing sanctions upon Fraser in response to his offensively lewd and indecent speech."...

... For present purposes, it is enough to distill from *Fraser* two basic principles. First, *Fraser's* holding demonstrates that "the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings." Had Fraser delivered the same speech in a public forum outside the school context, it would have been protected. In school, however, Fraser's First Amendment rights were circumscribed "in light of the special characteristics of the school environment." Second, *Fraser* established that the mode of analysis set forth in *Tinker* is not absolute. Whatever approach *Fraser* employed, it certainly did not conduct the "substantial disruption" analysis prescribed by *Tinker*.

Our most recent student speech case, *Kuhlmeier*, concerned "expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school." Staff members of a high school newspaper sued their school when it chose not to publish two of their articles. The Court of Appeals analyzed the case under *Tinker*, ruling in favor of the students because it found no evidence of material disruption to classwork or school discipline. This Court reversed, holding 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."

Kuhlmeier does not control this case because no one would reasonably believe that Frederick's banner bore the school's imprimatur. The case is nevertheless instructive because it confirms both principles cited above. *Kuhlmeier* acknowledged that schools may regulate some speech "even though the government could not censor similar speech outside the school." And, like *Fraser*, it confirms that the rule of Tinker is not the only basis for restricting student speech.

Drawing on the principles applied in our student speech cases, we have held in the Fourth Amendment context that "while children assuredly do not 'shed their constitutional rights ... at the schoolhouse gate,' ... the nature of those rights is what is appropriate for children in school." In particular, "the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject."

Even more to the point, these cases also recognize that deterring drug use by schoolchildren is an "important—indeed, perhaps compelling" interest. Drug abuse can cause severe and permanent damage to the health and well-being of young people:

School years are the time when the physical, psychological, and addictive effects of drugs are most severe. Maturing nervous systems are more critically impaired by intoxicants than mature ones are; childhood losses in learning are lifelong and profound; children grow chemically dependent more quickly than adults, and their record of recovery is depressingly poor. And of course the effects of a drug-infested school are visited not just upon the users, but upon the entire student body and faculty, as the educational process is disrupted. Just five years ago, we wrote: "The drug abuse problem among our nation's youth has hardly abated since Vernonia was decided in 1995. In fact, evidence suggests that it has only grown worse."

The problem remains serious today. About half of American twelfth-graders have used an illicit drug, as have more than a third of tenth-graders and about one-fifth of eighth-graders. Nearly one in four twelfth-graders has used an illicit drug in the past month. Some 25 percent of high-schoolers say that they have been offered, sold, or given an illegal drug on school property within the past year.

Congress has declared that part of a school's job is educating students about the dangers of illegal drug use. It has provided billions of dollars to support state and local drug-prevention programs, and required that schools receiving federal funds under the Safe and Drug-Free Schools and Communities Act of 1994 certify that their drug prevention programs "convey a clear and consistent message that ... the illegal use of drugs [is] wrong and harmful."

Thousands of school boards throughout the country—including JDHS—have adopted policies aimed at effectuating this message. Those school boards know that peer pressure is perhaps "the single most important factor leading schoolchildren to take drugs," and that students are more likely to use drugs when the norms in school appear to tolerate such behavior. Student speech celebrating illegal drug use at a school event, in the presence of school administrators and teachers, thus poses a particular challenge for school officials working to protect those entrusted to their care from the dangers of drug abuse.

The "special characteristics of the school environment" and the governmental interest in stopping student drug abuse—reflected in the policies of Congress and myriad school boards, including JDHS—allow schools to restrict student expression that they reasonably regard as promoting illegal drug use. *Tinker* warned that schools may not prohibit student speech because of "undifferentiated fear or apprehension of disturbance" or "a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." The danger here is far more serious and palpable. The particular concern to prevent student drug abuse at issue here, embodied in established school policy, extends well beyond an abstract desire to avoid controversy.

Petitioners urge us to adopt the broader rule that Frederick's speech is proscribable because it is plainly "offensive" as that term is used in *Fraser*. We think this stretches *Fraser* too far; that case should not be read to encompass any speech that co uld fit under some definition of "offensive." After all, much political and religious speech might be perceived as offensive to some. The concern here is not that Frederick's speech was offensive, but that it was reasonably viewed as promoting illegal drug use.

