

No. 05-377

IN THE
Supreme Court of the United States

MARGARET L. HOSTY, JENI S. PORCHE, AND
STEVEN P. BARBA,

Petitioners,

v.

PATRICIA CARTER,

Respondent.

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

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The Association for Education in Journalism and Mass Communication, the Association of Schools of Journalism and Mass Communication, the Northwestern University Medill School of Journalism, the Pennsylvania Center for the First Amendment, the Pennsylvania State University College of Communications, the Thomas Jefferson Center for Free Expression, the University of Georgia Henry W. Grady College of Journalism and Mass Communication, the University of Missouri School of Journalism, the Annenberg School for Communication of the University of Pennsylvania, and the S.I. Newhouse School of Public Communications at Syracuse University respectfully submit this brief as *amici curiae* supporting Petitioners Margaret L. Hosty, Jeni S. Porche, and Steven P. Barba.¹ The parties have consented to the filing of this brief, and letters indicating their assent have been submitted with this brief.

INTEREST OF THE *AMICI CURIAE*

The *amici* are associations of professors and leaders of journalism and mass communications schools and departments, as well as university journalism schools and centers for the study of the First Amendment. *Amici* have a strong interest in the application of the First Amendment to student newspapers at colleges and universities. Collectively, *amici* have broad and deep expertise in teaching journalism at the college level. As university educators, *amici* are qualified to address the pedagogical purposes served by uncensored college

¹ Pursuant to this Court's Rule 37.6, *amici* represent that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *amici*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

newspapers. *Amici* also are knowledgeable about the role that campus newspapers play in their communities and how best to prepare their students to become professional journalists.

The Association for Education in Journalism and Mass Communication has a membership of about 3,400. Of these, more than 3,000 teach and conduct research at United States universities and colleges. The AEJMC Constitution states that the association will improve education in journalism and mass communication by “supporting freedom of communication consonant with the ideal expressed in the First Amendment to the U.S. Constitution.” Freedom of expression at university and college student publications is important to AEJMC members because many work with student journalists in classrooms and as advisers to student publications.

The Association of Schools of Journalism and Mass Communication is a national organization of nearly 200 leaders, including deans, directors, and chairs of departments, schools and colleges that graduate the majority of new journalists in the United States from their professional degree programs. The association supports freedom of expression for everyone, and especially for student journalists, at college and university newspapers, yearbooks and magazines at all institutions throughout the nation.

Founded in 1921, Northwestern University’s Medill School of Journalism is both an undergraduate and graduate program whose mission is to provide rigorous professional education and training for a full range of positions in news, information and commercial communications, to lead thought in the field of journalism and to assist its students in finding employment. The school, comprising nearly 700 undergraduate journalism students, more than 150 graduate students in journalism, and another 80 studying integrated marketing

communications, enhances student knowledge of the environment of journalism, media ethics and the role of the media in a diverse society. Medill has 46 full-time faculty, teaching facilities in Evanston, Chicago and Washington, and a global program that each year trains 40 graduate journalism students abroad.

Penn State's College of Communications, which enrolls more than 3,300 undergraduate majors and 80 master's and doctoral students, is the largest nationally-accredited program of its kind in the country. The university offered its first journalism writing course in 1911. The Department of Journalism was established in 1929 and was in the initial group of institutions nationally accredited in 1948. In 1985, the School of Communications was formed, bringing together existing programs in journalism, advertising, public relations, telecommunications, media studies and film. Communications achieved college status in 1995. The College strives to educate students for citizenship in a society in which communication and information are major commodities and the basis of the democratic process. The College's 62-person full-time faculty is noted for its strong blend of professional and academic backgrounds and is dedicated to integrated excellence in teaching, research and outreach. The College boasts a strong array of special programs, including the Washington, D.C., Communications and Democracy Semester, the Foster Conference of Distinguished Writers and several endowed lecture series, many of which focus on ethics, social responsibility and freedom of expression. Penn State students participate in a variety of on-campus media opportunities by working at the century-old Daily Collegian, an independent newspaper with a 17,000 daily circulation; at ComRadio, a Webcasting station with a news and sports format; and on a weekly 30-minute student television news show that is aired on Penn State's public broadcasting station. Each year, nearly 500

Communications students enroll in for-credit off-campus internships across the country and abroad.

