

The Confederate Flag in Public Schools: A Tale of Two Flags

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State and local policymakers face a dilemma with student speech. On the one hand, policymakers understand the importance of students having a voice in their communities and experimenting with new ideas. On the other hand, schools must have the power to curb student speech when it interferes with a positive learning environment. The dilemma becomes more pronounced with controversial issues, such as student displays of the Confederate flag. This paper contextualizes the modern debate over the Confederate flag in public schools through the flag's social and legal history. It traces the flag's many and diverse uses since its inception in the Civil War, follows the changing stance of student speech rights in the courts, and then analyzes recent student displays of the flag and how their schools responded. This paper concludes that schools tend to censor the Confederate flag without engaging with the student side of the speech dilemma. I hope that an understanding of the historical context will lead to a more careful balancing of student and school interests.

Ethan Faucet, a Wisconsin high school student in 2016, mounted a six-foot flag pole to the back of his pick-up truck and proudly flew his Confederate flag into the school's parking lot.¹ A few of Ethan's friends followed suit and parked next to each other, creating a line of flags.² To these students, the flag symbolized southern pride and they claimed it was "in no way racist."³ The principal disagreed, and asked students to remove the flag from school property due to its historical associations with racism.⁴ The principal gave the students a choice: remove the flags from their vehicles or remove their vehicles from the school. The students chose the latter.⁵ The tension between these high school students and their principal is emblematic of the modern debate surrounding student speech rights in general, but in particular with respect to displays of the Confederate flag in public schools.

The debate converges the social history of the confederate flag with the legal history of student speech rights. On one side, school administrators, such as Ethan's principal, want to exercise their authority over offensive student speech that threaten a welcoming school climate. These Confederate flag opponents cite the flag's hateful history and the deference courts provide schools to control the learning environment. On the other side, students like Ethan and his friends want the freedom to express their identity and speak their mind. They invoke a history of southern culture and the court's responsibility to defend student speech from administrative overreach. While the social and legal histories of the Confederate flag cannot resolve the dispute, they can add context to better understand the complexities of this issue.

This paper will follow the two separate histories of the Confederate flag that converge in public schools today. First, it will track the meanings held by the Confederate flag throughout its social history. Second, it will follow the legal case history of student speech rights. Third, it will investigate recent disputes on the Confederate flag in schools. Finally, I hope this analysis will yield a conceptual framework for contextualizing the flag's social and legal histories when examining instances of student speech, in particular, with respect to displaying the confederate flag in public schools. In addition, schools should include students in discussions about the flag rather than exclude student voices through censorship.

Part I: Social History of the Confederate Flag - Meanings & Associations

The Confederate Flag's Historical Association with Racism

From its inception, the Confederate flag has symbolized racism. From the Civil War, to the Ku Klux Klan and other hate groups, to the pro-segregation public in the Civil Rights era, the Confederate flag has flown for hateful causes. Some apologists for the flag will brush aside its racist associations as rare or exceptional. To the contrary, as these examples demonstrate, it has consistently symbolized hate to broad swath of people. Although the Confederate flag's subjective meaning shifts relative to the viewer, these objective racist associations do not change.

The Confederate flag's history begins in the Civil War south. The south fought for secession to defend the institution of slavery and racial hierarchy. It used the Confederate flag as the symbol of its purpose and nascent government. Explicitly stating the south's impetus for war, the Vice President of the Confederacy, Alexander H. Stephens, stated in no uncertain terms that the new southern government rests "upon the great truth that the negro is not equal to the white man; that slavery, subordination to the superior race, is his natural and moral condition."⁶ Far from an outlier sentiment, Stephen's view of the war matched those of many other southern leader.⁷ Moreover, these racist sentiments of southern leaders were not discussed in secret or behind closed doors, but openly touted in defense of secession.⁸ While true that not every white family in the south owned slaves, all benefited from a racist society, and the rhetoric supporting succession capitalized on racial hierarchy to convince non-slave owning families.⁹ Powerful southerners with access to the levers of power that initiated the Civil War openly cited slavery and racial hierarchy as the impetus to action. The Confederate flag was the symbol of their new nation and was thereby associated with that nation's racial violence.

