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http://repository.jmls.edu/lawreview/vol28/iss3/8

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NOTES

A NATION OF ROBOTS?
THE UNCONSTITUTIONALITY OF PUBLIC
SCHOOL UNIFORM CODES

The vigilant protection of constitutional freedoms is nowhere more
vital than in the community of American schools.

Justice Potter Stewart

INTRODUCTION

The proliferation of gang violence in schools breeds a sense of
emergency for school districts. In reaction to the threat of gang
activity in schools, many school districts currently enforce manda-
tory dress codes. These codes prohibit students from wearing
certain clothing such as bandannas, colored handkerchiefs, college
ejackets, earrings and accessories identifiable as gang clothing.
California recently passed into law a more drastic measure allow-
ing public school districts to mandate school uniforms. Propo-
nents of this law and similar regulations justify them by assent-
ing that uniformity in dress will reduce gang violence and intimi-
dation in schools.

This Note posits that regulations mandating uniforms in
public schools are an unconstitutional limitation on students' First
Amendment rights of self-expression. Part I delineates gang prob-

2. As of October, 1992, the following were some notable school districts which
imposed strict dress codes banning clothing associated with gangs or gang-like
behavior in the hopes of providing a safer school environment: Anchorage, Atlanta,
Birmingham, Boston, Charleston, Charlotte, Chicago, Dallas, Denver, Detroit, the
District of Columbia, Houston, Jackson, Memphis, Minneapolis, Nashville, New
Haven, New Orleans, New York City, Oakland, Philadelphia, Phoenix, Portland,
Salt Lake City, San Antonio, San Francisco, Seattle, and St. Louis. Karon L. Jahn,
School Dress Codes v. The First Amendment: Ganging Up on Student Attire, Paper
Presented at the Annual Convention of the Speech Communication Association,
78th, Chicago, Ill., Oct. 30, 1992, at 19, microformed on Commission on Freedom of
Speech Panel Proposal (Educational Resources Information Center).
3. Id. at 8. For example, the Oakland, Cal. School District's dress code specifi-
cally prohibits the wearing of certain articles of clothing. Id. at 10. Banned articles
include T-shirts with decals which demean people on the basis of race or sex, some
pieces of jewelry, and smooth-fabric jogging suits. Id. In addition, students cannot
wear clothing designating membership in any non-school-sponsored organization.
Id.
4. CAL. EDUC. CODE § 35183 (West 1994).
5. Id.
lems in America generally and discusses the spread of these problems to schools. Part II details the California Dress Code Law (the "Uniform Law") as a solution to gang activity and other problems in schools. This Part presents the Long Beach School District's mandate of uniforms as an example of a school uniform policy currently in action. Part III analyzes the "Uniform Law" under the First Amendment symbolic speech doctrine. Part III first examines how courts define and apply the symbolic speech doctrine. Second, it discusses the inherent problems with the "Uniform Law," including constitutional conflicts and practical impossibilities. Finally, Part IV proposes a solution with a two-pronged effect: it advances the state's interest and simultaneously protects a student's right to free expression.

I. PROLIFERATION OF GANG VIOLENCE AS THE MAJOR IMPETUS FOR SCHOOL UNIFORMS

Gang activity in schools provides the major impetus for uniform codes and policies in the public schools. This Part first describes the historical nature of gangs and their symbols. Next, this Part discusses the modern gang and how its violence and its symbols differ from those of gangs in the past. Finally, this Part tracks how violence and gang symbols have penetrated the school environment, provoking legislatures and school boards to enact uniform policies.

A gang is an "interstitial group, integrated or organized through conflict." Youth gangs in America date back to before the turn of the nineteenth century. Traditionally, gangs form


Others have posed equally descriptive definitions for the gang structure. For instance,

A gang refers to any denotable adolescent group of youngsters who (a) are generally perceived as a distinct aggregation by others in the neighborhood, (b) recognize themselves as a denotable group (almost invariably with a group name), and (c) have been involved in a sufficient number of delinquent incidents to call forth a consistent negative response from neighborhood residents and/or law enforcement agencies.  

6. Id. at 11. Other definitions emphasize the organization and control of turf. For example, "[a] youth gang is a self-formed association of peers united by mutual interests with identifiable leadership and internal organization who act collectively or as individuals to achieve specific purposes, including the conduct of illegal activity and control of a particular territory, facility, or enterprise." Id. Section 186.22 of the California Penal Code defines "criminal street gangs" as "any organization, association, or group of three or more persons whether formal or informal . . . which has a common name or common identifying sign or symbol, where members individually or collectively engage in or have engaged in a pattern of criminal activity." Id.

7. Id. at 1.
during times of social change and political instability. Historically, the delinquency of youth gangs stems from a feeling of frustration among youths who believe that the opportunities for legitimate achievement are distributed unequally among various segments of the population. Those strong feelings of frustration encourage youths to find alternative means of achieving status and the symbols which accompany such status. Youth, by nature, is a time of rebelliousness, and young men throughout history displayed this rebelliousness through acts of delinquency.

Often, then, disadvantaged youths resort to delinquency to attain status.

Researchers regard the American male youth gang of the past as adventurous, funloving and spirited, despite occasional manifestations of delinquent behavior. During the World War II era, for example, researchers classified youth gangs as "stable, organized, functionally constructive, non-aggressive and community-integrated." Gangs in the 1950s and 1960s engaged merely in hand-to-hand combat if they resorted to violence at all. In fact, a 1950 study indicates that the most serious incidents of delinquency included "shooting staples," driving noisily by schools and churches, prowling, using abusive language and "loafing in the pool hall."

Gangs throughout history have attached great value to sym-

8. Id. For instance, some historians believe the New York City Civil War draft riots were precipitated by youth gangs. Id.
10. MICHAEL BRAKE, COMPARATIVE YOUTH CULTURE 22 (1985). In past decades, youth gangs rebelled through comparatively minor acts of delinquency including theft, vandalism and sexual misbehavior. Id. at 23.
11. See id.
12. SPERGEL, supra note 6, at 2.
13. Id.

In recent years, gangs have acquired "serious" guns, and the weapons are often used impersonally—in the infamous drive-by shootings, rather than in hand-to-hand inter-gang fights. The escalation of violence also seems to have something to do with intergenerational dynamics. Younger members often want to match or outdo the reputations of their predecessors.

Id.

Some gangs of the late 1950s portrayed the image of "Cool Cats" which they manifested by detaching or distancing themselves from their surroundings. BRAKE, supra note 10, at 28. Other groups manifested rebelliousness which took the form of delinquency, violence or other minor criminal activities. Id. None of these activities compares to the violence seen in today's youth gang.

15. COHEN, supra note 9, at 39.
bols which distinguish them from rival groups. For example, Lon-
don gangs in the 1600s donned colored ribbons to distinguish
different factions. Some gangs of the seventeenth and eigh-
teenth centuries wore belts designed with serpents, animals,
stars, and hearts pierced with arrows. In the 1970s, groups of
young males interested in motorcycles consistently wore blue
jeans, leather and no crash helmets, making this costume a sym-
bol of their subculture.

However, in the 1980s, gang life for young boys took on an-
other dimension. For reasons not easily determinable, but partly
attributable to easily accessible guns, gangs became a violent new
form of organized crime. Unlike the friendly groups of yester-
day, modern gangs more readily seek influence and intimidation
through violent activity. Criminal acts and acts of violence are, for
some, "rites of passage and symbolic acts of belonging." Gang
experts identify various motives for gang crime. These include turf
violation, intimidation, prestige, retaliation and recruitment. Gangs, usually operating at night and in large groups, often com-
mit crimes against those unable to defend themselves.

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16. SPERGEL, supra note 6, at 1.
17. Id.
18. BRAKE, supra note 10, at 14. "The dress . . . was not primarily a functional exigency of riding a motorcycle. It was more crucially a symbolic extension of the motorbike and amplification of the qualities inherent within a motorbike." Id. at 13.
19. SPERGEL, supra note 6, at 3. Researchers identify poverty as one over-
whelming characteristic of delinquent children. COHEN, supra note 9, at 40. Thus, the rise in violent gangs can be partly attributable to the increase in children living in poverty. See infra text accompanying note 25 for a more detailed discussion of children and poverty.
20. CITY OF CHICAGO BD. OF EDUC., GANG ACTIVITY TASK FORCE REPORT 2 (Sept. 1981) [hereinafter TASK FORCE REPORT]; see also SPERGEL, supra note 6, at 23 (discussing violent crime attributed to gangs).

The increase in gang violence in some cities in the past 8 to 10 years has been attributed to several factors. Gangs have more weapons than they have had in the past. Guns are used more often from a moving car (drive-by shootings). The ready availability of improved weaponry (.22s, .38s, .45s, .357 magnums, AK 47s, Uzis, and sawed-off shotguns) is associated with the changing pattern of gang conflict. The 'tradition,' 'report,' or myth of intergang rumbles based on large assemblages of youth arriving for battle on foot, which may be easily interdicted, has been supplanted by smaller, mobile groups of two or three youths, usually in a vehicle, prowling for op-
posing gang members. Although shootings are sometimes planned, spur-of-the-moment decisions to attack targets of opportunity are common.

Id.
21. CHICAGO POLICE DEPT, STREET GANGS 1 (n.d.) [hereinafter STREET GANGS].
22. See id. at 5 (describing gang activity). When in pursuit of money from the sale of drugs or in an attempt to gain status in the group through committing crimes, gang members do not discriminate and will injure or kill anyone in their way. Id. Victims occasionally include innocent bystanders. Id.
The ease with which children can obtain guns creates a much more serious and dangerous group of gangs than has existed in the past. Armed with sophisticated weapons, gangs participate in drug trafficking, witness intimidation, extortion, and bloody territorial wars. Suddenly, the nature of youth gangs has changed from funloving to wicked.

Gangs today plague all areas of the country. Presumably because of the decline in the nuclear family structure, the increase in poverty, and the lack of education and constructive alternatives for youths, the modern gang usually attracts adolescents and children who seek the protective family feeling that is absent from their homes. Generally, those attracted to gangs lack the recognition they would otherwise gain from family, school, athletics or employment. The gang provides identity and status, and the member develops a strong sense of loyalty to the gang which may make it impossible to break away.

