

Court releases opinion on Utica high school censorship case

Judge calls student newspaper a limited public forum, says officials had no legitimate claim under *Hazelwood* to censor

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MICHIGAN - Student journalists “must be allowed to publish viewpoints contrary to those of state authorities without intervention or censorship by the authorities themselves,” U.S. District Court Judge Arthur Tarnow ruled in *Dean v. Utica Community Schools*. Tarnow’s written opinion was released Nov. 17.

The opinion affirms Tarnow’s Oct. 12 bench ruling, in which he called Utica school officials’ censorship of Katy Dean’s 2002 story in the Utica High School *Arrow* “indefensible.”

Dean’s story was about a lawsuit filed against Utica Community Schools by Utica residents Rey and Joanne Frances. The Frances’ maintained that diesel exhaust from a school bus garage, owned by the district and located near their home, exacerbated Rey’s lung cancer.

In his Nov. 17 decision, Tarnow wrote that the *Arrow* constitutes a limited public forum, which means that restrictive standards established by the Supreme Court in its 1988 *Hazelwood v. Kuhlmeier* decision do not apply.

Courts have previously said that the government may only regulate speech in a limited public forum where it can demonstrate a “compelling” reason, such as showing that a particular article in a student publication would result in a serious, physical disruption to normal school activities. The less-restrictive *Hazelwood* standard, which allows school officials to regulate student speech “for legitimate pedagogical concerns,” only applies to nonpublic forums. However, Tarnow wrote, “Even if the *Arrow* is a non-public forum, [school officials’] suppression of Dean’s article was unreasonable.”

Dean’s lawyer, Andrew Nickelhoff, said the distinction between a public and nonpublic forum was crucial to the case.

“That is a really important principle that the judge affirmed, which is that at least in certain circumstances, a high school newspaper does function as a public forum,” he said.

Mark Goodman, executive director of the Student Press Law Center, called the Utica case “the most important student-newspaper censorship case since *Hazelwood*” and said Tarnow’s ruling is a clear victory for high school journalists.

“It’s really a parting of the clouds, if you will, from the darkness that was cast by *Hazelwood* for many high school publications,” Goodman said. “This will give them the ability to argue that the censorship that their school is engaging in is, in fact, unconstitutional.”

In deciding whether the *Arrow* was a limited public forum, Tarnow said it was necessary to examine the district's "policy and practice" with regard to the student newspaper. Because the district had not intervened in the *Arrow*'s editorial process for at least 25 years, the decision to censor Dean's story was a "violation of a rule established through years of actual practice," Tarnow wrote.

Throughout the case, Utica officials maintained that Dean's story was inaccurate and poorly researched, which led Utica superintendent Joan Sergent to censor it. But Tarnow said he found no evidence of either.

"The Court cannot ascertain a significant disparity in quality between Dean's article in the *Arrow* and similar articles in 'professional' newspapers," he said.

According to Nickelhoff, several professional journalists and journalism professors said Dean's story was of "excellent quality" for a high school publication.

"There really was just no basis at all for the superintendent's conclusion that the story was of inadequate quality or that it was inaccurate," Nickelhoff said.

Nickelhoff said he knows of no plans by the Utica school district to appeal the ruling. District officials could not be reached for comment.

For More Information:

Read the decision in *Dean v. Utica Community Schools*, No. 03-CV-71367DT (Nov. 17, 2004).
Read previous coverage:

* **Mich. school district violated First Amendment by pulling story, court rules** News Flash, 10/13/2004

* **Mich. student wins Courage in Student Journalism Award for fighting censorship** News Flash, 11/24/2003

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* **Mich. principal censors investigative story and editorial on lawsuit facing school** News Flash, 4/9/2002