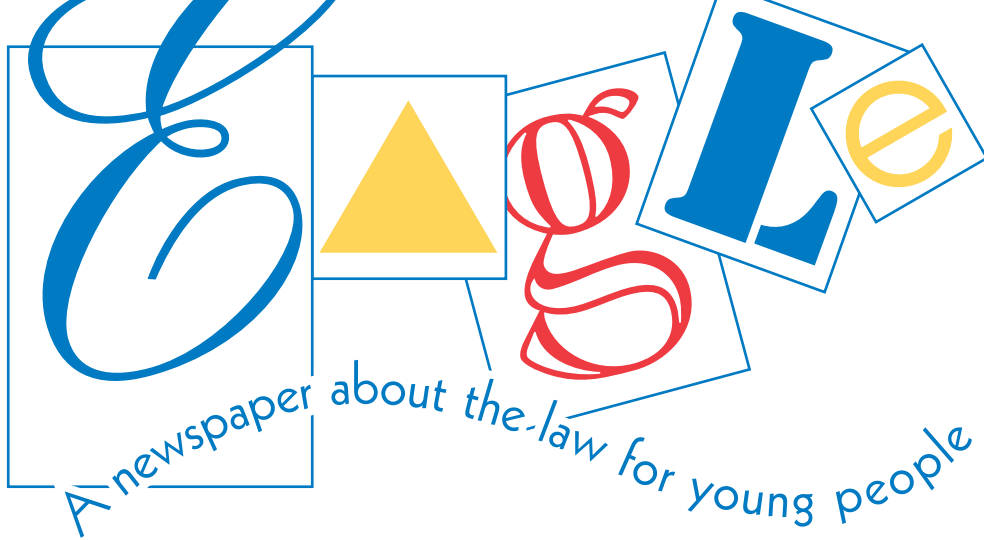


# THE LEGAL



SPRING 2008

## Cell Phones in Schools: Are They Worth the Trouble?

by Barbara Sheehan

For many students, contacting a friend or parent when school gets out — or sometimes even during the school day — is just a cell phone call away. That's not the case for kids in New York City public schools.

Along with items like guns, knives and box cutters, cell phones are banned from public schools in the Big Apple under a policy set by the New York City Department of Education. The ban has sparked an outcry among some parents and fueled an ongoing debate about the role cell phones should play, if any, in the school environment.

### Safety dial

At issue for many parents is safety, a subject that is of grave concern in light of the many incidents of school shootings across the nation, as well as the threat of terrorism.

Today, many parents see the cell phone as a "lifeline" to their children in cases of emergency, said Mike Yaple, spokesman for the New Jersey School Boards Association (NJSBA). This includes not only nationally-reported tragedies like school shootings, but also little "day-to-day" emergencies, like a parent who is running late to pick up his or her child, Yaple noted.

Or, it may involve a child who has a long commute to school. One New York mother, for example, recounted an incident to the *Gotham Gazette*



where her 11-year-old daughter was beaten on her way home from school. The student used her cell phone to call for help, according to the article.

While cell phones serve a valid purpose, schools face the challenge of balancing those advantages against the practical realities that cell phones bring, including disruptions in the classroom, cheating and taking inappropriate pictures with camera phones.

Some schools have also linked cell phones to fighting. For instance, last September, an NBC station in Louisville, KY, reported that a fight at a local high school was taped with a camera phone and put on MySpace. At a school in Milwaukee, WI, students reportedly used their cell phones to call in reinforcements in a school fight, according to a *Chicago Sun Times* article.

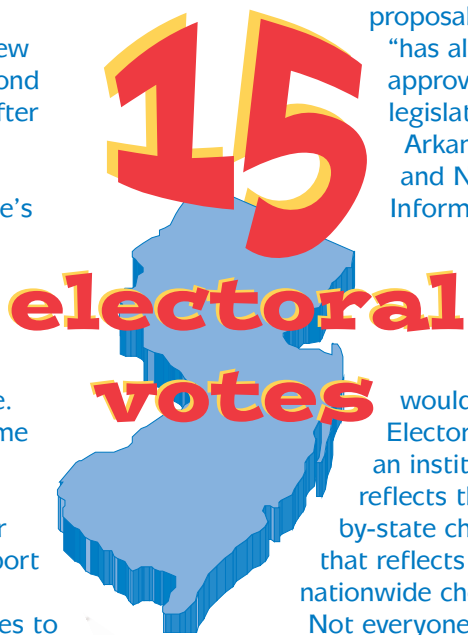
There is also the question of where students will keep their phones during the day, and how to keep students from using them when they shouldn't. In New York City, for example, according to the *Gotham Gazette*, many public schools don't have lockers where kids can store their backpacks, let alone their cell phones.

