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Educational institutions have struggled to apply Board of Regents v. Bakke to various affirmative action issues. Although Bakke is rather weak law, educational institutions should continue following its guidelines. The alternative to not applying Bakke could result in the eventual end of all affirmative action considerations. Gabriel J. Chin, *Bakke to the Wall: The Crisis of Bakkean Diversity,* 4 WM. & MARY BILL RTS. J. 881 (1996).

Tinker v. Des Moines Independent Community School District has been significantly transformed by subsequent holdings regarding students' rights. Although the progeny of Tinker have not overturned the Supreme Court's holding that the suppression of student speech is permissible only when demonstrated to be disruptive to school work, these decisions related to Tinker have significantly altered the Tinker analysis. Mark Yudoff, *Tinker Tailored: Good Faith, Civility, and Student Expression,* 69 ST. JOHN'S L. REV. 365 (1995).

*Analysis of narrative approaches in VMI and Citadel litigation provides opportunities to explore influences on courts and public opinion on gender related issues. Shannon Faulkner v. James Jones and United States v. Virginia*provided a direct challenge to the exclusion of women from traditional institutions. The narrative approach to gender related issues provides opportunities for litigants to effectively illustrate discrimination against women. Valorie K. Vljdki, Essay, *At War: Narrative Tactics in the Citadel and VMI Litigation,* 19 HARV. WOMEN'S L.J. 1 (1996).

In Vernonia School District 47J v. Acton, public schools have been given power to randomly test entire student populations for drug use. Recent federal court decisions have significantly limited students' Fourth Amendment protections and constitutional rights. However, policies for random drug testing of students can be designed and implemented without further encroaching on students' constitutional rights. John J. Bursh, Note, *The 4 R's of Drug Testing in Public Schools: Random is Reasonable and Rights are Reduced,* 80 MINN. L. REV. 1221 (1996).

Institutions found to be in violation of Individual's with Disabilities Education Act often face significant punitive damage awards to victims. The Act, however, should not be used to grant huge punitive damage awards because of the extra hardship it places on already financially burdened public institutions. Stephanie L. Gill, Comment, *Punitive Damages: Flying in the Face of the Individuals with Disabilities Act?,* 100 DICK. L. REV. 383 (1996).

United States v. Fordice provided a very limited approach to remedy desegration in institutions of higher learning. Additionally, the remedial steps announced in Fordice may actually threaten any hope of eradicating racial inequality in such institutions. In spite of the limited judicial remedy for these problems, Title VI of the Civil Rights Act of 1964 provides potentially adequate and constitutional remedies to many segregation and discrimination issues. Gil Kujovich, *Desegregation in Higher Education: The Limits of a Judicial Remedy,* 44 BUFF. L. REV. 1 (1996).

The Supreme Court denied students' constitutional protections in holding that random and suspicionless drug testing policies as established by schools are constitutional. In Vernonia School District v. Acton, the Court declared that a school may establish a random drug testing policy for students wishing to participate in athletic activities. The holding severely limits students' expectations of privacy and security under the Fourth Amendment. Joaquin G. Padilla, Comment, *Vernonia School District 47J v. Acton: Flushing the Fourth Amendment—Student Athletes' Privacy Interests Go Down the Drain,* 73 DENV. U.L. REV. 571 (1996).

Judicial oversight in holding ethnocentric areas of curriculum are needed for legitimate purposes. The areas in need of this oversight are educational materials purporting to be truthful when they are obviously false, the teaching of racial superiority, and using curriculum which promotes racial segretation. These three areas of failed educational policy threaten constitutional values. Steven Siegel,*Ethnocentric Public School Curriculum in a Multicultural Nation: Proposed Standards for Judicial Review,* 40 N.Y.L. SCH. L. REV. 311 (1996).

In Harris v. Joint School District, the Ninth Circuit Court of Appeals held that including voluntary prayer at school graduation ceremonies violated Establishment Clause doctrine. The Supreme Court, while affirming the constitutionally mandated result of the Ninth Circuit, should have clarified its position on voluntary school prayer by barring all invocations and benedictions at public graduations. Philip Oliss, Casenote, *Praise the Lord and Pass the Diplo-*

mas: Harrris v. Joint School District No. 241, 41 F. 3d 447 (9th Cir. 1994), 64 U. Cin. L. Rev. 705 (1996).