Although accusing this decision of doing "serious violence to the First Amendment" by authorizing "viewpoint discrimination," the dissent concludes that "it might well be appropriate to tolerate some targeted viewpoint discrimination in this unique setting." Nor do we understand the dissent to take the position that schools are required to tolerate student advocacy of illegal drug use at school events, even if that advocacy falls short of inviting "imminent" lawless action ("it is possible that our rigid imminence requirement ought to be relaxed at schools"). And even the dissent recognizes that the issues here are close enough that the principal should not be held liable in damages, but should instead enjoy qualified immunity for her actions. Stripped of rhetorical flourishes, then, the debate between the dissent and this opinion is less about

constitutional first principles than about whether Frederick's banner constitutes promotion of illegal drug use. We have explained our view that it does. The dissent's contrary view on that relatively narrow question hardly justifies sounding the First Amendment bugle.

School principals have a difficult job, and a vitally important one. When Frederick suddenly and unexpectedly unfurled his banner, Morse had to decide to act—or not act—on the spot. It was reasonable for her to conclude that the banner promoted illegal drug use—in violation of established school policy—and that failing to act would send a powerful message to the students in her charge, including Frederick, about how serious the school was about the dangers of illegal drug use. The First Amendment does not require schools to tolerate at school events student expression that contributes to those dangers.

The judgment of the United States Court of Appeals for the Ninth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, concurring.

The Court today decides that a public school may prohibit speech advocating illegal drug use. I agree and therefore join its opinion in full. I write separately to state my view that the standard set forth in *Tinker v. Des Moines Independent Community School District* (1969) is without basis in the Constitution.

The First Amendment states that "Congress shall make no law ... abridging the freedom of speech." As this Court has previously observed, the First Amendment was not originally understood to permit all sorts of speech; instead, "[t]here are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem." In my view, the history of public education suggests that the First Amendment, as originally understood, does not protect student speech in public schools. Although colonial schools were exclusively private, public education proliferated in the early 1800s. By the time the states ratified the Fourteenth Amendment, public schools had become relatively common. If students in public schools were originally understood as having free-speech rights, one would have expected nineteenth-century public schools to have respected those rights and courts to have enforced them. They did not....

Tinker effected a sea change in students' speech rights, extending them well beyond traditional bounds....

Accordingly, unless a student's speech would disrupt the educational process, students had a fundamental right to speak their minds (or wear their armbands)—even on matters the school disagreed with or found objectionable. ("[The school] 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").

Justice Black dissented, criticizing the Court for "subject[ing] all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students." He emphasized the instructive purpose of schools: "[T]axpayers send children to school on the premise that at their age they need to learn, not teach." In his view, the Court's decision "surrender[ed] control of the American public school system to public school students."

Of course, *Tinker's* reasoning conflicted with the traditional understanding of the judiciary's role in relation to public schooling, a role limited by *in loco parentis*. Perhaps for that reason, the Court has since scaled back *Tinker's* standard, or rather set the standard aside on an ad hoc basis. In *Bethel School District v. Fraser* (1986), a public school suspended a student for delivering a speech that contained "an elaborate, graphic, and explicit sexual metaphor." The Court of Appeals found that the speech caused no disruption under the *Tinker* standard, and this Court did not question that holding. The Court nonetheless permitted the school to punish the student because of the objectionable content of his speech. Signaling at least a partial break with *Tinker*, Fraser left the regulation of indecent student speech to local schools.

Similarly, in *Hazelwood School District v. Kuhlmeier* (1988), the Court made an exception to *Tinker* for school-sponsored activities. The Court characterized newspapers and similar school-sponsored activities "as part of the school curriculum" and held that "[e]ducators are entitled to exercise greater control over" these forms of student expression.

Accordingly, the Court expressly refused to apply *Tinker's* standard. Instead, for school-sponsored activities, the Court created a new standard that permitted school regulations of student speech that are "reasonably related to legitimate pedagogical concerns."

Today, the Court creates another exception. In doing so, we continue to distance ourselves from *Tinker*, but we neither overrule it nor offer an explanation of when it operates and when it does not. I am afraid that our jurisprudence now says that students have a right to speak in schools except when they don't—a standard continuously developed through litigation against local schools and their administrators. In my view, petitioners could prevail for a much simpler reason: As originally understood, the Constitution does not afford students a right to free speech in public schools.

JUSTICE STEVENS, with whom JUSTICE SOUTER and JUSTICE GINSBURG join, dissenting.

