



Know Your Rights As a Student Journalist



Nieman Foundation
for Journalism at Harvard

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Student Press Law Center

Provides free legal help and information on media law issues to student journalists and their advisers

SPLC.org



Red Flag: My college adviser insists on prior review

← →

Get legal help

Press Freedom in Your State

Legend:
 ■ States with student press freedom laws
 ■ States without student press freedom laws

Note on the Shifting Ethics of Anonymization

- Review takedown and anonymity policies
- Be transparent with contributors and audience about bylines and sourcing
- Re-educate staff on risks related to confidential sources and data storage

Board Policy Check

- Find and analyze your freedom of expression/publication policy
- With problematic policies, inform your advisers and then act independently
- Appeal any unsavory or unlawful parts
- This is your right as a student

Forms of Censorship

- Direct
 - Prior restraint (admin, CGA, or adviser)
 - Newspaper theft/destruction
 - Systemic prior review or required approval of content

Forms of Censorship Continued

- Indirect
 - Funding and opportunity revocation
 - Firing editors or staff and “stacking” a publication board
 - Discipline or removal of media adviser
 - Media/public relations “gag orders”

Forms of Censorship Continued

- Self-censorship
 - The “chilling effect” of repeated direct and/or indirect censorship

Public vs. Private Schools

- As government agencies, the First Amendment limits censorship at public schools.
- The First Amendment does not regulate the behavior of private schools. However, state law or school policy could provide legal protection for press freedom.

Private Schools: First Amendment-like Protection

- Contract Law Arguments;
- Certain State Law;
- Policy Considerations and Alumni Networks

Public vs. Private Censorship

SAVE THE
WHALES!

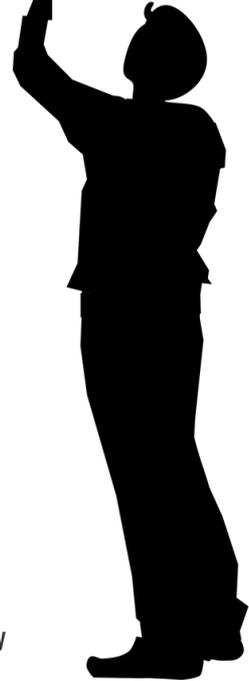


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Contract Law Arguments: Private Schools

- Focuses on the published output of the private school itself:
 - Recruitment materials;
 - Governance documents or policy; and
 - Student handbooks
- Language in these documents function as implicit and explicit promises for acceptance of tuition, creating contractual relationship

Contract Law Arguments Continued

- The “basic legal relation between a student and a private university or college is contractual in nature. The catalogues, bulletins, circulars, and regulations of the institution made available to the matriculant become a part of the contract”...
- “a breach of contract action might exist if a student enrolled in a course explicitly promising instruction that would qualify him as a journeyman, but in which the fundamentals necessary to attain that skill were not even presented.”

Ross v. Creighton Univ., 957 F.2d 410, 415 and 417
(7th Cir. 1992)

Certain State Law: Constitutions

- The Supreme Court in 1980 indicated that individual states may require First Amendment-like protections of private schools
 - Highlights the importance of approaching legislatures through New Voices (CA + RI)
- 44 State Constitutions proactively give freedom of expression; as to *private* parties, only NJ, PA, MA impose that mandate, but courts have not yet interpreted for our context

Policy Considerations and Alumni Networks

- Policy: less of a legal argument, more of a foundational principle:
 - Being able to censor does not make it right or good educational practice
 - Advantage for public school students
 - Religious schools: freedom of press/religion
- Alumni: private schools often rely heavily on alumni networks, seek out journalist alumni

Public Schools: Censorship and the First Amendment

What authority do government actors have to control the content of college student media?

