

THE LEGAL E

A LEGAL NEWSPAPER FOR KIDS



Students Take Action On Gun Control Issue

by Hanna Krueger

"They're shooting in my class i'm hiding in a corner i love you..." wrote Jessica Luckman in a text to her mother as a 19-year-old former student roamed the halls of Marjory Stoneman Douglas High School in Parkland, Florida with an assault rifle. Within six minutes of pulling the trigger, the gunman had killed 14 students and three teachers and injured 17 others in the deadliest school shooting since Sandy Hook in 2012, which left 20 children and six staff members dead in Connecticut.

Many believed Sandy Hook would be the breaking point in the nation's longstanding and heated gun rights battle, spurring lawmakers in Washington to act. Bills proposing an assault weapons ban and universal background checks, however, fizzled out in Congress. In fact, according to the Pew Charitable Trusts, since 2013, governors across the country have signed 382 "pro-gun" bills—many widely expanding access to firearms—while just 210 "gun safety laws" were signed into law.

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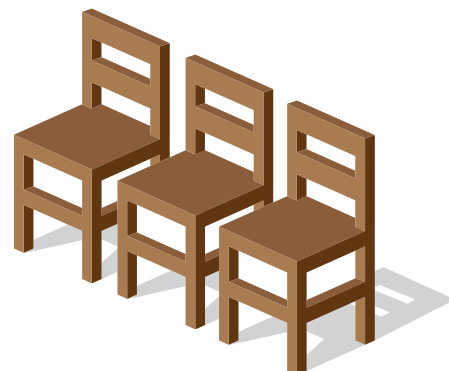
Walkouts Free Speech or Substantial Disruption?

by Michael Barbella

Never again. That was the message tens of thousands of American students hoped to convey in March 2018 as they walked out of classes to demand action on gun violence. Their outcry became somewhat lost, however, amid the national debate over their legal right to protest during school hours.

An estimated 185,000 students nationwide ditched their textbooks and laptops for 17 minutes on March 14, 2018 to honor the 17 people killed in a Valentine's Day shooting at Marjory Stoneman Douglas High School in Parkland, Florida. The coast-to-coast show of solidarity manifested itself in different ways throughout the day.

In Newtown, Conn., the site of a deadly school shooting six years ago, pupils simply read the names of each victim, while activists in Florida stood silently around sets of empty chairs.



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The Long Road to Equality for Women

by Jodi L. Miller

There is a famous quote about the wheels of government turning slowly. When it comes to the Equal Rights Amendment (ERA), first proposed in 1923, truer words were never spoken.

Alice Paul, a pioneer in the women's **suffrage** movement, wrote the first draft of the amendment soon after a woman's right to vote was achieved with the passage of the 19th Amendment. Nearly a century later, the ERA is just one state away from being **ratified**.

History of ERA

In 1923, on the 75th Anniversary of the first Women's Rights Convention in Seneca Falls, NY, Alice Paul introduced the Equal Rights Amendment. Paul said, "If we keep on this way they will be celebrating the 150th anniversary of

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Access to Social Media *Protected by First Amendment*

by Maria Wood

In the old days, the public square referred to a colonial village square where people gathered to share ideas and pass out written material. Today's public square is arguably the Internet and more specifically social media.

With an 8-0 decision, the U. S. Supreme Court ruled in June 2017 that the Internet is similar to a public forum and that social media is protected under the First Amendment, which guarantees every person's right to free speech.

"A fundamental principle of the First Amendment is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more," wrote Justice Anthony Kennedy in the Court's **majority opinion**.

In other words, social media is not only a place where people go to

express their viewpoints, but a place to gather information as well. Therefore, governments cannot limit who can log onto social media channels, including those convicted of crimes.

No lawbreakers allowed

The Court's decision was in response to a North Carolina law that made it a **felony** for an individual convicted of a crime against a minor to access commercial social networking sites where minor children are permitted to be members. In *Packingham v. North Carolina*, the U.S. Supreme Court was asked to decide whether the state's law violated the First Amendment.

