# Hazelwood Aff 1

## Notes

### Hazelwood Aff Sparknotes

Hazelwood School District V. Kuhlmeir was a 1988 Supreme Court ruling that allowed censorship of student newspapers. This affirmative argues that censorship of student publications is problematic for 3 main reasons

1. Precedent- Hazelwood has been cited in many other court cases to weaken first amendment protections

2. Journalism- censorship hurts student’s ability to learn the skills required to be an effective journalist

3. Education- censorship is counterproductive to the educational environment of schools

To understand the importance of Hazelwood you need to know a bit about Supreme Court first amendment jurisprudence which I will divide into two categories: relevant cases, and relevant principles. Let’s start with cases.

There are 3 important cases to understand.

1. Tinker v. Des Moines Independent Community School District- This is by far the most important Supreme Court case dealing with first amendment rights in schools. In Tinker a group of students wore black armbands to protest the Vietnam war and administrators tried to prevent them from doing so. The first important part of Tinker is that “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 saying this the court set a precedent that schools must recognize civil rights of both students and teachers. Second, “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.” In other words- administrator cannot censor speech because of it’s content- i.e. they cannot say “I disagree with this point of view”.

2. Hazelwood. The court in Hazelwood weakened (or eliminated) the protections it created in Tinker. This decision relied on a few key arguments. First, that student speech can be restricted when that speech threatens the “rights” of another student. In this case the court decided that articles about teen pregnancy and divorce where a threat to the privacy rights of students covered in the articles (it is important to night there is no “right to privacy” in the constitution, instead the courts have inferred a “penumbra of privacy”- the idea that other rights contain within them a general justification for a right to privacy). Second, the court decided that schools had a legitimate pedagogical concern in limiting these articles. Affirmative authors argue that both these arguments were so weak and poorly evidenced that this has defacto created a loophole to the first amendment. Specifically the school districts argued that because courts lack educational expertise they must defer to the opinions of administrators on whether or not speech was harmful. This deference undercuts or eliminates the “viewpoint neutrality” standard created in Tinker.

3. Hosty V. Carter- The original Hazelwood ruling applied to secondary schools (high schools) but the court explicitly left open the question of whether or not Hazelwood applied to Colleges and universities. In Hosty the 7th district court ruled that Hazelwood DID apply to colleges and allowed censorship of a college paper. Since that ruling Hazelwood has been cited in a variety of contexts outside of high schools to justify censorship. Hosty is important for one other, more complicated, reason. In Hosty the court did not literally say “censorship is acceptable”, they said that “qualified immunity” protected administrators from the lawsuit. If your federal civil rights are violated- by a police officer searching your home without a warrant or a school censoring your article- the way you protect your rights is to file a lawsuit under section 1983. These law suits allow people to pursue monetary damages for rights violations, the idea being that the threat of financial pain will deter government officials from violating rights in all but appropriate circumstances. Qualified immunity is a defense government officials raise in these lawsuits that essentially says “the law is sufficiently unclear that a reasonable person could have taken the offending action thinking it was ok”. So basically, if a federal agent doesn’t understand the law because the law is not clear, they can’t be held responsible for violating it. This is in stark contrast to a regular citizen for whom “ignorance of the law is not a defense”. So in Hosty the court ruled that because it was unclear whether or not Hazelwood applied to colleges, the administrator had qualified immunity. This is a very important ruling because it essentially says administrators could censor anything they wanted and then plead ignorance and win. This has caused an explosion of censorship on and off campus.

The affirmative argues that the court should overturn Hazelwood reinstating the doctrine of viewpoint neutrality. While the case does argue that free speech is important in high schools, more importantly it argues that the precedent set by this ruling would protect the right to free speech more broadly.

Below you can find details of the case and relevant federal laws. These summaries are from “amicus briefs” from the original court decision. An amicus, or “friend of the court”, brief is written by someone not involved in the law suit but who supports one side or the other.

The major negative argument is a counterplan to allow some but not all of the speech the affirmative does. More specifically, it allows schools to restrict “hate speech”. Hate speech is not a clearly defined concept in the law, but the debate centers around how harmful hate speech is related to other restricted speech. The court has acknowledged a few major exceptions to the first amendment: libel (things you know to be untrue), obscenity (speech that is offensive to societal norms and serves no other purpose like some forms of pornography), and fighting words (speech that directly promotes violent actions). Most negative authors think hate speech is a form of fight words or obscenity and thus should be restricted. First amendment advocates think the definition of hate speech is too ambiguous and courts should err on the side of caution by not allowing its restriction which could have dangerous precedential effects. A key distinction is whether the speech targets an individual or not. For example, saying “I dislike Bob- he’s a stupid Yankees fan” is targeted at an individual. Racist/sexist comments targeted at a specific individual are often considered fighting words and can be restricted. If you said “I dislike Yakees fans” that would generally be viewed as acceptable. In the context of school newspapers an article over say whether or not immigration was bad for the economy could be considered hate speech by some and not others which creates dicey legal situations.

For the affirmative the main arguments made against this CP/Disad are:

1. Precedent- hate speech restrictions are not “viewpoint neutral” which hurts a crucial first amendment principle

2. Ambiguity- what is/is not hate speech is not clearly defined and can be abused. For example conservative administrators could rule liberal commentary to be hate speech and vice versa

3. Boomerang/Cooption- this argument argues that if racism is so prevalent in society than it is more likely hate speech laws will hurt rather than help minorities. There are many empirical examples of where hate speech codes were used exclusively to target minority speech

4. Underground- hate speech laws don’t eliminate racism they drive it underground. This is worse for two reason: underground speech creates an “echo chamber” where discriminatory believes become more extreme over time, and that when underground people are less likely to be challenged on their discriminatory views by counterspeech

5. Safety Valve- this argues that hurtful speech is often “venting” that prevents actual violence.

Finally, a large portion of the case is devoted to defending the value of speech. These impacts can be broken down into two categories

1. Consequential- the case makes two arguments about the positive consequences of free speech. First, free speech in education is uniquely important to society. Schools are learning environments where people need the freedom to experiment. A famous court case claimed that if schools don’t have free speech it will hurt innovation and societal advancement causing “civilizational collapse”. Second, free speech exists primarily to challenge the government. Journalists are uniquely key in this role as they bring major issues to our attention and facilitate debate. High school censorship harms the production of good journalists because it teaches them it is acceptable for government officials to censor damaging information. Oppressive governments generally act to repress free speech to prevent resistance. This evidence makes a “root cause” claim that free speech is necessary to prevent war and genocide by oppressive governments.

2. Non Consequential- this evidence defends free speech as a prima facie good, there are again two reasons for this. First, speech is crucial to the development of moral reasoning. The more ideas people are exposed to the more likely they are to avoid dogmatism/discriminatory beliefs. Second, speech is a pre-requisite to any other moral value. You cannot articulate why it is important to combat racism or sexism without being able to speak about it. This means when the first amendment conflicts with other rights it should be given priority.

### FYI- The Hazelwood Case

Abrams, JD/SPLC President, et al. 86

(J. Marc, 1987 WL 864177 (U.S.) (Appellate Brief) Supreme Court of the United States. HAZELWOOD SCHOOL DISTRICT, et al., Petitioners, v. Cathy KUHLMEIER, et al., Respondents. No. 86-836. October Term, 1986. May 26, 1987. On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit Brief of Student Press Law Center, Journalism Education Association, Columbia Scholastic Press Advisers Association, Quill and Scroll Society, National Scholastic Press Association/Associated Collegiate Press, Missouri Journalism Education Association, Journalism Association of Ohio Schools, Southern Interscholastic Press Association, Garden State Scholastic Press Association, College Media Advisers, Community College Journalism Association, Association for Education in Journalism and Mass Communication as Amici Curiae in Support of Respondents J. Marc Abrams\*, S. Mark Goodman, Student Press Law Center, 800 18th Street, N.W., Suite 300, Washington, DC 20016, (202) 466-5242, Counsel for Amici curiae)

STATEMENT OF THE CASE

At the time of the events giving rise to this lawsuit, plaintiffs Cathy Kuhlmeier, Leslie Smart and Leanne Tippet were students in the Hazelwood East High School Journalism II class and were on the staff of Spectrum, the student newspaper at Hazelwood East. Spectrum, in the past and present, serves as a voice for the students at Hazelwood East, allowing them to raise in articles, editorials and letters to the editor issues that touch their lives inside and outside the school. Both written policies of \*6 the school board and Spectrum’s own pages noted that student expression would not be restricted in the student newspaper.

For the May 13, 1983, issue of Spectrum, staff members prepared a two-page spread of articles that focused on some of the problems teenagers face today. The articles focused on teenage pregnancy, teenage marriage, runaways and the effects of divorce on children, topics recognized as national crises for our nation’s youth. Several students at Hazelwood East were interviewed or surveyed for these articles, making the issues covered more relevant and immediate to Spectrum’s readers. All sources were informed in advance that their statements were being collected for use in Spectrum, and all gave their explicit consent to such use.

Pursuant to an unwritten policy at Hazelwood East, principal Robert Reynolds was given a copy of the galley proofs for the May 13 issue of Spectrum before they were returned with corrections to the printer. On May 11, 1983, without any notice to Spectrum staff members, Reynolds ordered adviser Howard Emerson to delete from the issue the two-page spread that contained the articles mentioned above. Reynolds later justified his decision by saying that the stories were “too sensitive” and “too mature” for the students at Hazelwood East. He said divorce, which affects the children of almost half of the marriages in the country,1 was per se a subject “inappropriate” for a high school newspaper. Relying on Hazelwood school board policies, the Hazelwood School District superintendent and board of education approved the principal’s censorship.

Plaintiffs brought this action asserting that their rights under the First Amendment to the United States Constitution had \*7 been violated and requesting declaratory relief and damages. The United States District Court for the Eastern District of Missouri, after trial without a jury, entered a judgment for the defendants. Plaintiffs appealed, and the United States Court of Appeals for the Eighth Circuit reversed the decision, finding Spectrum a public forum for student expression and holding that the school could not demonstrate that its censorship was necessary to avoid material and substantial interference with school work or discipline or an invasion of the rights of others. This Court granted appellees’ petition for certiorari.

SUMMARY OF ARGUMENT

The Hazelwood School District created Spectrum, the student newspaper at Hazelwood East High School, as an outlet for the expression of students. Both through its explicit written policies and its practice of allowing students to determine the content of Spectrum, the school district demonstrated its intent to create an avenue for the expression of student viewpoints and news. As a result of this intent, as well as the nature of a student newspaper as an expressive activity, First Amendment protections for respondents must apply. Recognition of such protections in no way interferes with petitioners’ ability to determine the curriculum of their journalism class.

Petitioners had the burden of proving their censorship justified. They could not do so. They were unable to demonstate that their censorship of Spectrum was justified under the material and substantial disruption or invasion of the rights of others standard that this Court applies to censorship within a public high school. Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).

Petitioners censorship was a direct prior restraint of student expression. Such policies are presumptively invalid, and the school district presented no justification for its system. Rather the school district’s prior restraint created a potential for its tort liability that would not otherwise have existed.

\*8 Petitioners policies under which they attempt to justify their censorship are unconstitutionally overbroad and vague and fail to provide necessary procedural due process.

### FYI- Detailed Case History

Baine, JD, 86

(1987 WL 864172 (U.S.) (Appellate Brief) Supreme Court of the United States. HAZELWOOD SCHOOL DISTRICT, et al., Petitioners, v. Cathy KUHLMEIER, et al., Respondents. No. 86-836. October Term, 1986. March 30, 1987. On Writ of Certiorari To The United States Court Of Appeals For The Eighth Circuit Brief for the Petitioners Robert P. Baine, Jr., Counsel of Record, 225 South Meramec, Tenth Floor, St. Louis, Missouri 63105, (314) 862-5981, John Gianoulakis, Robert T. Haar, Kohn, Shands, Elbert, Gianoulakis & Giljum, 411 North Seventh, St. Louis, Missouri 63101, (314) 241-3963, Counsel for Petitioners)

Petitioner Hazelwood School District operates public elementary and secondary schools within the State of Missouri, including the Hazelwood East High School. On August 19, 1983, respondents, former students in the Journalism II class at Hazelwood East, brought this action for declaratory relief pursuant to 28 U.S.C. §§2201, 2202, and damages pursuant to 42 U.S.C. §§1983, 1988.1 Respondents alleged that their rights under the First and Fourteenth Amendments had been abridged by petitioners’ refusal in May 1983 to permit publication of certain articles in the Hazelwood East Spectrum, a school-sponsored newspaper produced by Hazelwood East’s Journalism II class.

On May 9, 1985, after a three-day trial to the court, the Honorable John F. Nangle, Chief Judge, United States District Court for the Eastern District of Missouri, held respondents’ First Amendment rights were not violated when petitioners prohibited publication of articles containing “personal accounts” of pregnant high school students and students’ explanations why their parents divorced. He found that petitioners reasonably acted to protect the privacy of the students and their families, to avoid the appearance of official endorsement of the sexual norms of the pregnant students, to insure fairness to the divorced parents whose actions were characterized, and to limit the school-sponsored newspaper to materials appropriate for high school age readers.

During the 1982-1983 academic year, the Hazelwood East curriculum included two journalism classes, “Journalism I” and “Journalism II.” Enrollment in Journalism II required successful completion of Journalism I. Students in Journalism I were taught the fundamentals of reporting, writing, editing, \*4 layout, publishing and journalistic ethics. This instruction continued in Journalism II, but the primary activity of Journalism II was production of Hazelwood East’s school-sponsored newspaper, Spectrum. “This activity is best described as a classroom exercise or ‘lab’ in which Journalism II students were given an opportunity to apply the knowledge and skills derived from the instruction they received.” Appendix to Petition for Writ of Certiorari (hereinafter “App.”) A-26.2 The Hazelwood School District financed Spectrum, although newspaper sales to-students defrayed approximately 25% of the costs of production during the 1982-1983 academic year. App. A-27.

The district court found that the teacher of Journalism II “both had the authority to exercise and in fact exercised a great \*5 deal of control over Spectrum,” and “was the final authority with respect to almost every aspect of the production and publication of Spectrum, including its content.” App. A-29. The teacher

selected the editor, assistant editor, layout editor and layout staff of the newspaper. He scheduled publication dates, decided the number of pages for each issue, assigned story ideas to class members, counseled students on the development of the stories, reviewed the use of quotations, edited stories, adjusted layouts, selected the letters to the editor, edited the letter to the editor, called in corrections to the printer, and sold papers from the Journalism II classroom.

Id. The teacher assigned story ideas to particular students and specified the length of the proposed articles. (Trial Transcript (hereinafter “Tr.”) 1-29, 1-80). After a draft was completed, the teacher

would review the article, make comments, and return it to the student to be rewritten or researched further. Articles commonly went through this review and revision process three (3) or four (4) times.

App. A-31. Each issue of the paper was also to be submitted to the principal for prepublication review. App. A-29 to A-30.

Members of the Journalism II class researched and wrote the two articles that prompted the instant controversy. They were to appear with other articles on pages 4 and 5 of a 6-page, May 13, 1983 issue of Spectrum. Joint Appendix (hereinafter “J.A.”) 4-5. Three articles were to run along the top half of pages 4 and 5 and share a common headline:

Pressure describes it all for today’s teenagers

Pregnancy affects many teens each year

The first article in this top group of three surveyed teenage sexuality and pregnancy, with statistics on birth control, parental \*6 attitudes, and abortion. The second article discussed a proposed “Squeal Law” that would require federally funded clinics to notify parents when a teenager sought birth control assistance.

The third article consisted of separate “personal accounts of three Hazelwood East students who became pregnant.” The introduction to the article stated that “all names have been changed to keep the identity of these girls a secret.” In each of the three accounts, the student discussed her reaction to becoming pregnant, her plans for the future, her relationship with the father, the reaction of her parents, and details of her sex life and use or non-use of birth control methods.

App. A-37.

The three articles along the bottom half of pages 4 and 5 were entitled “Teenage marriages face 75 percent divorce rate,” “Runaways and juvenile delinquents are common occurrences in large cities,” and “Divorce’s impact on kids may have lifelong effect.” The latter article

dealt with the frequency and causes of divorce, as well as the affect (sic) of divorce on children. The article contained a quote from a student who was identified only as a “Junior”, as follows:

“My dad didn’t make any money, so my mother divorced him.”

“My father was an alcoholic and he always came home drunk and my mom really couldn’t stand it any longer,” ....

A Freshman identified by name as “Diana Herbert” gave the following quote:

“My dad wasn’t spending enough time with my mom, my sister and I. He was always out of town on \*7 business or out late playing cards with the guys. My parents always argued about everything.”

“In the beginning I thought I caused the problem, but now I realized (sic) it wasn’t me,” added Diana.

Similar quotes were provided from students identified by name as Susan Kiefer and Jill Viola.

App. A-37 to A-38.

The student authors of the pregnancy profiles and “Divorce’s impact” story used questionnaires to research their articles. Each subject was told the information would be used in Spectrum. The three pregnant girls were told their names would not be used. They were not given, however, any instructions regarding parental consent, and there was no evidence such consent was obtained. The parents of the students quoted in the “Divorce’s impact” article were not “contacted to explain or rebut the quoted statements of their children.” App. A-39.

The teacher of the Journalism II class, Mr. Robert Stergos, left the school district for private industry on April 29, 1983, and the district appointed a substitute teacher, petitioner Howard Emerson, to supervise the Journalism II class’s publication of the last two issues of the year. On May 10, 1983, Mr. Emerson, pursuant to the established prepublication review procedure, submitted page proofs of the May 13 issue to the school principal, petitioner Robert Reynolds. As the district court found:

With respect to the personal accounts of three (3) Hazelwood East students who were pregnant, Mr. Reynolds was concerned that the girls had been described to the point where they could be identified by their peers. In addition, he objected to their discussion of their sexual activity.

App. A-42. As for the “Divorce’s impact” article, Reynolds objected to the use of Diana Herbert’s name and the students’ \*8 quotations about reasons for their parents’ divorces. In particular, “he thought that fairness required that her parents be notified and given an opportunity to respond.” App. A-43.

Mr. Reynolds asked Mr. Emerson what would have to be done to delete the stories in question and Mr. Emerson responded that pages 4 and 5 could be deleted and page 6 could be changed to page 4. Mr. Reynolds directed Mr. Emerson to effectuate this.

