The Blurriness of Speech at "The Schoolhouse Gate"

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Abstract: The landmark 1969 Supreme Court case, *Tinker v. Des Moines Independent School District*, stated that students do not "shed their constitutional rights to freedom of speech and expression at the schoolhouse gate," so long as the speech does not "materially or substantially interfere with the requirements of appropriate discipline in the operation of the school."[36] However, unlike many precedents set in landmark cases, this ruling has been unclear and contested in ensuing decades. Minors' free speech rights must be understood in the context of a long, complex, and at times contradictory history of conflicting interpretations, such that, even now, more legal challenges are required to produce a clear set of rules. Through an analysis of a variety of contradicting court cases regarding free speech in schools, the rights of minors more broadly, and "right to know" issues in students' education, the highly contested nature of minors' free speech rights, historically and contemporarily, becomes apparent.

Major Department: History

[36] Tinker v. Des Moines Independent Community School District, 393 U.S. (1969): 506.

I. Introduction

In 1969, the precedent was set in the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District* that students do not "shed their constitutional rights to freedom of speech and expression at the schoolhouse gate," so long as the speech does not "materially or substantially interfere with the requirements of appropriate discipline in the operation of the school."[37] From 1969 on, the "Tinker test" would be applied in almost every case regarding students' free speech, but each court handled this test differently. Although the Supreme Court set this precedent, every school has its own "requirements of appropriate discipline," making student's First Amendment rights much more complicated and necessitating interpretation on a case-by-case basis. While the *Tinker* case expanded free speech rights when it allowed students to express their political views through the symbolic wearing of black armbands in protest of the Vietnam War, the Court, in less than twenty years, narrowed this ruling in both *Bethel School District v. Fraser* and *Hazelwood School District v. Kuhlmeier,* when the Court sided with the schools' disciplinary actions to suppress students' speech.

This raises the complex and unclear question of whether the Constitution was meant to protect the free speech rights of minors, with the answer varying from court to court. *Hazelwood* argues that the "rights of students in the public schools are not automatically coextensive with the rights of adults in other settings"; *Tinker* claims the opposite.[38] School is where children are shaped into functioning citizens, and "the great expenditures for education demonstrate our recognition of the importance of education to our democratic society."[39] Does this mean that school is the place where children can exercise the right to free expression to "practice" being a citizen, or does it mean that school is the place in which discipline is strictly taught? Lawyer John Garvey claims that the "child's claim to recognition of such a right is valid only insofar as free speech is instrumental in the growth of his ability to participate in self-government," implying this freedom is necessary for a child's development.[40] However, Justice Hugo L. Black argues that "school discipline, like parental discipline, is an integral and important part of training our children to be

[37] *Tinker v. Des Moines Independent Community School District*, 506.
[38] Hazelwood School District v. Kuhlmeier, 484 U.S. (1988): 260.
[39] Brown v. Board of Education of Topeka, 347 U.S. (1954): 493.
[40] John H. Garvey, "Children and The First Amendment," *Texas Law Review* 57, no. 3 (February 1979): 338.

good citizens—to be better citizens."[41] Free speech is a spectrum, and cultural and societal views on children often influence where minors fit on this line. Because of the lack of agreement between schools, courts, and officials, students do not know exactly where they stand as citizens. Any court case defending one's First Amendment rights has many moving parts to it, including the type of speech in question and the context in which it was said, which constantly adds to the complexity of American law and the interpretation of citizen's rights; cases involving students in schools are no different. Through an analysis of a variety of contradicting court cases regarding free speech in schools, the rights of minors more broadly, and "right to know" issues in students' education, the highly contested nature of minors' free speech rights, historically and contemporarily, becomes apparent.

