

State-Level Strategies For Reviving Student Press Freedom in the Era of Hazelwood

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SUMMARY

The *Hazelwood School District v. Kuhlmeier* decision has negatively affected student publications across the country since its implementation in 1988. Because the decision left so wide an interpretation of its terms, it has allowed for more administrative control over student newspapers by permitting prior restraint of controversial topics.

The case also severely limits the First Amendment protections for student publications in other ways. This leaves students striving to find a balance between upholding professional values without the same freedoms of the professional press.

The *Hazelwood* decision has created an environment that is hostile to journalism's fundamental mission of truthfulness and accuracy and because of this, students may be discouraged from pursuing future careers in journalism fields.

States can help fight this decision by adopting student press acts to outline and protect their students' First Amendment rights. Local school districts and journalism advisors can work together to develop written publication policies for their schools as guidelines for student journalists and school officials to follow.

BACKGROUND

In the spring of 1983, the students of Hazelwood East High School's newspaper, *The Spectrum*, were about to release their last issue for the school year. It was common practice for the Missouri principal, Robert Reynolds, to review all issues before they were printed. The May issue caused great alarm for Reynolds, who thought that two specific articles were too inappropriate to be published.

The first article was about teen pregnancy, with anonymous interviews from Hazelwood East students who had dealt with pregnancy issues. Reynolds believed that, although no names were mentioned in the article, it would be too easy to identify the students and the article was inappropriate for younger students because of its discussion of birth control. Another article that

Reynolds objected to was about a student whose parents were going through a divorce. In the interview the student spoke harshly of her father, something that Reynolds believed to be unfair, even though the names were deleted in the final version. Since the deadline for publication was looming Reynolds ordered the two pages with all of their content to be deleted, including several other inoffensive articles.

The students of the newspaper, who were not given a chance to revise the objectionable material, felt that their First Amendment rights had been violated by the censorship of the articles by Principal Reynolds. They took their case to the U.S. District Court for the Eastern District of Missouri. The Court upheld the school's decision, deciding that the school newspaper did not have the same First Amendment protections awarded to students in *Tinker v. Des Moines* almost 20 years earlier. The students appealed their case to the court of Appeals for the Eighth Circuit Court, who reversed the decision. Finally the case was brought before the Supreme Court, who upheld the US District Court's ruling that the censorship was not a First Amendment rights violation (*Hazelwood School District v. Kuhlmeier*):

First Amendment rights of students in the public schools are not automatically coextensive with the rights of adults in other settings, and must be applied in light of the special characteristics of the school environment. A school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside the school.

Furthermore, the court ruled that *The Spectrum* and other high school newspapers like it could not be described as open public forums, basically not warranting protection by the First Amendment.

RESULTS

What the ruling in *Hazelwood* failed to do was set up any clear standard for student publication censorship. The law failed to set up any guidelines for what could or could not be censored by school administrators, as long as they deemed that “their actions are reasonably related to legitimate pedagogical concerns” (*Hazelwood School District v. Kuhlmeier*). Scott Andrew Felder in his article *Stop the presses: Censorship and the High School Journalist* rebuffs that argument:

In sum, school officials can censor just about any type of student speech under *Hazelwood* so long as they do it in a viewpoint neutral manner and prove both the asserted legitimate pedagogical concern and the relationship between the censorship and the concern. Judicial review will be extremely deferential, as the courts prefer to leave control over local schools to the local school officials.

Since “pedagogical concern” is a very broad term that lacks any clear principles, it is more realistically decided by local flavor, political, religious and cultural views of the schools’ administrations.

This has led to a biased system. For example, in 2002 a Texas high school pulled an issue of their newspaper, citing that an article on the problems that homosexual teens face was too controversial. The principal of the high school, who made the decision, commented, “It’s to my benefit that I can pull some [articles] and not pull others. It’s my choice, it’s my job to do that” (Student Press Law Center). The ability to censor articles based on personal bias is exactly what justice Brennan of the Supreme Court feared in his dissent in *Hazelwood*, where he warned that, “The case before us aptly illustrates how readily school officials (and courts) can camouflage viewpoint discrimination as the ‘mere’ protection of students from sensitive topics” (*Hazelwood School District v. Kuhlmeier*).

With no clear guideline it is difficult to foresee what articles may be censored. High school publication advisers and student editors must find a way to keep their newspapers interesting and relevant without stepping over the invisible line between significant articles and controversial topics.

REACTIONS

Some states have tried to ease this confusion by passing into law publication acts that mandate schools to establish policies for student publications. Arkansas, California, Colorado and Iowa are examples of states that have passed laws stating that school boards, along with publication advisers, must develop written policies to outline the rules and regulations of student publications.

These laws were formulated to force school boards into clearly defining what *Hazelwood* had left so vague. Interestingly, but not surprisingly, these state publication laws, along with Massachusetts and Kansas have adopted laws, deemed anti-*Hazelwood* laws, giving students freedom of the press in high schools.