App. A-40. Reynolds’ superiors, petitioners Lawson and Huss, concurred in his decision.3

In analyzing the First Amendment issues, the district court distinguished between student speech “privately initiated and carried out independent of any school-sponsored program or activity,” such as the black armbands involved in Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969), and “student speech or conduct in the context of school-sponsored publications, activities or curricular matters.” App. A-47 to A-48. In concluding Spectrum was a nonpublic forum, the district court noted that it was produced by members of the Journalism II class as taught by a faculty member in accordance with the Hazelwood East Curriculum Guide. A textbook was used and students received academic credit and a grade. The preparation of Spectrum was largely done during class. The district court found “the most telling facts are the nature and extent of the Journalism II teacher’s control and final authority with respect to almost every aspect of producing Spectrum, as well as the control or pre-publication review exercised by Hazelwood officials in the past.” App. A-54.

\*9 Given that Spectrum was not a public forum, the district court held that school officials need demonstrate only that there was a reasonable basis for their actions. He concluded Principal Reynolds had a legitimate concern that the three girls featured in the pregnancy profiles could be identified, given the small number (8 to 10) of pregnant students at Hazelwood East and the specific information disclosed in the article. Judge Nangle also credited the judgment of Hazelwood East school authorities that this material - particularly in the context of a school-sponsored, curricular publication - was not appropriate for some high school age readers and might create the impression that the school district endorsed the sexual norms of the article’s subjects. App. A-55 to A-56.

Similarly, Reynolds had legitimate objections to the “Divorce’s impact” story because it related students’ perceptions of the reasons for their parents’ divorces without availing the parents an opportunity to object, respond or rebut these characterizations. App. A-56. As for deletion of all of pages 4 and 5, the trial court concluded that Reynolds reasonably believed that he had to make an immediate decision or no paper would be published, and that there was no time to make changes to the articles. App. A-40, A-55.

The United States Court of Appeals for the Eighth Circuit reversed. Judge Heaney, joined by Judge Arnold, held that Spectrum was a public forum “because it was intended to be and operated as a conduit for student viewpoint.” App. A-5 to A-6. Applying what it perceived to be the teaching of Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969), the court of appeals concluded that petitioners acted unconstitutionally because “the two articles objected to ... could not reasonably have been forecast to materially disrupt classwork, give rise to substantial disorder, or invade the rights of others.” App. A-2.

\*10 As for what the court of appeals characterized the “heart of this case” - the invasion of privacy concerns - it held that when the Tinker Court spoke of “invasion of the rights of others” it meant to refer only to tortious acts.

[S]chool officials are justified in limiting student speech, under this standard, only when publication of that speech could result in tort liability for the school. Any yardstick less exacting than potential tort liability could result in school officials curtailing speech at the slightest fear of disturbance.

App. A-14.

The court of appeals concluded that the pregnancy profiles and “Divorce’s impact” story were not tortious. It noted that the students quoted in the “Divorce’s impact” article had consented to publication. As for the pregnancy case study, the court of appeals observed that even if it was possible to identify the girls,

[t]he only tort action which, conceivably, could have been maintained against Hazelwood East had the pregnancy case study been published is that of invasion of privacy.... Certainly the parents of the girls could not maintain this tort against the school because the article did not expose any details of the parents’ lives, only about the students, and they fully consented. Almost as inconceivable is the prospect of the fathers maintaining this tort action. The fathers were not named in the article, thus they could only be identified by persons who previously had knowledge of the revealed facts. Thus, there would have been no disclosure. We conclude that because no tort action based on the articles could have been maintained against Hazelwood East, school officials were not justified in censoring the two articles based on the Tinker “invasion of the rights of others” test.

App. A-15.

\*11 Judge Wollman dissented. He thought the district court’s findings amply supported the conclusion that Spectrum was not a public forum. He objected “to a collective first amendment right to publish a school-sponsored, faculty-supervised newspaper with the same lack of constraints enjoyed by the commercial press or, for that matter, a solely student-sponsored, extracurricular paper totally removed from the aegis of the school.” App. A-19 to A-20.

Respondents petitioned for rehearing, calling to the court of appeals’ attention this Court’s opinion in Bethel School District No. 403 v. Fraser, 106 S.Ct. 3159 (1986), which reversed one of the principal authorities relied on by the panel. Rehearing was denied on August 27, 1983, with four judges (Ross, Fagg, Bowman and Magill) voting for rehearing en banc. App. A-21.

### FYI- Relevant Laws

Baine, JD, 86

(1987 WL 864172 (U.S.) (Appellate Brief) Supreme Court of the United States. HAZELWOOD SCHOOL DISTRICT, et al., Petitioners, v. Cathy KUHLMEIER, et al., Respondents. No. 86-836. October Term, 1986. March 30, 1987. On Writ of Certiorari To The United States Court Of Appeals For The Eighth Circuit Brief for the Petitioners Robert P. Baine, Jr., Counsel of Record, 225 South Meramec, Tenth Floor, St. Louis, Missouri 63105, (314) 862-5981, John Gianoulakis, Robert T. Haar, Kohn, Shands, Elbert, Gianoulakis & Giljum, 411 North Seventh, St. Louis, Missouri 63101, (314) 241-3963, Counsel for Petitioners)

THE CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. Amend. I:

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.

U.S. CONST. amend. XIV, §1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. §1983: Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

### 1AC

#### Contention 1: Stop the Press

#### 1. Censorship of student papers is widespread and targets even award winning students who approach political topics

Olson, Vermont State Director for the Journalism Education Association, 5-22-17

(Nancy A., http://www.reformer.com/stories/high-school-journalist-receives-national-recognition,508133)

BRATTLEBORO — Alexandre Silberman, a senior at Burlington High School and co-editor of "The BHS Register," the school's student newspaper, which has published continuously since 1898, was recently named one of six runners-up in the Journalism Education Association's High School Journalist of the Year competition. As a runner-up, Silberman receives a scholarship of $850. He also won the JEA Student Journalist Impact Award for his coverage of the 2016 contract talks, which had reached an impasse, between the Burlington school board and the teachers' union. In an email interview, Silberman shared a piece he wrote describing his coverage of those contract talks. "With the absence of local media coverage to inform the public, I decided to tackle the issue myself. Digging deep into documents and understanding the legal language of a contract and collective bargaining was not easy ... I attended countless school board meetings, reporting on the progress and providing updates in real time through social media. Many teachers and parents had young children and could not attend the meetings at night. I decided to bring in equipment and live-stream the events to increase access and promote civic participation." In mid-October, 2016, the union voted to strike, beginning on Oct. 20, if last-ditch negotiations failed. "After weeks of covering the negotiations," Silberman wrote, "I decided I would be on the frontlines for a last-ditch session. I spent close to a dozen hours camped with professional journalists outside of school district offices. When the local television reporters left I remained, providing consistent and timely updates via social media. Thousands of community members, including the mayor, tuned in to my live coverage. When the news broke that a deal had been reached, I took to Facebook Live, streaming the updates in real-time to hundreds of community members. My reporting was cited by professional news organizations, including Vermont Public Radio." JEA, with more than 2,700 members, is the largest scholastic journalism organization for teachers and advisers, according to the website. JEA provides training around the country at national conventions and institutes, offers national certification for teaching high school journalism, publishes print and online resources on the latest trends in journalism education, provides avenues for virtual discussion among teachers and communities, and mentoring to learn best practices, and monitors and defends First Amendment and scholastic press rights across the country. Silberman first heard about the Journalist of the Year competition in June 2016 at the Al Neuharth Free Spirit and Journalism Conference, a week-long all-expenses paid conference for rising high school seniors, in Washington, D. C. He looked into the details on the JEA website, and decided he was ready for the challenge. "I began by making a list of what I considered to be my best journalistic work throughout high school," he said. "I spent hours and hours building the website over Thanksgiving and Christmas break. I estimate it took me over 50-plus hours. In the end, it was worth every minute I put into it." Silberman entered his portfolio (http://alexandresilberman.weebly.com/) in the state-level contest and was pleased when he learned he was named Vermont's High School Journalist of the Year. His portfolio was then automatically entered in the national competition. Thirty-four state winners competed. At the JEA national convention in Seattle in April, Silberman was recognized as one of six runners-up. "It was such an honor to be named one of the top seven student journalists in the nation," he said. "I've poured so many hours and late nights into my work over the past few years. This was the moment where all of that hard work paid off and was recognized. It was a pretty special moment for me, and definitely the pinnacle of my high school journalism career." The four-day convention brought together over 3,800 high-school journalism students from all over the country. "I had the opportunity to attend some incredible sessions," Silberman said. "I heard from Peter Haley, a photographer with the 'Tacoma News-Tribune' about stories behind his images. I also heard from Eric Thomas, the executive director of the Kansas Scholastic Press Association, who helped advise a group of students who investigated their principal's credentials. Her degree turned out to be fabricated, and she resigned. The students made national news." On the second day of the convention, Silberman said, he had lunch with the JEA president Mark Newton and nine other students who had been selected for "Lunch with the President." "It was fascinating to learn about the great things students were doing around the country," Silberman said. "One student had created a live-sports broadcasting network. I also learned that censorship and prior review are a problem at schools around the country. One student said that a reporter for her newspaper was told by administration that she couldn't write about the women's march movement. I have had my principal personally pressure me not to run a story or image, and request specific edits to articles before publication.

#### 2. Censorship of student journalism is increasing at the worst possible time. Censorship discourages questioning authoritarianism

Schuman, PhD, 12-8-16

(Rebecca, http://www.slate.com/articles/life/education/2016/12/student\_journalists\_are\_under\_threat.html)

Well, here’s some great news to cheer you up: The American student press is under siege! Apparently, we’ve been too busy blowing gaskets over professor watch lists and “safe spaces” to recognize the actual biggest threat to free speech on college campuses today. According to a new report by the American Association of University Professors, in conjunction with three other nonpartisan free-speech advocacy organizations, a disquieting trend of administrative censorship of student-run media has been spreading quietly across the country—quietly, of course, because according to the report, those censorship efforts have so far been successful. The report finds that recent headlines out of Mount St. Mary’s University, for example, may be “just the tip of a much larger iceberg.” Indeed, “it has become disturbingly routine for student journalists and their advisers to experience overt hostility that threatens their ability to inform the campus community and, in some instances, imperils their careers or the survival of their publications.” The report chronicles more than 20 previously unreported cases of media advisers “suffering some degree of administrative pressure to control, edit, or censor student journalistic content.” Furthermore, this pressure came “from every segment of higher education and from every institutional type: public and private, four-year and two-year, religious and secular.” It gets worse. In many of the cases in the report, administration officials “threatened retaliation against students and advisers not only for coverage critical of the administration but also for otherwise frivolous coverage that the administrators believed placed the institution in an unflattering light,” including an innocuous listicle of the best places to hook up on campus. In many cases, the student publications were subject to prior review from either an adviser who reported directly to the administration or the administration itself. Prior review means getting what’s in your newspaper signed off on by someone up top before it can be published. It is—to use the parlance of my years of professional journalistic training that began with my time as features editor of the Vassar College Miscellany News in the mid-’90s—absolute bullshit. (At public universities, it’s also illegal.) First, and most obviously, this is because a free student press is a hallmark of the American higher education system, and any threat to that freedom is on its face worrying. But there’s also this: The last thing we need right now, in the creeping shadow of American authoritarianism, is an entire generation of fledgling journalists who’ve come up thinking censorship is acceptable.

#### 3. Censoring journalists is allowed by the Supreme Court according to Hazelwood V Kuhlmeier. That decision broke precedent protecting student first amendment rights

Baldridge, National Constitution Center, 1-13-17

(Maggie, https://constitutioncenter.org/blog/hazelwood-v-kulhmeier-limiting-student-free-speech/)

On January 13, 1988, the Supreme Court decided a First Amendment case that had major ramifications for the constitutional rights of students. In Hazelwood School District v. Kuhlmeier, high school students in a journalism class at Hazelwood East High School in St. Louis County, Missouri sued the school district after the journalism teacher and school principal removed two articles that they deemed inappropriate from the school-sponsored student paper, The Spectrum. The articles were about teen pregnancy, in which students who either had been or were currently pregnant were anonymously profiled; they also included an interview with a student who detailed her parents’ divorce and particularly her father’s behavior leading up to and throughout the process. The teacher and principal found the articles objectionable for a number of reasons. For one, the anonymity of the interviewed students could not be guaranteed. In addition, the principal was concerned that the article’s discussion of birth control was inappropriate for younger students, and the journalism teacher thought that the divorced father had the right to be informed of the article and to comment on it. Overall, the school believed that removing the articles was not just a matter of impropriety, but also a matter of protecting its students; it deemed the action within its right to curate a school-sponsored publication in accordance with academic standards. The school printed the May 1983 edition of The Spectrum sans the articles in question—without the knowledge of the student journalists. Dismayed by the school’s decision, three of the student journalists, including editor Cathy Kuhlmeier, pursued their case in the courts, arguing that the school had violated their First Amendment right of free speech. Twenty years before Hazelwood was decided, another student free speech case reached the Supreme Court. In Tinker v. Des Moines Independent Community School District, students were suspended for taking part in a Vietnam War protest by wearing black armbands—an action the administration had previously warned would result in punishment. With the help of the American Civil Liberties Union, the students sued the school district. In a landmark 7-2 decision, the Court ruled in favor of the students, holding that “a prohibition against expression of opinion, without any evidence that the rule is necessary to avoid substantial interference with school discipline or the rights of others, is not permissible under the First and Fourteenth Amendments.” In the majority opinion, Justice Abe Fortas argued that if the government were to allow an institution to curtail students from taking part in this form of speech, which neither disrupts nor causes harm to the school or other students, then it is “[strangling] the free mind at its source and [teaching] youth to discount important principles of [the] government as mere platitudes.” Similarly, the student journalists in the Hazelwood case, along with the ACLU, brought their case to federal district court in Missouri in the mid-1980s. The court sided with the school, ruling that it had not violated the students’ First Amendment rights because the publication was primarily meant as an educational tool. But the U.S. Court of Appeals for the Eighth Circuit reversed that decision. The Spectrum, it said, was not only “a part of the school’s adopted curriculum” but also "intended to be and operated as a conduit for student viewpoint.” The paper’s status as a “public forum” prohibited school officials from censoring the publication except when "necessary to avoid material and substantial interference with school work or discipline … or the rights of others”—an echo of the Tinker decision. In January 1987, the Supreme Court placed the case on its docket, and in October of that year, oral arguments were heard. The following January, the Court, in a landmark 5-3 decision, reversed the Eighth Circuit’s decision and ruled that the school had not violated the First Amendment. The Court decided that The Spectrum was not intended to reach the public sphere and was indeed meant for academic purposes. Because the paper was not a “forum for public expression,” the school did not have to comply with the standard set in Tinker. Thus, the school had grounds to edit and curate the school-sponsored publication as they saw fit and in line with what they saw as proper academic standards. In a dissenting opinion, Justice William Brennan shared his disappointment in the Court’s apparent decision to abandon the precedent set in Tinker. While he agreed with the majority opinion that educators have “the prerogative not to sponsor the publication of a newspaper article that is ‘ungrammatical, poorly written, inadequately researched, biased or prejudiced,’" he argued that the courts “need not abandon Tinker to reach that conclusion; [they] need only apply it.” In essence, the dissenters held that a student’s right to free speech was not curtailed the moment they passed through the “school gates” and The Spectrum was indeed a public forum protected by the First Amendment. Some argue that the Hazelwood decision has made student journalists more vulnerable to school censorship and punishment. Critics claim that Hazelwood “has essentially created scholastic journalism goals that are different from professional journalism standards.” Mark Goodman, a professor at Kent State University, said, “School officials who are not legally obligated to have the least concern about quality journalism can justify their acts of censorship independent of quality journalism concerns.” In response to these fears, some state governments have passed laws that establish greater protections for student journalists. More than 25 years after Hazelwood, for example, the Illinois state legislature passed The Speech Rights of Student Journalists Act, which went into effect in July 2016. The law was passed to protect students from what some see as the negative academic and constitutional ramifications of Hazelwood.

#### 4. The Hazelwood precedent is being used to justify widespread censorship outside of high schools.

Goodman, Director Student Press Law Center, 05

( S. Mark Goodman, Michael C. Hiestand, Student Press Law Center 2005 WL 2736314 (U.S.) (Appellate Petition, Motion and Filing) Supreme Court of the United States. Margaret L. HOSTY, Jeni S. Porche, and Steven P. Barba, Petitioners, v. Patricia CARTER, Respondent. No. 05-377. October 20, 2005. On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit Brief of Amici Curiae Student Press Law Center, Associated Collegiate Press, College Media Advisers, Community College Journalism Association, Society for Collegiate Journalists, Reporters Committee for Freedom of the Press, American Society of Newspaper Editors, National Newspaper Association, Newspaper Association of America, Society of Professional Journalists, Associated Press Managing Editors, College Newspaper Business and Advertising Managers, National Federation of Press Women, National Lesbian and Gay Journalists Association and the Independent Press Association/Campus Journalism Project in Support of Petition of Margaret L. Hosty, Jeni S. Porche, and Steven P. Barba for Writ of Certiorari Of Counsel: S. Mark Goodman, Michael C. Hiestand, Student Press Law Center, 1101 Wilson Blvd., Ste 1100, Arlington, VA 22209-2211, (703) 807-1904. Richard M. Goehler, (Counsel of Record), Frost Brown Todd LLC, 2200 PNC Center, 201 East Fifth Street, Cincinnati, Ohio 45202, (513) 651-6800, Counsel for Amici Curiae.)

In contrast to many high school censorship incidents, public college administrators today are less likely to be successful in their efforts to restrict the student press. This is usually (and perhaps only) because of the First Amendment protections that courts have consistently accorded college journalists. That circumstance would surely change were Hazelwood extended to limit the rights of college student journalists. Among some of the stories in college student publications that could be subject to censorship under the Hazelwood standard: • An opinion piece opposing an upcoming referendum that would have provided the college with revenue collected from property taxes. University officials, claiming the paper contained typographical and grammatical errors, confiscated and destroyed 10,000 copies of the paper. After students threatened legal action, the school agreed to reprint the newspaper.14 • An article detailing the incoming university president’s expenditure of state funds, including more than $100,000 spent to remodel the president’s home and pay for \*17 his inauguration. Following publication, the president transferred the newspaper’s adviser to another position at the school, an act that generated considerable public attention. The president later resigned after being questioned by state legislators regarding the spending that had been reported in the student newspaper. The adviser was remstated.15 • A yearbook story reporting that members of the school’s volleyball team were removed for bringing alcohol on a team trip and a feature spread on sex and relationships. Following publication, the yearbook editor lost his job. After the editor sued, the school agreed to a settlement in which it paid the editor $10,000 and agreed to a publications policy that prohibited administrative interference with the content of student publications.16 • An editorial cartoon, featuring cartoon figures as university officials, commenting on a U.S. Department of Education report that found the school had misused public funds when it paid for a trip to Disney World by students and school officials. One of those portrayed, the vice president of student affairs, temporarily halted printing of the issue - but released them after students objected.17 If Hazelwood is allowed to determine the level of First Amendment protection to which America’s college student media are entitled, there is no doubt university administrators are poised to take advantage of their new \*18 censorship powers. Word has already begun to spread that the standard “hands-off student media” policies recognized by college officials in the past may no longer be required. In California, for example - 2,000 miles west of the Governors State University campus and far beyond the jurisdiction of the Seventh Circuit - administrators at California State University system schools received a memo from the system’s legal counsel on June 30, 2005 - ten days after the Seventh Circuit handed down its decision - informing them that “[Hosty] appears to signal that CSU campuses may have more latitude than previously believed to censor the content of subsidized student newspapers….”18 Extending Hazelwood to the university setting is a recipe for encouraging censorship that would dramatically hinder the production of good journalism and the training of good journalists. Amici do not believe this Court intended the censorship of college and university student newspapers to be the legacy of Hazelwood.