II. The Differences of the Substantial Disruption Test in Various Cases

The brief for the respondents of *Tinker v. Des Moines Independent Community School District* stated that the case did "not conflict with prior applicable decisions of the United States Supreme Court," meaning that there was no case the *Tinker* decision could be directly based off of, which made the case a true precedent for student speech cases to come.[42] Although there had been major cases regarding student's First Amendment rights—such as *West Virginia Board of Education v. Barnette,* in which students were protected by the First Amendment from being required to salute the flag—*Tinker* was the first case to directly relate to "pure speech."[43] Justice Abe Fortas, who delivered the opinion of the Court, explained that "in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression," and "the record fails to yield evidence that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school." He claimed that students are "possessed of fundamental rights which the State must respect," and they "may not be regarded as closed-circuit recipients of only that which the State chooses to communicate."[44] This case truly opened up a new world for students to exercise and practice their rights as citizens

[41] *Tinker v. Des Moines Independent Community School District*, 524.
[42] Tinker v. Des Moines Independent School District, Appellate Brief (WL 1968): 112603.
[43] *Tinker v. Des Moines Independent Community School District*, 505.
[44] *Tinker v. Des Moines Independent Community School District*, 511.

in a school setting where they can learn what is "socially acceptable." It leveled the playing field between students and officials, regarding the former as people who possess rights rather than as subjects of the state. Students could use this case to their advantage to be more engaged in civics and stand up for themselves when they found it necessary.

Justice Black believed this case went too far, because "it is a myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases."[45] In previous cases regarding even adult free speech, the place in which speech occurred mattered, possibly alluding to the "clear and present danger" doctrine that had reigned throughout the Court for the previous fifty years. Black feared that this case would set off students to be "ready, able, and willing to defy their teachers on practically all orders" and disagreed 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."[46] Both the majority opinion and the dissenting opinion have had lasting effects on every student speech case. Depending on the Court and the context of the speech, either opinion is heavily relied upon to determine the decision. Although the *Tinker* case appeared to have solidified students' free speech rights, the dissenting opinion has lingered and influenced court cases through the years, creating a fuzzy picture of the reality of student rights.

The *Tinker* Test, also known as the Substantial Disruption Test, is "meant to determine when public school officials may discipline students for their expression."[47] In *Bethel School District v. Fraser*, a student was suspended for three days after using sexually charged language in a nomination speech at a school assembly. The Court of Appeals aligned similarly to the *Tinker* opinion, claiming that the school failed to provide evidence of a substantial disruption of school, as "the administration had no difficulty in maintaining order during the assembly and Fraser's speech did not delay the assembly program," which was also optional to attend. Judge Norris, who delivered the opinion, stated that "the First Amendment standard *Tinker* requires us to apply is material disruption, not inappropriateness."[48] The Court of Appeals also rejected the school's

[45] *Tinker v. Des Moines Independent Community School District*, 522.
[46] *Tinker v. Des Moines Independent Community School District,* 526.
[47] David L. Hudson Jr., "Substantial Disruption Test," The First Amendment Encyclopedia, Middle Tennessee State University, 2018, https://www.mtsu.edu/first-amendment/article/1584/substantial-disruption-test.
[48] Fraser v. Bethel School District, 755 F2d (CA9 Wash. 1985): 1360.

argument that the speech was indecent; speech that, according to *FCC v. Pacifica Foundation,* can be censored to protect students from offensive material. The Court explained that the *Pacifica* case was not applicable to *Fraser* because "a high school assembly is a very public space" and the "students are beyond the point of being sheltered from the potpourri of sights and sounds we encounter at every turn in our daily lives."[49] This court was heavily reliant on the precedent of the *Tinker* case, and, given the circumstances, once more expanded the students' rights to free speech. Yet the case did not stop here.

The Supreme Court completely flipped on the *Tinker* precedent and reversed the Court of Appeals decision in 1986. Justice Warren Burger stated that, "unlike the sanctions imposed on the students wearing armbands in *Tinker,* the penalties imposed in this case were unrelated to any political viewpoint," and even "in our Nation's legislative halls...there are rules prohibiting the use of expressions offensive to other participants" in debates.[50] The Court fully believed that the school was responsible for preparing students for the real world, and that, through discipline, this is achieved. What if the speech was politically charged and used sexual innuendos? Would the Court's decision be different? Philosopher Alexander Meiklejohn believes that the First Amendment "protects political freedom, in speech or wherever else it may be threatened."[51] In short, if it's political speech, anything goes. The Supreme Court adopted Meiklejohn's ideas in many cases of the 1960s such as *New York Times v. Sullivan.* Based on *Tinker,* if Fraser's speech was political, it may have been protected.

