# Hazelwood Aff 1

## Notes

### Hazelwood Aff Sparknotes

Hazelwood School District V. Kuhlmeir was a 1988 Supreme Court ruling that allowed censorship of student newspapers. This affirmative argues that censorship of student publications is problematic for 3 main reasons

1. Precedent- Hazelwood has been cited in many other court cases to weaken first amendment protections

2. Journalism- censorship hurts student’s ability to learn the skills required to be an effective journalist

3. Education- censorship is counterproductive to the educational environment of schools

To understand the importance of Hazelwood you need to know a bit about Supreme Court first amendment jurisprudence which I will divide into two categories: relevant cases, and relevant principles. Let’s start with cases.

There are 3 important cases to understand.

1. Tinker v. Des Moines Independent Community School District- This is by far the most important Supreme Court case dealing with first amendment rights in schools. In Tinker a group of students wore black armbands to protest the Vietnam war and administrators tried to prevent them from doing so. The first important part of Tinker is that “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate”. In saying this the court set a precedent that schools must recognize civil rights of both students and teachers. Second, “In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.” In other words- administrator cannot censor speech because of it’s content- i.e. they cannot say “I disagree with this point of view”.

2. Hazelwood. The court in Hazelwood weakened (or eliminated) the protections it created in Tinker. This decision relied on a few key arguments. First, that student speech can be restricted when that speech threatens the “rights” of another student. In this case the court decided that articles about teen pregnancy and divorce where a threat to the privacy rights of students covered in the articles (it is important to night there is no “right to privacy” in the constitution, instead the courts have inferred a “penumbra of privacy”- the idea that other rights contain within them a general justification for a right to privacy). Second, the court decided that schools had a legitimate pedagogical concern in limiting these articles. Affirmative authors argue that both these arguments were so weak and poorly evidenced that this has defacto created a loophole to the first amendment. Specifically the school districts argued that because courts lack educational expertise they must defer to the opinions of administrators on whether or not speech was harmful. This deference undercuts or eliminates the “viewpoint neutrality” standard created in Tinker.

3. Hosty V. Carter- The original Hazelwood ruling applied to secondary schools (high schools) but the court explicitly left open the question of whether or not Hazelwood applied to Colleges and universities. In Hosty the 7th district court ruled that Hazelwood DID apply to colleges and allowed censorship of a college paper. Since that ruling Hazelwood has been cited in a variety of contexts outside of high schools to justify censorship. Hosty is important for one other, more complicated, reason. In Hosty the court did not literally say “censorship is acceptable”, they said that “qualified immunity” protected administrators from the lawsuit. If your federal civil rights are violated- by a police officer searching your home without a warrant or a school censoring your article- the way you protect your rights is to file a lawsuit under section 1983. These law suits allow people to pursue monetary damages for rights violations, the idea being that the threat of financial pain will deter government officials from violating rights in all but appropriate circumstances. Qualified immunity is a defense government officials raise in these lawsuits that essentially says “the law is sufficiently unclear that a reasonable person could have taken the offending action thinking it was ok”. So basically, if a federal agent doesn’t understand the law because the law is not clear, they can’t be held responsible for violating it. This is in stark contrast to a regular citizen for whom “ignorance of the law is not a defense”. So in Hosty the court ruled that because it was unclear whether or not Hazelwood applied to colleges, the administrator had qualified immunity. This is a very important ruling because it essentially says administrators could censor anything they wanted and then plead ignorance and win. This has caused an explosion of censorship on and off campus.

The affirmative argues that the court should overturn Hazelwood reinstating the doctrine of viewpoint neutrality. While the case does argue that free speech is important in high schools, more importantly it argues that the precedent set by this ruling would protect the right to free speech more broadly.

Below you can find details of the case and relevant federal laws. These summaries are from “amicus briefs” from the original court decision. An amicus, or “friend of the court”, brief is written by someone not involved in the law suit but who supports one side or the other.

The major negative argument is a counterplan to allow some but not all of the speech the affirmative does. More specifically, it allows schools to restrict “hate speech”. Hate speech is not a clearly defined concept in the law, but the debate centers around how harmful hate speech is related to other restricted speech. The court has acknowledged a few major exceptions to the first amendment: libel (things you know to be untrue), obscenity (speech that is offensive to societal norms and serves no other purpose like some forms of pornography), and fighting words (speech that directly promotes violent actions). Most negative authors think hate speech is a form of fight words or obscenity and thus should be restricted. First amendment advocates think the definition of hate speech is too ambiguous and courts should err on the side of caution by not allowing its restriction which could have dangerous precedential effects. A key distinction is whether the speech targets an individual or not. For example, saying “I dislike Bob- he’s a stupid Yankees fan” is targeted at an individual. Racist/sexist comments targeted at a specific individual are often considered fighting words and can be restricted. If you said “I dislike Yakees fans” that would generally be viewed as acceptable. In the context of school newspapers an article over say whether or not immigration was bad for the economy could be considered hate speech by some and not others which creates dicey legal situations.

For the affirmative the main arguments made against this CP/Disad are:

1. Precedent- hate speech restrictions are not “viewpoint neutral” which hurts a crucial first amendment principle

2. Ambiguity- what is/is not hate speech is not clearly defined and can be abused. For example conservative administrators could rule liberal commentary to be hate speech and vice versa

3. Boomerang/Cooption- this argument argues that if racism is so prevalent in society than it is more likely hate speech laws will hurt rather than help minorities. There are many empirical examples of where hate speech codes were used exclusively to target minority speech

4. Underground- hate speech laws don’t eliminate racism they drive it underground. This is worse for two reason: underground speech creates an “echo chamber” where discriminatory believes become more extreme over time, and that when underground people are less likely to be challenged on their discriminatory views by counterspeech

5. Safety Valve- this argues that hurtful speech is often “venting” that prevents actual violence.

Finally, a large portion of the case is devoted to defending the value of speech. These impacts can be broken down into two categories

1. Consequential- the case makes two arguments about the positive consequences of free speech. First, free speech in education is uniquely important to society. Schools are learning environments where people need the freedom to experiment. A famous court case claimed that if schools don’t have free speech it will hurt innovation and societal advancement causing “civilizational collapse”. Second, free speech exists primarily to challenge the government. Journalists are uniquely key in this role as they bring major issues to our attention and facilitate debate. High school censorship harms the production of good journalists because it teaches them it is acceptable for government officials to censor damaging information. Oppressive governments generally act to repress free speech to prevent resistance. This evidence makes a “root cause” claim that free speech is necessary to prevent war and genocide by oppressive governments.

2. Non Consequential- this evidence defends free speech as a prima facie good, there are again two reasons for this. First, speech is crucial to the development of moral reasoning. The more ideas people are exposed to the more likely they are to avoid dogmatism/discriminatory beliefs. Second, speech is a pre-requisite to any other moral value. You cannot articulate why it is important to combat racism or sexism without being able to speak about it. This means when the first amendment conflicts with other rights it should be given priority.

### FYI- The Hazelwood Case

Abrams, JD/SPLC President, et al. 86

(J. Marc, 1987 WL 864177 (U.S.) (Appellate Brief) Supreme Court of the United States. HAZELWOOD SCHOOL DISTRICT, et al., Petitioners, v. Cathy KUHLMEIER, et al., Respondents. No. 86-836. October Term, 1986. May 26, 1987. On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit Brief of Student Press Law Center, Journalism Education Association, Columbia Scholastic Press Advisers Association, Quill and Scroll Society, National Scholastic Press Association/Associated Collegiate Press, Missouri Journalism Education Association, Journalism Association of Ohio Schools, Southern Interscholastic Press Association, Garden State Scholastic Press Association, College Media Advisers, Community College Journalism Association, Association for Education in Journalism and Mass Communication as Amici Curiae in Support of Respondents J. Marc Abrams\*, S. Mark Goodman, Student Press Law Center, 800 18th Street, N.W., Suite 300, Washington, DC 20016, (202) 466-5242, Counsel for Amici curiae)

STATEMENT OF THE CASE

At the time of the events giving rise to this lawsuit, plaintiffs Cathy Kuhlmeier, Leslie Smart and Leanne Tippet were students in the Hazelwood East High School Journalism II class and were on the staff of Spectrum, the student newspaper at Hazelwood East. Spectrum, in the past and present, serves as a voice for the students at Hazelwood East, allowing them to raise in articles, editorials and letters to the editor issues that touch their lives inside and outside the school. Both written policies of \*6 the school board and Spectrum’s own pages noted that student expression would not be restricted in the student newspaper.

For the May 13, 1983, issue of Spectrum, staff members prepared a two-page spread of articles that focused on some of the problems teenagers face today. The articles focused on teenage pregnancy, teenage marriage, runaways and the effects of divorce on children, topics recognized as national crises for our nation’s youth. Several students at Hazelwood East were interviewed or surveyed for these articles, making the issues covered more relevant and immediate to Spectrum’s readers. All sources were informed in advance that their statements were being collected for use in Spectrum, and all gave their explicit consent to such use.

Pursuant to an unwritten policy at Hazelwood East, principal Robert Reynolds was given a copy of the galley proofs for the May 13 issue of Spectrum before they were returned with corrections to the printer. On May 11, 1983, without any notice to Spectrum staff members, Reynolds ordered adviser Howard Emerson to delete from the issue the two-page spread that contained the articles mentioned above. Reynolds later justified his decision by saying that the stories were “too sensitive” and “too mature” for the students at Hazelwood East. He said divorce, which affects the children of almost half of the marriages in the country,1 was per se a subject “inappropriate” for a high school newspaper. Relying on Hazelwood school board policies, the Hazelwood School District superintendent and board of education approved the principal’s censorship.

Plaintiffs brought this action asserting that their rights under the First Amendment to the United States Constitution had \*7 been violated and requesting declaratory relief and damages. The United States District Court for the Eastern District of Missouri, after trial without a jury, entered a judgment for the defendants. Plaintiffs appealed, and the United States Court of Appeals for the Eighth Circuit reversed the decision, finding Spectrum a public forum for student expression and holding that the school could not demonstrate that its censorship was necessary to avoid material and substantial interference with school work or discipline or an invasion of the rights of others. This Court granted appellees’ petition for certiorari.

SUMMARY OF ARGUMENT

The Hazelwood School District created Spectrum, the student newspaper at Hazelwood East High School, as an outlet for the expression of students. Both through its explicit written policies and its practice of allowing students to determine the content of Spectrum, the school district demonstrated its intent to create an avenue for the expression of student viewpoints and news. As a result of this intent, as well as the nature of a student newspaper as an expressive activity, First Amendment protections for respondents must apply. Recognition of such protections in no way interferes with petitioners’ ability to determine the curriculum of their journalism class.

Petitioners had the burden of proving their censorship justified. They could not do so. They were unable to demonstate that their censorship of Spectrum was justified under the material and substantial disruption or invasion of the rights of others standard that this Court applies to censorship within a public high school. Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).

Petitioners censorship was a direct prior restraint of student expression. Such policies are presumptively invalid, and the school district presented no justification for its system. Rather the school district’s prior restraint created a potential for its tort liability that would not otherwise have existed.

\*8 Petitioners policies under which they attempt to justify their censorship are unconstitutionally overbroad and vague and fail to provide necessary procedural due process.

### FYI- Detailed Case History

Baine, JD, 86

(1987 WL 864172 (U.S.) (Appellate Brief) Supreme Court of the United States. HAZELWOOD SCHOOL DISTRICT, et al., Petitioners, v. Cathy KUHLMEIER, et al., Respondents. No. 86-836. October Term, 1986. March 30, 1987. On Writ of Certiorari To The United States Court Of Appeals For The Eighth Circuit Brief for the Petitioners Robert P. Baine, Jr., Counsel of Record, 225 South Meramec, Tenth Floor, St. Louis, Missouri 63105, (314) 862-5981, John Gianoulakis, Robert T. Haar, Kohn, Shands, Elbert, Gianoulakis & Giljum, 411 North Seventh, St. Louis, Missouri 63101, (314) 241-3963, Counsel for Petitioners)

Petitioner Hazelwood School District operates public elementary and secondary schools within the State of Missouri, including the Hazelwood East High School. On August 19, 1983, respondents, former students in the Journalism II class at Hazelwood East, brought this action for declaratory relief pursuant to 28 U.S.C. §§2201, 2202, and damages pursuant to 42 U.S.C. §§1983, 1988.1 Respondents alleged that their rights under the First and Fourteenth Amendments had been abridged by petitioners’ refusal in May 1983 to permit publication of certain articles in the Hazelwood East Spectrum, a school-sponsored newspaper produced by Hazelwood East’s Journalism II class.