#### 5. Schools are the most important site of first amendment activity- ignore negative evidence written about other contexts

Goodman, Director Student Press Law Center, 05

( S. Mark Goodman, Michael C. Hiestand, Student Press Law Center 2005 WL 2736314 (U.S.) (Appellate Petition, Motion and Filing) Supreme Court of the United States. Margaret L. HOSTY, Jeni S. Porche, and Steven P. Barba, Petitioners, v. Patricia CARTER, Respondent. No. 05-377. October 20, 2005. On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit Brief of Amici Curiae Student Press Law Center, Associated Collegiate Press, College Media Advisers, Community College Journalism Association, Society for Collegiate Journalists, Reporters Committee for Freedom of the Press, American Society of Newspaper Editors, National Newspaper Association, Newspaper Association of America, Society of Professional Journalists, Associated Press Managing Editors, College Newspaper Business and Advertising Managers, National Federation of Press Women, National Lesbian and Gay Journalists Association and the Independent Press Association/Campus Journalism Project in Support of Petition of Margaret L. Hosty, Jeni S. Porche, and Steven P. Barba for Writ of Certiorari Of Counsel: S. Mark Goodman, Michael C. Hiestand, Student Press Law Center, 1101 Wilson Blvd., Ste 1100, Arlington, VA 22209-2211, (703) 807-1904. Richard M. Goehler, (Counsel of Record), Frost Brown Todd LLC, 2200 PNC Center, 201 East Fifth Street, Cincinnati, Ohio 45202, (513) 651-6800, Counsel for Amici Curiae.)

The University is the paradigmatic “marketplace of ideas,” rendering “the vigilant protection of constitutional freedoms…nowhere more vital than in the community of American schools.” Healy v. James, 408 U.S. 169, 180 (1972) (citation omitted). This Court has specifically recognized there is “no doubt that the First Amendment rights of speech and association extend to the campuses of state universities.” Widmar v. Vincent, 454 U.S. 263, 268-69. This Court’s restrictive First Amendment standard in Hazelwood sprung from the premise that the special circumstances of the secondary and elementary school environment permit school authorities to exercise more control over school-sponsored student expression than the First Amendment would otherwise permit. However, the judicial deference necessary in the high school setting and below - and in the factual context of Hazelwood - is inappropriate for a university setting. A high school is an entirely different environment from a university. This Court acknowledged such a difference when it explicitly reserved the question of whether the same level of deference to school officials expressed in Hazelwood would be “appropriate with respect to school-sponsored expressive activity at the college and university level.” Hazelwood, Id. at 273, n.7. In fact, every effort to justify censorship of college student media under Hazelwood has been rejected by the lower courts except by the Seventh Circuit in Hosty. As Justice Souter has noted, the “cases dealing with the right of teaching institutions to limit expressive freedom of students have been \*8 confined to high schools, whose students and their school’s relation to them are different and at least arguably distinguishable from their counterparts in college education.” Board of Regents of the Univ. of Wisconsin System v. Southworth, 529 U.S. 217 (2000) (Sourer, J., concurring in the judgment) (citations omitted). This Court has explicitly recognized that where the “vital” principles of the First Amendment are at stake, “the first danger to liberty lies in granting the State the power to examine publications to determine whether or not they are based on some ultimate idea and, if so, for the State to classify them. The second, and corollary, danger to speech is from the chilling of individual thought and expression.” Rosenberger v. Rectors and Visitors of the University of Virginia, 515 U.S. 819, 835-36 (1995). These dangers are especially threatening in the university setting, where “[t]he quality and creative power of student intellectual life to this day remains a vital measure of a school’s influence and attainment.” Id. Yet that right to review and censor a student publication is precisely what the Seventh Circuit has approved in Hosty. Such restrictions have no place at a public college or university. “For the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation’s intellectual life.” Id. Lower courts have consistently struck down administrative attempts to limit free and robust student expression at the postsecondary level. Joyner v. Whiting, 477 F.2d 456 (4th Cir. 1973) (university withdrawal of funding to student publication at North Carolina State University based on editorial condemning integration rejected); Stanley v. Magrath, 719 F.2d 279 (8th Cir. 1983) (attempt by \*9 University of Minnesota to change student newspaper funding mechanism after publication of controversial humor issue rejected); Bazaar v. Fortune, 476 F.2d 570 (5th Cir. 1973), aff’d with modification, 489 F.2d 255 (en banc per curiam) (University of Mississippi’s censorship of student magazine because of “coarse language” and story about interracial love affair rejected). In fact, two appellate courts have explicitly refused to apply Hazelwood to college student media. Student Government Association v. Board of Trustees of the University of Massachusetts, 868 F. 2d 473, 480 n. 6 (1st Cir. 1989); Kincaid v. Gibson, 236 F.3d 342, 346 n. 4-5 (6th Cir. 2001) (en banc). College student expression should be subject to no greater restrictions than those applicable to the public at large. Healy, 408 U.S. at 180. The driving force prompting the enactment of the First Amendment was the founders’ unwavering commitment to the freedom of the mind. Nowhere is the mind more provoked, more nurtured, more challenged to new levels of enlightenment than on the university campus. Hazelwood did not, and should not be interpreted to have taken these fundamental precepts of college education into account when it diluted high school students’ First Amendment rights. Nothing in Hazelwood or its progeny should be read to alter the venerated balance favoring free and independent thought on America’s college and university campuses.

#### 6. Campus free speech is vital to civilization-it’s the engine that drives innovation and progress

Lukianoff, JD Stanford, 05

(George, Samantha Harris, Foundation for Individual, Rights in Education, 2005 WL 2736313 (U.S.) (Appellate Petition, Motion and Filing) Supreme Court of the United States. Margaret L. HOSTY et al., Petitioners, v. Patricia CARTER, Respondent. No. 05-377. October 19, 2005. On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit Brief Amici Curiae of the Foundation for Individual Rights in Education; The Coalition for Student & Academic Rights; Feminists for Free Expression; The First Amendment Project; Ifeminists.Net; National Association of Scholars; Accuracy in Academia; Leadership Institute; The Individual Rights Foundation; The American Council of Trustees and Alumni; and Students for Academic Freedom in Support of Petitioners)

This Court has long emphasized and understood the importance of free and open expression on campus: The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation … Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die. Sweezy v. New Hampshire, 354 U.S. 234, 250 (1957). \*6 In the nearly fifty years since Sweezy, this Court and lower courts have repeatedly reaffirmed the special importance of robust free expression in higher education.3 In Healy v. James, 408 U.S. 169 (1972), this Court made clear that students are an important part of the collegiate marketplace of ideas when it ruled that a college, acting “as the instrumentality of the State, may not restrict speech … simply because it finds the views expressed by any group to be abhorrent.” Healy at 187-88. See also Papish v. Bd. of Curators of the Univ. of Mo., 410 U.S. 667, 670 (1973) (“the mere dissemination of ideas - no matter how offensive to good taste - on a state university campus may not be shut off in the name alone of ‘conventions of decency.’ ”).

#### Thus the plan: The United States federal government should regulate the ability of elementary or secondary schools to censor student journalists by overturning Hazelwood V. Kuhlmeier

#### Or

#### Thus the plan: The United States federal government should regulate the ability of elementary or secondary schools to censor student journalists by enacting national legislation protecting the rights of student journalists and advisors

#### Contention 3: Let them Talk

#### 1. Hazelwood must be overturned, minor modifications to the doctrine won’t prevent censorship

Journal of Law & Education 2000

(Scott Andrew Felder, JD Candidate, Copyright (c) 2000 Jefferson Law Book Company, Division of Anderson Publishing Co. Journal of Law & Education October, 2000 29 J.L. & Educ. 433 Stop the Presses: Censorship and the High School Journalist)

One judicial solution, narrow interpretation of Hazelwood, has already been briefly noted. As mentioned above, most courts that end up striking down censorship do so by narrowly defining "school-sponsored" so as to exclude the particular student speech at issue. One such court discussed at length the undesirability of restrictions on free speech, even in the admittedly different environment of a public high school, and refused to apply Hazelwood to different facts. In the judge's opinion, the Supreme Court's decision in Board of Education v. Pico, n189 which distinguished between books removed from a school library (books the student could voluntarily choose to read) and those not selected as part of the school's curriculum (books the student would otherwise be compelled to read), provided adequate support for the decision to differentiate between curricular (containing mandatory statements) and extracurricular (containing voluntary statements) student publications. n190 Similar logic was used to conclude that school funding is not dispositive to the school-sponsored analysis. n191 While this sort of approach may work, the mine run of cases applying Hazelwood read it as broadly as possible in deference to local school officials. n192 A more novel approach is the content-specific analysis proposed by Wilborn that, like Hazelwood, divides student speech into three categories. n193 The first category, political speech, would be governed by Tinker. n194 Scholastic speech would be analyzed under the Central Hudson Gas & Electric Corp. v. Public Services Commission n195 commercial speech test. n196 The final category of speech, obscene and indecent speech, would be judged under Fraser and Hazelwood. n197 This approach, unique though it may be, is not entirely content-based and presents a set of problems all its own. Scholastic speech, defined by Wilborn as "speech that is school-sponsored or that occurs during a school program that a reasonable student or member of the community might reasonably attribute (at least in part) to the school[,]" n198 is a context-based category. This reopens the door for school officials to censor more types of student speech simply by classifying it as scholastic, obscene, or indecent. Though the Central Hudson test would be more protective of the students than the Hazelwood test, as the interest must be substantial rather than just legitimate, the relationship between means and ends must be direct rather than reasonable, and the regulation must be no more extensive than necessary. n199 Moreover, nothing suggests that courts would be any less deferential to these categorizations than they are to school officials' decisions under Hazelwood. Wilborn maintains that this possibility of characterization and increased censorship in individual cases is more than offset by the increased protection afforded student speech by applying the Central Hudson and Tinker tests to all but obscene and indecent speech. n200 Helping Yourself All is not lost in states where a broad interpretation of Hazelwood survives. Some state departments of education have promulgated regulations that protect student expression more broadly than Hazelwood. n201 In addition, self-help is always an option. Students can go to the mainstream press, as the Parkway West students did, or to the Bolt Reporter, n202 an online forum for students to publish censored works and discuss school censorship. Finally, students can also engage in Tinker speech to the same effect of the speech that was censored under Hazelwood. Hazelwood provides school officials with virtually plenary authority to censor student speech. Since courts will be very deferential in reviewing the asserted legitimate pedagogical concern implicated by a particular restriction, it is unlikely that censorship will be overturned under the Hazelwood standard. This ultimately boils down to giving school officials the right to act as thought police, prohibiting that speech they do not agree with because they do not agree with it. If the purpose of high school is to prepare students for college and the world beyond, the schools could better serve their mission by allowing students to exercise their First Amendment freedoms; censorship teaches students only that their constitutional protections of free speech are different from everyone else's. Justice Brennan said it best: "The young men and women of Hazelwood East expected a civics lesson, but not the one the Court teaches them today." n203 The Court used to agree with him, n204 and it is unfortunate for the students that it does not do so any longer.

#### 2. Overturning Hazelwood is key to restore the doctrine of “value neutrality”, the bedrock of the first amendment. The Tinker “disruption” standard allows adequate flexibility for schools to deal with harmful speech in a pedagogical, rather than censorious, manner.

Tobin, M.Phil @Cambridge, 04

(Susannah Barton, Harvard JD Candidate, Divining Hazelwood: The Need for a Viewpoint Neutrality Requirement in School Speech Cases Harvard Civil Rights-Civil Liberties Law Review [Vol. 39 2004])

When the Supreme Court first handed down Hazelwood, supporters of free speech rights were dismayed because the holding restricted the rights of students and others to express themselves in school-sponsored fora. The holding of Tinker nineteen years earlier had appeared sufficient to allow administrators the necessary control over student speech that was disruptive to the school environment, and the extensions of administrator control found in Fraser and Hazelwood seemed to be unnecessary limitations on student rights. As Hazelwood began to be applied, its ramifi- cations regarding viewpoint discrimination became increasingly clear, rendering a troublesome decision even more harmful. The denial of certiorari in Fleming indicates that it will likely be some time before the Supreme Court hears a case which seeks to clarify the circuit split regarding Hazelwood and viewpoint discrimination. Judging from the evidence of the questions asked at oral argument and the language of both the majority and dissenting opinions, it seems possible that the Hazelwood Court intended to abandon the requirement of viewpoint neutrality that it held so sacred in its other free speech jurisprudence. It is also possible, however, that the absence of an explicit rejection of viewpoint neutrality in the context of school-sponsored speech indicates a reluctance on the part of some members of the majority to articulate such a serious departure from precedent. When and if the Court does take up a case addressing this question, the justices should explicitly prohibit viewpoint discrimination in schools. Further, the Court should try to make a statement about the distinction between content and viewpoint discrimination in order to give courts and, for that matter, local school officials guidance as they go forward. The complexity of the situation is not a reason to encourage ambiguity. One useful distinction that could be made is between viewpoint discrimination regarding religious speech in a school setting that potentially implicates the Establishment Clause and therefore an additional line of constitutional inquiry, and viewpoint discrimination of non-religious speech, which should be strictly forbidden. While the holdings in Rosenberger and Lamb’s Chapel indicate that religious speech can be considered a viewpoint for purposes of viewpoint neutrality analysis, those cases did not involve in-school speech activities, like the candy cane distribution in Westfield, that might be seen as proselytizing approved by a government entity. The explicit requirement of viewpoint neutrality in schools might raise concerns about the ability of schools to promote legitimate pedagogical objectives, but those concerns can be addressed even in an environment of viewpoint neutrality. One priority of school officials is the creation of a safe and productive learning environment for students. The Tinker disruption standard, still in place, would allow officials to limit speech that threatens the security of students. Equally important priorities include the inculcation of civic values and transmission of curricular subject matter. To the extent that controversial speech interferes with those objectives, teachers and administrators should take the opportunity to engage students in dialogue and consider each controversy a “teachable moment.” There is no doubt that public school teachers are overworked and underpaid, and such a prescription for more dialogue and less speech suppression may seem unrealistic given their already heavy burdens. But speech suppression directly contradicts the public school system’s mission to produce well-educated citizens able to participate in democracy. Any adjustments made in favor of more dialogue and speech protection will be worth the effort and will ultimately result in a more productive school environment. Last spring, a student newspaper editor at a North Carolina high school was forced to censor an article on high school drinking rather than face the other option her principal gave her: no publication of the paper at all.256 The principal required the editor to eliminate references to specific students who had been suspended for drinking during a school trip on the grounds that the publication of the anecdotes would embarrass those students.257 The principal, Bill Anderson, explained his decision, saying, “One of the responsibilities of a high school principal is to edit the content of a school-sponsored newspaper to insure that all writings are appropriate for students at different developmental levels.”258 But the student editor, Sara Boatright, noted that Anderson had not previously censored references to inappropriate student activity, having allowed the paper to run references to students in a fight and to arson suspects.259 At the time of this writing, the principal at Lynn English High School in Massachusetts prevented an English teacher (who had received permission from the department chair) from screening the Academy Award– winning ªlm Bowling for Columbine on the grounds that it allegedly contained anti-war messages.260 The ACLU of Massachusetts issued a press release suggesting that such action might violate the First Amendment, as a viewpoint-based decision, because it did not involve a “legitimate pedagogical concern” under Hazelwood. 261 The kind of choice Sara Boatright faced—self-censorship or no publication at all—and the censorship of a noted film by school officials in Lynn are exactly what student journalists and others who have experienced or witnessed censorship will remember about the kind of civic values taught to them in public school. The inculcation of moral and democratic values which the public education system was created to promote demands a more rigorous protection of First Amendment rights for student journalists, students, and community members in general than that which the Court gave us in Hazelwood and that which too many circuit courts have given us in the subsequent fifteen years. The world undoubtedly has changed after September 11, but what should not have changed is our recognition of the wisdom of the Founding Fathers when they expressly protected the freedom of speech. Despite the temptation to silence dissent in a time of tension and violence, the Court has a chance to clarify and extend the freedoms of students and others in school settings. It should not hesitate to take that opportunity to inculcate the values of democracy in the country’s young citizens.