New Jersey recently proposed gun-free school zone legislation intended to reduce increasing gun violence. The harsh penalties and restrictive zoning elements of the legislation may not be an effective deterrance of gun violence. The state should focus its efforts on substantive restriction of access to guns, coupled with a pro-active effort to remove violent students and to reforming the juvenile justice system. Susan L. Ludwigson, *Symposium: Triggering Liability: Should Manufacturers, Distributors, and Dealers Be Held Accountable for the Harm Caused by Guns? Legislative Survey,* 19 SETON HALL LEGIS. J. 921 (1995).

In its decisions on prayer in public schools, the Supreme Court has asserted what the Constitution has purported all along: "[R]eligion is not to be settled by majority vote." However, many misinterpret the Supreme Court's rulings on school prayer. This article attempts to dispel seven common myths that have attached to the school prayer issue. The Supreme Court decisions clearly state majority and minority groups may freely practice their religious faiths; however, the state, through the public schools, may not. Freedom of religion, as guaranteed by the First Amendment, provides all individuals the "right to be free from coercion in their religious belief and practice." John M. Swomley, *Myths About Voluntary School Prayer,* 35 WASHBURN L.J. 294 (1996).

In the Supreme Court's decision in Vernonia School District v. Acton, 115 S. Ct. 2386 (1995), the Justices composed a multi-factor balancing test that gives short shrift to individual privacy interests. The Supreme Court reversed the Ninth Circuit's ruling and held it was permissible for the Vernonia School District to administer drug testing to elementary and high school students who participate in school athletics. The Court's balancing test is highly subjective and only one component deals with children. Therefore, adults may fall under the balancing test in subsequent cases, greatly limiting Fourth Amendment protection from unreasonable searches. Irene Merker Rosenberg, *Public School Drug Testing: The Impact of Action,* 33 AM. CRIM. L. REV. 349 (1996).

Although Supreme Court case law traditionally gave federal district courts broad discretion in solving public school desegregation issues, the Court's holding in Missouri v. Jenkins, 115 S. Ct. 2038 (1995), gives authority back to school officials, thus limiting federal district court power over school systems. Missouri v. Jenkins resurrects the reasoning of a nineteenth century Supreme Court case—*Plessy v. Ferguson,* 163 U.S. 537 (1896)—and prevents federal district courts from "fashioning remedies that adequately address the vestiges

of past segregation." The Supreme Court failed to provide district courts the guidance necessary to evaluate when the district court could release a state from a court order. Chelsey Parkman, *Missouri v. Jenkins: The Beginning of the End for Desegregation,* 27 LOY. U. CHI. L.J. 715 (1996).

While free speech as guaranteed by the Constitution's First Amendment may include "hate speech," the current trend to trivialize the value of free speech in academic communities would damage our free society more than the hate speech itself. In recent years, American university life has been infiltrated with racism, sexism, homophobia, and anti-Semitism. Although many universities have taken prescriptive measures, the Supreme Court may step in if academics cannot "respect the value of a free-trade-in-ideas zone in a democratic society." Fletcher N. Baldwin, Jr., *The Academies, "Hate Speech" and the Concept of Academic Intellectual Freedom,* 7 U. FLA. J.L & PUB. POL'Y 41 (1995).

Private management is the answer to the problems in our nation's public schools. Privatization reform in conjunction with increased community involvement will not only improve the quality of public schools, but integrate them as well. Jennifer L Romer, Note, *Attacking Educational Inequality: The Privatization Approach,* 16 B.C. THIRD WORLD L.J. 245 (1996).

Public funds used to enable students to attend private schools do not adversely affect the performance of the private schools. A statistical study of five countries shows that increased enrollment due to the use of public funds does not decrease the performance of private schools. Eugenia Froedge Toma, *Public Funding and Private Schooling Across Countries,* 39 J.L. & ECON. 121 (1996).

A high school's policy requiring random, suspicionless drug testing of its athletes violates the student's constitutional rights to privacy and to be free from unreasonable searches and seizures. The United States Supreme Court does not agree. This casenote argues that the law violates the student's constitutional rights. C. Lane Mears, Casenote, *Constitutional Law—Fourth Amendment—Another Slice of the Privacy Pie: Do Public Schoolchildren Maintain Any Fourth Amendment Rights After Vernonia Sch. Dist. 47J v. Acton, 115 S. Ct. 2386 (1995)?,* 37 S. TEX. L. REV. 591 (1996).

