



HAZELWOOD SCHOOL DISTRICT v. KUHLMEIER
SUPREME COURT OF THE UNITED STATES
484 U.S. 260
January 13, 1988
[6 – 3]

OPINION: Justice WHITE...This case concerns the extent to which educators may exercise editorial control over the contents of a high school newspaper produced as part of the school's journalism curriculum. Petitioners are the Hazelwood School District in St. Louis County, Missouri...Respondents are three former Hazelwood East students who were staff members of Spectrum, the school newspaper. **They contend that school officials violated their First Amendment rights by deleting two pages of articles from the May 13, 1983, issue of Spectrum.**

Spectrum was written and edited by the Journalism II class at Hazelwood East. The newspaper was published every three weeks or so during the 1982-1983 school year. More than 4,500 copies of the newspaper were distributed during that year to students, school personnel, and members of the community.

The Board of Education allocated funds from its annual budget for the printing of Spectrum. These funds were supplemented by proceeds from sales of the newspaper. The printing expenses during the 1982-1983 school year totaled \$4,668.50; revenue from sales was \$1,166.84. The other costs associated with the newspaper—such as supplies, textbooks, and a portion of the journalism teacher's salary—were borne entirely by the Board.

The Journalism II course was taught by Robert Stergos for most of the 1982-1983 academic year. Stergos left Hazelwood East to take a job in private industry on April 29, 1983, when the May 13 edition of Spectrum was nearing completion, and petitioner Emerson took his place as newspaper adviser for the remaining weeks of the term.

The practice at Hazelwood East during the spring 1983 semester was for the journalism teacher to submit page proofs of each Spectrum issue to Principal Reynolds for his review prior to publication. On May 10, Emerson delivered the proofs of the May 13 edition to Reynolds, who objected to two of the articles scheduled to appear in that edition. One of the stories described three Hazelwood East students' **experiences with pregnancy**; the other discussed the **impact of divorce on students** at the school.

Reynolds was concerned that, although the pregnancy story used false names "to keep the identity of these girls a secret," the pregnant students still might be identifiable from the text. He also believed that the article's references to sexual activity and birth control were inappropriate for some of the younger students at the school. In addition, Reynolds was concerned that a student identified by name in the divorce story had complained that her father "wasn't spending enough time with my mom, my sister and I" prior to the divorce, "was always out of town on business or out late playing cards with the guys," and "always argued about everything" with her mother. Reynolds believed that the student's parents should have been given an opportunity to respond to these remarks or to consent to their publication. He was unaware that Emerson had deleted the student's name from the final version of the article.

Reynolds believed that there was no time to make the necessary changes in the stories before the scheduled press run and that the newspaper would not appear before the end of the school year if printing were delayed to any significant extent. He concluded that his only options under the circumstances were to publish a four-page newspaper instead of the planned six-page newspaper, eliminating the two pages on which the offending stories appeared, or to publish no newspaper at all. Accordingly, he directed Emerson to withhold from publication the two pages containing the stories on pregnancy and divorce. He informed his superiors of the decision, and they concurred.

Respondents subsequently commenced this action...seeking a declaration that their First Amendment rights had been violated, injunctive relief, and monetary damages. After a bench trial, the District Court denied an injunction, holding that no First Amendment violation had occurred.

The District Court concluded that school officials may impose restraints on students' speech in activities that are "an integral part of the school's educational function"—including the publication of a school-sponsored newspaper by a journalism class—so long as their decision has "a substantial and reasonable basis." The court found that Principal Reynolds' concern that the pregnant students' anonymity would be lost and their privacy invaded was "legitimate and reasonable," given "the small number of pregnant students at Hazelwood East and several identifying characteristics that were disclosed in the article." The court held that Reynolds' action was also justified **"to avoid the impression that [the school] endorses the sexual norms of the subjects" and to shield younger students from exposure to unsuitable material.** The deletion of the article on divorce was seen by the court as a reasonable response to the invasion of privacy concerns raised by the named student's remarks. Because the article did

not indicate that the student's parents had been offered an opportunity to respond to her allegations, said the court, there was cause for "serious doubt that the article complied with the rules of fairness which are standard in the field of journalism and which were covered in the textbook used in the Journalism II class." Furthermore, the court concluded that Reynolds was justified in deleting two full pages of the newspaper, instead of deleting only the pregnancy and divorce stories or requiring that those stories be modified to address his concerns, based on his "reasonable belief that he had to make an immediate decision and that there was no time to make modifications to the articles in question."

