No. 86-836

In The
Supreme Court of the United States
October Term, 1986

HAZELWOOD SCHOOL DISTRICT, *et al.*,
Petitioners,
v.
CATHY KUHLMEIER, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONERS, HAZELWOOD SCHOOL DISTRICT, ET AL.

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INTERESTS OF AMICUS

This brief amicus curiae is respectfully submitted pursuant to Supreme Court Rule No. 36. Consent to the filing of this brief has been granted by counsel for all parties; the letters of consent have been lodged with the clerk of this Court.

Pacific Legal Foundation is a nonprofit, tax-exempt corporation, incorporated under the laws of California for the purpose of participating in litigation affecting public policy. Policy of the Foundation is set by a Board of Trustees composed of concerned citizens, the majority of whom are attorneys. The Board of Trustees evaluates the merits of any contemplated legal action and authorizes such legal action only where the Foundation's position has broad support within the general community. The Foundation's Board of Trustees has authorized the filing of a brief amicus curiae in this matter.

Pacific Legal Foundation has participated in several cases which involved issues similar to that presented in this matter, including *Bethel School District v. Fraser,* 478 U.S. —, 92 L. Ed. 2d 549 (1986). The Foundation's public policy perspective and litigation experience in weighing the rights of individual students against those of school authorities will help provide this Court with additional argument to review the holding of the Eighth Circuit Court of Appeals in this matter.

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OPINION BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is reported at 795 F.2d 1368 (8th Cir. 1986).

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STATEMENT OF THE CASE

This case presents the issue of whether a school-sponsored high school newspaper, which is an integral part of the school curriculum, is a "public forum" for purposes of the First Amendment. This case also raises the question of the role courts should maintain in reviewing decisions of school authorities to further educational policies and objectives.

Spectrum is the school newspaper at Hazelwood East High School in St. Louis County, Missouri. The Journalism II class, which produces *Spectrum,* is designed as a classroom laboratory exercise in which students apply their knowledge and skills learned in Journalism I. The teacher has the authority to exercise and does exercise a great deal of control over *Spectrum,* including its contents. Additionally, each issue of the paper is to be submitted to the principal for prepublication review.

In 1983 members of the Journalism II class researched and wrote two articles which were deleted from *Spectrum* by the principal. The first article consisted of separate personal accounts of three Hazelwood East students who became pregnant. Even though pseudonyms were used for the girls in the pregnancy study, the principal believed the girls could be identified from the text. In addition, the principal opposed the discussion about the details of the girls' sex lives and the use or nonuse of birth control methods. The second article involved students' explanations why their parents divorced. One student, identified by name in the article presented to the principal, accused her father of being an alcoholic and of causing the divorce. The principal believed that fairness required the parents

to be notified and given an opportunity to respond to the article. The principal believed that an immediate decision had to be made regarding the articles. Rather than holding up the newspaper, he simply instructed the teacher to have the printer delete the two pages containing those articles. The principal's immediate supervisor concurred in the decision.

When three of the staff members of *Spectrum* filed suit against the school district, the District Court found that deletion of the articles did not violate the students' First Amendment rights. The court held that *Spectrum* was not a "public forum" because it was an integral part of the school curriculum and that the principal had a reasonable basis for his actions. The decision was reversed by a divided Eighth Circuit panel finding that *Spectrum* was a "public forum" and that schools can constitutionally limit student speech only when the publication can result in tort liability for the school.

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SUMMARY OF ARGUMENT

The Eighth Circuit's opinion in this case has raised substantial questions regarding the role of school officials in maintaining local control of educational policy through the curriculum, including the inculcation of community values. This case involves the scope and the extent of the right of public school students to speak freely in the school environment in relation to the authority of school officials to make educational decisions about whether particular articles are appropriate for a school-sponsored newspaper.

The legitimate and essential goals of public education are multiple. Public schools do not limit their function to "reading, writing, and arithmetic" but teach community values, including social and moral values. *Bethel School District v. Fraser,* 92 L. Ed. 2d at 557. This unique demand placed on public schools requires the school board to develop a curriculum that reflects fundamental community values. This cannot be done if school authorities are prevented by the courts from exercising curriculum control by deciding what is or is not appropriate in the school setting.