The case involved Lester Gerard Packingham, a convicted sex offender. In 2002, Packingham, who was then 21 years old, was found guilty of unlawful activities with a young person in Durham, North Carolina. He spent a year in prison. As a result of his crime, Packingham had to register as a sex offender and was ordered to have no contact with young people. In addition, under North Carolina law, Packingham could not view or post on social media sites, such as Facebook.

In 2010, the Durham police department was checking for violations to the state law. During the investigation, a police officer noticed a Facebook post from a "J.R. Gerrard." The officer traced the name back to Packingham.

In the post, Packingham said he was happy a parking ticket had been dismissed. While he may have escaped a parking violation, by accessing a social media site Packingham had violated North Carolina state law.

Packingham argued the law violated his First Amendment rights and was therefore, unconstitutional. A superior court judge disagreed, noting the state has a duty to protect children from any contact with someone who might harm them.

Packingham **appealed** the ruling to the North Carolina Court of Appeals. That court sided with him, agreeing his First Amendment rights had been denied and **overturned** his conviction.

The state of North Carolina appealed that court's decision to the North Carolina Supreme Court, who **reversed** the appeals court's decision. The state's law, the North Carolina Supreme Court justices said, was needed to keep people who had been convicted of the same crime as Packingham away from children and put a "limitation on conduct" not speech.

Marketplace of ideas

During oral arguments before the U.S. Supreme Court, several justices made reference to the significance of the Internet and social media in today's daily life.

"It is a crucially important channel of political communication," Justice Elena Kagan said. "It is embedded in our culture as ways to communicate and ways to exercise our constitutional rights."

Justice Ruth Bader Ginsburg said that being restricted from social media would represent "being cut off from a very large part of the marketplace of ideas. And the First Amendment includes not only the right to speak, but the right to receive information."

Before the Court, David T. Goldberg, Packingham's lawyer, argued that North Carolina's law was too broad in prohibiting his client from reviewing all social media sites and by doing so violated his First Amendment rights. "The law does not operate in some sleepy First Amendment quarter. It operates and forbids speech on the very platforms on which Americans today are



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most likely to communicate, to organize for social change, and to petition their government.”

Court’s decision

Siding with *Packingham*, Justice Kennedy wrote, “North Carolina, with one broad stroke bars access to what for many are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge.”

Justice Kennedy added that to prohibit someone from social media altogether “is to prevent the user from engaging in the legitimate exercise of First Amendment rights.” The state, he said, cannot restrict lawful speech based on what it thinks is unlawful speech.

Ellen P. Goodman, a professor at Rutgers Law School—Camden, who specializes in information policy law and free speech issues, said she believes the Supreme Court made the right decision.

“It was a strong First Amendment ruling that recognizes the prominence of the Internet in people’s lives,” Professor Goodman explains. “The Court ruled that the North Carolina law was too broad, and too much of an imposition on a person’s First Amendment rights to access information.”

Professor Goodman is not surprised by the decision in light of

other rulings the Court has handed down. “The Court has been saying for a while the Internet is just like any other medium of communication,” she says. “It’s an arena where there are First Amendment rights. In some ways the Internet is news but in other ways it’s just like any platform for communication. We can expect the Supreme Court will treat communications online as fully protected by the First Amendment.”

Although he agreed with the Court’s majority, Justice Samuel Alito wrote a **concurring opinion** where he took issue with certain points, including Justice Kennedy’s opinion that social media is similar to the public square.

“I am troubled by the Court’s loose **rhetoric**. After noting that ‘a street or a park is a quintessential forum for the exercise of First Amendment rights,’ the Court states that ‘cyberspace’ and ‘social media in particular’ are now ‘the most important places (in a spatial sense) for the exchange of views,’” Justice Alito wrote. “The Court should be more attentive to the implications of its rhetoric for, contrary to the Court’s suggestion, there are important differences between cyberspace and the physical world.”

Justice Alito noted that it is easier for parents to monitor their children in person rather than on the Internet and pointed out that “the Internet offers an




unprecedented degree of anonymity” allowing an offender the ability “to assume a false identity.”