The Court of Appeals...reversed. The court held at the outset that Spectrum was not only "a part of the school adopted curriculum," but also a public forum, because the newspaper was "intended to be and operated as a conduit for student viewpoint." The court then concluded that Spectrum's status as a public forum precluded school officials from censoring its contents **except when "necessary to avoid material and substantial interference with school work or discipline...or the rights of others."**

The Court of Appeals found "no evidence in the record that the principal could have reasonably forecast that the censored articles or any materials in the censored articles would have materially disrupted classwork or given rise to substantial disorder in the school." School officials were entitled to censor the articles on the ground that they invaded the rights of others, according to the court, **only if publication of the articles could have resulted in tort liability to the school. The court concluded that no tort action for libel or invasion of privacy could have been maintained against the school by the subjects of the two articles or by their families.** Accordingly, the court held that school officials had violated respondents' First Amendment rights by deleting the two pages of the newspaper.

The Court of Appeals' conclusion that "no tort action for libel or invasion of privacy could have been maintained against the school" is **dicta**, not binding on "would be" plaintiffs. I wonder? Would the judges who concluded as such be willing to suffer the consequences to the school if they would turn out to be wrong? And, how about the school's concern over such potential liability of the students themselves? Or, should school boards around the Country let students learn about defamation law the hard way --- subject them to liability at a young age! The Court of Appeal majority should get out of the education business.

We granted certiorari and we now reverse.

Students in the public schools do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker*.

As I said when discussing the *Tinker* case, this phrase is problematic. I can now say with the greatest of confidence, this phrase is, simply put, a lie! Pure fiction! The point is that the free speech rights of students are different at school than they are off campus, just as the free speech rights of adults are different in the middle of a church service than they are in the public square.

The Court is about to prove my point. Just witness the litany of free speech “rights” that are, in fact, shed at the schoolhouse gate. Why do justices continue to use a phrase that is false?

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." *Tinker* (1985). A school need not tolerate student speech that is inconsistent with its "basic educational mission," *Fraser*, even though the government could not censor similar speech outside the school. Accordingly, we held in *Fraser* that a student could be disciplined for having delivered a speech that was "sexually explicit" but not legally obscene at an official school assembly, because the school was entitled to "disassociate itself" from the speech in a manner that would demonstrate to others that such vulgarity is "wholly inconsistent with the 'fundamental values' of public school education." **We thus recognized that "the determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board," rather than with the federal courts.** It is in this context that respondents' First Amendment claims must be considered.

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." *Hague v. CIO* (1939); *Widmar v. Vincent* (1981). 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," *Perry Education Assn. v. Perry Local Educators' Assn.* (1983), or by some segment of the public, such as student organizations. If the facilities have instead been reserved for other intended purposes, "communicative or otherwise," then no public forum has been created, and school officials may impose reasonable restrictions on the speech of students, teachers, and other members of the school community. "The government does not create a public forum by inaction or by permitting limited discourse, but only by intentionally opening a nontraditional forum for public discourse." *Cornelius v. NAACP Legal Defense & Educational Fund, Inc.* (1985).

The policy of school officials toward Spectrum was reflected in Hazelwood School Board Policy 348.51 and the Hazelwood East Curriculum Guide. Board Policy 348.51 provided that "[s]chool sponsored publications are developed within the adopted curriculum and its educational implications in regular classroom activities." The Hazelwood East Curriculum Guide described the Journalism II course as a "laboratory situation in which the students publish the school newspaper applying skills they have learned in Journalism I." The lessons that were to be learned from the Journalism II course, according to the Curriculum Guide, included development of

journalistic skills under deadline pressure, "the legal, moral, and ethical restrictions imposed upon journalists within the school community," and "responsibility and acceptance of criticism for articles of opinion." Journalism II was taught by a faculty member during regular class hours. Students received grades and academic credit for their performance in the course.

