

KNOW YOUR RIGHTS:

1st Amendment & censorship

The student press law center answers your most frequently asked questions about students' right to a free press

Q Do students still have any First Amendment rights after the Supreme Court's *Hazelwood* case?

A: Definitely. The Supreme Court reduced, but did not eliminate, the First Amendment protection of high school students' "curricular" speech in the 1988 *Hazelwood* ruling. Even where *Hazelwood* applies, the burden remains on the school to furnish a legitimate educational reason for censoring – and that cannot be simply protecting the school's P.R. image. Except for one federal court ruling that covers Indiana and Wisconsin, there's little reason to believe *Hazelwood* applies in the adult setting of a college campus.

Q Is *Hazelwood* always the rule for all high school media?

A: Not at all. Schools can always designate student publications as "forums" for student expression. In a "forum" publication, the school can intervene only if the speech is unlawful or threatens to incite substantial disruption. Seven states have laws extending this enhanced protection to all student publications (and an eighth, Illinois, only for publications at the college level). Such laws been on the books for more than 30 years with no evidence of any ill effects.

Q If a school can't censor the publication directly, can they censor indirectly, by pulling the funding or threatening the adviser?

A: Two states – California and Kansas – expressly protect advisers against retaliation under state law. In the rest, the First Amendment should prohibit any act by a public school meant to punish or deter legally protected speech. That includes firing the adviser, cutting the budget, replacing the editor or any other act of intimidation, as long as it can be linked back to the editorial content of the publication.

Q So if I'm at a private school, I'm out of luck?

A: The First Amendment restricts only state employees, so there's no constitutional recourse at a private school. But there may be state-law protections (California's "Leonard Law" puts private and public schools and colleges on the same free-speech footing) or policies in the school's own internal regulations. Many excellent private colleges – including Notre Dame, Princeton and Tulane – offer First Amendment-like rights to the student media on their campuses under school rules.

Q Can the school censor what students write on blogs and other off-campus websites when they're on their own time?

A: Most legal experts think not, but a few recent federal court cases have opened the door for schools to punish speech that might lead students to respond disruptively on school grounds. Speech that appears to promote violence against school personnel – even humorously – is unlikely to receive constitutional protection, so be careful what you joke about.

