

## What Does Free Speech Mean?

Among other cherished values, the First Amendment protects freedom of speech. The U.S. Supreme Court often has struggled to determine what exactly constitutes protected speech. The following are examples of speech, both direct (words) and symbolic (actions), that the Court has decided are either entitled to First Amendment protections, or not.

The First Amendment states, in relevant part, that: "Congress shall make no law...abridging freedom of speech." Freedom of speech includes the right:

- ◆ Not to speak (specifically, the right not to salute the flag). *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943).
- ◆ Of students to wear black armbands to school to protest a war ("Students do not shed their constitutional rights at the schoolhouse gate."). *Tinker v. Des Moines*, 393 U.S. 503 (1969).
- ◆ To use certain offensive words and phrases to convey political messages. *Cohen v. California*, 403 U.S. 15 (1971).
- ◆ To contribute money (under certain circumstances) to political campaigns. *Buckley v. Valeo*, 424 U.S. 1 (1976).
- ◆ To advertise commercial products and professional services (with some restrictions). *Virginia Board of Pharmacy v. Virginia Consumer Council*, 425 U.S. 748 (1976); *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).
- ◆ To engage in symbolic speech, e.g., burning the flag in protest. *Texas v. Johnson*, 491 U.S. 397 (1989); *United States v. Eichman*, 496 U.S. 310 (1990).

Freedom of speech does not include the right:

- ◆ To incite actions that would harm others (e.g. "[S]hout[ing] 'fire' in a crowded theater."). *Schenck v. United States*, 249 U.S. 47 (1919).
- ◆ To make or distribute obscene materials. *Roth v. United States*, 354 U.S. 476 (1957).
- ◆ To burn draft cards as an anti-war protest. *United States v. O'Brien*, 391 U.S. 367 (1968).
- ◆ To permit students to print articles in a school newspaper over the objections of the school administration. *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1983).
- ◆ Of students to make an obscene speech at a school-sponsored event. *Bethel School District #43 v. Fraser*, 478 U.S. 675 (1986).
- ◆ Of students to advocate illegal drug use at a school-sponsored event. *Morse v. Frederick*, 551 U.S. \_\_\_, 127 S. Ct. 2618 (2007).

## Statement of the Case

Students forming a vampire club called The Fangtastics at school post vampire-related content on the student wall of their high school's official FaceLook fan page. When the principal decides not to recognize The Fangtastics as a legitimate school club because she believes it endorses dangerous cult activity, a student posts a critical satire about the decision on the student wall. The student administrator of the wall does not remove the satire or related student postings. The principal claims that all the students violated school policies by posting content that threatened a safe and efficient learning environment. The students claim that their First Amendment rights were violated and sue the principal and the school district in federal court.

Attached are the materials for the mock trial during your visit to the US District Court. There will be a total of 16 student participants and four students in non-speaking rolls posing as members of the Fangtasticks (should wear sunglasses but vampire fangs and capes are optional) with the remainder of the students acting as jurors.

Teachers will select participants. All roles may be male or female. Opening statements will be delivered by real attorneys assisting in this case; however, attorney #4 for each side will deliver unscripted closing arguments based on notes taken during the trial. This should be a brief summary (3 minutes per side) of why the jury should render a verdict in favor of their client.

**2 (Two) Student Judges**

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**1 (One) Court Security Officer**

*(Stands to the side of the bench and calls the court to order)*

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**1 (One) Courtroom Deputy**

*(Sits in front of the bench and stands to administer the oath)*

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**4 (Four) Attorneys for Plaintiff – Fangtastic Randy Cullen**

P Atty #1

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P Atty #2

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P Atty #3

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Unscripted Closing Argmt P Atty #4

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**4 (Four) Attorneys for Defendant – Principal Mary Skinner**

D Atty #1

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D Atty #2

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D Atty #3

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Unscripted Closing Argmt D Atty #4 \_\_\_\_\_

**Witnesses**

**2 (Two) Witnesses for the Plaintiff (Student)**

Randy Cullen, Fangtastics Leader \_\_\_\_\_  
(At counsel table)

Alex Swan, FaceLook Monitor \_\_\_\_\_  
(In the gallery behind the plaintiff until called to the stand)