Amicus takes the position that students do have rights which are protected by the Federal Constitution and they do not shed them at the schoolhouse gate. *Tinker v. Des Moines Independent Community School District,* 393 U.S. 503, 506 (1969). However, these rights of students must be balanced against the right—indeed the obligation—of school authorities to administer the school's educational policies and objectives.

Amicus stresses that school administrators and personnel are professionally trained individuals who are competent and dedicated experts in the field of education. The courts lack this special knowledge and should let stand decisions by these experts as to what is and is not required to further the goals of schools unless those decisions clearly abuse students' constitutional rights.

Further, amicus takes the position that a school district's exercise of its editorial control and judgment over a school-sponsored high school newspaper does not violate students' First Amendment rights.

Amicus urges this Court to reverse the Eighth Circuit's opinion which places a straitjacket on school officials and adopt instead a standard of reasonableness for reviewing the actions of school authorities.

ARGUMENT

I

THE NEEDS OF THE EDUCATION PROCESS LIMIT STUDENTS' RIGHT OF FREE SPEECH

A. Students' First Amendment Rights Must Be Viewed in Light of the Special Characteristics of the Public School Environment

This case examines the scope and extent of the right of public school students to speak freely in the school environment in relation to the authority of school officials to make educational decisions about whether particular articles are appropriate for a newspaper sponsored by the school. This Court has recognized that local school boards have broad discretion in the management of school affairs, but this discretion must be "exercised in a manner that comports with the transcendent imperatives of the First Amendment." *Board of Education, Island Trees Union Free School District v. Pico,* 457 U.S. 853, 864 (1982). While the role of the First Amendment is to foster individual self-expression, all First Amendment rights accorded to students must be construed "in light of the special characteristics of the school environment." *Tinker v. Des*

Moines Independent Community School District, 393 U.S. at 506. The unique demands placed on public schools require a showing that basic First Amendment freedoms are "directly" and "sharply" implicated prior to judicial intervention in the operation of the public schools. *Epperson v. Arkansas,* 393 U.S. 97, 104 (1968).

This Court has also recognized that primary and secondary public schools not only provide academic instruction, but also socialize children for participation in our society through the inculcation of community values. In *Ambach v. Norwick,* 441 U.S. 68, 76-77 (1979), this Court stated that public schools are vitally important "in the preparation of individuals for participation as citizens" and as vehicles for "inculcating fundamental values necessary to the maintenance of a democratic political system." This was recently reaffirmed in *Bethel School District v. Fraser,* 92 L. Ed. 2d at 557.

This Court has noted

> "that local school boards must be permitted 'to establish and apply their curriculum in such a way as to transmit community values,' and that 'there is a legitimate and substantial community interest in promoting respect for authority and traditional values be they social, moral, or political.'" *Board of Education v. Pico,* 457 U.S. at 864.

To maintain an environment in which learning and socialization processes may occur, local school boards and school administrators must be entrusted with broad discretionary authority. *See New Jersey v. T.L.O.,* 469 U.S. —, 83 L. Ed. 2d 720, 735 (1985); *Goss v. Lopez,* 419 U.S. 565, 580 (1975). To further educational goals and objectives,

this Court has acknowledged that the First Amendment does not prevent school officials from determining what type of speech would undermine the school's basic educational mission. *Bethel School District v. Fraser,* 92 L. Ed. 2d at 560.

Finally, most public schools have a locally elected board and professional educators to determine educational policy, including the curriculum. The curriculum is developed through a process that necessarily reflects and transmits local values. *Pico,* 457 U.S. at 891-92 (Burger, C.J., dissenting); *id.* at 894-97 (Powell, J., dissenting); *Ingraham v. Wright,* 430 U.S. 651, 670-72 (1977). To avoid a national educational policy on curriculum, plaintiffs' First Amendment claims must be evaluated in light of the need for substantial judicial deference to decisions of school authorities to maintain a sound educational environment.

B. The Eighth Circuit Misapplied Tinker and the "Public Forum" Doctrine

The majority opinion in the Eighth Circuit, however, ignored the district's interests in maintaining an educational environment compatible with community values. First, relying on *Tinker,* the majority held that the district was powerless to exercise its editorial control absent a showing that it was "necessary to avoid material and substantial interference with school work or discipline or the rights of others." *Kuhlmeier v. Hazelwood School District,* 795 F.2d at 1374. To meet the Circuit Court's "invasion of the rights of others" test, the student's action

must result in tort liability for the school. *Id.* at 1375. Second, it treated the school-sponsored newspaper as a traditional "public forum" for First Amendment purposes. Neither *Tinker* nor this Court's "public forum" doctrine warrants these holdings.