## New Jersey Second State to Support National Popular Vote

by Phyllis Raybin Emert

With the 2008 presidential election fast approaching and both parties' conventions imminent, the way in which the U.S. elects its president is once again under scrutiny.

In January 2008, New Jersey became the second state in the country (after Maryland) to enter a compact that would award the Garden State's fifteen electoral votes to the winner of the national popular vote for president, regardless of the results of its state vote. Illinois may soon become the third state in the nation to enter the compact if its governor signs the bill. The support of these three states brings 46 electoral votes to the compact's passage, with



224 still needed before it would take effect.

According to National Popular Vote, Inc., a non-profit organization whose purpose is to study, analyze and educate the public about the

National Popular Vote proposal, the legislation "has also been approved by one legislative house in Arkansas, Colorado and North Carolina." Information on

National Popular Vote Inc.'s website, states that the compact would "change the Electoral College from an institution that reflects the voters' state-by-state choices into a body that reflects the voters' nationwide choice."

Not everyone is convinced. California Governor Arnold

Schwarzenegger and the governor of Hawaii vetoed similar bills in their states despite them having the approval of their respective state legislatures.

### How the current system works

While Americans elect their senators and representatives by direct vote, when it comes to electing our chief executive, the process is more complicated, which is what the Founding Fathers wanted. According to the League of Women Voters, the Founding Fathers didn't trust the people to vote directly for presidential candidates because of what they termed "popular passion." So, they devised a system, outlined in Article II, Section 1 of the U.S. Constitution, where the president would be elected indirectly by presidential electors who would make up what is called the Electoral College.

Today, the Electoral College consists of 538 presidential electors

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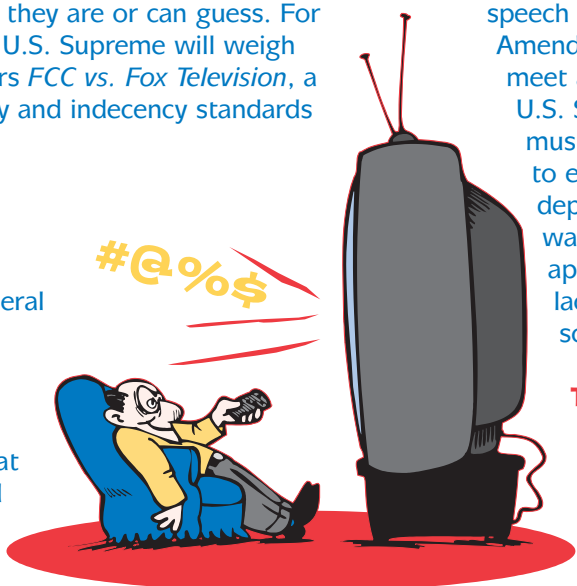
## U.S. Supreme Court to Weigh in on Policing the Airwaves

by Phyllis Raybin Emert

There are words you can't say on radio or television and you probably know what they are or can guess. For the first time in 30 years the U.S. Supreme will weigh in on the subject when it hears *FCC vs. Fox Television*, a case that deals with obscenity and indecency standards on public airwaves.

### How the FCC works

The U.S. government regulates public airwaves through the independent Federal Communications Commission (FCC), which was established in 1934. The Commission responds to complaints by individuals who don't like what they see or hear on radio and television. The Media



Bureau (one of seven FCC bureaus) regulates radio and television programming.

According to the FCC's website, "Obscene speech is not protected by the First Amendment... To be obscene, material must meet a three-prong test [as determined by the U.S. Supreme Court]... An average person... must find that the material... [has] a tendency to excite lustful thoughts, the material must depict or describe, in a patently offensive way, sexual conduct specifically defined by applicable law, and the material... must lack serious literary, artistic, political or scientific value."