... I would hold ... that the school's interest in protecting its students from exposure to speech "reasonably regarded as promoting illegal drug use," cannot justify disciplining Frederick for his attempt to make an ambiguous statement to a television audience simply because it contained an oblique reference to drugs. The First Amendment demands more, indeed, much more.

The Court holds otherwise only after laboring to establish two uncontroversial propositions: first, that the constitutional rights of students in school settings are not coextensive with the rights of adults; and second, that deterring drug use by schoolchildren is a valid and terribly important interest. As to the first, I take the Court's point that the message on Frederick's banner is not *necessarily* protected speech, even though it unquestionably would have been had the banner been unfurled elsewhere. As to the second, I am willing to assume that the Court is correct that the pressing need to deter drug use supports JDHS's rule prohibiting willful conduct that expressly "advocates the use of substances that are illegal to minors." But it is a gross non sequitur to draw from these two unremarkable propositions the remarkable conclusion that the school may suppress student speech that was never meant to persuade anyone to do anything....

Yet today the Court fashions a test that trivializes the two cardinal principles upon which *Tinker* rests. The Court's test invites stark viewpoint discrimination. In this case, for example, the principal has unabashedly acknowledged that she disciplined Frederick because she disagreed with the pro-drug viewpoint she ascribed to the message on the banner, incidentally, that Frederick has disavowed....

It is also perfectly clear that "promoting illegal drug use," comes nowhere close to proscribable "incitement to imminent lawless action." Encouraging drug use might well increase the likelihood that a listener will try an illegal drug, but that hardly justifies censorship....

Although this case began with a silly, nonsensical banner, it ends with the Court inventing out of whole cloth a special First Amendment rule permitting the censorship of any student speech that mentions drugs, at least so long as someone could perceive that speech to contain a latent pro-drug message. Our First Amendment jurisprudence has identified some categories of expression that are less deserving of protection than others—fighting words, obscenity, and commercial speech, to name a few....

Even in high school, a rule that permits only one point of view to be expressed is less likely to produce correct answers than the open discussion of countervailing views. In the national debate about a serious issue [student drug use], it is the expression of the minority's viewpoint that most demands the protection of the First Amendment. Whatever the better policy may be, a full and frank discussion of the costs and benefits of the attempt to prohibit the use of marijuana is far wiser than suppression of speech because it is unpopular.

I respectfully dissent.

Supplementary Reading 1: The Chicago Principles: Report on the Committee on Freedom of Expression (2014)
Source: https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf

The Committee on Freedom of Expression at the University of Chicago was appointed in July 2014 by President Robert J. Zimmer and Provost Eric D. Isaacs "in light of recent events nationwide that have tested institutional commitments to free and open discourse." The Committee's charge was to draft a statement "articulating the University's overarching commitment to free, robust, and uninhibited debate and deliberation among all members of the University's community."

The Committee has carefully reviewed the University's history, examined events at other institutions, and consulted a broad range of individuals both inside and outside the University. This statement reflects the long-standing and distinctive values of the University of Chicago and affirms the importance of maintaining and, indeed, celebrating those values for the future.

From its very founding, the University of Chicago has dedicated itself to the preservation and celebration of the freedom of expression as an essential element of the University's culture. In 1902, in his address marking the University's decennial, President William Rainey Harper declared that "the principle of complete freedom of speech on all subjects has from the beginning been regarded as fundamental in the University of Chicago" and that "this principle can neither now nor at any future time be called in question."

Thirty years later, a student organization invited William Z. Foster, the Communist Party's candidate for President, to lecture on campus. This triggered a storm of protest from critics both on and off campus. To those who condemned the University for allowing the event, President Robert M. Hutchins responded that "our students . . . should have freedom to discuss any problem that presents itself." He insisted that the "cure" for ideas we oppose "lies through open discussion rather than through inhibition." On a later occasion, Hutchins added that "free inquiry is indispensable to the good life, that universities exist for the sake of such inquiry, [and] that without it they cease to be universities."

In 1968, at another time of great turmoil in universities, President Edward H. Levi, in his inaugural address, celebrated "those virtues which from the beginning and until now have characterized our institution." Central to the values of the University of Chicago, Levi explained, is a profound commitment to "freedom of inquiry." This freedom, he proclaimed, "is our inheritance."

More recently, President Hanna Holborn Gray observed that "education should not be intended to make people comfortable, it is meant to make them think. Universities should be expected to provide the conditions within which hard thought, and therefore strong disagreement, independent judgment, and the questioning of stubborn assumptions, can flourish in an environment of the greatest freedom."