School officials did not deviate in practice from their policy that production of Spectrum was to be part of the educational curriculum and a "regular classroom activity." The District Court found that Robert Stergos, the journalism teacher during most of the 1982-1983 school year, "both had the authority to exercise and in fact exercised a great deal of control over Spectrum." For example, Stergos selected the editors of the newspaper, scheduled publication dates, decided the number of pages for each issue, assigned story ideas to class members, advised students on the development of their stories, reviewed the use of quotations, edited stories, selected and edited the letters to the editor, and dealt with the printing company. Many of these decisions were made without consultation with the Journalism II students. The District Court thus found it "clear that Mr. Stergos was the final authority with respect to almost every aspect of the production and publication of Spectrum, including its content." Moreover, after each Spectrum issue had been finally approved by Stergos or his successor, the issue still had to be reviewed by Principal Reynolds prior to publication. Respondents' assertion that they had believed that they could publish "practically anything" in Spectrum was therefore dismissed by the District Court as simply "not credible." These factual findings are amply supported by the record, and were not rejected as clearly erroneous by the Court of Appeals.

The evidence relied upon by the Court of Appeals in finding Spectrum to be a public forum is equivocal at best. For example, Board Policy 348.51, which stated in part that "[s]chool sponsored student publications will not restrict free expression or diverse viewpoints within the rules of responsible journalism," also stated that such publications were "developed within the adopted curriculum and its educational implications." One might reasonably infer from the full text of Policy 348.51 that **school officials retained ultimate control over what constituted "responsible journalism" in a school-sponsored newspaper.** Although the Statement of Policy published in the September 14, 1982, issue of Spectrum declared that "Spectrum, as a student-press publication, accepts all rights implied by the First Amendment," this statement, understood in the context of the paper's role in the school's curriculum, suggests at most that the administration will not interfere with the students' exercise of those First Amendment rights that attend the publication of a school-sponsored newspaper. It does not reflect an intent to expand those rights by converting a curricular newspaper into a public forum. Finally, that students were permitted to exercise some authority over the contents of Spectrum was fully consistent with the Curriculum Guide objective of teaching the Journalism II students "leadership responsibilities as issue and page editors." **A decision to teach leadership skills in the context of a classroom activity hardly implies a decision to relinquish school control over that activity.** In sum, the evidence relied upon by the Court of Appeals fails to demonstrate the "clear intent to create a public forum" that existed in cases in which we found public forums to have been created. School officials did not evince either "by policy or by practice," *Perry Education Assn.*, 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 "reserved the forum for its intended purpose" 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," *Fraser*, not only from speech that would



"substantially interfere with [its] work...or impinge upon the rights of other students," *Tinker*, but also from speech that is, for example, ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences. 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. **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," *Fraser*, 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." *Brown v. Board of Education* (1954).

Well, I don't have any problem with articles taking positions on controversial political matters. After all, isn't that what the press is all about? It would seem a standard disclaimer of school endorsement is all that is necessary in most instances.

Accordingly, we conclude that the standard articulated in *Tinker* for determining when a school may punish student expression need not also be the standard for determining when a school may refuse to lend its name and resources to the dissemination of student expression. Instead, we hold that 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.

This standard is consistent with our oft-expressed view that the education of the Nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges. 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 implicated" as to require judicial intervention to protect students' constitutional rights.

We also conclude that Principal Reynolds acted reasonably in requiring the deletion from the May 13 issue of Spectrum of the pregnancy article, the divorce article, and the remaining articles that were to appear on the same pages of the newspaper.

