

## Case Brief: *Hazelwood v. Kuhlmeier* (1988)

### Facts of the Case

**Petitioner:** Hazelwood School District

**Respondent:** Cathy Kuhlmeier

The school newspaper of Hazelwood East High School was written and edited by students and reviewed by both an adviser and Principal Robert Reynolds. As Reynolds reviewed the page proofs for the year's final edition of the *Spectrum*, he became concerned about two articles. One article focused on divorce and contained personal anecdotes from students about their families. Reynolds objected to the fact that these family members had no chance to refute or respond to the negative comments made about them. Reynolds also questioned the appropriateness of a second article about teenage pregnancy.

Fearing that changing the articles would force the students to miss their deadline for publication, Reynolds told the paper's adviser simply to delete the two pages that contained these articles, despite the fact that there were other student-written articles on these pages. District officials supported his decision.

Cathy Kuhlmeier, a student editor of the *Spectrum*, and other student journalists were outraged by what they considered censorship of their work. Believing their First Amendment rights had been violated, they took their case to the U.S. district court in Missouri.

The district court decided against the students, saying that if the school had a "substantial and reasonable basis," it could place limits on curricular activities, including the publication of the school newspaper.

The students appealed this decision to a federal court of appeals, which sided with them and agreed that their First Amendment rights had been violated. The court noted that the newspaper was a "public forum for student expression." A student publication, such as a school newspaper, is a "public forum" when students have been given the right to make their own decisions about content. As a "public forum" and a

channel for "student viewpoints," the *Spectrum* could not be censored unless it was "necessary to avoid material and substantial interference with school work or discipline . . . or the rights of others."

The school appealed, and the Supreme Court agreed to hear the case. The legal issue before it was as follows: *Was the Spectrum a "public forum for student expression," therefore making the principal's deletions of student-written articles a violation of the students' First Amendment rights?*

### Precedent: *Cantwell v. State of Connecticut* (1940)

**Essential Facts:** Jesse Cantwell and his son, both Jehovah's Witnesses, were distributing religious materials by ringing doorbells and by approaching people on the street in a predominantly Catholic neighborhood. Two pedestrians became angry after voluntarily listening to the Cantwells' anti-Catholic message. The Cantwells were arrested both for violating a local law that required a permit for solicitation and for inciting a breach of the peace.

**Legal Issue:** Did the local law requiring a permit for solicitation or the "breach of peace" ordinance violate the Cantwells' First Amendment rights to free speech?

**Holding:** The Court held that the local law restricting solicitation based on religious grounds violated both the First and the Fourteenth amendments. The Court also held that an interest to maintain public order could not be used to justify the suppression of "free communication of views." The Cantwells' message, though possibly offensive, did not threaten "bodily harm."

**Precedent: *Epperson v. Arkansas* (1968)**

**Essential Facts:** A high school biology teacher, Susan Epperson, filed suit in court to challenge the constitutionality of an Arkansas law banning the teaching of evolution. The law stated that to “teach the theory or doctrine that mankind ascended or descended from a lower order of animals” was a misdemeanor and would result in the teacher’s dismissal.

**Legal Issue:** Did the state law that made the teaching of evolution illegal violate either the teacher’s right to free speech or the First Amendment’s Establishment Clause?

**Holding:** The Court decided that the Arkansas law did violate the First Amendment, as well as the Fourteenth Amendment. It reasoned that the law violated the Establishment Clause because it was not a “manifestation of religious neutrality.” In addition, the Court held that a state’s right to dictate the curriculum of public schools does not allow it to prohibit teaching a scientific theory. In its holding, however, the Court noted that “public education in our Nation is committed to the control of state and local authorities.” It also stated that federal courts should not ordinarily “intervene in the resolution of conflicts which arise in the daily operation of school systems.”

**Precedent: *Tinker v. Des Moines Independent Community School District* (1969)**

**Essential Facts:** Two high school students, John and Mary Beth Tinker, wore black armbands to school to protest the Vietnam War. They were told that they would be suspended until they agreed to return to school without the armbands.