#### 3. The marketplace if ideas is crucial to development of moral reasoning. Speech restrictions should be rejected on face

Dwyer, PhD, 01

(Susan, Phil@Maryland, Nordic Journal of Philosophy, Vol. 2, No. 2 ® Philosophia Press 2001)

*Direct Nonconsequentialism* Let us return to the central topic: free speech. From the perspective just sketched, the value of a marketplace of ideas – that notion so central to the consequentialist justification of free speech – lies not so much in its long-term all-things-considered good consequences (the avoidance of dogmatism, democracy, truth, etc.) Rather, **free speech is seen as a necessary condition for the realization of *any* human goods. Constraints on inquiry and expression are constraints on humanity itself**. Echoing this thought, Nagel (1995) writes: That the expression of what one thinks and feels should be overwhelmingly one's own business, subject to restriction only when clearly necessary to prevent serious harm distinct from the expression itself, is a condition of being an independent thinking being. It is a form of moral recognition that you have a mind of your own: even if you never *want* to say anything to which others would object, the idea that they *could* stop you if they did object is in itself a **violation of your integrity** (96). A simple yet powerful fact both explains why **speech is valuable in and of itself** and justifies its stringent protection: **when speech is threatened, *we* are threatened**. Direct nonconsequentialism stands in stark contrast to consequentialist approaches which, as we have seen, make the value of speech contingent on its effects. And unlike indirect nonconsequentialism, it makes our status as language users, not our autonomy, the ground for limiting the state's attempts to interfere with our liberty. To repeat: direct nonconsequentialism asserts that speech is valuable because linguistic capacities are the expression of the essence of creatures (us) to whom we attribute the highest moral status. The way in which the direct nonconsequentialist makes explicit what is special about speech helps to make sense of a commonly experienced wariness regarding restrictions on speech we hate. We worry equally when the state seeks to prohibit the speech of sexists or Flat-Earthers. The consequentialist thinks this reaction is explained by attributing to us the belief that any state restriction of speech is the thin end of a wedge: we are discomforted by the thought of the muzzled sexist or Flat-Earther because we think our speech may be next. This may well be the right account of human psychology in these matters. But it is hardly an explanation of the prima facie wrongness of restrictions on lunatics' and sexists’ speech. Our discomfort is a *moral* discomfort. In bringing out the idea that speech is the expression of our essence, the direct nonconsequentialist is able to capture the true nature of our reaction to state restrictions on others' speech we do not particularly care for. Direct nonconsequentialism also gives substance to a powerful idea that some influential critics – notably, Catharine Mackinnon (1987) – find hopelessly abstract. This is the thought that “[e**]very time you strengthen free speech in one place, you strengthen it everywhere** (164).” And seeing how direct nonconsequentialism does so will help illustrate some of the practical implications of this strategy for justifying free speech. Proponents of legislation designed to restrict or prohibit problematic speech and courts that rule on the constitutionality of such legislation, **often reason in terms of how** **free speech interests are to be balanced** with other interests. For example, proponents of speech codes argue that racist speech harms minorities’ interests in social and political equality; and in the United States, the constitutionality of restrictions on ‘fighting words’ is defended in light of the state’s interests in maintaining law and order. These arguments imply that the expressive rights of *individual* racists and troublemakers may sometimes be infringed in order to promote the good of some *collective*. But as the history of free speech debates reveal, once we admit that collective interests can trump individual rights, it is extremely difficult consistently to maintain the belief that a right to free speech imposes severe limits on what the state may do. The direct nonconsequentialist justification of free speech avoids this particular difficulty. Recall, we are working within the context of constitutional provisions – that is, we are thinking about rationales for stringent protections of speech, where these are understood as mechanisms for keeping the government out of some aspect of our lives. In this sense, such provisions express rights had by individuals against the state. But the direct nonconsequentialist’s account of the basis of these rights suggests that it is a mistake to think of them as radically individualistic. True, each of us has a right to free speech, but we have that right in virtue of our membership in a collective – the species *H. sapiens* – where every member has the same right for the same reason. Thus, in stressing that a universal feature of the species – language mastery – grounds protections on speech, the direct nonconsequentialist **avoids individualizing the right to free speech in a way that makes it perpetually vulnerable to the assertion of some collective good**. If we think of a person’s right to free speech as protecting just one aspect of his **liberty among others, we run the risk of obscuring what is morally relevant about speech.** The hatemonger and the pornographer each have a right to free speech, but this is not to be understood in terms of their being free to act on contingent desires they have. My occurrent desire to eat ice-cream holds no weight in the big scheme of things; even I would concede that it is permissible for the state to thwart my satisfying this desire, if doing so meant promoting some very important collective good. But speech is different. It is worthy of protection not because people want to say certain things, but (to repeat) because speech expresses our very nature. *What* someone wants to say is neither here nor there. Thus, in decoupling the value of free speech from individual desires, direct nonconsequentialism gives content to the idea that when we strengthen (protect) free speech in one place, we strengthen (protect) it everywhere.

#### 4. Censorship is a pre-requisite to large scale violence. Dissent must be silenced before war and genocide become possible

D’Souza, PhD Phil @Oxford, 96

(Frances, Prof. Anthropology Oxford, http://www.europarl.europa.eu/hearings/19960425/droi/freedom\_en.htm?textMode=on)

In the absence of freedom of expression which includes a free and independent media, it is impossible to protect other rights, including the right to life. Once governments are able to draw a cloak of secrecy over their actions and to remain unaccountable for their actions then massive human rights violations can, and do, take place. For this reason alone the right to freedom of expression, specifically protected in the major international human rights treaties, must be considered to be a primary right. It is significant that one of the first indications of a government's intention to depart from democratic principles is the ever increasing control of information by means of gagging the media, and preventing the freeflow of information from abroad. At one end of the spectrum there are supposedly minor infringements of this fundamental right which occur daily in Western democracies and would include abuse of national security laws to prevent the publication of information which might be embarrassing to a given government: at the other end of the scale are the regimes of terror which employ the most brutal moves to suppress opposition, information and even the freedom to exercise religious beliefs. It has been argued, and will undoubtedly be discussed at this Hearing, that in the absence of free speech and an independent media, it is relatively easy for governments to capture, as it were, the media and to fashion them into instruments of propaganda, for the promotion of ethnic conflict, war and genocide. 2. Enshrining the right to freedom of expression The right to freedom of expression is formally protected in the major international treaties including the United Nations Universal Declaration of Human Rights, Article 19 of the International Covenant on Civil and Political Rights, Article 10 of the European Convention on Human Rights. In addition, it is enshrined in many national constitutions throughout the world, although this does not always guarantee its protection. Furthermore, freedom of expression is, amongst other human rights, upheld, even for those countries which are not signatories to the above international treaties through the concept of customary law which essentially requires that all states respect the human rights set out in the Universal Declaration of Human Rights by virtue of the widespread or customary respect which has been built up in the post World War II years. 3. Is free speech absolute? While it is generally accepted that freedom of expression is, and remains the cornerstone of democracy, there are permitted restrictions encoded within the international treaties which in turn allow for a degree of interpretation of how free free speech should be. Thus, unlike the American First Amendment Rights which allow few, if any, checks on free speech or on the independence of the media, the international treaties are concerned that there should be a balance between competing rights: for example, limiting free speech or media freedom where it impinges on the individual's right to privacy; where free speech causes insult or injury to the rights and reputation of another; where speech is construed as incitement to violence or hatred, or where free speech would create a public disturbance. Given that these permitted restrictions are necessarily broad, the limits of free speech are consistently tested in national law courts and, perhaps even more importantly, in the regional courts such as the European Commission and Court of Human Rights. In recent years several landmark cases have helped to define more closely what restrictions may be imposed by government and under what circumstances. In particular, it has been emphasised by the European Court that any restriction must comply with a three-part test which requires that any such restriction should first of all be prescribed by law, and thus not arbitrarily imposed: proportionate to the legitimate aims pursued, and demonstrably necessary in a democratic society in order to protect the individual and/or the state. 4. Who censors what? Despite the rather strict rules which apply to restrictions on free speech that governments may wish to impose, many justifications are nevertheless sought by governments to suppress information which is inimical to their policies or their interests. These justifications include arguments in defence of national and/or state security, the public interst, including the need to protect public morals and public order and perfectly understandable attempts to prevent racism, violence, sexism, religious intolerance and damage to the indi-vidual's reputation or privacy. The mechanisms employed by governments to restrict the freeflow of information are almost endless and range from subtle economic pressures and devious methods of undermining political opponents and the independent media to the enactment of restrictive press laws and an insist-ence on licensing journalists and eventually to the illegal detention, torture and disappearances of journalists and others associated with the expression of independent views. 5. Examples of censorship To some the right to free speech may appear to be one of the fringe human rights, especially when compared to such violations as torture and extra-judicial killings. It is also sometimes difficult to dissuade the general public that censorship, generally assumed to be something to do with banning obscene books or magazines, is no bad thing! It requires a recognition of some of the fundamental principles of democracy to understand why censorship is so immensely dangerous. The conditon of democracy is that people are able to make choices about a wide variety of issues which affect their lives, including what they wish to see, read, hear or discuss. While this may seem a somewhat luxurious distinction preoccupying, perhaps, wealthy Western democracies, it is a comparatively short distance between government censorship of an offensive book to the silencing of political dissidents. And the distance between such silencing and the use of violence to suppress a growing political philosophy which a government finds inconvenient is even shorter. Censorship tends to have small beginnings and to grow rapidly. Allowing a government to have the power to deny people information, however trivial, not only sets in place laws and procedures which can and will be used by those in authority against those with less authority, but it also denies people the information which they must have in order to monitor their governments actions and to ensure accountability. There have been dramatic and terrible examples of the role that censorship has played in international politics in the last few years: to name but a few, the extent to which the media in the republics of former Yugoslavia were manipulated by government for purposes of propaganda; the violent role played by the government associated radio in Rwanda which incited citizens to kill each other in the name of ethnic purity and the continuing threat of murder issued by the Islamic Republic of Iran against a citizen of another country for having written a book which displeased them. 6. The link between poverty, war and denial of free speech There are undoubted connections between access to information, or rather the lack of it, and war, as indeed there are between poverty, the right to freedom of expression and development. One can argue that democracy aims to increase participation in political and other decision-making at all levels. In this sense democracy empowers people. The poor are denied access to information on decisions which deeply affect their lives, are thus powerless and have no voice; the poor are not able to have influence over their own lives, let alone other aspect of society. Because of this essential powerlessness, the poor are unable to influence the ruling elite in whose interests it may be to initiate conflict and wars in order to consolidate their own power and position. Of the 126 developing countries listed in the 1993 Human Development Report, war was ongoing in 30 countries and severe civil conflict in a further 33 countries. Of the total 63 countries in conflict, 55 are towards the bottom scale of the human development index which is an indicator of poverty. There seems to be no doubt that there is a clear association between poverty and war. It is reasonably safe to assume that the vast majority of people do not ever welcome war. They are normally coerced, more often than not by propaganda, into fear, extreme nationalist sentiments and war by their governments. If the majority of people had a democratic voice they would undoubtedly object to war. But voices are silenced. Thus, the freedom to express one's views and to challenge government decisions and to insist upon political rather than violent solutions, are necessary aspects of democracy which can, and do, avert war. Government sponsored propaganda in Rwanda, as in former Yugoslavia, succeeded because there weren't the means to challenge it. One has therefore to conclude that it is impossible for a particular government to wage war in the absence of a compliant media willing to indulge in government propaganda. This is because the government needs civilians to fight wars for them and also because the media is needed to re-inforce government policies and intentions at every turn.

#### 5. Problematic speech should be approached through a lens of epistemic humility

Dalmia, PhD, 9-22-16

(Shikha, Senior Analyst/Award winning Journalist http://reason.com/blog/2016/09/22/debating-nyus-jeremy-waldron-on-free-spe)

One: Hate speech bans make us impatient and dogmatic The main reason that libertarians like me are partisans of free speech is not because we believe that a moral laissez faire, anything goes attitude, is in itself a good thing for society. Rather, it stems from an epistemic humility that we can't always know what is good or bad a priori – through a feat of pure Kantian moral reasoning. Moral principles, as much as scientific ones, have to be discovered and developed and the way to do so is by letting competing notions of morality duke it out in what John Stuart Mill called the marketplace of ideas. Ideas that win do so by harmonizing people's overt moral beliefs with their deeper moral intuitions or, as Jonathan Rauch notes, by providing a "moral education." This is how Mahatma Gandhi, Martin Luther King and Frank Kamney, the gay rights pioneer, managed to open society's eyes to its injustices even though what they were suggesting was so radical for their times. But this takes time. With free speech, societies have to play the long game. It takes time to change hearts and minds and one can't be certain that one's ideas will win out in the end. One has to be willing to lose. The fruits of censorship -- winning by rigging the rules and silencing the other side -- seem immediate and certain. But they unleash forces of thought control and dogmatism and repression and intolerance that are hard to contain, precisely what we are seeing right now on campuses.

## Case Extensions

### Inherency- Censorship Widespread

#### Censorship of student journalism is increasing at the worst possible time

Schuman, PhD, 12-8-16

(Rebecca, http://www.slate.com/articles/life/education/2016/12/student\_journalists\_are\_under\_threat.html)

Well, here’s some great news to cheer you up: The American student press is under siege! Apparently, we’ve been too busy blowing gaskets over professor watch lists and “safe spaces” to recognize the actual biggest threat to free speech on college campuses today. According to a new report by the American Association of University Professors, in conjunction with three other nonpartisan free-speech advocacy organizations, a disquieting trend of administrative censorship of student-run media has been spreading quietly across the country—quietly, of course, because according to the report, those censorship efforts have so far been successful. The report finds that recent headlines out of Mount St. Mary’s University, for example, may be “just the tip of a much larger iceberg.” Indeed, “it has become disturbingly routine for student journalists and their advisers to experience overt hostility that threatens their ability to inform the campus community and, in some instances, imperils their careers or the survival of their publications.” The report chronicles more than 20 previously unreported cases of media advisers “suffering some degree of administrative pressure to control, edit, or censor student journalistic content.” Furthermore, this pressure came “from every segment of higher education and from every institutional type: public and private, four-year and two-year, religious and secular.” It gets worse. In many of the cases in the report, administration officials “threatened retaliation against students and advisers not only for coverage critical of the administration but also for otherwise frivolous coverage that the administrators believed placed the institution in an unflattering light,” including an innocuous listicle of the best places to hook up on campus. In many cases, the student publications were subject to prior review from either an adviser who reported directly to the administration or the administration itself. Prior review means getting what’s in your newspaper signed off on by someone up top before it can be published. It is—to use the parlance of my years of professional journalistic training that began with my time as features editor of the Vassar College Miscellany News in the mid-’90s—absolute bullshit. (At public universities, it’s also illegal.) First, and most obviously, this is because a free student press is a hallmark of the American higher education system, and any threat to that freedom is on its face worrying. But there’s also this: The last thing we need right now, in the creeping shadow of American authoritarianism, is an entire generation of fledgling journalists who’ve come up thinking censorship is acceptable.

#### Censorship of critical journalism is widespread- faculty are told prior restraint is a requirement of the job

Joint Statement of the AAUP et al., Dec 16

(A committee composed of representatives from the American Association of University Professors, the College Media Association, the National Coalition Against Censorship, and the Student Press Law Center formulated this joint statement in fall 2016. The document received the endorsement of all four sponsoring organizations. https://s3.amazonaws.com/media.spl/1398\_jointstatement\_aaupbulletin\_studentmedia\_finalo.pdf)

The movement also shone light on the status of student journalists and their faculty and staff advisers, as demonstrated by an incident involving a faculty member and a student videographer at the University of Missouri and by one involving the student newspaper at Wesleyan University.1 While unusual for the attention they garnered, these incidents were by no means unique or even rare. It has become disturbingly routine for student journalists and their advisers to experience overt hostility that threatens their ability to inform the campus community and, in some instances, imperils their careers or the survival of their publications, as the sampling of cases discussed in this report demonstrates. Administrative efforts to subordinate campus journalism to public relations are inconsistent with the mission of higher education to provide a space for intellectual exploration and debate. But publicly reported cases may just be the tip of a much larger iceberg. A March 2016 survey of college and university media advisers affiliated with the College Media Association revealed that over a threeyear period more than twenty media advisers who had not previously shared their stories reported suffering some degree of administrative pressure to control, edit, or censor student journalistic content. This pressure was reported from every segment of higher education and from every institutional type: public and private, four-year and two-year, religious and secular. None of the cases has been made public, in most instances because the advisers feared for their jobs, regardless of whether the adviser was a staff or faculty member and regardless of his or her tenure status. In many cases, college and university officials threatened retaliation against students and advisers not only for coverage critical of the administration but also for otherwise frivolous coverage that the administrators believed placed the institution in an unflattering light. For example, administrators at one four-year public university demanded that the adviser begin conducting prepublication review after the newspaper published a story about the “top ten places to hook up on campus.” And it is not only administrators who apply this pressure. In the 2016 survey, one media adviser reported that a representative of graduate student government threatened to cut the newspaper’s funding if the newspaper did not cover more graduate student events. In some cases, advisers were told that conducting “prior review”—turning the adviser into a gatekeeper with the ability to overrule the editors’ judgments—was a requirement of employment.

\*\*”the movement” is referencing on campus BLM protests

### Journalism Suppression High

#### Most qualified sources agree- widespread journalistic censorship at colleges now

LoMonte, SPLC Exec. Director, 12-1-06

(Frank D., http://www.splc.org/article/2016/12/college-media-threats-report-2016)

The American Association of University Professors (AAUP), the Student Press Law Center (SPLC), the College Media Association (CMA) and the National Coalition Against Censorship (NCAC) Thursday jointly released a report, "Threats to the Independence of Student Media," calling on the nation's colleges to address the problems of censorship, retaliation and excessive secrecy that imperil the independent news coverage essential for civically healthy campuses. The report cites multiple cases in which college and university administrations exerted pressure in attempts to control, edit, or censor student journalistic content. This pressure has been reported in every segment of higher education and every institutional type: public and private, four-year and two-year, religious and secular.

### Journalists Key

Experience-college censorship hurts recruitment for future journalists. Censorship means students won’t participate, won’t learn they are accountable for what they report, and fail to learn the adversarial relationship crucial the function of the fourth estate

Long, JD Yale, 05

(Robert A., Law @Georgetown, 2005 WL 2736312 (U.S.) (Appellate Petition, Motion and Filing) Supreme Court of the United States. Margaret L. HOSTY, Jeni S. Porche, and Steven P. Barba, Petitioners, v. Patricia CARTER, Respondent. No. 05-377. October 20, 2005. On Petition For a Writ of Certiorari To The United States Court of Appeals For The Seventh Circuit Brief of the Association for Education in Journalism and Mass Communication and the Association of Schools of Journalism and Mass Communication, et al., as Amici Curiae in Support of Petitioner Robert A. Long, Jr., Counsel of Record, Kurt A. Wimmer, Covington & Burling, 1201 Pennsylvania Ave., NW, Washington, DC 20004-2401, (202) 662-6000, Counsel for Amici Curiae.)