In February 1992, Penn State established the Pennsylvania Center for the First Amendment to promote awareness and understanding of the principles of free expression to the scholarly community and the general public. The Center's goals support Penn State's outreach mission of providing the commonwealth and the nation with education, research and service. The Center carries out numerous projects designed to accomplish its mission. Faculty members involved in the enterprise have published books and articles on First Amendment topics. Numerous op-ed pieces have appeared in the nation's most-respected newspapers. The Center's members regularly provide commentary to newspapers and magazines and on radio and television programs as well as give speeches to organizations that wish to learn more about First Amendment freedoms. Additionally, the Center serves as a media resource, providing assistance on access issues and related topics. It further provides expert testimony to courts and legislative bodies grappling with First Amendment issues. The Center gives students the opportunity to engage in research projects under the supervision of its co-directors. The Pennsylvania Center for the First Amendment, which is housed in the College of Communications, is co-directed by attorneys Robert D. Richards and Clay Calvert.

The Thomas Jefferson Center for the Protection of Free Expression, located in Charlottesville, Virginia, is a nonprofit, nonpartisan institution dedicated solely to the protection of the First Amendment rights of free speech and free press. For more than ten years the Center has participated actively in the litigation of First Amendment issues and has filed briefs *amicus curiae* in federal and state courts, including this Court. Many of those cases involved questions of academic freedom and free speech within the academic community.

The Grady College at the University of Georgia is one of the oldest and most distinguished communication programs in the country. Its three departments – journalism, telecommunications, and advertising and public relations – are consistently ranked among the very best in the nation. Our focus on providing the highest possible quality of education drives the Grady College's success and the success of its alumni. It is our privilege to prepare the next generation of leaders in journalism and communication, and it is our commitment to emphasize education rather than to simply provide training. The distinguished faculty is critical to the success of our mission. Not only do they provide students with the best in professional training, they also instill within them a sound understanding of the duties, responsibilities and obligations they will have as future journalists and communication professionals within a democracy. The Grady College is home to the Peabody Awards, internationally recognized as one of the most prestigious awards for excellence in electronic media.

The University of Missouri School of Journalism is the world's first journalism school, founded by Walter Williams in 1908. Williams, the first dean of the school and later the president of the University of Missouri, believed that journalism education should be professionalized and provided at a university. Today, the Missouri School of Journalism consistently ranks at the top of professional surveys of journalism schools. At Missouri, real-world media experience is part of the curriculum. The Missouri School of Journalism educates students for careers in journalism, advertising and other media fields by combining a strong liberal arts education with unique hands-on training in professional media. The School publishes the Columbia Missourian, the weekly morning newspaper for the Columbia region, Adelante, a bilingual monthly newsmagazine, Vox magazine and the Global Journalist. It also operates Station KBIA(FM),

one of the most successful noncommercial radio stations in the country, Station KOMU(TV), the Columbia NBC affiliate, the only university-owned commercial television station in the United States that uses its newsroom as a working lab for students, and Missouri Digital News, an Internet-based news service

When publisher, diplomat and philanthropist Walter Annenberg announced the founding of the Annenberg School for Communication (ASC) at the University of Pennsylvania in 1958, he described its purpose with the following words:

Every human advancement or reversal can be understood through communication. The right to free communication carries with it responsibility to respect the dignity of others – and this must be recognized as irreversible. Educating students to effectively communicate this message and to be of service to all people is the enduring mission of this school.

Over the ensuing 45 years, ASC has attempted to remain true to this mission, while also adjusting to changes affecting the School, the University and the larger educational, scholarly and professional environments. In ASC's current incarnation it does so through an emphasis on four central goals. First, producing and disseminating cutting-edge scholarly research designed to advance the field's theoretical and empirical understanding of the role of communication in public and private life. Second, producing high-quality applied research designed to advance the public's understanding and effective use of communication (from face-to-face conversations to mass media), and policy-makers' ability to create a media environment that fosters the personal and collective development of its citizens. Third, providing a first-class liberal arts education to

undergraduates, designed to help make them better consumers and producers of public information, strengthening their understanding of the role of communication in their personal, professional and civic lives, and preparing them for private and public-sector leadership positions in communication-related fields. And fourth, educating Ph.D. graduate students in the theories, substance and methods of communication research and placing them in leading academic and professional positions in the field.

