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Payroll Guarantee Association, Inc. v. The Board of Education of the San Francisco Unified School District: Denying Hecklers the Right to Veto Unpopular Speech

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The Great Dissents of the "Lone Dissenter"

Justice Jesse W. Carter's Twenty Tumultuous Years on the California Supreme Court

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Payroll Guarantee Association, Inc. v. The Board of Education of the San Francisco Unified School District: Denying Hecklers the Right to Veto Unpopular Speech

*By David Zizmor and Clifford Rechtschaffen**

Payroll Guarantee Association, Inc. v. The Board of Education of the San Francisco Unified School District[1] dealt with a difficult balancing question in First Amendment jurisprudence: to what degree are the rights of a speaker espousing unpopular views protected when such speech engenders disruptive protests—protests which themselves constitute a form of speech? Are the free speech rights of the unpopular speaker paramount? Do opponents have the right to protest such speech to the point at which the protests are so disturbing that the speech cannot go forward, in effect giving opponents a "heckler's veto?"

As detailed below, in *Payroll,* the California Supreme Court sustained a local school board's decision to prevent a racist firebrand from speaking, in order to guard against disturbances that the speech was anticipated to provoke. Jus-

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1. *Payroll Guarantee Ass'n v. The Bd. of Educ. of the S.F. Unified School Dist.*, 27 Cal. 2d 197 (1945).

tice Carter, in an eloquent dissent that foreshadowed the evolution of the law on this issue, argued that the speech should go forward, warning against the dangers of giving the government too much power to suppress the views of disfavored speakers.

The California Supreme Court's Decision

In *Payroll*, the California Supreme Court had to determine whether a school board could refuse to approve an application to speak in a public space due to the threat of disruptive demonstrations. On November 9, 1945, the notorious Gerald L. K. Smith hoped to speak in a San Francisco high school auditorium, ostensibly to discuss a proposed state ballot amendment for full employment and a pension system.[2] Smith's reputation, however, as a "master rabble-rouser of the extreme right wing" known for his "fiery bigotry, aimed chiefly at blacks and Jews," hints at a more sinister agenda.[3] Smith's obituary noted that he counted Huey Long and Father Charles Coughlin as esteemed colleagues and had developed a considerable reputation as "anti-black, anti-Semitic, anti-Catholic, and pro-Fascist."[4]

The California Education Code designated public school auditoriums as a forum for the citizenry to discuss, among other things, subjects pertaining to the "educational, political, economic, artistic, and moral interests" of the community.[5] The law, however, prohibited the use of school auditoriums by anyone advocating the violent overthrow of the U.S. government or otherwise designated as a "subversive element," and also allowed the school's governing board to enact rules and regulations to ensure that any permitted activities "did not interfere with the use and occupancy of the [school], as is required for the purposes of the public schools of the State."[6]

The organizers of the event had obtained certification from the school principal that the proposed speech would not conflict with school programs or other designated meetings. (While there were adult evening classes scheduled at the school, none were in the auditorium where Smith would speak.) The organizers then applied to the San Francisco school board for permission to hold

2. *Id.* at 200.
3. *Transition*, Newsweek, Apr. 26, 1976, at 59.
4. *Gerald L. K. Smith Dead; Anti-Communist Crusader,* N.Y. Times, Apr. 16, 1976, at 27.
5. *Payroll*, 27 Cal. 2d. at 199.
6. *Id.* at 200 (quoting Cal. Ed. Code, §19433).

the event. The board denied the requested permission. Opponents of the event had appeared before the board, noting how divisive Smith was and that his views were similar to those of the Nazis and other fascist governments in Europe (the fighting in World War II had ended just months earlier), and indicating that they planned to picket the meeting. The board took note of the fact that there had been long picket lines and noisy demonstrations at all of Smith's prior public appearances in California. It concluded that if Smith spoke, there would be several thousand "noisy and boisterous" demonstrators surrounding the school, that numerous students enrolled in the adult night school would refuse to cross the picket lines and attend classes, and that the noise of the demonstrations would interfere with regular school activities.