But America's values were very different in the 1980s, as compared to the 1960s, shifting to a more conservative viewpoint with a focus on moral standards.[52] For example, the 1980s included a moral panic over MTV and its potential threat to expose children to inappropriate concepts. Music, radio, and media outlets were becoming more and more censored to protect children's innocence, spearheaded by groups such as the Parents Music Resource Center, who, "without any valid scientific basis, ascribed multiple evils in society to be rooted in popular

[49] *Fraser v. Bethel School District*, 1363.
[50] Bethel School District v. Fraser, 478 U.S. (1986): 681.
[51] Alexander Meiklejohn, "What Does the First Amendment Mean?" *University of Chicago Law Review* 20 (Spring 1953): 471.
[52] Allan Parachini, "Art in the Eighties: Censorship: A Decade of Tighter Control of the Arts," *Los Angeles Times,* December 25, 1989, https://www.latimes.com/archives/la-xpm-1989-12-25-ca-781-story.html.

music," and eventually pushed for the Recording Industry Association of America to add "a 'Parental Advisory— Explicit Content' label to certain products."[53] This societal pressure to keep children away from immorality may have placed an unconscious bias in many Justices' minds, motivating them to steer students away from the concept of free speech and rejection of authority and towards the idea of discipline. Cultural context aside, the stark difference between the Court of Appeals and the Supreme Court in the *Fraser* case is just another example of the highly contested nature of students' rights.

Two years after the *Fraser* decision, the case's interpretation would be upheld in the 1988 Supreme Court case *Hazelwood School District v. Kuhlmeier*, where two students' articles about teen pregnancy and divorce were taken out of the school newspaper before publication because they were deemed inappropriate for the audience. Like in *Fraser,* the Court of Appeals, using the Substantial Disruption test, found "no evidence in the record that the principal could have reasonably forecast that the censored articles or any materials in the censored articles would have materially disrupted classwork or given rise to substantial disorder in the school."[54] However, the Supreme Court reversed this decision.

The school district argued that the newspaper was not a public forum, meaning that the school had ultimate control over what got published, in order to reflect the school's values. Justice Byron White stated that "the school's curriculum suggests, at most, that the administration will not interfere with the students' exercise of those First Amendment rights that attend the publication of a school-sponsored newspaper. It does not reflect an intent to expand those rights by converting a curricular newspaper into a public forum." Since the newspaper was for an educational purpose, there was no need for "judicial intervention to protect students' constitutional rights," because education is "primarily the responsibility of parents, teachers, and state and local school officials."[55] The school district also argued that the material itself was too mature for most of its audience, and an issue of privacy rights. The principal feared that the pregnant girls interviewed in the article could easily be identified, along with their family members and boyfriends who "were

[53] "Parents Music Resource Center," NNDB, https://www.nndb.com/org/374/000128987/.
[54] *Hazelwood School District v. Kuhlmeier*, 265.
[55] *Hazelwood School District v. Kuhlmeier*, 484.

given no opportunity to consent to its publications or offer a response."[56] The Court sided with the school's argument that the principal's conclusions were "reasonable."

Justice William J. Brennan dissented, preaching that public schools are vital in preparing youth for the "duties of citizenship in our democratic Republic," and that the Hazelwood School District broke its promise of guaranteeing an "atmosphere...exercising the full panoply of rights associated with free student press." He went on to say that, "public educators must accommodate some student expression even if it offends them or offers views or values that contradict those the schools wishes to inculcate."[57] Although the school did not wish to promote teen pregnancy, this was still a real-life subject that was happening at the school itself, so shouldn't teens even as young as fourteen have had some exposure to it in case it were to happen to them? America is often uncomfortable with honest sex education, but if schools—especially high schools—are to prepare students for the real world as a citizen, information like this may be necessary for the ability to protect themselves. Brennan explained that, "censorship designed to shield the audience...in no way furthers the curricular purposes of a school newspaper, unless one believes that the purpose of the school newspaper is to teach students that the press ought never report bad news, express unpopular views...[or] upset its sponsors. Unsurprisingly, Hazelwood East claims no such pedagogical purpose."[58] Applying Brennan's logic, students should not be shielded from divorce, as they were in this case, as it was not and is not an uncommon struggle to deal with as a child, especially at the high school level. Although the school newspaper was not defined as a public forum, it could have been a place where students who had family struggles could find others to relate to. Privacy rights and free speech have often been at odds with one another, but regarding *Hazelwood,* Brennan argues that privacy is merely an excuse for the school censoring uncomfortable topics.