On May 9, 1985, after a three-day trial to the court, the Honorable John F. Nangle, Chief Judge, United States District Court for the Eastern District of Missouri, held respondents’ First Amendment rights were not violated when petitioners prohibited publication of articles containing “personal accounts” of pregnant high school students and students’ explanations why their parents divorced. He found that petitioners reasonably acted to protect the privacy of the students and their families, to avoid the appearance of official endorsement of the sexual norms of the pregnant students, to insure fairness to the divorced parents whose actions were characterized, and to limit the school-sponsored newspaper to materials appropriate for high school age readers.

During the 1982-1983 academic year, the Hazelwood East curriculum included two journalism classes, “Journalism I” and “Journalism II.” Enrollment in Journalism II required successful completion of Journalism I. Students in Journalism I were taught the fundamentals of reporting, writing, editing, \*4 layout, publishing and journalistic ethics. This instruction continued in Journalism II, but the primary activity of Journalism II was production of Hazelwood East’s school-sponsored newspaper, Spectrum. “This activity is best described as a classroom exercise or ‘lab’ in which Journalism II students were given an opportunity to apply the knowledge and skills derived from the instruction they received.” Appendix to Petition for Writ of Certiorari (hereinafter “App.”) A-26.2 The Hazelwood School District financed Spectrum, although newspaper sales to-students defrayed approximately 25% of the costs of production during the 1982-1983 academic year. App. A-27.

The district court found that the teacher of Journalism II “both had the authority to exercise and in fact exercised a great \*5 deal of control over Spectrum,” and “was the final authority with respect to almost every aspect of the production and publication of Spectrum, including its content.” App. A-29. The teacher

selected the editor, assistant editor, layout editor and layout staff of the newspaper. He scheduled publication dates, decided the number of pages for each issue, assigned story ideas to class members, counseled students on the development of the stories, reviewed the use of quotations, edited stories, adjusted layouts, selected the letters to the editor, edited the letter to the editor, called in corrections to the printer, and sold papers from the Journalism II classroom.

Id. The teacher assigned story ideas to particular students and specified the length of the proposed articles. (Trial Transcript (hereinafter “Tr.”) 1-29, 1-80). After a draft was completed, the teacher

would review the article, make comments, and return it to the student to be rewritten or researched further. Articles commonly went through this review and revision process three (3) or four (4) times.

App. A-31. Each issue of the paper was also to be submitted to the principal for prepublication review. App. A-29 to A-30.

Members of the Journalism II class researched and wrote the two articles that prompted the instant controversy. They were to appear with other articles on pages 4 and 5 of a 6-page, May 13, 1983 issue of Spectrum. Joint Appendix (hereinafter “J.A.”) 4-5. Three articles were to run along the top half of pages 4 and 5 and share a common headline:

Pressure describes it all for today’s teenagers

Pregnancy affects many teens each year

The first article in this top group of three surveyed teenage sexuality and pregnancy, with statistics on birth control, parental \*6 attitudes, and abortion. The second article discussed a proposed “Squeal Law” that would require federally funded clinics to notify parents when a teenager sought birth control assistance.

The third article consisted of separate “personal accounts of three Hazelwood East students who became pregnant.” The introduction to the article stated that “all names have been changed to keep the identity of these girls a secret.” In each of the three accounts, the student discussed her reaction to becoming pregnant, her plans for the future, her relationship with the father, the reaction of her parents, and details of her sex life and use or non-use of birth control methods.

App. A-37.

The three articles along the bottom half of pages 4 and 5 were entitled “Teenage marriages face 75 percent divorce rate,” “Runaways and juvenile delinquents are common occurrences in large cities,” and “Divorce’s impact on kids may have lifelong effect.” The latter article

dealt with the frequency and causes of divorce, as well as the affect (sic) of divorce on children. The article contained a quote from a student who was identified only as a “Junior”, as follows:

“My dad didn’t make any money, so my mother divorced him.”

“My father was an alcoholic and he always came home drunk and my mom really couldn’t stand it any longer,” ....

A Freshman identified by name as “Diana Herbert” gave the following quote:

“My dad wasn’t spending enough time with my mom, my sister and I. He was always out of town on \*7 business or out late playing cards with the guys. My parents always argued about everything.”

“In the beginning I thought I caused the problem, but now I realized (sic) it wasn’t me,” added Diana.

Similar quotes were provided from students identified by name as Susan Kiefer and Jill Viola.

App. A-37 to A-38.

The student authors of the pregnancy profiles and “Divorce’s impact” story used questionnaires to research their articles. Each subject was told the information would be used in Spectrum. The three pregnant girls were told their names would not be used. They were not given, however, any instructions regarding parental consent, and there was no evidence such consent was obtained. The parents of the students quoted in the “Divorce’s impact” article were not “contacted to explain or rebut the quoted statements of their children.” App. A-39.

The teacher of the Journalism II class, Mr. Robert Stergos, left the school district for private industry on April 29, 1983, and the district appointed a substitute teacher, petitioner Howard Emerson, to supervise the Journalism II class’s publication of the last two issues of the year. On May 10, 1983, Mr. Emerson, pursuant to the established prepublication review procedure, submitted page proofs of the May 13 issue to the school principal, petitioner Robert Reynolds. As the district court found:

With respect to the personal accounts of three (3) Hazelwood East students who were pregnant, Mr. Reynolds was concerned that the girls had been described to the point where they could be identified by their peers. In addition, he objected to their discussion of their sexual activity.

App. A-42. As for the “Divorce’s impact” article, Reynolds objected to the use of Diana Herbert’s name and the students’ \*8 quotations about reasons for their parents’ divorces. In particular, “he thought that fairness required that her parents be notified and given an opportunity to respond.” App. A-43.

Mr. Reynolds asked Mr. Emerson what would have to be done to delete the stories in question and Mr. Emerson responded that pages 4 and 5 could be deleted and page 6 could be changed to page 4. Mr. Reynolds directed Mr. Emerson to effectuate this.

App. A-40. Reynolds’ superiors, petitioners Lawson and Huss, concurred in his decision.3

In analyzing the First Amendment issues, the district court distinguished between student speech “privately initiated and carried out independent of any school-sponsored program or activity,” such as the black armbands involved in Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969), and “student speech or conduct in the context of school-sponsored publications, activities or curricular matters.” App. A-47 to A-48. In concluding Spectrum was a nonpublic forum, the district court noted that it was produced by members of the Journalism II class as taught by a faculty member in accordance with the Hazelwood East Curriculum Guide. A textbook was used and students received academic credit and a grade. The preparation of Spectrum was largely done during class. The district court found “the most telling facts are the nature and extent of the Journalism II teacher’s control and final authority with respect to almost every aspect of producing Spectrum, as well as the control or pre-publication review exercised by Hazelwood officials in the past.” App. A-54.

\*9 Given that Spectrum was not a public forum, the district court held that school officials need demonstrate only that there was a reasonable basis for their actions. He concluded Principal Reynolds had a legitimate concern that the three girls featured in the pregnancy profiles could be identified, given the small number (8 to 10) of pregnant students at Hazelwood East and the specific information disclosed in the article. Judge Nangle also credited the judgment of Hazelwood East school authorities that this material - particularly in the context of a school-sponsored, curricular publication - was not appropriate for some high school age readers and might create the impression that the school district endorsed the sexual norms of the article’s subjects. App. A-55 to A-56.

Similarly, Reynolds had legitimate objections to the “Divorce’s impact” story because it related students’ perceptions of the reasons for their parents’ divorces without availing the parents an opportunity to object, respond or rebut these characterizations. App. A-56. As for deletion of all of pages 4 and 5, the trial court concluded that Reynolds reasonably believed that he had to make an immediate decision or no paper would be published, and that there was no time to make changes to the articles. App. A-40, A-55.

The United States Court of Appeals for the Eighth Circuit reversed. Judge Heaney, joined by Judge Arnold, held that Spectrum was a public forum “because it was intended to be and operated as a conduit for student viewpoint.” App. A-5 to A-6. Applying what it perceived to be the teaching of Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969), the court of appeals concluded that petitioners acted unconstitutionally because “the two articles objected to ... could not reasonably have been forecast to materially disrupt classwork, give rise to substantial disorder, or invade the rights of others.” App. A-2.

\*10 As for what the court of appeals characterized the “heart of this case” - the invasion of privacy concerns - it held that when the Tinker Court spoke of “invasion of the rights of others” it meant to refer only to tortious acts.

[S]chool officials are justified in limiting student speech, under this standard, only when publication of that speech could result in tort liability for the school. Any yardstick less exacting than potential tort liability could result in school officials curtailing speech at the slightest fear of disturbance.

App. A-14.

The court of appeals concluded that the pregnancy profiles and “Divorce’s impact” story were not tortious. It noted that the students quoted in the “Divorce’s impact” article had consented to publication. As for the pregnancy case study, the court of appeals observed that even if it was possible to identify the girls,

[t]he only tort action which, conceivably, could have been maintained against Hazelwood East had the pregnancy case study been published is that of invasion of privacy.... Certainly the parents of the girls could not maintain this tort against the school because the article did not expose any details of the parents’ lives, only about the students, and they fully consented. Almost as inconceivable is the prospect of the fathers maintaining this tort action. The fathers were not named in the article, thus they could only be identified by persons who previously had knowledge of the revealed facts. Thus, there would have been no disclosure. We conclude that because no tort action based on the articles could have been maintained against Hazelwood East, school officials were not justified in censoring the two articles based on the Tinker “invasion of the rights of others” test.

App. A-15.

\*11 Judge Wollman dissented. He thought the district court’s findings amply supported the conclusion that Spectrum was not a public forum. He objected “to a collective first amendment right to publish a school-sponsored, faculty-supervised newspaper with the same lack of constraints enjoyed by the commercial press or, for that matter, a solely student-sponsored, extracurricular paper totally removed from the aegis of the school.” App. A-19 to A-20.

Respondents petitioned for rehearing, calling to the court of appeals’ attention this Court’s opinion in Bethel School District No. 403 v. Fraser, 106 S.Ct. 3159 (1986), which reversed one of the principal authorities relied on by the panel. Rehearing was denied on August 27, 1983, with four judges (Ross, Fagg, Bowman and Magill) voting for rehearing en banc. App. A-21.

### FYI- Relevant Laws

Baine, JD, 86

(1987 WL 864172 (U.S.) (Appellate Brief) Supreme Court of the United States. HAZELWOOD SCHOOL DISTRICT, et al., Petitioners, v. Cathy KUHLMEIER, et al., Respondents. No. 86-836. October Term, 1986. March 30, 1987. On Writ of Certiorari To The United States Court Of Appeals For The Eighth Circuit Brief for the Petitioners Robert P. Baine, Jr., Counsel of Record, 225 South Meramec, Tenth Floor, St. Louis, Missouri 63105, (314) 862-5981, John Gianoulakis, Robert T. Haar, Kohn, Shands, Elbert, Gianoulakis & Giljum, 411 North Seventh, St. Louis, Missouri 63101, (314) 241-3963, Counsel for Petitioners)

THE CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. Amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. amend. XIV, §1:

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

42 U.S.C. §1983: Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

## 1AC

### 1AC — Censorship Advantage

#### Contention One — Stop the Presses.

#### First, censorship of student newspapers is widespread and targets student discussing political issues.

Olson 17 — (Nancy A., Vermont State Director for the Journalism Education Association, [http://www.reformer.com/stories/high-school-journalist-receives-national-recognition,508133](http://www.reformer.com/stories/high-school-journalist-receives-national-recognition%2C508133), 5-22-17)

