“It can hardly be argued that students or teachers shed their constitutional rights ... at the schoolhouse gates. This has been the unmistakable holding of this Court for almost 50 years.” So wrote Justice Fortas for the Court in *Tinker v. Des Moines* (1969). Students certainly enjoy their constitutional rights to speech, press, free exercise of religion and privacy that all other citizens enjoy. But the Court has never found that any of these rights are absolute. Rather, they might yield in the face of compelling state interests. As such, the Court sometimes finds that the compelling interest of a peaceable and orderly educational environment is sufficiently compelling to trump the exercise of students’ rights.

In *Tinker*, the Court considered whether the students had a right to expressive speech in school. The Court had previously found that some actions were so expressive in their nature as to warrant protection as speech. Nevertheless, because the message was conveyed through an action, the state might have a less than compelling reason to regulate the act and still satisfy the Constitution. In *Tinker*, a few students wore armbands to school in protest of the Vietnam War. The students were suspended, and the Court was asked whether this constituted a violation of the students’ right to free speech. The Court ruled in favor of the students, finding no cause for alarm regarding the students’ desire to wear the armbands. In the absence of any uproar or outcry, and with no disturbance resulting from the wearing of the armbands, the majority found the action to be close to “pure speech.” The dissenters either disagreed with the finding of negligible disturbance at the school, or they would give the widest latitude to the discretion of the school authorities.

In a concurring opinion in *Tinker*, Justice Stewart noted that, “Although I agree with much of what is said in the Court’s opinion, and with its judgment in this case, I cannot share the Court’s uncritical assumption that, school discipline aside, the First Amendment rights of children are co-extensive with those of adults.” This question, of whether the free speech rights of students were the equal of those of adults was raised in *Hazelwood v. Kuhlmeier*. Here, a student newspaper, published as part of a journalism class, was to run an article on student pregnancy and another on the impact of divorce on students. Consistent with school practice, the article proofs were submitted to the school principal prior to publication. He withheld the articles, finding the first inappropriate for a young audience, and the latter unfair to those parents criticized by their
In Tinker, the Court found that only speech which “materially disrupts classwork or involves substantial disorder or invasion of the rights of others” can be censored.
Dissenting in *Earls* was Justice Ruth Bader Ginsburg, who concurred with the Court opinion in *Vernonia*. Yet in *Earls*, Justice Ginsburg believes that the Court has gone too far in limiting students’ privacy rights. Searches must be reasonable, and she finds the testing of those not inclined to drug use, and absent any finding of a drug problem to be unreasonable. Further, the danger of drug use to student athletes is quite substantial, posing severe health risks associated with their sports. Yet there seem to be no equivalent health risk to those engaged in non-athletic competition such as Future Homemakers, Future Farmers, or marching band. Tongue firmly in cheek, Ginsburg writes, “Notwithstanding nightmarish images of out-of-control flatware, livestock run amok, and colliding tubas disturbing the peace and quiet of *Tecumseh*, the great majority of students the School District seeks to test in truth are engaged in activities that are not safety sensitive to an unusual degree.” Lastly, while athletes might share a diminished sense of privacy given the nature of a locker room, there is no locker room for the Academic Team, hence a greater expectation of privacy.

As is the case in its First and Fourth Amendment jurisprudence elsewhere, in the case of students, the Court attempts to balance the exercise of these freedoms with compelling state interests. And maintaining an orderly classroom environment, or teaching a particular lesson, or preventing drug use have on occasion proven to be sufficiently compelling interests to limit students’ rights to speech, press and privacy.

Dr. Warner Winborne is Assistant Professor of Political Science at Hampden-Sydney College in Virginia, where his particular areas of interest include Aristotle, Adam Smith, and Thomas Hobbes. The Executive Director for the Center for the Study of the Constitution, he specializes in the Fourth, Ninth, and Fourteenth Amendments. He has presented papers at the Midwest Political Science Association’s annual conferences, chaired a roundtable discussion of Lani Guinier’s and Gerald Torres’ *The Miner’s Canary* at the American Political Science Association conference, and is the author of *Modernization and Modernity: Thomas Hobbes, Adam Smith and Political Development*. 
Case Background

The Spectrum was the student newspaper at Hazelwood East High School. It was produced by students in the Journalism II class, under the supervision of their teacher. As with many student newspaper classes, the journalism teacher was directly involved in the newspaper’s production. He appointed the editors, scheduled publication dates, assigned stories, advised students on writing and researching, edited stories, and dealt with the printing company. Each issue of the Spectrum was also reviewed by the principal before publication.