In addition to the official use of the Confederate flag to represent the southern government during the Civil War, non-governmental hate groups have also adopted the symbol. The Ku Klux Klan (KKK) is one such hate groups. Although early incarnations of the KKK did not use the Confederate flag despite assuredly southern heritage,¹⁰ the KKK began associating itself with the symbol during its second revival in the 1940s.¹¹ The leader of the KKK, during a speech to his followers with Confederate flags waving in

the background, clarified the organization's purpose. "God segregated the races. There is no law that can be passed by Harry Truman, or Congress, or by the Legislature of your state that can supersede the law of the Lord."¹² The use of the flag by the KKK's leader influence the group's membership. Klan members often employed the Confederate flag in private during initiation ceremonies and in public when committing hate crimes.¹³ After the KKK's second revival, the group continued to use the Confederate flag into the 1960s, culminating with Robert Shelton. Shelton, the leader of the KKK in 1961, turned the Confederate flag from a symbol often an associated symbol to an official one.¹⁴ Before Shelton, the flag implicitly symbolized the KKK due its proximity in KKK affairs, but after Shelton, Klan leaders understood the flag as an explicit symbol the KKK's objective of racial purity.¹⁵ Aside from the KKK, other hate groups such as the National States' Rights Party (NSRP) also made frequent use of the flag to symbolize their hatred of Jews and people of color.¹⁶ The NSRP used the Confederate flag to adorn their publications and gatherings.¹⁷ The leader of the NSRP, Edward Fields, publicly acknowledged that the Confederate flag symbolized their racist agenda.¹⁸ The NSRP and the KKK made frequent, overt, and explicit connections between their racist agendas and the Confederate flag.

Aside from hate groups, the general public of the Civil Rights era also wielded the Confederate Flag to support segregation.¹⁹ Whereas its use by hate groups could be seen as exceptional, the public's use of the flag emphasizes its generally accepted racialized associations. For example, in the wake of *Brown v. Board of Education*, nine black students registered for a white public school. On their first day of school, white segregationists protested their arrival while wearing and waving the Confederate flag.²⁰ In another instance, when black students started sit-ins in opposition to segregation, they encountered white resistance donning Confederate symbols.²¹ The Confederate flag emerged again in the fight against using buses to integrate public schools.²² The segregationist public's use of the Confederate flag to symbolize racism was not lost on the victims. Civil rights leaders lambasted the Confederate flag as a symbol of racism and demanded its removal from the public discourse.²³ Like the southern Civil War government and the racist hate groups, the Civil Rights era public understood the flag as a means to intimidate people of color.

As these examples demonstrate, the Confederate flag has repeatedly been used as a symbol of racism. In the first example, the flag represented the Civil War south's beliefs in slavery and racial hierarchy. In the second, the Ku Klux Klan and other hate groups adopted the flag as symbolic of their racist agenda. In the third, members of the public, not associated with any particular hate group or organization, used the flag in support of segregationist policies. This list is not complete, but it follows the pattern of association between the Confederate flag and racism. When the Wisconsin high school principal told Ethan Faucet to remove the Confederate flag from school property, this history of racist associations was the impetus.

Other Meanings of the Confederate Flag

The Confederate flag's history of racism cannot be undone. Modern interpretations of the flag as a symbol of intolerance accurately draw on this history as support. However, the flag, like many symbols, is homonymic. Its meaning changes depending on who flies it, where, and when. Although far from exhaustive, three examples expose its divergent meanings: 1) the flag's meaning to military personnel during the civil war, 2) the flag's meaning to soldiers in World War 2 and the Korean War, 3) and the flag's meaning to the public in the mid-twentieth century. None of these examples excuse or cover its racist associations, but they reveal how context can change its meaning.

Although born during the Civil War, the specific origins of the Confederate flag arise from the South's military. In the early days of the Confederacy, political leaders considered a variety of flags as their nascent nation's symbol.²⁴ Early iterations bore heavy similarities to the stars and stripes. For southern military personnel, this was a functional issue. At the time, flags were the primary means of distinguishing friend from foe.²⁵ At more than one occasion, southern troops fell victim to friendly fire due to flag confusion.²⁶ Within this context, the southern military leadership chose a design to distinguish themselves from their opponents. They chose a Confederate battle flag, that would later become the flag of the southern government and the version most referenced today.²⁷ The original promulgation of the flag came not from its racist associations, but from its military functionality.

Within its military context, the Confederate flag communicated a panoply of meanings to southern soldiers. Although they assuredly benefited from southern racism, most Confederate soldiers had a different perspective on the war. To them, the North was an invading force and they were defending their homes, their families, and their liberty from the intrusion.²⁸ These soldiers were not wrong. During the war, the North immeasurably damaged those homes and families that southern soldiers sought to protect.²⁹ As to the flag itself, death and sacrifice under its banner steeped it in a host of meanings. “The cause for which he had fought, the great captain he had followed, the devotion to a single end that had kept him struggling in the ranks, the daily sacrifice, the very poverty and cold and hunger, all these were bound up and made one with the tattered flag upon his arm.”³⁰ Moreover, Northern troops understood the symbolic importance of the flag and would intentionally aim for southern flag bearers to assault enemy morale.³¹ To these embattled southern soldiers, far from an explicitly racist symbol, the flag symbolized patriotism, fallen friends, honor, and pride.