BRATTLEBORO — Alexandre Silberman, a senior at Burlington High School and co-editor of "The BHS Register," the school's student newspaper, which has published continuously since 1898, was recently named one of six runners-up in the Journalism Education Association's High School Journalist of the Year competition. As a runner-up, Silberman receives a scholarship of $850. He also won the JEA Student Journalist Impact Award for his coverage of the 2016 contract talks, which had reached an impasse, between the Burlington school board and the teachers' union. In an email interview, Silberman shared a piece he wrote describing his coverage of those contract talks. "With the absence of local media coverage to inform the public, I decided to tackle the issue myself. Digging deep into documents and understanding the legal language of a contract and collective bargaining was not easy ... I attended countless school board meetings, reporting on the progress and providing updates in real time through social media. Many teachers and parents had young children and could not attend the meetings at night. I decided to bring in equipment and live-stream the events to increase access and promote civic participation." In mid-October, 2016, the union voted to strike, beginning on Oct. 20, if last-ditch negotiations failed. "After weeks of covering the negotiations," Silberman wrote, "I decided I would be on the frontlines for a last-ditch session. I spent close to a dozen hours camped with professional journalists outside of school district offices. When the local television reporters left I remained, providing consistent and timely updates via social media. Thousands of community members, including the mayor, tuned in to my live coverage. When the news broke that a deal had been reached, I took to Facebook Live, streaming the updates in real-time to hundreds of community members. My reporting was cited by professional news organizations, including Vermont Public Radio." JEA, with more than 2,700 members, is the largest scholastic journalism organization for teachers and advisers, according to the website. JEA provides training around the country at national conventions and institutes, offers national certification for teaching high school journalism, publishes print and online resources on the latest trends in journalism education, provides avenues for virtual discussion among teachers and communities, and mentoring to learn best practices, and monitors and defends First Amendment and scholastic press rights across the country. Silberman first heard about the Journalist of the Year competition in June 2016 at the Al Neuharth Free Spirit and Journalism Conference, a week-long all-expenses paid conference for rising high school seniors, in Washington, D. C. He looked into the details on the JEA website, and decided he was ready for the challenge. "I began by making a list of what I considered to be my best journalistic work throughout high school," he said. "I spent hours and hours building the website over Thanksgiving and Christmas break. I estimate it took me over 50-plus hours. In the end, it was worth every minute I put into it." Silberman entered his portfolio (http://alexandresilberman.weebly.com/) in the state-level contest and was pleased when he learned he was named Vermont's High School Journalist of the Year. His portfolio was then automatically entered in the national competition. Thirty-four state winners competed. At the JEA national convention in Seattle in April, Silberman was recognized as one of six runners-up. "It was such an honor to be named one of the top seven student journalists in the nation," he said. "I've poured so many hours and late nights into my work over the past few years. This was the moment where all of that hard work paid off and was recognized. It was a pretty special moment for me, and definitely the pinnacle of my high school journalism career." The four-day convention brought together over 3,800 high-school journalism students from all over the country. "I had the opportunity to attend some incredible sessions," Silberman said. "I heard from Peter Haley, a photographer with the 'Tacoma News-Tribune' about stories behind his images. I also heard from Eric Thomas, the executive director of the Kansas Scholastic Press Association, who helped advise a group of students who investigated their principal's credentials. Her degree turned out to be fabricated, and she resigned. The students made national news." On the second day of the convention, Silberman said, he had lunch with the JEA president Mark Newton and nine other students who had been selected for "Lunch with the President." "It was fascinating to learn about the great things students were doing around the country," Silberman said. "One student had created a live-sports broadcasting network. I also learned that censorship and prior review are a problem at schools around the country. One student said that a reporter for her newspaper was told by administration that she couldn't write about the women's march movement. I have had my principal personally pressure me not to run a story or image, and request specific edits to articles before publication.

#### Second, censorship of student journalism is increasing at the worst possible time. Censorship discourages questioning authoritarianism.

Schuman 16 — (Rebecca, Ph.D. December 8th, http://www.slate.com/articles/life/education/2016/12/student\_journalists\_are\_under\_threat.html)

Well, here’s some great news to cheer you up: The American student press is under siege! Apparently, we’ve been too busy blowing gaskets over professor watch lists and “safe spaces” to recognize the actual biggest threat to free speech on college campuses today. According to a new report by the American Association of University Professors, in conjunction with three other nonpartisan free-speech advocacy organizations, a disquieting trend of administrative censorship of student-run media has been spreading quietly across the country—quietly, of course, because according to the report, those censorship efforts have so far been successful. The report finds that recent headlines out of Mount St. Mary’s University, for example, may be “just the tip of a much larger iceberg.” Indeed, “it has become disturbingly routine for student journalists and their advisers to experience overt hostility that threatens their ability to inform the campus community and, in some instances, imperils their careers or the survival of their publications.” The report chronicles more than 20 previously unreported cases of media advisers “suffering some degree of administrative pressure to control, edit, or censor student journalistic content.” Furthermore, this pressure came “from every segment of higher education and from every institutional type: public and private, four-year and two-year, religious and secular.” It gets worse. In many of the cases in the report, administration officials “threatened retaliation against students and advisers not only for coverage critical of the administration but also for otherwise frivolous coverage that the administrators believed placed the institution in an unflattering light,” including an innocuous listicle of the best places to hook up on campus. In many cases, the student publications were subject to prior review from either an adviser who reported directly to the administration or the administration itself. Prior review means getting what’s in your newspaper signed off on by someone up top before it can be published. It is—to use the parlance of my years of professional journalistic training that began with my time as features editor of the Vassar College Miscellany News in the mid-’90s—absolute bullshit. (At public universities, it’s also illegal.) First, and most obviously, this is because a free student press is a hallmark of the American higher education system, and any threat to that freedom is on its face worrying. But there’s also this: The last thing we need right now, in the creeping shadow of American authoritarianism, is an entire generation of fledgling journalists who’ve come up thinking censorship is acceptable.

#### Third, censoring journalists is allowed by the Supreme Court according to Hazelwood v. Kuhlmeier. That decision broke eliminated first amendment protections for students.

Baldridge 17 — (Maggie, National Constitution Center, https://constitutioncenter.org/blog/hazelwood-v-kulhmeier-limiting-student-free-speech/)

On January 13, 1988, the Supreme Court decided a First Amendment case that had major ramifications for the constitutional rights of students. In Hazelwood School District v. Kuhlmeier, high school students in a journalism class at Hazelwood East High School in St. Louis County, Missouri sued the school district after the journalism teacher and school principal removed two articles that they deemed inappropriate from the school-sponsored student paper, The Spectrum. The articles were about teen pregnancy, in which students who either had been or were currently pregnant were anonymously profiled; they also included an interview with a student who detailed her parents’ divorce and particularly her father’s behavior leading up to and throughout the process. The teacher and principal found the articles objectionable for a number of reasons. For one, the anonymity of the interviewed students could not be guaranteed. In addition, the principal was concerned that the article’s discussion of birth control was inappropriate for younger students, and the journalism teacher thought that the divorced father had the right to be informed of the article and to comment on it. Overall, the school believed that removing the articles was not just a matter of impropriety, but also a matter of protecting its students; it deemed the action within its right to curate a school-sponsored publication in accordance with academic standards. The school printed the May 1983 edition of The Spectrum sans the articles in question—without the knowledge of the student journalists. Dismayed by the school’s decision, three of the student journalists, including editor Cathy Kuhlmeier, pursued their case in the courts, arguing that the school had violated their First Amendment right of free speech. Twenty years before Hazelwood was decided, another student free speech case reached the Supreme Court. In Tinker v. Des Moines Independent Community School District, students were suspended for taking part in a Vietnam War protest by wearing black armbands—an action the administration had previously warned would result in punishment. With the help of the American Civil Liberties Union, the students sued the school district. In a landmark 7-2 decision, the Court ruled in favor of the students, holding that “a prohibition against expression of opinion, without any evidence that the rule is necessary to avoid substantial interference with school discipline or the rights of others, is not permissible under the First and Fourteenth Amendments.” In the majority opinion, Justice Abe Fortas argued that if the government were to allow an institution to curtail students from taking part in this form of speech, which neither disrupts nor causes harm to the school or other students, then it is “[strangling] the free mind at its source and [teaching] youth to discount important principles of [the] government as mere platitudes.” Similarly, the student journalists in the Hazelwood case, along with the ACLU, brought their case to federal district court in Missouri in the mid-1980s. The court sided with the school, ruling that it had not violated the students’ First Amendment rights because the publication was primarily meant as an educational tool. But the U.S. Court of Appeals for the Eighth Circuit reversed that decision. The Spectrum, it said, was not only “a part of the school’s adopted curriculum” but also "intended to be and operated as a conduit for student viewpoint.” The paper’s status as a “public forum” prohibited school officials from censoring the publication except when "necessary to avoid material and substantial interference with school work or discipline … or the rights of others”—an echo of the Tinker decision. In January 1987, the Supreme Court placed the case on its docket, and in October of that year, oral arguments were heard. The following January, the Court, in a landmark 5-3 decision, reversed the Eighth Circuit’s decision and ruled that the school had not violated the First Amendment. The Court decided that The Spectrum was not intended to reach the public sphere and was indeed meant for academic purposes. Because the paper was not a “forum for public expression,” the school did not have to comply with the standard set in Tinker. Thus, the school had grounds to edit and curate the school-sponsored publication as they saw fit and in line with what they saw as proper academic standards. In a dissenting opinion, Justice William Brennan shared his disappointment in the Court’s apparent decision to abandon the precedent set in Tinker. While he agreed with the majority opinion that educators have “the prerogative not to sponsor the publication of a newspaper article that is ‘ungrammatical, poorly written, inadequately researched, biased or prejudiced,’" he argued that the courts “need not abandon Tinker to reach that conclusion; [they] need only apply it.” In essence, the dissenters held that a student’s right to free speech was not curtailed the moment they passed through the “school gates” and The Spectrum was indeed a public forum protected by the First Amendment. Some argue that the Hazelwood decision has made student journalists more vulnerable to school censorship and punishment. Critics claim that Hazelwood “has essentially created scholastic journalism goals that are different from professional journalism standards.” Mark Goodman, a professor at Kent State University, said, “School officials who are not legally obligated to have the least concern about quality journalism can justify their acts of censorship independent of quality journalism concerns.” In response to these fears, some state governments have passed laws that establish greater protections for student journalists. More than 25 years after Hazelwood, for example, the Illinois state legislature passed The Speech Rights of Student Journalists Act, which went into effect in July 2016. The law was passed to protect students from what some see as the negative academic and constitutional ramifications of Hazelwood.

#### Fourth, the Hazelwood precedent is being used to justify widespread censorship outside of high schools.

Goodman 5 — (S. Mark Goodman, Michael C. Hiestand, Student Press Law Center 2005 WL 2736314 (U.S.) (Appellate Petition, Motion and Filing) Supreme Court of the United States. Margaret L. HOSTY, Jeni S. Porche, and Steven P. Barba, Petitioners, v. Patricia CARTER, Respondent. No. 05-377. October 20, 2005. On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit Brief of Amici Curiae Student Press Law Center, Associated Collegiate Press, College Media Advisers, Community College Journalism Association, Society for Collegiate Journalists, Reporters Committee for Freedom of the Press, American Society of Newspaper Editors, National Newspaper Association, Newspaper Association of America, Society of Professional Journalists, Associated Press Managing Editors, College Newspaper Business and Advertising Managers, National Federation of Press Women, National Lesbian and Gay Journalists Association and the Independent Press Association/Campus Journalism Project in Support of Petition of Margaret L. Hosty, Jeni S. Porche, and Steven P. Barba for Writ of Certiorari Of Counsel: S. Mark Goodman, Michael C. Hiestand, Student Press Law Center, 1101 Wilson Blvd., Ste 1100, Arlington, VA 22209-2211, (703) 807-1904. Richard M. Goehler, (Counsel of Record), Frost Brown Todd LLC, 2200 PNC Center, 201 East Fifth Street, Cincinnati, Ohio 45202, (513) 651-6800, Counsel for Amici Curiae.)