In May of 1983, the Spectrum’s advisor submitted the paper to the principal for review before publication, as usual. The principal found two stories that concerned him. One was about teen pregnancy and featured interviews with unnamed students. The other was about the impact of divorce on teens, and also featured interviews, this time with identified students. The principal was concerned that the unnamed students could be identified, and that the parents discussed in the divorce story had not been given a chance to respond. He ordered the stories deleted from the paper.

Believing the school had violated their First Amendment rights, several Spectrum staff members, including Cathy Kuhlmeier, sued. While the original court upheld the school’s actions, the Appeals Court sided with the students, holding that the Spectrum was “a public forum, because it was “intended to be and operated as a conduit for student viewpoint.” The court concluded that Spectrum’s status as a public forum prevented 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.”

Hazelwood School District appealed the case to the Supreme Court. The Court had to determine if the Spectrum was a public forum, and whether public schools could censor student speech within school-sponsored expressive activities.
DOCUMENT A

The First Amendment, 1791
Congress shall make no law respecting ... abridging the freedom of speech, or of the press...

→ What did “the press” mean in 1791? What does it mean today?

DOCUMENT B

Tinker v. Des Moines, 1969
Note: This case concerned students who had been suspended students for wearing black armbands to school in protest of the Vietnam War.

First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate....

In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school the prohibition cannot be sustained....

[T]he record fails to yield evidence that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students ... [and] the school officials banned and sought to punish petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance....

→ According to this document, under what conditions can a school censor student speech?

→ How does the Court describe the expression of opinion in this case?
Page Proofs of the Spectrum, 1983

Note: The principal had objections to the stories titled “Divorce’s impact on kids may have lifelong effect” and “Pressure describes it all for today’s teenagers.”

Was the principal right to be concerned about these two articles?
**DOCUMENT D**

*Bethel v. Fraser, 1985*

Note: This case concerned a student who had been suspended for giving a student-government nomination speech filled with sexual innuendo.

This Court acknowledged in *Tinker v. Des Moines* that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” ...In upholding the students’ right to engage in a nondisruptive, passive expression of a political viewpoint in *Tinker*, this Court was careful to note that the case did “not concern speech or action that intrudes upon the work of the schools or the rights of other students.”

[The] fundamental values of habits and manners of civility essential to a democratic society must, of course, include tolerance of divergent political and religious views, even when the views expressed may be unpopular. But these “fundamental values” must also take into account consideration of the sensibilities of others, and, in the case of a school, the sensibilities of fellow students....

- According to this document, what kind of student speech did *Tinker* (Document B) uphold?
- Between what two values is this ruling trying to strike a balance?

**DOCUMENT E**

*“Statement of Policy,” Spectrum, September 14, 1988*

Note: Beginning in 1982, this statement appeared annually in the Spectrum.

Spectrum, as a student-press publication, accepts all rights implied by the First Amendment....

All ... editorials appearing in this newspaper reflect the opinions of the Spectrum staff, which are not necessarily shared by the administrators or faculty of Hazelwood East....

- How might this statement apply to the issues in this *Hazelwood*?
DOCUMENT F

Hazelwood District Board Policy, 1988

School-sponsored student publications will not restrict free expression or diverse viewpoints within the rules of responsible journalism.

- How might the term “responsible journalism” be defined?

DOCUMENT G


Note: Mr. Baine represented Hazelwood School District.

MR. BAINE: [T]he principal could understand the school audience as well as anyone else in that some of the information in those articles might make it appear that because it was produced in a classroom exercise that the school in effect had condoned the activities of these children, of these young ladies who had gotten pregnant, for example....

QUESTION: Even if the school would not appear as condoning it, the school was certainly providing the paper and the ink and the money to write the story, right, which was not the case in Tinker?

MR. BAINE: Well, that is true.

QUESTION: It was their own arm bands in Tinker, they brought them from home, the school did not provide them?

MR. BAINE: Right.

- In what way does this exchange assert that the expression in Hazelwood differs from that in the Tinker case?

We deal first with the question whether *Spectrum* may appropriately be characterized as a forum for public expression. ...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. If the facilities have instead been reserved for other intended purposes ... then no public forum has been created. ...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....

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 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.

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....

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....

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. ...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.

*(continued on next page)*
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.

- Why did the Court conclude the Spectrum was not a public forum?
- Under what conditions did the Court rule that school officials could exercise editorial control over student speech?