Soldiers continued to wave the Confederate flag long after the Civil War ended. In the decades following, southerners held a deep reverence for military service due to stories of their Confederate ancestors and lack of other job opportunities.³² During military service, soldiers would fly the Confederate flag as a form of sectional pride. For example, World War II soldiers in the Solomon Islands used the flag to instigate friendly intra-unit rivalry between northern and southern troops.³³ To them, the flag was symbolic of southern culture and emblematic of southern regional flair.³⁴ The Confederate flag was even more prominent during the Korean War. In Korea, U.S. soldiers were under the authority of the United Nation and thereby officially flew the United Nations flag.³⁵ To maintain a sense of nationalism, Southern *and Northern* soldiers displayed the Confederate flag.³⁶ The flag served as a symbol of home for soldiers in a foreign nation under an unfamiliar flag. In each case, the Confederate flag symbolized sectional pride. That section was southern states to the troops in the Solomon Islands, and it was the United States to American United Nation soldiers. Instead of a racist symbol used to intimidate, it was a community symbol used to raise spirits.

Soldiers were not the only group that drew on the flag's non-racist symbolism. The public also used the Confederate flag to show their pride for Southern heritage. In the 1940s, southern college football fans would wave Confederate flags when their team played a northern one.³⁷ Similar to the soldiers in World War II and Korea, the flag represented a form of playful sectionalism that cheered on the Southern players. Further, popular culture played to the flag's southern imagery. Movies like "Gone with the Wind" romanticized southern culture and placed the Confederate flag as a southern symbol.³⁸ These displays in the popular culture lead to the flag's popularity in the 1950s. The Confederate flag became a national 'fad,' and with its dispersion among the national population, it gained a diversity of associations.³⁹ Advertisers began placing the Confederate flag symbol on a cavalcade of household goods.⁴⁰ Television shows, such as *The Dukes of Hazzard* in the late 1970s and 1980s, also used the flag to communicate southern culture to the national audience.⁴¹ From the 1950s to the 1980s, business understood the monetary value of southern affiliation and used the Confederate flag to signal that affiliation to customers. They succeeded not due to the flag's racial meanings, but due to its symbolism of south heritage.

None of these examples undercut the racist associations of the Confederate flag. Rather than replace, they add to the complexity of the flag's symbolism. Its meaning changes depending on the speaker, the audience, the place, and the time. Yet it is this history that Ethan Faucet and his friends reference when they claim that it symbolizes southern pride.⁴² Faucet and his friends are right, in one sense. The Confederate flag does symbolize southern pride, and it has carried that meaning since the civil war to soldiers and the public. However, Faucet and other flag apologists are wrong when they say the Confederate flag "is in no way racist" ("Public Schooling Battle Map," 2018) Regardless of individual intent or subjective meaning, the flag still carries a history of racial violence.

Part II: Historical Overview of Student Speech Cases in the Supreme Court

Ethan Faucet's school succeeded in censoring him. Although the dispute did not go to court, if it had the school would likely prevail. Today, students have limited speech rights, especially when that

speech is the Confederate flag. The case history of student speech provides important context for understanding why courts interpret the constitution to grant schools broad authority to censor student speech. In general, the trend of student speech rights has declined since its peak in the late 1960s. Furthermore, even at its peak, students have enjoyed far less speech rights than adults as courts have granted schools relatively greater deference to censor.

The Advent of Free Speech Rights

The story of student free speech rights begins in 1919, when a Russian immigrant threw leaflets off a New York City rooftop.⁴³ Those leaflets opposed sending U.S. troops into Russia and led to his arrest for violating the Sedition Act of 1918.⁴⁴ The case, *Abrams v. United States*, appeared before the Supreme Court and marked one its first forays into interpreting the first amendment's declaration that "Congress shall make no law . . . abridging the freedom of speech." The Court ruled *against* Abrams, denying him speech protections, and upheld the Sedition Act as constitutional.⁴⁵ Although the judgment stood against speech rights, Justice Holmes' dissent planted the concept of 'the marketplace of ideas' that would influence future decisions.⁴⁶ For Holmes, "the best test of truth is the power of the thought to get itself accepted in the competition of the market."⁴⁷ In other words, the government should promote speech and allow it to compete instead of censoring what it finds objectionable.