In contrast to many high school censorship incidents, public college administrators today are less likely to be successful in their efforts to restrict the student press. This is usually (and perhaps only) because of the First Amendment protections that courts have consistently accorded college journalists. That circumstance would surely change were Hazelwood extended to limit the rights of college student journalists. Among some of the stories in college student publications that could be subject to censorship under the Hazelwood standard: • An opinion piece opposing an upcoming referendum that would have provided the college with revenue collected from property taxes. University officials, claiming the paper contained typographical and grammatical errors, confiscated and destroyed 10,000 copies of the paper. After students threatened legal action, the school agreed to reprint the newspaper.14 • An article detailing the incoming university president’s expenditure of state funds, including more than $100,000 spent to remodel the president’s home and pay for \*17 his inauguration. Following publication, the president transferred the newspaper’s adviser to another position at the school, an act that generated considerable public attention. The president later resigned after being questioned by state legislators regarding the spending that had been reported in the student newspaper. The adviser was remstated.15 • A yearbook story reporting that members of the school’s volleyball team were removed for bringing alcohol on a team trip and a feature spread on sex and relationships. Following publication, the yearbook editor lost his job. After the editor sued, the school agreed to a settlement in which it paid the editor $10,000 and agreed to a publications policy that prohibited administrative interference with the content of student publications.16 • An editorial cartoon, featuring cartoon figures as university officials, commenting on a U.S. Department of Education report that found the school had misused public funds when it paid for a trip to Disney World by students and school officials. One of those portrayed, the vice president of student affairs, temporarily halted printing of the issue - but released them after students objected.17 If Hazelwood is allowed to determine the level of First Amendment protection to which America’s college student media are entitled, there is no doubt university administrators are poised to take advantage of their new \*18 censorship powers. Word has already begun to spread that the standard “hands-off student media” policies recognized by college officials in the past may no longer be required. In California, for example - 2,000 miles west of the Governors State University campus and far beyond the jurisdiction of the Seventh Circuit - administrators at California State University system schools received a memo from the system’s legal counsel on June 30, 2005 - ten days after the Seventh Circuit handed down its decision - informing them that “[Hosty] appears to signal that CSU campuses may have more latitude than previously believed to censor the content of subsidized student newspapers….”18 Extending Hazelwood to the university setting is a recipe for encouraging censorship that would dramatically hinder the production of good journalism and the training of good journalists. Amici do not believe this Court intended the censorship of college and university student newspapers to be the legacy of Hazelwood.

#### Fifth, schools are the most important site of First Amendment activity.

Goodman 5 — (S. Mark Goodman, Michael C. Hiestand, Student Press Law Center 2005 WL 2736314 (U.S.) (Appellate Petition, Motion and Filing) Supreme Court of the United States. Margaret L. HOSTY, Jeni S. Porche, and Steven P. Barba, Petitioners, v. Patricia CARTER, Respondent. No. 05-377. October 20, 2005. On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit Brief of Amici Curiae Student Press Law Center, Associated Collegiate Press, College Media Advisers, Community College Journalism Association, Society for Collegiate Journalists, Reporters Committee for Freedom of the Press, American Society of Newspaper Editors, National Newspaper Association, Newspaper Association of America, Society of Professional Journalists, Associated Press Managing Editors, College Newspaper Business and Advertising Managers, National Federation of Press Women, National Lesbian and Gay Journalists Association and the Independent Press Association/Campus Journalism Project in Support of Petition of Margaret L. Hosty, Jeni S. Porche, and Steven P. Barba for Writ of Certiorari Of Counsel: S. Mark Goodman, Michael C. Hiestand, Student Press Law Center, 1101 Wilson Blvd., Ste 1100, Arlington, VA 22209-2211, (703) 807-1904. Richard M. Goehler, (Counsel of Record), Frost Brown Todd LLC, 2200 PNC Center, 201 East Fifth Street, Cincinnati, Ohio 45202, (513) 651-6800, Counsel for Amici Curiae.)

The University is the paradigmatic “marketplace of ideas,” rendering “the vigilant protection of constitutional freedoms…nowhere more vital than in the community of American schools.” Healy v. James, 408 U.S. 169, 180 (1972) (citation omitted). This Court has specifically recognized there is “no doubt that the First Amendment rights of speech and association extend to the campuses of state universities.” Widmar v. Vincent, 454 U.S. 263, 268-69. This Court’s restrictive First Amendment standard in Hazelwood sprung from the premise that the special circumstances of the secondary and elementary school environment permit school authorities to exercise more control over school-sponsored student expression than the First Amendment would otherwise permit. However, the judicial deference necessary in the high school setting and below - and in the factual context of Hazelwood - is inappropriate for a university setting. A high school is an entirely different environment from a university. This Court acknowledged such a difference when it explicitly reserved the question of whether the same level of deference to school officials expressed in Hazelwood would be “appropriate with respect to school-sponsored expressive activity at the college and university level.” Hazelwood, Id. at 273, n.7. In fact, every effort to justify censorship of college student media under Hazelwood has been rejected by the lower courts except by the Seventh Circuit in Hosty. As Justice Souter has noted, the “cases dealing with the right of teaching institutions to limit expressive freedom of students have been \*8 confined to high schools, whose students and their school’s relation to them are different and at least arguably distinguishable from their counterparts in college education.” Board of Regents of the Univ. of Wisconsin System v. Southworth, 529 U.S. 217 (2000) (Sourer, J., concurring in the judgment) (citations omitted). This Court has explicitly recognized that where the “vital” principles of the First Amendment are at stake, “the first danger to liberty lies in granting the State the power to examine publications to determine whether or not they are based on some ultimate idea and, if so, for the State to classify them. The second, and corollary, danger to speech is from the chilling of individual thought and expression.” Rosenberger v. Rectors and Visitors of the University of Virginia, 515 U.S. 819, 835-36 (1995). These dangers are especially threatening in the university setting, where “[t]he quality and creative power of student intellectual life to this day remains a vital measure of a school’s influence and attainment.” Id. Yet that right to review and censor a student publication is precisely what the Seventh Circuit has approved in Hosty. Such restrictions have no place at a public college or university. “For the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation’s intellectual life.” Id. Lower courts have consistently struck down administrative attempts to limit free and robust student expression at the postsecondary level. Joyner v. Whiting, 477 F.2d 456 (4th Cir. 1973) (university withdrawal of funding to student publication at North Carolina State University based on editorial condemning integration rejected); Stanley v. Magrath, 719 F.2d 279 (8th Cir. 1983) (attempt by \*9 University of Minnesota to change student newspaper funding mechanism after publication of controversial humor issue rejected); Bazaar v. Fortune, 476 F.2d 570 (5th Cir. 1973), aff’d with modification, 489 F.2d 255 (en banc per curiam) (University of Mississippi’s censorship of student magazine because of “coarse language” and story about interracial love affair rejected). In fact, two appellate courts have explicitly refused to apply Hazelwood to college student media. Student Government Association v. Board of Trustees of the University of Massachusetts, 868 F. 2d 473, 480 n. 6 (1st Cir. 1989); Kincaid v. Gibson, 236 F.3d 342, 346 n. 4-5 (6th Cir. 2001) (en banc). College student expression should be subject to no greater restrictions than those applicable to the public at large. Healy, 408 U.S. at 180. The driving force prompting the enactment of the First Amendment was the founders’ unwavering commitment to the freedom of the mind. Nowhere is the mind more provoked, more nurtured, more challenged to new levels of enlightenment than on the university campus. Hazelwood did not, and should not be interpreted to have taken these fundamental precepts of college education into account when it diluted high school students’ First Amendment rights. Nothing in Hazelwood or its progeny should be read to alter the venerated balance favoring free and independent thought on America’s college and university campuses.

#### Sixth, campus free speech is vital to civilization — it drives innovation and progress.

Lukianoff 5 — (George, Samantha Harris, JD Stanford, Foundation for Individual, Rights in Education, 2005 WL 2736313 (U.S.) (Appellate Petition, Motion and Filing) Supreme Court of the United States. Margaret L. HOSTY et al., Petitioners, v. Patricia CARTER, Respondent. No. 05-377. October 19, 2005. On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit Brief Amici Curiae of the Foundation for Individual Rights in Education; The Coalition for Student & Academic Rights; Feminists for Free Expression; The First Amendment Project; Ifeminists.Net; National Association of Scholars; Accuracy in Academia; Leadership Institute; The Individual Rights Foundation; The American Council of Trustees and Alumni; and Students for Academic Freedom in Support of Petitioners)

This Court has long emphasized and understood the importance of free and open expression on campus: The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation … Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die. Sweezy v. New Hampshire, 354 U.S. 234, 250 (1957). \*6 In the nearly fifty years since Sweezy, this Court and lower courts have repeatedly reaffirmed the special importance of robust free expression in higher education.3 In Healy v. James, 408 U.S. 169 (1972), this Court made clear that students are an important part of the collegiate marketplace of ideas when it ruled that a college, acting “as the instrumentality of the State, may not restrict speech … simply because it finds the views expressed by any group to be abhorrent.” Healy at 187-88. See also Papish v. Bd. of Curators of the Univ. of Mo., 410 U.S. 667, 670 (1973) (“the mere dissemination of ideas - no matter how offensive to good taste - on a state university campus may not be shut off in the name alone of ‘conventions of decency.’ ”).

#### Seventh, the marketplace of ideas is crucial to development of moral reasoning. Speech restrictions should be rejected on face.

Dwyer 1 — (Susan, PhD, Phil@Maryland, Nordic Journal of Philosophy, Vol. 2, No. 2 ® Philosophia Press 2001)

*Direct Nonconsequentialism* Let us return to the central topic: free speech. From the perspective just sketched, the value of a marketplace of ideas – that notion so central to the consequentialist justification of free speech – lies not so much in its long-term all-things-considered good consequences (the avoidance of dogmatism, democracy, truth, etc.) Rather, **free speech is seen as a necessary condition for the realization of *any* human goods. Constraints on inquiry and expression are constraints on humanity itself**. Echoing this thought, Nagel (1995) writes: That the expression of what one thinks and feels should be overwhelmingly one's own business, subject to restriction only when clearly necessary to prevent serious harm distinct from the expression itself, is a condition of being an independent thinking being. It is a form of moral recognition that you have a mind of your own: even if you never *want* to say anything to which others would object, the idea that they *could* stop you if they did object is in itself a **violation of your integrity** (96). A simple yet powerful fact both explains why **speech is valuable in and of itself** and justifies its stringent protection: **when speech is threatened, *we* are threatened**. Direct nonconsequentialism stands in stark contrast to consequentialist approaches which, as we have seen, make the value of speech contingent on its effects. And unlike indirect nonconsequentialism, it makes our status as language users, not our autonomy, the ground for limiting the state's attempts to interfere with our liberty. To repeat: direct nonconsequentialism asserts that speech is valuable because linguistic capacities are the expression of the essence of creatures (us) to whom we attribute the highest moral status. The way in which the direct nonconsequentialist makes explicit what is special about speech helps to make sense of a commonly experienced wariness regarding restrictions on speech we hate. We worry equally when the state seeks to prohibit the speech of sexists or Flat-Earthers. The consequentialist thinks this reaction is explained by attributing to us the belief that any state restriction of speech is the thin end of a wedge: we are discomforted by the thought of the muzzled sexist or Flat-Earther because we think our speech may be next. This may well be the right account of human psychology in these matters. But it is hardly an explanation of the prima facie wrongness of restrictions on lunatics' and sexists’ speech. Our discomfort is a *moral* discomfort. In bringing out the idea that speech is the expression of our essence, the direct nonconsequentialist is able to capture the true nature of our reaction to state restrictions on others' speech we do not particularly care for. Direct nonconsequentialism also gives substance to a powerful idea that some influential critics – notably, Catharine Mackinnon (1987) – find hopelessly abstract. This is the thought that “[e**]very time you strengthen free speech in one place, you strengthen it everywhere** (164).” And seeing how direct nonconsequentialism does so will help illustrate some of the practical implications of this strategy for justifying free speech. Proponents of legislation designed to restrict or prohibit problematic speech and courts that rule on the constitutionality of such legislation, **often reason in terms of how** **free speech interests are to be balanced** with other interests. For example, proponents of speech codes argue that racist speech harms minorities’ interests in social and political equality; and in the United States, the constitutionality of restrictions on ‘fighting words’ is defended in light of the state’s interests in maintaining law and order. These arguments imply that the expressive rights of *individual* racists and troublemakers may sometimes be infringed in order to promote the good of some *collective*. But as the history of free speech debates reveal, once we admit that collective interests can trump individual rights, it is extremely difficult consistently to maintain the belief that a right to free speech imposes severe limits on what the state may do. The direct nonconsequentialist justification of free speech avoids this particular difficulty. Recall, we are working within the context of constitutional provisions – that is, we are thinking about rationales for stringent protections of speech, where these are understood as mechanisms for keeping the government out of some aspect of our lives. In this sense, such provisions express rights had by individuals against the state. But the direct nonconsequentialist’s account of the basis of these rights suggests that it is a mistake to think of them as radically individualistic. True, each of us has a right to free speech, but we have that right in virtue of our membership in a collective – the species *H. sapiens* – where every member has the same right for the same reason. Thus, in stressing that a universal feature of the species – language mastery – grounds protections on speech, the direct nonconsequentialist **avoids individualizing the right to free speech in a way that makes it perpetually vulnerable to the assertion of some collective good**. If we think of a person’s right to free speech as protecting just one aspect of his **liberty among others, we run the risk of obscuring what is morally relevant about speech.** The hatemonger and the pornographer each have a right to free speech, but this is not to be understood in terms of their being free to act on contingent desires they have. My occurrent desire to eat ice-cream holds no weight in the big scheme of things; even I would concede that it is permissible for the state to thwart my satisfying this desire, if doing so meant promoting some very important collective good. But speech is different. It is worthy of protection not because people want to say certain things, but (to repeat) because speech expresses our very nature. *What* someone wants to say is neither here nor there. Thus, in decoupling the value of free speech from individual desires, direct nonconsequentialism gives content to the idea that when we strengthen (protect) free speech in one place, we strengthen (protect) it everywhere.

