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Recognition of High School Student Organizations: Constitutional Protection of Associational Rights

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Recognition of High School Student Organizations: Constitutional Protection of Associational Rights

Although the United States Supreme Court has addressed many first amendment issues involving the high school community, it has never directly addressed the issue of students' rights of association at the high school level. This issue has arisen, however, in the lower courts, generally when students request official recognition in an attempt to organize discussion or promotion of political or partisan views and are refused such recognition on the grounds of general school board policies forbidding organizations which support one point of view or which espouse political ideas. This note addresses the question of whether a school board may constitutionally withhold official recognition from a high school political organization and suggests that the standards expressed for college students in Healy v. James should be applied to the high school community when


2Withholding official recognition can entail a denial of any or all privileges associated with official recognition. For example, denial of the use of physical facilities for meeting purposes, denial of the use of communications media such as the school newspaper, bulletin boards or public address system; or denial of funding from the school. While the withholding of official recognition may not pose an absolute denial of associational rights, the difficulty of forming and publicizing an organization and of finding satisfactory meeting facilities without official recognition may cause, in effect, a denial of associational rights.

3Garvin v. Rosenau, 455 F.2d 233 (6th Cir. 1972). The school authorities reasoned that the school should not support or appear to support partisan groups. There was also concern that a political club might be a divisive influence in the school. See also Dixon v. Beresh, 361 F. Supp. 253, 254 (E.D. Mich. 1973) ("Absent a threat to the orderly operation of the school, to deny recognition to a student group for the reason that it advocates 'controversial' ideas is patently unconstitutional.").

4Garvin v. Rosenau, 455 F.2d 233 (6th Cir. 1972). The school authorities reasoned that the school should not support or appear to support partisan groups. There was also concern that a political club might be a divisive influence in the school. See also Dixon v. Beresh, 361 F. Supp. 253, 254 (E.D. Mich. 1973), where school authorities stated that the school would be impaired if "any numbers and types" of student organizations were allowed to "proliferate."

508 U.S. 169 (1972). See notes 61, 62, 69-72 infra & text accompanying. Petitioners, seeking to form a local chapter of Students for a Democratic Society (SDS) at a state-supported college, were denied recognition as a campus organization. The Court held that once the
"students in the exercise of First Amendment rights collide with the rules of the school authorities."^5

**School Board Authority—The Traditional View**

Historically, students in the United States have been denied many rights and privileges upon their entry into public schools and universities. The control that schools wield over students is derived primarily from two students filed application for official recognition of their organization in conformance with requirements, the burden was on the college officials to justify rejection and that insofar as the denial of recognition was based on an assumed relationship with the national SDS, a result of disagreement with the group's philosophy, or a consequence of fear of disruption for which there was no support, the college's decision violated the petitioners' first amendment associational interests.

Much of the discussion in *Healy* is derived from *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503 (1969). See notes 48-54 infra & text accompanying. In *Tinker* the petitioners, three public school children, were suspended from school for wearing black armbands to school in protest of the government's policy in Vietnam. The Court held that the students' conduct was within the protection of the free speech clause of the first amendment and the due process clause of the fourteenth amendment and that first amendment rights were available to teachers and students.

^5*Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 507 (1969). This note will deal only with first amendment rather than fourteenth amendment implications of official recognition of high school political organizations. A possible alternative challenge to rules which prohibit some high school political organizations while allowing other politically oriented organizations could be made on equal protection grounds. For example, the Court in *Tinker* noted that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance; only the black armbands worn in protest of the Vietnam War were singled out for prohibition. The Court went on to state: "Clearly, the prohibition of expression of one particular opinion . . . is not constitutionally permissible." *Id.* at 511. Similarly, the Sixth Circuit showed displeasure with a school rule that allowed for recognition of certain politically oriented organizations while denying recognition to others. *Garvin v. Rosenau*, 455 F.2d 233 (6th Cir. 1972). As freedom of association is a fundamental right, see notes 57-59, 63 infra, such a challenge could have a good chance of success.

