

First Amendment Law of Public Primary and Secondary School Newspapers

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First Amendment Law of Middle and High School Newspapers

When six high school students from Pittsburg, Kansas exposed their newly-hired principal's questionable credentials in March of 2017, Pittsburg Community Schools Superintendent Destry Brown said of their tenacity, "I want our kids to have real-life experiences, whether it's welding or journalism" (Williams, 2017). While school district employees were initially bewildered by the student journalists' investigation, their determined reporting that led to the principal's resignation eventually granted them the respect of their school board – and an invitation to the 2017 White House Correspondents' Dinner.

The widespread commendation of these Pittsburg High School journalists is relatively abnormal, as certain developments in communications law have historically hindered First Amendment rights of public K-12 school (hereafter "public school") journalists to perform this type of investigative work. Damaging precedent exists that dictates the treatment of public school journalists, precedent that never quite offers the same First Amendment protections to public school students as college or professional journalists. But as exhibited in the preceding story, young journalists possess skills that are not only far beyond their years, but are also objectively important to their communities. When it comes to public school student journalism, free expression is necessary to acknowledge and amplify the issues that affect United States citizens in order to keep citizens informed; therefore, public school students deserve the same First Amendment protections as their older counterparts so they may uphold their duty to inform the public of relevant affairs.

Background

Unlike professional journalists, or even college journalists, public school student journalists have not traditionally enjoyed the First Amendment right to freedom of expression.

The seminal U.S. Supreme Court case regarding public school student freedom of expression, and more specifically their freedoms of speech and the press, is *Hazelwood v. Kuhlmeier* (1988), which established that schools may censor student speech in media if “legitimate pedagogical concerns” exist related to the student-produced media in question. Such concerns that may be censored include school-sponsored student expression that interferes with school discipline or students’ rights, as well as content that is not academically appropriate, invites concerns related to health or welfare, or can be reasonably deemed obscene or vulgar (Utterback, 2003). This newly-established framework categorically suppressed student expression.

Public school students’ freedom of expression in more general terms was upheld in *Tinker v. Des Moines Independent Community School District* (1969), in which a group of Des Moines, Iowa public school students wore black armbands to protest the Vietnam War. This was the first consideration of whether First Amendment protections applied to public school students (Hoover, 2008) and resulted in a victory for the students, as the school did not provide enough reason to limit their freedom of expression; the school simply wanted only to prevent potential controversy from the protest of the war (*Tinker v. Des Moines*, 1969).

Eleven states, plus the District of Columbia, already have either laws or education code provisions specifically protecting free expression of public school student journalists (Student Press Law Center, 2017). Additionally, a number of state legislatures have previously attempted or are currently working toward expanding the flow of free student expression.

In April of 2017, Indiana attempted to pass House Bill 1130, which would have protected the freedom of expression of public school students in grades five and up. However, a controversial amendment was tagged onto the bill when it reached the state Senate Education Committee that would have kept advertisements in student media outside of student control,

raised the applicable grade level minimum from five to nine, and required students to petition the Indiana Board of Education if they faced any backlash from school administrators. As a result of the myriad disagreements, the bill did not make it out of the state Senate (Elliott, 2017).

The Arizona legislature is currently considering Senate Bill 1384, which would extend the First Amendment freedoms of speech and press to public school student journalists, even if the student media entity is school-sponsored. Arguments against the bill range from high school students being incapable of “absolute total free speech without adult supervision” to concerns that because public school student publications are taxpayer-funded, citizens unaffiliated with the school whose taxes fund education should be able to rely on the fact that school administrators can step in and censor student-written work if necessary. There also exist worries among Republican legislators that high schools are “opposed to conservative thought,” and that passing a bill such as S.B. 1384 would essentially suppress conservative students’ freedom of speech (Fischer, 2017).

Rationale

As seen at Pittsburg High School, supporting student press freedom and general freedom of expression reinforces the general idea that journalists, no matter their age, have a duty to the public to keep them informed, even if it means taking aim at their own institution. The support from public schools is instrumental in upholding these freedoms, as *Hazelwood v. Kuhlmeier* (1988) would later determine that it is the public school districts themselves, rather than the governmental bodies above them, that dictate whether public school students have access to these rights (Martin, 2003).

