Harvard Law Review Association
November, 1988

The Supreme Court, 1987 Term

Leading Cases

I. Constitutional Law

F. Freedom of Speech, Press, and Association

***271** 4. STUDENT SPEECH—FREE PRESS IN HIGH SCHOOLS

Public educators in the United States are expected to pass on to their students—to inculcate in them—the shared values of their community. [FN1] This communication of values is essential to the continued vitality of American culture and to the social, moral, and political education of students. [FN2] Yet inculcation of community values cannot be allowed to trample students' individual liberties; public educators must strike a delicate balance between the state's educational interests and the students' rights to self-expression. [FN3] Although the striking of this balance shoul initially be left to local educators, [FN4] when value inculcation impermissibly interferes with students' constitutional rights, courts must intervene. [FN5]

Nineteen years ago in *Tinker v. Des Moines Independent Community School District*, [FN6] the Supreme Court held that school officials cannot interfere with student speech unless such speech would 'materially disrupt classwork or involve substantial disorder or invasion of the rights of others.' [FN7] Focusing on the school's need to maintain order, the *Tinker* Court emphasized the constitutional significance of students' right to expression and, as a result, substantially limited educators' ability to choose the values they instill in their students. ***272** More recently, however, the Court has retreated from its vigilant protection of students' rights and has allowed educators increasing control over student expression. [FN8]

Last Term, in *Hazelwood School District v. Kuhlmeier*$, [FN9] the Court continued its retreat from *Tinker* by severely limiting the settings within which students may exercise first amendment rights under the *Tinker* standard. In effect, the Court struck a new balance that favors inculcation at the expense of student liberty.

The Journalism II class of Hazelwood East High School in Missouri wrote and edited the school's newspaper, *Spectrum*. [FN10] The journalism teacher was required to submit page proofs to the principal for approval prior to publication. [FN11] On May 13, 1983, the principal ordered two pages of the six-page paper deleted because he objected to two articles on those pages. One of the articles related the stories of three pregnant Hazelwood East students; the other described students' reactions to their parents' divorces. [FN12] The principal objected to the pregnancy story because he felt that it was 'inappropriate for some of the younger students at the school,' [FN13] and he objected to the divorce article because a student who was identified by name complained of her father's conduct. [FN14] The principal ordered by entire two pages excised because he believed that any delay would prevent publication before the end of the school year. [FN15] *Spectrum*'s staff remained unaware of the deletions until the day the paper was published. When the students met with the principal that afternoon, they were told that the stories were 'inappropriate, personal, sensitive, and unsuitable.' [FN16]

Three former members of *Spectrum*'s staff brought suit alleging that the principal's censorship violated their first amendment rights. [FN17] The district court upheld the censorship, reasoning that, because *Spectrum****273*** was 'an integral part of the school's educational function,' [FN18] the school need only show 'a reasonable basis for the action taken.' [FN19] The Court of Appeals for the Eighth Circuit disagreed, finding that, although *Spectrum* was 'a part of the school-adopted curriculum,' [FN20] it was also a 'public forum'; as such, school control over the paper's content was governed by *Tinker*. [FN21] Applying *Tinker*, the court held that the principal's censorship was unconstitutional because it was not "necessary to avoid material and substantial interference with school work or discipline . . . or the rights of others." [FN22]

The Supreme Court reversed. Writing for a 5-3 majority, [FN23] Justice White rejected the circuit court's application of *Tinker*. The Court first held that *Spectrum* was a nonpublic forum because the school did not "by policy or by practice" open the paper "for indiscriminate use by the general public' or by some segment of the public, such as student organizations.' [FN24] Relying on *Spectrum*'s close connection with the Journalism II class [FN25] and a school board policy statement providing that " s chool sponsored publications are developed within the adopted curriculum and its educational implications," [FN26] the Court concluded that the school board did not exhibit a "clear intent to create a public forum." [FN27] Because the paper was a nonpublic forum, school officials 'were entitled to regulate the contents of *Spectrum* in any reasonable manner.' [FN28]

***274** The Court next justified the principal's censorship on the grounds that the paper was school-sponsored. Because 'students, parents, and members of the public might reasonably perceive [the contents] to bear the imprimatur of the school,' [FN29] and because the school should be able to "disassociate itself' from speech that urges conduct 'inconsistent with 'the shared values of a civilized social order,'' [FN30] the Court found the school entitled to control the paper's contents. To enable the school to fulfill its role as inculcator of community values, the Court held that censorship of school-sponsored student speech need only be 'reasonably related to legitimate pedagogical concerns.' [FN31]