This note does not deal with nonpolitical organizations such as secret societies or fraternal or social organizations which may not receive first amendment protection. See generally *Robinson v. Sacramento City Unified School Dist.*, 245 Cal. App. 2d 278, 53 Cal. Rptr. 781 (1966); *Passel v. Forth Worth Independent School Dist.*, 453 S.W.2d 888 (Tex. Civ. App. 1970).

sources: legislative grants of authority and the common law, most notably the doctrine of *in loco parentis*.

State statutes generally grant broad rulemaking powers to local school officials, usually the school board. Most of these statutes allow the school officials to make and enforce rules for the government and management of the school property, employees and pupils. Early court cases construed such legislative grants of power quite broadly, showing great deference to the school administrative decisionmaking process. One such case, in which a student was denied readmission to a university because she refused to answer questions about a letter published in a local newspaper charging university officials with improper conduct, illustrates this deference:

The maintenance of discipline, the upkeep of the necessary tone and standards of behavior in a body of students . . . is, of course, a task committed to its faculty and officers; not to the courts. It is a task which demands special experience . . . and the officers must, of necessity, be left untrammelled in handling the problems which arise, as their judgment and discretion may dictate . . . .

Further, the courts advanced an "implied contract" theory of the student-administration relationship:

Every student, upon his admission into an institution of learning, impliedly promises to submit to, and be governed by, all the necessary and proper rules and regulations which have been, or may thereafter, be adopted for the government of the institution . . . .

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7The Indiana statute is typical of such grants of authority:

In carrying out the school purposes of each school corporation, its governing body acting on its behalf shall have the following specific powers:

(17) To prepare, make, enforce, amend and/or repeal rules, regulations and procedures for the government and management of the schools, property, facilities and activities of the school corporation, its agents, employees and pupils and for the operation of its governing body, which rules, regulations and procedures may be designated by any appropriate title such as "policy handbook," "by-laws," "rules and regulations."


Even in recent cases the courts have acknowledged the need for school officials to have comprehensive authority to promulgate and enforce rules designed to prescribe and control student conduct and to advance the school’s educational goals. Courts have said that regulations for which there is a rational basis should be upheld and that adherence to reasonable rules as to time, place and manner may be demanded.

Much of the non-statutory tradition of administrative authority in public education is built on the doctrine of in loco parentis. Simply stated, the doctrine provides that the school takes the place of the parent. The classic statement of the doctrine comes from Blackstone:

[A father] may also delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then in loco parentis, and has such a portion of the power of the parent committed to his charge, viz. that of restraint and correction, as may be necessary to answer the purposes for which he is employed.

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2E.g., Stevenson v. Wheeler County Bd. of Educ., 306 F. Supp. 97 (S.D. Ga. 1969). This case involved a petition to enjoin enforcement of clean shaving regulations adopted by public high school authorities. In denying the petition, the district court held that the mere fact that moustaches and beards grown by public high school students had never created any incidents or disruption in the school system did not warrant the conclusion that a regulation adopted by school officials was unreasonable or arbitrary especially where the regulation was adopted in good faith and was not racially oriented. See Passel v. Fort Worth Independent School Dist., 453 S.W.2d 888 (Tex. Civ. App. 1970). Passel involved a class suit to enjoin a school district and board of education from enforcing a regulation adopted for the purpose of implementing a statute prohibiting fraternities, sororities and secret societies in public schools below the rank of college. The court held that such prohibition did not deprive members of such organizations of any personal or civil right guaranteed to them by the state or federal constitutions. See also Robinson v. Sacramento City Unified School Dist., 245 Cal. App. 2d 278, 53 Cal. Rptr. 781 (1966). In Robinson the constitutionality of a statute forbidding student membership in off-campus sororities or fraternities was upheld. The court relied on the school board’s contention that the harm done by such societies outweighed the good and that they were “inimical” to the government, discipline and morale of the pupils, to decide that there was a rational basis for the statute and that it should therefore be upheld. The court went on to differentiate adults’ and college students’ constitutional rights from those of adolescents.

