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OPINION

FIRST AMENDMENT Assault on college press

By Harvey A. Silverglate
Special to The National Law Journal
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Independent college journalism may soon be a relic of the past—on a par with typewriters and eight-track cassette players—in at least three states, and potentially throughout the country. This past summer, the 7th U.S. Circuit Court of Appeals, which presides over Illinois, Wisconsin and Indiana, applied to colleges and universities the censorship rules designated years ago by the Supreme Court to govern elementary and high school journalism. The implications are far-reaching and severe: Public university administrators, seemingly more sensitive than ever to criticism, as well as to dissent against prevailing opinion, no longer have to fret. They need only designate extracurricular student newspapers "non-public forums" in order to assure themselves editorial control over all aspects of student news coverage and editorial opinion.

On Sept. 16, the losing students filed a petition seeking Supreme Court review. If the high court takes the case and upholds the 7th Circuit, public university administrators nationwide will have carte blanche to suppress everything from criticism of university policies to analysis of national politics. Alarmed advocates of freedom of the press and academic freedom to have the Supreme Court reverse the 7th Circuit before other courts follow its lead.

Student editors of the *Innovator* at Governors State University in a suburb of Chicago editorialized against the administration's refusal to renew the teaching contract of the paper's faculty adviser. Margaret Hosty, a student, penned a number of columns attacking the dean who dismissed the adviser. University President Stuart Fagan reprimanded the newspaper for being irresponsible, and Dean of Student Affairs and Services Patricia Carter instructed the *Innovator's* printer not to produce any further issues. The printer, fearful of not being paid, complied. Publication of the independent student paper ceased, replaced by one under the administration's control.

When Hosty and her fellow student journalists and editors sued in federal court, they prevailed in district court and then before a three-judge panel of the Court of Appeals. *Hosty v. Carter*, 325 F.3d 945 (7th Cir. 2003). The university, however, persuaded the full membership of the appellate court to reverse the panel by a vote of 7-4. *Hosty v. Carter*, No. 01-4155 (7th Cir. en banc, June 20, 2005). The majority thought that *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988), which gave elementary and high school administrators authority to censor school-sponsored student newspapers, applies to colleges, holding that an extracurricular newspaper could be governed by the university, even though the funds came from mandatory activity fees collected from students. The minority thought *Hazelwood* did not apply, stressing

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the significant differences between high school and college students in terms of academic freedom and personal maturity, refusing to infantilize-or subjugate-voting-age citizens.

Just a house organ?

If the 7th Circuit opinion stands, student newspapers could quickly become house organs, like alumni magazines, rather than independent forums of news and opinion. The independent student press at public colleges and universities would all but vanish, and not only in the Midwest. As the certiorari petition portends, the 7th Circuit's opinion "threatens to restrict substantially the freedom of expression on college and university campuses throughout the nation."

This legal erosion of student journalists' rights on public university campuses mirrors a disturbing nationwide trend. Professional journalists face significant challenges from a culture that has inadequate respect for the role journalists play in a deliberative democracy. Defamation suits and punitive damages serve as a constant threat, while the reporter's source privilege has been so tattered as to no longer effectively exist.

Students, administrators and civil libertarians have their eyes trained on the high court's reception of the petition for review. Several amicus briefs by interested civil liberties and journalism organizations are reportedly in the works and will be filed by the Oct. 24 deadline.

The Student Press Law Center, a national watchdog organization, announced recently that it had learned that a few weeks after the *Hosty* decision, the general counsel of California State University sent a memo to all of the presidents of the various campuses in the system, advising of *Hosty's* potential reach: "[T]he case appears to signal that CSU campuses may have more latitude than previously believed to censor the content of subsidized student newspapers."

"More latitude," indeed! The 7th circuit's opinion gives administrators unfettered discretion to become in effect the new editors of our nation's college newspapers, even when student-paid fees, not tax monies, subsidize the paper.

Harvey A. Silverglate, a Boston criminal defense and civil liberties lawyer and co-author of The Shadow University (Harper Perennial 1999), is vice-chairman of The Foundation for Individual Rights in Education, which plans to file a friend-of-the-court brief supporting Margaret Hosty's position. He can be reached at has@harveysilverglate.com.

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