### The Pacifica decision

One of the most significant legal rulings regarding indecency is the 1978 case of *FCC v. Pacifica*. That case involved the Pacifica Radio Station's 2 p.m. broadcast of a satiric monologue

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spread over the 50 states and the District of Columbia. Each elector casts one electoral vote. How many electors or electoral votes each state receives is determined by its congressional representation. Each state receives one electoral vote for each of its senators and representatives in the U.S. Congress. For example, New Jersey has two senators and 13 representatives for a total of 15 electoral votes. Although the District of Columbia has no senator or representative, it is afforded the minimum of three electoral votes.

According to the U.S. Constitution, the electors originally met in their respective states and voted for two candidates. A list of the candidates and votes cast was sent to the president of the Senate, who then announced the votes. The person with the largest number of votes became president if he had a majority. If there was a tie, the House of Representatives chose the president. The top vote getter became the president, while the person with the next highest total was appointed vice president.

### Early problems

In 1796, using the new Electoral College system, Federalist John Adams became president, while Thomas Jefferson, a Democratic-Republican became vice president. Today, this would be the equivalent of Republican George Bush becoming president and Democrat Al Gore becoming vice president. To avoid similar problems, in 1804, the Twelfth Amendment was passed, which basically stated that electors should now have two separate ballots, one for president and a separate one for vice president. The only other change to the Electoral College was made in 1961 when the District of Columbia was awarded three electoral votes.

While electors in colonial America had plenty of clout and voted for whomever they wanted to become president or vice president, today the electors, who are appointed by the state's individual party organizations (Democrat and Republican), as a practical matter, merely confirm the outcome of their state's popular vote, although they are free to vote their conscience. The electors meet in mid-December following the election to officially cast their votes in their respective state capitols.

With the exception of Maine and Nebraska, the remaining 48 states operate on a winner-take-all system (Maine and Nebraska award their votes on a proportional basis). So if the Democratic presidential candidate gets one more vote than the Republican in New Jersey, he or she would get all of the state's 15 electoral votes and the electors appointed by the Democratic Party would cast their votes at the December meeting. If the Republican candidate won the popular New Jersey vote, the Republican-appointed electors would cast their votes. To win the election, a presidential candidate must receive a majority (270) of electoral votes.

### How a national popular vote would work

There have been four presidential elections (1824, 1876, 1888 and 2000) where the winner of the popular vote lost the presidency because he did not win the majority of electoral votes. That is why proponents of the compact are pushing hard for changing the Electoral College so that voters directly vote for presidential candidates.

A Gallup poll, taken after the 2000 presidential election, revealed that 60 percent of the voting public support a "direct election" for president. According to a poll conducted by *The Washington Post*, the Kaiser Family Foundation and Harvard University, that number jumped to 72 percent in 2007.

The bill or compact, officially titled the Agreement Among the States to Elect the

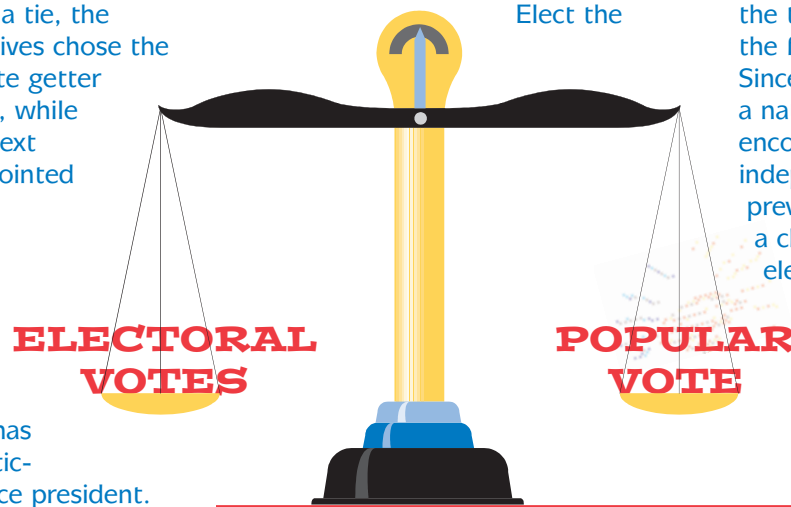
President by National Popular Vote, offers an alternative to passing a constitutional amendment, which would require ratification by two-thirds of the states and could possibly take years to pass. The compact does not take effect, however, until a combination of other states, which have a cumulative total of 270 electoral votes also enter into it. While that could take years as well, Robert Richie, executive director of FairVote, a non-profit, non-partisan organization that seeks universal access to elections and majority rule for all, believes the National Popular Vote "will be in place for the 2012 election," according to FairVote's website.