Where would Pittsburg High School be right now if not for the student journalists who, unlike their adult journalist counterparts, decided to look into the background of their newly-

hired principal and immediately discovered severe red flags? If the school had been allowed to interfere with the publication of the article in question, as was attempted in *Dean v. Utica Community Schools* (2003) when the article concerned an issue in which the school had a competing interest, Pittsburg High School may still have an unqualified principal. It is therefore vital that students, with the support of their faculty or editorial advisors, be able to pitch, write, and publish their own stories.

As the controversy surrounding *Hazelwood v. Kuhlmeier* (1988) demonstrated, there is a delicate societal balance between suppressing First Amendment protections and censoring speech with the intent of protecting minor students. But recent opinion in high schools, as illustrated by a 2017 survey of nearly 12,000 students, suggests that these students are more in favor of First Amendment rights among their peers than any time in the past ten years (Park, 2017). If high school students are confident in their own abilities to demonstrate and monitor their own free expression, legislating otherwise could be doing them a massive disservice.

Legal Context

Four key cases demonstrate the established precedent for the suppression of public school students' free expression rights as well as the challenges to the precedent over the following decades: *Hazelwood v. Kuhlmeier* (1988), *Desilets v. Clearview Regional Board of Education* (1994), *Dean v. Utica Community Schools* (2004), and *R.O. v. Ithaca City School District* (2011). While all of the latter three cases considered the *Hazelwood* interpretation, the eventual decisions suggest a trend toward recognizing the freedoms of public school journalists, or at least laying the groundwork for future parties to challenge *Hazelwood* in states without widespread protections for public school student journalists.

The landmark case in students' freedom of expression in public school media outlets was *Hazelwood v. Kuhlmeier* (1988). Every version of *The Spectrum*, the newspaper of Hazelwood East High School in St. Louis County, Missouri, was written and edited by students, but as it was sponsored by the school, Principal Robert E. Reynolds necessitated reviewing proofs of each product before publication. In the May 13, 1983 issue, student journalists wrote two articles about teenage pregnancy and divorce that Reynolds deemed unsuitable for publication for their inappropriate nature. Therefore, Reynolds removed the pages on which the stories appeared from the issue. In response, three students, with the help of the American Civil Liberties Union, sued the school (Utterback, 2003).

As *Hazelwood v. Kuhlmeier* (1988) took place well outside the sphere where protesting a controversial war, as in *Tinker*, may have invoked widespread public fervor, it is unsurprising that the same type of consideration was not given to a case that involved students providing information about something likely much less controversial in their articles. After conflicting decisions in the U.S. District Court for the Eastern District of Missouri and the U.S. Court of Appeals for the Eighth Circuit, the U.S. Supreme Court decided in *Hazelwood* that public school administrators may censor student speech if "legitimate" concerns related to pedagogy exist (*Hazelwood v. Kuhlmeier*, 1988). Such concerns included the potential controversy of the content of the two articles, which would have likely been attributed to the students who wrote the articles (Hoover, 2008). The view of what consists a "legitimate pedagogical concern" (*Hazelwood v. Kuhlmeier*, 1988) would later be challenged directly.

In 1994, the New Jersey Supreme Court would decide in *Desilets v. Clearview Regional Board of Education* that *Hazelwood* required clarification to distinguish between content-based and content-neutral news articles. The central issue of *Desilets v. Clearview* (1994) concerned

the publication of two reviews of R-rated films in a middle school newspaper. Brien Desilets, a seventh grade student at Clearview Junior High School in Gloucester County, New Jersey, wrote reviews of *Mississippi Burning* and *Rain Man* for the school newspaper *The Pioneer Press*, but school principal Charles Bishop feared that if students read these reviews, they might be prompted to view the films. However, in their decision, the New Jersey Supreme Court found that “legitimate pedagogical concerns” as defined in *Hazelwood v. Kuhlmeier* (1988) were not present in Bishop’s decision to censor the reviews from appearing in the newspaper, elucidating that such inconsistencies in the application of precedent established in *Hazelwood* would not justify censorship. Concerns also existed that Clearview Junior High School did not have a sufficient policy to clarify their position in this matter (*Desilets v. Clearview*, 1994). In deeming the reviews themselves unobjectionable, Bishop’s decision to censor the reviews meant he considered them to be content-neutral entities; therefore, any pedagogical concerns would not have been related to the content of the articles, as was the case in *Hazelwood*.