3Healy v. James, 408 U.S. 169 (1972). Restrictions as to time, place and manner are not, however, confined to the school setting. See e.g., Adderley v. Florida, 385 U.S. 39, 47-48 (1966) (demonstration by non-inmates at county jail); Cox v. Louisiana, 379 U.S. 559 (1965) (civil rights demonstration at Baton Rouge courthouse).


5W. Blackstone, Commentaries *453.
The Supreme Court still recognizes the interplay of parent and teacher in the rearing of children, though perhaps in a manner somewhat different from that described by Blackstone:

'[C]onstitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society... [P]arents and others, teachers for example, who have this primary responsibility for children's well-being are entitled to the support of laws designated to aid discharge of that responsibility.\textsuperscript{16}

School officials standing in \textit{loco parentis} must nevertheless take care not to undermine parental authority.\textsuperscript{17} Most parents, as members of the community, expect the high school to concentrate on transmitting basic information and the mores of the surrounding society\textsuperscript{18} and feel that while schools should not be rigid disciplinary institutions, neither should they be open forums. As Justice Black observed:

'[C]ertainly a teacher is not paid to go into school and teach subjects the State does not hire him to teach as part of its selected curriculum. Nor are public school students sent to the schools at public expense to broadcast political or any other views to educate and inform the public... [T]axpayers send children to school on the premise that at their age they need to learn, not teach.\textsuperscript{19}

Thus, the public school student is viewed as a passive consumer of administration and parent approved material, rather than as an active participant in his own education.

The secondary school has been said to be distinguishable from higher levels of education in that it, more so than the college or university, acts \textit{in loco parentis} with respect to minors.\textsuperscript{20} There is also authority that high

\textsuperscript{17}E.g., Comment, Colleges and Universities: The Demise of In Loco Parentis, 6 LAND & WATER L. REV. 715 (1971); see note 45 \textit{infra} & text accompanying. \textit{But see} Mailloux v. Kiley, 323 F. Supp. 1387 (D. Mass. 1971), where a high school teacher wrote a slang word for sexual intercourse on the blackboard and discussed it with his eleventh grade students as an example of a taboo word. The teaching method was not shown to have general support of the teaching profession or that part of the profession to which he belonged but was relevant to the teacher's subject and students and was regarded by experts of significant standing as serving a serious educational purpose and used by the teacher in good faith. The court held that the teacher could not be suspended or discharged for using the method without notice, by regulation or otherwise, that he should not use that method. The court noted, however, that the secondary school stands more clearly than the university \textit{in loco parentis} and is closely governed by a school board selected by a local community.
school students, because of their age, do not enjoy the full range of first
amendment rights possessed by adults.\textsuperscript{21} As Justice Stewart has observed:
"A state may permissibly determine that, at least in some precisely
delineated areas, a child—like someone in a captive audience—is not
possessed of that full capacity for individual choice which is the pre-
supposition of the First Amendment guarantees."\textsuperscript{22} Following this view, it
is often asserted that high school students are too young, immature and
unsophisticated to deal with political issues and political organizations
which might seek to take advantage of an assemblage of high school
students.\textsuperscript{23} Similarly, the Supreme Court drew a distinction between high
school-age and college-age students in Tilton v. Richardson,\textsuperscript{24} a case
challenging the Higher Education Facilities Act of 1963\textsuperscript{25} which provides
federal construction grants for college and university facilities and which
excludes any facility to be used for sectarian instruction. In holding that
the Act authorized grants to church-related schools, and in sustaining the
Act's constitutionality, the Court noted that in the university setting there
is less danger that religion will permeate the area of secular education than
in primary and secondary schools dealing with impressionable children. A
California appellate court, in Robinson v. Sacramento City Unified School
District,\textsuperscript{26} distinguished the associational rights of adults from those of
adolescents, stating that the first amendment guarantee of the right of free
assembly as applied to adults was not at issue because the court was dealing
with adolescents in their formative years. There, the court upheld a state
statute which forbade high school student membership in social fraternities
or sororities on the ground that the statute dealt with "activities which
reach into the school and which reasonably may be said to interfere with
the educational process [and] with the morale of high school student
bodies as a whole . . . ."\textsuperscript{27}