An official at a public university imposed a system of prior restraint on the publication of petitioners’ newspaper. The Seventh Circuit’s decision upholding the official’s action, if not corrected, will have a chilling effect on the exercise of First Amendment rights by journalists and faculty at public colleges and universities. It will also have a potentially devastating impact on the recruitment and training of tomorrow’s professional journalists. 1. This Court has recognized that the First Amendment applies to students at public universities and \*9 colleges. Healy v. James, 408 U.S. 169, 182 (1972). The Court has extended First Amendment protection to students working on college newspapers. Papish v. Bd. of Curators of Univ. of Missouri, 410 U.S. 667 (1973). Ten years ago, the Court made clear that university officials violate the First Amendment when they impose viewpoint-based discrimination on funding decisions for student newspapers. Rosenberger v. Rector and Visitors of the Univ. of Virginia, 515 U.S. 819 (1995). The Court distinguished cases in which the university was paying for an agent to promote the university’s message from cases in which the university was facilitating the speech of student groups. Id. at 834. “Having offered to pay the third-party contractors on behalf of private speakers who convey their own messages, the University may not silence the expression of selected viewpoints.” Id. at 835. The Seventh Circuit’s decision permits a public official to stop publication of a student newspaper on the basis of objections to its contents in direct contravention of the principles articulated in Rosenberger and its predecessors. The Court should grant certiorari in order to reaffirm the First Amendment rights of college journalists as well as to protect the interests of faculty members and the readership of campus newspapers. The Court’s decision in Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988), does not and should not be applied at the university level. See Hazelwood, 484 U.S. at 273 n.7 (explicitly noting that the Court’s decision does not extend to the college and university level). 2. An uncensored college newspaper is vitally important to attracting college students to journalism and providing them with a real-world training ground that prepares them to become professional journalists. The skills that journalists acquire while working at a college newspaper are fundamental to their development into \*10 professionals who are able to make editorial decisions, take responsibility for the stories that are published - and those that are not - and gather and write about the events of the day in an objective manner. The reporters and editors working on a campus paper learn valuable lessons that prepare them for a career in journalism. Prior experience in journalism is one of the most important factors considered by both small and large newspapers in hiring new reporters. Barbara J. Hipsman & Stanley T. Wearden, Skills Testing at American Newspapers 13-14 (Aug. 1989) (paper presented at the Annual Meeting of the Association for Education in Journalism and Mass Communication, Newspaper Division). More than three quarters of newspapers test for writing skills before hiring journalists. Id. at 11. In addition to prior journalism experience and writing skills, general reporting ability ranked very high among skills that newspapers listed as most desirable in new hires. Id. at 13. College students acquire more than writing and reporting skills when they work for a campus newspaper. They also learn that they are responsible for what appears on the pages of their publication. For this reason, it has been argued that “the student publication offers the single best avenue for training - superior even to the journalism school … for a career in professional journalism.” Richard J. Peltz, Censorship Tsunami Spares College Media: To Protect Free Expression on Public Campuses, Lessons from the “College Hazelwood” Case, 68 Tenn. L. Rev. 481, 482 (2001). This vital experience cannot be acquired at newspapers whose content is controlled by university officials. Professor Peltz observes that the consequences of applying Hazelwood to university journalists would extend “outside the ivy-covered walls. Imagine a generation of college-trained journalists with no practical \*11 experience handling controversial subject matter, nor with any more than an academic understanding of the role of the Fourth Estate in American society.” Id.

#### Censorship prevents journalists from learning critical thinking skills and independence necessary for a fully functioning free press

Long, JD Yale, 05

(Robert A., Law @Georgetown, 2005 WL 2736312 (U.S.) (Appellate Petition, Motion and Filing) Supreme Court of the United States. Margaret L. HOSTY, Jeni S. Porche, and Steven P. Barba, Petitioners, v. Patricia CARTER, Respondent. No. 05-377. October 20, 2005. On Petition For a Writ of Certiorari To The United States Court of Appeals For The Seventh Circuit Brief of the Association for Education in Journalism and Mass Communication and the Association of Schools of Journalism and Mass Communication, et al., as Amici Curiae in Support of Petitioner Robert A. Long, Jr., Counsel of Record, Kurt A. Wimmer, Covington & Burling, 1201 Pennsylvania Ave., NW, Washington, DC 20004-2401, (202) 662-6000, Counsel for Amici Curiae.)

Early exposure to and experience in a realistic journalistic setting is important not only for the training that it provides, but also for the effect that it has on the student reporters’ ability to think critically about the proper role and methods of the press. Research demonstrates that early participation on student newspapers influences student journalists’ attitudes towards the press and likelihood of committing to a career in journalism. Student reporters with experience working in newsroom become more like professional journalists when asked about their views on civic journalism and on the practices of the news media generally. Michael McDevitt et al., The Making and Unmaking of Civic Journalists: Influences of Professional Socialization, 79 Journalism & Mass Commc’n Q. 87, 95-96 (2002). “One experience in particular - working for the campus paper - appears to instill a sense of autonomy” in student journalists. Id. at 98. See also Jennifer Rauch et al., Clinging to Tradition, Welcoming Civic Solutions: A Survey of College Students’ Attitudes toward Civic Journalism, 58 Journalism & Mass Commc’n Educator 175, 183-84 (2003). Research also suggests that “the earlier one decides on journalism as a career, the greater the commitment later on.” Wilson Lowrey & Lee B. Becker, Commitment to Journalistic Work: Do High School and College Activities Matter?, 81 Journalism & Mass Commc’n Q. 528, 538 (2004). See also id. at 539 (noting that an important predictor of the choice to become a journalist is college-level socialization, and that experience with campus media significantly enhances the probability of pursuing a career in journalism). \*12 Extending this Court’s holding in Hazelwood to college level newspapers would defeat these goals. If university administrators can impose prior restraints on campus newspapers, college journalists will fail to learn the importance of autonomy and professional responsibility because they will be neither autonomous nor responsible. Peltz, 68 Tenn. L. Rev. at 549 (“practical experience with editorial freedom and responsibility is an essential component of an education in journalism”). Not only would college journalists fail to get real-world experience in making and taking responsibility for editorial decisions, they also would not be free to take initiative in reporting because of the chilling effect of the administration’s censors.

### Student Journalists Matter

#### With decline of print media student journalism is more important than ever- free press is crucial to develop civic engagement and check institutional misconduct

Joint Statement of the AAUP et al., Dec 16

(A committee composed of representatives from the American Association of University Professors, the College Media Association, the National Coalition Against Censorship, and the Student Press Law Center formulated this joint statement in fall 2016. The document received the endorsement of all four sponsoring organizations. https://s3.amazonaws.com/media.spl/1398\_jointstatement\_aaupbulletin\_studentmedia\_finalo.pdf)

I. Invaluable Role of Student Media

The 1967 Joint Statement on Rights and Freedoms of Students declared: Student publications and the student press are valuable aids in establishing and maintaining an atmosphere of free and responsible discussion and of intellectual exploration on the campus. They are a means of bringing student concerns to the attention of the faculty and the institutional authorities and of formulating student opinion on various issues on the campus and in the world at large. Whenever possible the student newspaper should be an independent corporation financially and legally separate from the college or university. Where financial and legal autonomy is not possible, the institution, as the publisher of student publications, may have to bear the legal responsibility for the contents of the publications. In the delegation of editorial responsibility to students, the institution must provide sufficient editorial freedom and financial autonomy for the student publications to maintain their integrity of purpose as vehicles for free inquiry and free expression in an academic community. “As safeguards for the editorial freedom of student publications,” the Statement continued, “the following provisions are necessary”: a. The student press should be free of censorship and advance approval of copy, and its editors and managers should be free to develop their own editorial policies and news coverage. b. Editors and managers of student publications should be protected from arbitrary suspension and removal because of student, faculty, administration, or public disapproval of editorial policy or content. Only for proper and stated causes should editors and managers be subject to removal and then only by orderly and prescribed procedures. The agency responsible for the appointment of editors and managers should be the agency responsible for their removal. c. All institutionally published and financed student publications should explicitly state on the editorial page that the opinions there expressed are not necessarily those of the college, university, or student body.3 These principles should apply to all student media, which should not be subordinated to an institution’s public-relations program. Candid journalism that discusses students’ dissatisfaction with the perceived shortcomings of their institutions can be uncomfortable for campus authorities. Nevertheless, this journalism fulfills a healthful civic function. A college or university campus is in many ways analogous to a self-contained city in which thousands of residents conduct their daily lives—drawing on the resources of the institution for housing, dining, police protection, medical services, employment, recreation, and culture. Student journalists keep watch over the delivery of these services, giving the members of their public a voice in the matters that concern them most. Student-produced journalism increasingly serves as an “information lifeline” for the entire community. In 2012, the Knight Foundation and other philanthropic funders of journalism challenged universities to reimagine themselves as “teaching hospitals” for news, satisfying the public’s critical information needs just as traditional teaching hospitals fulfill urgent medical needs.4 This evolution was already well under way but has accelerated with the rapid erosion of staffing at professional news organizations; the Pew Research Center reports that 14 percent of all journalists responsible for covering state capitals are students.5 When they are not financially or legally independent, student media outlets have traditionally been categorized either as curricular or as co- or extracurricular—that is, as classroom labs where work is directed, assigned, and graded by a professor or as independent organizations affiliated with a college or university but run entirely by students, often being designated as a student club, with a skilled adviser who offers education and counsel but takes no part in editorial decisions. In both arrangements, professors or advisers, whether they are members of the faculty or the staff, can sometimes face intense pressure from college and university administrators to avoid topics or stories that the administration finds objectionable. Because the work of news outlets is, by nature, often more publicly visible than other classroom or club activities, administrators may be quick to discipline these staff and faculty members because they believe the institution’s reputation to be at stake, sometimes on a daily basis, as each new news story is published in print, on air, or online. Recent years have brought an increasing diversity of online publications and “media laboratories,” which can provide student journalists with the opportunity to disseminate their class-produced work to a public audience. These publications make a significant contribution to the community’s journalistic ecosystem. Nevertheless, they are no substitute for independent, student-run media. Few, if any, laboratory-based publications supervised by instructors as graded classroom exercises are providing “watchdog” coverage of the campus itself (and indeed, significant structural issues make such class-generated watchdog coverage impracticable).6 Obstruction and harassment of campus media frequently signify deeper institutional mismanagement that administrators may seek to downplay or conceal. In one especially egregious example, the administration of California’s Southwest College mounted a campaign of intimidation and bullying of student journalists—including freezing the newspaper’s printing budget, cutting the adviser’s salary, and even threatening staff members with arrest—as part of an effort to conceal high-level wrongdoing. The administrator responsible for the harassment campaign, Raj Chopra, was forced out of office soon afterward as part of a wide-ranging “pay-to-play” corruption scandal encompassing members of the college’s board of trustees and contractors. The scandal resulted in criminal charges against eighteen individuals, including Chopra, who ended up accepting a guilty plea and serving three years’ probation.7 No reputable college or university would insist that its auditors skew their findings to portray a deceptively favorable outlook because the institution is paying for the report, although they might dissent from those findings. Administrations should take a similar approach to the findings of their student media, the value of which is inextricably linked to their independence.

#### Censorship demands place ethical quandaries on journalism advisors driving out key teachers/role models

Joint Statement of the AAUP et al., Dec 16

(A committee composed of representatives from the American Association of University Professors, the College Media Association, the National Coalition Against Censorship, and the Student Press Law Center formulated this joint statement in fall 2016. The document received the endorsement of all four sponsoring organizations. https://s3.amazonaws.com/media.spl/1398\_jointstatement\_aaupbulletin\_studentmedia\_finalo.pdf)

The best media advisers, often journalists themselves, are staunch defenders of their students’ free press rights. They should not be punished for asserting themselves in this role. The College Media Association, whose seven hundred members advise college media at every level of collegiate journalism, has endorsed a Code of Ethical Behavior for media advisers.8 It states: “The adviser is a journalist, educator and manager who is, above all, a role model. Because of this, the adviser must be beyond reproach with regard to personal and professional ethical behavior; should encourage the student media advised to formulate, adhere to and publicize an organizational code of ethics; and ensure that neither the medium, its staff nor the adviser enter into situations which would jeopardize the public’s trust in and reliance on the medium as a fair and balanced source of news and analysis.” The Code further declares: Freedom of expression and debate by means of a free and vigorous student media are essential to the effectiveness of an educational community in a democratic society. This implies the obligation of the student media to provide a forum for the expression of opinion—not only those opinions differing from established university or administrative policy, but those at odds with the media staff beliefs or opinions as well. Student media must be free from all forms of external interference designed to regulate its content, including confiscation of its products or broadcasts; suspension of publication or transmission; academic personal or budgetary sanctions; arbitrary removal of staff members or faculty; or threats to the existence of student publications or broadcast outlets. Conducting “prior review” violates the basic tenets of the college or university media adviser’s personal and professional code. Media advisers are, above all else, educators who seek to train young journalists in the practice of ethical, thorough journalism. Typically, they are not producers of college or university journalism and should not be expected—or allowed—to interfere in the editorial process. An adviser who writes for the student newspaper without attribution or who rewrites material in the student newspaper is akin to a professor who rewrites an essay for a student instead of offering suggestions for improvement. An administrator who demands control of student media content is akin to a college or university official who dictates the content of a student essay. When news content stems from classwork—when, for example, students in a journalism course produce work that the professor then posts to a class website— there might be greater ambiguity. However, even in these cases, professors still must restrain the impulse to control content, and administrators should never attempt to dictate what these classes can and cannot cover, no matter how objectionable they might find the content to be. Students learn by doing: by reporting and writing, by photographing, or by making video or audio recordings. They should be in charge of editing, designing, managing, and leading their organizations, for this is the essence of experiential learning. The College Media Association Code of Ethics therefore mandates that advisers must always “defend and teach without censoring.” Regardless of the type of institution or adviser, the Code asserts, “There should never be an instance where an adviser maximizes quality by minimizing learning. Student media should always consist of student work.”

### I/L- Question Authority

#### Censorship causes journalists to stop questioning authority- papers become a mouthpiece for institutional propaganda

Long, JD Yale, 05

(Robert A., Law @Georgetown, 2005 WL 2736312 (U.S.) (Appellate Petition, Motion and Filing) Supreme Court of the United States. Margaret L. HOSTY, Jeni S. Porche, and Steven P. Barba, Petitioners, v. Patricia CARTER, Respondent. No. 05-377. October 20, 2005. On Petition For a Writ of Certiorari To The United States Court of Appeals For The Seventh Circuit Brief of the Association for Education in Journalism and Mass Communication and the Association of Schools of Journalism and Mass Communication, et al., as Amici Curiae in Support of Petitioner Robert A. Long, Jr., Counsel of Record, Kurt A. Wimmer, Covington & Burling, 1201 Pennsylvania Ave., NW, Washington, DC 20004-2401, (202) 662-6000, Counsel for Amici Curiae.)

The threat of censorship of campus papers is not only real, it is growing. Michael W. Hirschorn, University Efforts to Censor Newspapers Are on the Increase, Student Editors Say, 33 Chronicle of Higher Educ. at 35-37 (1987). Studies show that high school newspapers suffered a severe chilling effect after Hazelwood, avoiding coverage of controversial issues. Carol S. Lomicky, Analysis of High School Newspaper Editorials Before and After Hazelwood School District v. Kuhlmeier: A Content Analysis Case Study, 29 J. of Law & Educ. 463 (2000); see also id. at 473 (finding that students began to self-censor criticism in their publications, eliminating two thirds of the pre-Hazelwood levels of critical commentary). Three-fourths of high school principals and advisors acknowledge censoring their schools’ newspapers. Lillian Lodge Kopenhaver and J. William Click, High School Newspapers Still Censored Thirty Years After Tinker, 78 Journalism & Mass Commc’n Q. 321, 327 (2001). More than a decade after the Court announced its opinion in Hazelwood, high school “journalists appear unwilling to oppose the administration in their commentary.” Lomicky, 29 J. of Law & Educ. at 471. \*13 A Hazelwood regime applied to university students risks turning college newspapers into the timid house organs that most high school newspapers have become. Id. at 329. Research shows that 87 percent of high school principals believe that the student newspaper should advance the public relations objectives of the school. Id. Half of them disagree with the statement that the newspaper should print a factually accurate story if the publication will embarrass the school’s administration. Id. Such publications would give college students little incentive or ability to gain the real-world journalism experience that studies show is so crucial in acquiring the skills and commitment necessary for training tomorrow’s reporters.

### Yes Snowball

#### Application of Hazelwood can be used to justify censorship outside of papers

Nimick, JD, 06

(Virinia J, SCHOOLHOUSE ROCKED: HOSTY V. CARTER AND THE CASE AGAINST HAZELWOOD Journal of Law and Policy Volume 14 Issue 2 SCIENCE FOR JUDGES VI: Techniques for Evidence-Based Medicine)

By questioning the traditional presumption of independence of college student media, the Hosty court introduced a dangerous ambiguity to the rights of all students engaged in any form of expression. As Mark Goodman, executive director of the Student Press Law Center noted, “Traditionally, student newspapers were presumed by their very nature to be forums for free expression . . . [Hosty] gives schools the chance to argue that’s not what they intended.”324 Goodman went on to suggest that determining forum status for other school-funded student activities, such as speakers and films, might be even more difficult since those forms of expression do not enjoy the traditional presumption of operating as a public forum.325 For example, in November 2004, Indian River Community College (FL) refused to allow the film The Passion of the Christ on campus. The College claimed an unwritten blanket ban on R-rated movies, despite the fact that at around the same time, the school had allowed theatrical productions that would have garnered an R rating and had sponsored at least one other Rrated film.326 Writing for the majority in Hosty, Judge Easterbrook noted, “Let us not forget that academic freedom includes the authority of the university to manage an academic community and evaluate teaching and scholarship free from interference.”327 Clearly suggesting that determining the content of a school-funded newspaper might be a proper exercise of the university’s academic freedom, the Hosty majority ignored the possibility that an extension of Hazelwood’s framework to the post-secondary level might also chill faculty members’ exercise of First Amendment rights. Hazelwood has been interpreted by numerous lower courts to apply to both student and teacher speech.328 Courts have granted high school administrators broad329 and, in at least one case, apparently unlimited330 authority to dictate curriculum and presentation of material in the classroom. At least one court, recognizing the potentially devastating implications of extending Hazelwood to faculty speech, explicitly refused to reach the issue.331 Such an expansion of Hazelwood’s restrictive framework would effectively defeat the notion of the university as a “quintessential marketplace of ideas” and provide public school administrators with unprecedented authority to control faulty speech.(993-5)

#### Hazelwood proves snowball is immediate

Nimick, JD, 06

(Virinia J, SCHOOLHOUSE ROCKED: HOSTY V. CARTER AND THE CASE AGAINST HAZELWOOD Journal of Law and Policy Volume 14 Issue 2 SCIENCE FOR JUDGES VI: Techniques for Evidence-Based Medicine)

Despite the confusion, Hazelwood’s impact was immediate.96 Less than an hour after the Court’s decision was announced on the radio, a high school principal censored an article on AIDS.97 That same day, in another high school, the entire staff of a schoolsponsored newspaper resigned, and instead began work on an underground newspaper.98 In fact, the Student Press Law Center (SPLC), a non-profit group that provides legal support and advice to student media outlets, has reported an increase in the number of inquiries concerning censorship it has received for every year since Hazelwood. In 1996, SPLC received a record 221 requests for legal help from high school student journalists or their advisors.99 In 2002, SPLC recorded 529 such requests—an increase of nearly 240%.100 SPLC Executive Director Mark Goodman attributes the continual increase to the Court’s decision in Hazelwood, noting that it has “essentially gutted the First Amendment in many of America’s High Schools.”101(957)