**Legal Issue:** Did prohibiting students from wearing armbands in public school, as a form of symbolic protest, violate the First Amendment’s freedom of speech protections?

**Holding:** The Court held that the school’s prohibition of the armbands was a violation of the First Amendment. For school officials to justifiably prohibit some form of expression, they must “be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.” Because the Tinkers’ actions did not “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school,” disciplinary action against them could not be supported. The Tinkers were protected under the First Amendment, because students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” In its opinion, however, the Court reemphasized the need to recognize the “authority of the States and of school officials . . . to prescribe and control conduct in the schools.”

## Case Brief: *Wallace v. Jaffree* (1985)

### Facts of the Case

**Petitioner:** George Wallace, Governor of Alabama

**Respondent:** Ishmael Jaffree

In 1978, Alabama enacted a statute that allowed a one-minute period of silence in public schools for the purpose of “meditation.” In 1981, the statute was rewritten to include not only meditation but also “voluntary prayer.” In 1982, the statute was further amended to authorize teachers to lead “willing students” in a prescribed prayer to “Almighty God . . . the Creator and Supreme Judge of the world.”

In 1982, Ishmael Jaffree, a resident of Mobile County, Alabama, filed a complaint on behalf of his three elementary-aged schoolchildren. The complaint named school board members, school officials, and the three teachers as defendants. Jaffree sought a judgment that would prevent the defendants from performing or allowing regular religious prayer services or other forms of religious observances in the Mobile County Public Schools. He stated that these prayer services, though allowed by the 1981 and 1982 state laws, violated the First Amendment.

The district court held that both the 1981 and the 1982 statutes were constitutional because Alabama had the right to establish a state religion if it chose to. The court of appeals reversed the decision and held that both statutes were unconstitutional.

The case was appealed to the Supreme Court. The Court unanimously held that the 1982 statute authorizing teachers to lead students in prayer was unconstitutional. That left it with the 1981 statute to examine and this legal issue to decide: *Did Alabama’s state law authorizing a period of silence for “meditation or voluntary prayer” violate the Establishment Clause of the First Amendment?*

### Precedent: *West Virginia State Board of Education v. Barnette* (1943)

**Essential Facts:** In West Virginia, refusing to salute the flag was considered insubordination, and students who did so were consequently expelled from school. Various civic and religious groups challenged this statute. They argued that the statute made no allowances for religious beliefs.

**Legal Issue:** Did the mandatory flag salute for children in public school violate the First Amendment?

**Holding:** The Supreme Court held in favor of the petitioners, noting that the school district had violated the First Amendment rights of students by forcing them to salute the American flag. The Court found that the salute was a means of communicating ideas. Requiring the communication of ideas went against the intent of the First Amendment. In drawing this conclusion, the Court noted that school boards may not “prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.”

**Precedent: *Engel v. Vitale* (1962)**

**Essential Facts:** New York’s State Board of Regents directed their schools to recite a morning nondenominational prayer as a part of their “Statement on Moral and Spiritual Training in the Schools.” On the grounds that this practice was contrary to their beliefs and religious practices and that it violated the First and Fourteenth amendments, the parents of 10 students brought this action to the Supreme Court.

**Legal Issue:** Did the reading of a nondenominational prayer in public school violate the Establishment Clause of the First Amendment?

**Holding:** The Court held in favor of the parents and students, noting that despite the prayer’s nondenominational character and the fact that it was voluntary, it was still constitutionally unacceptable. By providing the prayer, New York officially approved religion.

**Precedent: *Lemon v. Kurtzman* (1971)**

**Essential Facts:** This case involved disputes over laws in Pennsylvania and Rhode Island. The Pennsylvania law provided financial support to private schools for teacher salaries and instructional materials for nonreligious subjects. In Rhode Island, a law supplemented the salaries of teachers in nonpublic elementary schools.

**Legal Issue:** Did these state laws, by providing aid to “church-related educational institutions,” violate the First Amendment’s Establishment Clause?