Justice Brennan also reasoned that the Court should not have abandoned the *Tinker* precedent for this case, as the Court erected "a taxonomy of school censorship, concluding that *Tinker* applies to only one category, and not the other."[59] He questioned how the *Fraser* case, and

[56] *Hazelwood School District v. Kuhlmeier*, 484.
[57] *Hazelwood School District v. Kuhlmeier*, 280.
[58] *Hazelwood School District v. Kuhlmeier*, 284.
[59] *Hazelwood School District v. Kuhlmeier*, 281.

many other cases regarding student speech, relied so heavily on *Tinker* even when the issues were completely different from one another, but *Hazelwood* did not. The Court opened with "*Tinker's* time-tested proposition that public school students 'do not shed their rights...at the schoolhouse gate,'" which Brennan explained was an "ironic introduction to an opinion that denude[d] high school students of much of the First Amendment protection that *Tinker* itself prescribed."[60] In just two years, as a result of *Fraser* and *Hazelwood,* the interpretation of the *Tinker* precedent differed within the Supreme Court itself, as well as between it and the lower courts. The lower courts appeared to continue to stick to the original *Tinker* values of the 1960s in the expansion of free speech and the importance of the school in preparing students for the duties of citizenship. The majority of the Supreme Court wished to take a step back from this and to reinforce the values of the 1980s. Those who dissented in these Supreme Court decisions were often in favor of a more liberal viewpoint in most cases. Although all cases rely on *Tinker,* there appears to be a shift from the majority opinion to the dissenting, complicating decisions throughout the following years.

In a more recent case from 2014, *Dariano v. Morgan Hill Unified School District,* the "Court of Appeals ruled that public school officials did not violate the First Amendment when they required several students wearing T-shirts of the American flag to remove their T-shirts on Cinco de Mayo."[61] Within the school there had been a history of violence between Caucasian and Mexican students, and tension rose when a Mexican student asked a Caucasian student if they "hated Mexicans" because they were wearing an American Flag T-shirt on a Mexican holiday. Relying on *Tinker* and the Substantial Disruption test, the Court explained that "there was evidence of impending violence and the school officials acted reasonably in the name of student safety."[62] In this case, the dissenting opinion from *Tinker* and the school's need to maintain control over students was still the legally dominant view, even in the modern day.

However, there was still disagreement on the interpretation of *Tinker* between the judges of the Court in *Dariano*. Judge Diarmuid O'Scannlain explained that the majority's "opinion misinterprets *Tinker's* own language," because the way the school handled the situation was by

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[60] *Hazelwood School District v. Kuhlmeier,* 290.
[61] David L. Hudson Jr., "Dariano v. Morgan Hills Unified School District (9th Cir)," The First Amendment Encyclopedia, Middle Tennessee State University, 2014, https://www.mtsu.edu/first-amendment/article/1545/dariano-v-morgan-hills-unified-school-district-9th-cir.
[62] Hudson, "Dariano v. Morgan Hills Unified School District (9th Cir)."