**2 (Two) Witness for the Defense (Principal)**

Chris Black, Football Kicker \_\_\_\_\_  
(In the gallery behind the defendant until called to the stand)

Principal Mary Skinner, Defendant \_\_\_\_\_  
(At counsel table)

**4 (four)members of the Fangtasticks**

*(Sit in the front row of the gallery behind the Plaintiff's counsel table.)*

Fangtasticks #1 \_\_\_\_\_

Fangtasticks #2 \_\_\_\_\_

Fangtasticks #3 \_\_\_\_\_

Fangtasticks #4 \_\_\_\_\_

## SCRIPT

### Opening Statement

Court Security Officer:

All rise, The Honorable \_\_\_\_\_ United States District Judge in and for the Central District of Oz and associate judges \_\_\_\_\_ and \_\_\_\_\_ presiding. Hearye, hearye, hearye. All persons having business before this Court draw near, give attention and you shall be heard. God save the United States of America and this Honorable Court.

Please be seated.

Host Judge: I see that the jury has been selected and seated. Will the Courtroom Deputy please swear in the jury?

Courtroom Deputy:

Do each of you solemnly swear---that you will well and truly try---the issues in this cause---between the plaintiff, Randy Cullen ---and the Defendant, Principal Mary Skinner---and render a true verdict---according to the evidence and the charge of this Court --- so help you God?

Host Judge: Plaintiff's counsel will now present its opening statement.

Plaintiff's Attorney (Real): Thank you, Your Honor. May it please the Court, members of the jury - - -

Host Judge: Defense counsel will now present its opening statement.

Defense Attorney (Real): Thank you, Your Honor. May it please the Court, members of the jury - - -

Judge #1: Mr/Ms. \_\_\_\_\_, call your first witness.

**TESTIMONY OF RANDY CULLEN  
(Plaintiff – Leader of the Fangtastics)**

P Atty #1           Your Honor, I would like to call my first witness, Mr./Ms. Randy Cullen.

Judge #1:           Mr./Ms. Cullen, please come forward and be sworn.

Crtrm Dep:         Please raise your right hand. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Cullen:             I do.

Judge #1:           Please be seated. Please state your full name, spelling your last name.

Cullen:             Randy Cullen. C-U-L-L-E-N.

Judge #1           You may proceed.

P Atty #1:         Please state your age for the record and where you currently attend school.

Cullen:             I'm 18 years old. I am a senior at Forks High School.

P Atty #1:         Please tell the Court what you know about a group called the Fangtastics that was formed last year at Forks High School.

Cullen:             Up until last year, my friends and I were part of the drama program at Forks High School. That was the year the school board decided to cut the program. They decided they couldn't keep both the drama program and the football program going. One had to go and so drama lost out. We formed our own drama group and started putting on plays. The year before the school performed the *Fantasticks*, so we decided to call ourselves the Fangtastics. We specialize in vampire stories. We perform at events in the community and at school – like the recent Talent Show. We also contribute to the

community. We just organized a blood drive that was really successful!

P Atty #1: Tell the Court what happened the day of the talent show.

Cullen: The play was a hit. Everyone laughed and clapped. We received three curtain calls.

P Atty #1: It sounds like a successful event, so how did the trouble start?

Cullen: Well, I came up with the idea of dressing up like vampires the morning of the Talent Show. We put on makeup and costumes and acted like vampires all morning. We wouldn't sit near the windows in our classes and we drank bottles of blood, I mean, tomato juice in the lunchroom that day.

P Atty #1: Is there anyone in the courtroom who is dressed the way you were dressed that day?

Cullen: Yes. All the members of the group. They're sitting there in the front row. *(Points to the group in the front row.)*

P Atty #1 What got you into trouble?

Cullen: Well, the trouble, actually, came after the Talent Show when we posted a satirical poem criticizing Principal Skinner's decision to reject our application to be recognized as an official school club. She turned us down and accused us of being a cult. And she had the poem taken off the school's web page. Essentially she violated our First Amendment rights to freedom of speech and freedom of association.

P Atty #1: Tell me more about the poem that the Principal had taken off the site.

Cullen: I wrote a satirical poem about the Principal's reaction to when my sister posted it on the school's FaceLook page.

P Atty #1 What is FaceLook?