\textsuperscript{21}Ginsberg v. New York, 390 U.S. 629, 639 (1968). But see notes 77-94 infra & text
accompanying.
\textsuperscript{22}Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503, 515 (1969)
(concurring opinion).
\textsuperscript{23}See Katz v. McAulay, 438 F.2d 1058 (2d Cir. 1971), cert. denied, 405 U.S. 933 (1972).
This was a proceeding on high school students' motion for a preliminary injunction against
enforcement by school officials of a rule prohibiting the students' solicitation of funds from
other public school pupils. The motion was denied. School officials contended that where
outside organizations or individuals espousing various causes seek to take advantage of the
required assemblage of secondary school pupils as a captive audience to solicit funds either
directly or through the agency of some of the pupils for their particular project or cause, they
are in effect in competition for the time, attention and interest of the pupils with those who
are seeking to administer the school system. This situation was said to be plainly harmful to
the operation of the public schools.
\textsuperscript{24}403 U.S. 672, 685-86 (1971).
\textsuperscript{26}245 Cal. App. 2d 278, 291, 53 Cal. Rptr. 781, 792 (1966).
\textsuperscript{27}Id. at 278, 291, 53 Cal. Rptr. at 792 (1966).
Ginsberg v. New York\textsuperscript{28} has been cited for the proposition that even in the analogous area of free expression, important consequences can be made to depend on whether the citizen is an adult or a minor.\textsuperscript{29} Ginsberg held that it is not constitutionally impermissible to accord minors under seventeen years of age a more restricted right than that assured to adults to judge and determine for themselves what sex material they may read and see.\textsuperscript{30} When dealing with non-obscene erotic expression, it has been stated that immaturity and other factors justify imposition of rules on the world of children that are not strictly part of the adult realm of free expression.\textsuperscript{31} Even where adults enjoy a protected freedom, "the power of the state to control the conduct of children reaches beyond the scope of its authority over adults . . . ."\textsuperscript{32} But while acknowledging its position in Ginsberg,\textsuperscript{33} the Court later clarified its position, saying that minors are entitled to a significant degree of first amendment protection and that only in well-defined circumstances may the government bar public dissemination of protected materials to them.\textsuperscript{34}

Thus, minors, while possibly not possessing the full range of first amendment freedoms as adults, are no longer seen by the courts as persons without substantial first amendment rights.

\textbf{The Changing View of Students' Rights}

Since Brown v. Board of Education,\textsuperscript{35} the courts have exhibited a changing role concerning public education.\textsuperscript{36} Showing less deference to...
school authorities, in the last decade the courts have often held that constitutional guarantees are protected in education facilities, while still recognizing that school authorities must have the powers necessary to control and correct the behavior of students in their charge.\textsuperscript{57} No longer embracing the implied contract or privilege theories of education, the Supreme Court has characterized education as a property interest.\textsuperscript{58} The Court has pointed out that although there is no constitutional right to an education at public expense, once the state has chosen to extend the right to an education to its citizens it may not withdraw that right without adherence to the minimum procedures required by the due process clause.\textsuperscript{59}