"silencing the target of the threat," who was peacefully exercising their free speech rights. His dissent claimed that, "what the panel fails to recognize, and what we have previously held, is that *Tinker* went out of its way to reaffirm the heckler's veto doctrine; the principle that 'the government cannot silence messages simply because they cause discomfort, fear, or even anger.'"[63] Through this misinterpretation of *Tinker,* "to permit the heckler's veto, the panel opens the door to the suppression of any viewpoint opposed by a vocal and violent band of students," and enlists "the power of the state to silence them."[64] O'Scannlain demonstrates a fear of an organized group seeking to silence a minority group, or in this case, school authorities and minors, respectively. He believes *Tinker's* precedent should be followed as a guide to students' First Amendment rights, with the schoolhouse bas a place no different from any other in which to exercise them. The fact that he reads this case as the complete opposite of the other Court judges shows that, regardless of the cultural context of the time, there has never been a set agreement on the free speech rights of students because the different interpretations of the *Tinker* case have not agreed with each other since 1969.

III. The Rights of Minors

The consistently inconsistent interpretations of *Tinker* are due in part to the complicated nature of minors' rights. The picture of students' free speech rights in schools is blurry because the schoolhouse is not only a place where discipline is necessary for the purpose of education, but also because the students are not legal adults. But just as discipline is necessary for a student who breaks the rules in a school, it is also necessary for an employee who "breaks the rules" in a workplace. A student who skips class will be disciplined just like an adult who misses their quota or consistently arrives late to the office. However, the adult signs a contract with their employer and agrees to meet their quotas. The student is required by the state to attend school, typically until their graduation. The question now is to what extent a student has a say in all of this as a minor, as well as a person.

[63] Dariano v. Morgan Hills Unified School District, 745 F.3d (9th Cir. 2014): 354.
[64] *Dariano v. Morgan Hills Unified School District*, 354.

Scholar Akhil Amar argues that some Supreme Court Justices rely too heavily on doctrines, rather than the Constitution because, "for them, the elaborated precedent often displaces the enacted text," as they "spend too much time pondering arid formulas" and transform "widely accepted constitutional principles into normatively insensitive or outlandish lines of case law."[65] However, there is nothing written in the Constitution regarding the rights of children, other than the voting age. The First Amendment does not mention the words "citizen" or "legal adult." Therefore, Justices must solely rely on doctrine and precedent when it comes to minors; but there are still controversies and disagreements over these rulings, including within *Tinker*.

Justice Black, in his *Tinker* dissent, believed that the Court should not have had the hearing at all. He stated that, "the Court arrogate[d] to itself, rather than to the State's elected officials charged with running the schools, the decision as to which school disciplinary regulations are 'reasonable.'"[66] Had the other Justices been on the same page as Black, students may not have access to the rights that *Tinker's* legal precedent set. If this were the case, the extent of minors' rights in schools may not even be argued because students would simply have to submit to their schools and elected state officials, rather than stand up for the rights they were granted by the Court.

Within the *Tinker* doctrine disagreements, Justice Black claimed that, "the original idea of schools...was that children had not yet reached the point of experience and wisdom which enabled them to teach all of their elders...one may be permitted to harbor the thought that taxpayers send children to school on the premise that, at their age, they need to learn, not teach."[67] Black seems to lean towards the idea that, because children are not yet fully developed, the schoolhouse is solely a place to encourage discipline, rather than allow students to explore and practice their rights in the real world. John Garvey explains that "we are accustomed to thinking that the physical, mental, and emotional immaturity of children in some ways makes them ineligible to possess rights." However, "to speak of children as having rights to certain freedoms against the government, even though they are not capable of intelligent choice," is "future-oriented in the sense that they will

[65] Akhil Amar, "The Supreme Court, 1999 Term," *Harvard Law Review* 114, no. 1 (2000): 57. https://doi.org/10.2307/1342409.
[66] *Tinker v. Des Moines Independent Community School District,* 517.
[67] *Tinker v. Des Moines Independent Community School District,* 522.

have real meaning and use once the child reaches maturity."[68] Would this mean that, although children may not be fully aware of how to exercise their rights, they still should be able to in order to gain this experience and grow as citizens? Is school a place where they can gain this experience? Those in favor of the Tinker children wrote that the "Courts have recognized that...schools should be treated as models of our democratic society. The rights of free speech and free expression which are to be encouraged in the adult democratic society must affirmatively be fostered in the school system."[69] Children have the right to practice the rights they will use in the future, and the school is an ideal place for this practice according to those who favor the *Tinker* case.