### Changing the system

Detractors of a direct presidential election claim that the Electoral College promotes the two-party system, discouraging the formation of third parties. Since every vote would be equal, a national popular vote would encourage third-party and independent candidates, who previously would never have had a chance of securing enough electoral votes. This could prove problematic.

In a column posted on [cnn.com](http://cnn.com), Bill Schneider, CNN

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## Most Popular, Not Always the Winner

Winning the national popular vote does not always win you the presidency. Just ask Andrew Jackson, Samuel Tilden, Grover Cleveland and, most recently, Al Gore.

### 1824 — A Deal Was Struck

The first election year in which the president did not win the popular vote was 1824 when four candidates vied for the U.S. presidency. Competing in the race were Andrew Jackson, of Tennessee, a popular war hero; John Quincy Adams, of Massachusetts, the current secretary of state and also the son of the nation's second president, John Adams; William H. Crawford, of Georgia, who became seriously ill during the campaign; and U.S. Representative Henry Clay of Kentucky.

Jackson won the popular vote by more than 38,000 votes over Adams. All four candidates received electoral votes, but none of them had enough for an Electoral College majority. The decision went to the House of Representatives, which could only vote for the top three candidates so Clay, who had received the least number of electoral votes, was eliminated. Adams struck a deal with Clay, who rounded up western votes and threw his support to the New Englander. The result was that Adams won enough states' votes to become president. One of the first things the new president did was to name Henry Clay as his secretary of state.

Obviously, that was part of the deal that Jackson called a "corrupt bargain." Jackson was so incensed at the outcome of the election that he founded the Democratic Party. Then he ran again in 1828 as a man of the people against the incumbent president and won both the popular vote (56 percent to 43.6 percent) and the electoral vote (170 to 83).

### Other "popular" candidates

In 1876, the winner of the popular vote by a quarter of a million votes, Democrat Samuel Tilden, lost the election to Republican Rutherford B. Hayes, who beat Tilden in the Electoral College, 185 to 184. A special commission was appointed by Congress to resolve the disputed ballots, resulting in the closest Electoral College victory by a candidate.

Although Democrat Grover Cleveland won the popular vote for president in 1888 by a small margin, it was Republican Benjamin Harrison who became president after winning the majority in the Electoral College, 233 to 168. Cleveland had been elected president in 1884, and went on to run again in 1892, this time defeating Harrison. He is the only U.S. president to serve two non-consecutive terms.

In 2000, the small margin of victory (537 votes) for George W. Bush in Florida set off protests by many voters because of confusion with the ballot. The Florida Supreme Court ruled that there should be a hand recount in the disputed areas, but the state appealed to the U.S. Supreme Court. In a 5-4 decision, the Court stopped the recounts and awarded Florida's electoral votes to Bush. Gore won the popular vote by 543,895 votes, but lost in the Electoral College 271-266.

— Phyllis Raybin Emert



# Teen Curfews in Malls Get Mixed Reviews

by Barbara Sheehan

In a controversial move that some people say infringes on the rights of young people, some malls around the nation have imposed weekend curfews on teen shoppers.

According to the International Council of Shopping Centers (ICSC), about 51 malls around the country have implemented either a weekend teen curfew or an escort policy that requires teenagers and younger kids to be accompanied by a parent or a person over 21. While the ICSC asserts that no teen curfews or escort policies have been reported in New Jersey, in other states, the practice seems to be a growing trend, with an estimated 11 malls signing on in 2007 alone.