The California Supreme Court, in a 6–1 decision, upheld the Board's refusal. It found that the Board had substantial evidence for concluding that Smith would generate so much opposition that normal school activities would be disturbed. It rejected the argument of Smith's followers that any interference with school work would not be their fault, and that the police department had the responsibility to prevent any disturbances. Rather, the majority reasoned, the police could not restrain opponents from peacefully picketing without infringing their right of free speech. If the speech generated so much opposition that it disturbed school activities, "it would not be for the police to curb those who incidentally caused the disturbance so long as their activities were lawful, but for the board to prevent the occurrence of such a disturbance."[7] The speaker "cannot disclaim some share of the responsibility for whatever reactions his speech provokes."[8] The majority opinion adverted to only one governing U.S. Supreme Court precedent, *Cox v. New Hampshire*, for the general proposition that the government can impose regulations on the use of public streets for parades and processions to maintain public order, even if it involves some curtailment of civil liberties.[9]

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7. *Id.* at 203.

8. *Id.*

9. *Cox v. N.H.*, 312 U.S. 569 (1941). In *Cox,* the Supreme Court upheld a New Hampshire law which required a "special license" for anyone wishing to hold a demonstration in the streets. In that case, a group of Jehovah's Witnesses were prosecuted for parading down city streets without the required license. The Court found that the state's parade licensing process properly regulated the "time, place, and manner" of parades without regard to the content of speech, and that the restrictions imposed served to prevent overlapping parades and afford advance notice for proper policing. Prior case law also had established that the government could restrict insulting or "fighting" words—those which are so inherently inflammatory that they are "likely to provoke the average person to retaliation, and thereby cause a breach of the peace." *Chaplinksy v. N.H.*, 315 U.S. 568,

Justice Carter, alone, dissented. In his view, the board's refusal to permit Smith's speech improperly rested on conjecture and speculation: the board could not know with any certainty the true reaction to Smith's speech, and rather than exercising its judgment, it had "bowed" to threats of third parties.[10] More fundamentally, even if Smith's speech did prove provocative, it was the job of the proper authorities to control any adverse reaction by the audience and protect Smith's constitutional right to speak.[11] Indeed, Carter quoted extensively from *Hague v. CIO*, a U.S. Supreme Court case decided six years earlier,[12] in which Jersey City had denied various labor organizations a permit to hold a meeting on city property in order to communicate their views to interested citizens. In *Hague,* Justice Roberts famously wrote that since time immemorial, streets and parks "have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions."[13] Justice Carter placed particular emphasis on a passage from *Hague* in which the Court declared that "uncontrolled official suppression of the [right to speech and assembly] cannot be made a substitute for the duty to maintain order in connection with the exercise of the right."[14]

Where the *Payroll* majority saw the possibility of an angry and hostile crowd (and given Smith's history, perhaps rightfully so), Carter saw a much more invidious threat to the First Amendment by preventing Smith's speech under the guise of protecting the public. In ringing language, Carter concluded that "the history of civilization is replete with instances in which those in power have sought to suppress expression of the thoughts and ideas of those advocating philosophies with which they do not agree."[15]

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574 (1942). The typical examples were profane, indecent or abusive remarks. *Cantwell v. Conn.*, 310 U.S. 296, 310 (1940). There was no allegation that Smith's speech fell into this category.

10. *See Payroll,* 27 Cal. 2d at 206–07 (Carter, J., dissenting).

11. *Id.* at 208 (if "there is a threat or assumption of noise, commotion, rioting or violence … [it] should be and presumably will be controlled by the proper authorities.").

12. *Hague v. CIO*, 307 U.S. 496 (1939).

13. *Id.* at 515

14. *Id.* at 516.

15. *See Payroll,* 27 Cal. 2d at 208 (Carter, J., dissenting).

Subsequent Evolution of the Case Law Adopting Justice Carter's Decision

Less than two years after *Payroll*, the Eighth Circuit handed down a decision that seemed to affirm Justice Carter's thinking. In *Sellers v. Johnson*,[16] a group of Jehovah's Witnesses wished to hold a series of religious meetings in a public park in the small town of Lacona, Iowa. Their first meeting resulted in nothing more serious than heckling from the audience.[17] The next day, upset town residents forced the passage of a resolution requiring anyone speaking in the park to apply for permission from the town council. Without knowledge of this resolution, the Jehovah's Witnesses returned the following week to give another speech. This time, more than 700 people showed up (a feat considering Lacona had a population of just over 400),[18] and watched as several citizens attacked the Jehovah's Witnesses as they tried to speak. When they attempted to speak for a third time with threats of violence swirling around them, the Jehovah's Witnesses found every road into Lacona blockaded by the sheriff and 100 special deputies and Iowa highway patrolmen.[19] Subsequently, the Jehovah's Witnesses sued to enjoin the Lacona authorities from depriving them of their "civil rights of freedom of assembly, speech, and worship, and those of other … Jehovah's witnesses."[20] The Lacona authorities based their action on the need to prevent disorder and a breach of the peace.