#### Finally, censorship is a pre-requisite to large scale violence. Dissent must be silenced before war and genocide become possible.

D’Souza 96 — (Frances, Prof. Anthropology Oxford, PhD Phil @Oxford, http://www.europarl.europa.eu/hearings/19960425/droi/freedom\_en.htm?textMode=on)

In the absence of freedom of expression which includes a free and independent media, it is impossible to protect other rights, including the right to life. Once governments are able to draw a cloak of secrecy over their actions and to remain unaccountable for their actions then massive human rights violations can, and do, take place. For this reason alone the right to freedom of expression, specifically protected in the major international human rights treaties, must be considered to be a primary right. It is significant that one of the first indications of a government's intention to depart from democratic principles is the ever increasing control of information by means of gagging the media, and preventing the freeflow of information from abroad. At one end of the spectrum there are supposedly minor infringements of this fundamental right which occur daily in Western democracies and would include abuse of national security laws to prevent the publication of information which might be embarrassing to a given government: at the other end of the scale are the regimes of terror which employ the most brutal moves to suppress opposition, information and even the freedom to exercise religious beliefs. It has been argued, and will undoubtedly be discussed at this Hearing, that in the absence of free speech and an independent media, it is relatively easy for governments to capture, as it were, the media and to fashion them into instruments of propaganda, for the promotion of ethnic conflict, war and genocide. 2. Enshrining the right to freedom of expression The right to freedom of expression is formally protected in the major international treaties including the United Nations Universal Declaration of Human Rights, Article 19 of the International Covenant on Civil and Political Rights, Article 10 of the European Convention on Human Rights. In addition, it is enshrined in many national constitutions throughout the world, although this does not always guarantee its protection. Furthermore, freedom of expression is, amongst other human rights, upheld, even for those countries which are not signatories to the above international treaties through the concept of customary law which essentially requires that all states respect the human rights set out in the Universal Declaration of Human Rights by virtue of the widespread or customary respect which has been built up in the post World War II years. 3. Is free speech absolute? While it is generally accepted that freedom of expression is, and remains the cornerstone of democracy, there are permitted restrictions encoded within the international treaties which in turn allow for a degree of interpretation of how free free speech should be. Thus, unlike the American First Amendment Rights which allow few, if any, checks on free speech or on the independence of the media, the international treaties are concerned that there should be a balance between competing rights: for example, limiting free speech or media freedom where it impinges on the individual's right to privacy; where free speech causes insult or injury to the rights and reputation of another; where speech is construed as incitement to violence or hatred, or where free speech would create a public disturbance. Given that these permitted restrictions are necessarily broad, the limits of free speech are consistently tested in national law courts and, perhaps even more importantly, in the regional courts such as the European Commission and Court of Human Rights. In recent years several landmark cases have helped to define more closely what restrictions may be imposed by government and under what circumstances. In particular, it has been emphasised by the European Court that any restriction must comply with a three-part test which requires that any such restriction should first of all be prescribed by law, and thus not arbitrarily imposed: proportionate to the legitimate aims pursued, and demonstrably necessary in a democratic society in order to protect the individual and/or the state. 4. Who censors what? Despite the rather strict rules which apply to restrictions on free speech that governments may wish to impose, many justifications are nevertheless sought by governments to suppress information which is inimical to their policies or their interests. These justifications include arguments in defence of national and/or state security, the public interst, including the need to protect public morals and public order and perfectly understandable attempts to prevent racism, violence, sexism, religious intolerance and damage to the indi-vidual's reputation or privacy. The mechanisms employed by governments to restrict the freeflow of information are almost endless and range from subtle economic pressures and devious methods of undermining political opponents and the independent media to the enactment of restrictive press laws and an insist-ence on licensing journalists and eventually to the illegal detention, torture and disappearances of journalists and others associated with the expression of independent views. 5. Examples of censorship To some the right to free speech may appear to be one of the fringe human rights, especially when compared to such violations as torture and extra-judicial killings. It is also sometimes difficult to dissuade the general public that censorship, generally assumed to be something to do with banning obscene books or magazines, is no bad thing! It requires a recognition of some of the fundamental principles of democracy to understand why censorship is so immensely dangerous. The conditon of democracy is that people are able to make choices about a wide variety of issues which affect their lives, including what they wish to see, read, hear or discuss. While this may seem a somewhat luxurious distinction preoccupying, perhaps, wealthy Western democracies, it is a comparatively short distance between government censorship of an offensive book to the silencing of political dissidents. And the distance between such silencing and the use of violence to suppress a growing political philosophy which a government finds inconvenient is even shorter. Censorship tends to have small beginnings and to grow rapidly. Allowing a government to have the power to deny people information, however trivial, not only sets in place laws and procedures which can and will be used by those in authority against those with less authority, but it also denies people the information which they must have in order to monitor their governments actions and to ensure accountability. There have been dramatic and terrible examples of the role that censorship has played in international politics in the last few years: to name but a few, the extent to which the media in the republics of former Yugoslavia were manipulated by government for purposes of propaganda; the violent role played by the government associated radio in Rwanda which incited citizens to kill each other in the name of ethnic purity and the continuing threat of murder issued by the Islamic Republic of Iran against a citizen of another country for having written a book which displeased them. 6. The link between poverty, war and denial of free speech There are undoubted connections between access to information, or rather the lack of it, and war, as indeed there are between poverty, the right to freedom of expression and development. One can argue that democracy aims to increase participation in political and other decision-making at all levels. In this sense democracy empowers people. The poor are denied access to information on decisions which deeply affect their lives, are thus powerless and have no voice; the poor are not able to have influence over their own lives, let alone other aspect of society. Because of this essential powerlessness, the poor are unable to influence the ruling elite in whose interests it may be to initiate conflict and wars in order to consolidate their own power and position. Of the 126 developing countries listed in the 1993 Human Development Report, war was ongoing in 30 countries and severe civil conflict in a further 33 countries. Of the total 63 countries in conflict, 55 are towards the bottom scale of the human development index which is an indicator of poverty. There seems to be no doubt that there is a clear association between poverty and war. It is reasonably safe to assume that the vast majority of people do not ever welcome war. They are normally coerced, more often than not by propaganda, into fear, extreme nationalist sentiments and war by their governments. If the majority of people had a democratic voice they would undoubtedly object to war. But voices are silenced. Thus, the freedom to express one's views and to challenge government decisions and to insist upon political rather than violent solutions, are necessary aspects of democracy which can, and do, avert war. Government sponsored propaganda in Rwanda, as in former Yugoslavia, succeeded because there weren't the means to challenge it. One has therefore to conclude that it is impossible for a particular government to wage war in the absence of a compliant media willing to indulge in government propaganda. This is because the government needs civilians to fight wars for them and also because the media is needed to re-inforce government policies and intentions at every turn.

### 1AC — Plan

#### Thus the plan:

#### The United States federal government should regulate the ability of elementary or secondary schools to censor student journalists by enacting national legislation protecting the rights of student journalists and advisors.

### 1AC — Solvency

#### Contention Two — Solvency.

#### First, complete overturn of Hazelwood is essential to preventing widespread censorship.

Journal of Law & Education 2000 — (Scott Andrew Felder, JD Candidate, Copyright (c) 2000 Jefferson Law Book Company, Division of Anderson Publishing Co. Journal of Law & Education October, 2000 29 J.L. & Educ. 433 Stop the Presses: Censorship and the High School Journalist)

One judicial solution, narrow interpretation of Hazelwood, has already been briefly noted. As mentioned above, most courts that end up striking down censorship do so by narrowly defining "school-sponsored" so as to exclude the particular student speech at issue. One such court discussed at length the undesirability of restrictions on free speech, even in the admittedly different environment of a public high school, and refused to apply Hazelwood to different facts. In the judge's opinion, the Supreme Court's decision in Board of Education v. Pico, n189 which distinguished between books removed from a school library (books the student could voluntarily choose to read) and those not selected as part of the school's curriculum (books the student would otherwise be compelled to read), provided adequate support for the decision to differentiate between curricular (containing mandatory statements) and extracurricular (containing voluntary statements) student publications. n190 Similar logic was used to conclude that school funding is not dispositive to the school-sponsored analysis. n191 While this sort of approach may work, the mine run of cases applying Hazelwood read it as broadly as possible in deference to local school officials. n192 A more novel approach is the content-specific analysis proposed by Wilborn that, like Hazelwood, divides student speech into three categories. n193 The first category, political speech, would be governed by Tinker. n194 Scholastic speech would be analyzed under the Central Hudson Gas & Electric Corp. v. Public Services Commission n195 commercial speech test. n196 The final category of speech, obscene and indecent speech, would be judged under Fraser and Hazelwood. n197 This approach, unique though it may be, is not entirely content-based and presents a set of problems all its own. Scholastic speech, defined by Wilborn as "speech that is school-sponsored or that occurs during a school program that a reasonable student or member of the community might reasonably attribute (at least in part) to the school[,]" n198 is a context-based category. This reopens the door for school officials to censor more types of student speech simply by classifying it as scholastic, obscene, or indecent. Though the Central Hudson test would be more protective of the students than the Hazelwood test, as the interest must be substantial rather than just legitimate, the relationship between means and ends must be direct rather than reasonable, and the regulation must be no more extensive than necessary. n199 Moreover, nothing suggests that courts would be any less deferential to these categorizations than they are to school officials' decisions under Hazelwood. Wilborn maintains that this possibility of characterization and increased censorship in individual cases is more than offset by the increased protection afforded student speech by applying the Central Hudson and Tinker tests to all but obscene and indecent speech. n200 Helping Yourself All is not lost in states where a broad interpretation of Hazelwood survives. Some state departments of education have promulgated regulations that protect student expression more broadly than Hazelwood. n201 In addition, self-help is always an option. Students can go to the mainstream press, as the Parkway West students did, or to the Bolt Reporter, n202 an online forum for students to publish censored works and discuss school censorship. Finally, students can also engage in Tinker speech to the same effect of the speech that was censored under Hazelwood. Hazelwood provides school officials with virtually plenary authority to censor student speech. Since courts will be very deferential in reviewing the asserted legitimate pedagogical concern implicated by a particular restriction, it is unlikely that censorship will be overturned under the Hazelwood standard. This ultimately boils down to giving school officials the right to act as thought police, prohibiting that speech they do not agree with because they do not agree with it. If the purpose of high school is to prepare students for college and the world beyond, the schools could better serve their mission by allowing students to exercise their First Amendment freedoms; censorship teaches students only that their constitutional protections of free speech are different from everyone else's. Justice Brennan said it best: "The young men and women of Hazelwood East expected a civics lesson, but not the one the Court teaches them today." n203 The Court used to agree with him, n204 and it is unfortunate for the students that it does not do so any longer.

#### Second, overturning Hazelwood is key to restore the doctrine of “value neutrality”, the bedrock of the first amendment. The Tinker “disruption” standard is sufficient to prevent harmful speech.