Now, too, the assertion that the doctrine of \textit{in loco parentis} justifies the school's domination of the student is considered to be largely unacceptable\textsuperscript{60} as it is far too vague and unlimited a doctrine, susceptible to abuse by school authorities.\textsuperscript{41} Blackstone's common law conception of school authority was based on the view that parental authority was given up to the school, but that doctrine predated extensive state involvement in public education. Today, the school board is not a private agency designed to fulfill parental desires, but rather is a public agency operating under a legislative delegation of authority.\textsuperscript{42} The mere statement that a school is \textit{in loco parentis} should not dissolve the restrictions on all public agency actions that abridge first amendment rights.\textsuperscript{43} Notwithstanding the large grants of power by state legislatures, school authorities are not at liberty to promulgate any and all rules related to the educational structure regardless of the effect such rules may have on other societal interests.\textsuperscript{44} Further, the fact that a parent or the community might object provides no justification for the denial of first amendment rights of children other than their own, including the right to gather to discuss political views. In another context the doctrine of \textit{in loco parentis} was given a restricted application:

The constitution of the United States does not vest in objectors the right to preclude other students who may voluntarily desire to participate in a course of study under the guise that the objector's liberty, personal

\textsuperscript{59}Id.
\textsuperscript{60}See \textit{Developments in the Law—Academic Freedom}, 81 Harv. L. Rev. 1045 (1968).
\textsuperscript{41}See Comment, \textit{Colleges and Universities: The Demise of In Loco Parentis}, 6 Land \\& Water L. Rev. 715, 723 (1971). Although this comment deals chiefly with the university setting, it draws analogies to the lower level educational settings and cites cases dealing with both secondary and elementary schools.
\textsuperscript{43}Note, \textit{First Amendment Right of Association for High School Student — Robinson v. Sacramento City Unified School District}, 55 Calif. L. Rev. 911, 917 (1967).
\textsuperscript{44}Goldstein, \textit{The Scope and Sources of School Board Authority to Regulate Student Conduct and Status: A Nonconstitutional Analysis}, 117 U. Pa. L. Rev. 373 (1969).
happiness or parental authority is somehow jeopardized or impaired. To adhere to such a concept would use judicial constitutional authority to limit inquiry to conformity, and to limit knowledge to the known.45

Contemporary students are more mature and sophisticated than those in the past. The influences of television and other mass media on the perspectives of even very young children are pervasive.46 The message of the courts today may well be that in terms of student maturity and consequent educational function, the lines between the high school and college or university are not so clear-cut as once was thought.47 Thus, the position that the utilization of the doctrine of in loco parentis is in the interest of the students' welfare and guidance is no longer a sufficiently compelling reason to deny first amendment rights of high school students.

ASSOCIATIONAL RIGHTS OF HIGH SCHOOL STUDENTS

Although the larger part of the case law dealing with the first amendment as it affects high school students concerns speech and expression rather than association, such cases may be used as a basis of analogy in analyzing the issues of students' associational rights. In Tinker v. Des Moines Independent Community School District,48 the Supreme Court upheld the right of public school students peacefully protesting the Vietnam War to wear black armbands on school premises. The majority held that such expression may not be prohibited or punished where the school authorities have not shown that it will cause, or has resulted in, a material and substantial interference with school activities.49 The Court placed the burden of justifying any prohibition of a student's expression on school authorities.50 In addition, Tinker is important because it extended the right of students to wear armbands to the classroom itself, despite the distracting effect, short of disruption, which might result.51

In Tinker, the Court used two approaches to determine the validity of the regulation.52 First, it focused on the factual underpinnings of the regulation. Finding that it was not based on a reasonable forecast of

48Id. at 511.
49Id. at 509.
disruption, but instead on mere apprehension and the desire to avoid controversy,55 the Court held that the students could not be disciplined for disobeying the regulation. Second, the Court independently reviewed the record to ascertain how the plaintiff students conducted themselves and how other students reacted. It was in this connection that the Court found no material disruption had occurred.54

While courts have also upheld the right of students to publish controversial matter in newspapers55 and to publish "underground newspapers,"56 the first amendment protects more than freedom of symbolic expression and freedom of the press:

