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Free speech groups worry *Hosty* ruling will scale back students' 1st Amendment rights

7th Circuit Court of Appeals ruled this week that restrictive *Hazelwood* ruling can apply on college campuses

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Media and free speech groups warn that a decision this week by a federal appeals court could have damaging consequences for free speech on college and university campuses.

"It is a sad day for journalism in the United States," Society of Professional Journalists President Irwin Gratz said in a statement in response to Monday's decision in *Hosty v. Carter*. "In the states covered by this ruling, students will now spend eight years with prior review and censorship as part of their journalistic experience."

The Society was among a group of 25 free expression and media organizations that filed a brief in support of the students in *Hosty*.

The U.S. Court of Appeals for the Seventh Circuit, which covers Indiana, Illinois and Wisconsin, ruled in *Hosty* that the 1988 *Hazelwood v. Kuhlmeier* decision, which limited high school students' free expression rights, applies to colleges and universities. Under *Hazelwood*, courts first have to determine if a publication is a "designated public forum" in which students have been given authority to make content decisions before deciding whether unconstitutional censorship has occurred.

The case started in 2001 when three student staff members of the *Innovator*, Margaret Hosty, Jeni Porche and Steven Barba, sued Governors State University claiming Dean Patricia Carter instructed their printer not to print the paper until it was approved by an administrator. The students said they were censored for publishing articles critical of the administration.

The appeals court also said that the administrator in the case had qualified immunity, meaning she could not be forced to pay financial damages because her misunderstanding of the law was reasonable.

Kathy Lawrence, College Media Advisers president, said the two holdings of the *Hosty* opinion – that *Hazelwood* extends to colleges and that the administrator in the case was not held liable because she may not have known better – create a dangerous situation.

"I think when you take those two positions from *Hosty v. Carter* together, things look pretty scary," Lawrence said. "It's pretty easy to envision a case in which a university administrator begins a practice of just routinely deciding what will and will not go in a campus medium."

With the expansion of *Hazelwood* to colleges, some college administrators may look at student newspapers as more of an extension of the school's public relations function than as a newspaper, said Stephen Key, general counsel for the Hoosier State Press Association

The HSPA is an Indiana professional media group that also joined in support of the students in the case.

Key said college administrators might also try to position themselves in ways allowing

them to have influence over content.

"I think you'll see in places college administrators who don't have a full appreciation for student press ... moving and doing things to try and put the student publication into a situation where it's going to be ruled as not a designated public forum, [where] then they can start to control content," Key said.

Lawrence said another troubling aspect to the court's written opinion was its references to subsidized newspapers as being subjected to the *Hazelwood* analysis. She said some papers, like at the University of Texas where Lawrence is the adviser, are highly self-sufficient and receive little from the university.

But other schools may not be in the same situation. She said some schools have established their student newspapers as learning laboratories and, in doing so, these schools put money into the programs for a number of reasons to better the learning experience.

"But if that same generosity leads people to decide that the school should determine content, then the learning value to the students is tremendously diminished," Lawrence said. "And the health of the First Amendment in a democracy is diminished even more."

Key pointed out that the decision's impact might go beyond student media.

"This may go beyond not only student publications but it may go into the products being put together by university faculty – speakers who are brought in," he said. "The whole effort by a university administration, if they want to control or censor messages, this will strengthen their hand."

This adds strength to college administrators' arguments for censorship, as some have already used other tactics to censor protected free speech, said Greg Lukianoff, director of public and legal advocacy for the Foundation for Individual Rights in Education.

FIRE is an organization that works to defend individuals' rights, including freedom of speech, on college campuses. It also supported the students in *Hosty*.

"Far, far smaller loopholes with regards to the First Amendment rights of students have been exploited to censor what used to be considered clearly protected speech," Lukianoff said. "Considering the ways in some cases administrations have used – from intimidation, harassment – having an actual opinion likening collegiate free-speech rights to high school free speech rights could be disastrous for free speech on campus."

Lukianoff said free speech on college campuses needs broad protections, because if ambiguity exists, people will capitalize on that and try to silence uncomfortable or unagreeable speech.

"As much as people like to think they value free speech, as soon as there's a loophole that people can take advantage of to silence their critics or opinions they think are wrong, they will jump on them," he said. "This opinion creates tremendous opportunities for administrators and other students who want to infantilize students or deny them their basic rights."

–By Sean Hill

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