The pioneer of the curfew for teens is the Mall of America in Bloomington, Minn., which in the mid 1990s was one of the first in the industry to establish an escort policy for teens. At the time, the mall was responding to a situation that mall tenant Benjamin King, owner of King Jewelers, described in an ICSC newsletter article as “horrible, with fights, shootings and stabbings.”

According to the ICSC, the Mall of America policy requires youth under 16 to be accompanied by a parent or guardian 21 years or older during the hours of 6 p.m. until the mall closes on Fridays and Saturdays.

“It was done as a last resort but has worked really well,” Maureen Bausch, Mall of America’s director of business development, said in the article. An October 2001 ICSC



newsletter reported that incidents at the mall dropped from 300 in 1995, when the policy was established, to two the next year.

Other malls, like the Columbia Mall in Columbia, Mo., have also reported success with similar policies. According to an April 2007 article in *Pantagraph*, a Bloomington-Normal, Illinois publication, the number of instances where people were asked to correct their conduct on an average Saturday night at the Columbia Mall dropped from about 50 to 60 before the policy to about five to eight after.

## Consumer rights

Despite stories like these, everyone is not sold on mall curfews. In an October 2001 issue of ICSC’s newsletter, Clinton Cochran, then vice president of asset management for Kravco in King of Prussia, Pa., said, “I think it’s wrong. First of all, teens are a challenge, but they are customers; they also are your future consumers. You deal with the problems if you have problems.”

Referring to the policy at the Mall of America, a senior staff counsel at the American Civil Liberties Union (ACLU) old *The New York Times*, “It infringes on the rights of young people.”

Despite these criticisms, it appears that so far no one has legally challenged teen curfews in malls. The courts have, however, considered other types of teen curfews as well as other individual rights issues in shopping centers.

For example, in 2003, a Connecticut court considered the case of a juvenile curfew ordinance in Vernon. The curfew barred anyone under the age of 18 from being out of doors after 11 p.m. on school nights or after

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## Policing the Airwaves **CONTINUED FROM PAGE 1**

by comedian George Carlin, titled “Seven Dirty Words.” A father who was driving with his son at the time complained to the FCC about the monologue, saying it was inappropriate to broadcast it at that time of day. The Commission concluded that the language used was indecent and should be prohibited from being broadcast in the afternoon.

The Pacifica Radio Station disagreed with the FCC’s ruling citing the First Amendment right to freedom of speech. The U.S. Supreme Court ultimately heard the case and ruled 5-4 that the FCC regulation of indecent programming did not violate the First Amendment. The Commission did not impose any fines or punishments on the radio station, but put them on notice about airing indecent broadcasts when children were likely to be listening.

In *Pacifica*, the Court noted that its decision “was a narrow one limited to the facts of the Carlin monologue as broadcast,” and distinguished between an occasional or isolated use of a word and offensive words repeated over and over again. In the Court’s **majority opinion**, Justice Lewis Powell wrote, “the Commission’s holding, and certainly the Court’s holding today, does not speak to cases involving the isolated use of a potentially offensive word in the course of a radio broadcast, as distinguished from the verbal shock treatment administered by the respondent here.”

Since *Pacifica*, the FCC has allowed what they called “fleeting and isolated” instances of offensive words over the airwaves. Today, the question is whether the Commission has gone too far with censorship regulations that intrude on First Amendment freedom of speech guarantees.

### Oops! Did I say that?

So, how did all this come about and why has the U.S. Supreme Court agreed to hear the case? It started with the live broadcast of the 2003 Golden Globe Awards ceremony when U2 lead singer Bono received an apparently unexpected award for Best Original Song. In his acceptance speech, an excited Bono declared, “this is really, really, f\*\*\*ing brilliant. Really, really, great.” Members of the Parents Television Council, a non-partisan education organization that, according to its website, was founded to ensure that children are not assaulted by sex, violence and profanity on television and other media, filed many complaints with the FCC regarding the Bono incident.