The Eighth Circuit found for the Jehovah's Witnesses in a decision that echoed the dissent of Justice Carter. Just as Carter stressed the need for the police to protect a speaker's right to free speech from a hostile audience, the *Sellers* court opined that,

> "the fundamental rights to assemble, to speak, and to worship cannot be abridged merely because persons threaten to stage a riot or because peace officers believe or are afraid that breaches of the peace will occur if the rights are exercised.… The only sound way to enforce the law is to arrest and prosecute those who violate the law. The Jehovah's witnesses were at all times acting lawfully, and those who attacked them, for the purpose of preventing them from holding their religious

16. *Sellers v. Johnson*, 163 F.2d 877 (8th Cir. 1947).
17. *Id*. at 878.
18. http://www.extension.iastate.edu/communities/ftppt/FTWarren.ppt#265 (Slide 11).
19. *See Sellers*, 163 F.2d at 879.
20. *Id.* at 880.

> meeting … were acting unlawfully and without any legal justification for their conduct."[21]

The court rejected the argument that the Jehovah's Witnesses presented a clear and present danger to the town's safety, noting that if the town could muster a force of more than 100 people to blockade the town, they surely could have deputized enough people to protect the Jehovah's Witnesses during their speech.[22] Like Justice Carter in *Payroll,* the Eighth Circuit made the rights of the speakers the central importance rather than the rights of the hostile audience.

Even stronger endorsement for Carter's views came in the Supreme Court's decision in *Terminiello v. Chicago*, decided in 1949.[23] There, the city of Chicago had prosecuted Father Terminiello,[24] like Gerald Smith an incendiary speaker espousing racially divisive and hateful positions, for an address he delivered at a public auditorium. (Terminiello in fact had been brought to Chicago to speak in response to a call signed by Smith, who noted that Terminiello had been "persecuted" and "hounded," and that he was a "fearless lover of Christ and America."[25]) Terminiello delivered an anti-Semitic, racially inflammatory diatribe, labeling his opponents "slimy scum" and "bedbugs."[26] Outside the auditorium, an "angry and turbulent" crowd of over one thousand protesters "hurl[ed] epithets at those who would enter and tried to tear their clothes off," and several disturbances ensued.[27] The city charged Terminiello with inciting a "breach of the peace," alleging that this offense included speech "which stirs the public to anger, invites dispute, brings about a condition of unrest, or creates a disturbance.…"[28]

Terminiello was convicted under this interpretation of the local ordinance. The Supreme Court reversed, holding that:

> a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and chal-

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21. *Id.* at 881, 883.
22. *Id.* at 883.
23. *Terminiello v. Chi.*, 337 U.S. 1 (1949).
24. Although he was advertised as a Catholic Priest, he was under suspension by his Bishop at the time of his speech. *See id.* at 14 (Jackson, J., dissenting).
25. Justice Jackson noted that Terminiello's speech "followed, with fidelity that is more than coincidental, the pattern of European fascist leaders." *See id.* at 23.
26. *Id.* at 26 (Jackson, J., dissenting).
27. *Id.* at 16 (Jackson, J., dissenting) (internal quotations omitted).
28. *Id.* at 4.

> lenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute … is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.[29]

The Court distinguished this situation two years later in *Feiner v. New York*.[30] There, it sustained the conviction of a black street corner speaker whose derogatory remarks about President Truman and other political officials inspired a hostile audience reaction, on the grounds that his speech was likely to incite riot and disorder and thus constituted a "clear and present danger." Justice Black's vigorous dissent, paralleling the reasoning of Justice Carter, argued that while the police have the power to prevent an imminent breach of the peace, "they first must make all reasonable efforts to protect [the speaker]," including arresting anyone attempting to interfere with the speaker.[31] As Professor Erwin Chemerinsky notes, the problem with using the clear and present danger test in this context is that "it allows an audience reaction, if hostile enough, to be a basis for suppressing a speaker."[32]

In the 1960s, the Court retreated from the *Feiner* decision and embraced the reasoning of Justice Black and Justice Carter's dissents.[33] In a series of cases involving efforts by state and local authorities to suppress marches or addresses by civil rights protesters advocating for the end of racial segregation, the Court clearly established that community hostility cannot be the basis for restricting free speech rights.[34]

For example, in *Edwards v. South Carolina*,[35] 187 black students were arrested for peacefully protesting on the grounds of South Carolina's state capital, despite ample police protection, for conduct described by the local authorities as "boisterous," "loud," and "flamboyant" (the latter included loudly singing "The Star Spangled Banner"). The Court noted that the students had

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29. *Id.* (citations omitted).