Cullen: It's like My Space or Facebook. Students from the school post pictures from school events, essays, and jokes. Most of the stuff is about sports and dances. Things like that.

P Atty #1: **(Attorney picks up the poem that has been marked with an Exhibit #1 sticker.)** Your Honor, may I approach the Witness?

Judge#1: Yes, you may.

P Atty #1 **(Attorney walks to the witness stand with the poem)**  
Showing you what's been marked for Identification as Exhibit #1, do you recognize this?  
**(Hands the poem to witness.)**

Cullen: Yes. That's the poem my sister posted. I wrote it. I saw it on the school's FaceLook page.

P Atty #1 Your Honor, we offer Exhibit #1 into evidence.

Judge #1 Any objections?

D Atty #1: No objection.

Judge #1: Exhibit #1 is received into evidence.

P Atty #1: Mr./Ms. Cullen, please read it for

Cullen: Sure.  
*If the school smears the Fangtastics with mud  
We don't have to put up with that crud  
And Principal Skinner  
Won't be the winner  
If her house is drenched in \_\_\_\_\_.*

P Atty #1: And what happened to your poem?

Cullen: It was just a joke, but Principal Skinner called me in and told me the Fangtastics are a dangerous cult. She said



she took the poem as a personal threat. She had it pulled off the web page and banned all the members of the group from the website. That's censorship and a violation of my First Amendment rights. Schools shouldn't be able to limit the freedom of speech and association of their students. That's when I asked my father to help me file this lawsuit. That's why we're here.

P Atty #1: And what is it you are asking this Court to do?

Cullen: All I want are my First Amendment rights, freedom of speech and freedom of association.

P Atty #1: Thank you, Mr./Ms. Cullen. Nothing further.

Judge#1: Does Defense Counsel have any questions for this witness?

D Atty #1: Yes, Your Honor.

Judge #1: You may inquire.

D Atty #1: Did it ever occur to you that your antics in the classrooms and the cafeteria might disrupt the learning environment at school that day?

Cullen: No. I thought people would laugh, and that's what they did.

D Atty #1: *(Attorney takes out policy.)* Your Honor, may I approach the witness?

Judge #1: Yes, you may.

D Atty #1: Mr./Ms. Cullen, I'm showing you what's been marked Exhibit #2, a warning on the FaceLook web page. You recognize that, don't you?

Cullen: Yes.

D Atty #1: You've seen this policy on the use of the web page many times correct?

Cullen: Yes.

D Atty #1: Your Honor, we offer Exhibit #2 into evidence.

Judge #1: Any objections?

P Atty #1: No objection.

Judge #1: Received.

Def Atty #1: Mr./Ms. Cullen, please read out loud the part I have highlighted.

Cullen: "All material posted on the school FaceLook page must be related to school activity, respectful and free of offensive language."

D Atty #1: The Fangtastics were not a recognized school club, right?

Cullen: So the Principal said, but everyone else recognized us. They couldn't miss us. We're as active – and legitimate – as any other club at school. And we are one of the largest clubs, too.

D Atty #1: However, the Principal never recognized your group as an official school club.

Cullen: Unfortunately, that's right.

D Atty #1: So Mr./Ms. Cullen, your group's actions were not related to a school activity, right?

Cullen: Well, we performed at the Talent Show.

D Atty #1: Let's turn to your poem. Your poem ends with a blank for a missing word. The missing word is blood, isn't it?

Cullen: Could be. Or it could be "drenched in a flood." Depends on the reader. Everyone knows she lives near the Grand Forks river and it floods every year.

D Atty #1: Your poem is disrespectful to the Principal, isn't it?

Cullen: I don't think it's disrespectful to make a harmless joke.

D Atty #1: It certainly contains offensive language, doesn't it?

Cullen: I guess it depends on what you call offensive.

Def Atty #1: Thank you Mr./Ms. Cullen. No further questions.

Judge #1: Redirect?

P Atty #1: Yes, very briefly. Mr./Ms. Cullen, on the day of the Talent Show, did any of the teachers reprimand you for your costumes or behavior?

Cullen: Not at all. In fact, they laughed along with everyone else.

P Atty #1: No further questions.

Judge #1: Very well. Thank you, Mr./Ms. Cullen. You may step down. Counsel, any other witnesses?