Tobin 4 — (Susannah Barton, M.Phil @Cambridge, Harvard JD Candidate, Divining Hazelwood: The Need for a Viewpoint Neutrality Requirement in School Speech Cases Harvard Civil Rights-Civil Liberties Law Review [Vol. 39 2004])

When the Supreme Court first handed down Hazelwood, supporters of free speech rights were dismayed because the holding restricted the rights of students and others to express themselves in school-sponsored fora. The holding of Tinker nineteen years earlier had appeared sufficient to allow administrators the necessary control over student speech that was disruptive to the school environment, and the extensions of administrator control found in Fraser and Hazelwood seemed to be unnecessary limitations on student rights. As Hazelwood began to be applied, its ramifi- cations regarding viewpoint discrimination became increasingly clear, rendering a troublesome decision even more harmful. The denial of certiorari in Fleming indicates that it will likely be some time before the Supreme Court hears a case which seeks to clarify the circuit split regarding Hazelwood and viewpoint discrimination. Judging from the evidence of the questions asked at oral argument and the language of both the majority and dissenting opinions, it seems possible that the Hazelwood Court intended to abandon the requirement of viewpoint neutrality that it held so sacred in its other free speech jurisprudence. It is also possible, however, that the absence of an explicit rejection of viewpoint neutrality in the context of school-sponsored speech indicates a reluctance on the part of some members of the majority to articulate such a serious departure from precedent. When and if the Court does take up a case addressing this question, the justices should explicitly prohibit viewpoint discrimination in schools. Further, the Court should try to make a statement about the distinction between content and viewpoint discrimination in order to give courts and, for that matter, local school officials guidance as they go forward. The complexity of the situation is not a reason to encourage ambiguity. One useful distinction that could be made is between viewpoint discrimination regarding religious speech in a school setting that potentially implicates the Establishment Clause and therefore an additional line of constitutional inquiry, and viewpoint discrimination of non-religious speech, which should be strictly forbidden. While the holdings in Rosenberger and Lamb’s Chapel indicate that religious speech can be considered a viewpoint for purposes of viewpoint neutrality analysis, those cases did not involve in-school speech activities, like the candy cane distribution in Westfield, that might be seen as proselytizing approved by a government entity. The explicit requirement of viewpoint neutrality in schools might raise concerns about the ability of schools to promote legitimate pedagogical objectives, but those concerns can be addressed even in an environment of viewpoint neutrality. One priority of school officials is the creation of a safe and productive learning environment for students. The Tinker disruption standard, still in place, would allow officials to limit speech that threatens the security of students. Equally important priorities include the inculcation of civic values and transmission of curricular subject matter. To the extent that controversial speech interferes with those objectives, teachers and administrators should take the opportunity to engage students in dialogue and consider each controversy a “teachable moment.” There is no doubt that public school teachers are overworked and underpaid, and such a prescription for more dialogue and less speech suppression may seem unrealistic given their already heavy burdens. But speech suppression directly contradicts the public school system’s mission to produce well-educated citizens able to participate in democracy. Any adjustments made in favor of more dialogue and speech protection will be worth the effort and will ultimately result in a more productive school environment. Last spring, a student newspaper editor at a North Carolina high school was forced to censor an article on high school drinking rather than face the other option her principal gave her: no publication of the paper at all.256 The principal required the editor to eliminate references to specific students who had been suspended for drinking during a school trip on the grounds that the publication of the anecdotes would embarrass those students.257 The principal, Bill Anderson, explained his decision, saying, “One of the responsibilities of a high school principal is to edit the content of a school-sponsored newspaper to insure that all writings are appropriate for students at different developmental levels.”258 But the student editor, Sara Boatright, noted that Anderson had not previously censored references to inappropriate student activity, having allowed the paper to run references to students in a fight and to arson suspects.259 At the time of this writing, the principal at Lynn English High School in Massachusetts prevented an English teacher (who had received permission from the department chair) from screening the Academy Award– winning ªlm Bowling for Columbine on the grounds that it allegedly contained anti-war messages.260 The ACLU of Massachusetts issued a press release suggesting that such action might violate the First Amendment, as a viewpoint-based decision, because it did not involve a “legitimate pedagogical concern” under Hazelwood. 261 The kind of choice Sara Boatright faced—self-censorship or no publication at all—and the censorship of a noted film by school officials in Lynn are exactly what student journalists and others who have experienced or witnessed censorship will remember about the kind of civic values taught to them in public school. The inculcation of moral and democratic values which the public education system was created to promote demands a more rigorous protection of First Amendment rights for student journalists, students, and community members in general than that which the Court gave us in Hazelwood and that which too many circuit courts have given us in the subsequent fifteen years. The world undoubtedly has changed after September 11, but what should not have changed is our recognition of the wisdom of the Founding Fathers when they expressly protected the freedom of speech. Despite the temptation to silence dissent in a time of tension and violence, the Court has a chance to clarify and extend the freedoms of students and others in school settings. It should not hesitate to take that opportunity to inculcate the values of democracy in the country’s young citizens.

#### Finally, any problematic speech should be approached through a lens of education, not censorship.

Dalmia 16 — (Shikha, PhD, Senior Analyst/Award winning Journalist, 9-22-16, http://reason.com/blog/2016/09/22/debating-nyus-jeremy-waldron-on-free-spe)

One: Hate speech bans make us impatient and dogmatic The main reason that libertarians like me are partisans of free speech is not because we believe that a moral laissez faire, anything goes attitude, is in itself a good thing for society. Rather, it stems from an epistemic humility that we can't always know what is good or bad a priori – through a feat of pure Kantian moral reasoning. Moral principles, as much as scientific ones, have to be discovered and developed and the way to do so is by letting competing notions of morality duke it out in what John Stuart Mill called the marketplace of ideas. Ideas that win do so by harmonizing people's overt moral beliefs with their deeper moral intuitions or, as Jonathan Rauch notes, by providing a "moral education." This is how Mahatma Gandhi, Martin Luther King and Frank Kamney, the gay rights pioneer, managed to open society's eyes to its injustices even though what they were suggesting was so radical for their times. But this takes time. With free speech, societies have to play the long game. It takes time to change hearts and minds and one can't be certain that one's ideas will win out in the end. One has to be willing to lose. The fruits of censorship -- winning by rigging the rules and silencing the other side -- seem immediate and certain. But they unleash forces of thought control and dogmatism and repression and intolerance that are hard to contain, precisely what we are seeing right now on campuses.

## 2AC — Censorship Advantage

### They Say: “No Censorship Now”

#### Censorship of critical journalism is widespread — faculty are told prior restraint is a requirement of the job

Joint Statement of the AAUP et al., Dec 16

(A committee composed of representatives from the American Association of University Professors, the College Media Association, the National Coalition Against Censorship, and the Student Press Law Center formulated this joint statement in fall 2016. The document received the endorsement of all four sponsoring organizations. https://s3.amazonaws.com/media.spl/1398\_jointstatement\_aaupbulletin\_studentmedia\_finalo.pdf)

The movement also shone light on the status of student journalists and their faculty and staff advisers, as demonstrated by an incident involving a faculty member and a student videographer at the University of Missouri and by one involving the student newspaper at Wesleyan University.1 While unusual for the attention they garnered, these incidents were by no means unique or even rare. It has become disturbingly routine for student journalists and their advisers to experience overt hostility that threatens their ability to inform the campus community and, in some instances, imperils their careers or the survival of their publications, as the sampling of cases discussed in this report demonstrates. Administrative efforts to subordinate campus journalism to public relations are inconsistent with the mission of higher education to provide a space for intellectual exploration and debate. But publicly reported cases may just be the tip of a much larger iceberg. A March 2016 survey of college and university media advisers affiliated with the College Media Association revealed that over a threeyear period more than twenty media advisers who had not previously shared their stories reported suffering some degree of administrative pressure to control, edit, or censor student journalistic content. This pressure was reported from every segment of higher education and from every institutional type: public and private, four-year and two-year, religious and secular. None of the cases has been made public, in most instances because the advisers feared for their jobs, regardless of whether the adviser was a staff or faculty member and regardless of his or her tenure status. In many cases, college and university officials threatened retaliation against students and advisers not only for coverage critical of the administration but also for otherwise frivolous coverage that the administrators believed placed the institution in an unflattering light. For example, administrators at one four-year public university demanded that the adviser begin conducting prepublication review after the newspaper published a story about the “top ten places to hook up on campus.” And it is not only administrators who apply this pressure. In the 2016 survey, one media adviser reported that a representative of graduate student government threatened to cut the newspaper’s funding if the newspaper did not cover more graduate student events. In some cases, advisers were told that conducting “prior review”—turning the adviser into a gatekeeper with the ability to overrule the editors’ judgments—was a requirement of employment.

\*\*”the movement” is referencing on campus BLM protests

#### Most qualified sources agree- widespread journalistic censorship now.

LoMonte, SPLC Exec. Director, 12-1-06

(Frank D., http://www.splc.org/article/2016/12/college-media-threats-report-2016)

The American Association of University Professors (AAUP), the Student Press Law Center (SPLC), the College Media Association (CMA) and the National Coalition Against Censorship (NCAC) Thursday jointly released a report, "Threats to the Independence of Student Media," calling on the nation's colleges to address the problems of censorship, retaliation and excessive secrecy that imperil the independent news coverage essential for civically healthy campuses. The report cites multiple cases in which college and university administrations exerted pressure in attempts to control, edit, or censor student journalistic content. This pressure has been reported in every segment of higher education and every institutional type: public and private, four-year and two-year, religious and secular.

### They Say: “No Spillover to Other Areas”

#### Application of Hazelwood can be used to justify censorship outside of papers

Nimick, JD, 06

(Virinia J, SCHOOLHOUSE ROCKED: HOSTY V. CARTER AND THE CASE AGAINST HAZELWOOD Journal of Law and Policy Volume 14 Issue 2 SCIENCE FOR JUDGES VI: Techniques for Evidence-Based Medicine)

By questioning the traditional presumption of independence of college student media, the Hosty court introduced a dangerous ambiguity to the rights of all students engaged in any form of expression. As Mark Goodman, executive director of the Student Press Law Center noted, “Traditionally, student newspapers were presumed by their very nature to be forums for free expression . . . [Hosty] gives schools the chance to argue that’s not what they intended.”324 Goodman went on to suggest that determining forum status for other school-funded student activities, such as speakers and films, might be even more difficult since those forms of expression do not enjoy the traditional presumption of operating as a public forum.325 For example, in November 2004, Indian River Community College (FL) refused to allow the film The Passion of the Christ on campus. The College claimed an unwritten blanket ban on R-rated movies, despite the fact that at around the same time, the school had allowed theatrical productions that would have garnered an R rating and had sponsored at least one other Rrated film.326 Writing for the majority in Hosty, Judge Easterbrook noted, “Let us not forget that academic freedom includes the authority of the university to manage an academic community and evaluate teaching and scholarship free from interference.”327 Clearly suggesting that determining the content of a school-funded newspaper might be a proper exercise of the university’s academic freedom, the Hosty majority ignored the possibility that an extension of Hazelwood’s framework to the post-secondary level might also chill faculty members’ exercise of First Amendment rights. Hazelwood has been interpreted by numerous lower courts to apply to both student and teacher speech.328 Courts have granted high school administrators broad329 and, in at least one case, apparently unlimited330 authority to dictate curriculum and presentation of material in the classroom. At least one court, recognizing the potentially devastating implications of extending Hazelwood to faculty speech, explicitly refused to reach the issue.331 Such an expansion of Hazelwood’s restrictive framework would effectively defeat the notion of the university as a “quintessential marketplace of ideas” and provide public school administrators with unprecedented authority to control faulty speech.(993-5)

#### Hazelwood proves snowball is immediate

Nimick, JD, 06

(Virinia J, SCHOOLHOUSE ROCKED: HOSTY V. CARTER AND THE CASE AGAINST HAZELWOOD Journal of Law and Policy Volume 14 Issue 2 SCIENCE FOR JUDGES VI: Techniques for Evidence-Based Medicine)

Despite the confusion, Hazelwood’s impact was immediate.96 Less than an hour after the Court’s decision was announced on the radio, a high school principal censored an article on AIDS.97 That same day, in another high school, the entire staff of a schoolsponsored newspaper resigned, and instead began work on an underground newspaper.98 In fact, the Student Press Law Center (SPLC), a non-profit group that provides legal support and advice to student media outlets, has reported an increase in the number of inquiries concerning censorship it has received for every year since Hazelwood. In 1996, SPLC received a record 221 requests for legal help from high school student journalists or their advisors.99 In 2002, SPLC recorded 529 such requests—an increase of nearly 240%.100 SPLC Executive Director Mark Goodman attributes the continual increase to the Court’s decision in Hazelwood, noting that it has “essentially gutted the First Amendment in many of America’s High Schools.”101(957)

#### Restriction justifies other forms of censorship

Nimick, JD, 06

(Virinia J, SCHOOLHOUSE ROCKED: HOSTY V. CARTER AND THE CASE AGAINST HAZELWOOD Journal of Law and Policy Volume 14 Issue 2 SCIENCE FOR JUDGES VI: Techniques for Evidence-Based Medicine)

Since Hazelwood was handed down, its rationale has been expanded to encompass all forms of student expression. High school teachers and administrators have broadly interpreted Hazelwood as a grant of authority to “control student expression for the sake of preserving the institutional and educational integrity of public schools.”102 Its reasoning has been extended beyond the realm of the student press and applied to a variety of First Amendment issues,103 including student attire and appearance,104 school mascots,105 curriculum decisions,106 faculty speech,107 academic freedom,108 and student speech at school assemblies and graduation ceremonies. (957-8)

### They Say: “Student Journalists Not Key”

#### Censorship hurts long-term journalism — students don’t learn how to think critically.

Long, JD Yale, 05

(Robert A., Law @Georgetown, 2005 WL 2736312 (U.S.) (Appellate Petition, Motion and Filing) Supreme Court of the United States. Margaret L. HOSTY, Jeni S. Porche, and Steven P. Barba, Petitioners, v. Patricia CARTER, Respondent. No. 05-377. October 20, 2005. On Petition For a Writ of Certiorari To The United States Court of Appeals For The Seventh Circuit Brief of the Association for Education in Journalism and Mass Communication and the Association of Schools of Journalism and Mass Communication, et al., as Amici Curiae in Support of Petitioner Robert A. Long, Jr., Counsel of Record, Kurt A. Wimmer, Covington & Burling, 1201 Pennsylvania Ave., NW, Washington, DC 20004-2401, (202) 662-6000, Counsel for Amici Curiae.)