After an investigation, the Enforcement Bureau of the FCC denied the complaints, stating that it was an isolated incident that didn’t refer to sexual actions. The Parents Television Council requested a review of the Bureau’s decision. Five months later, the full Commission reversed the

Bureau. The FCC, in a change of policy, declared, “We believe that, given the core meaning of the ‘f-word,’ any use of that word or a variation, in any context, inherently has a sexual connotation, and therefore falls within the first prong of our indecency definition.” Furthermore, the Commission stated, “The use of the ‘f-word’ here, on a nationally telecast awards ceremony, was shocking and **gratuitous**.... The fact that the use of this word may have been unintentional is irrelevant; it still has the same effect of exposing children to indecent language.” In an FCC memo, the Commission explained that any prior interpretation that isolated or fleeting uses of the ‘f-word’ were not indecent, “is no longer good law.”



The FCC did not fine NBC, which broadcast the Golden Globe ceremony, but gave notice of its change in policy, warning that in the future, networks will be subject to fines for “each indecent utterance” and recommended they use “a delay/bleeping system for live broadcasts.”

### FCC vs. Fox Television

In February 2006, the FCC issued what it called an Omnibus Order, citing several programs broadcast between February 2, 2002 and March 8, 2005 that it considered indecent and profane under the new stricter policy issued in response to the Golden Globe incident. Fox Television broadcast two of the programs. During the 2002 Billboard Music Awards, Cher commented during her acceptance speech, “People have been telling me I’m on the way out every year, right? So f\*\*\*em.” The following year, at the same awards show, Nicole Richie, a presenter, said, “Have you ever tried to get cow s\*\*\* out of a Prada purse? It’s not so f\*\*\*ing simple.” Although the FCC did not issue any fines because the broadcasts occurred before the change in policy, they reaffirmed that the isolated use of these words is indecent or profane.

The four major television networks filed a lawsuit in federal court challenging the Omnibus Order. The Order is described in court documents as a “change in agency policy without adequate explanation.” In the lawsuit, the networks claim the FCC’s ruling is unconstitutional and state that the obscenities heard in the programs were “fleeting, isolated — and in some cases unintentional.”

In June 2007, the U.S. Court of Appeals for the Second Circuit ruled 2-1 against the FCC and in support of the television networks. Judge Rosemary S. Pooler wrote that the Commission “fails to provide a reasoned analysis justifying its departure from the agency’s established practice.” The Court agreed with the networks that “the FCC’s indecency test is undefined... inconsistent, and... unconstitutionally vague.” As an example of this inconsistency, Judge Pooler wrote, “although the Commission has declared all variants of ‘f \*\*\*’ and ‘s\*\*\*’ are... indecent and profane, repeated use of those words in [the Academy Award-winning movie] *Saving Private Ryan*, for example was neither indecent nor profane. And while multiple occurrences of expletives in *Saving Private Ryan* was not gratuitous, ... a single occurrence... in the Golden Globe Awards was ‘shocking and gratuitous.’”

The FCC is appealing the federal court’s decision to the U.S. Supreme Court.


Why are the networks so determined and willing to expose themselves to a prolonged lawsuit? One reason may be pure dollars and cents. In 2006, as a result of the now infamous wardrobe malfunction at the Super Bowl, the maximum fine for each indecency violation was increased to \$325,000. When a network has as many as 100 affiliate stations that can add up to millions of dollars in fines.

### Gone to far?

In response to whether the FCC has gone too far with censorship regulations that may intrude on First Amendment freedom of speech guarantees, New York entertainment law attorney Ronald Bienstock stated, “It is not the breath of regulation but the arbitrary enforcement of such regulation that can cause a chilling effect on broadcasters.”

In April 2007, the FCC reported that there is a link between aggression in children and violence on television, giving way to its next big issue — whether, with congressional approval, the FCC can regulate violence on television. Decisions will have to be made between what is acceptable violence, such as movies about World War II and the Holocaust, and what is unnecessary violence in series such as *24*, *CSI*, or *Law and Order*.

Bienstock declared, “Such regulation would be akin to closing the barn door after all of the violent cows have left the barn. Video games can be more violent than any of the content on television, yet that is not presented in congressional discourse.”

Oral arguments in *FCC vs. Fox Television* will be heard in the fall when the U.S. Supreme Court will decide whether the FCC policies can stand up to First Amendment constitutional guarantees of freedom of speech. 



