

Case Summary: *Hazelwood School District v. Kuhlmeier*

Changing the Rules

[*Hazelwood School District v. Kuhlmeier*](#) raised the question of whether the principal of Hazelwood East High School, near St. Louis, violated the First Amendment rights of his students by deleting two pages of the *Spectrum*, the school-sponsored newspaper that was produced in a school journalism course.

A journalism adviser, who supervised the *Spectrum's* staff, submitted each edition to the principal for review, prior to publication. In May 1983, a substitute was advising the newspaper because the regular journalism teacher left before the school year ended. After reviewing the May 13 edition of the paper, principal Robert Reynolds decided that two articles should not be published. The articles covered teenage pregnancy at Hazelwood East and the effects of divorce on students. Reynolds decided to delete the two pages on which they appeared, thus deleting additional articles as well.

This is how the story on teen pregnancy in the May 13 issue of the *Spectrum* began:

Sixteen-year-old Sue had it all — good looks, good grades, a loving family and a cute boyfriend. She also had a seven pound baby boy. Each year, according to Claire Berman (Readers Digest, May 1983), close to 1.1 million teenagers — more than one out of every 10 teenage girls — become pregnant. In Missouri alone, 8,208 teens under the age of 18 became pregnant in 1980, according to Reproductive Health Services of St. Louis. That number was 7,363 in 1981.

The article followed with personal accounts of three Hazelwood East students who became pregnant. The names of all three were changed:

Terri: I am five months pregnant and very excited about having my baby. My husband is excited too. We both can't wait until it's born. . . .

Patti: I didn't think it could happen to me, but I knew I had to start making plans for me and my little one. . . .

Julie: At first I was shocked. You always think 'It won't happen to me.' I was also scared because I did not know how everyone was going to handle it. . . .

Principal Reynolds believed the pregnancy article was inappropriate for a school newspaper and its intended audience, and the girls' anonymity was not adequately protected. He also believed that the divorce article, in which a student sharply criticized her father for not spending more time with his family, violated journalistic fairness because the newspaper did not give the girl's father a chance to defend himself. As the journalism class was, in part, designed to teach these notions of fairness, Reynolds asserted that he was acting in the best interests of the school by censoring the material.

Students on the *Spectrum* staff, surprised at finding two pages missing, filed a lawsuit against the school on the grounds that their First Amendment rights had been violated.

Five years later, the final decision came down in *Hazelwood*, the first Supreme Court case to focus specifically on high school student press rights.

The Decision of the Supreme Court:

On Jan. 13, 1988, the U.S. Supreme Court voted 5-3 to reverse the decision of the U.S. Court of Appeals for the 8th Circuit in St. Louis, which had upheld the rights of the students. The Court ruled that Principal Reynolds had the right to censor articles in the student newspaper that were deemed contrary to the school's educational mission.

Where *Tinker* gave students the power of free expression, *Hazelwood* gave school administrators the power to censor student newspapers.

The Supreme Court began its analysis by citing *Tinker's* basic premise that students “do not shed their constitutional rights to freedom of speech or expression at the school house gate.” But the Court modified this position by citing *Bethel vs. Fraser*, “A school need not tolerate student speech that is inconsistent with its basic educational mission.”

The Court said schools could censor any forms of expression deemed “ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences,” or any expression that advocates “conduct otherwise inconsistent with the shared values of the civilized social order.”

The key: “Educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.”

The Court found it was “not unreasonable” for Reynolds to have concluded that “frank talk” by students about their sexual histories and the use of birth control, even though their comments were not graphic, was “inappropriate in a school-sponsored publication distributed to 14-year-old freshmen.”

Justice Byron White wrote in the Court's majority opinion, “A school must be able to set high standards for the student speech that is disseminated under its auspices — standards that may be higher than those demanded by some newspaper publishers or theatrical producers in the ‘real’ world — and may refuse to disseminate student speech that does not meet those standards.

“In addition, a school must be able to take into account the emotional maturity of the intended audience in determining whether to disseminate student speech on potentially sensitive topics, which might range from the existence of Santa Claus in an elementary school setting to the particulars of teenage sexual activity in a high school setting.”