The words of Harper, Hutchins, Levi, and Gray capture both the spirit and the promise of the University of Chicago. Because the University is committed to free and open inquiry in all matters, it guarantees all members of the University community the broadest possible latitude to speak, write, listen, challenge, and learn. Except insofar as limitations on that freedom are necessary to the functioning of the University, the University of Chicago fully respects and supports the freedom of all members of the University community "to discuss any problem that presents itself."

Of course, the ideas of different members of the University community will often and quite naturally conflict. But it is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Although the University greatly values civility, and although all members of the University community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.

The freedom to debate and discuss the merits of competing ideas does not, of course, mean that individuals may say whatever they wish, wherever they wish. The University may restrict expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of the University. In addition, the

University may reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt the ordinary activities of the University. But these are narrow exceptions to the general principle of freedom of expression, and it is vitally important that these exceptions never be used in a manner that is inconsistent with the University's commitment to a completely free and open discussion of ideas.

In a word, the University's fundamental commitment is to the principle that debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the University community to be offensive, unwise, immoral, or wrong-headed. It is for the individual members of the University community, not for the University as an institution, to make those judgments for themselves, and to act on those judgments not by seeking to suppress speech, but by openly and vigorously contesting the ideas that they oppose. Indeed, fostering the ability of members of the University community to engage in such debate and deliberation in an effective and responsible manner is an essential part of the University's educational mission.

As a corollary to the University's commitment to protect and promote free expression, members of the University community must also act in conformity with the principle of free expression. Although members of the University community are free to criticize and contest the views expressed on campus, and to criticize and contest speakers who are invited to express their views on campus, they may not obstruct or otherwise interfere with the freedom of others to express views they reject or even loathe. To this end, the University has a solemn responsibility not only to promote a lively and fearless freedom of debate and deliberation, but also to protect that freedom when others attempt to restrict it.

As Robert M. Hutchins observed, without a vibrant commitment to free and open inquiry, a university ceases to be a university. The University of Chicago's long-standing commitment to this principle lies at the very core of our University's greatness. That is our inheritance, and it is our promise to the future.

Geoffrey R. Stone, Edward H. Levi Distinguished Service Professor of Law, Chair

Marianne Bertrand, Chris P . Dialynas Distinguished Service Professor of Economics, Booth School of Business

Angela Olinto, Homer J. Livingston Professor, Department of Astronomy and Astrophysics, Enrico Fermi Institute, and the College

Mark Siegler, Lindy Bergman Distinguished Service Professor of Medicine and Surgery

David A. Strauss, Gerald Ratner Distinguished Service Professor of Law

Kenneth W. Warren, Fairfax M. Cone Distinguished Service Professor, Department of English and the College

Amanda Woodward, William S. Gray Professor, Department of Psychology and the College

Supplementary Reading 2: *Uzuegbunam et al. v. Preczewski et al.* (2020)
Source: https://www.supremecourt.gov/opinions/20pdf/19-968_8nj9.pdf

JUSTICE THOMAS delivered the opinion of the Court.

At all stages of litigation, a plaintiff must maintain a personal interest in the dispute. The doctrine of standing generally assesses whether that interest exists at the outset, while the doctrine of mootness considers whether it exists throughout the proceedings. To demonstrate standing, the plaintiff must not only establish an injury that is fairly traceable to the challenged conduct but must also seek a remedy that redresses that injury. And if in the course of litigation a court finds that it can no longer provide a plaintiff with any effectual relief, the case generally is moot. This case asks whether an award of nominal damages by itself can redress a past injury. We hold that it can.

I

According to the complaint, Chike Uzuegbunam is an evangelical Christian who believes that an important part of exercising his religion includes sharing his faith. In 2016, Uzuegbunam decided to share his faith at Georgia Gwinnett College, a public college where he was enrolled as a student. At an outdoor plaza on campus near the library where students often gather, Uzuegbunam engaged in conversations with interested students and handed out religious literature.

A campus police officer soon informed Uzuegbunam that campus policy prohibited distributing written religious materials in that area and told him to stop. Uzuegbunam complied with the officer's order. To learn more about this policy, he then visited the college's Director of the Office of Student Integrity, who was directly responsible for promulgating and enforcing the policy. When asked if Uzuegbunam could continue speaking about his religion if he stopped distributing materials, the official said no. The official explained that Uzuegbunam could speak about his religion or distribute materials only in two designated "free speech expression areas," which together make up just 0.0015 percent of campus. And he could do so only after securing the necessary permit. Uzuegbunam then applied for and received a permit to use the free speech zone.