As was always the case with gangs, symbols and insignias today are essential to the aspect of belonging and identification; however, contemporary gang members "live in this world of identification, status and symbolism twenty-four hours a day." Gang members today achieve status and recognition through clothing, jewelry, hand signals, tattoos and graffiti; these

23. CONLY, supra note 14, at 13.
24. SPERGEL, supra note 6, at 3.
25. Carl Rogers, *Children in Gages*, UNESCO COURIER, Oct. 1991, at 19. Youth gangs are usually groups of more than two persons who frequently engage in illegal activity in furtherance of their camaraderie. *Id.* These groups are territorial and vigilant in protecting their "turf." *Id.* They usually identify themselves by names and distinguish themselves by wearing certain colors or articles of clothing certain ways, by exchanging hand signals, or through tattoos and jewelry. *Id.*

Gangs are frequently a product of poor urban neighborhoods or urban housing projects where the typical one-parent family receives income solely from federal aid. *Id.* Nationally, 20% of all children live below the poverty level established by the federal government. *Id.*

*See also* Sylvester Monroe, *Life in the 'Hood*, TIME, June 15, 1992, at 36 (noting that in 1992 there were 187 known gangs nationwide). Gangs form in every state, and not solely in urban centers. *Id.* Gangs also exist in suburban communities with populations of 5,000. *Id.*

26. TASK FORCE REPORT, supra note 20, at 1.
27. STREET GANGS, supra note 21, at 1.
28. *Id.* at 9.
29. TASK FORCE REPORT, supra note 20, at 2.
30. All gangs choose colors to represent themselves. STREET GANGS, supra note 21, at 6. Gangs distinguish themselves through the colors of clothing or by the manner in which the clothing is worn. *Id.* For example, gangs generally polarize between two major factions termed as the "people" and the "folks." *Id.* at 16. Incarcerated gang members established these alliances in the 1980s seeking protection in the penitentiary system by forming alliances. *Id.* Because gang identifiers are forbidden in the penal system, incarcerated gang members when asked to represent their affiliation, will simply say 'People' or 'Folks.' *Id.* These alliances are not
symbols serve as marks of identification and weapons of intimidation to rival gang members. These identifiers reinforce the elements of unity, identity and loyalty that are essential to gang relationships.

Recently, American society has seen an increase in gang crimes committed over clothing. For gang members desiring various types of clothing, or merely desiring to humiliate other gangs, armed robbery and homicide become ways to achieve their goals. An unfortunate consequence of gang crimes committed formed on traditional gang racial boundaries. Id. In fact, both alliances contain blacks, Hispanics and white street gang members. Id. at 17.

This method of identification has moved to the streets. Id. Members of the “people” alliance wear all identifiers to the left side (for example, the bill of a hat facing toward the left side of the body). Id. The “folks” gangs wear identifiers to the right side. Id. A new trend in clothing identifiers involves gang members choosing a college or professional sports team with the same colors as the gang colors and wearing team paraphernalia (for example, Starter jackets). Id. at 13.

31. Id. at 10. Medallions worn as necklaces may indicate a gang symbol, and thus act as a gang identifier. Id. In addition, depending on the “people” or “folks” affiliation, earrings worn in the right or left ear may identify gangs. Id. More specifically, gang members within the “people” or “folks” affiliations may choose earrings with the specific gang symbol (for example, a dollar sign is the symbol for the Chicago “C-Notes” gang and the Playboy bunny is the symbol for the Chicago “Party People” gang). Id. at 17.

32. Id. at 7. Hand signs are used by gangs to communicate gang affiliation and/or to intimidate or challenge other gangs. Id. Gang members “throw signs” as a means of nonverbal communication to challenge another gang or to communicate within their gang. Id. Hand signs are made by forming letters (such as sign language letters) or numbers to represent gang initials or symbols. Id. “Throwing down” a rival gang symbol is a sign of disrespect and commonly provokes shootings. Id.

33. Id. A tattoo identifies a gang member by including a letter, symbol or name of a gang. Id. Gangs wear both homemade and professionally done tattoos. Id. Members tattoo any part of the body. Id. A new trend among gangs involves tattooing a teardrop on the cheek of a gang member to represent another gang member who has been killed or incarcerated. Id.

34. Id. at 6. Graffiti is a clear marking of territorial boundaries. Id. It serves as a warning to other gangs not to invade the space of gang. Id.

35. Id.

36. Id.

37. Nina Darnton, Street Crimes of Fashion, NEWSWEEK, Mar. 5, 1990, at 58. Police in large urban cities have noticed a startling increase in armed robbery, much of which is linked to gang children wanting to make a fashion statement. Id. “The combination of crack-quickened tempers, availability of guns and the flashy clothes of the drug culture has taken fashion awareness to a wicked level.” Id. One explanation, especially for the college and professional team athletic jackets and clothing, is that black sports figures who wear these same clothes are the only role models gang children have to emulate. Id. However, wearing jackets and other clothing may also establish a symbol for the gang and work to intimidate members of rival gangs. Id. Thus, much of the increase in crime stems from the territorialism of gangs; if a gang member sees a member of a rival gang in his territory wearing the rival gang colors, the rival may be shot or injured to humili-
over clothing is that innocent bystanders are often caught in the
crossfire.\textsuperscript{38}

Violence associated with gang initiation and territorialism
has spread from the streets to the schools, in some instances cre-
ating a potentially threatening school environment.\textsuperscript{39} The situa-

tate rival gang members. \textit{Id.}

It is difficult to classify exactly what constitutes a gang crime. \textit{Spergel, su-
pra \textsuperscript{6}, at 8.}

The Los Angeles Police Department defines 'gang-related crime' as homicide,
attempted murder, assault with a deadly weapon, robbery, kidnapping,
shooting at an inhabited dwelling, or arson in which the suspect or victim is
identified in police files as a gang member or associate member (usually on
the basis of a prior arrest or identification as a gang member). In Chicago, a
wider range of crimes may be classified as gang-related but only if the inci-
dent grows out of a gang function, gang motivation, or particular circum-
stances. Any robbery involving a gang member is gang related in Los Angel-
es, but a 'gang-related robbery' in Chicago must be due mainly to gang pur-
pose or grow directly out of gang structure and interest. Philadelphia, Bos-
ton, New York City and other cities (even within the state of California)
have different criteria for identifying and classifying an incident as gang
related.

\textit{Id.} \textsuperscript{38}. \textit{Spergel, supra \textsuperscript{6}, at 8.}

39. \textit{Id.} at 69. The United States Department of Justice Office of Juvenile and
Delinquency Prevention reports that although gang researchers have not paid
considerable attention to the issue of gangs in schools, gangs are noticeably
prevalent in schools. \textit{Id.} This report states that:

In six large cities, informants reported 'the presence of identified gangs
operating in the schools, stabbings, beatings, and other kinds of assaults on
teachers,' and that the schools in Philadelphia are 'citadels of fear' with
'gang fighting in the halls.' In Chicago, 50\% of public school students believe
that 'identifiable gangs are operating in and around the majority of schools,
both elementary and secondary.' One in 10 students reports that street-gang
members make them afraid when they are in school, have either attacked or
threatened them, and have solicited them for membership—although mainly
when they are not at school.

\textit{Id.} at 70.

Additionally, the report states that school-related gang problems are different
in character from the street gang problem. \textit{Id.} "It is generally less serious and in-
volves younger youths." \textit{Id.} The report also states that:

Self-report and police-arrest data appear to tap different dimensions of the
gang problem. The Chicago Board of Education study reports that younger
students, aged 12 or 13, are as likely as students aged 18 or older to be
solicited for gang membership. However, a substantial majority of youths
arrested for gang-related crimes are over 14 years of age.

\textit{Id.}

Police reports tend to indicate a more limited gang problem in schools than
do other reports. \textit{Id.} For example,

Chicago Police Department statistics show that 10\% to 11\% of reported gang
incidents in 1985 and 1986 occurred on school property generally. Only 3.3\%
of the reported gang incidents took place on public high-school property in
1985. Chicago public-school discipline reports for the same period show that
only 2\% of discipline code violations were gang-related, but that gang inci-
tion involves stabbings on campus, carrying weapons under clothing to schools, threatening teachers and students, and selling drugs on school property. These problems provide the impetus for school districts to enact dress codes. Although many schools around the country currently enforce dress codes, prior to the passage of California's "Uniform Law," no state legislation permitted school districts to mandate uniforms.

II. THE CALIFORNIA "UNIFORM LAW": AN ATTEMPT TO ELIMINATE GANG PROBLEMS IN PUBLIC SCHOOLS

Hoping to curtail the gang problem in schools, legislatures and school districts are more readily encouraging "uniform" policies in public schools. This Part examines the California "Uniform Law" as one solution to the gang activity in schools. Section A delineates the background of the "Uniform Law." Section B discusses reported justifications for the law. Finally, Section C provides the Long Beach Unified School District's uniform policy as an example of uniforms currently mandated by a public school.

A. The California "Uniform Law"

Currently, many schools enforce dress codes prohibiting students from wearing to school certain items which might identify gang affiliation, such as bandannas, jewelry and head-bands.

40. See id. at 69 (discussing generally, gang-related delinquency in or around schools); see also James A. Maloney, Constitutional Problems Surrounding the Implementation of "Anti-Gang" Regulations in the Public Schools, 75 MARQ. L. REV. 179, 180-82 (1991) (describing gang problems in schools today).

41. See California Goes Beyond Dress Codes, N.Y. TIMES, Aug. 24, 1994, § B, at 8 (considering the goal of school uniforms); see also Carl Ingram, State Senate Votes to Let Public Schools Require Uniforms, L.A. TIMES, Apr. 19, 1994, at A3 (analyzing the dress code law as an anti-gang measure).

42. See, e.g., Olesen v. Board of Educ., 676 F. Supp. 820, 821 (N.D. Ill. 1987) (providing an example of a school "anti-gang" dress code).

These dire anti-gang measures are not confined solely to the schoolhouse. For instance, city officials of the town of Harvard in McHenry County, Illinois, created an anti-gang ordinance which prohibits "any public action or display that even suggests gang affiliation." Ray Quintanilla, Toughest Against Gangs? Maybe Tiny Harvard, CHI. TRIB., Feb. 1, 1995, § 1, at 1 (emphasis added). More specifically, the police may stop, warn or arrest any Harvard resident who wears "gang-related" symbols, jewelry and colors in public. Id. Although police report a decline in gang activity, Harvard youths are concerned that police are too strictly enforcing the law, and that they may be placed under arrest for wearing any stylish hat, jewelry or sport jacket. Id.

Harvard citizens and interest groups are currently challenging the anti-gang ordinance. Id. at 11. For instance, the American Civil Liberties Union says the
However, California legislators, school officials, and parents believed a uniform dress policy would more easily and more effectively reduce gang activity in schools. Thus, on August 23, 1994, California's Governor Pete Wilson signed into law a dress code bill proposed by State Senator Phil Wyman.43

Harvard ordinance infringes on constitutional rights "not just by limiting free speech, but also by singling out people because of the way they look or act, or what they wear." Id. Additionally, a 13-year-old Harvard resident who police arrested for wearing a six-pointed Star of David is appealing a McHenry County circuit court decision upholding the ordinance. Id. He claims his arrest pursuant to the law was unconstitutional. Id.