## **TESTIMONY OF ALEX SWAN**

**(Plaintiff's Witness – Student Monitor of the Forks High FaceLook Page)**

- P Atty #2:** Your Honor, I would like to call my next witness, Mr./Ms. Alex Swan.
- Judge #2:** Mr./Ms. Swan, please come forward and be sworn.
- Ctrrm Dep:** Please raise your right hand. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?
- Swan:** I do.
- Judge #2:** Please be seated. Please state your full name, spelling your last name.
- Swan:** Alex Swan. S-W-A-N.
- Judge #2:** You may inquire.
- P Atty #2:** Please state your age for the record and where you attend school.
- Swan:** I'm sixteen. I attend Forks High School.
- P Atty #2:** Could you please tell us what you have to do with the school's FaceLook page?
- Swan:** I'm the student monitor.
- P Atty #2:** How did you come to serve as the monitor?
- Swan:** Principal Skinner appointed me. It was my first year at Forks High School. She thought an activity like this would help me get to know more of the students.
- P Atty #2:** And what exactly does the student monitor do?
- Swan:** I check the FaceLook page every day during study hall to

make sure that nobody has put anything on the FaceLook page that they shouldn't

P Atty #2: How do you know if something shouldn't be on the page?

Swan: Like it says on the web page, everything has to be about the school. It has to be respectful and none of the words can be offensive.

P Atty #2: *(Atty takes Exhibit #1)* Your Honor, may I show this exhibit to the witness?

Judge #2: Go ahead.

P Atty #2: Showing you Exhibit #1, do you recognize this poem?

Swan: Yes. I saw it on the school's FaceLook page.

P Atty #2: What did you do as school monitor when you saw it on the FaceLook page?

Swan: I didn't do anything.

P Atty #2: Why not?

Swan: Because I thought it was about a school club.

P Atty #2: Why didn't you find the poem offensive?

Swan: I guess because it was, obviously, a big joke.

P Atty #2: What was Principal Skinner's reaction to your decision to leave it on the web page?

Swan: She was mad. I always thought Principal Skinner had a better sense of humor than that.

P Atty #2: Thank you Mr./Ms. Swan. No further questions.

Judge #2: Does the Defense Counsel have any questions for this witness?

D Atty #2: Yes, Your Honor.

D Atty #2: Mr./Ms. Swan, as you said, you are new at Forks High, is that right?

Swan: Yes, I moved here about six weeks ago.

D Atty #2: Would it be accurate to say that you want to be popular at your new school?

Swan: Well, everyone wants to have friends.

D Atty #2: Is it true that you applied for membership in the Fangastics but you haven't heard yet if you've been accepted?

Swan: Well, yes, but that doesn't have anything to do with anything.

D Atty #2: Thank you, Mr./Ms. Swan. That's all.

Judge #2: Re-direct?

P Atty #2: None, Your Honor.

Judge #2: Very well. Thank you, Mr./Ms. Swan. You may step down. You may call your next witness.

P Atty #3: Plaintiff rests.

## **TESTIMONY OF CHRIS BLACK**

**(Defendant's Witness – Kicker for Football Team. Reported Fangtastics)**

- D Atty #2: Your Honor, I would like to call my first witness, Mr./Ms. Chris Black.
- Judge #1: Mr./Ms. Black, please come forward and be sworn.
- Crtrm Dep: Please raise your right hand. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?
- Black: I do.
- Judge #1: Please be seated. Please state your full name, spelling your last name.
- Black: Chris Black. B-L-A-C-K.
- Judge #1: You may inquire.
- D Atty #2: For the record, please state your age and where you attend school.
- Black: I'm eighteen years old and I'm the kicker of the football team at Forks High School. Go Wolfpack!!!! (*Howls*)
- Judge #1: Mr./Ms. Black, we're happy for your football team but please just answer the questions.
- Black: Sure. Cool, Your Honor. No problem.
- D Atty #2: Were you in school on March 3rd of last year, the day of the Talent Show?
- Black: I was.
- D Atty #2: What, if anything, unusual happened that day?
- Black: Unusual – yeah. The so-called 'Fangtastics' (*making*

***quotation marks with his hands***) took over the school. They interfered with our classes and slowed down the lunch line drinking their "Bloody Mary Skinners" (***quotation marks with hands***)

D Atty #2: What did you do?

