

Scenario 1 Response
“Buttons, Leaflets, and The School Newspaper”
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The Scenario

It is early in the morning, and school is about to start for the day. Thomas Jones and his friend Ray Mead enter the principal’s office at Raintree High School, each wearing the same button on their shirts. The very noticeable buttons are large with a red background and say “SOL Exams Suck!” The two students are carrying leaflets, which they want to distribute to other students at the school. The leaflets contain an invitation to a community rally sponsored by their parents and others opposed to the SOL exams in general and to the school’s policy of including student performance on the SOL exams as part of the final grades. Tom and Ray ask the principal, Mr. Tree, for permission to distribute the leaflets. He denies their request, telling them of the school board policy that bans distribution of political leaflets on school grounds. They ask if they can publish the contents of the leaflet in the next edition of the school newspaper, and that request is also denied by Mr. Tree.

Mr. Tree demands that the students remove the very noticeable buttons on their shirts, citing another school board policy that prohibits the wearing of buttons, T-shirts, hats or other items of clothing bearing slogans or advertisements. Both Tom and Ray become irate and tell Mr. Tree they have the right to distribute the leaflets, print the material in the school newspaper, and to wear the buttons. Mr. Tree again asks that they remove the buttons, and the two young men refuse. Mr. Tree suspends both students with the stipulation that they may return to school when they remove the buttons.

Tom and Rays parents meet with Mr. Tree the next morning, without their sons. In their view, their sons are being punished solely because they voiced an opinion disrespectful of the SOL exams and how the results are used. In their opinion the buttons and leaflets deal with a matter of public concern. They point out that other students have, in the past, used the school newspaper to advertise upcoming meetings and rallies, and they don’t see that what they are requesting is any different. The parents inform Mr. Tree that, with the support of many community members, they have obtained an attorney and intend to go to court over the violations of their children’s rights.

What are the issues? How do you believe a judge would rule?

My Summary

Summary: The school division was in the wrong in three out of three instances.

Action: School denies request to distribute leaflets.

Quarterman v. Byrd (5th Cir. 1971) holds that principals requiring students to submit to their approval before distributing literature, regardless of circumstance, is unconstitutional.

Eisner v. Stamford Board (2nd Cir. 1971) goes further to say that even with the provision of a stipulation that the condition for restriction shall include “reasonable disruption” as a test when that test is unspecific and undefined, such restriction is unconstitutional.

The citation of a precedent banning materials on the basis of a political nature seems to infringe upon *Tinker v. Des Moines* (393 U.S. 503 [1969]), which held that banning politically active speech and activity was

unconstitutional. It is possible *thought not tested* that the LEA action in this case would constitute a *Tinker* violation.

My Opinion: Mr. Tree violated the first amendment rights of the students when he denied their request to distribute the leaflets. Indeed, it appears that the students were not required, under law, to initiate the request. It was an opportunity for discussion and guidance, not approval or denial.

Action: School denies request to public article in school newspaper.

Hazelwood v Kuhlmeier (484 U.S. 260 [1988]) holds that a school may set high standards for language in its publications, and may restrict speech that is “inconsistent with the shared values of a civilized social order.” However, the description of the language in question does not meet this test, and the school’s actions are therefore not protected under *Hazelwood*.

Particularly as no justification is provided for the denial, *Eisner* and/or *Tinker* may be triggered in this case as well.

My Opinion: Mr. Tree does not have a compelling reason for restricting the speech, and therefore violated the first amendment rights of the students when he denied their request to publish the aforementioned material in the school newspaper.

Action: School suspends students for failing to remove “SOL Exams Suck!” buttons.

Tinker v. Des Moines is once again a precedent in this case. Students in the scenario are engaging in a nonverbal protest action, and therefore the buttons may well be protected speech.

However, there is a counterprecedent. *Bethel v Fraser* (478 U.S. 675 [1986]) established that the school does have the right to restrict speech that is vulgar and offensive. If the court accepted that “sucks” was sexual innuendo, and the school acted to restrict the language *solely on that basis*, there would be a likelihood, in my opinion, that the action would be upheld as constitutional under the *Bethel* test. However, as Mr. Tree cited the prohibition of “slogans or advertisements,” the *Bethel* protection is not triggered. To the contrary, the school does not – under any of the provisions aforementioned – have the right to summarily restrict all speech. The regulation at best infers the prohibition of commercial advertising and at worst stands in patent violation of constitutional precedent as established by the Court.

My Opinion: Mr. Tree violated the first amendment rights of the students when he censored their “SOL Exams Suck!” buttons on the basis of general language instead of solely on the basis of sexually explicit language.

Conclusion

Mr. Tree undertook three actions called into question, and all three appear to violate the constitutional rights of the students in question.

I believe a court of law would rule the school division in violation in all three instances.

The only one of the three actions that could have been improved into a state of legality would be the third, and only then in the event that Mr. Tree limited his language in restricting the display of the buttons to the

objectionable “Sucks!” term as being sexually explicit, which might well trigger the *Bethel* protection for the school.