Residents of Harvard oppose the ordinance on constitutional grounds. For instance, Joe Gregory, a former member of Harvard's police board whose son was picked up by police last March for wearing a Star of David, says about the law, "[t]his is ridiculous. Eventually, we're all going to look like the Good Humor Man, otherwise, we'll get arrested." Don Terry, Town Takes a Hard Line on Street Gangs' Symbols, But Some See Threat to Free Speech Rights, N.Y. TIMES, Feb. 7, 1995, at A6. Additionally, Mr. Gregory's son's attorney, Charles P. Weech, said about the law, "Harvard should be applauded for taking a stand against gangs . . . but the court system and we as citizens need to decide how much we want to stop gangs and whether we want to give up our constitutional rights to do it. Personally, I'm not ready to go as far as Harvard." Id.

43. CAL. EDUC. CODE § 35183 (West 1994). The statute reads:

SECTION 1. Section 35183 of the Education Code is amended to read:

35183. (a) The Legislature finds and declares each of the following:

(1) The children of this state have the right to an effective public school education. Both students and staff of the primary, elementary, junior and senior high school campuses have the constitutional right to be safe and secure in their persons at school. However, children in many of our public schools are forced to focus on the threat of violence and the messages of violence contained in many aspects of our society, particularly reflected in gang regalia that disrupts the learning environment.

(2) "Gang-related apparel" is hazardous to the health and safety of the school environment.

(3) Instructing teachers and administrators on the subtleties of identifying constantly changing gang regalia and gang affiliation takes an increasing amount of time away from educating our children.

(4) Weapons, including firearms and knives, have become common place upon even our elementary school campuses. Students often conceal weapons by wearing clothing, such as jumpsuits and overcoats, and by carrying large bags.

(5) The adoption of a schoolwide uniform policy is a reasonable way to provide some protection for students. A required uniform may protect students from being associated with any particular gang. Moreover, by requiring schoolwide uniforms teachers and administrators may not need to occupy as much of their time learning the subtleties of gang regalia.

(6) To control the environment in public schools to facilitate and maintain an effective learning environment and to keep the focus of the classroom on learning and not personal safety, schools need the authorization to implement uniform clothing requirements for our public school children.

(7) Many educators believe that school dress significantly influences pupil behavior. This influence is evident on school dress-up days and color days. Schools that have adopted school uniforms experience a "coming together
This "Uniform Law" amends a previous law that permitted California school districts to adopt "reasonable dress code regulations" necessary for the health and safety of the school environment.\textsuperscript{44} The legislature's rationale for both the initial and amended law stems from the threat of gang violence in schools, potentially threatening the health and safety of public school students.\textsuperscript{45} The newly passed amendment adds a provision stating:

The adoption of a schoolwide uniform policy is a reasonable way to provide some protection for students. A required uniform may protect students from being associated with a particular gang. Moreover, by requiring schoolwide uniforms[,] teachers and administrators may not need to occupy as much of their time learning the subtleties of gang regalia.\textsuperscript{46}

\textsuperscript{44} Id.
\textsuperscript{45} Id.
\textsuperscript{46} § 35183(a)(6).
B. Justifications for the Law

While thwarting gang violence is the major impetus for the amended bill, it is not the only premise. Parents, school officials and the legislature hope to establish a more well-behaved group of students as well. In their view, uniforms will reduce disciplinary problems and in turn increase academic performance. Senator Wyman suggested other possible benefits from the adoption of uniforms. These include fewer tardy excuses, fewer referrals for discipline, a reduction in the theft of expensive and designer clothes, and an increase in the general sense of self-esteem of the students.

C. The Long Beach Unified School District: Exemplifying Uniforms in Action

One California school district, the Long Beach Unified School District, implemented a school uniform policy beginning Fall, 1994, becoming the first school district in the state to mandate uniforms pursuant to the "Uniform Law." The Long Beach policy, which affects nearly 60,000 students from fifty-six elementary and fourteen middle schools, becomes the first policy in the nation to require students from kindergarten to eighth grade to wear uniforms. The school district exempts high schools from the uniform plan mainly because administrators doubted whether older students would accept the uniforms.

Long Beach has a significant gang presence. However, nei-

47. § 35183(a)(6)-(7).
49. Id.
50. Id.
51. See Peter Callaghan, Schools Have Some Legal Justification for Requiring Student Uniforms, TACOMA NEWS TRIB., Apr. 7, 1994, at A7 (explaining that the Long Beach, California, school district will be the national "guinea pig" in an experiment with a mandatory public school uniform policy).
54. Long Beach is home to just less than half a million persons. Telephone Interview with Officer Norm Sorenson, Gang Division Officer, Long Beach Police Department, Long Beach, Cal. (Oct. 11, 1994). In this relatively small community exist 66 criminal street gangs, 33 of which are criminally active. Id. The Long Beach Police Department (LBPD), through its "Gang Reporting Evaluation and Tracking System," recognizes 14,500 gang members in its jurisdiction. Id. The ages of the Long Beach gang members range from 9 to 23 years. Id. The 52-square-mile patrol area of the LBPD records approximately 120 homicides a year, half of which the LBPD believes to be gang-related incidents. Id.
ther the Long Beach Unified School District nor the Long Beach Police Department (LBPD) keeps specific data on the number of gang members in schools.\footnote{55} Gang division officers of the LBPD indicate that statistics are difficult to maintain mainly because most gang members either drop out by junior high school or are expelled due to criminal activity or poor academic standing.\footnote{56} A gang division officer opined that the "new fashion trend" of school students recently provoked the new uniform policy in Long Beach.\footnote{57} The "rap" and "hip-hop" movement makes popular a fashion trend which is strikingly similar to styles that gang members typically wear. Thus, non-gang members become indistinguishable from gang members at first glance. "A gang member seeking revenge, especially a member high on crack, has a difficult time distinguishing between a rival gang member and a non-gang member wearing the same style and colors."\footnote{58}

Like the California Legislature's rationale for passing the "Uniform Law," the Long Beach Unified School District hopes the use of uniforms will decrease absenteeism, reduce incidents of misconduct, suspensions and expulsions, improve grades, and reduce tensions created by clothing related to gangs or socioeconomic class.\footnote{59} The Long Beach uniform policy requires color-coordinated collared shirts or blouses, pants, skirts or shorts.\footnote{60} The expected cost for three uniform outfits is sixty-five to seventy-five dollars.\footnote{61} Parents complain about being unable to afford new uniforms for their children. However, the Long Beach School District hopes to cover the cost for indigent families through fundraisers.\footnote{62}

Uniform clothing in public schools, at least according to its proponents, may confer many benefits on schools, including a reduction of "economic class" competitiveness among students, a reduction in distraction caused by clothing, and a nicer "look" to the school environment; legislators and school boards hope each of these benefits will create a more disciplined atmosphere. Despite these benefits, codes encouraging a mandate of school uniforms have a significant downside: they greatly infringe on First Amend-
ment rights of free expression. Indeed, the interference with First Amendment rights is so severe that the "Uniform Law," and others like it, cannot withstand constitutional scrutiny.

III. SYMBOLIC SPEECH AND THE FIRST AMENDMENT: ARE UNIFORM POLICIES IN PUBLIC SCHOOLS CONSTITUTIONAL?

This Part discusses the constitutional infirmities with the "Uniform Law." Section A provides the background of symbolic speech, which is protected by the First Amendment. More specifically, this Section analyzes how courts protect expressive conduct as symbolic speech, how a person's choice of clothing qualifies as symbolic speech, and how uniforms threaten protected free expression. Section B determines the level of scrutiny courts use to analyze restrictions on symbolic speech. This Section, then, differentiates between content-based and content-neutral regulations, classifies the "Uniform Law" as a content-neutral regulation requiring scrutiny under the United States v. O'Brien test, and concludes that the "Uniform Law" fails the O'Brien test for two reasons: (1) it fails adequately to further the state's interest, and (2) it is fatally overbroad.

The First Amendment to the Constitution protects freedom of speech.64 The courts historically have treated First Amendment rights with special favoritism.65 In fact, some jurists theorize that the framers intentionally gave free speech and expression the primary position in the Bill of Rights.66 Theorists believe that

64. The First Amendment provides: "Congress shall make no law . . . abridging the freedom of speech . . . ." U.S. CONST. amend. I. The Fourteenth Amendment extends this proscription to the states. U.S. CONST. amend. XIV, § 1; see, e.g., Gitlow v. New York, 268 U.S. 652, 666 (1925) (stating "we . . . assume that freedom of speech . . . which [is] protected by the First Amendment from abridgement by Congress [is] among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the States.").
65. Robert B. McKay, The Preference for Freedom, 34 N.Y.U. L. REV. 1182, 1184 (1959). Freedom of expression is so vital to the Constitution that it must stand in a preferred position. Id. Courts express their preference for First Amendment freedom of speech in many ways, including:
   - the clear and present danger test; narrowing of the presumption of constitutionality; strict construction of statutes to avoid limitation of first amendment freedoms; relaxation of the requirements of standing to sue where first amendment issues are involved; and generally higher standards of procedural due process where these freedoms are in jeopardy.
   Id.
66. Id. at 1187. The primacy of the freedoms of the First Amendment, because they are vital to the values of a free society, must be recognized in varied ways to accommodate the various contexts in which these crucial rights may be challenged.
   Id. at 1222.
courts should carefully protect freedom of speech because society greatly values this freedom. Because freedom of speech and freedom of expression are such important rights in our free democracy, courts closely scrutinize legislation which threatens their infringement; theoretically, legislatures must guard First Amendment rights as closely as the courts. The following Section discusses the First Amendment symbolic speech doctrine and its treatment by the courts.

A. Background of Symbolic Speech Protected by the First Amendment

1. Conduct as Protected Symbolic Speech

As early as 1931, the Supreme Court recognized that the First Amendment protects not only verbal speech, but symbolic speech as well. Generally, courts and scholars consider a non-verbal act symbolic speech if it contains some communicative value. Thus, the Court recognizes that conduct, and not solely words, can communicate self-expression; as a result, the courts protect some forms of conduct as expressive symbolic speech within the meaning of the First Amendment. For example, courts have recognized hair styles, flag burning, wearing expressive

67. Thomas I. Emerson, Toward a General Theory of the First Amendment, 72 YALE L.J. 877, 878 (1963). For example, the theorist Thomas Emerson believes freedom of speech and expression must receive undaunted protection because the values society attaches to these freedoms fall into four important groups: (1) assuring individual self-fulfillment, (2) a means of attaining the truth, (3) a method of securing participation by the members of the society in social, including political, decisionmaking, and (4) maintaining the balance between stability and change in society. Id.