The S.I. Newhouse School of Public Communications at Syracuse University is one of the nation's premier schools of mass communication. The Newhouse school, which traces its roots to Syracuse University's School of Journalism (founded in 1934), embraces virtually every known form of information dissemination from print journalism to broadcast journalism to online communication and from advertising and public relations to photography and film. The more than 60 faculty members come primarily from the profession, men and women for whom teaching is the top priority. Among them are international experts in such fields as First Amendment law, the effects of television on children, the impact of television on popular culture, and the effectiveness of advertising. The mission of the Newhouse School is to prepare students for productive and rewarding careers in public communications while at the same time educating them about the societal roles and obligations of their respective fields. Today the School offers majors in photography, graphics, magazine journalism, broadcast journalism, public relations, advertising, and television-radio-film as well as its original focus, newspaper journalism. It is also the site of several research centers dedicated to the study of communication.

SUMMARY OF THE ARGUMENT

Studies of high school, college, and professional news media demonstrate the vital importance of uncensored campus newspapers. Research shows that experience in reporting for and editing a campus newspaper provides a unique opportunity for college journalists to develop an understanding of the role of the press. This experience is critical in developing a commitment to the field of journalism as a career, and in acquiring the skills that newspapers find valuable.

Permitting college administrators to censor campus newspapers undermines the goal of encouraging students to mature as journalists and prevents them from learning that they are responsible for what they publish. This Court's decisions on campus freedom of the press support the conclusion that such censorship violates the First Amendment. Permitting a system of prior restraint, as in this case, harms the interests of campus and local readers in seeking relevant and critical coverage of issues in their community, including the administration of the local university. The Seventh Circuit's decision also poses a threat to academic freedom and the exercise of First Amendment rights by faculty members.

ARGUMENT

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

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

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

experience handling controversial subject matter, nor with any more than an academic understanding of the role of the Fourth Estate in American society.” *Id.*

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 Comm’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 Comm’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 Comm’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).

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.

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 Comm'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.

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.

3. The Seventh Circuit's application of *Hazelwood* to campus newspapers will expand the censorship trends identified above to college campuses. *See generally* Lomicky, 29 *J. of Law & Educ.* at 463-76; *see also* Peltz, 68 *Tenn. L. Rev.* at 496 (noting that high school students and their advisors self-censored coverage of controversial topics after *Hazelwood*). Yet *Hazelwood* did not alter the regime of *Healy* and *Papish*, and confirms that college-level journalists and newspapers are entitled to the First Amendment rights guaranteed to the professional press.

The Seventh Circuit's application of *Hazelwood* to the university press was erroneous for three reasons: (i) high-school students are younger than college students, and the Court has often found youth to be an important factor in determining the application of Constitutional rights; (ii) the high-school newspaper in *Hazelwood* was part of a classroom curriculum, while the newspaper in this case was not; and (iii) the mission of public universities and the role that they play are different from that of high schools.

First, the Court should grant certiorari in order to correct the Seventh Circuit's error in applying *Hazelwood*, a high-school press freedoms case, to adults. One of the chief rationales the Court offered in *Hazelwood* for permitting educators to control student publications was that the officials needed to be able to "take into account the emotional maturity of the intended audience...." *Hazelwood*, 484 U.S. at 272 (citing such "potentially sensitive topics" as the existence of Santa Claus and discussions of teenage sexual activity). Compare *Widmar v. Vincent*, 454 U.S. 263, 274 n.14 (1981) (noting that "[u]niversity students are, of course, young adults. They are less impressionable than younger students..."). See also *Tilton v. Richardson*, 403 U.S. 672, 686 (1971) (noting the "skepticism of the college student").