**Holding:** The Court held that the state statutes did violate the Establishment Clause, because the First Amendment was designed to prevent the “sponsorship, financial support, and active involvement . . . in religious activity.” In its holding, the Court made the following distinction regarding state statutes that might conflict with the Establishment Clause: “First, the statute must have a secular [nonreligious] legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion.” Because both states’ laws included aid to nonpublic schools, the Court held that this directly benefited the churches that operated these schools, thus violating the Establishment Clause. In addition, because the laws required close supervision, there was an excessive relationship between the state and religion.

## Case Brief: *Bethel School District No. 403 v. Fraser* (1986)

### Facts of the Case

**Petitioner:** Bethel School District

**Respondent:** Matthew Fraser

In April 1983, Matthew Fraser, a 17-year-old student at Bethel High School, stood before 600 of his peers at a required student-body assembly to deliver a speech supporting another student's nomination for student government. His speech was full of sexual references and innuendos. Prior to his delivering the speech, two of Fraser's teachers warned him that the speech was "inappropriate" and that should he deliver it, he could face severe reprimanding.

A counselor who was present during the speech noted that some students hooted and seemed supportive, but that others, many of whom were 14-year-olds, seemed embarrassed or even confused by the speech. One teacher later stated that she found it necessary to spend class time discussing the speech with her class.

The following morning, the assistant principal called Fraser into her office and told him that he had broken a school rule that prohibited the use of obscene language. Fraser was presented with letters written by teachers who had witnessed the speech. He was then given a chance to explain his conduct, during which time he admitted to knowingly using the obscene language. Fraser was suspended from school for three days, and his name was removed from the list of candidates who would speak at the graduation ceremonies. After serving only two days of the suspension, Fraser was allowed to return to school.

Fraser's father filed suit with the district court, alleging that Fraser's suspension violated his First Amendment right to freedom of speech. The district court held in favor of Fraser, awarded him compensation for damages and court fees, and ordered the school district to reinstate Fraser as a graduation speaker.

On appeal, the judgment of the district court was upheld on the grounds that Fraser's speech was the same as the protest armbands worn by the petitioners in *Tinker v. Des Moines Independent*

*Community School District*. The appeals court rejected the school district's argument that the speech had a disruptive effect on the educational process.

The Supreme Court agreed to hear the case to answer the following question: *Did Bethel High School authorities violate the First Amendment by disciplining a high school student for giving a lewd speech at a school assembly?*

### Precedent: *Ginsberg v. New York* (1968)

**Essential Facts:** The owner of a stationery store in New York was arrested and convicted of selling obscene material to a 16-year-old boy. He had violated a New York law that made it unlawful to "knowingly" sell to anyone under 17 either "any picture . . . which depicts nudity . . . and which is harmful to minors" or "any . . . magazine . . . which contains [such pictures] and which, taken as a whole, is harmful to minors."

**Legal Issue:** Did New York's statute prohibiting the sale of obscene material to minors, but not to adults, violate the First Amendment?

**Holding:** The Supreme Court held that the government is entitled to restrict children's access to certain kinds of sexually explicit material, even if the material is not obscene or illegal for adults. In its opinion, the Court reasoned that "the State has an independent interest in protecting the welfare of children and safeguarding them from abuses."

**Precedent: *Tinker v. Des Moines Independent Community School District* (1969)**

**Essential Facts:** Two high school students, John and Mary Beth Tinker, wore black armbands to school to protest the Vietnam War. They were told that they would be suspended until they agreed to return to school without the armbands.

**Legal Issue:** Did prohibiting students from wearing armbands in public school, as a form of symbolic protest, violate the First Amendment's freedom of speech protections?

**Holding:** The Court held that the school's prohibition of the armbands was a violation of the First Amendment. For school officials to justifiably prohibit some form of expression, they must "be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." Because the Tinkers' actions did not "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," disciplinary action against them could not be supported. The Tinkers were protected under the First Amendment, because students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." In its opinion, however, the Court reemphasized the need to recognize the "authority of the States and of school officials . . . to prescribe and control conduct in the schools."