69. See generally Stromberg v. California, 283 U.S. 359, 370 (1931) (invalidating, on First Amendment grounds, a statute prohibiting display of "any flag, badge, banner or device . . . as a sign, symbol or emblem of opposition to organized government").


71. Since all communication takes place through some conduct, not all conduct is within the realm of symbolic speech. One possible suggestion for classifying conduct which qualifies as symbolic speech is to determine if the conduct is assertive in nature, meaning that the conduct "cannot adequately be explained unless a desire to communicate is presumed." Note, Symbolic Conduct, 68 COLUM. L. REV. 1091, 1117 (1968).

72. Tiersma, supra note 70, at 1526; see, e.g., Texas v. Johnson, 491 U.S. 397, 404 (1989) (recognizing that although the First Amendment literally protects against any acts of infringement on "speech," the Court has "long recognized that its protection does not end at the spoken or written word").

73. See, e.g., Breen v. Kahl, 419 F.2d 1034, 1036 (7th Cir. 1969) (reasoning that "[t]he right to wear one's hair length at any length or in any desired manner is an
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ingredient of personal freedom protected by the United States Constitution."). The Breen court held that the school's interest in maintaining discipline was not a sufficient justification to overcome the fundamental "right to wear one's hair at any length or in any desired manner." Id. at 1036; see also Crews v. Cloncs, 432 F.2d 1259, 1266 (7th Cir. 1970) (recognizing a student's right to choose the style and length of hair despite the state's need for an orderly educational system).

74. See Texas v. Johnson, 491 U.S. at 397 (protecting flag burning as a form of expression under the First Amendment).

75. See McIntire v. Bethel Sch., 804 F. Supp. 1415, 1430 (W.D. Okla. 1992) (permitting students to wear expressive t-shirts). In McIntire, the school district suspended 26 high school students for wearing t-shirts which displayed the slogan "the best of the night's adventures are reserved for people with nothing planned." Id. at 1418. The superintendent realized that the slogan had been taken from an alcoholic beverage advertisement, and thus the students allegedly violated a school regulation prohibiting the wearing of shirts with alcoholic beverage slogans. Id. at 1423. The District Court determined that the slogan was not an expression because there was no evidence linking the statement to alcohol anywhere on the shirt. Id. The court then found a prima facie First Amendment violation when it concluded that the shirt conveyed an idea and not a product endorsement. Id. at 1427.

76. See Chandler v. McMinnville Sch. Dist., 978 F.2d 524, 527 (9th Cir. 1992) (holding that when a button message was not lewd or plainly offensive, wearing buttons constituted expression protected by the First Amendment, especially without evidence from the school district that the buttons caused disruption in school).

77. See City of Ladue v. Gilleo, 114 S. Ct. 2038, 2045 (1994) (invalidating an ordinance forbidding private homeowners from hanging expressive signs on their properties). In Gilleo, a woman displayed a sign from her home stating "For Peace in the Gulf." Id. at 2039. Hanging such a sign was in violation of an ordinance banning all residential signs, except those which fell within 10 exemptions. Id. The Court held that the ordinance violated the homeowner's right to free speech. Id. The Court reasoned that although LaDue has a concededly valid interest in minimizing visual clutter, "[i]t has totally foreclosed [a venerable means of communication] to political, religious or personal messages." Id. at 2045.

78. See Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 505 (1969) (holding that a regulation prohibiting wearing armbands to school to exhibit disfavor with the Vietnam War was an unconstitutional denial of a student's right to free expression).

79. The most notable case presenting such an issue is Tinker v. Des Moines Independent School District. Id. at 503. In Tinker, a school district suspended students who, in protest of the Vietnam War, wore black armbands to school. Id. The Supreme Court held that the conduct was a symbolic act protected by the First Amendment because the conduct was "akin to pure speech." Id. at 505. In his opinion for the Court, Justice Fortas stated that teachers and students alike enjoy fundamental freedoms guaranteed by the Constitution. Id. at 506. More specifically he added, "[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Id. Justice Fortas concluded that, in the absence of a valid specific constitutional reason to inhibit students' speech, students are free to express their views. Id. at
sonal appearance as a form of self-expressive conduct arose in the late 1960s and early 1970s with an abundance of students bringing constitutional challenges against school dress codes regulating the length of their hair. Although the federal courts of appeal did not agree on the constitutionality of hair length regulations, the Supreme Court never granted certiorari to any of the students' cases. The Supreme Court's denial of certiorari left intact roughly half of the lower courts' decisions favoring the school district's interest in maintaining order, health and safety; it also left intact the contrary decisions upholding a student's right to free expression through hair length.

In Spence v. Washington, the Supreme Court delineated two conditions which, if met, qualify conduct as symbolic speech.
worthy of First Amendment protection. First, there must be an intent to convey a particularized message. Second, the likelihood must be great that those who view the message will readily understand it. Choice of clothing satisfies the Spence test, and thus is symbolic speech protected by the First Amendment.

2. Choice of Clothing as Self-Expression

Personal choice of clothing satisfies both prongs of the Spence test, and thus is conduct worthy of consideration as symbolic speech. First, clothing, whether consciously or subconsciously chosen, is nonverbal conduct which conveys a "particularized message" about the self. Dress is a "systematic means of transmission of information about the wearer." Dress conveys an array of meanings simultaneously, including creativity, attitude, identity, value, and mood. Although the effect of nonverbal conduct may not be consciously intended, the intent may none-theless be very real.

84. Id. at 410-11.
85. Id.
86. Id.
87. Id.
88. Grace Q. Vicary, The Signs of Clothing, in CROSS-CULTURAL PERSPECTIVES IN NONVERBAL COMMUNICATION 299 (Fernando Poyatos ed., 1988). "Clothing is basic to definition of self. It is impossible to discuss [c]lothing, even as distant history, and ignore disquieting inner questions such as '[w]hat do the clothes I am wearing say about me?" Id.

See also BRAKE, supra note 10, at 13 (describing how clothing makes statements). "The nature of our apparel is very complex. Clothes are so many things at once. Our social shells, the system of signals with which we broadcast our intentions, are often the projection of our fantasy selves . . . clothes are our weapons, our challenges, our visible insults." Id. at 13-14.


Most people have a deep wish to express their creativity, but they lack artistic talent or skill to do so. The selection of a piece of clothing represents a minimal amount of transferred creativity into which individual desires can be translated. The dress, blouse, or skirt I pick is not only my personal signature, but also an expression of my own creative imagination.

91. Damhorst, supra note 89, at 1.
92. Melville B. Nimmer, The Meaning of Symbolic Speech Under the First Amendment, 21 UCLA L. REV. 29, 37 (1973). Nimmer adds an example to his theory that even subconscious intent to convey a message may be very real. Id. Through this example, Nimmer suggests the conduct of choosing clothing does have meaning:

When each morning I select the particular apparel to wear for the day, I
Research on clothing and psychology overwhelmingly concludes that clothing sends many types of messages about the wearer. For example, dress provides information about “characteristics of the stimulus persons, their social and cultural backgrounds, relationships with others, and types of situations and activities in which they were or might be involved.” Dress primarily transmits messages about personality traits and is a powerful means of self-expression. In this respect, clothing resembles a language. Because what we wear is a matter of choice, this choice creates a system of signs in which we voluntarily and deliberately send messages about ourselves. Thus, choice of clothing sends a particularized message of personality traits and attitude, thereby satisfying the first prong of the Spence test.

Intentions to send messages about oneself through dress satisfy the second prong of the Spence test because the messages are recognizable and understandable by viewers. Social perception may consider whether it will be a hot or cold day, whether it is likely to rain, and a number of other factors. To the extent that my choice of wearing apparel for the day is dictated by such considerations, my concern is with a nonmeaning effect, i.e., my physical comfort. But if in making my choice I also consider (as most people do) how this particular ensemble will “look,” I am then concerned with the impression to be made in the minds of others, whether cognitive, emotive, or both. To that extent I am concerned with the meaning effect of my conduct in wearing certain clothes.

Id. 93. Damhorst, supra note 89, at 2.

94. Id. at 5. Damhorst’s research, analyzing the previous studies done on measures of messages from clothing, indicates that the most frequent types of messages recognized were of personality traits (70.2%). Id. Other frequently-measured messages from clothing were of achievement and skills (4.8%) and the quality of relationships and interactions (3.9%). Id. Other message types included role and status, fashionability, attitudes and interests, mood, culture, lifestyle, behavior or intention, and relationships to others. Id.

95. Id. at 7; see also SUSAN B. KAISER, THE SOCIAL PSYCHOLOGY OF CLOTHING AND PERSONAL ADORNMENT 314 (1985) (relating individuality to dress). Individuality encourages the natural human experience to stand apart from others. Id. at 315. Dressing uniquely is one way in which to bring attention to oneself. Id.

Clothing represents a form of communication over which we can exert a great deal of control. We can plan in great detail what we are going to wear in order to communicate certain aspects of ourselves, thereby expressing creativity. Originality and adaptability are also benefits of individuality. For instance, an individual who is not always concerned with conformity may feel disencumbered to some extent from confining norms; this would make it easier to adapt to diverse situations.


97. Damhorst, supra note 89, at 5. Signs and codes communicate messages. See PIERRE GUIRAUD, SEMIOLOGY 18 (1976) (discussing clothing in terms of semiology, the science which studies signs).
research indicates that clothing symbols serve as nonverbal communicators. Information about one's personality is garnered nonverbally by others depending on the clothing one wears. Variations in clothing affect the social impressions of that person. In addition, social perception studies suggest that clothing, which affects the perceptions of others, also affects the perception of the self.

If clothing projects a message onto viewers about the wearer's personality, then personal identity must, in part, be defined by choice of dress. People consciously dress to convey a specific image to others. For instance, the public would not easily accept President Clinton as a world leader if he adopted a trendy "grunge" look. Jacqueline Kennedy Onassis could never have maintained her dignified image if she had chosen to dress like the rock star Madonna.

The development of personal identity is particularly important during adolescence. Since adolescence is the final stage of identity formation, "the adolescent's ego development demands and permits playful, if daring, experimentation in fantasy and introspection." Adulthood and early adulthood is a period for reshaping values and ideas and exploring one's relationship to the world in order to discover identity. Because appearance serves as a symbol through which an adolescent expresses herself, and because that symbol is understood by those who view it, the second prong of the Spence test is satisfied, making choice of clothing a type of symbolic speech.