Twenty minutes after Uzuegbunam began speaking on the day allowed by his permit, another campus police officer again told him to stop, this time saying that people had complained about his speech. Campus policy prohibited using the free speech zone to say anything that "disturbs the peace and/or comfort of person(s)." The officer told Uzuegbunam that his speech violated this policy because it had led to complaints. The officer threatened Uzuegbunam with disciplinary action if he continued. Uzuegbunam again complied with the order to stop speaking. Another student who shares Uzuegbunam's faith, Joseph Bradford, decided not to speak about religion because of these events.

Both students sued a number of college officials in charge of enforcing the college's speech policies, arguing that those policies violated the First Amendment. As relevant here, they sought nominal damages and injunctive relief. Respondents initially attempted to defend the policy, stating that Uzuegbunam's discussion of his religion "arguably rose to the level of 'fighting words.'" But the college officials quickly abandoned that strategy and instead decided to get rid of the challenged policies. They then moved to dismiss, arguing that the suit was moot, because of the policy change. The students agreed that injunctive relief was no longer available, but they disagreed that the case was moot. They contended that their case was still live because they had also sought nominal damages. The District Court dismissed the case, holding that the students' claim for nominal damages was insufficient by itself to establish standing.

The Eleventh Circuit affirmed. It stated that a request for nominal damages can save a case from mootness in certain circumstances, such as where a person pleads but fails to prove an amount of compensatory damages. But, because the students did not request compensatory damages, their plea for nominal damages could not by itself establish standing.
We granted certiorari to consider whether a plaintiff who sues over a completed injury and establishes the first two elements of standing (injury and traceability) can establish the third by requesting only nominal damages. We now reverse.

II

To satisfy the "'irreducible constitutional minimum'" of Article III standing, a plaintiff must not only establish (1) an injury in fact (2) that is fairly traceable to the challenged conduct, but he must also seek (3) a remedy that is likely to redress that injury. There is no dispute that Uzuegbunam has established the first two elements. The only question is whether the remedy he sought—nominal damages—can redress the constitutional violation that Uzuegbunam alleges occurred when campus officials enforced the speech policies against him.

A

In determining whether nominal damages can redress a past injury, we look to the forms of relief awarded at common law. "Article III's restriction of the judicial power to 'Cases' and 'Controversies' is properly understood to mean 'cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process.'" The parties here agree that courts at common law routinely awarded nominal damages. They, instead, dispute what kinds of harms those damages could redress.

Both sides agree that nominal damages historically could provide prospective relief. The award of nominal damages was one way for plaintiffs at common law to "obtain a form of declaratory relief in a legal system with no general declaratory judgment act." For example, a trespass to land or water rights might raise a prospective threat to a property right by creating the foundation for a future claim of adverse possession or prescriptive easement. By obtaining a declaration of trespass, a property owner could "vindicate his right by action" and protect against those future threats. Ibid. Courts at common law would not declare property boundaries in the abstract, "but the suit for nominal damages allowed them to do so indirectly."

The parties disagree, however, about whether nominal damages alone could provide retrospective relief. Stressing the declaratory function, respondents argue that nominal damages by themselves redressed only continuing or threatened injury, not past injury.

But cases at common law paint a different picture. Early courts required the plaintiff to prove actual monetary damages in every case. Later courts, how- ever, reasoned that every legal injury necessarily causes damage, so they awarded nominal damages absent evidence of other damages (such as compensatory, statutory, or punitive damages), and they did so where there was no apparent continuing or threatened injury for nominal damages to redress.

The latter approach was followed both before and after ratification of the Constitution. An early case about voting rights effectively illustrates this common-law understanding. Faced with a suit pleading denial of the right to vote, the court rejected the plaintiff's claim because, among other reasons, the plaintiff had not established actual damages. Dissenting, Lord Holt argued that the common law inferred damages when- ever a legal right was violated. Observing that the law recognized "not merely pecuniary" injury but also "personal injury," Lord Holt stated that "every injury imports a damage" and that a plaintiff could always obtain damages even if he "does not lose a penny by reason of the [violation]." Although Lord Holt was in the minority, the House of Lords overturned the majority decision, thus validating Lord Holt's position, , and this principle "laid down . . . by Lord Holt" was followed "in many subsequent cases."