The Court then examined the principal's conduct under this reasonableness standard rather than the *Tinker* 'material disruption' standard. The principal had two basic fears: first, that the paper invaded the privacy of the individuals mentioned or alluded to in the two articles; second, that the pregnant girls' 'frank talk' about 'their sexual histories and their use or nonuse of birth control' was 'inappropriate' for some of the paper's younger readers. [FN32] The Court agreed with the district court that these concerns were justified and that the principal's decision to censor was reasonable. [FN33]

In dissent, Justice Brennan, joined by Justices Marshall and Blackmun, agreed with the Court that public schools must necessarily inculcate community values: 'the public educator nurtures students' social and moral development by transmitting to them an official dogma of "community values."' [FN34] He disagreed, however, with the Court's abandonment of *Tinker*. [FN35] Justice Brennan argued that the Court's reasonableness standard effectively allows a school to suppress any speech with which it disagrees. According to Justice Brennan, the 'maverick' who sports a passive protest symbol, the gossip who fills the student commons with 'tales of sexual escapades,' and the political science student who expounds on the virtues of socialism all 'convey a moral position at odds with the school's official stance.' [FN36] If a school, as the Court claimed, 'need not tolerate student speech ***275** that is inconsistent with its 'basic educational mission," [FN37] then a school could suppress all such student expression. This suppression, Justice Brennan argued, would 'convert our public schools into 'enclaves of totalitarianism." [FN38]

Justice Brennan also criticized the Court's distinction between school-sponsored speech and personal speech. He argued that the distinction had no basis in the Court's precedent, [FN39] and that the Court's rationales for the distinction were unnecessary, illegitimate, and overbroad. [FN40] First, Justice

Brennan reasoned, the school's interest in ensuring that 'participants learn whatever lessons the activity is designed to teach,' although valid, is 'the essence of the *Tinker* test, not an excuse to abandon it.' [FN41] Second, he labelled 'potential topic sensitivity' [FN42] as 'a vaporous non-standard' that invites viewpoint discrimination. [FN43] Third, although educators may have a legitimate interest in dissociating the school from student speech, Justice Brennan argued, the school must use the least oppressive means to do so. [FN44] In this case, dissociative means short of censorship—such as a disclaimer—were available to the school. [FN45]

After rejecting the Court's reasonableness standard, Justice Brennan concluded that the principal's censorship was impermissible under *Tinker*'s material disruption standard. [FN46] Justice Brennan ended his opinion by criticizing the 'brutal manner' in which the principal excised the two pages, stating that it was 'insidious from one to whom the public entrusts the task of inculcating in its youth an appreciation for the cherished democratic liberties that our Constitution guarantees.' [FN47]

***276** The *Hazelwood* decision continues the Court's unfortunate retreat from *Tinker*. The Court's introduction of the public forum doctrine into the student-speech context and its articulation of a novel 'school-sponsored speech' doctrine threaten to reduce *Tinker* to virtual irrelevance. Equally disturbing are *Hazelwood*'s implications for the constitutional and educational values that underlie *Tinker. Hazelwood* reflects a theory of the connection between education and self-government that both undervalues student liberty and fails to instill in students the attitudes and capacities essential to democratic citizenship.

Hazelwood is not the first sign of the Court's dissatisfaction with *Tinker*. In *Tinker*, the Court balanced the inculcation of community values with students' individual liberties by allowing only those restrictions on student speech necessary to maintain an orderly educational environment. In *Bethel School District No. 403 v. Fraser*, [FN48] however, the Court held that school officials could censure a student for delivering a sexually suggestive speech because the speech interfered with the school's teaching of the 'boundaries of socially acceptable behaviour.' [FN49] *Fraser* thus implicitly altered the *Tinker* balance by characterizing interference with inculcation of values as itself a material disruption of the school's educational mission.