An official at a public university imposed a system of prior restraint on the publication of petitioners’ newspaper. The Seventh Circuit’s decision upholding the official’s action, if not corrected, will have a chilling effect on the exercise of First Amendment rights by journalists and faculty at public colleges and universities. It will also have a potentially devastating impact on the recruitment and training of tomorrow’s professional journalists. 1. This Court has recognized that the First Amendment applies to students at public universities and \*9 colleges. Healy v. James, 408 U.S. 169, 182 (1972). The Court has extended First Amendment protection to students working on college newspapers. Papish v. Bd. of Curators of Univ. of Missouri, 410 U.S. 667 (1973). Ten years ago, the Court made clear that university officials violate the First Amendment when they impose viewpoint-based discrimination on funding decisions for student newspapers. Rosenberger v. Rector and Visitors of the Univ. of Virginia, 515 U.S. 819 (1995). The Court distinguished cases in which the university was paying for an agent to promote the university’s message from cases in which the university was facilitating the speech of student groups. Id. at 834. “Having offered to pay the third-party contractors on behalf of private speakers who convey their own messages, the University may not silence the expression of selected viewpoints.” Id. at 835. The Seventh Circuit’s decision permits a public official to stop publication of a student newspaper on the basis of objections to its contents in direct contravention of the principles articulated in Rosenberger and its predecessors. The Court should grant certiorari in order to reaffirm the First Amendment rights of college journalists as well as to protect the interests of faculty members and the readership of campus newspapers. The Court’s decision in Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988), does not and should not be applied at the university level. See Hazelwood, 484 U.S. at 273 n.7 (explicitly noting that the Court’s decision does not extend to the college and university level). 2. An uncensored college newspaper is vitally important to attracting college students to journalism and providing them with a real-world training ground that prepares them to become professional journalists. The skills that journalists acquire while working at a college newspaper are fundamental to their development into \*10 professionals who are able to make editorial decisions, take responsibility for the stories that are published - and those that are not - and gather and write about the events of the day in an objective manner. The reporters and editors working on a campus paper learn valuable lessons that prepare them for a career in journalism. Prior experience in journalism is one of the most important factors considered by both small and large newspapers in hiring new reporters. Barbara J. Hipsman & Stanley T. Wearden, Skills Testing at American Newspapers 13-14 (Aug. 1989) (paper presented at the Annual Meeting of the Association for Education in Journalism and Mass Communication, Newspaper Division). More than three quarters of newspapers test for writing skills before hiring journalists. Id. at 11. In addition to prior journalism experience and writing skills, general reporting ability ranked very high among skills that newspapers listed as most desirable in new hires. Id. at 13. College students acquire more than writing and reporting skills when they work for a campus newspaper. They also learn that they are responsible for what appears on the pages of their publication. For this reason, it has been argued that “the student publication offers the single best avenue for training - superior even to the journalism school … for a career in professional journalism.” Richard J. Peltz, Censorship Tsunami Spares College Media: To Protect Free Expression on Public Campuses, Lessons from the “College Hazelwood” Case, 68 Tenn. L. Rev. 481, 482 (2001). This vital experience cannot be acquired at newspapers whose content is controlled by university officials. Professor Peltz observes that the consequences of applying Hazelwood to university journalists would extend “outside the ivy-covered walls. Imagine a generation of college-trained journalists with no practical \*11 experience handling controversial subject matter, nor with any more than an academic understanding of the role of the Fourth Estate in American society.” Id.

#### Censorship prevents journalists from learning critical thinking skills and independence necessary for a fully functioning free press

Long, JD Yale, 05

(Robert A., Law @Georgetown, 2005 WL 2736312 (U.S.) (Appellate Petition, Motion and Filing) Supreme Court of the United States. Margaret L. HOSTY, Jeni S. Porche, and Steven P. Barba, Petitioners, v. Patricia CARTER, Respondent. No. 05-377. October 20, 2005. On Petition For a Writ of Certiorari To The United States Court of Appeals For The Seventh Circuit Brief of the Association for Education in Journalism and Mass Communication and the Association of Schools of Journalism and Mass Communication, et al., as Amici Curiae in Support of Petitioner Robert A. Long, Jr., Counsel of Record, Kurt A. Wimmer, Covington & Burling, 1201 Pennsylvania Ave., NW, Washington, DC 20004-2401, (202) 662-6000, Counsel for Amici Curiae.)

Early exposure to and experience in a realistic journalistic setting is important not only for the training that it provides, but also for the effect that it has on the student reporters’ ability to think critically about the proper role and methods of the press. Research demonstrates that early participation on student newspapers influences student journalists’ attitudes towards the press and likelihood of committing to a career in journalism. Student reporters with experience working in newsroom become more like professional journalists when asked about their views on civic journalism and on the practices of the news media generally. Michael McDevitt et al., The Making and Unmaking of Civic Journalists: Influences of Professional Socialization, 79 Journalism & Mass Commc’n Q. 87, 95-96 (2002). “One experience in particular - working for the campus paper - appears to instill a sense of autonomy” in student journalists. Id. at 98. See also Jennifer Rauch et al., Clinging to Tradition, Welcoming Civic Solutions: A Survey of College Students’ Attitudes toward Civic Journalism, 58 Journalism & Mass Commc’n Educator 175, 183-84 (2003). Research also suggests that “the earlier one decides on journalism as a career, the greater the commitment later on.” Wilson Lowrey & Lee B. Becker, Commitment to Journalistic Work: Do High School and College Activities Matter?, 81 Journalism & Mass Commc’n Q. 528, 538 (2004). See also id. at 539 (noting that an important predictor of the choice to become a journalist is college-level socialization, and that experience with campus media significantly enhances the probability of pursuing a career in journalism). \*12 Extending this Court’s holding in Hazelwood to college level newspapers would defeat these goals. If university administrators can impose prior restraints on campus newspapers, college journalists will fail to learn the importance of autonomy and professional responsibility because they will be neither autonomous nor responsible. Peltz, 68 Tenn. L. Rev. at 549 (“practical experience with editorial freedom and responsibility is an essential component of an education in journalism”). Not only would college journalists fail to get real-world experience in making and taking responsibility for editorial decisions, they also would not be free to take initiative in reporting because of the chilling effect of the administration’s censors.

#### Censorship demands place ethical quandaries on journalism advisors driving out key teachers/role models

Joint Statement of the AAUP et al., Dec 16

(A committee composed of representatives from the American Association of University Professors, the College Media Association, the National Coalition Against Censorship, and the Student Press Law Center formulated this joint statement in fall 2016. The document received the endorsement of all four sponsoring organizations. https://s3.amazonaws.com/media.spl/1398\_jointstatement\_aaupbulletin\_studentmedia\_finalo.pdf)

The best media advisers, often journalists themselves, are staunch defenders of their students’ free press rights. They should not be punished for asserting themselves in this role. The College Media Association, whose seven hundred members advise college media at every level of collegiate journalism, has endorsed a Code of Ethical Behavior for media advisers.8 It states: “The adviser is a journalist, educator and manager who is, above all, a role model. Because of this, the adviser must be beyond reproach with regard to personal and professional ethical behavior; should encourage the student media advised to formulate, adhere to and publicize an organizational code of ethics; and ensure that neither the medium, its staff nor the adviser enter into situations which would jeopardize the public’s trust in and reliance on the medium as a fair and balanced source of news and analysis.” The Code further declares: Freedom of expression and debate by means of a free and vigorous student media are essential to the effectiveness of an educational community in a democratic society. This implies the obligation of the student media to provide a forum for the expression of opinion—not only those opinions differing from established university or administrative policy, but those at odds with the media staff beliefs or opinions as well. Student media must be free from all forms of external interference designed to regulate its content, including confiscation of its products or broadcasts; suspension of publication or transmission; academic personal or budgetary sanctions; arbitrary removal of staff members or faculty; or threats to the existence of student publications or broadcast outlets. Conducting “prior review” violates the basic tenets of the college or university media adviser’s personal and professional code. Media advisers are, above all else, educators who seek to train young journalists in the practice of ethical, thorough journalism. Typically, they are not producers of college or university journalism and should not be expected—or allowed—to interfere in the editorial process. An adviser who writes for the student newspaper without attribution or who rewrites material in the student newspaper is akin to a professor who rewrites an essay for a student instead of offering suggestions for improvement. An administrator who demands control of student media content is akin to a college or university official who dictates the content of a student essay. When news content stems from classwork—when, for example, students in a journalism course produce work that the professor then posts to a class website— there might be greater ambiguity. However, even in these cases, professors still must restrain the impulse to control content, and administrators should never attempt to dictate what these classes can and cannot cover, no matter how objectionable they might find the content to be. Students learn by doing: by reporting and writing, by photographing, or by making video or audio recordings. They should be in charge of editing, designing, managing, and leading their organizations, for this is the essence of experiential learning. The College Media Association Code of Ethics therefore mandates that advisers must always “defend and teach without censoring.” Regardless of the type of institution or adviser, the Code asserts, “There should never be an instance where an adviser maximizes quality by minimizing learning. Student media should always consist of student work.”

### They Say: “Marketplace of Ideas Fails”

#### The marketplace isn’t an end in itself, but is crucial to self-realization

Redish, Law@NU, 82

(Martin H, University of Pennsylvania Law Review, Vol. 130, No. 3 (Jan., 1982), pp. 591-645)

It does not necessarily follow, however, that the marketplaceof- ideas concept must be discarded. To the contrary: if viewed as merely a means by which the ultimate value of self-realization is facilitated, the concept may prove quite valuable in determining what speech is deserving of constitutional protection. In other words, it could be argued that, if the intrinsic aspect of the selfrealization value 95 is to be maintained, the individual needs an uninhibited flow of information and opinion to aid him or her in making life-affecting decisions, in governing his or her own life. Since the concept of self-realization by its very nature does not permit external forces to determine what is a wise decision for the individual to make, it is no more appropriate for external forces to censor what information or opinion the individual may receive in reaching those decisions. Thus, an individual presumably has the right 96 not to associate with people of different races in the privacy of his home, and may decide to exercise that right because he believes those who contend other races are genetically inferior.97 That is his choice, and he may reach it on whatever basis he chooses, no matter how irrational it may seem to others. Because individuals constantly make life-affecting decisions-from the significant to the trivial-each day of their lives, there is probably no expression of opinion or information that would not potentially affect some such decision at some point in time. Therefore, the marketplace-of-ideas concept as a protector of all such expression makes perfect sense.98 (617-8)

#### Irrational acts don’t disprove the market

Redish, Law@NU, 82

(Martin H, University of Pennsylvania Law Review, Vol. 130, No. 3 (Jan., 1982), pp. 591-645)

So revised, the marketplace-of-ideas concept can be successfully defended against another attack: Baker's contentions that the theory "requires that people be able to use their rational capacities to eliminate distortion caused by the form and frequency of message presentation and to find the core of relevant information or argument," and that "[t]his assumption cannot be accepted [be-cause e]motional or 'irrational' appeals have great impact." a9 If we accepted the attainment of truth as the theory's goal, Professor Baker's point would be well taken. But the point becomes irrelevant if we instead view the theory simply as a means of facilitating the value of self-realization. For if an individual wishes to buy a car because he believes it will make him look masculine, or to vote for a candidate because the candidate looks good with his tie loosened and his jacket slung over his shoulder, who are we to tell him that these are improper acts? We may prefer that he make his judgments (at least as to the candidate, if not the car) on more traditionally "rational" grounds, and hope that appeals made on such grounds will be heard. But in these areas society has left the ultimate right to decide to the individual, and this would not be much of a right if we prescribed how it was to be used.'00 (618-9)