#### Restriction justifies other forms of censorship

Nimick, JD, 06

(Virinia J, SCHOOLHOUSE ROCKED: HOSTY V. CARTER AND THE CASE AGAINST HAZELWOOD Journal of Law and Policy Volume 14 Issue 2 SCIENCE FOR JUDGES VI: Techniques for Evidence-Based Medicine)

Since Hazelwood was handed down, its rationale has been expanded to encompass all forms of student expression. High school teachers and administrators have broadly interpreted Hazelwood as a grant of authority to “control student expression for the sake of preserving the institutional and educational integrity of public schools.”102 Its reasoning has been extended beyond the realm of the student press and applied to a variety of First Amendment issues,103 including student attire and appearance,104 school mascots,105 curriculum decisions,106 faculty speech,107 academic freedom,108 and student speech at school assemblies and graduation ceremonies. (957-8)

### AT: Free Speech is Conservative

#### Portraying speech as “conservative” is a tactic to justify administrative cover ups

Lukianoff, JD, 14

(Lukianoff, Greg. Unlearning Liberty: Campus Censorship and the End of American Debate)

Over the past two decades, the topic of censorship on campus has often been treated as a “conservative issue,” because the fact is that socially conservative opinions are the ones most likely to be stifled at colleges and universities today. While many attempts at censorship are apolitical, you are far more likely to get in trouble on campus for opposing, for example, affirmative action, gay marriage, and abortion rights than you are for supporting them. Political correctness has become part of the nervous system of the modern university and it accounts for a large number of the rights violations I have seen over the years. For decades, our universities have been teaching students that speech with a chance of offending someone should be immediately silenced; but the slope for offensiveness has proven remarkably slippery, and the concept of hurtful speech is often invoked by campus administrators in the most self-serving ways. The press has gotten so used to such cases that they are often shrugged off as the same old “political correctness” on campus. But the problem is much more serious than that dismissive definition. When students risk punishment for speaking their minds, something has gone very wrong in the college environment.(5-6)

#### It’s a smear

Lukianoff, JD, 14

(Lukianoff, Greg. Unlearning Liberty: Campus Censorship and the End of American Debate)

Why is it odd that a liberal should fight for free speech rights? Isn’t freedom of speech a quintessentially liberal issue? Some members of the baby boomer generation may be horrified to learn that campus administrators and the media alike often dismiss those of us who defend free speech for all on campus as members of the conservative fringe. While I was once hissed at during a libertarian student conference for being a Democrat, it is far more common that I am vilified as an evil conservative for defending free speech on campus. I remember telling a New York University film student that I worked for free speech on campus and being shocked by his response: “Oh, so you’re like the people who want the KKK on campus.” In his mind, protecting free speech was apparently synonymous with advocating hatred. He somehow missed the glaring fact that the content of his student film could have been banned from public display if not for the progress of the free speech movement. The transformation of free speech on campus to a conservative niche issue is a method of dismissing its importance. Sadly, we live in a society where simply labeling something an evil conservative idea (or, for that matter, an evil liberal one) is accepted by far too many people as a legitimate reason to dismiss it. This is just one of the many cheap tactics for shutting down debate that have been perfected on our campuses and are now a common part of everyday life.

### AT: Marketplace of Ideas Bad

#### The marketplace isn’t an end in itself, but is crucial to self-realization

Redish, Law@NU, 82

(Martin H, University of Pennsylvania Law Review, Vol. 130, No. 3 (Jan., 1982), pp. 591-645)

It does not necessarily follow, however, that the marketplaceof- ideas concept must be discarded. To the contrary: if viewed as merely a means by which the ultimate value of self-realization is facilitated, the concept may prove quite valuable in determining what speech is deserving of constitutional protection. In other words, it could be argued that, if the intrinsic aspect of the selfrealization value 95 is to be maintained, the individual needs an uninhibited flow of information and opinion to aid him or her in making life-affecting decisions, in governing his or her own life. Since the concept of self-realization by its very nature does not permit external forces to determine what is a wise decision for the individual to make, it is no more appropriate for external forces to censor what information or opinion the individual may receive in reaching those decisions. Thus, an individual presumably has the right 96 not to associate with people of different races in the privacy of his home, and may decide to exercise that right because he believes those who contend other races are genetically inferior.97 That is his choice, and he may reach it on whatever basis he chooses, no matter how irrational it may seem to others. Because individuals constantly make life-affecting decisions-from the significant to the trivial-each day of their lives, there is probably no expression of opinion or information that would not potentially affect some such decision at some point in time. Therefore, the marketplace-of-ideas concept as a protector of all such expression makes perfect sense.98 (617-8)

#### Irrational acts don’t disprove the market

Redish, Law@NU, 82

(Martin H, University of Pennsylvania Law Review, Vol. 130, No. 3 (Jan., 1982), pp. 591-645)

So revised, the marketplace-of-ideas concept can be successfully defended against another attack: Baker's contentions that the theory "requires that people be able to use their rational capacities to eliminate distortion caused by the form and frequency of message presentation and to find the core of relevant information or argument," and that "[t]his assumption cannot be accepted [be-cause e]motional or 'irrational' appeals have great impact." a9 If we accepted the attainment of truth as the theory's goal, Professor Baker's point would be well taken. But the point becomes irrelevant if we instead view the theory simply as a means of facilitating the value of self-realization. For if an individual wishes to buy a car because he believes it will make him look masculine, or to vote for a candidate because the candidate looks good with his tie loosened and his jacket slung over his shoulder, who are we to tell him that these are improper acts? We may prefer that he make his judgments (at least as to the candidate, if not the car) on more traditionally "rational" grounds, and hope that appeals made on such grounds will be heard. But in these areas society has left the ultimate right to decide to the individual, and this would not be much of a right if we prescribed how it was to be used.'00 (618-9)

### AT: Marketplace Imbalanced

#### Free speech best protects the powerless even if not perfect

Strossen, ACLU president, 01

(Nadine, Law @NYU, Incitement to Hatred: Should There Be a Limit Copyright (c) 2001 Board of Trustees of Southern Illinois University Southern Illinois University Law Journal Winter, 2001 25 S. Ill. U. L. J. 243)

In his 1994 book, Hate Speech: The History of an American Controversy, Samuel Walker shows that, throughout the twentieth century, the equality rights of African- Americans and other minority groups were dependent on a robust free speech concept. He further shows that, realizing the importance of protecting even speech viewed as hateful or dangerous-because their own speech certainly was so viewed in many Southern and other communities-the major American civil rights organizations consistently opposed efforts to restrict hate speech. As Walker concluded, "The lessons of the civil rights movement were that the interests of racial minorities and powerless groups were best protected through the broadest, most content-neutral protection of speech." n51

#### Censorship worse than free speech for disempowered

Strossen, ACLU president, 01

(Nadine, Law @NYU, Incitement to Hatred: Should There Be a Limit Copyright (c) 2001 Board of Trustees of Southern Illinois University Southern Illinois University Law Journal Winter, 2001 25 S. Ill. U. L. J. 243)

Just as free speech always has been the strongest weapon to advance equal rights causes, correspondingly, censorship always has been the strongest weapon to thwart them. Ironically, the explanation for this pattern lies in the very analysis of those who want to curb hate speech. They contend that racial minorities and women are relatively disempowered and marginalized. I agree with that analysis of the problem, and am deeply committed to working toward solving it. Indeed, I am proud that the ACLU is, and always has been, on the forefront of the struggles for racial justice, women's rights, and other equality movements. I strongly disagree, though, that censorship is a solution for our society's persistent discrimination. To the contrary, precisely because women and minorities are relatively powerless, it makes no sense to hand the power structure yet another tool that it can and will use to further suppress them, in two senses of the word "suppress"-both stifling their expression and repressing their efforts to enjoy full and equal human rights. Consistent with the analysis of the censorship advocates themselves, the government is likely to wield this tool, along with all others, to the particular disadvantage of already disempowered groups. Laws censoring hate speech are inevitably enforced disproportionately against speech by and on behalf of groups who lack political power, including government critics, and even members of the very minority groups who are the laws' intended beneficiaries. As I previously noted, this was precisely the conclusion reached by the respected international human rights organizations, Human Rights Watch and Article 19, citing examples ranging from South Africa to the former Soviet Union.

# Answers to Off Case

## Hate Speech CP

### Hate Speech= Free Speech

#### Recent ruling protects hate speech-viewpoint discrimination backfires

Volokh, Law @UCLA, 6-19-17

(Eugene, https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/06/19/supreme-court-unanimously-reaffirms-there-is-no-hate-speech-exception-to-the-first-amendment/?utm\_term=.db1e0421e514)

From today’s opinion by Justice Samuel Alito (for four justices) in Matal v. Tam, the “Slants” case: [The idea that the government may restrict] speech expressing ideas that offend … strikes at the heart of the First Amendment. Speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express “the thought that we hate.” Justice Anthony Kennedy wrote separately, also for four justices, but on this point the opinions agreed: A law found to discriminate based on viewpoint is an “egregious form of content discrimination,” which is “presumptively unconstitutional.” … A law that can be directed against speech found offensive to some portion of the public can be turned against minority and dissenting views to the detriment of all. The First Amendment does not entrust that power to the government’s benevolence. Instead, our reliance must be on the substantial safeguards of free and open discussion in a democratic society. And the justices made clear that speech that some view as racially offensive is protected not just against outright prohibition but also against lesser restrictions. In Matal, the government refused to register “The Slants” as a band’s trademark, on the ground that the name might be seen as demeaning to Asian Americans. The government wasn’t trying to forbid the band from using the mark; it was just denying it certain protections that trademarks get against unauthorized use by third parties. But even in this sort of program, the court held, viewpoint discrimination — including against allegedly racially offensive viewpoints — is unconstitutional. And this no-viewpoint-discrimination principle has long been seen as applying to exclusion of speakers from universities, denial of tax exemptions to nonprofits, and much more.

#### SCOTUS recently affirmed in Matal v. Tam that hate speech is protected

NYT Editorial Board 6-19-17

(https://mobile.nytimes.com/2017/06/19/opinion/supreme-court-free-speech-gerrymandering.html)

FREE SPEECH In Matal v. Tam, the justices ruled that the government can’t pick and choose which trademarks it registers based on whether they offend certain people or groups. The case was brought by the Slants, an Asian-American dance-rock band that had chosen its name — a familiar slur against people of Asian descent — to defuse its negative power. The Patent and Trademark Office rejected the name under a provision in a 70-year-old federal law prohibiting the registration of trademarks that “disparage” any “persons, living or dead, institutions, beliefs, or national symbols.” Writing for the majority, Justice Samuel Alito said the law violates a “bedrock First Amendment principle: Speech may not be banned on the ground that it expresses ideas that offend.” That’s the right call. The First Amendment bars the government from discriminating among speakers based on their viewpoints. In this case, the Trademark Office did that by blocking only registrations for trademarks it determined to have negative connotations. The free-speech clause doesn’t apply to the government’s own speech, but registered trademarks can’t be put in that category — otherwise the government would have to argue that it endorses each of the more than two million trademarks it has already registered. The decision is likely to help the Washington Redskins, who lost their trademark protections in 2014 after years of complaints from Native American groups. At the time, this page supported the Trademark Office’s decision, and we still regard the Redskins name as offensive. Based on this case, however, we’ve since reconsidered our underlying position.

### No Solvency- Net Benefit

#### Restrictions fail due to definition issues, and tradeoff with political challenges to egregious behavior

Malik, Senior Visiting Fellow at the University of Surrey, 12

(Kenan, . NBB/history of science @Imperial College <https://kenanmalik.wordpress.com/2012/04/19/why-hate-speech-should-not-be-banned/> 4-19)

Peter Molnar: Would you characterize some speech as ‘hate speech’, and do you think that it is possible to provide a reliable legal definition of ‘hate speech’? Kenan Malik: I am not sure that ‘hate speech’ is a particularly useful concept. Much is said and written, of course, that is designed to promote hatred. But it makes little sense to lump it all together in a single category, especially when hatred is such a contested concept. In a sense, hate speech restriction has become a means not of addressing specific issues about intimidation or incitement, but of enforcing general social regulation. This is why if you look at hate speech laws across the world, there is no consistency about what constitutes hate speech. Britain bans abusive, insulting, and threatening speech. Denmark and Canada ban speech that is insulting and degrading. India and Israel ban speech that hurts religious feelings and incites racial and religious hatred. In Holland, it is a criminal offense deliberately to insult a particular group. Australia prohibits speech that offends, insults, humiliates, or intimidates individuals or groups. Germany bans speech that violates the dignity of, or maliciously degrades or defames, a group. And so on. In each case, the law defines hate speech in a different way. One response might be to say: Let us define hate speech much more tightly. I think, however, that the problem runs much deeper. Hate speech restriction is a means not of tackling bigotry but of rebranding certain, often obnoxious, ideas or arguments as immoral. It is a way of making certain ideas illegitimate without bothering politically to challenge them. And that is dangerous.

### No Solvency- Precedent

#### Precedent of the CP guts the bedrock of the first amendment- content neutrality

Strossen, ACLU president, 01

(Nadine, Law @NYU, Incitement to Hatred: Should There Be a Limit Copyright (c) 2001 Board of Trustees of Southern Illinois University Southern Illinois University Law Journal Winter, 2001 25 S. Ill. U. L. J. 243)

The ACLU staunchly supports the traditional, strictly speech-protective, FirstAmendment standards concerning hate speech, and opposes any relaxation even in thealleged service of such laudable goals as promoting equality and reducing discrimination. As I already noted, though, the traditional standards do not provide that all speech is absolutely protected. Thus, in the campus context, we would not oppose a code that simply reflected longstanding, legitimate limits on speech that the ACLU never has opposed in any other context-for example, prohibitions on threats. On this point, the relevant ACLU policy reads as follows: This policy does not prohibit colleges and universities from enacting disciplinary codes aimed at restricting acts of harassment, intimidation and invasion of privacy. Although these are imprecise terms susceptible of impermissibly overbroad application, each term defines a type of conduct which is legally proscribed in many jurisdictions when directed at a specific individual or individuals and when intended to frighten, coerce, or unreasonably harry or intrude upon its target. Threatening telephone calls to a minority student's dormitory room, for example, would be proscribable conduct under the terms of this policy. Expressive behavior which has no other effect than to create an unpleasant learning environment, however, would not be the proper subject of regulation.The fact that words may be used in connection with otherwise actionable conduct does not immunize such conduct from appropriate regulation. For example, intimidating phone calls, threats of attack, extortion and blackmail are unprotected forms of conduct which include an element of verbal or written expression. n20 A. Restricting Hate Speech Would Violate Cardinal Free Speech Principles To allow restrictions on hate speech beyond these traditional, contextual limitations on all speech in other words, to allow restrictions on hate speech because of its offensive content-would violate the two most fundamental principles underlying the First Amendment's free speech guarantee. The first [\*250] such principle specifies what is a sufficient justification for restricting speech,and the second prescribes what is not a sufficient justification. I already have touched on the first cardinal free speech principle, which isoften encapsulated by the phrase, "clear and present danger." It holds that a restriction on speech may be justified only when necessary to avert imminent harm to an interest of compelling importance, such as physical safety. As former Supreme Court Justice Oliver Wendell Holmes observed in a much-quoted opinion, consistent with this principle, the First Amendment would not protect someone who falsely shouted "Fire!" in a theater and caused a panic. n21 To be restricted consistent with this principle, the speech must clearly pose an imminent, substantial danger. Allowing speech to be curtailed on the speculative basis that it might indirectly lead to some possible harm sometime in the future would inevitably unravel free speech protection. All speech might lead to some potential danger at some future point. As Justice Holmes put it, "[e]very idea is an incitement." n22 Therefore, under such a watered-down approach, scarcely any idea would be safe, and surely no idea that challenged the status quo would be. Until the 1960s, the United States Supreme Court did apply this relaxed, so- called "bad tendency" approach to free speech. Over dissents by such respected Justices as Holmes and Brandeis, the Court allowed government to suppress any speech that might have a tendency to lead to some future harm. n23 This approach endangered all critics of government policy and advocates of political reform. For example, during the World War I era, thousands of Americans were imprisoned for peacefully criticizing United States participation in the war and other government policies. Likewise, at the height-or depth-of the Cold War, members of left-wing political groups were imprisoned for criticizing capitalism or advocating socialism. In light of this history, it is ironic that people toward the left of the political spectrum would now champion a return to the censorial standards that were so long used to suppress their ideas. Yet, that is precisely what the advocates of hate speech codes are doing. In the modern era, the Supreme Court has resoundingly repudiated this bad tendency rationale for suppressing controversial speech. In the modern era, moreover, the high Court has recognized the crucial distinction between advocacy of violent or unlawful conduct, which is protected, and intentional, [\*251] imminent incitement of such conduct, which is not. The Court enshrined thisdistinction in a landmark 1969 ACLU case, Brandenburg v. Ohio. n24 InBrandenburg, the Court unanimously upheld the First Amendment rights of a Ku KluxKlan leader who addressed a rally of supporters, some of whom brandished firearms and advocated violence and discrimination against Jews and blacks. n25 The Court held that this generalized advocacy was neither intended nor likely to cause immediate violent or unlawful conduct, and therefore could not be punished. n26 Notably, the Supreme Court consistently has applied Brandenburg's critical distinction between protected advocacy and unprotected incitement to shelter incendiary expression of every stripe-not only racist hate speech, but also fiery rhetoric in support of civil rights causes and protests. n27 Once again, the recent controversy surrounding Matthew Hale's case is instructive. The Illinois authorities denied his license to practice law because of his advocacy of white supremacist views, with no allegation-let alone evidence-that he had crossed the line between protected advocacy and prohibited incitement. If the United States Supreme Court had applied a similar standard in the important 1982 case of NAACP v. Claiborne Hardware, n28 the NAACP (National Association for the Advancement of Colored People) and its leaders would have faced severe penalties that would have threatened the ongoing viability of this leading civil rights organization. In stark contrast with the stance of Illinois bar officials and judges toward Matthew Hale, who was punished for advocating peaceful law reform to enshrine his racist views, the Supreme Court held that NAACP leaders had a First Amendment right to advocate not only violence, but indeed violence against African-Americans. Specifically, the Court protected the right of NAACP leaders to advocate violent reprisals against individuals who violated an NAACP-organized boycott of white merchants who allegedly had engaged in racial discrimination. n29 Even though some violence was subsequently committed against blacks who patronized white merchants, it occurred weeks or months after the inflammatory addresses. Accordingly, in a major victory for the civil rights cause, as well as for free speech principles, the Supreme [\*252] Court overturned a lower court ruling that had declared the boycott unlawful and heldthe NAACP responsible for white merchants' large financial losses. n30 TheCourt explained the fundamental free speech principles at stake as follows: The [NAACP leaders'] addresses generally contained an impassioned plea for black citizens to unify, to support and respect each other, and to realize the political and economic power available to them. In the course of those pleas, strong language was used . . . . Strong and effective extemporaneous rhetoric cannot be nicely channeled in purely dulcet phrases. An advocate must be free to stimulate his audience with spontaneous and emotional appeals for unity and action in a common cause . . . . To rule otherwise would ignore the "profound national commitment" that "debate on public issues should be uninhibited, robust, and wide- open." n31 The second fundamental free speech principle that would be violated by suppressing hate speech requires "content neutrality" or "viewpoint neutrality." It holds that government may never limit speech just because any listener-or even, indeed, the majority of the community-disagrees with or is offended by its content or the viewpoint it conveys. The Supreme Court has called this the "bedrock principle" of our proud free speech tradition under American law. n32 In recent years, the Court has steadfastly enforced this fundamental principle to protect speech that conveys ideas that are deeply unpopular with or offensive to many, if not most, Americans-for example, burning an American flag in a political demonstration against national policies, n33 or burning a cross near the home of an African- American family that had recently moved into a previously all-white neighborhood. n34 The viewpoint-neutrality principle was also essential to protect expression by pro-civil rights demonstrators during the Civil Rights Movement in the 1960s. In many Southern communities where Martin Luther King, Jr., and other civil rights activists demonstrated and aired their ideas, their views were seen as deeply offensive, abhorrent, and dangerous to traditional community mores and values concerning racial segregation and discrimination. Efforts [\*253] to censor and punish these expressions, though, were thwarted by court rulings enforcing the viewpoint-neutrality principle. n35 So this core principle is firmly entrenched in United States law. But it stillmeets a lot of public resistance, at least on first impression. I can illustrate this through a story about my own beloved father. After he retired, Dad moved to San Diego. About 15 years ago, I was invited to give a lecture there, following some well-publicized, ugly incidents of anti-Semitic and racist expression. I was asked to explain why the ACLU defends free speech even for racist and religious bigots, and why we win those cases. My father came to hear my talk. Now, mind you, he was not a card-carrying ACLU member! But he still came because he had not heard me give a speech since my high school commencement address-which, incidentally, he also disagreed with! Anyway, he listened very attentively. Afterwards, he came up to me and said: "I appreciate that excellent explanation of ACLU positions and constitutional law. I now understand that the ACLU is correctly interpreting the First Amendment. Thank you for making it clear to me that the problem is the First Amendment." I don't mean to pick on my dear Dad unfairly. To the contrary, his reaction was quite typical. Most people don't realize the importance of defending free speech for ideas that they find outrageous until or unless their own ideas are subject to censorship because other people find them outrageous.