The *Hazelwood* Court further restricted *Tinker* by articulating two arguably distinct limitations on *Tinker*'s application. First, without explanation, the Court seemingly decided that *Tinker* should be restricted to public forums. Second, the *Hazelwood* majority limited *Tinker* to situations not involving school-sponsored speech. In nonpublic forums or in connection with school-sponsored speech, the Court held, schools may restrict student speech as long as such restrictions are 'reasonable.' [FN50] Unfortunately, the Court's opinion never specifies whether these two rationales are alternative holdings or whether school sponsorship is somehow equated with nonpublic forum status. [FN51]

The Court's ambiguous reasoning could lead to an even more drastic limitation of *Tinker* in the future. The *Hazelwood* majority focused predominantly on its newly fashioned school-sponsored speech rationale; it is to this point that the dissent exclusively responded. ***277** Nevertheless, because the opinion expressly limited *Tinker* to public forums and because virtually no public forums exist in the school context, lower courts might now employ the Court's reasoning to overrule *Tinker* in effect by applying the deferential reasonablenesses standard to *all* student-speech cases. [FN52]

The *Hazelwood* Court's doctrinal innovations appear even more radical when one recognizes that the Court could have reached the same result by applying *Tinker*. Because the *Tinker* test, as modified by *Fraser*, allows a school to circumscribe speech that materially disrupts a school's attempts to inculcate community values, the Court could have decided that the divorce and teenage pregnancy articles would have materially disrupted the school's interest in inculcating the values of chastity and journalistic integrity. [FN53] That the majority in *Hazelwood* decided instead to create a new doctrine governing student

speech suggests that the Court was seeking a doctrinal framework more consistent with its repudiation of *Tinker*'s vision of education and self-government.

Tinker's theory envisions schools as instruments through which students learn the skills necessary to function in a democratic society. ***278** The limitations on inculcation imposed by *Tinker*'s material disruption standard—at least before its dilution by *Fraser*—embody a belief, repeatedly articulated by the Court, that unnecessary restrictions on students' first amendment freedoms hinder their education as citizens. [FN54] As the Court warned in *West Virginia Board of Education v. Barnette*, [FN55] ' t hat schools are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.' [FN56]

Decisions like *Fraser* and *Hazelwood*, in contrast, view local schools not as a means of preparing students for self-government, but as institutions of self-government. Under this theory, the inculcation of values is a central way in which communities govern themselves. [FN57] The shift in the Court's educational ideology from *Tinker* to *Hazelwood* is unfortunate for the nation's students. First, the theory underlying *Fraser* and *Hazelwood* overlooks the fact that self-government in the United States is not merely local but national in scope. *Hazelwood*'s lenient reasonableness standard, which permits wide latitude for self-government, subordinates national democratic ideals to local values; it allows schools, in pursuit of their inculcative mission, to dictate what students can hear and say. As a result, students not only are deprived of the education necessary to function as democratic citizens, but also are implicitly taught that their government is arbitrary and authoritarian. [FN58]

Second, the Court's theory of education and self-government ignores the inherent resilience of schools as organs of inculcation. Valueless education is impossible. [FN59] As a result, the public school cannot ***279** avoid being a powerful and effective inculcator of political, social, cultural, and moral values. Correspondingly, the proper role of courts is to act as a counterweight, ensuring that a school's power is not used to violate students' constitutionally guaranteed freedoms. Moreover, because the *Tinker* standard already offers less protection than the comparable standard for content-specific regulation of non-school speech, [FN60] *Tinker* respects the school's interest in inculcation while protecting students' first amendment rights.

The *Hazelwood* Court rightly acknowledged that a school needs to be able to dissociate itself from student speech to preserve its interest in inculcating community values. [FN61] Yet this rationale does not justify the Court's result, for the school in *Hazelwood* could have dissociated itself through means less oppressive than censorship. The school could have easily published a disclaimer in the paper and separately informed the student body of the 'official position . . . and explain ed why the student position was wrong.' [FN62] Competition between school and student speech allows the interests of both parties to flourish; the students experience first-hand the democratic values of free expression and government toleration, and the school is allowed to impart its 'official dogma of 'community values." [FN63]

As the guardian of students' constitutional freedoms, the Court must not allow those fundamental liberties to be compromised unless infringement is necessary to proper education. Responsible inculcation is essential to the educational growth of the nation's students and to the continued vitality of American culture. Yet, to be responsible, inculcation must teach community values without undermining the fundamental democratic values that underlie the Constitution.

[FN1] *See, e.g.*, Board of Educ. v. Pico, 457 U.S. 853, 864 (1982) (plurality opinion) (recognizing the community's "legitimate and substantial . . . interest" in having the school "transmit community values . . . be they social, moral, or political" (quoting Brief for Petitioners)).