Growing teacher unionization and the shift of funding responsibility to state governments has a negative effect on the performance of non-college-bound students in public schools. An analysis of student's scores on the Armed Forces Qualifying Test from 1971 to 1991 show a decrease in student performance. Sam Peltzman, *Political Economy of Public Education: Non-College-Bound Students,* 39 J.L. & ECON. 73 (1996).

The United States Supreme Court recently decided that government funds can be used to fund religious publications at state schools. The Court considered the First Amendment's rights to freedom of the press and freedom from government establishment of religion. Charles S. Hartman, Note, *When the Issue is Funding, No News Isn't "Good News": Rosenberger v. Rector & Visitors of the University of Virginia, 115 S.Ct. 2510 (1995),* 21 U. DAYTON L. REV. 541 (1996).

Student-led prayer at school functions violates the Establishment Clause of the Constitution by producing government-endorsed, student-led coercion, thus fostering the kind of divisiveness that the Establishment Clause was designed to avert. The framers of the Constitution defined government as requiring separation of church and state free of any religious establishment because of the inherent threat to religious freedom that establishment poses. In *Lee v. Weisman,* the Supreme Court found school-supported prayer at a graduation violated the Establishment Clause because school officials directed the performance of a formal religious exercise and because attendance at a graduation is in a real sense mandatory. Responding to *Lee,* school prayer proponents directed their efforts to student-led prayers as an exercise of free speech. Permitting student-led prayer as a part of a formal school activity goes beyond government accommodation and extends essentially to government approval or endorsement of religion. Instead of creating an open public forum, the schools are allowing the majority to include a message to the exclusion of others. Accordingly, to protect all religious groups against dangers inherent to establishment, it is necessary for all groups to agree to disestablishment. Myron Schreck, *Balancing the Right to Pray at Graduation and the Responsibility of Disestablishment,* 68 TEMP. L. REV. 1869 (1995).

Diversity serves a unique role in higher education, and courts should treat diversity as a compelling interest in determining the legality of affirmative action programs which seek to achieve diversity in higher education. In *Regents of the University of California v. Bakke,* the Supreme Court held that race may be used as a factor in an admissions program at a university. Accordingly, the pursuit of diversity in higher education has fostered great controversy. Recently, the Supreme Court found that all racial classifications must be narrowly tailored to further compelling governmental interests. If courts reexamine the value of diversity in higher education, they should not use evidentiary requirements applied in past cases involving remedying past discrimination. Instead, courts should modify their review of non-remedial cases by examining the unique nature of diversity in higher education and the protection afforded to academic decisions. Admitting a racially diverse body effectively serves to fulfill the academic mission. Note, *An Evidentiary Framework*

for Diversity as a Compelling Interest in Higher Education, 109 HARV. L. REV. 1357 (1996).

Because schools play a vital role in a democratic society, school officials should not be allowed to censor or ban student speech merely because the expression occurs on school grounds or in connection with a school event. In *Hazelwood v. Kuhlmeier,* the Supreme Court found the First Amendment Freedom of Speech provision provides only limited protection to student speech, thus the Court failed to provide meaningful protection to student expression. Although order and discipline are of great importance in educating children, the current judicial rationale for examining free speech in the school context significantly undervalues student speech. Despite seemingly undercutting contemporary First Amendment theory, student expression would best be served by an approach requiring courts to consider the content of speech as well as the context in which the expression occurs in evaluating the validity of school restrictions on student expression. S. Elizabeth Wilborn, *Teaching the New Three Rs—Repression, Rights, and Respect: A Primer of Student Speech Activities,* 37 B.C. L. Rev. 119 (1995).