Decision’s impact

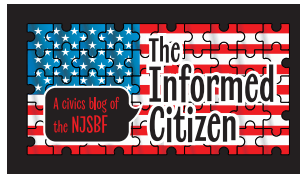
Though the *Packingham* decision is only a year old, its impact has already been seen. In March 2018, for instance, the West Virginia Supreme Court reversed a parole board’s decision to send a convicted felon back to jail because he lived in a house where his girlfriend had a computer with access to the Internet. The man said he did not have the password to log onto the computer.

The state’s Supreme Court, citing the *Packingham* decision, ruled the parole board’s decision denying the man access to the Internet represented a restriction of his free speech rights.

Will the *Packingham* decision apply in the future? In his opinion, Justice Kennedy cautioned that rulings made regarding social media today might not apply in the future as the Internet changes. “The forces and directions of the Internet are so new and so far reaching that courts must be conscious that what they may say today might be obsolete tomorrow,” he wrote. 

TAKE ADVANTAGE OF THE NJSBF’S NEW BLOGS

The New Jersey State Bar Foundation’s civics blog, **The Informed Citizen** explains civics-related topics in plain language. Posts can be read on any device or easily printed as a handout. Stay tuned, as new posts will be added to the blog every month.



And, don’t miss the update blogs for **Respect** (Respect Rundown) and **The Legal Eagle** (The Legal Eagle Lowdown). These blogs feature updates on recent stories published in the newsletters.

You can find all of the blogs on our website (njsbf.org). Access them from the Homepage’s navigation bar under Blogs.

Questions or comments should be directed to Jodi Miller at jmiller@njsbf.org.

Equality for Women **CONTINUED FROM PAGE 1**

the 1848 Convention without being much further advanced in equal rights than we are...If we had not concentrated on the Federal Amendment we would be working today for suffrage...We shall not be safe until the principle of equal rights is written into the framework of our government."

The original amendment stated: "Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction. Congress shall have power to enforce this article by appropriate legislation." That amendment was introduced in every congressional session until it passed both houses of Congress with reworded language in 1972. The current ERA states: "Section 1: Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex. Section 2: The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article. Section 3: This amendment shall take effect two years after the date of ratification."

The ERA was sent to the states for ratification on March 22, 1972. It received 22 state ratifications in the first year. Then progress slowed, with the last state (Indiana) ratifying the amendment in 1977, the year of Paul's death.

During the decade ERA advocates were fighting for the amendment's passage, opponents, led by Phyllis Schlafly, a lawyer and conservative political activist, were rallying against it. Schlafly and her supporters, including many conservative religious groups, believed the women's liberation movement was hurting families and stoked fear about the ERA, claiming its passage would force women into combat, put privacy rights in jeopardy and deny women the right to be supported by their husbands. Rather than seeing the ERA as gaining protections for women, opponents viewed making laws gender neutral as threatening "privileges" for women.

In 1978, Congress voted to extend the original seven-year deadline for ratification of the ERA until June 30, 1982. Despite the extension, no more states had ratified the amendment by the new deadline. In the end, the ERA fell three states short of the 38 needed for ratification.

Rescinding support

As a result of efforts to derail the ERA, between 1973 and 1982, five states (Nebraska, Tennessee, Idaho, Kentucky and South Dakota) that had ratified the amendment voted to **rescind** support of the ERA. Article V of the U.S. Constitution only allows for the ratification of an amendment. It does not give the power to rescind that ratification. Legal precedent, for example with ratification of the 14th Amendment to the U.S. Constitution, suggests that

the actions of these five states are not valid and therefore still count toward the 38-state ratification requirement.

The U.S. Constitution Sesquicentennial Commission explained in *The Story of the Constitution*, published in 1937, "The rule that ratification once made may not be withdrawn has been applied in all cases; though a legislature that has rejected may later approve, and this change has been made in the consideration of several amendments."

200 years later...

The ERA was thought to be dead until a 200-year-old amendment changed everything. The 27th Amendment to the U.S. Constitution, which deals with the timing of congressional pay raises, was passed in 1992. Written by James Madison, the amendment was sent to the states for ratification in 1789.