The First Amendment rights of children have been limited in recognition of the importance of protecting them from exposure to material that is deemed inappropriate for an immature audience. *Hazelwood*, 484 U.S. at 272; *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 684 (1986) (sustaining high school's punishment of student for vulgar speech); *FCC v. Pacifica Found.*, 438 U.S. 726 (1978) (affirming sanctions for "dirty words" broadcast); *Ginsberg v. New York*, 390 U.S. 629 (1968) (upholding prohibition on sale of obscenity to minors); *Bellotti v. Baird*, 443 U.S. 622, 636-637 (1979) (discussing the Court's jurisprudence limiting children's First Amendment rights, citing immaturity). These cases, however, provide no basis for departing from traditional First Amendment principles when the relevant writers and readers are adults. Only one percent of the students enrolled in American colleges and universities are under the age of 18. U.S. Census Bureau Survey, Table A-6, Age Distribution of College Students 14 Years Old and Over, by Sex: October 1947 to 2002, available at <http://www.census.gov/population/socdemo/school/tabA-6.xls> (last viewed October 13, 2005).

Second, the pedagogical reasons for official control of the student press do not apply when the newspaper is not part of any class but is instead an autonomous extracurricular activity. When student-published newspapers are produced in a classroom setting, as part of the curriculum and for academic credit, the Court has recognized that the school should be able to exercise supervisory control over the classroom activity. *Hazelwood*, 484 U.S. at 268-69; cf. *Brown v. Li*, 308 F.3d 939, 949-50 (9th Cir. 2002) (noting that *Hazelwood* applies to core curricular speech, but does not apply to student extracurricular speech, including newspapers). Conversely, when campus newspapers are not part of a classroom exercise, suggestions of pedagogical justification for censorship is unpersuasive. See *Student Gov't Ass'n v. Bd. of Trustees of the Univ. of Massachusetts*, 868 F.2d 473, 480 n.6 (1st Cir. 1989) (rejecting the application of *Hazelwood* to college newspapers); see also *Kincaid v. Gibson*, 236 F.3d 342, 346 n.5 (6th Cir. 2001) (en banc) (noting that "*Hazelwood* has little application" to case involving university officials' confiscation of yearbooks in violation of the First Amendment). "[I]f a college has a student newspaper, its publication cannot be suppressed because college officials dislike its editorial comment." *Joyner v. Whiting*, 77 F.2d 456, 460 (4th Cir. 1973).

Here, the University's President and the Dean of the College complained that the newspaper had published articles that were "irresponsible" and "defamatory." See Pet. 5. The president rebuked the publication for criticizing him and for allegedly sullyng the reputation of the faculty and the school. *Id.* at 5-6. Such complaints are not pedagogical. In any case, "[p]ublic officers, whose character and conduct remain open to debate and free discussion in the press, find their remedies for false accusations in actions under libel laws providing for redress and punishment, and not in proceedings to

restrain the publication of newspapers and periodicals.”
Near v. Minnesota, 283 U.S. 697, 718-19 (1931).

Third, the public university’s mission is fundamentally different from that of a high school, and the power to censor does not advance its legitimate goals. Censorship of college newspapers “risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation’s intellectual life, its college and university campuses.” *Rosenberger*, 515 U.S. at 836. This Court has observed that:

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 is to speech from the chilling of individual thought and expression. That danger is especially real in the University setting, where the State acts against a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition.

Id. at 835.

This distinction explains why the Court’s “cases dealing with the right of teaching institutions to limit expressive freedom of students have been confined to high schools.” *Bd. of Regents of the Univ. of Wisconsin System v. Southworth*, 529 U.S. 217, 239 n.4 (2000) (Souter, J., concurring in the judgment) (citations omitted). The “role and purpose” of high schools, in contrast, are to prepare children to become “members of the Republic” by inculcating in them “the habits and manners of civility.” *Bethel Sch. Dist.*, 478 U.S. at 681; *see also West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 637 (1943) (stating that they are “educating the young for citizenship”). The

Court should grant review in order to restore the freedoms that are so central to the flourishing “intellectual and philosophic tradition” at this Nation’s colleges and universities.

4. In addition to the real-world training ground that it provides, an uncensored college press is critically important in providing the services that any newspaper provides to its readership, namely news about the community and its public officials. The imposition of prior restraints on the press was anathema to the Framers, and the need for a free press is no less vital or relevant on a college campus than anywhere else. “[L]iberty of the press, historically considered and taken up by the Federal Constitution, has meant, principally although not exclusively, immunity from previous restraints or censorship.” *Near*, 283 U.S. at 716. Such freedom allows the press to fulfill its role as a “watchdog” that alerts its readers to wrongdoing by officials.