Assessment of constitutional landscape in realm of school prayer. Despite the passage of three decades since the Supreme Court first examined the issue of school prayer, it remains divisive and substantial uncertainty remains in the area. Although devotional use of scripture and recitation of prayer in public schools violates the Establishment Clause of the First Amendment of the Constitution, individual students' ability to pray cannot constitutionally be infringed upon by schools. Thus, the two ends of the school prayer spectrum are clear: schools cannot evade the prohibition in the First Amendment directly, nor indirectly by measures utilizing invited clergy, parents, or teachers; however, schools cannot infringe upon the protected private practice of prayer by students. In the middle are the issues likely to divide lower courts because the Supreme Court has not ruled specifically on these areas, including the validity of student-led prayer, religious songs at school ceremonies, and moments of silence. Thus, the seeming confusion of school administrators in approaching prayer-related issues is understandable. Robert M. O'Neil, *Who Says You Can't Pray?,* 3 VA. J. SOC. POL'Y & L. 347 (1996).

Choice in education is a means of reform that can compel schools to innovate to achieve higher educational outputs. Bureaucracy in our nation's public schools has reduced innovation in schools and generated an educational system in a state of crisis. Choice in education offers a means to garner superior educational opportunities with less money put into a system that is not achieving high educational outputs. Accordingly, one program, the Milwaukee Pa-

rental Choice Program ("MPCP"), merits examination as a choice reform system for education. Criticisms of the MPCP program are based upon the mistaken premise that the program violates the Establishment Clause of the Constitution by having a primary effect of encouragement of religion. Parents, not schools or government, make the decision of which school the child will attend based on the needs and interests of the child and family and the reputation and educational record of each school. However, even if the courts determine MPCP violates the Establishment Clause, the program could be restructured to avoid the violation and still provide viable choice reform. The current educational establishment and its failures should not be accepted. Joe Price, Note, *Educational Reform: Making the Case for Choice,* 3 VA. J. SOC. POL'Y & L. 435 (1996).

Policies in higher education prohibiting consensual sexual relationships between professors and students for whom they have no direct academic responsibility or evaluative role should be reevaluated. Although no student should ever be subject to unwelcome sexual advances from a professor, policies forbidding consensual sexual relationships between a student and a professor who has no evaluative role for the student serve no legitimate institutional purpose. Proponents of these policies have not shown incapacity on the part of consenting adults to vitiate consent. Accordingly, there is no justification for a university to treat adult students as something less than a consenting adult, absent a direct academic relationship with the professor. Conversely, coercion, intimidation, or unwelcome sexual advances are properly prohibited by institutional sexual harassment policies. Moreover, if there is an academic relationship between a student and a professor in an evaluative role, conflict of interest policies can sufficiently address those situations. Thus, policies consisting of a complete ban on consensual relationships between faculty and students serve no legitimate educational purpose. Sherry Young, *Getting to Yes: The Case Against Banning Consensual Relationships in Higher Education,* 4 AM. U. J. GENDER & L. 269 (1996).

Vermont statute requires automatic "step" increases of teacher's salaries even during negotiations, outraging some taxpayers who believe negotiations for salary contracts should be exclusive process for paying teacher salaries. Taxpayer outrage—especially during difficult negotiation and budget defeats—creates an unstable environment in local school districts. This article explores Vermont's law mandating teacher step increases during negotiations for new collective bargaining agreements; compares Vermont's law with other states' laws; and recommends timing reforms so that Vermont's current law can harmonize with teachers' contract negotiations and related procedures. James C. May, *The Law and Politics of Paying Teachers Salary Step Increases*

Upon Expiration of a Collective Bargaining Agreement, 20 VT. L. REV. 753 (1996).

Following Supreme Court precedent on equal protection issues, colleges and universities should interpret Title IX in way that provides both men and women equal opportunity to participate in athletic programs. Athletic departments should structure funding so that opportunities for female athletes accurately reflect the proportion of female students willing and able to participate in intercollegiate athletics. Charles P. Beveridge, Note, *Title IX and Intercollegiate Athletics: When Schools Cut Men's Athletic Teams,* 1996 U. ILL. L. REV. 809 (1996).

The Supreme Court's recent decision to limit racial preferences and set-asides appears to be new chapter in race and equal protection constitutional doctrine. Because education has long been characterized as a "unique" sector of our society, the Court may change its course in future decisions. Otherwise, the Court will virtually eliminate affirmative action as we know it. Krista L. Cosner, Note, *Affirmative Action in Higher Education: Lessons and Directions from the Supreme Court,* 71 IND. L.J. 1003 (1996).