**Precedent: *FCC v. Pacifica Foundation* (1978)**

**Essential Facts:** A Pacifica Foundation radio station broadcast comedian George Carlin's recording of "Filthy Words." The father of a young boy who happened to be listening to the broadcast complained to the Federal Communications Commission, the government agency that regulates radio and television broadcasting. After receiving the complaint, the FCC reprimanded the radio station for violating regulations that prohibited broadcasting "indecent" material and warned that sanctions would be imposed if there were further incidents.

**Legal Issue:** Could the public broadcasting of indecent language be restricted by the government without violating the First Amendment?

**Holding:** The Court held that a radio station could be constitutionally restricted from broadcasting offensive words. However, certain factors should be considered when invoking penalties or sanctions, such as audience, medium, time of day, and method of transmission. The Court held that the Pacifica Foundation's broadcast was "indecent" and that the FCC could prohibit such broadcasts during hours when children were likely to be listening. The Court cited an interest in both shielding children from offensive material and ensuring that unwanted speech does not enter people's homes.

## Case Brief: *Board of Education of Westside Community Schools v. Mergens* (1990)

### Facts of the Case

**Petitioner:** Westside Community School Board of Education

**Respondent:** Bridget Mergens

Bridget Mergens, a student at Westside High School in Nebraska, asked school authorities if she could start a Christian club at the high school. When her request was denied, she filed suit. She based her claim on the Equal Access Act, a law passed by Congress in 1984. Under this act, schools that receive federal financial assistance and that have at least one student-led, noncurriculum club that meets outside of class time must allow other clubs to organize. However, these clubs must have voluntary attendance, must be student led and initiated, and cannot be promoted by a teacher or school official.

Westside High was a public high school that received federal financial assistance. It also already had a number of recognized groups and clubs—including a chess club, a scuba club, and a service club—that met after school hours on school grounds. The school district required these clubs to have faculty sponsorship, a direct violation of the Equal Access Act. The district felt that allowing Mergens to form a Christian club would violate the Establishment Clause of the First Amendment. On those grounds, the school board voted to deny Mergens’s request. Shortly afterward, Mergens and several Westside students filed suit.

The district court held in favor of the school district because it examined the extracurricular clubs available to students at the school and concluded that they were all curriculum related, making the Equal Access Act null and void in this case. The court of appeals reversed the decision, holding that several existing student clubs were indeed noncurriculum related and that therefore Mergens should have been allowed to organize a Christian club and have it receive official school recognition. In addition, it rejected the claim that the formation of a Christian club—as well as the Equal Access Act that allowed its formation—violated the Establishment Clause.

The case was brought before the Supreme Court to answer the following question: *Did the Equal Access Act, which requires that schools permitting noncurriculum clubs also allow religious clubs, violate the Establishment Clause of the First Amendment?*

### Precedent: *Lemon v. Kurtzman* (1971)

**Essential Facts:** This case involved disputes over laws in Pennsylvania and Rhode Island. The Pennsylvania law provided financial support to private schools for teacher salaries and instructional materials for nonreligious subjects. In Rhode Island, a law supplemented the salaries of teachers in nonpublic elementary schools.

**Legal Issue:** Did these state laws, by providing aid to “church-related educational institutions,” violate the First Amendment’s Establishment Clause?

**Holding:** The Court held that the state statutes did violate the Establishment Clause, because the First Amendment was designed to prevent the “sponsorship, financial support, and active involvement . . . in religious activity.” In its holding, the Court made the following distinction regarding state statutes that might conflict with the Establishment Clause: “First, the statute must have a secular [nonreligious] legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion.” Because both states’ laws included aid to nonpublic schools, the Court held that this directly benefited the churches that operated these schools, thus violating the Establishment Clause. In addition, because the laws required close supervision, there was an excessive relationship between the state and religion.