99. Leslie L. Davis & Sharron J. Lennon, Clothing and Human Behavior from a Social Cognitive Framework Part II: The Stages of Social Cognition, CLOTHING & TEXTILES RES. J., Fall 1989, at 2. Research also indicates that people tend to behave differently depending on how they perceive others based on their dress and appearance. Id.
100. Davis & Lennon, supra note 98, at 43.
101. Id. at 45. The article gives the example of a study performed to investigate the effects of wearing eyeglasses on the subjects' self-perceptions of intelligence. Id. The researchers found that although subjects' actual performance on several intelligence tests was not improved, subjects felt better about their performances when wearing eyeglasses. Id. "In addition, when wearing eyeglasses subjects also described themselves as more scholarly and competent." Id. Thus, choice of personal adornment presumably provides some sense of self-determination; the choice of dress can allow a person to project himself in any manner he wants. Id.
102. See KAISER, supra note 95, at 5 (using a similar example by explaining that a doctor dressed outlandishly may disturb a patient during an examination).
103. ERIK H. ERIKSON, IDENTITY, YOUTH AND CRISIS 164 (1968).
104. Id.
105. BRAKE, supra note 10, at 24.
106. See John D. Ingram & Ellen R. Domph, The Right to Govern One's Personal
3. Uniforms Threaten Self-Expression

Uniforms eliminate the freedom to display part of one's personality to others. Derived from the Latin meaning "one form," uniforms are devices designed to "resolve certain dilemmas in complex organizations." Sociologists identify five primary functions of uniforms. Among these are the suppression of individuality and the promotion of group identification, these are precisely the goals of school districts that enact uniform codes.

Uniform clothing codes in public schools raise the same issues as did the school restrictions in the late 1960s and early 1970s which mandated a sort of uniformity in hair length. Some of the circuit courts recognized that the right to govern personal appearance through hair length is expressive symbolic conduct. One such court, in Bishop v. Conlaw, struck down a dress code regulating hair length. The Bishop court stated:

"There is little doubt that this regulation seeks to restrict a young person's personal liberty to mold his own lifestyle through his personal appearance. To say that the issue is not 'substantial' turns a deaf ear to the basic values of individual privacy and the freedom to caricature one's own image."

Appearance, 6 Okla. City U. L. Rev. 339, 356-57 (1981) (recognizing that appearance is a symbol, a visual presence, and thus has a "strong claim to first amendment protection because it is often intended by the wearer as a symbol and may be seen as a symbol.").

107. Kaiser, supra note 95, at 308. "Formal uniforms . . . are protected by, and help to legitimize, laws or regulations in organizations or institutions." Id. Uniforms primarily meet the needs of the organization and not of the individual. Id. at 325.

108. Id. at 308. First, uniforms are symbols of group membership. Id. Second, uniforms reveal and conceal roles. Id. In this respect, all other aspects of individuality are suppressed when in uniform. Id. Uniforms communicate only about one's current role and suppress information about all others. Id. Third, uniforms "legitimize one's role in a given situation" by indicating to the world that one is a member of a group. Id. Fourth, uniforms suppress individuality. Id. They symbolize that one is not an individual, but part of a group. Id. Kaiser discusses some negatives aspects of uniforms related to this function including the proposition that dress codes may stifle a sense of individuality and "cause some dissonance with respect to the person's role." Id. at 310. Finally, uniforms "deal with problems of organizations in one of three ways: (a) by defining group boundaries, (b) by promoting group goals, and (c) by reducing role conflicts." Id.

109. Id. at 308.

110. Bishop v. Conlaw, 450 F.2d 1069, 1077 (8th Cir. 1971).

111. Id. at 1078 (Lay, J., concurring). The Bishop court did not grant the student petitioner relief based on the First Amendment because there was no evidence in the record suggesting that the student intended his hairstyle to represent any symbolic expression. Id. at 1075. Rather, the court held that the student possessed a constitutionally protected right to govern his personal appearance based on the Ninth Amendment, the Due Process Clause of the Fourteenth Amendment and the privacy penumbras of the Bill of Rights. Id. The court remarked that "[t]he common theme underlying decisions striking down hairstyle regulations is that the Consti-
The court continued by stating that hair length regulations may be sustained only by a showing that they are necessary to prevent interference with the educational process.112

Many of the courts upholding hair length regulations relied on the schools' rationale that long hair may interfere with the educational process.113 However, the courts made some explicit precautions in the decisions upholding hair regulations. For instance, in King v. Saddleback Junior College District,114 the Ninth Circuit upheld a hair length regulation, specifically indicating that "[t]he dress code provision under examination does not require a rigid and particular standard of sameness."115 Since the dress code provided latitude for individual expression of personality, there was no evidence that the school district enacted
the code specifically to suppress free expression. The Fifth Circuit, using similar reasoning, partially invalidated a regulation restricting the style, rather than the length, of hair.

Thus, choice of clothing, like choice of hair length, is nonverbal conduct which intends to send a message which is understood by viewers. Because this nonverbal conduct satisfies the two prongs of the Spence test, choice of clothing joins the ranks of other expressive nonverbal conduct worthy of First Amendment protection. Furthermore, a First Amendment analysis applies because uniforms invade students' freedom of expression. Once a court finds conduct to have an expressive function which merits First Amendment protection, the government may still limit that right to expression with a showing of a reasonable and valid state interest. The next step in the constitutional analysis requires a determination of which level of scrutiny the nonverbal, expressive conduct demands.

B. Determining the Level of Scrutiny: Content-Based Versus Content-Neutral Restrictions

Having determined, based on the Spence test, that freedom to choose dress is conduct which receives First Amendment protection, the next step requires a determination of whether the government is regulating speech because of its content or whether the regulation seeks to avoid some evil unconnected with the speech's content. The courts distinguish between two types of restrictions and analyze these restrictions differently. Generally, courts analyze regulations which are unrelated to the suppression of expression (content-neutral restrictions) under the standard enunciated in United States v. O'Brien. But, if the regulation

116. King, 425 F.2d at 429.
117. See Griffin v. Tatum, 425 F.2d 201, 202 (5th Cir. 1970) (granting relief to a student who was suspended for wearing his hair in a style which did not conform to the school hair length regulation). The Griffin court granted relief to the petitioner, but did not completely invalidate the hair length regulation. Id. at 203. The school district here presented undisputed evidence that long hair on boys was a disruptive influence in the school. Id. However, the Griffin court concluded that the school district acted arbitrarily by suspending the student for wearing his hair in a style which did not conform to their interpretation of the hairstyle regulation. Id.
118. United States v. O'Brien, 391 U.S. 367, 376 (1968). The Court followed its past decisions holding that "when 'speech' and 'nonspeech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms." Id.
is related to the suppression of free expression (content-based), the state's interest must withstand strict scrutiny.\textsuperscript{122} To ensure the "widest possible dissemination of information" and the uninterrupted interchange of ideas, the First Amendment prohibits content-based restrictions that censor particular points of view, and content-neutral restrictions that too broadly prohibit opportunities for free expression.\textsuperscript{123}

The content distinctions used by the Court have not been without criticism.\textsuperscript{124} Legal scholars mainly fault the content dis-
tinctions because courts often have difficulty applying them. Viewing the Court's past decisions on statutes regulating speech, though, the Court will likely use the content distinctions. Thus, the analysis will proceed on this assumption.

1. Content-Based Regulations

Content-based regulations relate to the suppression of expressive conduct. Content-based statutes select between viewpoints and seek to eliminate the expression of one viewpoint. For example, in *Boos v. Barry*, individuals challenged a statute prohibiting the display of signs within 500 feet of an embassy which "bring a foreign government into... public disrepute." The Court deemed this regulation content-based because the legislature suppressed a classification of speech—signs critical of foreign governments—but not all picketing in front of foreign embassies. Courts thus become very suspicious when the govern-

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127. *Boos v. Barry*, 485 U.S. 312, 319 (1988); see also *R.A.V. v. City of St. Paul*, 112 S. Ct. 2538, 2549 (1992) (invalidating an ordinance prohibiting bias-motivated disorderly conduct). In *R.A.V.*, the Court considered the challenged ordinance content-based because it imposed prohibitions on speakers expressing views disparaging others on the basis of race, color, creed, religion and gender while simultaneously allowing equally abusive expressions if they were not aimed at these groups. *Id.* at 2548. The Court stated that "[s]electivity of this sort creates the possibility that the city is seeking to handicap the expression of particular ideas." *Id.* at 2549. This is why the Court considers content-based statutes presumptively invalid. *Id.* at 2542.


129. *Id.* at 316.

130. *Id.* at 318-19. The Court went on to explain why the statute was content based by saying, "whether individuals may picket in front of the foreign embassy depends entirely upon whether their picket signs are critical of the foreign government or not. One category of speech has been completely prohibited within 500 feet of embassies. Other categories of speech, however, such as favorable speech about a foreign government or speech concerning a labor dispute with a foreign government, are permitted."
ment bans only one viewpoint while simultaneously allowing speakers with other viewpoints on the same subject to speak freely.\textsuperscript{131}

Courts subject content-based restrictions to the strictest scrutiny.\textsuperscript{132} The strict scrutiny test requires the government to show that the regulation is necessary to serve a "compelling state interest" and is "narrowly drawn to achieve that end."\textsuperscript{133} Under the strict scrutiny standard, the government may not claim that the speaker can make his point just as well in some other place, at some other time, or in some other manner.\textsuperscript{134} A government objection to a message based on its viewpoint cannot be tolerated, even if the interference is minor.\textsuperscript{135}

Considering the content distinctions the Court uses to analyze the constitutionality of regulations on expression, it is unlikely that the Court will consider a total ban on expression through clothing a content-based regulation. Unlike the situation in \textit{Boos}, the California uniform statute does not prohibit certain categories of clothing; rather, it completely bans all choice in clothing. Thus, the statute is not selecting between viewpoints. The statute would likely be considered content-based if it, in order to reduce gang identification, prohibited "caps with certain logos"; in this example a school would be prohibiting certain clothing solely on the basis of its content. Since the "Uniform Law" evenhandedly stifles \textit{all} expression, a court is thus unlikely to consider it content-based.