**DOCUMENT I**


The school principal, without prior consultation or explanation, excised ... articles ... 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 [them] “inappropriate, personal, sensitive, and unsuitable” for student consumption.

The Court offers no more than an obscure tangle of three excuses to afford educators “greater control” over school-sponsored speech than the *Tinker* test would permit: the public educator’s prerogative to control curriculum; the pedagogical interest in shielding the high school audience from objectionable viewpoints and sensitive topics; and the school’s need to dissociate itself from student expression. None of the excuses ... supports the distinction that the Court draws. *Tinker* fully addresses the first concern; the second is illegitimate; and the third is readily achievable through less oppressive means.

Official censorship ... in no way furthers the curricular purposes of a student newspaper unless one believes that the purpose of the school newspaper is to teach students that the press ought never report bad news, express unpopular views, or print a thought that might upset its sponsors.

*Tinker* teaches us that the state educator’s undeniable ... 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.

The case before us aptly illustrates how readily school officials (and courts) can camouflage viewpoint discrimination as the mere protection of students from sensitive topics.

Dissociative means short of censorship are available to the school. It could, for example, require the student activity to publish a disclaimer, such as the “Statement of Policy” that Spectrum published each school year ... or it could

(continued on next page)
simply issue its own response clarifying the official position on the matter and explaining why the student position is wrong. Yet, without so much as acknowledging the less oppressive alternatives, the Court approves of brutal censorship....

The young men and women of Hazelwood East expected a civics lesson, but not the one the Court teaches them today. I dissent.

› **Why does the dissent assert that the principal censored the student articles?**

› **Why does the dissent object to the majority’s ruling?**

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**DOCUMENT J**

**Reactions to the Ruling, 2001**

The case had nothing to do with what is being taught in the curriculum; it had solely to do with what students were allowed to publish. ...[T]he legacy of *Hazelwood* is that it helped to create a generation of young people who don’t have a clue what the First Amendment is about when they leave high school. Many students are taught that there is only freedom of expression when those in power agree with what you are saying.

–Mark Goodman, Executive Director of the Student Press Law Center

[T]his is an issue of the control of curriculum. I think that the *Tinker* case had been abused. The original basis for *Tinker* was good but some lower courts had expanded *Tinker* to the point where school officials would have had to permit the printing of anything students wrote. ...There is a saying that ‘all education is local,’ and I think the *Hazelwood* case stands for that principle.


Courtesy of the First Amendment Center
http://www.firstamendmentcenter.org/analysis.aspx?id=4360

› **Contrast these two reactions to the ruling.**
**Future of the First Amendment Study, 2005**

<table>
<thead>
<tr>
<th>Question</th>
<th>Children who answered “Yes”</th>
<th>Adults who answered “Yes”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do you agree that [professional] newspapers should be able to publish freely without government approval of stories?</td>
<td>51%</td>
<td>80%</td>
</tr>
<tr>
<td>Do you agree that high school students should be allowed to report controversial issues in their student newspapers without approval of school authorities?</td>
<td>58%</td>
<td>43%</td>
</tr>
</tbody>
</table>

*Sources: “Future of the First Amendment” Study, Center for Survey Research Analysis at the University of Connecticut and the State of the First Amendment (SOFA) survey, Freedom Forum*

- Summarize the chart data in one or two sentences.
- Could there be a cause-effect relationship between the ruling in *Hazelwood* and this information?

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**KEY QUESTION**

Argue whether or not the First Amendment should protect student speech in public school-sponsored newspapers.
Conflict escalates over canceled student play on Iraq

By Lisa Chamoff
The Advocate
March 27, 2007

WILTON - A principal’s decision to stop the performance of a play about the war in Iraq, crafted by students in a Wilton High School drama class, has garnered national media attention and touched off a debate on censorship.

As part of an advanced theater arts class, 15 students spent the second semester putting together a collection of dramatic readings based on interviews and letters from veterans of the war, including a 2005 Wilton High School graduate who was killed in Iraq in September.

After a student whose brother is serving in the war said the project, “Voices in Conflict,” was not balanced, Principal Timothy Canty put an end to it.

Wilton Public Schools Superintendent Gary Richards said Canty made the decision after much thought, and the administration thought the students’ script did not provide enough context to explore a complicated subject....


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- How does this situation compare to the one in Hazelwood v. Kuhlmeier?
- Do you believe the school has acted unconstitutionally?