Black: In the best interests of my team and the school, I felt obligated to report to Principal Skinner that I suspected Cullen.

D Atty #2: Why did you report Mr./Ms. Cullen for what happened on the day of the Talent Show?

Black: They disrupted classes. My guys have to maintain their grades to play on the team. Nobody was studying.

D Atty #2: Did you have any other concerns when you decided to report the poem?

Black: The guy threatened Ms. Skinner. The poem ends in "blood" and I thought Ms. Skinner needed to know about it.

D Atty #2: No further questions, Your Honor.

Judge #1: Does Counsel for the Plaintiff have any questions for this witness?

P Atty #2: Yes, Your Honor.

P Atty #2: Do you have any reasons not to like Randy Cullen?

Black: He and his cult of Fangtastics are strange.

P Atty #2: Isn't it true that Randy Cullen lobbied the School Board to transfer money from the football budget to save the drama program?

Black: That'll never happen as long Principal Skinner's in charge.



P Atty #2: Thank you, Mr./Ms. Black. No further questions.

Judge #1: Redirect?

D Atty #2: No, Your Honor.

Judge #1: Thank you, Mr./Ms. Black. You may step down.

Judge #1: Counsel, any other witnesses?

Def Atty #2: One more, Your Honor.

**TESTIMONY OF PRINCIPAL MARY SKINNER  
(Defendant – Principal of Forks High School)**

Judge #2: You may proceed when you're ready, Counsel.

D Atty #3: The Defense calls Principal Ms. Mary Skinner.

Judge #2: Ms. Skinner, please come forward and be sworn.

Crtm Dep: Please raise your right hand. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Skinner: I do.

Judge #2: Please be seated. Please state your full name, spelling your last name.

Skinner: Mary Skinner. S-K-I-N-N-E-R.

D Atty #3: Ms. Skinner, what is your occupation

Skinner: I am the Principal at Forks High School.

D Atty #3: Are you familiar with a group of students at Forks called the Fangtastics?

Skinner: Very familiar.

D Atty #3: How did you come to know of the group?

Skinner: The group was first brought to my attention the morning of the Talent Show by Chris Black, one of my students. As he described the group, I knew they were a cult.

D Atty #3: What did you do then?

Skinner: I considered cancelling the group's appearance in the Talent Show, but my concern was that pulling the performance would create a further disturbance. So I let the performance go on.

D Atty #3: What about the group's behavior led you to describe it as a cult?

Skinner: I have been trained to recognize indicators of cult associations and antisocial behavior

D Atty #3: Was there anything else that added to your sense of alarm?

Skinner: Yes. Chris Black came to my office and showed me the FaceLook page. There, I found the poem Mr./Ms. Cullen read to the Court. I naturally ordered Mr./Ms. Swan to remove the poem and immediately cancelled the posting privileges of all Fangtastics.

D Atty #3: Thank you, Principal Skinner. No further questions.

Judge #2: Does Counsel for the Plaintiff have any questions for this witness?

P Atty #3: Yes, Your Honor.

P Atty #3: Ms. Skinner, you indicated that you first became concerned about the Plaintiff and his/her associations after Chris Black brought your attention to the poem on the web page.

Skinner: That's correct.

P Atty #3: After speaking with Mr./Ms. Black, did you speak to any of the teachers on your staff to confirm these allegations?

Skinner: I did.

P Atty #3: And did the teachers express the same degree of concern that you expressed today?

Skinner: No. They did not.

P Atty #3: Isn't it true that Mr./Ms. Cullen and the other students in the drama program campaigned to win votes on the

School Board for their proposal to reduce the football team's funding, specifically, in order to keep the drama program going?

Skinner: There was such a campaign and such a proposal.

P Atty #3: You opposed that proposal didn't you?

Skinner: Yes, I did.

P Atty #3: You've got quite a football tradition at Forks don't you?

Skinner: The Forks Wolfpack has won three state championships. I'm the team's biggest fan. Their winning record makes it easier for our students to attract scholarships and it gives visibility to our academic excellence.

P Atty #3: Is it possible that your decision in this matter was influenced by the football team's success in raising badly needed revenues and attract scholarships that reflect well on the school's academic ratings?

Skinner: My focus was – and will always be – on my responsibility to safeguard the security of the students under my charge.