To ERA advocates, a 203-year-long successful ratification indicated that Congress has the power to maintain the legal viability of the ERA's 35 state ratifications, meaning that they still only needed three more. So advocates adopted the "three-state strategy" which focused on urging the 15 states that had not ratified the amendment to do so.

As a result of this new strategy, Nevada ratified the ERA in March 2017 and Illinois did the same in May 2018. To date, 13 states (Alabama, Arizona, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Utah and Virginia) still have not ratified the ERA. In 2018, efforts for Virginia to be the final state ratification failed.

Lenora Lapidus, director of the Women's Rights Project at the American Civil Liberties Union, is encouraged by the activism of women today and contends that the final state ratification could come in the next two years. There are efforts concentrating on North Carolina, Lapidus says, but does not count out Virginia possibly ratifying in the next legislative session.

Still needed?

To date, the only equality among men and women specified in the U.S. Constitution is the right to vote. According to the Alice Paul Institute in Mt. Laurel, from birth the way males and females obtain their constitutional rights are different. "We have not moved beyond the traditional assumption that males hold rights and females, if treated unequally, must prove that they hold them."

But critics contend the ERA is no longer needed because women have made great strides since the time the amendment was



Equality for Women **CONTINUED FROM PAGE 4**

first proposed, pointing to laws protecting women against discrimination.

U.S. Census Bureau data reveals, however, that women still earn 80.5 cents for every dollar a man earns and women of color earn even less. According to the Institute for Women's Policy Research, that earnings gap will not close until 2058. The U.S. is ranked 45th in the Global Gender Gap of nations, coming in behind Belarus and Namibia.

"Statutes are not enough because they can be rescinded," says Lapidus. "A constitutional amendment is permanent."

Legal scholars argue that ratification of the ERA would bring sex discrimination up to the strict scrutiny standard, according to Lapidus. The standard now is "exceedingly persuasive justification."

"The effect would be that most laws or government policies would be struck down as unconstitutional because they wouldn't meet the strict scrutiny standard," she says.

Lapidus explains that strict scrutiny, which is the highest standard, means in order for a law or policy to treat men and women differently and still be considered constitutional, it would need to be narrowly tailored and there would need to be a compelling government interest to do so. In addition, there would have to be no "less restrictive" alternative to the proposed law.

In an article for the *Harvard Women's Law Journal*, written in 1978,

Ruth Bader Ginsburg, future U.S. Supreme Court justice, wrote, "With the Equal Rights Amendment, we may expect Congress and the state legislatures to undertake in earnest, systematically and pervasively, the law revision so long deferred. And in the event of legislative default, the courts will have an unassailable basis for applying the bedrock principle: All men and all women are created equal."

Where we go from here

According to Lapidus, once the last state ratification is obtained there will be some issues to work out. "Congress has to take some action to extend the deadline or some other action needs to be taken," she says.

By extending the deadline in 1978, Congress demonstrated that it does have that power. In addition, Article V of the U.S. Constitution has no mention of a time limit for a constitutional amendment just that three-fourths of state legislatures need to ratify for it to become part of the U.S. Constitution. Another argument that the imposed deadline should not bar final ratification is that it appears in the proposing clause, not the actual amendment.

Abigail Adams wrote in a 1776 letter to her husband, John, "In the new code of laws, remember the ladies and do not put such unlimited power into the hands of the husbands." Perhaps if the ERA is ultimately ratified, the ladies will finally be remembered. 🗑️



Walkouts **CONTINUED FROM PAGE 1**

Protesters in the nation's capital, by contrast, were more animated, gathering outside the White House chanting, "Hey, hey, ho, ho, the NRA has got to go!" and Los Angeles students injected creativity into the mix by laying down on a football field and spelling out the walkout's rallying cry: "Enough."

Organized by Youth Empower, a division of the national Women's March group, the protest aimed to raise awareness of student gun control demands, among them, an assault-style weapon ban and expanded background checks for all gun buyers.