1. The Tinker Standard Does Not Apply

Tinker was a case of unconstitutional suppression of viewpoint. Several students were suspended for wearing black arm bands symbolizing their opposition to the United States' involvement in Vietnam. The arm bands were neither offensive nor controversial for any reason other than disagreement with the political viewpoint they symbolically conveyed. Additionally, the decision to wear the arm bands was not related to any school-sponsored activity —it was a political statement. The school's discipline was motivated by disapproval of the students' opinions on the war and the action discriminated against this viewpoint by permitting other forms of symbolic expression, such as the wearing of political campaign buttons or the "Iron Cross." *Tinker,* 393 U.S. at 509-11. The students in *Tinker,* therefore, established a First Amendment violation because the decisive factor for the school officials' action was an intent to suppress the students' viewpoint on a political issue. *Perry Education Association v. Perry Local Educators' Association,* 460 U.S. 37, 49 n.9 (1983); *id.* at 58 (Brennan, J., dissenting).

In *Bethel School District v. Fraser,* this Court distinguished the "political" message of the arm bands in *Tinker* and the nominating speech given by Fraser at a school-sponsored assembly. The Court stated:

> "In upholding the students' right to engage in a non-disruptive, passive expression of a political viewpoint in Tinker, this Court was careful to note that the case did 'not concern speech or action that intrudes upon the work of the schools or the rights of other students.' " *Bethel,* 92 L. Ed. 2d at 556-57.

The Eighth Circuit, however, did not make this distinction.

An examination of this case reveals no evidence that the pages were removed from the newspaper because the school officials disagreed with the viewpoint. On the contrary, several copies of the articles were photocopied and circulated among the students after the newspaper was printed and distributed. There was no effort on the part of the school officials to stop the circulation of the articles or to punish the students who circulated them. These stories were removed from *Spectrum* only because the principal had a legitimate concern that the three girls featured in the pregnancy article could be identified given the specific information described in the article and that there were only 8 to 10 pregnant students at Hazelwood East. Similarly, the divorce article dealt with students' perceptions of the reasons for their parents' divorce without allowing the parents an opportunity to respond to the article. Where school authorities delete articles without regard to any viewpoint expressed, the *Tinker* standard is inapplicable. Further, the speech in *Tinker* was not related to any school-sponsored activity. Unlike *Tinker's* arm band, *Spectrum* was an integral part of the school curriculum. Both of these factors were crucial to the holding in *Tinker* and since those factors are absent here the *Tinker* standard is inapplicable.

2. Hazelwood East Has Not Created a Forum of Unlimited Student Expression in Spectrum

Also underlying the Eighth Circuit's analysis of plaintiffs' First Amendment rights was the erroneous assumption that the school-sponsored newspaper was a traditional public forum for First Amendment purposes. *Kuhlmeier,* 795 F.2d at 1372.

This Court has adopted a forum analysis as a means of determining when the government's interest in limiting the use of its property or facilities to some intended purpose outweighs the interest of those wishing to use it for other purposes. *Cornelius v. NAACP Legal Defense and Educational Fund, Inc.*, 473 U.S. —, 87 L. Ed. 2d 567 (1985). This Court has recognized three categories of First Amendment fora: (1) the traditional public forum; (2) the limited public forum; and (3) the nonpublic forum. *Id.* at 579-80; *Perry Education Association v. Perry Local Educators' Association*, 460 U.S. at 45-46.

The Eighth Circuit held that *Spectrum* was a public forum "because it was intended to be and operated as a conduit for student viewpoint." *Kuhlmeier,* 795 F.2d at 1372. Contrary to that decision, Hazelwood East's school-sponsored newspaper was neither an open public forum nor a limited public forum, but a nonpublic educational activity. Although it provided certain students an opportunity to publish articles written in Journalism II, "[n]ot every instrumentality used for communication . . . is a traditional public forum or a public forum by designation." *Cornelius*, 87 L. Ed. 2d at 580; *United States*

Postal Service v. Council of Greenburgh Civic Associations, 453 U.S. 114, 130 n.6 (1981).