**Precedent: *Widmar v. Vincent* (1981)**

**Essential Facts:** At the University of Missouri at Kansas City, a state university, registered student groups were permitted to use school facilities to conduct meetings. A registered student religious group that had received permission to use the facilities was then informed that it could no longer do so because the university prohibited the use of university buildings or grounds “for purposes of religious worship or religious teaching.” This group sued the school, asserting that their First Amendment rights to religious free exercise and free speech had been violated.

**Legal Issue:** Did the university violate the First Amendment by prohibiting a religious group to use its facilities?

**Holding:** The Supreme Court held that by excluding the religious group from using its facilities, the university violated the “fundamental principle that a state regulation of speech should be content-neutral.” The Establishment Clause does not require state universities to limit the access of religious organizations to their facilities. An “equal access” policy would not offend the Establishment Clause if it could pass the following three-pronged test: (1) It has a secular legislative purpose. (2) Its principal or primary effect would be neither to advance nor to inhibit religion. (3) It does not foster “an excessive government entanglement with religion.”



## Preparing Your Case

You will work with your team to prepare a legal argument for your assigned case.

- **Step 1: Assign roles.** Decide with your legal team which member is best suited for each role:

**Chief Counsel** As the leader of your legal team, you will lead your team as it reviews the facts of the case. You will review each part of the legal arguments to ensure that all requirements are met.

**Associate Counsel 1** You will lead your team as it prepares an opening statement for the Court. You will then deliver this opening statement to the Court.

**Associate Counsel 2** You will lead your team as it prepares your main legal argument. You will then deliver these arguments to the Court.

**Associate Counsel 3** You will lead your team as it prepares a closing statement. You will then deliver this statement to the Court.

- **Step 2: Review your case brief.** Your Chief Counsel will make sure everyone understands the important facts of your case. Discuss these questions with your team:
  - What main arguments will your team make?
  - What main arguments will the opposing team make? How will you counter them?
- **Step 3: Prepare your opening statement.** Under the leadership of Associate Counsel 1, decide the best way to open your argument. Your opening should be no longer than 1 minute and should contain
  - a clear, concise statement of your team’s opinion of this case.
  - the constitutional rights pertaining to the issues of your case.
  - a brief summary of the key details of the case, presented in a way that clearly favors your position. For example, in the case of *Schenck v. United States* (from Section 5.1), the petitioner’s counsel might begin, *Charles Schenck acted completely within the scope of his constitutional rights when he protested the draft by mailing leaflets to young men in Philadelphia, and he should not have been arrested.* The respondent’s

counsel might begin, *During wartime, the need to maintain public safety sometimes prevails over individual rights. The Espionage Act was an attempt to make sure that the war effort was not undermined, and Charles Schenck clearly violated that act by distributing antidraft leaflets.*

- what you intend to prove to the Court.
- **Step 4: Prepare your main legal argument.** Associate Counsel 2 will help your team formulate a strong legal argument for your case. This main argument should be roughly 3 minutes in length and
  - include all the relevant facts from your case brief.
  - reference any precedents that might help your argument and relate any precedents you use to your case. (You cannot simply cite a precedent. You must also clearly explain its connection to your case.)
  - assert why you believe your opponent is wrong.
  - strongly state your purpose and a belief that you are constitutionally right.
- **Step 5: Prepare your closing statement.** Associate Counsel 3 will help your team formulate a strong closing argument. It should be no more than 1 minute long and include
  - a general restatement of your position.
  - a quick summary of your strongest argument.
  - a final rebuttal of the opposing team’s argument.
  - a specific recommendation to the Court as to how you believe it should decide.
- **Step 6: Rehearse your arguments.** As you rehearse, your Chief Counsel should listen to each team member deliver his or her portion of the legal argument and be able to identify all the specified elements of each step. The Chief Counsel should also check that each presenter
  - speaks loudly and clearly, with a professional tone and without using slang.
  - makes eye contact with the audience.
  - stays within the given time limits.
  - dresses appropriately for a member of a legal team presenting a case to the Supreme Court.