P Atty #3: You testified that when you decided to remove Mr./Ms. Cullen's poem from the web page, you asked Mr./Ms. Swan to remove it. Can't *you* remove material from the web page yourself?

Skinner: No. I don't have an account.

P Atty #3: To your knowledge, do any of the members of your faculty or staff have FaceLook accounts?

Skinner: Not that I know of.

P Atty #3: Do you have any control over the content of this site?

Skinner: Well, yes. I appointed Mr./Ms. Swan and she reports to me.

P Atty #3: So, you're saying a student is the only one who can access this page, therefore, would it be correct to call it a student-run page?

Skinner: Absolutely not. The web page was started by the school. It carries the school logo and mission statement. As with all public communication about the school, the administration has absolute editorial control.

P Atty #3: But, the school cannot alter the page without Mr./Ms. Swan?

Skinner: Mr./Ms. Swan has a very important role. We like to give good students leadership opportunities.

P Atty #3: Moving on, do you think it was a good decision on your part to allow a school-run website to be monitored by one, sole student – Mr./Ms. Swan?

Skinner: I'm a busy person. I can't run the school and stay abreast of the ever changing FaceLook technology. I want to make one very important point that seems to be lost in this line of questioning. (Her voice shakes and gets louder.) I don't favor or discriminate against any of my students. I support them whether they throw a football or write a poem. But I also must maintain order.

D Atty #3: Thank you, Principal Skinner. No further questions.

Judge #2: Thank you, Principal Skinner. You may step down.

Judge #2: Counsel, you may call your next witness.

D Atty #3: I have no further witnesses, Your Honor.

Judge #2: Ladies and gentleman of the jury, we're going to take a 5 minute break, and when we return, we will hear the parties' closing arguments. You will then be provided with some instructions.

US Marshal: All Rise. This Court will be in recess.

***Five-Minute Break***

Attorney #4 on each side has been taking notes throughout the proceedings for his/her closing arguments. The break gives each Attorney #4 time to organize a brief presentation to the jury.

**Closing Arguments**  
*(2 minutes each side)*

- CSO: All Rise. This Court is now in session. Please be seated.
- Host Judge: Counsel for the Plaintiff may make your closing arguments at this time.
- P Atty #4: Thank you, Your Honor. Members of the jury . . .
- Host Judge: Counsel for the Defendant may make your closing arguments at this time.
- D Atty #4: Thank you, Your Honor. Members of the jury . . .
- Host Judge: Jury Instructions

## **COURT'S INSTRUCTIONS TO THE JURY**

Members of the Jury:

I will now explain to you what we call “jury instructions,” the rules of law that you must follow and apply in deciding this case.

When I have finished you will go to the jury room and begin your discussions — what we call your deliberations.

In deciding the case you must follow and apply all of the law as I explain it to you, whether you agree with that law or not; and you must not let your decision be influenced in any way by sympathy, or by prejudice, for or against anyone.

In your deliberations you should consider only the evidence - - that is, the testimony of the witnesses and the exhibits I have admitted in the record - - but as you consider the evidence, you may make deductions and reach conclusions which reason and common sense lead you to make

Now, in saying that you must consider all of the evidence, I do not mean that you must accept all of the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part.

In deciding whether you believe or do not believe any witness I suggest that you ask yourself a few questions: Did the witness impress you as one who was telling the truth? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness seem to



have a good memory? Did the witness have the opportunity and ability to observe accurately the things he or she testified about? Did the witness appear to understand the questions clearly and answer them directly? Did the witness' testimony differ from other testimony or other evidence?

In a civil case, the Plaintiff has the responsibility to prove his claim by a "preponderance of the evidence." This is sometimes called the "burden of proof" . A "preponderance of the evidence" simply means an amount of evidence that is enough to persuade you that a claim or contention is more likely true than not true.

If the proof fails to establish the claim by a preponderance of the evidence you should find against the Plaintiff. If the proof does establish the claim by a preponderance of the evidence you should find for the Plaintiff.

In making your decision you have to decide if the decision by the school principal to remove the poem as posted on Face Look by the Fangtastics violated the student's First Amendment right to free speech as guaranteed by the US Constitution.

Any verdict you reach in the jury room must be by the majority. In other words, to return a verdict one more than half of you must agree. Your deliberations will be secret; you will never have to explain your verdict to anyone.