Spectrum was an integral part of the school curriculum. It was designed as a laboratory exercise for the Journalism II class. The preparation of *Spectrum* was largely done during class. The students used a textbook. Additionally, they received academic credit and a grade. The teacher selected the editorial staff, set the size and date of issues, assigned stories, critiqued and required modification of drafts, and edited the stories. The teacher decided which articles prepared in the Journalism II class would be published. Clearly, the teacher was the final authority with respect to almost every aspect of the production of *Spectrum,* including its content. Additionally, each issue of the paper was required to be submitted to the principal for prepublication review. These characteristics of the school-sponsored newspaper, like most aspects of a public school's educational program, bear no resemblance to recognized First Amendment public fora. *Cornelius,* 87 L. Ed. 2d at 594 n.3 (Blackmun, J., dissenting).

Under this Court's analysis, "[c]ontrol over access to a nonpublic forum can be based on subject matter and speaker identity so long as the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint neutral." *Cornelius,* 87 L. Ed. 2d at 582. It follows that government has the right to exercise control over access to a forum that has been established for a particular purpose. *Cornelius,* 87 L. Ed. 2d at 582; *Perry,* 460 U.S. at 46. As discussed below, a close examination of the educational interests implicated by these articles

reveal that the district's viewpoint neutral action was reasonable in light of surrounding circumstances and was necessary to further the compelling state interest of the educational process.

C. Courts Should Not Interfere in Daily School Operations Absent an Abuse of Basic Constitutional Rights

It must be recognized that a student is subject to far more stringent regulations than an adult outside a school environment. This Court stated in *Ginsberg v. State of New York,* 390 U.S. 629, 638 (1968), "where there is an invasion of protected freedoms 'the power of the state to control the conduct of children reaches beyond the scope of its authority over adults . . . .' " This includes students' First Amendment guarantees.

This Court stated in *Bethel*:

> "The First Amendment guarantees wide freedom in matters of adult public discourse. . . . It does not follow, however, that simply because the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, that the same latitude must be permitted to children in a public school. In New Jersey v. T.L.O., 469 U.S. 325 . . . (1985), we reaffirmed that the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings." *Bethel,* 92 L. Ed. 2d at 558.

This Court has consistently held that where educational policy is at issue, local priorities and standards should control. *San Antonio Independent School District v. Rodriguez,* 411 U.S. 1 (1973). Thus, each state and

each local school board, acting for the school district, must determine its educational policies. "Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values." *Epperson v. Arkansas,* 393 U.S. at 104.

In approaching this subject it must be recognized that school administrators and personnel are professionally trained individuals who are experts in the field of education. Because judges lack such expertise, in the absence of very clear abuse by school authorities bordering on capriciousness, arbitrariness, or bad faith, the courts should let stand these administrative decisions as to what is required in the day-to-day operation of the school. "It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion." *Wood v. Strickland,* 420 U.S. 308, 326 (1975). A court may disagree with the judgment of school officials, but such disapproval provides no license or authorization to usurp the school officials' authority by substituting the court's judgment for that of the school.

Here, the decision made by the school authorities to delete the articles was an educational decision to the effect that the materials were inappropriate in a school-sponsored publication. The principal had a legitimate concern that the intimate private details set forth in the articles could reveal the identity of the young students. The principal also had a legitimate concern that some of the material 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. Similarly, the principal had reasonable objections to the divorce article because it related students' perceptions of the reasons for their parents' divorce without allowing the parents an opportunity to respond to the article. The soundness of that educational decision is not an issue for the courts.

In *Bethel School District v. Fraser,* this Court stated: "The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board." 92 L. Ed. 2d at 558. And, in *Board of Education v. Pico,* 457 U.S. 853, this Court recognized that even in a school library, school authorities have the discretion to remove inappropriate books provided that the motivating factor is neither the purposeful suppression of ideas, *id.* at 871-72 (plurality opinion), *id.* at 879-81 (Blackmun, J., concurring), nor the selection of a particular viewpoint for prohibition, *id.* at 918-20 (Rehnquist, J., dissenting). The viewpoint neutral actions of the school authorities to delete these articles from the school-sponsored newspaper were constitutionally permissible given the highly personal and sensitive topic of these articles and the obvious educational concern on the part of the school to protect these students and the school.