When the Court began to interpret speech rights, it distinguished adults from students. For adults, the 1931 cases *Near v. Minnesota* and *Stromberg v. California* broke the *Abrams* logjam and held that government prior restraints on speech are unconstitutional unless the government can prove exceptional circumstances.⁴⁸ However, when the question of *student* free speech rights arose in the 1940 case *Minersville School District v. Gobitis*, the Court used a different approach.⁴⁹ In *Gobitis*, Amish students were refusing to say the pledge of allegiance in school for religious purposes, and their refusal caused school administrators to expel them.⁵⁰ In contrast to its rulings in *Near* and *Stromberg*, the court did not recognize free speech rights for students.⁵¹ It ruled against the students, wanting to grant deference to the school administrator's disciplinary decisions.⁵²

These early free speech cases convey two key messages. First, America has not always held strong commitments to free speech rights. The Court in *Abrams* ruled in favor of a law prohibiting anti-government speech. *Abrams* is no longer applicable today, but it demonstrates that the concept of free speech is not as foundational and uncontroversial in the history of America as some may assume. Second, when the Court did begin to interpret a right to free speech, it viewed students in schools as separate from adults in public. The theme of separate standards for student speech continues to reemerge throughout the case history.

Ascendancy of Student Speech Rights

Less than three years after *Gobitis*, the 1943 case *West Virginia State Board of Education v. Barnette* signaled a sea change for student speech.⁵³ The facts in *Barnette* were similar to *Gobitis*. Some students refused to salute the American flag for religious reasons despite a West Virginia law requiring it, and school administrators expelled the students for their refusal.⁵⁴ However, whereas the *Gobitis* Court supported the school, the *Barnette* Court agreed with the students. The Court interpreted a salute as a form of speech, and then questioned the school's authority to coerce it.⁵⁵ By questioning the school's authority, the Court recognized student rights, and created a counter-interest to school power. Moreover, although the court could have used religious liberty to justify its position, it instead couched its reasoning in freedom of speech.⁵⁶ Justice Jackson, speaking for the majority, wrote "[F]reedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order."⁵⁷ *Barnette* overturned *Gobitis* and marked a new era for student speech.

"It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."⁵⁸ This was the seminal line from the 1968 case *Tinker v. Des Moines Independent Community School District*. *Tinker* built upon *Barnette* and established a clear framework for evaluating school actions that suppress student speech. Tinker was a student at a public school in Des Moines, Iowa.⁵⁹ To protest the Vietnam war, he wore a black armband to school and the

school suspended him for violating a school policy prohibiting the armbands.⁶⁰ The facts of *Tinker* asked a different question than *Barnette*. Whereas in *Barnette* the school was forcing a student's speech, in *Tinker* the school was prohibiting student speech. The Court had to address two questions: 1) do students have free speech rights in school? and 2) if they do, under what circumstances can schools curtail those rights?⁶¹ To the first, the Court answered in the affirmative. Referencing the *Abrams* dissent's 'marketplace of ideas,' the Court cast speech as a student right and an essential component of the educational process.⁶² As to the second question, the Court constructed a two-part test for shielding student speech from school authority. Student speech is protected from school censorship if the speech does not "materially and substantially interfere with the requirements of appropriate discipline in the school" and does not interfere "with the rights of other students to be secure and let alone."⁶³ *Tinker* firmly established student speech rights, and lower courts now had a clear standard to interpret cases.

Although *Barnette* and *Tinker* were watershed cases for student speech, neither brought students' speech rights to the adult level. Most restrictions on adult speech must pass a standard of judicial review called strict scrutiny. Without delving into the nuances of judicial review, strict scrutiny is a standard so difficult to meet that many scholars describe it as "strict in theory, fatal in fact." In contrast, the *Tinker* standard balances student speech rights against school authority. Schools cannot exercise unrestrained authority, but if the speech disrupts their educational objectives or harms the rights of other students then the school can control it. *Tinker* was the peak of student speech rights, and even at its peak, it was far inferior to adult protections. After *Tinker*, the Court began to carve out exceptions to its standard, initiating the decline of student power and the rise of school authority.

The Decline of Student Speech Rights

From *Tinker* in 1968 until *Bethel School District v. Fraser* in 1986,⁶⁴ courts had almost two decades of a clear standard of evaluation. *Fraser* did not overturn *Tinker*, but it added an exception that marked the Court's first move toward greater school deference. Matthew Fraser was a high school student making a speech to support his friend's run for student office.⁶⁵ To appeal to his peers, Fraser laced the

speech with sexual double entendre and school officials suspended him.⁶⁶ Importantly, the school did not claim any disruption to educational objectives or any interference with the rights of other students.⁶⁷ In other words, by the school's own admission, it failed the *Tinker* test.