"I just hope we can get better gun control," Stoneman Douglas freshman

Heather Taylor, who was inside the school during the shooting, told NBC News during the walkout. "I hope that happens. I hope people see we're really trying and we're not going to stop."

Indeed, students persevered in their mission to advocate for gun control despite encountering some pushback from school administrators threatening disciplinary action.

The Tinker standard

By scheduling the walkout during school hours, Youth Empower rekindled a decades-long debate over students' First Amendment rights. The issue was first addressed half a century ago with the U.S. Supreme Court's now-famous

declaration that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

The catalyst for the 1969 Supreme Court ruling was a decision four years earlier by the Des Moines Public School District to suspend five students for wearing black armbands in class to protest the Vietnam War. The district argued the two-week suspension was necessary to maintain order and discipline in school, but the U.S. Supreme Court disagreed, concluding that student speech can only

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Something different

In the wake of the Parkland shooting something was different, according to Jerusha Conner, a professor of education policy at Villanova University who researches student voice and youth organizing.

"Adults have been working on gun control since Columbine and then Sandy Hook and nothing has happened. So the young people said, 'If you're not going to lead us anywhere, we're going to have to,'" says Professor Conner.

In the months since Luckman sent that harrowing text, a wave of teen activists has seized the limelight in their quest to end gun violence. A day after the shooting, following a candlelight vigil for the victims, a group of Parkland students had a sleepover where they discussed what could be done.

"We said something needs to happen; there needs to be a central space; there needs to be a movement," said student Alex Wind in an interview with *The Washington Post*.

In the dwindling minutes of February 15, members of the slumber party launched a Facebook page for the Never Again movement, which called for Parkland to be the last school shooting in the United States. The page gained thousands of followers within hours. But it did not stop there.

As their peers and teachers were still being laid to rest, the student group organized a powerful movement. They rallied around the central idea of stricter background checks for gun buyers and seized the cameras with provocative Tweets and energized speeches from rallies throughout Florida. One student led a delegation down to the state's capital and others laid the groundwork for a nationwide march against gun violence. Just four days after the shooting, the youth-led activist movement had a name, a policy goal, a plan and the attention of lawmakers and reporters throughout the country.

"Youth really took control of the narrative from the beginning and reshaped the way in which the media responded and then applied pressure to ensure that there would be political change as well," said Professor Conner.

By March, the group began to see results. Rental car companies, airlines and hotels stopped offering discounts to members of the National Rifle Association (NRA). Dick's Sporting Goods, Walmart and L.L. Bean, three popular gun suppliers, increased the minimum age to purchase a gun to 21.

Red flags

Following steady pressure from Parkland activists, the gun-friendly state of Florida passed the first set of gun restrictions in 20 years, increasing the minimum age for gun purchases to 21, creating a three-day waiting period for sales and banning bump stocks, a makeshift device that enables guns to fire faster. The state also instituted a red flag law. Red flag laws allow police

officers or in some cases family members to ask a judge for permission to temporarily take away the guns from someone they believe poses a threat to themselves or others.

Gun control advocates argue that red flag laws make it harder for troubled individuals to obtain guns. According to the Brady Campaign to Prevent Gun Violence, 42 percent of mass shooters exhibit warning signs before committing their crimes. The 19-year-old responsible for the Parkland shooting, according to press reports, had a history of violence toward animals, fights with family members and an obsession with guns. He once commented on a YouTube video: "I'm going to be a professional school shooter." He was on law enforcement's radar and the FBI had been alerted about his behavior, but he was still able to purchase multiple firearms.

Nationwide the number of states with red flag laws more than doubled after Parkland to include Florida, Vermont, Maryland, Rhode Island, New Jersey, Delaware, Massachusetts and Illinois. Prior to the Parkland shooting, five states (Connecticut, Indiana, California, Washington and Oregon) had red flag laws on the books. Three other states (Michigan, Ohio and Pennsylvania) are considering red flag proposals, but face criticism from Second Amendment activists who argue the law infringes on **due process rights**.