30. *Feiner v. N.Y.*, 340 U.S. 315 (1951).

31. *Id.* at 327 (Black, J., dissenting).

32. Erwin Chemerinsky, Constitutional Law: principles and policies § 11.3 975 (2d ed. 2002).

33. *Id.*

34. One scholar argued that at stake in these cases was whether the "Court would permit the South one gigantic heckler veto" over black civil rights demonstrations. Harry Kalven, Jr., The Negro and the First Amendment 141 (1965).

35. *Edwards v. S.C.*, 372 U.S. 229 (1963).

been arrested "because the opinions which they were peaceably expressing were sufficiently opposed to the views of the majority of the community to attract a crowd and necessitate police protection," and ruled that individuals could not be convicted because "their speech stirred people to anger, invited public dispute, or brought about a condition of unrest."[36] The Court reached a similar result two years later in *Cox v. Louisiana*.[37] In that case, Cox was convicted of disturbing the peace for leading a large civil rights protest on the steps of the Louisiana state courthouse. In overturning the conviction, the Court found that the conduct of the students themselves was peaceful, and that the fear of violence relied on by the state was based upon the reaction of the group of white citizens watching the protests from across the street. The Court emphatically explained that "constitutional rights may not be denied simply because of hostility to their assertion or exercise."[38]

Likewise, in *Gregory v. City of Chicago*,[39] a group of civil rights demonstrators marched peacefully to the mayor of Chicago's home to press their claims for faster desegregation of the city's schools. They were met by a hostile crowd that swelled to between 1,000 to 2,000 people, who began throwing rocks and eggs and hurling racial epithets at the protestors, and, in the opinion of the local police, came dangerously close to rioting.[40] The protestors were arrested and convicted of disorderly conduct; the Supreme Court unanimously overturned the convictions, holding that the protestors could not be convicted for holding a peaceful demonstration.

As Professor Chemerinsky explains, these cases stand for the proposition that "the First Amendment requires that the police try to control the audience that is threatening violence and stop the speaker only if crowd control is impossible and a threat to the breach of the peace imminent."[41] Thus, two decades after *Payroll*, Justice Carter's argument that police have an affirmative duty to

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36. *Id.* at 237–38 (citations omitted).

37. *Cox. v. La.*, 379 U.S. 536 (1965).

38. *Id.* at 551 (quoting *Watson v. Memphis*, 373 U.S. 526, 535 (1963)). In *Watson*, the Supreme Court rejected the city of Memphis' argument to delay desegregation of its public parks in order to prevent interracial disturbances and community turmoil.

39. *Gregory v. City of Chi.*, 394 U.S. 111 (1969).

40. *Id.* at 120 (Black, J., concurring); *Id.* at 146 (quoting excerpt from opinion of Illinois Supreme Court).

41. Chemerinsky, *supra* note 32, at 976; *see also* Kevin Francis O'Neill, *Disentangling The Law Of Public Protest*, 45 Loy. L. Rev. 411, 487 (1999) ("The underlying rationale of the hostile audience cases is to prevent a "heckler's veto" of minority opinions. The idea is to give minority viewpoints a chance to enter the marketplace of ideas and gain adherents.… Thus, the First Amendment protects the speaker whose beliefs are so controversial

protect unpopular speakers from hostile crowd reactions had become firmly established law.

Conclusion

Unpopular speech often generates hostile opposition, and a temptation for authorities to restrict it. Although Justice Carter did not prevail in *Payroll*, he articulated the vital importance of safeguarding the rights of unpopular speakers, and his position ultimately carried the day. As the Sixth Circuit explained in 1975:

> [t]o permit police officers to prohibit the expression of ideas … because other persons are provoked and seek to take violent action against the speaker would subvert the First Amendment, and would incorporate into that constitutional guarantee a "heckler's veto" which would empower an audience to cut off the expression of a speaker with whom it disagreed. The state may not rely on community hostility and threats of violence to justify censorship.[42]

DISSENT

Carter, J. I dissent.