Hazelwood, being so broad, leaves the law to be interpreted in various ways. For example, R.C. Salomone’s 1992 survey, *Free Speech and School Governance in the Wake of Hazelwood*, found that principals from southern states “believed, to a much greater degree than principals from other parts of the nation, that school officials exercised more authority over student publications after *Hazelwood*” (qtd. in Plopper and Downs 8).

Likewise, a survey reported in Mary Peterson Arnold’s report *Student Freedom of Expression and High School Journalism Advisers: A Legal and Ethical Dilemma* finds that high school publication advisers react differently based on demographics. “Rural teachers are more apt to take controversial topics to the principal than their suburban counterparts” (Arnold 68).

Many examples of censored articles deal with controversial issues such as teen pregnancy, safe sex practices, abortion, teen homosexuality and criticism of the school or officials. Students who don't personally experience these controversial issues are exposed to them by many other forms of easily accessible media such as television, newspapers, magazines and the Internet.

While the *Hazelwood* decision claims "educators are entitled to exercise greater control over this second form of student expression to assure that [...] that readers or listeners are not exposed to material that may be inappropriate for their level of maturity" (*Hazelwood School District v. Kuhlmeier*), censoring for reasons pertaining to maturity seems a naïve step on the behalf of the officials who are themselves uncomfortable creating a dialogue about personal matters that affect teenagers that they might not agree with.

As Justice Brennan said in his dissent, "the mere fact of school sponsorship does not, as the Court suggests, license such thought control in the high school, whether through school suppression of disfavored viewpoints or through official assessment of topic sensitivity" (*Hazelwood School District v. Kuhlmeier*).

Many of these issues are direct outcomes of inadequate or non-existent journalism training. -

Also, according to the *Hazelwood School District v. Kuhlmeier* decision, school administrations have the right to censor newspaper articles that are "ungrammatical, poorly written, inadequately researched, biased or prejudiced" (*Hazelwood School District v. Kuhlmeier*). Many of these issues are direct outcomes of inadequate or non-existent journalism training. -

Scholastic journalism has become viewed as non-essential to the school curriculum, and regrettably has seen the chopping block in many public high schools. Journalism programs are now being taken out of the classroom and into ill-funded and ill-advised extra-curricular activities. Already stretched thin, teachers, who themselves may have had no previous journalism experience, are given the role of journalism advisers.

STATE LAWS ENACTED

Since the *Hazelwood* decision in 1988 six states have adopted student publication acts. Arkansas, California, Colorado, Iowa, Kansas, Massachusetts and Oregon have all adopted laws granting students more protection of their First Amendment rights. These acts have come to be known as the anti-*Hazelwood* laws. The acts grant freedom of expression to student publications even if they are school-sponsored and funded.

The Colorado Student Free Expression Law even grants student publications the status that was the core basis for the *Hazelwood* decision, by stating "if a publication written substantially by students is made generally available throughout a public school, it shall be a public forum for students of such school."

The California Free Expression Law, the only state publication act to predate *Hazelwood*, clarifies that school officials must show explanation for censoring student expression prior to the act. This helps to eliminate needless acts of restriction.

These acts are essential to help provide students the same experience and freedoms of the working press. These laws can also reflect policy not just for public high schools but also for colleges and universities who have recently been threatened with publication censorship. A dangerous trend is occurring in higher education where prior review is being installed at some universities.

Students of the campus newspaper *The Innovator* at Governors State University of Illinois sued the school for First Amendment violations. The paper had recently printed articles criticizing administration. Seemingly, in response to this, Dean Patricia Carter ordered the printing company to halt further publications until she could perform prior review of the paper. The 7th U.S. Circuit Court of Appeals,

which heard the case, ultimately sided with the students, stating, “Dean Carter violated clearly established First Amendment law in censoring the student newspaper” (*Hosty v. Carter*).

What the court also accomplished was creating a connection between the case and *Hazelwood*, opening up the debate of whether school publications can be viewed as traditional public forums, expressing that “if underwritten student publications at Governors State University are a non-public forum, then it becomes important whether Dean Carter had legitimate pedagogical reasons for her action.” The court laid dangerous groundwork for future cases that could affect the independence of the college press.

IMPACT ON JOURNALISM CAREERS

If students are interested in following a career in journalism, but have had no experience with freedoms allowed to the professional press, interest in journalism as a field of study may be stifled as a result of the impact of *Hazelwood*. Students should be allowed to operate with the full protection of the First Amendment rights given to their professional, adult counterparts.

The press, in any form, needs to function independently from official control and censorship to maintain its integral watch dog mission of truthfulness and accuracy. If students are being taught not to cover the important topics or ask the essential questions, how will this reflect on the future of America’s journalists who have already instilled in themselves a sense of self-censorship?

States need to adopt protection laws for their student publications to ensure that every press member is working on even ground, no matter what age.

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