[FN2] *See, e.g., id.*; Ambach v. Norwick, 441 U.S. 68, 76 (1979) (recognizing the 'importance of public schools in the preparation of individuals for participation as citizens, and in the preservation of the values on which our society rests'); Brown v. Board of Educ., 347 U.S. 483, 493 (1954) (emphasizing the importance of education to a democratic society and noting that the school 'is a principal instrument in awakening the child to cultural values').

[FN3] One commentator considers this conflict to be a central issue of political theory. *See* Ingber, *Socialization, Indoctrination, or the 'Pall of Orthodoxy': Value Training in the Public Schools*, 1987 U. ILL. L. REV. 15, 17 (1987) ('A fundamental tension exists between the ideology of liberalism, which focuses on individual autonomy, and that of community, which emphasizes institutions that shape character.' (footnote omitted)); *cf. The Supreme Court, 1981 Term—Leading Cases*, 96 HARV. L. REV. 62, 160 (1982) ('Any attempt to reconcile theoretically a right of the community to inculcate and a right of the individual to thought that is free from community interference is . . . bound to fail.').

[FN4] *See, e.g.*, Epperson v. Arkansas, 393 U.S. 97, 104 (1968) (noting that 'public education in our Nation is committed to the control of state and local authorities').

[FN5] *See, e.g.*, West Virginia Bd. of Educ. v. Barnette, 319 U.S. 624, 637 (1943) ('Boards of Education . . . have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights.').

[FN6] 393 U.S. 503 (1969).

[FN7] *Id.* at 513. The school in *Tinker* had forbidden students from wearing black armbands protesting the Vietnam war. *See id.* at 504.

[FN8] *See, e.g.*, Bethel School Dist. No 403 v. Fraser, 478 U.S. 675, 685-86 (1986) (allowing school officials to discipline a student for delivering a suggestive speech that was 'wholly inconsistent with the 'fundamental values' of public school education').

[FN9] 108 S. Ct. 562 (1988).

[FN10] *See id.* at 565.

[FN11] *See id.*

[FN12] *See id.* The other articles on the deleted pages concerned the problems of teenage marriages, runaways, juvenile delinquents, birth control, and teenage pregnancy in general. The principal testified that he had no objections to these articles. All seven articles appeared under the headline 'Pressure Describes It All For Today's Teenagers.' *See* Kuhlmeier v. Hazelwood School Dist., 607 F. Supp. 1450, 1457 (D.C. Mo. 1985).

[FN13] *See* 108 S. Ct. at 566. Although the pregnancy story used false names, the principal was also concerned that the pregnant students might be identifiable from the text. *See id.* at 565.

[FN14] *See id.* The principal was unaware that the journalism teacher had deleted the student's name from the article's final version. *See id.*

[FN15] *See id.*

[FN16] Kuhlmeier v. Hazelwood School Dist., 795 F.2d 1368, 1371 (8th Cir. 1986).

[FN17] *See* 108 S. Ct. at 566.

[FN18] Kuhlmeier v. Hazelwood School Dist., 607 F. Supp. 1450, 1463 (D.C. Mo. 1985).

[FN19] *Id.* at 1466.

[FN20] 795 F.2d at 1373.

[FN21] *See id.* at 1372, 1374; *see also* Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 46 (1983) (stating that, to limit a public forum, 'a content-based prohibition must be narrowly drawn to effectuate a compelling state interest').

[FN22] 795 F.2d at 1374 (quoting *Tinker*, 393 U.S. at 511).

[FN23] Justice White's opinion was joined by Chief Justice Rehnquist and Justices Stevens, O'Connor, and Scalia. Justice Brennan filed a dissenting opinion that Justices Marshall and Blackmun joined. Justice Kennedy took no part in the consideration or decision of this case.

[FN24] 108 S. Ct. at 568 (quoting *Perry Educ. Ass'n*, 460 U.S. at 46 n.7, 47) (citation omitted); *see also* Cornelius v. NAACP Legal Defense & Educ. Fund, Inc., 473 U.S. 788, 802 (1985) ('The government . . . create[s] a public forum . . . only by intentionally opening a nontraditional forum for public discourse.').

[FN25] With one exception, each student on *Spectrum*'s staff was enrolled in Journalism II, described by the school's curriculum guide as a "laboratory situation in which the students publish the school newspaper." 607 F. Supp. at 1452-53 (quoting the Hazelwood East Curriculum Guide). The students received grades and academic credit, and the Journalism II teacher 'exercised a great deal of control over *Spectrum.' Id.*

[FN26] *Id.* at 1455 (quoting Hazelwood School Board Policy 348.51).

