

# Hazelwood v. Kuhlmeier / Should the State Enact Anti-Hazelwood Legislation?

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## Directions:

1. Read the **background section** about anti-Hazelwood laws and policies (page 1).
  2. Prepare for and participate in a mock **legislative forum** about enacting an anti-Hazelwood law in your state (page 2).
  3. If assigned by your teacher, complete the **extension activity** (page 3).
  4. Explore the **additional resources** if you want to learn more about the topic (page 3).
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## Background

The decision in *Hazelwood v. Kuhlmeier* has made it much easier for principals and other school officials to censor student expression. In an effort to prevent this from happening, several states and localities have passed student free speech legislation. These laws limit the circumstances under which student publications can be censored and thus extend to student journalists greater protection than that which is afforded them under *Hazelwood*. States that have enacted these “anti-Hazelwood” laws include: Arkansas, California, Colorado, Iowa, Kansas, and Massachusetts. In 2020, bills were also introduced in Hawaii, Kentucky, Minnesota, Missouri, Nebraska, New Jersey, New York, Pennsylvania, and Virginia. Other states have tried to pass legislation but have failed because they could not get a majority in the legislature and in other cases because the executive vetoed them.

Some people wonder how states can pass laws that seem to challenge decisions of the federal courts. Mike Hiestand, of the Student Press Law Center, explains this apparent contradiction in the following words:<sup>1</sup>

“Hazelwood was a First Amendment case. Think of the First Amendment as establishing a “floor” of federal protection from government censorship. No government official-federal, state or local-may ever act in a way nor may lawmakers ever pass a law or policy that provides individuals with less free speech protection than that required by the First Amendment. That’s why a public high school principal can’t institute a policy, for example, that allows her to halt publication of any material she simply disagrees with. The First Amendment—and specifically Hazelwood—requires more than that.”

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<sup>1</sup> Mike Hiestand, “Understanding ‘Anti-Hazelwood’ Laws.” Student Press Law Center. August 7, 2001.

Nothing, however, prevents lawmakers from passing a law (or school board members from enacting a local district policy) that requires school and government officials to provide student journalists with more free speech protection. In other words, Hazelwood and the First Amendment establish the ground floor of censorship protection, but anyone—where they believe the First Amendment provides insufficient protection against government censorship—can raise the ceiling and establish a higher floor. And that is precisely what state lawmakers and school board officials have done in passing student free expression laws and policies.

In other words, a state can pass a law or a school district can implement a policy that expands students' First Amendment rights by limiting the circumstances under which principals or school officials can censor student publications. In essence, this would give students the same free speech rights they had before the *Hazelwood* decision was made. If, on the other hand, a state tried to pass a law which placed further restrictions on students' free expression (i.e., greater restrictions than those found in the *Hazelwood* case), it would be unconstitutional.

## Legislative Forum

Your state legislature has decided to consider the issue of adopting its own anti-Hazelwood law. They have invited the public to an open forum to discuss this issue.

1. Your teacher will assign you to one of the following groups:
  - Student journalists
  - Newspaper advisors
  - Concerned parents
  - Principals
  - Local school officials
2. Brainstorm the pros and cons of anti-Hazelwood legislation from the perspective of your assigned group.
3. Determine if your group is for or against the legislation.
4. Work with your group to prepare comments to be delivered at the forum. Be sure to include the following in your comments:
  - What is your position on the legislation?
  - What are your reasons?
  - What would you like to see included or omitted from the policy? Are there amendments your group would offer?
5. Present your findings to the “state legislature” that will be composed of all of the students in the class. After hearing all of the arguments, they will debate and vote on the issue of anti-Hazelwood legislation.

## Extension Activity

Now that you have explored this issue, you are ready to convince the state legislature to adopt your personal viewpoint. You may do this by appealing directly to the state legislature or by trying to convince other citizens to adopt your viewpoint.

1. Create an outline. Identify your position and list arguments that support that viewpoint.
2. Choose an activity from the list below:
  - Write a letter to your state legislature.
  - Write a newspaper editorial.
  - Create a political cartoon.
  - Write a speech to be delivered to an audience. On a separate sheet of paper, write a paragraph in which you describe the target audience and the speech techniques used.
  - Create a brochure. Your brochure should contain visuals and text. On a separate sheet of paper, write a paragraph in which you explain the message, the target audience, and the propaganda techniques used.
  - Create a storyboard for a video advertisement. On a separate sheet of paper, write a paragraph in which you explain the message, the target audience, the propaganda techniques, and the video and audio techniques used.
  - Create your own product. Be sure to have your teacher approve this before you begin.
3. Use the information from your outline to help you create the product you have selected. In your product, clearly state and support your position.

## Additional Resources

- **New Voices:** a student-powered nonpartisan grassroots movement of state-based activists who seek to protect student press freedom with state laws (<https://splc.org/new-voices/>)
- **Student Press Law Center’s Law Library:** cases, laws, regulations, and model policies related to student press ([http://www.splc.org/knowyourrights/law\\_library.asp](http://www.splc.org/knowyourrights/law_library.asp))
- **National Coalition Against Censorship:** NCAC’s mission is to promote freedom of thought, inquiry and expression and oppose censorship in all its forms (<https://ncac.org/project/what-we-do>)