D. The District Had an Important Interest in Avoiding the Impression That It Approved the Viewpoints Expressed in the Articles

The district's actions were necessary to dispel any impression among students and parents that it approved of the content of those articles. A public school has an "important interest in avoiding the impression that it has

endorsed a viewpoint at variance with its educational program." *Seyfried v. Walton,* 668 F.2d 214, 216 (3d Cir. 1981).

Additionally, the parents of the students have a right to expect that the school will not sponsor publications that implicate serious privacy issues, such as pregnancy and divorce—without assuring that the information is educationally valid and portrayed in an appropriate light.

Based on the potentially harmful effect of these articles on the students and the district's need to remove an imprimatur of official tolerance, the district promoted its public educational policy by deleting these articles from *Spectrum.*

Indeed, the presentation of material determined by the school authorities to be unsuitable for the students because of the sexual nature of the articles has support in this Court. In *Bethel,* Fraser gave a speech using thinly veiled sexual allusions to gain the attention of the student audience at a school-sponsored assembly. This Court found that it was appropriate for the school to disassociate itself from the impression that it endorsed the content of Fraser's speech because it was inconsistent with fundamental educational policies. 92 L. Ed. 2d at 560.

Also in *Trachtman v. Anker,* 563 F.2d 512 (2d Cir. 1977), *cert. denied,* 435 U.S. 925 (1977), the court upheld the denial of a high school newspaper editor's right to distribute a questionnaire surveying the sexual activities and birth control practices of his fellow students. The court found that within the public school environment, the varying ages and levels of maturity of school children and the diversity of parental attitudes and expectations for

their children concerning sexuality create a strong educational interest in presenting sexual matters in a responsible manner. The presentation of this topic in an irresponsible fashion can have serious and permanent harmful effects on adolescents. *Trachtman,* 563 F.2d at 519-20.

And, in *Seyfried v. Walton,* 668 F.2d 214, the District Court affirmed the superintendent's decision to cancel the musical "Pippin" as inappropriate for school sponsorship did not offend the students' First Amendment rights. In affirming the lower court's decision, the court determined that the critical factor was the relationship of the play to the school curriculum. The court found that the play was an integral part of the school's educational program and a student has no First Amendment right to participate in any particular course of study. *Seyfried,* 668 F.2d at 216.

Students at Hazelwood East do not have a First Amendment right to study any subject they desire. Nor, is there a First Amendment right to demand the publication of a particular article. The selection of the curriculum is best left to the expertise of educators.

II

THERE IS NO FIRST AMENDMENT RIGHT OF ACCESS TO SCHOOL-SPONSORED NEWSPAPERS

A basic contention of plaintiffs is that a school-sponsored newspaper is a public forum and the school must allow all students to present their ideas in *Spectrum.* According to this argument, a school would not be able to exercise its discretion to reject an article because the subject matter is inappropriate and not suitable for publication.

Spectrum is part of the educational program at Hazelwood East High School for its journalism students. Even though much of the editorial work is done by students, it is done under the guidance of a teacher. The teacher exercises a great deal of control over content by deciding what articles prepared in the Journalism II class will be published. This screening and selective process requires the exercise of opinion as to what particular articles should or should not be published.

Plaintiffs seem to feel that the personal anecdotal articles on divorce and pregnancy should be published regardless of the opinion of the school officials. In this respect, the students are seeking to intrude their opinion upon the educational judgment of the school authorities.

Here, the principal's actions were reasonable. The articles were deleted 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, and to ensure fairness to the divorced parents whose actions were characterized. Additionally, the principal was under the impression that an immediate decision had to be made. Rather than holding up the newspaper, he simply instructed the teacher to have the printer delete the two pages containing those articles. Under these circumstances, the school authority's actions were reasonable.

The right to freedom of speech does not open every avenue of communication to anyone who desires to use a particular outlet for expression. On the contrary, each outlet presents its own peculiar problems. *Joseph Burstyn, Inc. v. Wilson,* 343 U.S. 495, 502-03 (1952). Nor does freedom of speech include the right to speak on any subject,

in any manner, at any time. *Cf. Bethel School District v. Fraser,* 92 L. Ed. 2d at 549. As stated in *McIntire v. William Penn Broadcasting Company of Philadelphia,* 151 F.2d 597, 600-01 (3d Cir. 1945), "[t]rue, if a man is to speak or preach he must have some place from which to do it. This does not mean, however, that he may seize a particular radio station for his forum."