## Cell Phones in Schools CONTINUED FROM PAGE 1

### What did the New York court say?

Given the pros and cons of cell phones, how should schools regulate them? This was the question posed to the New York Supreme Court last year when a group of parents filed a lawsuit claiming that the ban on cell phones in New York City public schools deprives kids of their safety and intrudes on the relationship between parents and their children. These parents sought to have the policy changed to allow students to bring their phones to school but not to use them during the school day (as is the case in many New York schools).

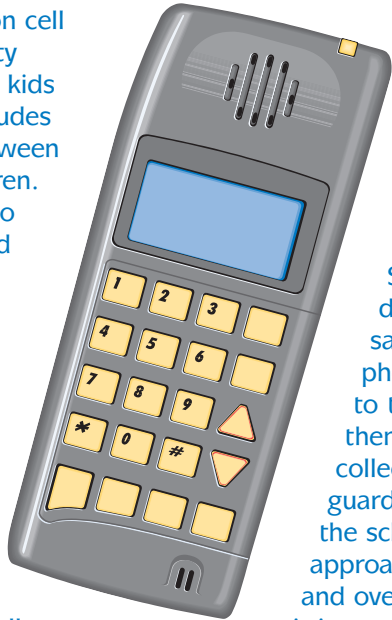
After considering the case, the court found last May that the school department's ban on cell phones was both constitutional and rational, and upheld the policy. In his ruling, New York Supreme Court Judge Lewis Bart Stone said that allowing phones in school would essentially put teachers in the position of regulating them and would therefore detract from their ability to do their job. The ruling did, however, include a section called "special circumstances," whereby school principals may allow exceptions to the ban in special situations.

### What is the policy in New Jersey schools?

Ultimately, schools and school districts make the decision about if, when and where students can use cell phones. Yapple, of the NJSBA, says he is unaware of any cell phone bans in New Jersey, like the one in New York. If there were such

a thing, he says it would be more likely at the elementary level.


Dr. David Heisey, principal at Scotch Plains-Fanwood High School, says students there are allowed to bring cell phones to school but must keep them out of sight and in the off-mode during the school day. Students who violate this rule have their phones immediately taken away and must attend a mandatory Saturday morning detention, Dr. Heisey said. Further, the phones are not returned to the students themselves but must be collected by a parent or guardian. Dr. Heisey said the school takes a strict approach to the policy, and over all he contends it is working.



### It's always something

While the issue of the day is cell phones (and even those are changing continually in terms of their capabilities), the idea of regulating technology in schools is not new.

Both Yapple and New Jersey attorney David Rubin remember when pagers were a concern in the 1980s because they were often associated with illegal drug dealing. At that time, a state law was put on the books prohibiting students from carrying pagers in New Jersey schools. Of course, today there are a myriad of other gadgets that kids stow away in their backpacks, from Mp3 players to portable video games to iPods.

Where cell phones are concerned, anyway, the debate will likely remain fully charged for the foreseeable future. 

## Teen Curfews CONTINUED FROM PAGE 3

midnight on weekends, with certain exceptions. The lower court deemed the curfew constitutional. According to a press release issued by the ACLU, a federal appeals court overturned the lower court's ruling and said the curfew violated the 14th amendment to the Constitution, which concerns the right to travel.

As for shopping centers, both state and federal courts have considered cases dealing with a person's constitutional rights in malls, such as the right to hand out leaflets or hold public demonstrations.

At the federal level, courts have generally deemed malls private property and have restricted people's constitutional rights in them, according to the First Amendment Center, an operating program of the Freedom Forum, which is a nonpartisan foundation in Washington, D.C., dedicated to free press, free speech and free spirit for all people. Most state courts considering this subject have followed suit.

New Jersey and California, however, have expanded individual rights on private property, including shopping malls, the First Amendment Center said. In this regard, visitors to malls in New Jersey are generally allowed more constitutional freedoms than their counterparts in some other states.


Perhaps this has something to do with why New Jersey malls have not instituted any curfews or

escort policies for teens. Or else it may simply be that allowing teens in malls is good for business.