At the federal level, President Donald Trump called on Congress to strengthen background checks for gun buyers, a measure that 90 percent of Americans support. In a meeting with Parkland students, he said he favored arming teachers and later doubled down on his support of the controversial idea in Tweets and rally speeches. Currently, seven states—most recently Florida—allow public school employees to carry firearms to work, according to the National Conference of State Legislatures.

Marching for life

On March 24, 2018, the Parkland students showcased the sprawling reach of their movement in a student-led demonstration entitled March for Our Lives. Youths marched in a sea of support across the United States and internationally, including in London, Madrid, Rome and Tokyo. According to *The Washington Post*, the event brought out approximately two million people in 763 locations worldwide.

"The simple framing of March for Our Lives is powerful. It is their lives that they feel are at stake here and there's nothing more important than that," said Professor Conner of the effectiveness of the movement.

Perhaps the most sprawling and sustainable change enacted by the Parkland movement is its ability to spark collaborations between youths of different neighborhoods and demographics.

"We recognize that Parkland received more attention because of its affluence," Jaclyn Corin, a survivor of the Parkland shooting, said during



Gun Control CONTINUED FROM PAGE 6

her speech at the March for Our Lives rally. “But we share this stage today and forever with those communities who have always stared down the barrel of a gun.”

“The campaign has brought together groups that were working independently for years before Parkland and now are working together under a larger umbrella,” explains Rachel Gunther, who helps manage Youth on Board, a Boston-based youth organizing program, which has twice been visited by Parkland students.


The youth vote

After the March for Our Lives rally, the Never Again activists shifted their focus to the November midterm election. In the past, youth turnout has been historically low during midterm elections, which fall halfway through a president’s term. The last midterm election in 2014 had just 21.5 percent participation from 18 to 29-year-olds, according to Tufts University’s Center for Information Research on Civic Learning and Engagement (CIRCLE).

The Parkland activists embarked on a two-month, nationwide bus tour, dubbed Road to Change, in June centered on rallying young voters. They made over 50 stops in 20 states and visited every congressional district in

Florida, which hosted a Senate and gubernatorial election, as well as 27 house elections.

Ultimately, the midterm election results were a mixed bag for the Never Again movement. Some candidates, backed by the NRA, fell to opponents advocating for gun law reform. Others, like Rep. Steve King of Iowa, whose campaign attacked the Parkland movement, held onto their seats. However, according to CIRCLE, early estimates show that 31 percent of 18 to 29-year-olds cast a ballot in the midterms, the highest rate of midterm turnout for this demographic in 25 years. Each year, more members of Generation Z (anyone born after 1997) become eligible to vote.

According to statistics compiled by *The Washington Post*, more than 208,000 students have experienced gun violence at school since the shooting at Columbine High School in 1999. Parkland activists say Generation Z is “the mass shooting generation,” which grew up accustomed to active shooter drills and death toll counts on CNN. Their votes could bring the Parkland ideals closer to reality, proving that change is possible. 



Walkouts CONTINUED FROM PAGE 5

be censored if it “materially disrupts” classwork or involves the “substantial disorder or invasion” of others’ rights. The armbands, in the eyes of the Court, did neither. The substantial disruption standard outlined by the court is better known as the Tinker test, named after two siblings (Mary Beth and John Tinker) who, along with 16-year-old Christopher Eckhardt, sued the Des Moines Public School

District over their suspension. “Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible,” Supreme Court Justice Abe Fortas wrote for the majority in *Tinker v. Des Moines Independent Community School District*. “Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots.”

Applying Tinker

In applying the *Tinker* standard to the Parkland shooting protests, school districts had to decide whether the walkouts constituted

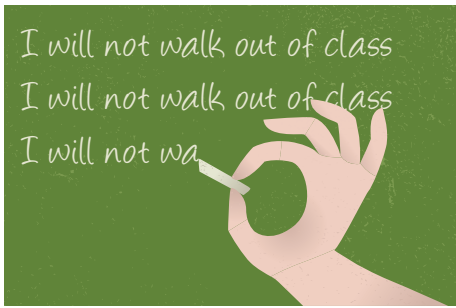
a substantial disruption to classes and/or breached others students’ rights. Because the decision was so subjective, districts’ policies for dealing with the walkout varied significantly.