### No Solvency- Rollback

#### PICS are rolled back- no chance they survive constitutional challenge

Rabe, MA/JD, 03

(Lee Ann, STICKS AND STONES: THE FIRST AMENDMENT AND CAMPUS SPEECH CODES The John Marshall Law Review Fall, 2003 37 J. Marshall L. Rev. 205)

These two cases remain the only two challenges to campus speech codes in federal court. In both cases, the district courts [\*216] struck down the codes as unconstitutionally vague and overbroad. This track record does not bode well for public university administrators who seek to protect their campus and students by limiting student speech. The speech that administrators want to prohibit through speech codes is difficult to precisely define. If the code covers too much speech, the courts are likely to find that the code is overbroad. If the code covers too little speech, administrators are unlikely to achieve their goal of a safer campus because much of the speech they seek to prohibit will be allowed. If the speech code seeks to be undefined enough to cover all the speech the administrators find harmful, the courts are likely to find that the code is unconstitutionally vague. If speech codes can be written in a way that satisfies both the Constitution and the goal of a safe and supportive campus, the road to such a code is a narrow one indeed.

#### Speech codes are impossible to defend vs breadth challenges

Rabe, MA/JD, 03

(Lee Ann, STICKS AND STONES: THE FIRST AMENDMENT AND CAMPUS SPEECH CODES The John Marshall Law Review Fall, 2003 37 J. Marshall L. Rev. 205)

Content-based regulation is not the only stumbling block faced by those who would institute campus speech codes. Another crucial problem with campus speech codes is that they are both overbroad and vague because the codes prohibit protected speech as well as speech outside the protection of the First and Fourteenth Amendments. Also, the exact language prohibited by the codes can be hard to define, giving those students punished under the codes little or no advance notice as to exactly what speech has been prohibited. Several Justices disagreed with the majority's rationale in R.A.V., but agreed with the result. n41 Instead of using the "underbreadth" theory presented by the majority, these Justices would have struck down the Minneapolis ordinance because it was overbroad. n42 In addition to prohibiting a narrow category of "fighting words," the ordinance also prohibited "a substantial amount of expression that, however repugnant, is shielded by the First Amendment." n43 Justice White reiterated the Court's long-standing position that hurt feelings alone are not sufficient grounds for removing First Amendment protection from speech. n44 The ordinance was "fatally overbroad and invalid on its face" n45 because so much protected speech was affected by the ordinance. The overbreadth theory may make it nearly impossible to write a campus speech code that would survive a constitutional challenge; any such code needs to be extremely narrowly tailored to avoid sweeping in protected, if "repugnant," speech.

#### Empirics prove true for university speech codes

Rabe, MA/JD, 03

(Lee Ann, STICKS AND STONES: THE FIRST AMENDMENT AND CAMPUS SPEECH CODES The John Marshall Law Review Fall, 2003 37 J. Marshall L. Rev. 205)

Federal district courts have cited to the overbreadth problem when striking down campus speech codes. In Doe v. University of Michigan, n46 the district court declared the speech code adopted by the University of Michigan to be unconstitutional. n47 The court first drew a distinction between "pure" speech and conduct, stating that the latter was open to prohibition and punishment while speech alone generally was not. n48 The court went on to discuss the types of speech that the university might be able to regulate, including "fighting words" and speech "which has the effect of inciting imminent lawless action." n49 Regulations aimed at prohibiting such speech must be carefully targeted so it affects only the unprotected speech. If the regulation also bans a significant amount of speech protected by the First Amendment, the regulation is overbroad and cannot withstand constitutional challenge. The Michigan speech code was not so carefully targeted. Instead it prohibited both protected speech and potentially unprotected speech. n50 The University's code vaguely described which types of speech were prohibited and the administration never considered whether the speech complained of might be protected by the First Amendment. n51 The University noted that speech that did violate the code included classroom discussions on the origins of homosexuality n52 and informal [\*214] discussions about the challenges faced by dentistry students. n53 Intense debate over the treatment of minorities in an academic program or the reasons an individual is homosexual are not the kind of speech contemplated by the "fighting words" doctrine. n54 Yet those topics were exactly the kind of speech the university saw as sufficiently harmful to warrant full hearings, counseling, and forced apologies. n55 Such an overbroad scope ensured the unconstitutionality of the speech code because it conflicted with the protections of the First Amendment. n56

## Hate Speech Net Benefit

### 2AC Conservativism

#### Censorship is a pyrrhic victory- exposure to harmful ideas is inevitable, censorship is driving a resurgence in conservativism that guarantees the beliefs the left hates become dominant

Peters 17

(Charlie, 2-18, second-year Philosophy student at the University of Edinburghhttp://www.telegraph.co.uk/education/2017/02/17/student-lefts-culture-intolereance-creating-new-generation-ofconservatives/)

Student demands for censorship get a lot of coverage. Spiked Online’s Free Speech University Rankings, now in its third annual edition, argues that there is a “crisis of free speech on campus”. By analysing the censorious policies and actions that have taken place on British campuses, Spiked concluded that 63.5 per cent of universities actively censor speech and 30.5 per cent stifle speech through excessive regulation. You can barely go a few days without encountering a new op-ed covering censorship on campus. Maajid Nawaz describes the students demanding censorship as members of the “regressive left”. Milo Yiannopoulos calls them “snowflakes”. With all of this book-burning and platform-denying madness sweeping up much of the media’s interest in campus culture, the gradual rise of another group of students has gone under-reported. British and American millennials and post-millennials – also known as ‘Gen Z’ – are warming to conservatism. To understand why this is happening, it is important to consider the vast changes that have taken place in Western student politics over the last fifty years. Students were once in favour of free speech. In the mid-1960s, students of the University of California, Berkeley undertook a mass-movement for free speech. Under the leadership of Leftist heroes like Jack Weinberg, Bettina Aptheker and Jackie Goldberg, students demanded that the university administration retracted their on-campus ban of political activities. They demanded their freedom of speech. Mario Savio delivered what is generally recognised as the iconic speech of the University of California, Berkeley's (UCB) free speech movement. Here is the speech’s most powerful section: “There is a time when the operation of the machine becomes so odious, makes you so sick at heart, that you can't take part. You can't even passively take part! And you've got to put your bodies upon the gears and upon the wheels, upon the levers, upon all the apparatus, and you've got to make it stop! And you've got to indicate to the people who run it, to the people who own it — that unless you're free, the machine will be prevented from working at all!” Savio’s speech helped push the movement towards success. Berkeley students won their full rights. Students, now liberated from the “machine” of university censorship, were able to create the anti-Vietnam student movement, another famous campus protest. Nowadays, the student Left are unwilling to honour Savio’s legacy. On the 2nd of February, violent protests at Berkeley shut down a talk by popular conservative speaker Milo Yiannopoulos. Instead of maintaining a liberal and free atmosphere for speech and argument, Berkeley students have become the gears, wheels and levers of the machine that Savio wanted to stop. In the space of fifty years, Berkeley students have gone from rioting against a university administration that limited their freedom of speech to violently opposing the presence of a speaker they disagree with. In the modern era, students have often been attracted to the politics of the Left. 1968 saw pivotal student protests around the world. In the United States, students were central to the civil rights movement. In France, students joined forces with millions of striking workers to protest against capitalism. The conservative philosopher Roger Scruton was in Paris during the 1968 riots and has said that it was whilst witnessing the uprising that he became a conservative. The violence at Berkeley mirrors the street protests in Paris from 1968. Privileged and excitable students living in one of the most blessed parts of the world went out and created havoc in order to overthrow an opponent that they refused to tolerate. The Parisians, at least, had a deeper political cause – but the Berkeley students carried out the ugliest form of protest. It is the form of protest that says “I don’t like that view, therefore you must not be allowed to express it” and it is causing a lot of students to have their own ‘Scruton moment’. There have been several responses to campus censorship in the United Kingdom and the United States. One of the most interesting developments has been the rise in demand for conservative thought. In the United States, college tours by speakers popular with conservatives such as Milo Yiannopoulos, Steven Crowder, Ben Shapiro and Christina Hoff Sommers have become huge events. There has been a spike in membership in conservative college clubs including Young Americans for Liberty, which boasts 804 chapters filled with 308,927 members. In the United Kingdom, free speech societies have been started across the country. ‘Speakeasy’ groups have been founded at the LSE, Leeds, Queen Mary, Cardiff, Oxford, Manchester and at Edinburgh, where I study. In these groups, ‘unacceptable’ conservative thoughts are debated amongst liberally-minded (as all good conservatives are) students. Moreover, some student unions have voted to disaffiliate from the National Union of Students (NUS). Analysis from market research firm, The Gild, shows that ‘Gen Z’ is the most conservative generation since 1945. The research reveals that ‘Gen Z’ Britons are more likely to favour conservative spending, dislike tattoos and body-piercings, and oppose marijuana legislation. The youth and student members of the British Left have given up trying to win arguments on principle, preferring to shut down the views of those they opponents. But ‘Gen Z’ live in the time of mass media where anyone’s political views can be shared worldwide at ease. By pushing a “you can’t say that” attitude, the young Left in the UK and the US are reducing their opportunity to respond to conservative ideas, and, as a result of this, conservatism is on the rise. Nowadays, the only thing that is stopping a student from accessing a new idea is a censorious gag from a student union or NUS apparatchik. Whilst the student Left have historically campaigned in support of causes that the West’s youth have been favourable towards, such as the anti-war and anti-austerity movements, they are now picking on something that is dear to us: freedom of information. Students of my generation have grown up in an era of mass-communication. Each year has brought new tools for the flow of ideas, conversation and media. The rapid expansion of affordable technology has been matched by the growth of the social media market. When it is common for students to be able to easily interact with anyone in the world via a portable computer that fits in their pocket, nothing seems more silly to us than cliquey calls for censorship. That is why young people and students are becoming conservatives – they’re the only people making the case for a freedom that they love.

### --XT: Conservativism

#### Pro censorship arguments misunderstand shifting power dynamics –pyrrhic victory

Blumner, JD, 16

(Robyn E., Int. J. Appl. Psychoanal. Studies 2016; 13: 245–246)

The essays are typically more about power than speech. Many work off this basic premise: The powerful white male majority is in a position to subordinate powerless ethnic and racial minorities and women, which transmogrifies demeaning speech into demonstrable acts of harm by normalizing and legitimizing discrimination and terrorizing and silencing the target. In an essay titled “Subordinating Speech,” Maitra argues that people who use hate speech, even if they have no apparent authority, can nonetheless gain authority through the act of speaking down to a racial minority. Which is one way to elide the modern‐day reality that our president and attorney general are Black while millions of white males hold no economic or political power. McGowan suggests some racial hate speech has the equivalent impact of a “Whites Only” sign – speech we may legally prohibit when used by a business proprietor.An essay by Caroline West says societal equality aside, free speech itself is enhanced by restricting racist hate speech, because racist speech silences and marginalizes the targets of the speech, making their speech less likely to be offered, heard or comprehended. Laura Beth Nielsen reinforces this silencing theme with an essay titled, “Power in Public: Reactions, Responses, and Resistance to Offensive Public Speech.” Nielsen suggests that street harassment of a sexual or racial variety leads people to choose no response rather than a potentially dangerous confrontation. All to suggest that the typical tonic for offensive speech – more speech – is an unreasonable and unworkable prescription. Nielsen compares First Amendment protection for racial and sexual hate speech with the raft of laws limiting aggressive pan handling. She claims that because targets of panhandling are society's privileged the courts allow the First Amendment to bend so elites may feel comfortable walking public streets, but no such consideration is granted women who receive unwanted catcalls. Failing to recognize that white male supremacy is an eroding model of social power is one of the blind spots in this book. Somehow, women, racial and ethnic minorities and gays and lesbians have been able to win tremendous gains despite America's commitment to free speech – and I would argue because of it. Who is powerful and who is powerless is becoming less clear. But the essays give no ground on this. Another blind spot is failing to recognize that not everyone agrees on what speech is harmful. One only need look at the throngs of Americans throwing enthusiastic support behind Donald Trump's GOP (Republican Party) presidential bid to understand that, as US Supreme Court Justice John Marshall Harlan wrote, “one man's vulgarity is another's lyric.” Trump's claim that Mexican immigrants are rapist; his demand that Muslims be barred from entering the country, undoubtedly sound like harmful hate speech to some. Yet, to others he is singing their song. Long ago I wrote that free speech is not a matter of good speech versus bad speech, but who has the power to decide which is which. Better that we not give anyone in government the power to censor. Because it just might be Trump who is the decider‐in‐chief.(246)

### 2AC Cooption

#### HS restrictions get coopted

Tambini, Comparative Media @Oxford, 12-8-03

(Damian, The Guardian)

Thinktanks close to the US president and international organisations have also launched projects on hate speech this year and clearly in a more transparent, more media-focused world, the monitoring of incitement is more than a passing fad. "We have high hopes for hate speech monitoring, but it is crucial that at an early stage we isolate the key principles that are really at stake," says Westcott. Monitoring for hate speech can surely help to prevent violent conflict but it also presents fundamental dilemmas: just how do we recognise hate speech, and how can we ascertain if it is likely to lead to violence? If speech that constitutes genuine incitement is detected, what would be the appropriate international legal channels to pursue? If national authorities are not to be trusted to be fair in separating hate speech from valid criticism, how can international monitoring appear legitimate? And - following the closure of an Iraqi newspaper for criticism of US occupiers - at what point could a legitimate anti-colonial discourse be classified as hate speech? Fundamentally, where unequal societies cleave politically and economically along ethnic grounds - as was the case in Rwanda - antagonism and debate across ethnic lines is a necessary safety valve. The job of determining what constitutes legitimate political debate and what constitutes incitement is clearly ultimately for courts. What monitoring can do is provide reliable evidence and engage diplomatic pressure: a role surely strengthened after the decisions last week.

### --XT: Cooption

#### Cooption outweighs- causes more hostility and circumvention means no benefits to outweigh

Massaro, Law@Arizona, 91

(Toni M., FREE SPEECH AND RELIGIOUS, RACIAL, AND SEXUAL HARASSMENT: EQUALITY AND FREEDOM OF EXPRESSION: THE HATE SPEECH DILEMMA William & Mary Law Review WINTER, 1991 32 Wm. & Mary L. Rev. 211)

Practical problems add to the theoretical difficulties. First, both of the proposed "solutions" to the problem of hate speech -- suppression and protection -- evoke nonfrivolous charges that they will cause serious social harms. They conjure up the dual spectres of McCarthyism on the one hand and spirit-murdering n21 denials of equality on the other. Second, both proposals may trigger forceful opposition. Protecting hate speech, especially in controlled environments like the workplace or school, fosters an atmosphere of incivility and tension, which can give rise to unrest and even physical disruptions. Yet, suppressing hate speech, especially under the "one-way" proposals of some civil rights theorists, risks charges of censorship or reverse discrimination, which likewise can give rise to intergroup hostilities and potential disruptions. Another student expressed this latter concern during a seminar discussion of this problem. As he put it, "There is no [\*215] way, in the high school that I attended, that the students would accept a rule that said the blacks could call the whites racist names, but the whites could not call the blacks racist names. The students would laugh in your face, or worse." n22 Finally, there are the formidable problems of defining an epithet or slur and containing the adverse consequences of restricting this speech. Is it racist, for example, to state that African-Americans are better athletes than whites? n23 Is it homophobic to declare that AIDS is a product of reckless gay male sexual practices? n24 People express concern that the rules that restrict hate speech will be overbroad and could stultify intergroup discourse or chill academic discourse, n25 political satire or social commentary, n26 contemporary rap music, or other forms of artistic expression. n27 Many worry that regulation of hate speech will lead [\*216] to regulation of other forms of offensive and confrontational speech, like flag burning or other political expression. Some grouse that the attempt to control hate speech may be manipulated to attempt to enforce "politically correct" attitudes, with a strong tilt toward the left. Others, more sympathetic to the regulation proposals, worry that once hate speech regulation identifies certain terms as unlawful epithets and slurs, inventive racists will coin new ones faster than the regulators can master the new vocabularies. Indeed, the effort to regulate may inspire these inventions or send them underground. n28 Many people argue, therefore, that no workable solution to hate speech is possible. Any regulation would be either too chilling of good speech or so narrow as to be purely symbolic and likely unenforceable.