The dissent correctly notes that English courts differed in some respects from courts under our system, but Lord Holt's position also prevailed in courts on this side of the Atlantic. Applying what he called Lord Holt's "incontrovertible" reasoning, Justice Story explained that a prevailing plaintiff "is entitled to a verdict for nominal damages" whenever "no other [kind of damages] be proved." Because the common law recognized that "every violation imports damage," Justice Story reasoned that "[t]he law tolerates no farther inquiry than whether there has been the violation of a right." Justice Story also made clear that this logic applied to both retrospective and prospective relief.

The dissent discounts Justice Story's statement, saying that he took a potentially contradictory position elsewhere and asserted that both actual damages and a violation of a legal right are required. But in the same source the dissent cites, Justice Story said that nominal damages are "presumed" "[w]here the breach of duty is clear." Justice Story adopted the same position a few years later. And other jurists declared that "[t]he principle that every injury legally imports damage, was decisively settled, in the case of Ashby." This history is hardly one of "indeterminate sources."

Admittedly, the rule allowing nominal damages for a violation of any legal right, though "decisively settled," was not universally followed—as is true for most common-law doctrines. And some courts only followed the rule in part, recognizing

the availability of nominal damages but holding that the improper denial of nominal damages could be harmless error. Yet, even among these courts, many adopted the rule in full whenever a person proved that there was a violation of an "important right." Nonetheless, the prevailing rule, "well established" at common law, was "that a party whose rights are invaded can always recover nominal damages without furnishing any evidence of actual damage."

That this rule developed at common law is unsurprising in the light of the noneconomic rights that individuals had at that time. A contrary rule would have meant, in many cases, that there was no remedy at all for those rights, such as due process or voting rights, that were not readily reducible to monetary valuation. By permitting plaintiffs to pursue nominal damages whenever they suffered a personal legal injury, the common law avoided the oddity of privileging small-dollar economic rights over important, but not easily quantifiable, nonpecuniary rights.

B

Respondents and the dissent attempt to discount this historical line of cases by contending that something other than nominal damages provided redressability. They argue instead that courts could award nominal damages only when a plaintiff pleaded compensatory damages but failed to prove a specific amount. In those circumstances, they say, the plea for compensatory damages is what satisfied the redressability requirement, and courts awarded nominal damages merely as a technical matter. We do not agree.

To begin with, the cases themselves did not require a plea for compensatory damages as a condition for receiving nominal damages. Lord Holt spoke in categorical terms: "[E]very injury imports a damage," so a plaintiff who proved a legal violation could always obtain some form of damages because he "must of necessity have a means to vindicate and maintain [the right]." Justice Story's language was no less definitive: "The law tolerates no farther inquiry than whether there has been the violation of a right." When a right is violated, that violation "imports damage in the nature of it" and "the party injured is entitled to a verdict for nominal damages."

Respondents and the dissent thus get the relationship between nominal damages and compensatory damages backwards. Nominal damages are not a consolation prize for the plaintiff who pleads, but fails to prove, compensatory damages. They are instead the damages awarded by default until the plaintiff establishes entitlement to some other form of damages, such as compensatory or statutory damages.

The argument that a claim for compensatory damages is a prerequisite for an award of nominal damages also rests on the flawed premise that nominal damages are purely symbolic, a mere judicial token that provides no actual benefit to the plaintiff. That contention is not without some support. But this view is against the weight of the history discussed above, and we have already expressly rejected it. Despite being small, nominal damages are certainly concrete. The dissent says that "an award of nominal damages does not change [a plaintiff's] status or condition at all." But we have already held that a person who is awarded nominal damages receives "relief on the merits of his claim" and "may demand payment for nominal damages no less than he may demand payment for millions of dollars in compensatory damages."

The next difficulty faced by respondents and the dissent is their inability to square their argument with established principles of standing. Because redressability is an "'irreducible' " component of standing, no federal court has jurisdiction to enter a judgment unless it provides a remedy that can redress the plaintiff 's injury. Yet early courts routinely awarded nominal damages alone. Certainly, no one seems to think that those judgments were without legal effect. Those nominal damages necessarily must have provided redress. Respondents contend that a request for compensatory damages at the pleading stage was what provided the basis for nominal damages at the judgment stage. But a plaintiff must maintain a personal interest in the dispute at every stage of litigation, including when judgment is entered. As soon as a plea for compensatory damages fails at the factfinding stage of litigation, that plea can no longer support jurisdiction for a favorable judgment. The dissent's contrary assertion is unaccompanied by any citation.