Justice William Brennan filed the dissenting opinion, which was joined by Justices Thurgood Marshall and Harry Blackmun. In his dissent, Justice Brennan wrote that he found the newspaper at Hazelwood East High School to be a “forum established to give students an opportunity to express their views” and said the Supreme Court should have applied the *Tinker* standard. Justice Brennan characterized the censorship at Hazelwood East as indefensible, saying it “aptly illustrates how readily school officials (and courts) can camouflage viewpoint discrimination as the ‘mere’ protection of students from sensitive topics.

“Such unthinking contempt for individual rights is intolerable from any state official,” Brennan wrote. “It is particularly insidious from one to whom the public entrusts the task of inculcating in its youth an appreciation for the cherished democratic liberties that our Constitution guarantees.”

Questions for Discussion

1. What is prior review?
2. What is censorship?
3. What conditions had to exist for a principal to exercise censorship of the student press according to the *Hazelwood* decision?
4. Does the *Hazelwood* ruling apply to all public schools? What factors does the court use to determine whether the student newspaper has been opened by the school as a public forum?
5. How did the Supreme Court reconcile its seemingly contradictory holdings in the *Hazelwood* and *Tinker* cases?
6. Under what circumstances may student speech in a school-sponsored, non-public forum be limited according to the *Hazelwood* decision?
7. What forms of student expression, other than school-sponsored student newspapers, could be censored under the *Hazelwood* standard?
8. Are school officials required to censor student expression under the *Hazelwood* ruling?
9. What is the difference between editorial decision making and self censorship?
10. If you were a high school principal, would your relationship with the school’s newspaper be based on the *Tinker* standard or the *Hazelwood* guidelines?

Points for Discussion

1. **What is prior review?**

Prior review takes place when an official reviews material before it is published or broadcast.

2. **What is censorship?**

Censorship is an examination and removal of expression, both words and images, to suppress what is considered morally, politically or otherwise objectionable. It is rooted in an ancient Roman practice. The censor was one of two officials who were responsible for taking public census and supervising public behavior and morals.

3. **What conditions have to exist for a principal to exercise censorship of the student press according to the *Hazelwood* decision?**

The Court said schools, public or private, could censor any forms of expression deemed “ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences,” or any expression that advocates “conduct otherwise inconsistent with the shared values of the civilized social order.”

4. **Does the *Hazelwood* ruling apply to all public schools? What factors does the court use to determine whether the student newspaper has been opened by the school as a public forum?**

No. The *Hazelwood* ruling does not apply to publications that have been opened as “public forums for student expression.” According to the [Student Press Law Center](#) “A student publication is a public forum for student expression when school officials have given student editors the authority to make their own content decisions. A school can do that either through an official policy or by allowing a publication to operate with editorial independence. . . . School officials are only allowed to censor forum publications when they can show the publication will cause a ‘material and substantial disruption’ of school activities.”

In addition, some states (currently Arkansas, California, Colorado, Iowa, Kansas and Massachusetts) have passed laws that give students much stronger free expression protection than *Hazelwood*.

5. **How did the Supreme Court reconcile its seemingly contradictory holdings in the *Hazelwood* and *Tinker* cases?**

In both decisions, the Supreme Court supported the mission of schools to educate in a safe environment. While students have First Amendment rights, these rights may be limited in the school setting.

Under the *Tinker* standard, school officials could only limit student free expression when they could demonstrate that the expression in question would cause a material and substantial disruption of school activities or an invasion of the rights of others.

According to the Student Press Law Center, “In essence, the majority opinion of

the Supreme Court said that the rights of public school students are not necessarily the same as those of adults in other settings. The student newspaper at Hazelwood East High School, it said, was not a 'forum for public expression' by students, and thus the censored students were not entitled to broad First Amendment protection. Therefore, the Court held that the school was not required to follow the standard established in *Tinker v. Des Moines Independent Community School District*.

“In the *Hazelwood* decision, the Court said that a different test would apply to censorship by school officials of student expression in a school-sponsored activity such as a student newspaper that was not a public forum for student expression. When a school’s decision to censor is ‘reasonably related to legitimate pedagogical concerns,’ it will be permissible. In other words, if a school can present a reasonable educational justification for its censorship, that censorship will be allowed.”