Congress, under its power to regulate immigration, should enable states to prohibit illegal immigrant children from receiving free public school education. The federal law would relieve the financial strain on such states as Texas and California—where there is a large population of illegal immigrants. In the past, federal courts struck down state laws that stop illegal immigrants from attending public schools because the laws violate the Equal Protection Clause or federal law preempts them. Lora L. Grandrath, Note, *Illegal Immigrants and Public Education: Is There a Right to the 3 Rs?,* 30 VAL. U. L. REV. 749 (1996).

Judicial remedies are ineffective in allocating financial resources more evenly so that disadvantaged students have equal education opportunities as required by Equal Protection Clause. The Supreme Court refused to apply federal constitutional remedies in one school district case where underfunded schools sought relief. The Court's decision has split state courts into two camps. One camp recognizes education as a fundamental right while the other does not. Frank J. Macchiarola and Joseph G. Diaz, *Disorder in the Courts: The Aftermath of San Antonio Independent School District v. Rodriguez in the State Courts,* 30 VAL. U.L. REV. 551 (1996).

Judicial intervention is inattentive to philosophy of effective education. Although courts often identify basic student rights issues, the judge-made solu-

tions stifle development of good school practice in two significant ways: (1) excessive legal entanglements in public schools daily affairs, and (2) educational policies based on individual legal rights versus the need to protect students' rights as a whole. Frank J. Macchiarola, Dorothy Kerzner Lipsky and Alan Gartner, *The Judicial System and Equality in Schooling,* 23 FORDHAM URB. L.J. 567 (1996).

The Supreme Court's decision viewing an Oregon school's drug testing policy as constitutional swallows public school students Fourth Amendment rights. The Supreme Court, in balancing the need to prevent students from using drugs with their right against unreasonable searches and seizures, found the need for drug prevention greater. This decision limits public school students' Fourth Amendment rights. Cornelius J. O'Brien, *Constitutional Law—Fourth Amendment—Warrant and Probable Cause Requirements,* 34 DUQ. L. REV. 1167 (1996).

A symposium held at University of Connecticut Law School dealt with the subject of freedom of religion and public schools. The symposium consisted of five speakers who expressed their views regarding prayer in schools. Opinions expressed ranged from allowing a moment of silence for those who wish to pray to a strict constitutional argument for keeping prayer out of public schools. Milton Sorokin and Ethel Sliver Sorokin, Symposium, *The First Amendment, Religion and the Public Schools,* 15 QLR 161 (1995).

The Supreme Court, in allowing public schools to abridge students Fourth Amendment rights for the sake of school order, has given school administrators too much discretion. The Supreme Court allows for a lesser standard of warrant and probable cause to be applied to students in search and seizure cases. This article argues that the lessened standard is not always necessary and is sometimes detrimental to students. Sunil H. Mansukhani, *School Searches After New Jersey v. T.L.O.: Are There Any Limits?,* 34 U. LOUISVILLE J. FAM. L. 345 (1996).

Individuals' rights against unreasonable search and seizure have been abridged by Supreme Court's balancing test it applies to administrative searches. This test is applied to student searches in public schools. As a result the students' privacy rights have diminished. Marc A. Stanislawczyk, Note, *An Evenhanded Approach to Diminishing Student Privacy Rights Under the Fourth Amendment: Vernonia School District v. Acton,* 45 CATH. U. L. REV. 1041 (1996).

Student's First Amendment rights to free speech should be limited to facilitate learning in the classroom. The Sixth Circuit recently held that students' speech should be restrained if it would harm the learning atmosphere of the classroom. This casenote agrees but argues that the Sixth Circuit engaged in an erroneous First Amendment analysis. Phillip Michael McKenney, Casenote, *"Learning is More Vital in the Classroom Than Free Speech": Settle v. Dickson County School Board,* 29 CREIGHTON L. REV. 1761 (1996).

Recent Supreme Court decision limits lower court's power to desegregate public schools. This note takes the reader through the *Missouri v. Jenkins* decision. The court concluded in this decision to limit the discretion the courts have in bringing bout desegregation on public schools. The note concludes that a possible alternative to courts in desegregation is the legislature. Christina J. Nielsen, Note, *Missouri v. Jenkins: The Uncertain Future of School Desegregation,* 64 UMKC L. REV. 613 (1996).