Likewise, any analogy to attorney's fees and costs fails. A request for attorney's fees or costs cannot establish standing because those awards are merely a "byproduct" of a suit that already succeeded, not a form of redressability. In contrast, nominal damages are redress, not a byproduct.

III

Because nominal damages were available at common law in analogous circumstances, we conclude that a request for nominal damages satisfies the redressability element of standing where a plaintiff's claim is based on a completed violation of a legal right.

The dissent worries that after today the Judiciary will be required to weigh in on legal questions "whenever a plaintiff asks for a dollar." But petitioners still would have satisfied redressability if instead of one dollar in nominal damages they sought one dollar in compensation for a wasted bus fare to travel to the free speech zone. The dissent "would place a higher value on Article III" than a dollar. But Congress abolished the statutory amount-in-controversy requirement for federal-question jurisdiction in 1980. And we have never held that one applies as a matter of constitutional law.

This is not to say that a request for nominal damages guarantees entry to court. Our holding concerns only redressability. It remains for the plaintiff to establish the other elements of standing; plead a cognizable cause of action; and meet all other relevant requirements. We hold only that, for the purpose of Article III standing, nominal damages provide the necessary redress for a completed violation of a legal right.

Applying this principle here is straightforward. For purposes of this appeal, it is undisputed that Uzuegbunam experienced a completed violation of his constitutional rights when respondents enforced their speech policies against him. Because "every violation [of a right] imports damage," nominal damages can redress Uzuegbunam's injury even if he cannot or chooses not to quantify that harm in economic terms.

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Supplemental Reading 3: S.B. No. 16 | Texas State Legislature (2023)
Source: https://legiscan.com/TX/text/SB16/id/2778043/Texas-2023-SB16-Engrossed.html

A BILL TO BE ENTITLED AN ACT

relating to the purpose of public institutions of higher education and a prohibition on compelling students enrolled at those institutions to adopt certain beliefs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 3, Education Code, is amended by adding Chapter 50 to read as follows:

CHAPTER 50. HIGHER EDUCATION PURPOSE Sec. 50.001. HIGHER EDUCATION PURPOSE. A public institution of higher education must be committed to creating an environment of:

1. intellectual inquiry and academic freedom so that all students are equipped for participation in the workforce and the betterment of society; and

2. intellectual diversity so that all students are respected and educated regardless of race, sex, or ethnicity or social, political, or religious background or belief.

SECTION 2. Section 51.942, Education Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) For purposes of Subsection (c)(5), good cause for taking disciplinary action against a faculty member, including revoking the tenure of the faculty member, includes the faculty member's violation of Section 51.982.

SECTION 3. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.982 to read as follows:

Sec. 51.982. PROHIBITION ON COMPELLING CERTAIN BELIEFS. (a) In this section:

1. "Coordinating board" means the Texas Higher Education Coordinating Board.

2. "Institution of higher education" and "university system" have the meanings assigned by Section 61.003.

b. A faculty member of an institution of higher education may not compel or attempt to compel a student enrolled at the institution to adopt a belief that any race, sex, or ethnicity or social, political, or religious belief is inherently superior to any other race, sex, ethnicity, or belief.

c. If an institution of higher education determines that a faculty member of the institution has violated this section, the institution shall discharge the faculty member.

d. The coordinating board by rule shall develop a procedure for an institution of higher education to receive and review complaints regarding a violation of this section by a faculty member of the institution. The procedure must:

1. take into consideration due process rights under the United States Constitution and the Texas Constitution; and

2. include a procedure by which the complainant or the faculty member who is the subject of the complaint may appeal the institution's determination regarding whether the faculty member violated this section to:

a. the chancellor or other executive officer of the institution's system, if the institution is a component of a university system; or

b. the president or other executive officer of the institution, if the institution is not a component of a university system.

e. Each institution of higher education shall implement the procedure developed under Subsection (d).

f. Not later than December 1 of each year, each institution of higher education shall submit to the legislature and the coordinating board a report on the complaints received by the institution under the procedure implemented under Subsection (e) during the preceding academic year.

SECTION 4. Section 51.982(c), Education Code, as added by this Act, applies only to a person who enters into or renews an employment contract as a faculty member at a public institution of higher education on or after the effective date of this Act.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.