In his sharp dissent, Justice Brennan said that he found the newspaper at Hazelwood East to be a “forum established to give students an opportunity to express their views....” He said that the Court should have applied the *Tinker* standard. Brennan said that the censorship at Hazelwood East “aptly illustrates how readily school officials (and courts) can camouflage viewpoint discrimination as the ‘mere’ protection of students from sensitive topics.”

6. Under what circumstances may student speech in a school-sponsored, non-public forum be limited according to the *Hazelwood* decision?

School officials are allowed to censor student speech, including a student publication that is curricular and not a public forum, when they can demonstrate that their censorship is “reasonably related to legitimate pedagogical [educational] concerns.” If censorship serves no valid educational purpose, it is prohibited.

In [*Hazelwood v. Kuhlmeier: A Complete Guide*](#), the Student Press Law Center states:

The Court gave several examples in its decision of what might be censorable: material that is “ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences.” Potentially sensitive topics, such as “the existence of Santa Claus in an elementary school setting,” “the particulars of teenage sexual activity in a high school setting,” “speech that might reasonably be perceived to advocate drug or alcohol use, irresponsible sex, or conduct otherwise inconsistent with the ‘shared values of a civilized social order,’” may also be censored. In addition, the Court said school officials can censor material that would “associate the school with anything other than neutrality on matters of political controversy.”

These examples, frightening in their breadth and vagueness, suggest that school officials might be allowed to censor a great number of things simply because they disapprove of them. In fact, the Court said schools can demand of their student

publications standards “higher than those demanded by some newspaper publishers ... in the ‘real’ world.”

However, a federal appellate court decision has indicated that this standard still imposes significant limitations on school officials’ rights. School officials must be able to show that their censorship is “viewpoint neutral,” that is, that they did not censor simply because they disagreed with a particular view students were expressing.

7. What forms of student expression, other than school-sponsored student newspapers, could be censored under the *Hazelwood* standard?

Although the Supreme Court decision applied to a student newspaper, all student news and information media — yearbooks, literary magazines, radio and television programs — have been affected. Drama and music productions have also been included under the scrutiny allowed by *Hazelwood*.

8. Are school officials required to censor student expression under the *Hazelwood* ruling?

No. *Hazelwood School District v. Kuhlmeier*, the 1988 U.S. Supreme Court decision, gave public high school officials greater authority to censor some school-sponsored student publications if they chose to do so.

9. What is the difference between editorial decision making and self censorship?

When editorial decision making takes place, students are fully responsible for the media’s content. The publication’s editorial board meets to discuss what its community needs to know, should know and wants to know.

Self-censorship is based in fear of reprisals from people who can influence the course of students’ academic careers. While self-censorship is impossible to measure, there are experts who believe it is more prevalent since the *Hazelwood* decision. Paul McMasters of the First Amendment Center says students — particularly those on newspapers that are cleared by school administrators before publication — try to avoid conflicts and steer clear of potentially sensitive or controversial issues that might not meet with the principal’s approval. “The student who opposes censorship now is the unique one, not the other way around,” McMasters says. “Sometimes the biggest proponents of censorship are fellow students harassing the student journalists. [These students] haven’t been taught in their classrooms the benefits and the absolutely necessity of a free and open debate and dialogue in our society.”

10. If you were a high school principal, would your relationship with the school’s newspaper be based in the *Tinker* standard or the *Hazelwood* guidelines?

Answers will vary. High school principals who want to control the student press tend to cite *Hazelwood* as a justification for prior review or restricting the subjects students can address in their school publications.

Michael Hiestand, attorney for the Student Press Law Center, puts it, “Administrators who are bent on censoring the paper can use *Hazelwood* for that purpose. Those who want to give press rights to students can certainly choose to read *Hazelwood* guidelines that way.”

Much of this file is excerpted from “From Tinker to Hazelwood: Landmark Supreme Court decisions and how schools deal with them” originally appeared as chapter 7 in “Death By Cheeseburger: High School Journalism in the 1990s and Beyond.” Reprinted by permission, The Freedom Forum.