It is your duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case do not hesitate to re-examine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your honest beliefs solely because the others think differently or merely to get the case over with.

Remember, that in a very real way you are judges - - judges of the facts. Your only interest is to seek the truth from the evidence in the case.

When you go to the jury room you should first select one of your members to act as your foreperson. The foreperson will preside over your deliberations and will speak for you here in court.

A form of verdict has been prepared for your convenience.

[Explain verdict]

You will take the verdict form to the jury room and when you have reached an agreement you will have your foreperson fill in the verdict form, date and sign it, and then return to the courtroom.

You have 10 minutes to reach your verdict.

## Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988)

### FACTS

Students enrolled in the Journalism II class at Hazelwood East High School were responsible for writing and editing the school's paper *The Spectrum*. Two of the articles submitted for publication in the final edition of the paper contained stories on divorce and teenage pregnancy. The divorce article featured a story about a girl who blamed her father's actions for her parents' divorce. The teenage pregnancy article featured stories in which pregnant students at Hazelwood East shared their experiences.

To ensure their privacy, the girls' names were changed in the article. The school principal felt that the subjects of these two articles were inappropriate. He concluded that journalistic fairness required that the father in the divorce article be informed of the story and be given an opportunity to comment. He also stated his concerns that simply changing the names of the girls in the teenage pregnancy article may not be sufficient to protect their anonymity and that this topic may not be suitable for the younger students. As a result, he prohibited these articles from being published in the paper.

Because there was no time to edit the paper if it were to go to press before the end of the school year, entire pages were eliminated. The student journalists then brought suit to the U.S. District Court for the Eastern District of Missouri, alleging that their First Amendment rights to freedom of speech had been violated.

The U.S. District Court concluded that they were not. The students appealed to the U.S. Court of Appeals for the Eighth Circuit, which reversed the ruling, stating that the students' rights had been violated. The school appealed to the U.S. Supreme Court, which granted certiorari.

# Forks High School Publications Policy

## I. STATEMENT OF POLICY

Freedom of expression and press freedom are fundamental values in a democratic society. The mission of any institution committed to preparing productive citizens must include teaching students these values, both by lesson and by example.

As determined by the courts, student exercise of freedom of expression and press freedom is protected by both state and federal law, especially by the First Amendment to the United States Constitution. Accordingly, school officials are responsible for encouraging and ensuring freedom of expression and press freedom for all students.

It is the policy of the Forks County Board of Education that (newspaper), (yearbook), (literary magazine) and (electronic or on-line media), the official, school-sponsored student media of Forks High School have been established as forums for student expression and as voices in the uninhibited, robust, free and open discussion of issues. Each medium should provide a full opportunity for students to inquire, question and exchange ideas. Content should reflect all areas of student interest, including topics about which there may be dissent or controversy.

It is the policy of the Forks County Board of Education that student journalists shall have the right to determine the content of student media. Accordingly, the following guidelines relate only to establishing grounds for disciplinary actions subsequent to publication

## **II. OFFICIAL STUDENT MEDIA**

### **A. Responsibilities of Student Journalists**

Students who work on official, school-sponsored student publications or electronic media determine the content of their respective publications and are responsible for that content. These students should:

1. Determine the content of the student media;
2. Strive to produce media based upon professional standards of accuracy, objectivity and fairness;
3. Review material to improve sentence structure, grammar, spelling and punctuation;
4. Check and verify all facts and verify the accuracy of all quotations; and
5. In the case of editorials or letters to the editor concerning controversial issues, determine the need for rebuttal comments and opinions, and provide space therefor if appropriate.
6. All material posted on the school FaceLook page must be related to school activity, respectful and free of offensive language.

## **III. ADVISER JOB SECURITY**

The student media adviser is not a censor. No person who advises a student publication will be fired, transferred or removed from the advisership by reason of his or her refusal to exercise editorial control over student media or to otherwise suppress the protected free expression of student journalists.

*If the school smears the Fangtastics with mud*

*We don't have to put up with that crud*

*And Principal Skinner*

*Won't be the winner*

*If her house is drenched*

*in \_\_\_\_\_.*



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF OZ

RANDY CULLEN,

v.