The First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or **abridging the freedom of speech, or of the press;** or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The “Publisher” Myth

Public School Officials

- Do not own the publication
- Taxpayer dollars used to support publication
- Administrators and other employed actors are government officials
- First Amendment limits ability of government officials to control student media content

Private Publishers

- Legally own the publication
- Private money used to fund the publication
- Private publisher is not a state actor limited by the First Amendment
- Can freely dictate publication’s content

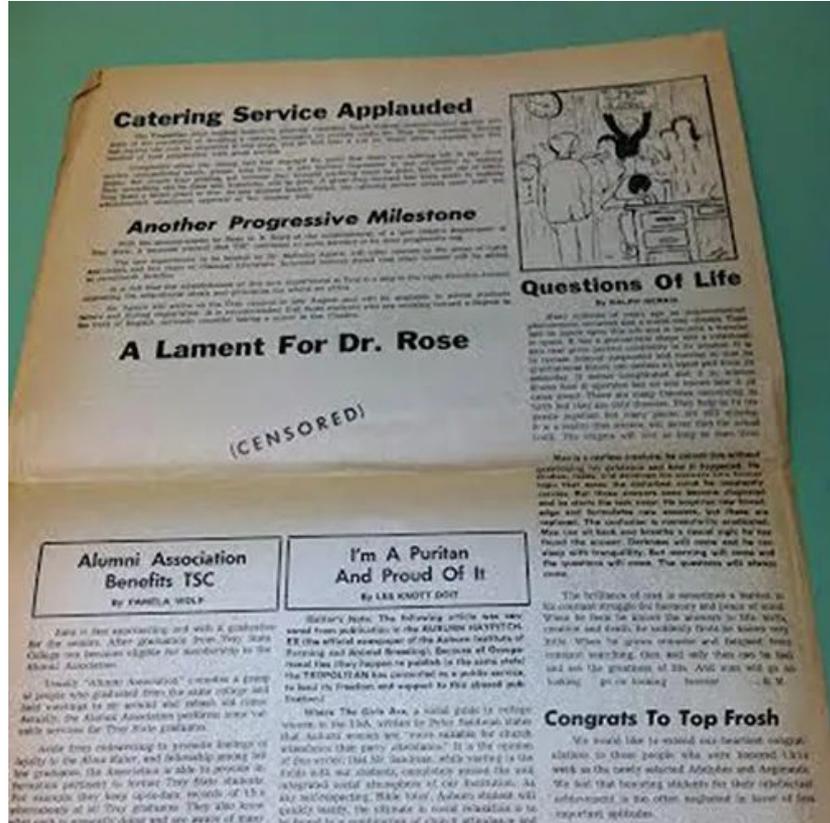
The “Publisher” Myth

“The University... is clearly an arm of the state, and this single fact will always distinguish it from the purely private publisher as far as censorship rights are concerned.”

- *Bazaar v Fortune* (5th Cir. 1973)

Dickey v Alabama State Bd of Educ. (1967)

Essentially the birth of college press freedom



Dickey v Alabama State Bd of Educ. (1967)

“State school officials cannot infringe on their students’ right of free and unrestricted expression as guaranteed by the Constitution of the United States where the exercise of such rights does not ‘materially and substantially’ interfere with the requirements of appropriate discipline in the operation of the school.”

- *Dickey v Alabama (M.D.Ala. 1967)*

Tinker v. Des Moines Independent Community School District (1969)

The U.S. Supreme Court recognizes that the First Amendment protects on-campus student speech

The *Tinker* Case

Mary Beth Tinker (right) with her mother, Lorena, and younger brother, Paul.



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Neither students nor teachers “shed their constitutional rights to freedom of expression or speech at the schoolhouse gate.”

— Supreme Court majority opinion

Tinker v. Des Moines Independent Community School District (1969)

The *Tinker* Standard

Student speech is protected from censorship except for:

- Speech that invades the rights of others (unprotected speech)
- Speech that creates a material and substantial disruption of normal school activities



Always-Unprotected Speech

- Defamation (libel/slander)
- Invasion of privacy
- Copyright infringement
- Speech that advocates illegal drug use
- Obscenity (legal obscenity)
- “Fighting words”
- “True threats”
- Incitement to imminent lawless action

“Material and Substantial Disruption”

- Serious, physical disruption of the learning process generally required
- Reasonable forecast of disruption required that is more than just a hunch

Post-*Tinker* College Press Freedom Decisions

“Censorship of constitutionally-protected expression cannot be imposed at a college or university by suspending editors, suppressing circulation, requiring [prior approval] of controversial articles, excising repugnant material, withdrawing financial support, or asserting any other form of censorial oversight based on the institution’s power of the purse.”