In an example of children being guaranteed rights as citizens, a District Court case from 1974, *Lopez v. Williams,* upheld that a student's due process rights were violated according to the Fourteenth Amendment. Dwight Lopez, a student from Columbus, Ohio, happened to be in the wrong place at the right time: tensions arose over Black History Week, causing Black students to enter the lunchroom Lopez was in and overturn tables. Lopez "testified that he and his friends walked out of the lunchroom...took no part in the unlawful activity...and did not violate any school rule." He then went home and received a phone call from his principal, "notifying him that he had been suspended. He was not advised of the reasons for the suspension."[70] The Court held that "the State created entitlement to an education is a liberty protected by the due process clause of the Fourteenth Amendment" and that "the plaintiffs were not accorded due process of law, in that they were suspended without hearing prior to suspension or within a reasonable time thereafter."[71] This case indicates that minors are considered in the Constitution, at least when it comes to the Fourteenth Amendment. Although school attendance is state-mandated, children have the right to exercise their due process rights if their education is interfered with. This allows students to have some say in the matter of their education and guarantees them some general citizen rights.

But where does it stop? Conforming to the cultural desire to protect children's morality, Judge Eugene Wright, in the Court of Appeals for the *Fraser* case, dissented, stating that, "Fraser's audience was primarily composed of minors. The school authorities had a substantial interest in

[68] Garvey, "Children and The First Amendment," 327.
[69] *Tinker v. Des Moines Independent Community School District*, Appellate Brief, 112602.
[70] Lopez v. Williams, 372 F. Supp. (1973): 1285.
[71] *Lopez v. Williams*, 1302.

protecting them from expression which could be shocking, embarrassing, or detrimental to their stage of development." He adds that, "schools perform a special function in our society" as we expect them "to instill citizenship, discipline, and acceptable morals...to inculcate society's values and help children become fully adjusted adults."[72] The acceptable behavior in the 1980s was not to speak out against authority, including parents, teachers, or any adult, which adds to the complexity of what it means to be an American citizen when the perceived acceptable behavior in society changes over time. Despite some guaranteed rights for minors coming from the *Lopez* case and advancements in other places, their free speech rights remained in a tense place, demonstrating how highly contested this subject is.

Another factor which complicates minors' rights is the close relation between parental influence and school authority, which highlights an interesting component to not only children's rights but to the school's purpose. Judge Wright compares this: "at home, parents are allowed to impose considerable restraints on their children's rights to 'free expression.' At school, the school authorities stand *in loco parentis* to enforce minimum standings of expression."[73] Comparing parental and school authority at this level undermines students' rights significantly. Parental authority also brings in privacy and legal issues that schools do not normally encounter. To say that school officials act in place of a parent for students during the school day is to say that schools have complete control over children. Garvey explains that, "the State's authority to discourage children's expression derives from the child's need for parental direction and the State's interest in educating future citizens." But he uses the example that, "a parent may wash out his child's mouth with soap for saying 'damn,' but it is fairly clear that public school authorities cannot properly do the same thing."[74] The relationship between parents and school officials is close-knit, but to say they are the same is unreasonable. A child may be ordered by his parent to complete his homework before he can eat dinner, but the school is in no position to order a child to complete his classwork before he can eat lunch.

Parental and school authority can be distinguished by the underlying reasons to enforce it. Although "parents' authority to direct their children's moral and intellectual growth provides, as

[72] *Fraser v. Bethel School District*, 1367.
[73] *Fraser v. Bethel School District*, 1367.
[74] Garvey, "Children and The First Amendment," 326.

it were, a value-free argument for state restriction of the free speech rights of minors," the state "has an independent interest in the growth of young people that also permits it to encourage, and within very broad limits direct, development of future citizens."[75] But just because the state is interested in the growth of citizens, it does not mean that it is all-willing to open up constitutional rights to minors, because, "the instrumental conception of free speech for children justifies abridging expression in order to accomplish the primary objectives."[76] With this interest, they may wish to enforce their moral standards onto students just as parents do, and given that the moral belief in discipline and order is still a key concept to many school, state, and Judicial authorities, discipline is prioritized over minors' rights.