Among the rights protected by the First Amendment is the right of individuals to further their personal beliefs. While the freedom of association is not explicitly set out in the Amendment, it has long been held to be implicit in the freedoms of speech, assembly and petition. . . There can be no doubt that denial of official recognition, without justification . . . burdens or abridges that associational right.57

Indeed, political organizations are afforded special protections as speech and associational activity of a fairly high order.58 Freedom to associate with others for the common advancement of political beliefs and ideas is a form of "orderly group activity" protected by the first and fourteenth amendments.59

This is not to say, however, that the right of association or any other first amendment right is necessarily absolute. Courts have applied a "balancing of interests" test when a first amendment right appears to be inconsistent with some other governmental interest.60 Yet students'
associational rights are not to be dealt with lightly. The Supreme Court has upheld the associational rights of university students in _Healy v. James_.\(^6\) The Court in that instance held that in a college setting, insofar as the denial of official recognition of the student group was based on an assumed relationship with the National SDS, was the result of administrative disagreement with the group's philosophy or was the result of an unsubstantiated fear of disruption, the college administrator's decision violated the students' first amendment rights.\(^6\)

\(^{61}\) Id. at 61. See also _Near v. Minnesota ex rel. Olson_, 283 U.S. 697, 716 (1931) ("[T]he protection of free speech even as to previous restraint is not absolutely unlimited.") (Hughes, C.J.); _Whitney v. California_, 274 U.S. 357, 373 (1927) ("But, although the rights of free speech and assembly are fundamental, they are not in their nature absolute.") (Brandeis, J., concurring); _Abrams v. United States_, 250 U.S. 616, 627 (1919) ("I do not doubt for a moment that by the same reasoning that would justify punishing persuasion to murder, the United States constitutionally may punish speech that produces or is intended to produce a clear and imminent danger that it will bring about forthwith certain substantive evils that the United States constitutionally may seek to prevent.") (Holmes, J., dissenting).

If there is to be a balancing of interests, however, such an issue might arise where freedom of association is inconsistent with some other governmental interest such as the prohibition of discrimination on the basis of race or sex. _See_ 42 U.S.C. § 2000d (1970); 20 U.S.C. 1681 (Supp. V 1975). _Wade v. Mississippi Cooperative Extension Service_, 372 F. Supp. 126, 144-45 (D. Miss. 1974), supplemented, 378 F. Supp. 1251 (1974), provides an example. There, the district court found that the sponsorship of 4-H clubs and homemakers clubs by a state agency constituted significant involvement of the state with the private association of club members and forbade the state from engaging in action that had a significant tendency to facilitate, enforce or support private discrimination. The court directed the state to take reasonable steps to eliminate discriminatory practices by local clubs including sponsorship of youth activities at racially segregated private schools. Thus, by the withdrawal or refusal of support, the state would be interfering with the students' absolute rights of association in a constitutionally permissible way. The Seventh Circuit has agreed that in appropriate cases the state may thus be precluded from expressly permitting private discriminatory conduct. _Banks v. Muncie Community Schools_, 433 F.2d 292 (7th Cir. 1970). While the court found that the evidence failed to show actual racial discrimination against black students with respect to school symbols, _i.e._, a school flag resembling the Confederate flag and the name "Rebels" for athletic teams, it recommended that school authorities exercise their discretion to bring about the elimination of such school symbols which are offensive to a racial minority. The court stated that in appropriate cases, the state may be precluded from expressly permitting private discriminatory conduct and that if evidence of actual discrimination arose in the future, an action might be brought at that time.