2. \textit{Content-Neutral Statutes}

Because the "Uniform Law" permits a complete ban and does not select between viewpoints, courts would probably consider the statute to be content-neutral. A regulation whose purpose is unrelated to the content of the expression is deemed content-neutral, despite an incidental effect on some speakers or messages but not others.\textsuperscript{136} As long as such a regulation is uniformly applied, the
Supreme Court sees the regulation as significantly less threatening to the First Amendment.137 Under this distinction, an “intermediate scrutiny” analysis determines the constitutionality of content-neutral regulations.138 The Supreme Court in United States v. O'Brien139 delineated a four-pronged test to determine whether a content-neutral governmental invasion of the right to free expression violates the First Amendment.140 The Court stated:

a governmental regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.141

Use of the O'Brien standard is especially appropriate in analyzing the “Uniform Law” because it mirrors the analysis of time, place and manner regulations.142

Protected speech, whether oral, written or symbolic conduct, is subject to reasonable time, place and manner restrictions.143 Such restrictions are valid “[as long as] restrictions are justified without reference to content of regulated speech, are narrowly tailored to serve a significant governmental interest, and . . . leave open ample alternative channels for communication of information.”144 The standard the Court uses to analyze time, place

example of a content-neutral regulation: “[A] prohibition against the use of sound trucks emitting ‘loud and raucous’ noise in residential neighborhoods is permissible if it applies equally to music, political speech, and advertising.” Id. This type of restriction is justified “without reference to the content of the regulated speech” and is thus considered content-neutral. Id.

138. Seid, supra note 126, at 574.
140. Id. at 377.
141. Id.
142. Clark v. Community for Creative Non-Violence, 468 U.S. 288, 298 (1984). The Court is not as threatened by an overall ban as they are by a proscription of certain types of speech, but not others. Id. Thus, time, place and manner restrictions not presumptively invalid are subject to a lesser scrutiny as content-based restrictions. Id.
143. Id. at 293. Time, place and manner restrictions are not complete bans on speech, but “regulations of the circumstances in which speech may occur.” Susan H. Williams, Content Discrimination and the First Amendment, 139 U. PA. L. REV. 615, 637 (1991). But, more importantly, the Court distinguishes them because they regulate the circumstances of the speech and not the content of the speech. Id.
144. Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989). The Court is not as threatened by an overall ban as they are by a proscription of certain types of speech, but not others. Id. Thus, time, place and manner restrictions not presumptively invalid are subject to a lesser scrutiny as content-based restrictions. Id.
and manner regulations, which is almost identical to the analysis the Court set forth in *O'Brien*, is a more lenient standard than the strict scrutiny analysis used to analyze content-based regulations.

Most likely, the California Legislature will not concede that the "Uniform Law" suppresses speech because of its content. Instead, the government will point to a danger beyond the speech itself, namely, incidents of gang violence in schools. Thus, the government, by asserting that prevention of gang violence is independent of the speech's content, will effectively be arguing that the statute serves only to regulate the time, place or manner of speech. A state's showing of a substantial interest may result in legitimate limitations on the fundamental right to free expression through conduct. However, to limit free expression, the time, place and manner regulation must satisfy the *O'Brien* test.

a. Analysis Under the *O'Brien* Test

The first prong of the *O'Brien* standard requires that a governmental regulation be sufficiently justified within the constitutional power of the government. This prong does not require a detailed analysis since it merely requires that the government entity enacting the law be empowered to pass such legislation. In order to pass laws, Congress is always required to have authorization under the Constitution. "[A]s a practical matter, today there are no meaningful restraints on the types of subjects upon which Congress may legislate." Thus, this prong

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"Although some people may be unable to express themselves in the exact physical manner, location, or time they find most satisfying, this inconvenience hardly seems a radical intrusion into individual autonomy." *Id.*


146. *See Texas v. Johnson*, 491 U.S. 397, 403 (1989) (providing that "[i]f the State's regulation is not related to expression, then the less stringent standard we announced in *United States v. O'Brien* for regulations of noncommunicative conduct controls").

147. *TRIBE*, *supra* note 134, at 794. The California Legislature will likely defend the dress code law on the basis that the law does not completely suppress free expression through clothing, but only limits such expression in the school environment. Children, the Legislature will maintain, can express themselves through clothing outside of school and on the weekends. Thus, the regulation acts like a "time, place or manner" regulation.

148. *See Breen v. Kahl*, 419 F.2d 1034, 1036 (7th Cir. 1969) (stating that "to limit or curtail this or any fundamental right, the state has a 'substantial burden of justification'.").


151. *Id.*

152. *Id.* The development of case law interpreting the Necessary and Proper
is basically a formality.

Second, a governmental invasion on free expression must, according to O'Brien, further an important or substantial government interest. The state's interest in reducing gang violence is indeed substantial, especially because schools are supposed to be neutral environments conducive to learning. States' efforts to preserve and protect their educational processes are undoubtedly important to society. Thus, the governmental interest in reducing gang violence satisfies one portion of the second prong of the O'Brien test.

However, despite an important governmental interest, it is questionable whether the "Uniform Law" sufficiently furthers the government interest in reducing gang activity. Overall, school uniforms may be a short, temporary solution, but will by no means solve the problems associated with gangs. Four major problems exist with the "Uniform Law" making it unlikely that the regulation satisfies the second prong of O'Brien.

First, the "Uniform Law" requires school districts implementing uniform policies to provide an "escape clause" whereby parents may choose not to have their children comply with the uniform policy. The language suggests applicability to any parent who may object for any reason. Thus, a parent who simply disagrees with the uniform policy may receive an exemption under this provision. Taken to its logical extreme, this "opt-out" provision makes the entire law unenforceable. A potentially unenforceable law hardly furthers a substantial state interest, and thus fails the second prong of the O'Brien test.

Second, because gangs identify themselves through other means than just clothing, elimination of gang clothing will not eradicate the problem. Jewelry, tattoos and hand signals also act as identifiers. The elimination of one means of identification will not do away with others. In fact, because gangs regard identifiers as vital to group solidarity, uniforms may simply encourage


154. See, e.g., Dawson v. Hillborough Cty., Fla. Sch. Bd., 322 F. Supp. 286, 304 (M.D. Fla. 1971) (holding that the school board failed to show that long hair caused any interference or a health or safety threat at school). The court reasoned that had the school made either of these showings, valid justifications would exist to interfere with student rights. Id.

155. CAL. EDUC. CODE § 35183(e) (West 1994). Another provision provides that the school district must accommodate nonconforming students in the same school district. § 35183(f).

156. ROBERT J. SIMANDL, HARTGROVE HOSP., GANG IDENTIFIERS 1-5 (n.d.). For example, gang members often mark the tongues of their shoes with some symbol to show their affiliation. Id. at 14. Thus, since uniform policies will unlikely mandate the shoes students must wear, this is another way students can identify despite the uniform policy.
the gangs to rely on alternative methods of identification. Moreover, rival gangs within a neighborhood and school district certainly associate outside of school. The "Uniform Law" cannot eliminate the recognition of faces or other identifiers that results from outside associations.

Third, the law is impractical in attempting to significantly decrease school gang activity. Children do not join gangs solely to wear certain colors or clothing; clothing is merely peripheral to other elements of gang membership. Indeed, children join gangs primarily for the sense of family and self-worth that is often missing from their biological families. The underlying desire for gaining acceptance and prestige through association with a gang will not disappear with the elimination of street clothes in schools.

Fourth, the California Legislature and school districts additionally indicate that one hope in enacting uniforms is a reduction in disciplinary problems in schools. Because school districts have not widely implemented uniforms, there is not yet any empirical evidence that uniforms will have this effect. Indeed, because the nature of gangs is inherently adversarial and territorial, rivalries between gang members will not simply cease because the students are in uniforms. The aggressive rivalry between factions will likely continue with or without uniforms. Thus, as these practical problems illustrate, the second prong of the O'Brien test is not satisfied; uniforms will not further sufficiently the government interest in reducing gang activity.

The third prong of the O'Brien test asks whether the regulation is unrelated to suppression of free expression. Essentially, this prong asks whether the regulation is content-based or content-neutral. The O'Brien intermediate scrutiny standard only applies to content-neutral statutes. As previously discussed, the courts will most likely consider the "Uniform Law" content-neutral because it effectuates a complete ban on street clothing in schools rather than singling out items which students cannot wear. Thus, if courts consider the "Uniform Law" content-neutral, the third prong of the O'Brien test is satisfied.

The fourth prong of O'Brien requires that the restriction be narrowly tailored so that "restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." In effect, determining whether the statute is nar-
rowly tailored resembles a determination of whether the statute is overbroad. Application of the overbreadth doctrine to the "Uniform Law" indicates that the "Uniform Law" will fail the fourth prong of the *O'Brien* test.

b. The Overbreadth Doctrine

The judiciary has the principal responsibility for correcting legislative defects in drafting statutes which too broadly deny a group its First Amendment protections. Courts can attack a statute based on the overbreadth doctrine, which is used to invalidate statutes that are "too sweeping" in coverage. The rationale for correcting overly broad legislation rests on the theory that courts need to eliminate an overinclusive law's deterrent impact or "chilling effect" on protected First Amendment conduct. Courts insist, however, that for a law to be struck down, the overbreadth need not only be real, but substantial as well.

The legislature has the burden of showing that the regulation is narrowly drawn and represents a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society. *Id.* See generally *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803) (establishing the doctrine of judicial review).

162. *Tribe, supra* note 134, at 844-45; see also *Broadrick v. Oklahoma*, 413 U.S. 601, 611-12 (1973) (defining the "substantial overbreadth" doctrine). The *Broadrick* Court stated, "[i]t has long been recognized that the First Amendment needs breathing space and that statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." *Id.* See generally *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803) (establishing the doctrine of judicial review).

163. *The First Amendment Overbreadth Doctrine, supra* note 68, at 845. "Many [laws] are so broadly drafted that the range of possible applications violating the first amendment is substantial. . . . A statute may appear to do more good than harm in its total impact and nonetheless reach privileged conduct in a substantial range of applications." *Id.* at 844-45.

164. *Id.* at 853.