- *Joyner v Whiting* (4th Cir. 1973)

Post-*Tinker* College Press Freedom Decisions

“The campus newspaper of a state supported university is entitled to the constitutional protections afforded the ‘press’, including freedom of expression for the editors.”

- *Sinn v. Daily Nebraskan* (D. Neb. 1986)

Combatting Censorship with the Law

- Must establish a relationship between the censoring act or decision and *content*
- Demonstrating the action was taken against student media is not enough
- Administrative appeal
- Federal “1983 action” (42 USC 1983 - civil action for deprivation of rights)

Hazelwood School District v. Kuhlmeier (1988)

The U.S. Supreme Court significantly reduces the level of First Amendment protection provided to most school-sponsored student media at public high schools

Pressure describes it all for today's teenagers Pregnancy affects many teens each year

Birth control is nearly essential for sexually active teenagers of our birth cohort. Looking about 10 years into the future, it is well-timely that 20 percent of us were never married in 1980. The birth rate is getting smaller. The bad news is that we are getting older. The good news is that we are getting older. The bad news is that we are getting older. The good news is that we are getting older.

TEEN AGE MARRIAGES, 1970-80

AGE	1974	1977	1978	1979	1980
Total	13,605	14,762	17,185	21,267	21,271
Under 15	237	256	250	293	253
15-17	1,945	2,129	2,694	3,001	2,919
18-19	11,423	12,377	14,241	17,973	18,099

Contraception, sex, pregnancy, and teenage marriages. The statistics show a steady increase in teenage marriages over the years. The birth rate is getting smaller. The bad news is that we are getting older. The good news is that we are getting older.

Teenage marriages face 75 percent divorce rate

Association for the Study of Child Development. The statistics show a steady increase in teenage marriages over the years. The birth rate is getting smaller. The bad news is that we are getting older. The good news is that we are getting older.

runaways and juvenile delinquents. The statistics show a steady increase in teenage marriages over the years. The birth rate is getting smaller. The bad news is that we are getting older. The good news is that we are getting older.

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Divorce's impact on kids may have lifelong effect. The statistics show a steady increase in teenage marriages over the years. The birth rate is getting smaller. The bad news is that we are getting older. The good news is that we are getting older.

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The *Hazelwood* Standard

- Censorship must be “reasonably related to legitimate pedagogical concerns.”
- Is there a reasonable educational justification?





Photo by Emiliano Bar on Unsplash.

“When a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.”

- Turner v. Safley,
482 U.S. 78 (1987)

Footnote 7:

“We need not now decide whether the same degree of deference [to censorship by school officials] is appropriate with respect to school-sponsored expressive activities at the college and university level.”

- *Hazelwood v Kuhlmeier* (1988)

Post-*Hazelwood* College Press Freedom Decisions

“The university environment is the quintessential ‘marketplace of ideas’ which merits full, or indeed heightened, First Amendment protection.”

- *Kincaid v Gibson* (6th Cir. 2001)

Post-*Hazelwood* College Press Freedom Decisions

“*Hazelwood* provides our starting point.”

- *Hosty v Carter* (7th Cir. 2005)

State Laws Protecting Public College Media

- Arkansas
- California (and private)
- Hawaii
- Illinois
- Maryland
- New Jersey
- North Dakota
- Oregon
- Rhode Island (and private)
- Vermont
- Washington
- West Virginia

Liability for Public College Student Media

“We find that the First Amendment... would bar [the university] from exercising anything but advisory control over the paper, therefore exempting the university from liability or responsibility.”

- *Milliner v Turner* (La. Ct. App. 1983)

The Court of Public Opinion



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“[W]ere it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter.”

-Thomas Jefferson

Letter to Colonel Edward Carrington (January 16, 1787)



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