\(^{62}\) Id. at 186-94. The Court mentioned three situations in which official recognition could be denied: (1) upon the establishment of a knowing affiliation with an organization possessing unlawful aims and goals, and a specific intent to further those illegal aims; (2) upon a showing that the organization posed a substantial threat of material disruption; and (3) whenever any group reserved the right to violate any valid campus rules with which it disagreed.
In order to abridge the first amendment freedom of association, the state must advance a "compelling interest." Moreover, the Constitution's protection is not limited to direct interference with associational rights but also protects such rights from more subtle interference, such as the requirement of disclosure of membership lists or the denial of privileges contingent upon a grant of official recognition of an organization. Just as in the community at large, a school may promulgate reasonable rules as to time, place and manner of expression. Such rules, however, must pass the stringent test set out in United States v. O'Brien and in Brandenburg v. Ohio; even though the regulation is within the constitutional power of the government, it must further a substantial governmental interest which is unrelated to the suppression of free expression, and the incidental restriction on first amendment freedoms must be no greater than is essential to the furtherance of that interest. As a less drastic alternative to denial of recognition, the Court in Healy suggested an initial grant of official recognition with withdrawal of recognition to follow if serious problems developed, or withholding recognition from those groups which reserved the right to violate valid campus rules.

Moreover, denial of recognition acts as a prior restraint on the freedoms of speech, assembly and association of organization members in that it curbs those freedoms before they have been abused or even exercised. While a school has a legitimate interest in preventing disruption on campus, it should bear a heavy burden of demonstrating the appropriateness of the prior restraint. Although not unconstitutional per se, "[a]ny system of prior restraints of expression comes to [the United States Supreme Court] bearing a heavy presumption against its constitutional

66Id. at 192-93.
67In Jacobs v. Board of School Comm'ts, the district court granted a permanent injunction against school officials enjoining them from enforcing a rule suppressing and prohibiting distribution of a publication on school grounds irrespective of disruption. The court said such a rule was not a legitimate exercise of the board's power to regulate time, place and manner of distribution. 394 F. Supp. 605 (S.D. Ind. 1972), aff'd, 490 F.2d 601 (7th Cir. 1973), vacated as moot, 420 U.S. 128 (1975).
69395 U.S. 444 (1969). In holding the Ohio criminal syndicalism statute unconstitutional the Court held that since the statute, on its face and as applied, purported to punish mere advocacy and to forbid assembly with others merely to advocate the described type of action, it fell within the condemnation of the first and fourteenth amendments.
71Id.; Comment, Withholding Official Recognition from Radical Student Groups: A Denial of First Amendment Rights, 57 Iowa L. Rev. 937 (1972).
72Healy v. James, 408 U.S. 169, 184 (1972).
validity," and the government carries the burden of showing justification for the imposition of restraint. A system of prior restraint avoids constitutional infirmity only if it takes place under procedural safeguards designed to obviate the dangers of a censorship system. The Supreme Court also has held that even when a governmental purpose is legitimate and substantial, that purpose cannot be pursued by means that "broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of the legislative abridgement must be viewed in light of less drastic means for achieving the same basic purpose." It is not likely that the denial of official recognition would often be the "least drastic means" available to prevent campus disruption or to further educational interests.

The Supreme Court has remarked that the "vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." Even though most high school students are minors, they are still "persons" under the Constitution, possessing rights that the state must respect. The right to receive information is included in the liberty and the state may not suppress ideas because it thinks them unsuitable or not approved for young people. Directing itself to the high school community in Shanley v. Northeast Independent School District, the United States Court of Appeals for the Fifth Circuit said:

One of the great concerns of our time is that our young people, disillusioned by our political processes, are disengaging from political participation. It is most important that our youth become convinced that our Constitution is a living reality, not parchment preserved under glass.


Erznoznik v. City of Jacksonville, 422 U.S. 205 (1975). A city ordinance making it a public nuisance and a punishable offense for a drive-in movie theater to exhibit films containing nudity where the screen was visible from a public street was held facially invalid as an infringement of first amendment rights.