According to Mintel International Group Ltd., a market research company, kids ages 12 to 17 numbered over 25 million in the U.S. in 2004, and in 2006 had an estimated spending power of \$153 billion.

Given this influence, it's no wonder that curfews are viewed as a last resort even by the malls that impose them. In fact, at the same time as some malls are instituting curfews, others, according to a December 2000 ICSC article, are trying to draw in young consumers through promotions like rock concerts and other teen-oriented marketing events.

One such mall in New Jersey is Woodbridge Center, where Marketing Manager Marian Kapp said many of the stores and happenings there are geared toward teens and families with children. For example, last fall the mall hosted a back-to-school event called, "The Scene," with a DJ booth and professional video gamer Johnathan "Fatal1ty" Wendel, among other things. A few months before that, pop star Fergie performed there.

It seems the freedom of New Jersey teens to visit malls when and with whom they choose is pretty safe for now. But as curfews in other states demonstrate, this is a right that should not be abused or taken for granted. 



## National Popular Vote CONTINUED FROM PAGE 2

senior political analyst wrote, "Someone could win the national vote with a bare **plurality**, perhaps as low as 25 or 30 percent... The new rules would also disconnect a state's voters from its electors."

Third parties have affected the outcome of American elections in the past because third party candidates tend to take votes away from one of the major parties, allowing the other party to win. For example, Ralph Nader's Green Party received more than 97,000 votes in Florida in 2000. Democrat Al Gore lost Florida by about 500 votes, allowing Republican George W. Bush to take the state and with it, the presidency. Green Party voters, who belonged to the Democratic Party and most likely would have cast their ballots for Al Gore, could have easily given him the win in Florida.

### One person, one vote?

David O. Stewart, who is the author of *The Summer of 1787: The Men Who Invented the Constitution*, wrote an article in *The Los Angeles Times* where he criticized the Electoral College, calling it "unfair," and claiming it "exaggerates the power of small states." As an example, he stated that in 2004, each of California's 55 electoral votes represented 226,000 voters, while each of Alaska's three electoral votes represented 104,000 voters. Therefore, according to Stewart, California voters counted less than Alaska voters. "One person, one vote? Hardly," Stewart wrote.

While civil rights attorney Stephen Latimer, of Hackensack, agrees that the Electoral College is outdated and may have outlived its usefulness, he believes it should be abolished by constitutional amendment in favor of a direct election of the president by popular vote.

In terms of the current proposed compact, Latimer explained that the U.S. Constitution has been interpreted to permit states to enter into contracts or compacts with each other. However, he stated, there is some debate as to whether the courts would uphold the compact's constitutionality if a state that passed the legislation changed its mind and pulled out of the agreement. Latimer also noted the possibility of a serious constitutional question that could arise involving the "one person, one vote" issue.


"Suppose 60 percent of New Jersey voters voted for the Democratic candidate, but 57 percent of the national vote went

to the Republican," explained Latimer. "If the New Jersey electoral votes were given to the Republican candidate, that would **nullify** the electoral will of New Jersey voters, thus effectively depriving them of the vote. I think that would be unconstitutional," Latimer stated.

### Swinging elections

Historically, some states favor one party over another. Currently, campaigning presidential candidates focus on what are called "swing states." These are states, like Ohio, Florida and Pennsylvania, that have not consistently favored any one party and "could go either way," giving one candidate a victory. Supporters of the national popular vote believe that candidates would have to campaign everywhere and not just battleground or swing states with large electoral votes. But that may not be the case.

Tom Mann, a constitutional scholar, told CNN, "You would see a much greater emphasis by the candidates campaigning in large uncompetitive states, like California, Texas and New York."

In other words, the "swing states" and smaller states would then be left out of the election process. Either way the pendulum swings on this issue, it is interesting to note that the United States is still having the same problem today that our Founding Fathers had in the 1700s. We still can't agree what is the best and fairest way to elect our president with all states having equal participation in the process. 



**gratuitous** — unnecessary.

**majority opinion** — a statement written by a judge or justice that reflects the opinion reached by the majority of his or her colleagues.

**nonpartisan** — not adhering to any established political group or party.

**nullify** — void; to deprive of legal force.

**plurality** — having a greater number (as in votes), but not a majority.