165. *Broadrick*, 413 U.S. at 615; see also *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 216 (1975) (using the *Broadrick* standard to declare a statute overbroad). In *Erznoznik*, a drive-in theater owner challenged his prosecution for violation of an ordinance prohibiting the showing of movies containing nudity because his theater was visible from a public thoroughfare. *Id.* at 206-07. The Court invalidated the statute, reasoning that because the Legislature enacted the ordinance to prohibit children from viewing nudity in films, and the net effect was that all viewers were prohibited from viewing the films, the restriction was broader than permissible. *Id.* at 213. The Court reasoned:

The ordinance is not directed against sexually explicit nudity, nor is it otherwise limited. Rather, it sweepingly forbids display of all films containing any uncovered buttocks or breasts, irrespective of context or pervasiveness. Thus it would bar a film containing a picture of a baby's buttocks, the nude body of a war victim, or scenes from a culture in which nudity is indigenous. The ordinance also might prohibit newsmen scenes of the opening of an art exhibit as well as shots of bathers on a beach. Clearly all nudity cannot be deemed obscene even as to minors. Nor can such a broad restriction be justified by any other governmental interest pertaining to minors. *Id.*
furthers a compelling state interest and is no greater than necessary to further that interest. Nearly any statute may be linked to some compelling goal of government, such as security in schools. However, the Court requires a tight fit between ends and means. "A statute must be narrowly drawn so that a challenged act of government is clearly an efficacious means to achieve permissible objectives of government and is narrowly aimed at those permissible objectives so as not unnecessarily to reach expressive conduct protected by the First Amendment." Under this facet of the analysis, then, a court must determine whether the state's interests could be served by means that would be less intrusive on activity protected by the First Amendment.

At first glance it looks as though the "Uniform Law's" complete ban on expression through clothing could not be narrowly tailored. However, a complete ban can be narrowly tailored, but only if each activity within the proscription's scope is an appropriately targeted evil. In the case of uniforms, however, not every student's dress is an evil to be combatted; thus, the "Uniform Law" fails the narrowly tailored requirement.

The fact is that the majority of students is not associated with gangs. For example, assume, arguendo, that the 14,500 gang members documented by the Long Beach Police Department are all enrolled in schools in the Long Beach Unified School District. Comparing this figure with the nearly 60,000 students

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166. See generally The First Amendment Overbreadth Doctrine, supra note 68, at 844 (discussing the overbreadth doctrine).
167. Id. at 914.
168. TRIBE, supra note 134, at 833.
169. Id.; see also JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW 952 (4th ed. 1991) (comparing the overbreadth doctrine and the least restrictive means test). The least restrictive means test is another way courts can check legislative acts that indiscriminately sweep personal liberties. Id.
172. This figure may even be a high estimate of the number of gang members in schools. The fact is, many gang members are expelled for criminal activity or drop out before or during high school. Telephone Interview with Officer Norm Sorenson, supra note 54.
in the school district indicates that only slightly more than twenty-four percent of the Long Beach student population is the cause of the problems the statute targets. However, the uniform policy suppresses the free expression of all students, including little Suzy, a straight A-student who attends church faithfully, and Billy, the young musical prodigy. These students are farthest from the source of the evil. The “Uniform Law” is not narrowly tailored when well-behaved, promising students who are not involved in gangs cannot exercise their freedom to choose clothing as a form of self-expression.

Thus, the California “Uniform Law” suffers from overbreadth because it encompasses far more than the exact source of the evil it seeks to remedy; it affects literally thousands of students who do not, and never will, associate with gangs. Despite the state’s compelling interest in regulating students wearing widely recognized gang indicia, the state cannot broadly sweep away every student’s First Amendment rights in order to achieve this end. Thus, because of its overbreadth and its insufficiency in substantially furthering a state interest, the “Uniform Law” violates the First Amendment.

IV. A CONSTITUTIONAL ALTERNATIVE: ATTACK THE SOURCE WITHOUT JEOPARDIZING FIRST AMENDMENT FREEDOMS

Since public schools have an enormous interest in reducing gang violence on campus, designing activities to reduce gang activity is necessary. Thus, Section A proposes a model statute, a suppressive tool which cures the constitutional defects of the “Uniform Law.” Section A then discusses other suppressive measures schools may constitutionally enact. Next, Section B spotlights various preventive programs which schools may adopt to help curtail the spread of gang activity; these alternatives focus on the source of the problem, rather than on merely treating the effects. Suppressive and preventive measures used simultaneously can effectively reduce gang problems in schools. However, either program alone will not solve the problem.

A. Suppression

As discussed previously, many schools currently ban certain items of clothing recognizable as gang identifiers. 173 Although seemingly reasonable restrictions, even dress codes may invoke constitutional questions. Specifically, regulations banning certain types of clothing are actually content-based restrictions because

173. See supra text accompanying note 3 for an example of a dress code policy which prohibits only certain articles of clothing.
they are aimed at the content of the expressive conduct. In order to pass constitutional muster under strict scrutiny, the regulations must be narrowly tailored, specific in definition so as not to fail for vagueness, and must further a compelling state interest.

1. A Model Statute

Undoubtedly, states desire to suppress the current gang activity in schools. Many states will likely attempt to follow California's lead by passing similar legislation allowing schools to mandate uniforms. The statute proposed in the Appendix of this Note is based on the California "Uniform Law," but seeks to cure the constitutional infirmities in the "Uniform Law." Although the proposed statute is content-based, it is narrowly tailored and necessary to serve a compelling state interest so as to withstand strict scrutiny.

First, the model statute contains the identical statement of purpose in the "Uniform Law." As mentioned previously, the courts certainly will find a compelling state interest in reducing gang activity in schools. Thus, the compelling state interest satisfies the requirements of strict scrutiny.

Second, the proposed statute requires gang education not only for students, but for teachers and administrators. Some teachers complain that schools are expending too many resources on seminars to instruct teachers about "gang-related" apparel. The teachers argue that when schools enact uniform policies, it saves the school district from using resources to keep teachers

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177. See infra Appendix.
178. Id.
179. Protecting students from gang violence in schools and working to make schools safer places which are more conducive to learning are compelling reasons for a suppressive statute. See Paul D. Murphy, Note, Restricting Gang Clothing in Public Schools: Does a Dress Code Violate a Student's Right of Free Expression?, 64 S. CAL. L. REV. 1321, 1336-37 (1991) (stating that if schools characterize regulations banning certain gang clothing as an attempt to better the learning environment for students, they will have a sufficient compelling interest to pass the strict scrutiny test). For examples of gang violence in schools providing a substantial state interest in maintaining safety in schools, see supra text accompanying notes 39-41.
180. See infra Appendix.
181. de Vise, supra note 53, at B5.
abreast of the latest fashions. The teachers maintain that schools may use the resources in alternative areas, such as for text books or to increase teacher salaries.

However, gang seminars for teachers will inform teachers not only of the new gang styles, but of other gang problems surfacing in schools. Moreover, gang seminars for teachers will force teachers and administrators to talk about gang problems in schools, rather than continually ignoring the problems. In effect, these seminars may work as a beneficial tool for educating teachers about gangs.

Third, the proposed statute overcomes any potential vagueness problems. Some current or proposed dress code regulations fail for vagueness given the difficulty for "the common student" to determine what "gang-related apparel" means. Thus, a child often has insufficient warning that what she is wearing is what the school considers "gang related apparel." The proposed statute requires teachers and administrators to delineate specifically which items of clothing the school bans. Thus, parents and students are put on notice as to exactly what cannot be worn to school.

Moreover, teachers and administrators cannot arbitrarily delineate which types of clothes to ban. The proposed statute requires explicit justification for determining which clothes to ban. The term "justified" as used in the statute means that,

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182. Id.
183. Id.
185. Although time will be spent on learning subtleties of gang regalia and gang activities which could arguably be spent elsewhere, teachers and administrators cannot continue to ignore the gang problem and must use their resources to combat the problem. Id. Gang seminars can easily be worked into the staffs' yearly teachers conferences. Id. Ms. Scott, of the Washington Junior High School in Joliet, Illinois, agrees that schools cannot continue to ignore the gang problem and must do all they can to confront and eradicate the problem. Id. Spending State funds on positive school programs designed to give pupils a stake in their education and deter them from gang activity will ultimately reduce the taxpayer burden, especially compared to the amount taxpayers currently pay for the victimization related to gang activity. Id.; see also TASK FORCE REPORT, supra note 20, at 21-26 (discussing anti-gang activities in schools).
186. A court may strike a statute for vagueness if "men of common intelligence must necessarily guess at its meaning." Broadrick, 413 U.S. at 607. To survive the test for vagueness, the statute or regulation must give "adequate warning of what activities it proscribes" or must set out "explicit standards" to those applying the regulation. Id.
187. See Telephone Interview with Officer Norm Sorenson, supra note 54 (discussing how current fashion trends make gang apparel trendy even for children not involved in gangs).
188. See infra Appendix.
through evidence, the banned items truly represent gang affiliation and are not prohibited solely based on the personal distaste of the school board members. Courts will not tolerate school districts arbitrarily banning items solely because they dislike the current style.

Fourth, the proposed statute requires "Gang Awareness Seminars." This provision is based on a "Gang Resistance Program" employed by the Washington Junior High School in Joliet, Illinois. The Gang Resistance Program, made possible by a grant from the Joliet Police Department, is actually a class conducted during school hours. The teachers and police liaisons teach children strategies for resisting influences from gangs. They also teach about the negative effects of gang involvement and suggest more positive and rewarding alternatives to joining a gang. Schools and communities need to involve parents in such activities. Although some parents' indifference contributes to a lack of self-esteem in a child, if parents know how to recognize gangs, they are more apt to steer children away from such influences.

189. For example, Officer Sorenson, being on the street with gangs daily, easily recognizes new gang trends. Telephone Interview with Officer Norm Sorenson, supra note 54.
190. See generally Griffin v. Tatum, 425 F.2d 201, 202 (5th Cir. 1970) (invalidating, in part, a regulation restricting the style, rather than the length, of hair).
191. Id.
192. Telephone Interview with Linda Scott, supra note 184; see also TASK FORCE REPORT, supra note 20, at 21-26 (encouraging the Board of Education for the City of Chicago to enact preventive seminars).
193. Telephone Interview with Linda Scott, supra note 184.
194. Id.
195. Id. These programs, while educating the student body at large, target not only "wannabee" gang members who have the potential to be swayed away from a gang lifestyle, but also target the brothers and sisters of gang members. Id. In gang-infested areas, a considerable number of children are "wannabees" or peripheral gang members amenable to prevention and intervention. CONLY, supra note 14, at 28. Peripheral gang members are often the newest and youngest members who tend to drift in and out of the gang depending on their immediate needs. STREET GANGS, supra note 21, at 2. "Wannabees" are the younger "recruits" who are aspiring toward gang membership. SPERGEL, supra note 6, at 37. "They are the targets of efforts by core or regular members to increase the size of the gang." Id.