[FN27] 108 S. Ct. at 568-69 (quoting *Cornelius*, 473 U.S. at 802). Policy statement 348.51 also stated that "[s]chool-sponsored student publications will not restrict free expression or diverse viewpoints within the rules of responsible journalism," but the Court concluded that the school officials intended to retain 'ultimate control over what constituted 'responsible journalism' in a school-sponsored newspaper.' *Id.* at 569 (quoting Hazelwood School Board Policy 348.51).

[FN28] *Id.; see also Perry Educ. Ass'n*, 460 U.S. at 46 (stating that the government may regulate speech in a nonpublic forum 'as long as the regulation . . . is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view').

[FN29] 108 S. Ct. at 569.

[FN30] 108 S. Ct. at 570 (quoting Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675, 683 (1986)).

[FN31] *Id.* at 571. The Court did not explain the relationship between its public forum analysis and its

school-sponsorship rationale. *See infra* p. 276.

[FN32] *Id.* at 571-72. In particular, the principal was concerned about '14-year-old freshmen . . . and even younger brothers and sisters.' *Id.* at 572.

[FN33] *See id.* at 572.

[FN34] 108 S. Ct. at 573 (Brennan, J., dissenting) (quoting Board of Educ. v. Pico, 457 U.S. 853, 864 (1982) (plurality opinion)) (citation omitted by the Court in *Hazelwood*).

[FN35] Justice Brennan did not address the Court's public forum analysis.

[FN36] 108 S. Ct. at 574 (Brennan, J., dissenting).

[FN37] 108 S. Ct. at 567 (quoting Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675, 685 (1986)).

[FN38] *Id.* at 574 (Brennan, J., dissenting) (quoting *Tinker*, 393 U.S. at 511).

[FN39] *See id.* at 575.

[FN40] *See id.* at 576.

[FN41] *See id.* Justice Brennan also rejected as 'utterly incredible' the Court's suggestion that the principal's unilateral and largely unexplained actions were intended as a 'lesson on the nuances of journalistic responsibility.' *Id.* at 576-77.

[FN42] *Id.* a 578. The Court had held that the school could retain control over 'student speech on potentially sensitive topics,' ranging from 'Santa Claus' to 'teenage sexual activity.' 108 S. Ct. at 570.

[FN43] *Id.* at 578 (Brennan, J., dissenting). Justice Brennan also felt that the principal's approval of the other articles on divorce and pregnancy was evidence that viewpoint discrimination, not topic sensitivity, was the principal's true motive. *See id.* at 578-79.

[FN44] *See id.* at 580 (citing Keyishian v. Board of Regents, 385 U.S. 589, 602 (1967)).

[FN45] *See id.* at 579.

[FN46] *See id.* Justice Brennan also argued that, under *Tinker*, speech does not "invad[e] the rights of others" unless the speech would expose the school to tort liability. *See id.* (quoting *Tinker*, 393 U.S. at 513); *see also* Note, *Administrative Regulation of the High School Press*, 83 MICH. L. REV. 625, 640 (1984).

[FN47] 108 S. Ct. at 580 (Brennan, J., dissenting).

[FN48] 478 U.S. 675 (1986).

[FN49] *Id.* at 681.

[FN50] The Court enunciated two slightly different reasonableness standards: because the paper was a nonpulic forum, school officials could regulate its contents 'in any reasonable manner,' 108 S. Ct. at 569, and because the paper was school-sponsored, school officials could control its contents in any manner 'reasonably related to legitimate pedagogical concerns,' *id.* at 571.

[FN51] Some fault for the Court's ambiguous use of public forum analysis must lie with the court of appeals, which based its decision on the recognition of the paper as a public forum. *See* 795 F.2d at 1372.

[FN52] As a doctrinal test, the public forum doctrine has been subject to criticism. *See, e.g.*, Cornelius v. NAACP Legal Defense & Educ. Fund, Inc., 473 U.S. 788, 820 (1985) (Blackmun, J., dissenting); Greer v. Spock, 424 U.S. 828, 860 (1976) (Brennan, J., dissenting) ('[T]he Court's forum approach to public speech blind[s] it to proper regard for First Amendment interests . . ..'); L. TRIBE, AMERICAN CONSTITUTIONAL LAW § 12-24, at 997 (2d ed. 1988) ('[T]he cloud of doctrine to which the public forum debate has led needs to be cleared away, the better to expose what is actually at stake in the restrictions and regulations at issue.'); Farber & Nowak, *The Misleading Nature of Public Forum Analysis: Content and Context in First Amendment Adjudication*, 70 VA. L. REV. 1219, 1234 (1984) (arguing that '[c]onstitutional protection should depend not on labeling the speaker's physical location but on the first amendment values and governmental interests involved in the case').