Students do not have the right to comandeer a school-sponsored newspaper for the publication of their articles to the exclusion of opinion of the school authorities who deem the articles inappropriate. On the contrary, the acceptance or rejection of articles submitted for publication in a school-sponsored newspaper necessarily involves the exercise of editorial judgment. A decision to delete an article is no less editorial in nature than an initial decision to publish an article.

As this Court stated in *Miami Herald Publishing Company v: Tornillo,* 418 U.S. 241 (1974):

> "The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment." *Id.* at 258.

Additionally, the First Amendment does not preclude the government from exercising editorial control over its own medium of expression. In *Columbia Broadcasting System, Inc. v. Democratic National Committee,* 412 U.S. 94, 139 n.7 (1973) (Stewart, J., concurring), Justice Stewart noted:

> "Government is not restrained by the First Amendment from controlling its own expression . . . . . .

> 'The purpose of the First Amendment is to protect private expression and nothing in the guarantee precludes the government from controlling its own expression or that of its agents.' ''

A finding by this Court that *Spectrum* is a public forum would result in the erosion of the journalistic discretion exercised by school authorities over a school-sponsored newspaper. It would transfer control from the school authorities who are accountable for educational policies and objectives and make it subordinate to student whim.

As this Court stated in *Bethel:*

> ''Justice Black, dissenting in Tinker, made a point that is especially relevant in this case: 'I wish therefore, . . . to disclaim any purpose . . . to hold that the federal Constitution compels the teachers, parents and elected school officials to surrender control of the American public school system to public school students.' '' *Id.* at 560.

It is clear that a school-sponsored newspaper is not a public forum. Students have no First Amendment right to compel a school to publish any particular article. The school must exercise its editorial discretion in light of the special characteristics of the school environment.

III

A REASONABLENESS STANDARD MUST APPLY TO DECISIONS OF SCHOOL AUTHORITIES

In *New Jersey v. T.L.O.,* 495 U.S. 325, this Court stated: ''Today's public school officials do not merely

exercise authority voluntarily conferred on them by individual parents; rather, they act in furtherance of publicly mandated educational and disciplinary policies." *Id.* at 336. This Court stressed the need to balance the students' legitimate expectation of privacy guaranteed by the Fourth Amendment on one side against the "need for effective methods to deal with breaches of public disorder" on the other side. In *Bethel,* 92 L. Ed. 2d 549, this Court took the position that students' First Amendment rights "must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior." *Id.* at 557.

Amicus urges that a standard of reasonableness should apply to decisions of school administrators. This Court should not require school officials to demonstrate that the deletion of an article from a school-sponsored newspaper was necessary to effectuate a compelling state interest, but rather only that the action was reasonable in light of the special characteristics of the school environment. School officials in the public school setting should be accorded wide latitude over decisions affecting the manner in which they educate students. This substantial public interest must be balanced against the students' guarantee of free speech.

The standard required by the Eighth Circuit is unworkable. It leaves school officials helpless in such cases to protect privacy rights unless the student expression would give rise to legal liability. Requiring school officials to make highly technical and potentially costly legal judgments about tort liability and the limits of First Amendment protections will chill the exercise of educational judgment. It is urged by amicus that the rigid standard

required by the Eighth Circuit be replaced by a standard of reasonableness.

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CONCLUSION

In the First Amendment context, students retain those rights that are not inconsistent with their status as students or with the legitimate educational objectives of the school system. Any challenge to a student's First Amendment interest must be analyzed in terms of the legitimate policies and goals of the educational system. These conflicting needs have to be balanced and a standard of reasonableness established.

When school administrators and teaching experts are required to exercise their discretion regarding whether an article is appropriate for publication in a school-sponsored newspaper, the academic system will be served if our school officials are allowed to discharge their "important, delicate, and highly discretionary functions," *Tinker*, 393 U.S. at 507, within the limits and constraints of the Federal Constitution.

This decision could affect student publications in more than 800 public schools in California alone and more than 19,000 nationwide. Amicus urges this Court to reverse the Eighth Circuit's decision which places a straitjacket on

school officials and adopt instead a standard of reasonableness for determining the actions of school officials.

DATED: March, 1987.

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