When targeting siblings of gang members, counselors focus on girls first. CONLY, supra note 14, at 34. This is because "research has shown that a significant proportion of girl gang members have been sexually abused and tend to be more entrenched in gang life than their male counterparts." Id.
197. Id.; see also NATIONAL CRIME PREVENTION COUNCIL, A PARENT'S GUIDE FOR PREVENTING Gangs (1993) (suggesting parenting skills to prevent children from joining gangs).
As Gang Prevention Officers and crime reports indicate, some items of clothing often incite violence.\textsuperscript{198} Banning these specific items in schools may help to curtail one aspect of the problem. More importantly, a reasonable dress code, coupled with the preventive measures mentioned below, substantially furthers the state interest by attacking the problem from many angles without unduly treading on constitutional rights.\textsuperscript{199}

2. Other Gang Suppression Programs

Association between gang members and rival gangs will not likely cease, even with the adoption of uniforms. Most threats and intimidating conduct presumably occur between classes in the halls and during less strictly monitored breaks in the school day. Thus, schools may want to focus on keeping associations to a minimum. This can be done by enacting a “block schedule” where teachers, not students, change classrooms.\textsuperscript{200} Additionally, teachers may accompany children to classes in other parts of the school and to the lavatory. Such a policy will not likely invoke First Amendment freedom of association problems because the Supreme Court does not recognize a special freedom to engage in “social association.”\textsuperscript{201}

B. Prevention

The most important means for schools and communities to reduce gang activity involves attacking the source of the problem. Studies by the United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention, indicate that gang prevention strategies proved much more successful than gang suppression strategies.\textsuperscript{202} When family structure is lacking, and the community provides no wholesome alternatives for children,

\textsuperscript{198} See \textit{supra} text accompanying notes 37-38 for a discussion of how clothing sometimes encourages gang violence.

\textsuperscript{199} See \textit{supra} text accompanying notes 162-70 for a discussion of the overbreadth problems with the “Uniform Law.”

\textsuperscript{200} Telephone Interview with Linda Scott, \textit{supra} note 184.

\textsuperscript{201} See generally \textit{City of Dallas v. Stanglin}, 490 U.S. 19, 25 (1989) (stating that “we do not think the Constitution recognizes a generalized right of ‘social association’ . . . .”). The Court in \textit{Stanglin} upheld an ordinance limiting the use of dance halls to persons between the ages of 14 and 18. \textit{Id.} at 28. The Court refused to consider the opportunity of young adults to congregate at dance halls as the type of association protected by the First Amendment mainly because “[t]he hundreds of teenagers who congregate each night at this particular dance hall are not members of any organized association.” \textit{Id.} at 24. Similarly, aside from extracurricular clubs and groups, students associating between classes would not likely receive First Amendment protections for comparable reasons.

\textsuperscript{202} \textsc{James C. Howell}, \textsc{U.S. DEP’T OF JUSTICE, GANGS, Fact Sheet #12} (Apr. 1994).
gang activity will continue to flourish. Because children typically join gangs to discover a feeling of family and self-worth, programs need to focus on encouraging children, before they join a gang, that they can gain acceptance and influence through more conventional activities. Thus, the schools and communities must educate parents and students; additionally they must enact programs to bolster self-esteem so that children can develop recognition and independence as an attractive alternative to gang membership.

Similarly, the schools and their communities need to sponsor activities for student involvement after school. Student involvement in sports and other activities will allow students to establish a stake in their educations. For example, schools in Long Beach find that gang members, especially Hispanic gang members, treasure their "machismo" attitude. Thus, the schools keep their gymnasiums open into the night and provide sports activities, such as karate, so that children may display their "machismo" in a more positive way. This also works to provide a safe "playground" for children, since their homes and neighborhoods are often war zones.

Extracurricular sports and intramural programs would also help to discourage children from gang activity. The Washington Junior High School, for example, pays teachers a stipend to stay after school and organize intramural programs to involve more students than just the "jocks." For those not interested in sports, schools could provide musical, theatrical and academic extracurricular alternatives so that a child may develop his talents and interests.

203. CONLY, supra note 14, at 27.

204. Id. at 28; see also TASK FORCE REPORT, supra note 20, at 21-26 (suggesting preventive measures for the Board of Education for the City of Chicago).

205. CONLY, supra note 14, at 34.

206. Telephone Interview with Officer Norm Sorenson, supra note 54.

207. Id.

208. Telephone Interview with Linda Scott, supra note 184.

209. CONLY, supra note 14, at 34. Offering positive activities such as sports and music will work to "de-marginalize" potential gang recruits. Id. Also, these activities give children a stake in their educations. Id.
Thus, the greatest goal for schools and communities is to encourage children to stay in school so they may develop skills enabling them to find a job or to pursue continuing education upon graduation. Schools and communities must try to captivate students' attention. Telling children, especially vulnerable teenagers, that they cannot wear the clothes that are so important to their identities is certainly not the best way to increase a student's interest in school.

CONCLUSION

States have a compelling interest in reducing gang activity in the school environment. Codes allowing schools to mandate uniforms, at first glance, appear to be worthwhile steps toward reducing gang activity. However, clothing unequivocally communicates and is thus expression within the meaning of the First Amendment. Uniform policies too broadly sweep students' First Amendment rights and, therefore, cannot withstand constitutional scrutiny. The better solutions involve either amending statutes like the "Uniform Law" to prohibit specific apparel only, or developing programs that attack the source of the gang problem. The United

210. Id. at 36. A possible effect of mandatory uniforms is a rise in dropouts, namely gang members who refuse to conform. Such an effect completely defeats the ultimate goal, encouraging children to stay in school. "The need to stay in school may be more acute for gang members and those at risk for joining gangs, if their inability to find employment perpetuates their gang involvement into young adulthood." Id.

211. Id. Conly describes various programs working to prevent gang involvement which are already under way across the country. Id. at 35. Two such groups with branches in southern California are the "10 schools" program and the "Cities in Schools" program. Id. The aim of these programs is keeping children committed to education. Id.

The goal of Cities in Schools and 10-Schools is to improve services to school children by increasing the range of services available and improving the ratios between students and service providers. The 10-Schools program is located in elementary schools; Cities in Schools in middle and high schools. In essence, these two programs establish social service support teams and make them available to participating schools. Cities in Schools is funded with Federal and private monies and coordinated by staff outside the school, while 10-Schools is part of the school system and funded largely with Federal funds. Both are focused on dropout prevention and improving students' academic standing by providing an array of services from social workers, medical personnel, psychologists, attendance counselors, dropout prevention specialists, and community mentors. Both encourage community involvement. In fact, Cities in Schools' personnel are repositioned from local government and private organizations, which donate their employees' time on either a part- or full-time basis. As part of their supervision of program youth, both programs also work with families to ensure family involvement in children's schooling.

Id. at 35-36.
States is not "a nation bent on turning out robots"\textsuperscript{212} allowing uniform regulations is certainly a step in the wrong direction.

\textsuperscript{212} Ferrell v. Dallas Indep. Sch. Dist., 393 U.S. 856, 856 (1968) (Douglas, J., dissenting).
The people of the State of California do enact as follows:

SECTION 1. Section 35183 of the Education Code is amended to read:

35183. (a) The Legislature finds and declares each of the following:
(1) The children of this state have the right to an effective public school education. Both students and staff of the primary, elementary, junior and senior high school campuses have the constitutional right to be safe and secure in their persons at school. However, children in many of our public schools are forced to focus on the threat of violence and the messages of violence contained in many aspects of our society, particularly reflected in gang regalia that disrupts the learning environment.
(2) "Gang-related apparel" is hazardous to the health and safety of the school environment.
(3) Instructing teachers and administrators on the subtleties of identifying constantly changing gang regalia and gang affiliation is essential to the suppression of gang activity in schools.
(4) Weapons, including firearms and knives, have become commonplace upon even our elementary school campuses. Students often conceal weapons by wearing clothing, such as jumpsuits and overcoats, and by carrying large bags.
(5) The adoption of a schoolwide dress code is a reasonable way to provide some protection for students. A reasonable dress code may protect students from being associated with any particular gang. Moreover, a dress code may reduce incidents of violence committed by students based on the current gang identifiers.

(b) Teachers and administrators shall meet prior to the commencement of each school year, and periodically throughout the school year if necessary, to discuss current gang problems in the schools and possible programs to reduce in-school gang activity. Teachers and administrators shall produce a list delineating articles of clothing not allowed on school premises. This list must be as specific as possible so that students and parents know exactly

213. The italicized portions of the proposed statute indicate changes from the California "Uniform Law."
214. A dress code prohibiting "gang-related apparel" will withstand constitutional scrutiny if the school board articulates a rationale basis for the regulation, such as safety in the schools. Olesen v. Board of Educ., 676 F. Supp. 820, 823 (N.D. Ill. 1987).
215. Sections 35183(a)(5)-(6) of the "Uniform Law" are eliminated. These sections of the "Uniform Law" discuss uniform policies. This paper is premised on the theory that uniform policies are unconstitutional.
what is not permitted. The basis for determining which articles of
clothing to ban shall include the findings of Gang Prevention
Units, or other similar institutions, of articles that are gang
identifiers and which are likely to provoke violence. Administrators
shall mail each revised list of banned clothing to all parents. Indi-
vidual schools may include the reasonable dress code policy as
part of its school safety plan, pursuant to Section 35294.1. Schools
shall not enact uniform policies.
(c) This amendment shall apply to elementary, high school and
unified school districts.
(d) A dress code policy enacted pursuant to this section shall be-
come effective within two weeks of a mailing to the parents so that
the schools may adequately notify all parents and students. After
each administrative change in the dress code policy, schools shall
not enforce amendments to the policy before adequately notifying
parents and teachers.
(e) The governing board shall not prohibit uniforms identifying a
nationally recognized youth organization on days that the organi-
zation has a scheduled
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meeting.
(f) School Boards shall institute in-school and extracurricular
“Gang Awareness” seminars and activities designed to educate
pupils and parents on current gang practices, gang identifiers
and gang avoidance strategies.

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216. For instance, Norm Sorenson of the Long Beach Police Department Gang
Division is adept in identifying all gang clothing and symbols since he is frequently
exposed to them on the street. Telephone Interview with Officer Norm Sorenson,
supra note 54.
217. Sections (e), (f) and (g) of the “Uniform Law” are either in a highly edited
form or are completely eliminated.
218. Section (f) of the “Uniform Law” is eliminated.
219. This provision is based on suggestions from the United States Department
of Justice that preventive measures are more effective in decreasing gang activity
than are suppressive activities. HOWELL, supra note 202.
220. This provision is based, in part, on ideas from Linda Scott of the Washing-
ton Junior High School in Joliet, Illinois. Telephone Interview with Linda Scott,
supra note 184. See supra text accompanying notes 202-11 for a discussion of pro-
grams providing the basis for this provision.