A major concern for both school districts in *Fraser* and *Hazelwood* was that the student's speech was involved in school-sponsored activities. Schools do not wish to promote any messages they do not believe in, so anything that is said by students or faculty in assemblies, games, or newspapers that are school-sponsored is closely monitored. This continues to be an ongoing issue for teachers and faculty to this day. In the recent case *Kennedy v. Bremerton School District*, a high school football coach who often prayed on the field after each game was asked by the school to "discontinue the practice in order to protect the school from a lawsuit based on violation of the [Establishment] Clause...Kennedy sued the school district for violating his rights under the First Amendment."[77] Schools are now quick to reprimand faculty like Kennedy in order to save their image and avoid controversy, possibly due to the tense cultural and political climate of today. However, faculty sign agreements when they are hired and are representatives of their schools while on campus grounds, so for schools to monitor some of what they say is reasonable.

Faculty willingly limit some of their constitutional rights through employment contracts. Students do not have contracts with the schools they attend, yet they still forfeit some of their constitutional rights because "the school environment is unique due to its physically confining nature, the immaturity of its population, and the special demands and needs of the educational purpose."[78] In this interpretation it is hard to say that minors have many rights, since they are too

[75] Garvey, "Children and The First Amendment," 336.
[76] Garvey, "Children and The First Amendment," 351.
[77] "Kennedy v. Bremerton School District," Oyez, accessed May 1, 2022, https://www.oyez.org/cases/2021/21-418.
[78] *Fraser v. Bethel School District*, 1367.

"immature" and have no choice but to attend school. But why should schools monitor what students say in school-sponsored activities when students technically are not the representatives of the school, unlike those who are paid to be? Both the Bethel and Hazelwood School Districts' arguments for the concern of their schools sending out the wrong message may conceal a desire to keep order and control over their students.

Whether the Constitution was created to include minors or not may never be conclusive, unless one day an amendment is added addressing what rights minors do and do not share with legal adults, although this seems unlikely. The topic of the rights of minors is not simply an argument to encourage children to reject authority, but a serious concept determining the extent to which children are humans with "unalienable rights," and to which they are mature enough to handle said rights. With the help of *Tinker* and *Lopez,* students have established certain guarantees to the First and Fourteenth Amendments, but those are not "automatically coextensive with the rights of adults."[79]

IV. The Right to Know

Since minors' rights are not always coextensive with adults' rights, additional complications arise involving what power minors have over their education rights. School officials and parents have similar power over children in the sense of what they want them to value. They enact statewide curriculums for all public-school children and have complete control over what books, subjects, and classes are accessible to minors; students have little say in the matter. If schools are "a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment," are they not responsible for exposing students to somewhat uncomfortable topics, so they are prepared for when they encounter them in adulthood?[80] The right to know is a human right, allowing citizens to be aware, be educated, and participate in decisions that involve them in some way. This right is also a continuous battle in schools between students and school officials, because allowing school officials to choose what students can and cannot learn about or have access to without the students'

[79] *Bethel School District v. Fraser*, 682.
[80] *Brown v. Board of Education of Topeka*, 493.

input infringes on this right. Garvey explains that, "like free speech, however, the right to know is not a unitary concept, and the extent of the protection to which it is entitled may depend on how the information is to be conveyed, as well as the role the government plays in its restriction."[81] Along with free speech, minors' rights regarding their education and its content have yet to be solved, as can be observed through a variety of court cases.

The banning of certain material in schools is one significant area of contestation regarding the right to know. One example court case is *Minarcini v. Strongsville City School District,* where five high school students filed a suit against their school board for violating their First and Fourteenth Amendment rights after the board ordered the removal of two books from the school library. In a similar fashion to Justice Black from his *Tinker* dissent, the Court of Appeals stated that:

> Public education in our Nation is committed to the control of state and local authorities. 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. On the other hand, 'the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.'[82]

This confirms that, although school officials have the most control over schools, the Courts are still willing to step in when the students' rights are at stake, guaranteeing some freedoms for minors. The question in this case is how much power school officials truly have over the material. The Court of Appeals began by explaining that, "discretion as to the selection of textbooks must be lodged somewhere and we can find no federal constitutional prohibition which prevents it from being lodged in school board officials who are elected representatives of the people." However, the board of education went too far: "the School Board removed the books because it found them objectionable in content and because it felt that it had the power, unfettered by the First Amendment, to censor the school library for subject matter which the Board members found distasteful." Thus, they concluded that school boards must have a genuine, academic reason for the removal or addition of certain books, not simply because they do not prefer the content. The

[81] Garvey, "Children and The First Amendment," 368.
[82] Minarcini v. Strongsville City School District, 541 F2d (1976): 580.