“Clearly the watchdog comprises part of the American tradition of freedom of the press. Judicial recognition of the importance of the press’ institutional function is firmly set in First Amendment case law.” Timothy W. Gleason, *The Watchdog in Nineteenth Century Libel Law: A Common Law Concept of Freedom of the Press* at 4 (Aug. 1986) (paper presented at the Annual Meeting of the Association for Education in Journalism and Mass Communication, Law Division). When university reporters turn the spotlight of the press onto campus officials and faculty in order to scrutinize and criticize their actions, they are fulfilling their obligations as journalists and are as worthy of First Amendment protections as their peers at mainstream newsrooms across the country.

The Seventh Circuit’s imposition of the *Hazelwood* regime on university journalists will harm college journalists’ ability to cover controversial issues, and thus

will handicap their readers' ability to find out about important issues on campus. Currently, college newspapers cover national and international news as well as local issues relevant to the campus community. See Peltz, 68 Tenn. L. Rev. at 481-82; Sylvia Spann, *The Student Newspaper in a Study Skills Class*, 18 Teaching English in the Two-Year College 38 (1991); see also *Student Activities Coverage: Mainframe of School Publications*, 21 Comm'n: Journalism Educ. Today vol. 2 (1987) (finding that roughly half of college newspaper coverage is devoted to campus news). College reporters "test the boundaries and look for their own sense of ethical behavior," and are relied upon (and expected to) act as an impetus for campus dialogues. John Jasinski, *As They See It...: College Newspapers May Not Look the Same to Campus Administrators*, 33 College Media Review 8, 11 (1994).

Under the *Hazelwood* regime, campus newspapers will not serve their readers by reporting the undistorted news. University officials will subject the campus newspapers to overt forms of censorship. Peltz, 68 Tenn. L. Rev. at 497-98 (citing examples of the "censorship tsunami" that swept across high schools after *Hazelwood*). And campus newspapers will frequently engage in self-censorship. See Lomicky, 29 J. of Law & Educ. at 473 (concluding that after *Hazelwood*, many high school newspapers engaged in self-censorship).

When college reporters criticize faculty and school officials, they are sometimes able to spur reform. Such criticism undoubtedly is the reason why some university officials are eager to have the power to censor such coverage, but it is not a valid justification for abridging campus freedom of speech and of the press. Under the *Hazelwood* regime, college journalists "could become increasingly complacent, unwilling to go after controversial stories in the student newspaper and unwilling to tackle controversial subjects and events...."

Peltz, 68 Tenn. L. Rev. at 534. Without such experience during college, it would be less likely “that the same college editor as a professional journalist would aggressively pursue” similarly controversial stories regarding government officials. *Id.* at 535.

5. The logic of the Seventh Circuit’s opinion is not confined to student newspapers, or even to students. An extension of the *Hazelwood* rule to the university level would also chill faculty members’ exercise of First Amendment rights. The *Hazelwood* opinion has been used in the lower courts to restrict teacher freedoms. Peltz, 68 Tenn. L. Rev. at 483 (noting that “*Hazelwood* has served as a springboard for lower courts to allow executive inroads not only into other student constitutional freedoms, but also into ... teachers’ academic freedom.”).

The Seventh Circuit’s extension of *Hazelwood* to the college level could be expected to have a similar effect on university teachers. Peltz, 68 Tenn. L. Rev. at 534 (noting that “there would be little reason to think that the tradition of academic freedom in American higher education – despite the approval of case law – is any more than a professional courtesy that college administrators may lawfully disregard on pedagogical grounds”) (citation omitted). The Supreme Court should grant review in order to forestall such an outcome, and to reaffirm the view expressed in *Healy* that:

[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools. The

college classroom with its surrounding environs is peculiarly the “marketplace of ideas,” and we break no new constitutional ground in reaffirming this Nation’s dedication to safeguarding academic freedom.

Healy, 408 U.S. at 180-81 (internal quotation marks and citations omitted).

CONCLUSION

The petition for a writ of certiorari should be granted.

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