The precedent established by *Hazelwood* gained even more depth in 2003, when Utica High School student reporter Katy Dean faced censorship for writing an article for her school newspaper, *The Arrow*, concerning local school bus diesel emissions. In this instance, the U.S. District Court for the Eastern District of Michigan – Southern Division made three main points as it granted summary judgment to Dean while denying Utica Community Schools’ motion for summary judgment: (1) that *The Arrow* was a limited public forum, meaning it was subject to time, place, and manner restrictions, but was not subject to regulation based on the content itself (i.e. content-neutral); (2) that the “legitimate pedagogical concerns” aspect of *Hazelwood v. Kuhlmeier* (1988) did not apply in this instance because of Utica Community Schools’ competing and conflicting interest in the content of the article (*Dean v. Utica*, 2003); and (3) that

Dean's article did not differ significantly from "professional" articles on the same topic (Hu, 2015). Utica Community Schools was also harmed by the fact that Dean published the article she wrote for *The Arrow* in a local newspaper, thus bolstering Dean's argument on the third point (*Dean v. Utica*, 2003). As the U.S. District Court for the Eastern District of Michigan – Southern Division used *Hazelwood* to contradict a school district rather than uphold its views, *Dean v. Utica* (2003) both legitimizes the work of public school journalists (Hu, 2015) and opened the door for the precedent established in *Hazelwood* to be legitimately challenged in court.

During *R.O. v. Ithaca City School District* (2011), centered at Ithaca High School in Ithaca, New York, *Hazelwood* received further interpretation extending to cartoons as well as textual material. It is also the only one of these four cases where the school newspaper advisor opposed the students' editorial stance in favor of publishing the material. When faculty advisor Stephanie Vinch initially prevented the publication of a cartoon involving pairs of stick figures in various sexual positions in *The Tattler*, her students did not question her decision, as the cartoon would have been published without context. However, when the cartoon was to be paired with an article about sexual education, and Vinch once more prohibited its publication, student R.O. claimed she was infringing upon the students' First Amendment rights and took the case to the United States District Court for the Northern District of New York. The argument, while not as technical as in the previous cases, was a much more direct challenge of *Hazelwood*, stating that it was unlawful to have to submit proofs of the newspaper to Vinch at all (*R.O. v. Ithaca City School District*, 2011).

When R.O. appealed the district court's decision to the United States Court of Appeals for the Second Circuit, the judges upheld the prior decision, invoking both *Hazelwood v. Kuhlmeier*'s precedent of "legitimate pedagogical concerns" (1988) as well as that of *Bethel*

School District v. Fraser (1986), which provided framework for deciding cases about lewd speech in high schools. *The Tattler* was also classified as a limited public forum, meaning school administrators could monitor what was published (LoMonte, 2013). However, this perhaps unconventional challenge to *Hazelwood* further clarified the types of materials allowed to be published in public school newspapers, thereby leaving room for other, slightly more refined challenges to take place in the future.

Proposed Changes

As mentioned above, only eleven states plus the District of Columbia provide additional First Amendment protections to public school student journalists. These states include Washington, Oregon, California, North Dakota, Colorado, Kansas, Iowa, Arkansas, Illinois, Pennsylvania, and Massachusetts (Student Press Law Center, 2017). Therefore, this number would need to increase in order for public school student journalists across the United States to enjoy the same freedoms as their counterparts in other states. All of these laws and statutes originated in their respective state legislatures, which means activists in states without these laws would have to contact their local legislators to introduce a bill that, when passed, would provide extra protections for public school students' freedom of expression. Therefore, it is first the duty of the citizens (especially students who can speak from their own experiences and to their own needs), then the duty of their state-level representatives, to express that a lack of full freedom of expression among public school students is an issue that deserves attention. The variety of states with both Democrat-majority and Republican-majority legislatures that have passed these types of bills should provide the confidence that free expression bills like in the aforementioned states can become law.

Predictions

In a political climate where press freedom in the United States may be threatened by the views, words, and actions of the current president, even professional, adult reporters are facing government backlash for exercising the First Amendment rights already unequivocally guaranteed to them as adults (Reporters Without Borders, 2017). As a result, the future of public school student journalists being able to practice their craft may be even more vague in the future, especially if this causes them to decide not to participate in journalism in school at all.

But, considering the Pittsburg High School student journalists once more, the story of these students provides a unique and well-executed yet vital goal for student journalists across the United States: to find and share the truth at whatever cost. From Pittsburg Community Schools being “100 percent” in support of the new principal’s hire, to apologizing after her resignation (Williams, 2017), this case demonstrates all that can go right in the course of practicing journalism as an intelligent, interested student reporter. In the future, it is vital that this work be supported and allowed to continue.

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