Court ends by saying that, "here we are concerned with the right of students to receive information which they and their teachers desire them to have. First Amendment protection of the right to know has frequently been recognized in the past."[83]

This case is valuable for students in that it establishes and recognizes that students do have some input in what they have access to in order to learn and be exposed to diverse, and sometimes more mature, content. The right to know is essential for a child's growth, "because the inability to develop a broad perspective will affect the child's participation in the political process only at some time in the future."[84] Although school is essential for teaching children moral values and providing structure, it also should be a place where children have the ability to think for themselves and develop their own diverse opinions; this is only possible by providing access to a diverse selection of material.

It is through the Fourteenth Amendment that students have the right to "acquire useful knowledge" because "the American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted."[85] Education is a powerful tool to succeed as both a person and an American citizen. It is crucial for school officials to allow students to be exposed to more than simply what the officials believe is valuable, as it is the students' constitutional right to gain an education that is diverse and helpful in shaping them as active citizens.

V. Conclusion

The extent of rights which students have and how far they can go in school is still unclear, but it can be said that the *Tinker* case did help to legally advance minors' rights in the country and its politics. The argument between whether students' rights are "coextensive with those of adults" or not is what makes this subject so complicated, as Professor Emily Waldman argues that the "student speech universe" is currently divided in two: "student speech that merely occurred on school premises could be restricted only if it caused a material disruption or invaded others' rights,

[83] *Minarcini v. Strongsville City School District*, 583.
[84] Garvey, "Children and The First Amendment," 372.
[85] Meyer v. Nebraska, 262 U.S. (1923): 400.

while student speech disseminated in a school-sponsored context could be restricted when the school had a legitimate pedagogical reason for doing so."[86] Yet it can be agreed upon by all that school is one of the most important aspects of American society and is critical for the future of democracy. The split that still lingers in schools is whether their purpose is to enforce discipline in order to encourage maturity, or to allow students to grow into their own persons through self-expression.

Garvey claims that, "free speech plays an important role in training the young for participation in democratic self-government." He reasons that there are many benefits of free speech for minors, including "the practice it offers in the skills of argument," the gratifying experience of "self-expression, or more largely, self-definition," and the "opportunity to become acquainted with the effects words and symbols can have."[87] The practice of free speech offers students lessons about intellectual conversation, manners, and their role in society that a simple school lesson would not be able to teach without the actual experience of the practice. If student speech was to be completely suppressed, children would have a lack of knowledge on how to behave in the world and interact with others, let alone how to be prepared to participate in the political sphere. School is a significant place where children gain this knowledge, and yet it is still unknown where their ability to freely express themselves stands. America, however, is a large country with a range of diverse opinions, making it difficult to put a blanket definition over such an ambiguous subject. Even outside of the schoolhouse, the "interpretation of the [First] Amendment is constantly involved in deep and perplexing ambiguity...there is a sense in which it does not say what it means. At any rate, it does not say it to us unless we practice eternal vigilance in the criticisms of our words and meanings."[88] Therefore, it is not only a citizen's right but a citizen's duty to exercise free speech in order to contribute to, and test, the complex nature of the First Amendment and its unique interpretation over time.

[86] Emily Gold Waldman, "Returning to Hazelwood's Core: A New Approach to Restrictions on School-Sponsored Speech," *Florida Law Review* 60, no. 1 (January 2008): 63.
[87] Garvey, "Children and The First Amendment," 365.
[88] Meiklejohn, "What Does the First Amendment Mean?" 461.

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