Our 18-year-olds can now vote, serve on juries, and be drafted; yet the [school] board fears the “awakening” of their intellects without reasoned concern for its effect upon school discipline. The First Amendment cannot tolerate such intolerance.82

Indeed, the school may not penalize partisan ideas83 such as those that may be raised by a high school political organization. Nor may it restrict speech or association because it finds the views expressed are in disagreement with those of the administration,84 abhorrent,85 offensive to the administration or community,86 distasteful to others,87 or controversial.88 The first amendment requires that government have no power to restrict expression because of its message, its ideas, its subject matter or its content.89 Nor does the first amendment tolerate expression restricted to unnecessarily limited locations. Speaking specifically of the school environment, the Court has stated:

The principle [of freedom of expression] is not confined to the supervised and ordained discussion which takes place in the classroom. . . . A student's rights, therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without “materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school” and without colliding with the rights of others.

We properly read [the Constitution] to permit reasonable regulation of speech-connected activities in carefully restricted circumstances. But we

82462 F.2d 960, 972, 978 (5th Cir. 1972) (school board policy of prohibiting distribution of petitions or printed documents of any kind without specific approval of high school principal was unconstitutionally applied).
83Garvin v. Rosenau, 455 F.2d 233 (6th Cir. 1972) (complaint that principal denied students the opportunity to express and promote a partisan point of view within the high school should not have been dismissed for lack of substantial federal question).
84Healy v. James, 408 U.S. 169 (1972).
85Id.
86Gay Students Organization v. Bonner, 509 F.2d 652 (1st Cir. 1974) (fact that officials of state university found expressions of gay students abhorrent could not provide important governmental interest upon which to predicate impairment of organization's first amendment rights).
88Dixon v. Beresh, 361 F. Supp. 253 (E.D. Mich. 1973). School officials refused to recognize a voluntary unincorporated association of high school students organized to discuss and advance ideas, including those of a political nature. The court held the refusal unconstitutional where it was uncontroverted that the organization had not advocated and was not advocating disrupting or impairing normal operations of the school and where the denial was based on the principal's interpretation of policy forbidding the school to afford recognition to student groups which advocated controversial ideas or stressed one side of issues.
89Police Dep't v. Mosley, 408 U.S. 92, 95 (1972).
do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom. Thus, there is no reason to distinguish students' rights of association and the right to organize and gather to discuss political issues from their right to freedom of speech. All of these rights should be protected. Neither the high school student's age, nor his position as a student are, in themselves, disabilities for which the enjoyment of important constitutional rights may be denied. The need for a learning environment free from disruption should not be minimized, but neither should students' rights of freedom of expression and freedom of association.

CONCLUSION

The withholding of official recognition from a high school political organization in the absence of some competing compelling interest, such as a finding that such an organization would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school, and in the absence of procedural safeguards, constitutes an infringement of the students' first amendment rights of association. School administrators should be encouraged to adopt the standards of material and substantial disruption as discussed in Tinker and the framework outlined in Healy v. James and the various other first amendment cases, in deciding whether to grant or deny official recognition to high school political organizations. Once a group of students undertakes to obtain official recognition of its organization, the Healy framework outlined in Healy v. James and the various other first decision it might make in rejecting recognition of the organization while reserving the right to the administration to withdraw or suspend recognition, once accorded, if the organization's members fail to abide by valid campus rules. Such procedures balance the needs of the various parties and provide a fair and reasonably unbiased framework for making such decisions.

Renee Mawhinney

91Id. at 511. Various other reasons for denying first amendment rights have been rejected by the courts; see notes 80, 81, 84-89 supra & text accompanying.
92While it may seem that the Court is drawing away from education litigation or becoming more conservative on such issues, the trend seems to be limited to those cases involving school desegregation. The Court has not changed significantly regarding first amendment rights of school children. See note 37 supra.
93See notes 48-54 supra & text accompanying.
95See note 91 supra.
96See notes 62, 69-76 supra & text accompanying.