CASE NO. 7:11-cv-1234-OZ

PRINCIPAL MARY SKINNER  
\_\_\_\_\_ /

VERDICT FORM

We the jury find that the decision by the school principal to remove the poem as posted on Face Look by the Fangtastics

**did / did not**

violate the student's First Amendment right to free speech as guaranteed by the US Constitution

SO SAY WE ALL, this 29th day of March, 2011

\_\_\_\_\_  
**FOREPERSON**

## Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988)

### FACTS

Students enrolled in the Journalism II class at Hazelwood East High School were responsible for writing and editing the school's paper *The Spectrum*. Two of the articles submitted for publication in the final edition of the paper contained stories on divorce and teenage pregnancy. The divorce article featured a story about a girl who blamed her father's actions for her parents' divorce. The teenage pregnancy article featured stories in which pregnant students at Hazelwood East shared their experiences.

To ensure their privacy, the girls' names were changed in the article. The school principal felt that the subjects of these two articles were inappropriate. He concluded that journalistic fairness required that the father in the divorce article be informed of the story and be given an opportunity to comment. He also stated his concerns that simply changing the names of the girls in the teenage pregnancy article may not be sufficient to protect their anonymity and that this topic may not be suitable for the younger students. As a result, he prohibited these articles from being published in the paper.

Because there was no time to edit the paper if it were to go to press before the end of the school year, entire pages were eliminated. The student journalists then brought suit to the U.S. District Court for the Eastern District of Missouri, alleging that their First Amendment rights to freedom of speech had been violated.

The U.S. District Court concluded that they were not. The students appealed to the U.S. Court of Appeals for the Eighth Circuit, which reversed the ruling, stating that the students' rights had been violated. The school appealed to the U.S. Supreme Court, which granted certiorari.



## PROCEDURE

**Lower Court:** Eighth Circuit

**Lower Court Ruling** Held: The decision of the principal to prohibit the publishing of certain student articles deemed to be inappropriate violates the student journalists' First Amendment free speech rights.

**Supreme Court Ruling:** Held: Reversed the decision of the Eighth Circuit. The decision of the school principal to prohibit the publishing of certain articles deemed to be inappropriate does not violate the student journalists' First Amendment right of freedom of speech.

**Supreme Court Vote:** 5-3

**Argued:** October 13, 1987

**Decided:** January 13, 1988

**Majority Opinion:** Justice White (joined by Chief Justice Rehnquist and Justices O'Connor and Scalia)

**Dissenting Opinion:** Justice Brennan (joined by Justices Marshall and Blackmun dissenting)

**ISSUES** Does the decision of a principal to prohibit the publishing of certain articles, which he deems inappropriate, in the school newspaper violate the student journalists' First Amendment right of freedom of speech?

**REASONING** The U.S. Supreme Court held that the principal's actions did not violate the students' free speech rights. The Court noted that the paper was sponsored by the school and, as such, the school had a legitimate interest in preventing the publication of articles that it deemed inappropriate and that might appear to have the imprimatur of the school. Specifically, the Court noted that the paper was not intended as a public forum in which everyone could share views; rather, it was a limited forum for journalism students to write articles pursuant to the requirements of their Journalism II class, and subject to appropriate editing by the school.

## Key Points to Remember

- \* The First Amendment protects the right to freedom of speech.
- \* The Spectrum was written by students in the Journalism II course as part of the requirements of that course.
- \* The articles in question were about divorce and teenage pregnancy. The subjects of both of these stories were students at Hazelwood East High School.
- \* The divorce article featured a story in which a girl blamed her father's actions for her parents' divorce, but the author did not adhere to journalistic standards by informing the father of the story and giving him an opportunity to respond.
- \* Although their names were changed, the principal was concerned that students may be able to recognize the identity of the girls who were interviewed for the pregnancy article.

## RESOURCES

### First Amendment Center

Haynes, Charles C., et al. *The First Amendment in Schools: A Guide from the First Amendment Center*. Virginia. ASCD (Association for Supervision and Curriculum Development) publications, 2003.

*Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988) (Majority and dissenting opinions) at [www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/hazelwood.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/hazelwood.html).

Raskin, Jamin B. *We the Students: Supreme Court Cases for and About Students*, 2nd ed. Washington, D.C. Congressional Quarterly Press, 200