#### Free speech best protects the powerless even if not perfect

Strossen, ACLU president, 01

(Nadine, Law @NYU, Incitement to Hatred: Should There Be a Limit Copyright (c) 2001 Board of Trustees of Southern Illinois University Southern Illinois University Law Journal Winter, 2001 25 S. Ill. U. L. J. 243)

In his 1994 book, Hate Speech: The History of an American Controversy, Samuel Walker shows that, throughout the twentieth century, the equality rights of African- Americans and other minority groups were dependent on a robust free speech concept. He further shows that, realizing the importance of protecting even speech viewed as hateful or dangerous-because their own speech certainly was so viewed in many Southern and other communities-the major American civil rights organizations consistently opposed efforts to restrict hate speech. As Walker concluded, "The lessons of the civil rights movement were that the interests of racial minorities and powerless groups were best protected through the broadest, most content-neutral protection of speech." n51

#### Censorship worse than free speech for disempowered

Strossen, ACLU president, 01

(Nadine, Law @NYU, Incitement to Hatred: Should There Be a Limit Copyright (c) 2001 Board of Trustees of Southern Illinois University Southern Illinois University Law Journal Winter, 2001 25 S. Ill. U. L. J. 243)

Just as free speech always has been the strongest weapon to advance equal rights causes, correspondingly, censorship always has been the strongest weapon to thwart them. Ironically, the explanation for this pattern lies in the very analysis of those who want to curb hate speech. They contend that racial minorities and women are relatively disempowered and marginalized. I agree with that analysis of the problem, and am deeply committed to working toward solving it. Indeed, I am proud that the ACLU is, and always has been, on the forefront of the struggles for racial justice, women's rights, and other equality movements. I strongly disagree, though, that censorship is a solution for our society's persistent discrimination. To the contrary, precisely because women and minorities are relatively powerless, it makes no sense to hand the power structure yet another tool that it can and will use to further suppress them, in two senses of the word "suppress"-both stifling their expression and repressing their efforts to enjoy full and equal human rights. Consistent with the analysis of the censorship advocates themselves, the government is likely to wield this tool, along with all others, to the particular disadvantage of already disempowered groups. Laws censoring hate speech are inevitably enforced disproportionately against speech by and on behalf of groups who lack political power, including government critics, and even members of the very minority groups who are the laws' intended beneficiaries. As I previously noted, this was precisely the conclusion reached by the respected international human rights organizations, Human Rights Watch and Article 19, citing examples ranging from South Africa to the former Soviet Union.

### They Say: “Free Speech is Conservative”

#### Portraying speech as “conservative” is a tactic to justify administrative cover ups

Lukianoff, JD, 14

(Lukianoff, Greg. Unlearning Liberty: Campus Censorship and the End of American Debate)

Over the past two decades, the topic of censorship on campus has often been treated as a “conservative issue,” because the fact is that socially conservative opinions are the ones most likely to be stifled at colleges and universities today. While many attempts at censorship are apolitical, you are far more likely to get in trouble on campus for opposing, for example, affirmative action, gay marriage, and abortion rights than you are for supporting them. Political correctness has become part of the nervous system of the modern university and it accounts for a large number of the rights violations I have seen over the years. For decades, our universities have been teaching students that speech with a chance of offending someone should be immediately silenced; but the slope for offensiveness has proven remarkably slippery, and the concept of hurtful speech is often invoked by campus administrators in the most self-serving ways. The press has gotten so used to such cases that they are often shrugged off as the same old “political correctness” on campus. But the problem is much more serious than that dismissive definition. When students risk punishment for speaking their minds, something has gone very wrong in the college environment.(5-6)

#### It’s a smear, not an argument.

Lukianoff, JD, 14

(Lukianoff, Greg. Unlearning Liberty: Campus Censorship and the End of American Debate)

Why is it odd that a liberal should fight for free speech rights? Isn’t freedom of speech a quintessentially liberal issue? Some members of the baby boomer generation may be horrified to learn that campus administrators and the media alike often dismiss those of us who defend free speech for all on campus as members of the conservative fringe. While I was once hissed at during a libertarian student conference for being a Democrat, it is far more common that I am vilified as an evil conservative for defending free speech on campus. I remember telling a New York University film student that I worked for free speech on campus and being shocked by his response: “Oh, so you’re like the people who want the KKK on campus.” In his mind, protecting free speech was apparently synonymous with advocating hatred. He somehow missed the glaring fact that the content of his student film could have been banned from public display if not for the progress of the free speech movement. The transformation of free speech on campus to a conservative niche issue is a method of dismissing its importance. Sadly, we live in a society where simply labeling something an evil conservative idea (or, for that matter, an evil liberal one) is accepted by far too many people as a legitimate reason to dismiss it. This is just one of the many cheap tactics for shutting down debate that have been perfected on our campuses and are now a common part of everyday life.

## 2AC — Solvency

### They Say: “Free Speech Doesn’t Check Government”

#### With decline of print media student journalism is more important than ever- free press is crucial to develop civic engagement and check institutional misconduct

Joint Statement of the AAUP et al., Dec 16

(A committee composed of representatives from the American Association of University Professors, the College Media Association, the National Coalition Against Censorship, and the Student Press Law Center formulated this joint statement in fall 2016. The document received the endorsement of all four sponsoring organizations. https://s3.amazonaws.com/media.spl/1398\_jointstatement\_aaupbulletin\_studentmedia\_finalo.pdf)

I. Invaluable Role of Student Media

The 1967 Joint Statement on Rights and Freedoms of Students declared: Student publications and the student press are valuable aids in establishing and maintaining an atmosphere of free and responsible discussion and of intellectual exploration on the campus. They are a means of bringing student concerns to the attention of the faculty and the institutional authorities and of formulating student opinion on various issues on the campus and in the world at large. Whenever possible the student newspaper should be an independent corporation financially and legally separate from the college or university. Where financial and legal autonomy is not possible, the institution, as the publisher of student publications, may have to bear the legal responsibility for the contents of the publications. In the delegation of editorial responsibility to students, the institution must provide sufficient editorial freedom and financial autonomy for the student publications to maintain their integrity of purpose as vehicles for free inquiry and free expression in an academic community. “As safeguards for the editorial freedom of student publications,” the Statement continued, “the following provisions are necessary”: a. The student press should be free of censorship and advance approval of copy, and its editors and managers should be free to develop their own editorial policies and news coverage. b. Editors and managers of student publications should be protected from arbitrary suspension and removal because of student, faculty, administration, or public disapproval of editorial policy or content. Only for proper and stated causes should editors and managers be subject to removal and then only by orderly and prescribed procedures. The agency responsible for the appointment of editors and managers should be the agency responsible for their removal. c. All institutionally published and financed student publications should explicitly state on the editorial page that the opinions there expressed are not necessarily those of the college, university, or student body.3 These principles should apply to all student media, which should not be subordinated to an institution’s public-relations program. Candid journalism that discusses students’ dissatisfaction with the perceived shortcomings of their institutions can be uncomfortable for campus authorities. Nevertheless, this journalism fulfills a healthful civic function. A college or university campus is in many ways analogous to a self-contained city in which thousands of residents conduct their daily lives—drawing on the resources of the institution for housing, dining, police protection, medical services, employment, recreation, and culture. Student journalists keep watch over the delivery of these services, giving the members of their public a voice in the matters that concern them most. Student-produced journalism increasingly serves as an “information lifeline” for the entire community. In 2012, the Knight Foundation and other philanthropic funders of journalism challenged universities to reimagine themselves as “teaching hospitals” for news, satisfying the public’s critical information needs just as traditional teaching hospitals fulfill urgent medical needs.4 This evolution was already well under way but has accelerated with the rapid erosion of staffing at professional news organizations; the Pew Research Center reports that 14 percent of all journalists responsible for covering state capitals are students.5 When they are not financially or legally independent, student media outlets have traditionally been categorized either as curricular or as co- or extracurricular—that is, as classroom labs where work is directed, assigned, and graded by a professor or as independent organizations affiliated with a college or university but run entirely by students, often being designated as a student club, with a skilled adviser who offers education and counsel but takes no part in editorial decisions. In both arrangements, professors or advisers, whether they are members of the faculty or the staff, can sometimes face intense pressure from college and university administrators to avoid topics or stories that the administration finds objectionable. Because the work of news outlets is, by nature, often more publicly visible than other classroom or club activities, administrators may be quick to discipline these staff and faculty members because they believe the institution’s reputation to be at stake, sometimes on a daily basis, as each new news story is published in print, on air, or online. Recent years have brought an increasing diversity of online publications and “media laboratories,” which can provide student journalists with the opportunity to disseminate their class-produced work to a public audience. These publications make a significant contribution to the community’s journalistic ecosystem. Nevertheless, they are no substitute for independent, student-run media. Few, if any, laboratory-based publications supervised by instructors as graded classroom exercises are providing “watchdog” coverage of the campus itself (and indeed, significant structural issues make such class-generated watchdog coverage impracticable).6 Obstruction and harassment of campus media frequently signify deeper institutional mismanagement that administrators may seek to downplay or conceal. In one especially egregious example, the administration of California’s Southwest College mounted a campaign of intimidation and bullying of student journalists—including freezing the newspaper’s printing budget, cutting the adviser’s salary, and even threatening staff members with arrest—as part of an effort to conceal high-level wrongdoing. The administrator responsible for the harassment campaign, Raj Chopra, was forced out of office soon afterward as part of a wide-ranging “pay-to-play” corruption scandal encompassing members of the college’s board of trustees and contractors. The scandal resulted in criminal charges against eighteen individuals, including Chopra, who ended up accepting a guilty plea and serving three years’ probation.7 No reputable college or university would insist that its auditors skew their findings to portray a deceptively favorable outlook because the institution is paying for the report, although they might dissent from those findings. Administrations should take a similar approach to the findings of their student media, the value of which is inextricably linked to their independence.

#### Censorship causes journalists to stop questioning authority- papers become a mouthpiece for institutional propaganda

Long, JD Yale, 05

(Robert A., Law @Georgetown, 2005 WL 2736312 (U.S.) (Appellate Petition, Motion and Filing) Supreme Court of the United States. Margaret L. HOSTY, Jeni S. Porche, and Steven P. Barba, Petitioners, v. Patricia CARTER, Respondent. No. 05-377. October 20, 2005. On Petition For a Writ of Certiorari To The United States Court of Appeals For The Seventh Circuit Brief of the Association for Education in Journalism and Mass Communication and the Association of Schools of Journalism and Mass Communication, et al., as Amici Curiae in Support of Petitioner Robert A. Long, Jr., Counsel of Record, Kurt A. Wimmer, Covington & Burling, 1201 Pennsylvania Ave., NW, Washington, DC 20004-2401, (202) 662-6000, Counsel for Amici Curiae.)

The threat of censorship of campus papers is not only real, it is growing. Michael W. Hirschorn, University Efforts to Censor Newspapers Are on the Increase, Student Editors Say, 33 Chronicle of Higher Educ. at 35-37 (1987). Studies show that high school newspapers suffered a severe chilling effect after Hazelwood, avoiding coverage of controversial issues. Carol S. Lomicky, Analysis of High School Newspaper Editorials Before and After Hazelwood School District v. Kuhlmeier: A Content Analysis Case Study, 29 J. of Law & Educ. 463 (2000); see also id. at 473 (finding that students began to self-censor criticism in their publications, eliminating two thirds of the pre-Hazelwood levels of critical commentary). Three-fourths of high school principals and advisors acknowledge censoring their schools’ newspapers. Lillian Lodge Kopenhaver and J. William Click, High School Newspapers Still Censored Thirty Years After Tinker, 78 Journalism & Mass Commc’n Q. 321, 327 (2001). More than a decade after the Court announced its opinion in Hazelwood, high school “journalists appear unwilling to oppose the administration in their commentary.” Lomicky, 29 J. of Law & Educ. at 471. \*13 A Hazelwood regime applied to university students risks turning college newspapers into the timid house organs that most high school newspapers have become. Id. at 329. Research shows that 87 percent of high school principals believe that the student newspaper should advance the public relations objectives of the school. Id. Half of them disagree with the statement that the newspaper should print a factually accurate story if the publication will embarrass the school’s administration. Id. Such publications would give college students little incentive or ability to gain the real-world journalism experience that studies show is so crucial in acquiring the skills and commitment necessary for training tomorrow’s reporters.