The issue presented in this case is whether or not the governing body of a school district may arbitrarily refuse the use of a school building under its supervision for a public assembly. I agree with the premise of the majority opinion that the primary function and purpose of school buildings is education and training of students, and that the governing board should not permit the use of the buildings for any purpose which is inimical to that function. A pivotal issue in this case is, therefore, whether there was such a showing made before the board to justify its conclusion that that function would be impaired if petitioner was granted permission to use the building. It must be conceded that the board cannot act arbitrarily or capriciously. But before discussing that question there are certain vital factors to be considered.

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that they spark audience unrest, but it does not protect the speaker who, in bad faith, sets out to instigate audience unrest.").

42. *Glasson v. Louisville*, 518 F.2d 899, 905–06 (1975). In *Glasson,* the police had confiscated the sign of a solitary protester critical of President Nixon's motorcade after her sign drew shouts and hecklers from bystanders across the street.

First, it is conceded by the majority opinion that there is no issue of the element of subversiveness in this case. The board did not purport to base its denial of permission on that ground. Hence, we must assume that we have an organization which itself is, and the causes it espouses are, wholly lawful in every respect. Second, the state law unequivocally places school buildings in the same category, as far as public assemblies are concerned, as public parks and streets. *Section 19431 of the Education Code* reads:

"*There is a civic center at each and every public school building and grounds* within the State where the citizens, parent-teachers' association, Campfire Girls, Boy Scout troops, farmers' organizations, clubs and *associations formed for recreational, educational, political, economic*, artistic, or moral activities of the public school districts *may engage* in supervised recreational activities, and *where they may meet and discuss, from time to time, as they may desire, any subjects and questions which in their judgment appertain to the educational, political, economic, artistic, and moral interests of the citizens of the communities in which they reside*. Governing boards of the school districts may authorize the use, by such citizens and organizations of any other properties under their control, for supervised recreational activities." (Emphasis added.) (See, also, *Goodman* v. *Board of Education*, 48 Cal.App.2d 731 [120 P.2d 665].) It is obvious from the statute and the Goodman case that a public policy has been clearly and unequivocally declared by the Legislature. *That policy is that school buildings shall be available for public assemblies and for the exercise of those cherished rights, freedom of speech and assembly*. Those concomitant rights are guaranteed by the *First* and *Fourteenth Amendments to the Constitution of the United States* and the Constitution of California. (Cal. Const., art. I, §§9 and 10.) *Hence, it must follow that the Legislature of California by its foregoing declaration of policy has provided a place where those constitutional rights may be exercised*. For those reasons I have stated that the school building is in the same category as public streets and parks. The Supreme Court of the United States has forcefully declared the right to exercise those rights in the latter places. The use of such places is inseparably interwoven with the rights themselves. In *Hague v. Committee for Industrial Organization,* 307 U.S. 496, 515 [59 S.Ct. 954, 83 L.Ed. 1423], the court said:

"Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, *time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.*…" (Emphasis added.) In the instant case the declaration by the Legislature, rather than ancient custom, as in the case of parks and streets, makes school buildings the place for the exercise of the rights involved.

This brings us to the only limitation (pertinent to this case) on the use of the school buildings for the exercise of those rights—the only basis upon which the board may refuse permission, namely, the use must not, in the language of the statute, in anywise "interfere with the use and occupancy of the public schoolhouse and grounds, as is required for the purposes of the public schools of the State." (Education Code, § 19433.) And "No use shall be inconsistent with the use of the buildings or grounds for school purposes, or interfere with the regular conduct of school work." (*Education Code*, § 19402.) It is true the board has discretion in determining whether such interference will occur but it cannot exercise that discretion arbitrarily or capriciously or upon speculation or for reasons which will substantially impair the declared policy that school buildings may be used for the exercise of free speech and assembly. As said in *Goodman* v. *Board of Education, supra*, page 734:

"It appears from the above (referring to the use of schools for public assemblies but making school use paramount) that *some* discretionary, but *not arbitrary*, power is reposed in the board.…" (Italics added.)

