AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 10: The Reagan Era—Democratic Rights/Free Speech/Public Property, Subsidies, Employers, and Schools

**Hazelwood School District v. Kuhlmeier, 484 U.S. 260** (1988)

*Students at Hazelwood East High School in St. Louis, Missouri, edited a school newspaper as part of their journalism class. The expenses of the paper were paid by the school, and the production of the paper was advised by a teacher. Page proofs of each issue were reviewed by the school principal before publication. The school principal objected to two articles in the last issue to be published in the spring of 1983. One described the experience of three students with pregnancy and the other described the impact of parental divorce on students. In both cases, the principal thought the identities of the students in the story were not sufficiently obscured and that the nature and content of the stories were not suitable for the younger students at the school. Given the timing of the issue, the decision was made remove the two stories from the published newspaper.*

*Three students in the journalism class filed suit in federal district court, but the trial court ruled that school’s actions had not violated their First Amendment rights. A circuit court reversed, and the U.S. Supreme Court reversed the circuit court. The Court reaffirmed but distinguished and clarified its earlier students’ rights cases. The majority emphasized that students could not engage in speech on school grounds that was disruptive to the workings of the school, and moreover that the school had a heightened interest in managing the content of speech that occurs as part of its curricular content.*

JUSTICE WHITE delivered the opinion of the Court.

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Students in the public schools do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Independent School District* (1969). They cannot be punished merely for expressing their personal views on the school premises — whether "in the cafeteria, or on the playing field, or on the campus during the authorized hours" – unless school authorities have reason to believe that such expression will "substantially interfere with the work of the school or impinge upon the rights of other students."

We have nonetheless recognized that the First Amendment rights of students in the public schools "are not automatically coextensive with the rights of adults in other settings," *Bethel School District No. 403 v. Fraser* (1986), 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. . . .

We deal first with the question whether *Spectrum* may appropriately be characterized as a forum for public expression. The public schools do not possess all of the attributes of streets, parks, and other traditional public forums that "time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." Hence, school facilities may be deemed to be public forums only if school authorities have "by policy or by practice" opened those facilities "for indiscriminate use by the general public," or by some segment of the public, such as student organizations. *Perry Education Association v. Perry Local Educators’ Association* (1983). . . .

. . . . School officials did not evince either "by policy or by practice," any intent to open the pages of Spectrum to "indiscriminate use," by its student reporters and editors, or by the student body generally. Instead, they "reserve[d] the forum for its intended purpos[e]," as a supervised learning experience for journalism students. Accordingly, school officials were entitled to regulate the contents of *Spectrum* in any reasonable manner. It is this standard, rather than our decision in *Tinker,* that governs this case.

The question whether the First Amendment requires a school to tolerate particular student speech — the question that we addressed in *Tinker* — is different from the question whether the First Amendment requires a school affirmatively to promote particular student speech. The former question addresses educators' ability to silence a student's personal expression that happens to occur on the school premises. The latter question concerns educators' authority over school-sponsored publications, theatrical productions, and other expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school. These activities may fairly be characterized as part of the school curriculum, whether or not they occur in a traditional classroom setting, so long as they are supervised by faculty members and designed to impart particular knowledge or skills to student participants and audiences.

Educators are entitled to exercise greater control over this second form of student expression to assure that participants learn whatever lessons the activity is designed to teach, that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, and that the views of the individual speaker are not erroneously attributed to the school. Hence, a school may in its capacity as publisher of a school newspaper or producer of a school play "disassociate itself," not only from speech that would "substantially interfere with [its] work . . . or impinge upon the rights of other students," but also from speech that is, for example, ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences. . . . 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. A school must also retain the authority to refuse to sponsor student 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," or to associate the school with any position other than neutrality on matters of political controversy. Otherwise, the schools would be unduly constrained from fulfilling their role as "a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment."

. . . . It is only when the decision to censor a school-sponsored publication, theatrical production, or other vehicle of student expression has no valid educational purpose that the First Amendment is so "directly and sharply implicate[d]," as to require judicial intervention to protect students' constitutional rights.