The initial paragraph of the pregnancy article declared that "[a]ll names have been changed to keep the identity of these girls a secret." The principal concluded that the students' anonymity was not adequately protected, however, given the other identifying information in the article and the small number of pregnant students at the school. Indeed, a teacher at the school credibly testified that she could positively identify at least one of the girls and possibly all three. It is likely that many students at Hazelwood East would have been at least as successful in identifying the girls. Reynolds therefore could reasonably have feared that the article violated whatever pledge of anonymity had been given to the pregnant students. In addition, he could reasonably have been concerned that the article was not sufficiently sensitive to the privacy interests of the students' boyfriends and parents, who were discussed in the article but who were given no opportunity to consent to its publication or to offer a response. The article did not contain graphic accounts of sexual activity. The girls did comment in the article, however, concerning their sexual histories and their use or nonuse of birth control. It was not unreasonable for the principal to have concluded that such frank talk was inappropriate in a school-sponsored publication distributed to 14-year-old freshmen and presumably taken home to be read by students' even younger brothers and sisters.

The student who was quoted by name in the version of the divorce article seen by Principal Reynolds made comments sharply critical of her father. The principal could reasonably have concluded that an individual publicly identified as an inattentive parent—indeed, as one who chose "playing cards with the guys" over home and family—was entitled to an opportunity to defend himself as a matter of journalistic fairness. These concerns were shared by both of

Spectrum's faculty advisers for the 1982-1983 school year, who testified that they would not have allowed the article to be printed without deletion of the student's name...

In sum, we cannot reject as unreasonable Principal Reynolds' conclusion that neither the pregnancy article nor the divorce article was suitable for publication in Spectrum. Reynolds could reasonably have concluded that the students who had written and edited these articles had not sufficiently mastered those portions of the Journalism II curriculum that pertained to the treatment of controversial issues and personal attacks, the need to protect the privacy of individuals whose most intimate concerns are to be revealed in the newspaper, and "the legal, moral, and ethical restrictions imposed upon journalists within [a] school community" that includes adolescent subjects and readers. Finally, we conclude that the principal's decision to delete two pages of Spectrum, rather than to delete only the offending articles or to require that they be modified, was reasonable under the circumstances as he understood them. Accordingly, no violation of First Amendment rights occurred. The judgment of the Court of Appeals for the Eighth Circuit is therefore Reversed.

DISSENT: Justice BRENNAN/MARSHALL/BLACKMUN...When the young men and women of Hazelwood East High School registered for Journalism II, **they expected a civics lesson.** Spectrum, the newspaper they were to publish, "was not just a class exercise in which students learned to prepare papers and hone writing skills, it was a...forum established to give students an opportunity to express their views while gaining an appreciation of their rights and responsibilities under the First Amendment to the United States Constitution..." "At the beginning of each school year," the student journalists published a Statement of Policy—tacitly approved each year by school authorities—announcing their expectation that "Spectrum, as a student-press publication, accepts all rights implied by the First Amendment...Only speech that 'materially and substantially interferes with the requirements of appropriate discipline' can be found unacceptable and therefore prohibited." (quoting *Tinker*). The school board itself affirmatively guaranteed the students of Journalism II an atmosphere conducive to fostering such an appreciation and exercising the full panoply of rights associated with a free student press. "School sponsored student publications," it vowed, "will not restrict free expression or diverse viewpoints within the rules of responsible journalism."

This case arose when the Hazelwood East administration breached its own promise, dashing its students' expectations. The school principal, without prior consultation or explanation, excised six articles—comprising two full pages—of the May 13, 1983, issue of Spectrum. He did so not because any of the articles would "materially and substantially interfere with the requirements of appropriate discipline," but simply because he considered two of the six "inappropriate, personal, sensitive, and unsuitable" for student consumption. In my view the principal broke more than just a promise. He violated the First Amendment's prohibitions against censorship of any student expression that neither disrupts classwork nor invades the rights of others, and against any censorship that is not narrowly tailored to serve its purpose...

But, Justices Brennan, Marshall and Blackmun, the students did, in fact, receive a valuable civics lesson. They learned that they do **not** have the full panoply of rights they will have when they are adults. That **is** the lesson. Until then, they cannot publish whatever they wish in defiance of their teachers. They are **children** who may have also learned that some things should not be published, even in the “real adult world.”