### 2AC Empirics

#### Empirics show speech codes promote rather than combat discrimination

Strossen, ACLU president, 01

(Nadine, Law @NYU, Incitement to Hatred: Should There Be a Limit Copyright (c) 2001 Board of Trustees of Southern Illinois University Southern Illinois University Law Journal Winter, 2001 25 S. Ill. U. L. J. 243)

Based on actual experience and observations in countries around the world, the respected international human rights organization, Human Rights Watch, concluded that suppressing hate speech does not effectively promote equality or reduce discrimination. In 1992, Human Rights Watch issued a report and policy statement opposing any restrictions on hate speech that go beyond the narrow confines permitted by traditional First Amendment principles. Human Rights Watch's policy statement explains its position as follows: The Human Rights Watch policy attempts to apply free speech principles in the anti-discrimination context in a manner that is respectful of both concerns, believing that they are complementary, not contradictory. While we recognize that the policy is closer to the American legal approach than to that of any other nation, it was arrived at after a careful review of the experience of many other countries . . . . This review has made clear that there is little connection in practice between draconian "hate speech" laws and the lessening of ethnic and racial violence or tension. Furthermore, most of the nations which invoke "hate speech" laws have a long way to go in implementing the provisions of the Convention for the Elimination of Racial Discrimination calling for the elimination of racial discrimination. Laws that penalize speech or membership are also subject to abuse by the dominant racial or ethnic group. Some of the most stringent "hate speech" laws, for example, have long been in force in South Africa, where they have been used almost exclusively against the black majority. n42 Similar conclusions were generated by an international conference in 1991 organized by the international free speech organization, Article 19, [\*259] which is named after the free speech guarantee in the Universal Declaration of HumanRights. That conference brought together human rights activists, lawyers, and scholars, from fifteen different countries, to compare notes on the actual impact that anti-hate-speech laws had in promoting equality, and countering bias and discrimination, in their respective countries. The conference papers were subsequently published in a book, Striking A Balance: Hate Speech, Free Speech, and Non-Discrimination. n43 The conclusion of all these papers was clear: not even any correlation, let alone any causal relationship, could be shown between the enforcement of anti-hate-speech laws by the governments in particular countries and an improvement in equality or inter-group relations in those countries. In fact, often there was an inverse relationship. These findings were summarized in the book's concluding chapter by Sandra Coliver, who was then Article 19's Legal Director: Laws which restrict hate speech have been flagrantly abused by the authorities. Thus, the laws in Sri Lanka and South Africa have been used almost exclusively against the oppressed and politically weakest communities. In Eastern Europe and the former Soviet Union these laws were vehicles for the persecution of critics who were often also victims of state-tolerated or sponsored anti-Semitism. Selective or lax enforcement by the authorities, including in the United Kingdom, Israel and the former Soviet Union, allows governments to compromise the right of dissent and inevitably leads to feelings of alienation among minority groups. Such laws may also distract from the need for effective legislation to promote non-discrimination. The rise of racism and xenophobia throughout Europe, despite laws restricting racist speech, calls into question the effectiveness of such laws in the promotion of tolerance and non-discrimination. One worrying phenomenon is the sanitized language now adopted to avoid prosecution by prominent racists in Britain, France, Israel and other countries, which may have the effect of making their hateful messages more acceptable to a broader audience. n44

### --Counterspeech True- Studies

#### Psychological studies prove counterspeech works

Strossen, ACLU president, 01

(Nadine, Law @NYU, Incitement to Hatred: Should There Be a Limit Copyright (c) 2001 Board of Trustees of Southern Illinois University Southern Illinois University Law Journal Winter, 2001 25 S. Ill. U. L. J. 243)

A study that was done by a professor at Smith College in Massachusetts demonstrated the effectiveness of this kind of counterspeech in combating bias and prejudice. It showed that when a student who hears a statement conveying discriminatory attitudes also promptly hears a rebuttal to that statement-especially from someone in a leadership position-then the student will probably not be persuaded by the initial statement. Dr. Fletcher [\*276] Blanchard, a psychologist at the college who conducted the experiment, concluded that"A few outspoken people who are vigorously anti-racist can establish the kind of social climate that discourages racist acts." n82 Thus, this study provides empirical social scientific support for the free speech maxim, discussed above, that the appropriate response to any speech with which one disagrees is not suppression but rather counterspeech.

### 2AC Safety Valve

#### Speech is a safety valve that prevents greater violence

Bhagwat, Law @UC Davis, 15

(Ashutosh, Free Speech Without Democracy Copyright (c) 2015 Regents of the University of California UC Davis Law Review November, 2015 UC Davis Law Review 49 U.C. Davis L. Rev. 59)

Hate Speech and Pornography The First Amendment has generally been understood to grant complete protection to speech denigrating minorities and women, including hate speech and pornography that falls short of obscenity. n238 This approach has been subjected to strong criticism on the grounds that hate speech and pornography silence the voices of disempowered [\*111] groups such as women and racial minorities, thereby interfering with their ability to participate fully in society and the political process. n239 Seen purely from the democracy-enhancement perspective, there is indeed a completely plausible argument that hate speech and pornography, far from advancing democratic self-governance, actually detract from it because such speech silences important voices, and the ideas expressed by hate speech and pornography (such as they are) have no legitimate role in a liberal democracy. There are, of course, counterarguments to the attack on hate speech based on traditional free speech theory. n240 The analysis presented here, however, suggests yet another reason why the First Amendment should protect hate speech: the role of hate speech as a safety valve. Explicitly racist and misogynistic ideas are very much at the margins of modern American political culture. As a result, individuals who hold such views are very likely to feel silenced and disempowered. That such people are disempowered is obviously a good thing; but suppressing their ability to express their ideas is likely to increase resentment and potentially violence. There is a non-trivial argument to be made that just as autocratic regimes should tolerate some dissenting speech in order to siphon off emotion, so too liberal democracies should tolerate hate speech - which after all, is dissenting speech in our societies - for the same reason. It should be noted that the argument for protecting hate speech as a safety valve is limited to the modern context. In an earlier time, when hate speech was common rather than in a marginalized position and society itself was officially discriminatory, hate speech did not primarily function as a safety valve. It was instead the expression of the dominant political position, whose impact was to suppress rather than [\*112] enhance democratic politics. Interestingly, therefore, the argument for protecting hate speech is reliant on the political collapse of the ideas hate speech embodies. In a different situation, the argument for protection would be much weaker, n241 but, perversely, so would the likelihood of regulation.

### --XT: Safety Valve

#### Venting o/w their internal link

St. Louis Post-Dispatch 3-27-98

It's too glib to say that hate speech leads to hate crimes. The need to denigrate and scapegoat others is also driven by feelings of personal, economic and cultural impotence that communities must address. Hate speech may be a private safety valve for people who conduct themselves, in public at least, with greater respect for otherness.

### 2AC Underground

#### Problematic speech shouldn’t be suppressed- that magnifies the impacts-prefer my evidence because it has internal weighing

Alexander,Law @San Diego, 13

(Larry, Is Freedom of Expression a Universal Right San Diego Law Review Summer, 2013 San Diego Law Review 50 San Diego L. Rev. 707)

One commentator has characterized the consequentialist considerations for freeing up some speech that might be suppressed because of two-step harms in the following way: First, being able to speak our minds makes us feel good. True, we tailor our words to civility, persuasion, kindness, or other purposes, but that is our choice. Censors claim the right to purge other people's talk - all the while insisting that it is for our own good. Second, much censorship appears irrational and alarmist in retrospect because the reasons people choose and use words are vastly more interesting than the systems designed to limit them. It's not hard to make a list of absurdities - I'm particularly fond of a rash of state laws that forbid the disparagement of agricultural products - but simplistic explanations and simple-minded responses are as dangerous as they are ditzy. In one of the few places that postmodern theory and common sense intersect, it is obvious that the meaning and perception of words regularly depend on such variables as speaker and spoken to, individual experience and shared history, and the setting, company, and spirit in which something is said. To give courts or other authorities the power to determine all this is, to put it mildly, mind-boggling. Third, censorship is inimical to democracy. Cloaking ideas and information in secrecy encourages ignorance, corruption, demagoguery, a corrosive distrust of authority, and a historical memory resembling Swiss cheese. Open discussion, on the other hand, allows verities to be examined, errors to be corrected, disagreement to be expressed, and anxieties to be put in perspective. It also forces communities to confront their problems directly, which is more likely to lead to real solutions than covering them up. Fourth, censorship backfires. Opinions, tastes, social values, and mores change over time and vary among people. Truth can be a protean thing. The earth's rotation, its shape, the origins of humankind, and the nature of matter were all once widely understood to be something different [\*719] from what we know today, yet those who challenged the prevailing faith were mocked and punished for their apostasy. Banning ideas in an attempt to make the world safe from doubt, disaffection, or disorder is limiting, especially for people whose lives are routinely limited, since the poor and politically weak are the censor's first targets. Finally, censorship doesn't work. It doesn't get rid of bad ideas or bad behavior. It usually doesn't even get rid of bad words, and history has shown repeatedly that banning the unpalatable merely drives it underground. It could be argued that that's just fine, that vitriolic or subversive speech, for example, shouldn't dare to speak its name. But hateful ideas by another name - disguised as disinterested intellectual inquiry, or given a nose job like Ku Klux Klansman David Duke before he ran for governor of Louisiana - are probably more insidious than those that are clearly marginal. n22 Let me close with a couple of examples. So-called hate speech - speech that disparages ethnic, racial, or religious groups - is generally prohibited in most Western countries but not in the United States, where it is constitutionally protected as a matter of freedom of speech. If we leave aside the one-step harm of offense and focus on the two-step harms of inciting others to violence or to discrimination against members of the disparaged groups, we can understand why some countries, given their history and culture, would be quite fearful of the effects hate speech might have. For example, think of Germany and anti-Semitic speech. On the other hand, in the twenty-first-century United States, the dangers of hate speech pale in comparison to the dangers of suppressing it. Suppression drives haters underground, where they may be more dangerous than if they were more visible. Suppression is frequently not evenhanded: disparagement of some favored groups is punished, but disparagement of other groups is not. Frequently, suppression of hate speech is an expression of power wielded by some groups over other groups rather than an expression of concern about violence or discrimination. Sometimes, suppression of hate speech is just partisan politics. In the United States, some groups have tried to label messages such as opposition to racial preferences as racist hate speech. And political correctness surely infects enforcement of hate speech laws. Consider the prosecution of Mark Steyn in British Columbia because of his book expressing political concerns over [\*720] the ever-increasing percentage of Muslims in Europe. n23 So whether hate speech laws are a good or bad thing will undoubtedly vary with the country, its history, its culture, and its politics. The same point can be made with respect to restrictions on culture-coarsening expression - pornography, violent video games, public profanity, and so forth. Culture coarsening is a real harm, and its baleful effects may even prove catastrophic. On the other hand, whether legal restrictions on expression that contributes to coarsening is a good idea will vary with the place, the time, the institutions, the current state of the culture, and so forth. Governments are generally pretty ham-fisted when it comes to defining culture-coarsening messages. The history in the United States of attempts to ban pornography is not reassuring. Other countries with other institutions may do a better job.

### --XT: Underground

#### Restrictions drive speech underground, tradeoff with more effective remedies

Levinson, Law@Valparaiso, 13

(Rosalie Berger, Targeted Hate Speech and the First Amendment: How the Supreme Court Should Have Decided Snyder Suffolk University Law Review 2013 Suffolk University Law Review 46 Suffolk U. L. Rev. 45)

In addition, First Amendment advocates argue that hate speech should be protected because it mobilizes social change and societal awareness. n225 They contend that allowing the expression of hate speech in the marketplace has the double positive effect of exposing poisonous ideas to the light of day and serving to transform an inert public into one mobilized for action. n226 They assert that restricting hate speech will not stop hatred; it simply drives the expression underground where it becomes more dangerous. n227 In contrast, permitting targeted victims to sue for IIED does not stifle or chill speech, nor is that the goal; it merely holds speakers liable when they purposefully target and exploit particularly vulnerable individuals with what are arguably unprotected "fighting words" that cause severe emotional distress. n228

#### Martyrdom and state power outweigh their impact

Australian 8-24-16

There is much to commend the view that a provision such as section 18C has no place in a liberal democracy. In her biography of Voltaire, Evelyn Beatrice Hall -famously remarked: "I disapprove of what you say, but I will defend to the death your right to say it". (This quotation is often misattributed to Voltaire himself.) Many other champions of liberty have expressed the same sentiment. I especially like Noam Chomsky's version: "If you believe in freedom of speech, you believe in freedom of speech for views you don't like. Stalin and Hitler, for -example, were dictators in favour of freedom of speech for views they liked only. If you're in favour of freedom of speech, that means you're in favour of freedom of speech precisely for views you -despise." I also have a great faith in the common sense of Australians. The best way to defeat "hate speech" is not to drive it underground, as has occurred, for example, with David Irving, the notorious Holocaust denier, anti-Semite and racial bigot who has been banned from entering or speaking in several countries (Australia included). This has succeeded only in clothing Irving in the guise of a martyr and fuelling the absurd theory that Western governments would not be so concerned about Irving if there were no truth in what he said. Far better to let such creatures air their despicable views in public, where his vile opinions can be assessed, -addressed and repudiated for the nonsense they demonstrably are.

#### Underground turn flips their minority protection impact (Flips Phil NC)

Haigh, JD Candidate, 06

(Ryan F., SOUTH AFRICA'S CRIMINALIZATION OF "HURTFUL" COMMENTS: WHEN THE PROTECTION OF HUMAN DIGNITY AND EQUALITY TRANSFORMS INTO THE DESTRUCTION OF FREEDOM OF EXPRESSION Washington University Global Studies Law Review 2006 5 Wash. U. Global Stud. L. Rev. 187)

Hate speech laws may be important in redrawing the limits of what is acceptable in any society and in setting new standards of behavior. n144 However, hate speech laws are not accomplishing these goals in South Africa. As Thomas Paine stated, "he that would make his own liberty secure must guard even his enemy from oppression; for if he violates this duty he establishes a precedent that will reach to himself." n145 Dignity is a [\*210] tool which can be used to inform individuals about the past and to provide a vision of the future. n146 It should not be used as a means to restrict essential freedoms, such as speech, thereby stripping individuals of the very qualities that they are trying to instill into society.

### AT: Turns Case- Marketplace

#### Responding to hateful speech is empowering and other community members solve

Strossen, ACLU president, 01

(Nadine, Law @NYU, Incitement to Hatred: Should There Be a Limit Copyright (c) 2001 Board of Trustees of Southern Illinois University Southern Illinois University Law Journal Winter, 2001 25 S. Ill. U. L. J. 243)

The viewpoint-neutrality principle reflects the philosophy, first stated in pathbreaking opinions by former United States Supreme Court Justices Oliver Wendell Holmes and Louis Brandeis, that the appropriate response to speech with which one disagrees in a free society is not censorship but counterspeech-more speech, not less. Persuasion, not coercion, is the solution. n38 Accordingly, the appropriate response to hate speech is not to censor it, but to answer it. Recall, as I discussed earlier, that this is the strategy that the Anti-Defamation League has been pursuing so effectively in response to Internet hate speech.

This counterspeech strategy is better than censorship not only in principle, but also from a practical perspective. That is because of the potentially empowering experience of responding to hate speech with counterspeech. I say "potentially,"since I realize that the pain, anger and other negative emotions provoked by being the target of hate speech could well have an incapacitating effect on some targeted individuals, preventing them from engaging in counterspeech. Even in such a situation, though, other members of the community who are outraged by the hate speech could engage in counterspeech, and that is likely to have a more positive impact than a censorial response. Furthermore, once other community members denounce the hate speech, it should be easier for the target to join them in doing so.

#### Their driven out impact reinforces victim culture

Strossen, ACLU president, 01

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I will illustrate these practical benefits of a non-censorial, counterspeech response to hate speech in the campus context. Far from being paternalistic, counterspeech is empowering to students; it transforms students who would otherwise be seen-and see themselves-largely as victims into activists and reformers. It underscores their dignity, rather than undermines it.

### AT: Turns Case –Speech Solves

#### The speech disad turns the net benefit

Strossen, ACLU president, 01

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In his 1994 book, Hate Speech: The History of an American Controversy, Samuel Walker shows that, throughout the twentieth century, the equality rights of African- Americans and other minority groups were dependent on a robust free speech concept. He further shows that, realizing the importance of protecting even speech viewed as hateful or dangerous-because their own speech certainly was so viewed in many Southern and other communities-the major American civil rights organizations consistently opposed efforts to restrict hate speech. As Walker concluded, "The lessons of the civil rights movement were that the interests of racial minorities and powerless groups were best protected through the broadest, most content-neutral protection of speech." n51

#### Risk of solvency deficit outweighs any net benefit

Rabe, MA/JD, 03

(Lee Ann, STICKS AND STONES: THE FIRST AMENDMENT AND CAMPUS SPEECH CODES The John Marshall Law Review Fall, 2003 37 J. Marshall L. Rev. 205)

The struggle over free speech continues at universities today. In addition to speech codes, some universities have adopted "free [\*227] speech zones." n134 In these zones, students and other protesters are free to express themselves on any issue they choose. After creating these zones, the universities then use them as leverage to justify limiting speech on other parts of the campus. n135 These "free speech zones" have not yet been challenged in court, but they are as unlikely to withstand constitutional challenge as are speech codes. Donna Shalala, as Chancellor of the University of Wisconsin in 1988, spoke about universities and the First Amendment: The First Amendment is not something that we can honor when we choose and disregard when we do not like what we hear ... freedom is never easy, and a great university is not a place to play with constitutional rights. It is a laboratory for open debate, a haven for diverse opinions. It must be a special place where those rights are protected and where principles of freedom are taught to citizens ... University administrators cannot abandon those principles to satisfy the will of a few, or even of many, at the expense of civil rights guaranteed to us all. n136 A robust exchange of ideas, even offensive, sometimes hurtful ideas, is a central part of the learning and intellectual exploration essential on university campuses. While preserving civility on campuses is a noble goal, it is a goal that must take second place to the freedoms guaranteed by the First Amendment.