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*Reversed*.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL and JUSTICE BLACKMUN join, dissenting.

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Public education serves vital national interests in preparing the Nation's youth for life in our increasingly complex society and for the duties of citizenship in our democratic Republic. . . .

The public educator's task is weighty and delicate indeed. It demands particularized and supremely subjective choices among diverse curricula, moral values, and political stances to teach or inculcate in students, and among various methodologies for doing so. Accordingly, we have traditionally reserved the "daily operation of school systems" to the States and their local school boards. . . . We have not, however, hesitated to intervene where their decisions run afoul of the Constitution. . . .

Free student expression undoubtedly sometimes interferes with the effectiveness of the school's pedagogical functions. Some brands of student expression do so by directly preventing the school from pursuing its pedagogical mission: The young polemic who stands on a soapbox during calculus class to deliver an eloquent political diatribe interferes with the legitimate teaching of calculus. And the student who delivers a lewd endorsement of a student-government candidate might so extremely distract an impressionable high school audience as to interfere with the orderly operation of the school. Other student speech, however, frustrates the school's legitimate pedagogical purposes merely by expressing a message that conflicts with the school's, without directly interfering with the school's expression of its message: A student who responds to a political science teacher's question with the retort, "socialism is good," subverts the school's inculcation of the message that capitalism is better. Even the maverick who sits in class passively sporting a symbol of protest against a government policy, or the gossip who sits in the student commons swapping stories of sexual escapade could readily muddle a clear official message condoning the government policy or condemning teenage sex. Likewise, the student newspaper that, like *Spectrum*, conveys a moral position at odds with the school's official stance might subvert the administration's legitimate inculcation of its own perception of community values.

If mere incompatibility with the school's pedagogical message were a constitutionally sufficient justification for the suppression of student speech, school officials could censor each of the students or student organizations in the foregoing hypotheticals, converting our public schools into "enclaves of totalitarianism," that "strangle the free mind at its source.” *West Virginia Board of Education v. Barnette* (1943). The First Amendment permits no such blanket censorship authority. . . . Just as the public on the street corner must, in the interest of fostering "enlightened opinion," tolerate speech that "tempt[s] [the listener] to throw [the speaker] off the street," public educators must accommodate some student expression even if it offends them or offers views or values that contradict those the school wishes to inculcate. *Cantwell v. Connecticut* (1940).

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The Court does not, for it cannot, purport to discern from our precedents the distinction it creates. One could, I suppose, readily characterize the students' symbolic speech in *Tinker* as "personal expression that happens to [have] occur[red] on school premises," although *Tinker* did not even hint that the personal nature of the speech was of any (much less dispositive) relevance. But that same description could not by any stretch of the imagination fit Fraser's speech. He did not just "happen" to deliver his lewd speech to an ad hoc gathering on the playground. As the second paragraph of *Fraser* evinces, if ever a forum for student expression was "school-sponsored," Fraser's was [in being delivered at a school assembly for student elections]. . . .

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I fully agree with the Court that the First Amendment should afford an educator the prerogative not to sponsor the publication of a newspaper article that is "ungrammatical, poorly written, inadequately researched, biased or prejudiced," or that falls short of the "high standards for . . . student speech that is disseminated under [the school's] auspices. . . ." But we need not abandon *Tinker* to reach that conclusion; we need only apply it. The enumerated criteria reflect the skills that the curricular newspaper "is designed to teach." The educator may, under *Tinker,* constitutionally "censor" poor grammar, writing, or research because to reward such expression would "materially disrup[t]" the newspaper's curricular purpose.

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*Tinker* teaches us that the state educator's undeniable, and undeniably vital, mandate to inculcate moral and political values is not a general warrant to act as "thought police" stifling discussion of all but state-approved topics and advocacy of all but the official position. . . . Thus, the State cannot constitutionally prohibit its high school students from recounting in the locker room "the particulars of [their] teen-age sexual activity," nor even from advocating "irresponsible se[x]" or other presumed abominations of "the shared values of a civilized social order." Even in its capacity as educator the State may not assume an Orwellian "guardianship of the public mind."

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