In this case there are two factors which, it is asserted, justified the board's conclusion that there would be an interference with the school functions: (1) The psychological factor, that is, that there is a threat that the place will be picketed and the adult pupils will not attend the evening classes. (2) The disturbance factor; that there is a threat that there will be such noise and commotion that classes cannot be conducted. In this connection it must be remembered that it is undisputed that the room in the building, the use of which petitioner seeks, is available, no school functions being scheduled therein. In regard to both of those elements it should be observed that they are nothing more than speculation and conjecture which certainly do not constitute a proper basis for the board's action. All we have is the mere opinion that those things are going to happen. That is not sufficient as a basis for refusing permission. The United States Supreme Court said in *Hague v. Committee for Industrial Organization, supra*, 516, in speaking of the refusal to permit assemblies in parks and streets:

"It (the ordinance dealing with permits) does not make comfort or convenience in the use of streets or parks the standard of official action. It enables the Director of Safety to refuse a permit *on his mere opinion that such refusal will prevent 'riots, disturbances or disorderly assemblage.*' It can thus, as the record discloses, be made the instrument of arbitrary suppression of free expression of views on national affairs, *for the prohibition of all speaking will undoubtedly 'prevent' such eventualities. But uncontrolled official suppression of the privilege cannot be made a substitute for the duty to maintain order in connection with the exercise of the right.*" …

Likewise, in the instant case the refusal based upon mere opinion is arbitrary and that is all the board had upon which to base its action. Also, similarly the assumption by the board and the majority opinion that there will be noise and boisterous conduct, must be based upon the untenable premise that all law enforcement facilities and the school authorities will be wholly impotent or will refuse to maintain order and protect the pupils in attending classes, an assumption of nothing less than anarchy. To that proposition the complete answer is made in *Hague v. Committee for Industrial Organization, supra*, 516, the "uncontrolled official suppression … cannot be made a substitute for the duty to maintain order…." Both of the factors touching interference with school functions are predicated on what some third persons may or may not do. The board in refusing permission *is not exercising its judgment*. It is bowing to the threats or conjectured conduct of third persons. In the one case it is picketing and in the other the possible refusal of the pupils to attend classes. If it is permitted to base its action on such grounds there is nothing left of the cherished rights of freedom of speech and assembly and of the declared right to use school buildings for that purpose. If the Republican Party desires the use of a school building to hold a meeting the board may refuse permission upon the assumption or threat by the parents of students of Democratic persuasion that they will not attend classes. If any meeting of any character by any group is proposed and it is opposed by only one person or many persons attending the school a denial of permission might follow. That amounts, not to a fair exercise of discretion by the board on the issue of interference with school functions, but to a dictatorship by one person or many, completely negativing the constitutional guaranties and the right to use school buildings to express them. The question of interference with school functions cannot thus be made to turn on the whim and caprice of the mental attitude of the pupils toward the proposed meeting. In such event *it is not the proposed assembly* which *interferes with the school program, it is the pupils who are interfering because of their refusal to attend classes*, but the board in denying the permit is penalizing the group desiring to assemble rather than the pupils. The same reasoning applies where there is a threat or assumption of noise, commotion, rioting or violence which will disturb the classes. And in addition there is the factor that such condition, if it arises, should be and presumably will be controlled by the proper authorities. Suppose someone threatened to burn the school buildings if the meeting were held. Would anyone say that such a threat was such an interference as to authorize a denial of permission? Even if there is reason to believe that there will be noise which will disturb classes, the school officials are competent to cope with that situation. They may maintain order and prevent any undue commotion or disturbance.

The reasoning upon which the majority opinion is based makes it possible for any school board to deny the use of school buildings to anyone who may apply when the proposed use is for a purpose which may be even slightly controversial, as it will not be difficult to find those who will object and threaten. This is all that is required to deny permission for such use under the rule of the majority opinion. This places in the hands of school boards, especially in those communities where there is only one school building available for such uses, the power to deny permission for the use of such building to anyone whom a majority of the board dislike. Discrimination and favoritism are bound to result, and the obvious purpose and object which the Legislature had in mind in enacting the so-called Civic Center Act will be frustrated.

The history of civilization is replete with instances in which those in power have sought to suppress expression of the thoughts and ideas of those advocating philosophies with which they did not agree. Human nature has not changed, and notwithstanding constitutional and statutory provisions and court decisions declaring the rights of freedom of speech and assembly to constitute the very foundation of our democratic way of life, there are still those who because of ignorance, prejudice, self-interest or blind bigotry would deny these rights to those who advocate a philosophy out of harmony with their own views. To the end that the basic concept of our civil liberties may be preserved with fairness and equality to all, the courts should be alert to strike down any attempted infringement of these fundamental rights regardless of the guise under which it is cloaked.