Boise, Idaho educators, for example, would not excuse protesters from class without parental permission, though the district also provided alternative activities during lunch and breaks so students could express their concerns and opinions. Cobb County, Georgia administrators, meanwhile—citing safety concerns—threatened to punish protesters with either Saturday detention or five days’ suspension, per district guidelines. One school district in Nevada threatened to withhold students’ diplomas or kick students off sports teams for participation in the walkout.

“*Tinker* protects student speech at school as long as it



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doesn't materially disrupt the learning environment," Seton Hall University law professor Thomas Healy says. "But the First Amendment doesn't give students a right to leave class in the middle of the day to engage in a protest. Schools can insist that students attend classes and can discipline them if they don't."

In Sayreville, students were threatened with two-day, out-of-school suspensions for participating in the Parkland protest, NJ Advance Media reported. Sayreville Board of Education President Kevin Ciak justified the district's stance by deeming the protest a "substantial disruption" to students' learning as well as a threat to the kids' safety. He also expressed concern about opening a Pandora's Box of student protests over trivial causes.

"The Board of Education is not in a position where legally, as a public school [district], we can select which particular causes we will allow our students to participate and protest in," Ciak said during a February 2018 public board meeting. "If we decide that we open this door, we open this door to allow students to basically walk out and protest anything. Today it might be a protest in favor of gun control; the next day we would have to allow students who wish to walk out in favor of their right to advocate for the Second Amendment—the right to bear arms. The next day we might have to allow students to walk out in protest for the legalization of marijuana. And the day

after that we may even have to allow students to protest because they're unhappy that their chemistry teacher gave them

too much homework on a Friday night before a long weekend."

Professor Healy says districts that sanction student protests based on the message risk violating the First Amendment. In other words, districts cannot be seen as taking a stance on any issue.

"Preventing disruption to the learning environment is enough by itself to justify the schools' position," Professor Healy explains. "Schools cannot discipline students simply because they don't like the message they're expressing. So, if schools allowed students to walk out in favor of gun rights but not in opposition to gun rights, that would violate the First Amendment. As long as they apply the policy against walkouts even-handedly, there's no First Amendment violation."


Discipline is key

Participating in a school walkout can result in disciplinary consequences for students. Across the country, chapters of the American Civil Liberties Union (ACLU) explained to schools and students alike what those consequences could be in light of the scheduled March 2018 walkout.

In the Garden State, the New Jersey School Boards Association and ACLU—NJ both provided guidance to New Jersey school districts on students' First Amendment rights in the weeks leading up to the Parkland protests. A March 1st letter from the ACLU-NJ reminded districts of students' constitutional rights, noting that pupils cannot legally be disciplined more harshly than normal for engaging in politically motivated conduct.

That means that if the usual punishment for an unexcused absence is detention, for example, a harsher punishment cannot be imposed for participating in a walkout.

The ACLU-NJ letter implored school administrators to see the walkout issue as a benefit.

"Instead of resorting to discipline, we hope that your district embraces moments like these affirmatively as an opportunity for students to learn firsthand about civic engagement, no matter the cause at the center. Public schools are essential in educating young people about democracy, and that includes their role in enacting it," the letter stated. 

GLOSSARY

appealed — when a decision from a lower court is reviewed by a higher court.

concurring opinion — a separate opinion delivered by one or more justices or judges that agrees with the decision of the court but not for the same reasons.

due process rights — basic rights of fairness against government actions which threaten a person's right to life, liberty or property.

felony — a serious criminal offense usually punished by imprisonment of more than one year.

majority opinion — a statement written by a judge or justice that reflects the opinion reached by the majority of his or her colleagues.

overturned — in the law, to void a prior legal precedent.

ratified — approved or endorsed.

rescind — take back or cancel, repeal; to void an act or an order.

reverse — to void or change a decision by a lower court.

rhetoric — language designed to have a persuasive or impressive effect on its audience, but often regarded as lacking in sincerity or meaningful content.

statute — legislation that has been signed into law.

suffrage — the right or privilege of voting.