Public forum analysis is particularly unhelpful in analyzing censorship of a school newspaper because it focuses on the school board's intent in creating the paper. The conflict in *Hazelwood* was between the school's interest in inculcating particular community values and the students' interest in free expression and personal development. An analysis of the school board's intent in creating the paper provides little insight into either the validity of the school's reasons for censorship or the weight of the students' interest in free expression. *See* Note, Kuhlmeier v. Hazelwood School District: *Application of the Prior Restraint and Public Forum Doctrines to the Free Expression Rights of High School Students*, 14 HASTINGS CONST. L.Q. 889, 907 (1987) (arguing that the appellate court's concentration on the public forum issue 'replaced the constitutionally urgent need to identify and balance the conflicting and legitimate interests of both parties').

[FN53] In situations in which censorship can be justified under *Tinker*, the school can still maintain a balance through reasonable procedural protections, such as clearly articulated standards, prior notice, and opportunities for appeal. Such safeguards not only would help ensure fair treatment of the students, but also would preserve the inculcation of democratic values. *See* Levin, *Educating Youth for Citizenship: The Conflict Between Authority and Individual Rights in the Public School*, 95 YALE L.J. 1647, 1676-77 (1986) (discussing the 'dignitary' theory of due process); *see also* Mashaw, *Administrative Due Process: The Quest for a Dignitary Theory*, 61 B.U.L. REV. 885, 886 (1981).

[FN54] "The Classroom is peculiarly the 'marketplace of ideas.' The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, [rather] than through any kind of authoritative selection."' *Tinker*, 393 U.S. at 512 (quoting Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967) (quoting United States v. Associated Press, 52 F. Supp. 362, 372 (S.D.N.Y. 1943))).

[FN55] 319 U.S. 624 (1943).

[FN56] *Id.* at 637.

[FN57] Justice Powell, himself a former school board member, championed this view. *See, e.g.*, Board of Educ. v. Pico, 457 U.S. 853, 893-97 (1982) (Powell, J., dissenting); O'Connor, 4 *Tribute to Justice Lewis F. Powell, Jr.*, 101 HARV. L. REV. 389, 396 (1987).

[FN58] *See generally* Levin, *supra* note 53, at 1654 (arguing that, '[i]f educational institutions are not subject to the same constitutional constraints as other governmental agencies, students will not come to an understanding of the value of a democratic participatory society, but instead will become a passive, alienated citizenry that believes that government is arbitrary'). In *Fraser*, the Court recognized that schools teach as much by example as by instruction: 'The process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class; schools must teach by example the shared values of a civilized social order.' *Fraser*, 478 U.S. at 683.

[FN59] *See* Ingber, *supra* note 3, at 28 (arguing that '[v]alue neutrality, essentially, is a value-laden attempt to impose liberal views and to 'save' and child from an illiberal background'); Levin, *supra* note 53, at 1654.

[FN60] *Compare* *Tinker*, 393 U.S. 503 *with* Terminiello v. Chicago, 337 U.S. 1, 5 (1949) (invalidating an ordinance that effectively forbade speech that 'stirred people to anger, invited public dispute, or brought about a condition of unrest').

[FN61] *See* 108 S. Ct. at 579 (Brennan, J., dissenting).

[FN62] *Id.* Forcing the paper to publish a disclaimer, as Justice Brennan suggests, would admittedly impose on the students' free expression, but it could be narrowly tailored to achieve its purpose and, most likely, would be unobjectionable to the students.

[FN63] *Id.* at 573 (quoting Board of Educ. v. Pico, 457 U.S. 853, 864 (1982)); *see also* L. TRIBE, *supra* note 52, § 12-4, at 812 ('To reduce the potential for abuse, some diversity of viewpoints must be ensured, not be limiting the spectrum of views that the school system may communicate . . . but by providing genuine opportunities for more speech . . ..').

102 Harv. L. Rev. 271

END OF DOCUMENT