Despite failing the *Tinker* test, the Court ruled in the school's favor.⁶⁸ First, the court reiterated the theme that students do not receive the same speech protections as adults.⁶⁹ Then, the Court categorized Fraser's speech as lewd or indecent and thereby outside the scope of *Tinker*.⁷⁰ However, the court did not provide another clear standard for evaluating school authority over lewd or indecent speech.⁷¹ That absence of a clear standard had the effect of granting more deference to schools.⁷² Now, when speech is lewd or indecent the *Tinker* test no longer applies and an ambiguous standard that defers to schools' authority applies instead.

The 1988 case *Hazelwood School District v. Kuhlmeier* also created a new speech category and placed it outside the scope of the *Tinker* test.⁷³ In *Kuhlmeier*, students had been creating a school newspaper that required the principal's approval for publication.⁷⁴ In one of the editions, the students included articles on teen pregnancy and the effects of divorce on children.⁷⁵ The principal found these topics inappropriate and removed the two pages where the topics appeared.⁷⁶ Just as in *Fraser*, the school did not claim the articles disrupted the school or interfered with the rights of other students.⁷⁷ Despite failing the *Tinker* test, the Court upheld the school's censorship. The Court categorized the speech in the school newspaper as 'school-sponsored' because it bore the school's imprimatur, and placed that category outside the scope of *Tinker*.⁷⁸ The Court justified the taxonomy in fear that the public may misattribute the views of students to the school.⁷⁹ To the Court, the potential for misattribution supported a standard lower than *Tinker*'s. Under this new category, a school could censor school-sponsored student speech if the school's action was "reasonably related to legitimate pedagogical concerns,"⁸⁰ a low, easily satisfied bar.

Kuhlmeier also underlined another way the Court analyzes student speech differently than adult speech. The principal exercised prior restraint as opposed to post-publication punishment. That is, instead of allowing the students to publish the columns and then suspend them, the principal censored the publication itself. *Near*, one of the cases that first interpreted free speech rights for adults, barred the

government from specifically using prior restraint without “exceptional circumstances.”⁸¹ *Kuhlmeier* not only applied a lower standard than *Tinker* for school-sponsored speech but also applied that standard to prior restraint.

The trend of *Fraser* and *Kuhlmeier* continued into the most recent Supreme Court case on student speech rights. In 2007, *Morse v. Frederick* created yet another student speech category immune to the *Tinker* test.⁸² Joseph Frederick was a high school student in Anchorage, Alaska when the Olympic torch was passing through.⁸³ His school released students early to watch the torch from the sidewalk.⁸⁴ As the torch was passing, Frederick unfurled a large banner that read, “Bong Hits 4 Jesus.”⁸⁵ The principal, Deborah Morse, grabbed the banner, crumpled it, and suspended Frederick.⁸⁶ The principal censored student speech off school grounds, when students were released early, due to the content of the speech, and not due to any disruption or interference with the rights of other students. Despite these factors, the Court ruled against Frederick and upheld the school’s actions. It categorized the student speech as pro-drug and reasoned that schools can censor student speech that promotes illegal drug use.⁸⁷ The standard for pro-drug speech was that the school must have “reasonably viewed [it] as promoting illegal drug use,”⁸⁸ another lower standard for the school to satisfy than the *Tinker* test.

Since *Tinker*, the Court has lowered student protections by creating additional categories of student speech: ‘lewd or indecent’ in *Fraser*, ‘school-sponsored’ in *Kuhlmeier*, and ‘pro-illegal drug use’ in *Frederick*. In each case, the Court granted more deference to schools by lowering the standard for censoring student speech. *Tinker* remains good law today, but its territory has shrunk. In the past few decades deference to school authority has risen, and this trend is made particularly clear when student speech involves the Confederate flag.

Part III: Confederate Flag Student Speech Rights

“Prohibiting students from having the Confederate flag at school is not automatically constitutional,”⁸⁹ stated the Fourth Circuit in the 2013 case *Hardwick v. Heyward*. *Hardwick* is the most recent federal appeals court case on the Confederate flag in school. Despite this rhetoric that the

Confederate flag should afford the same type of evaluation as other types of student speech, courts have effectively granted schools unquestioned authority over censoring it. The *Tinker* test has been broadly interpreted when assessing the Confederate flag's disruptive effect, and even in the absence of disruption, courts use *Fraser* to rule in favor of schools.

Applying Tinker's First Prong: Issues of Actual vs. Expected Learning Disruption

A Missouri high school was rife with racial tension in the mid 2000s.⁹⁰ White students were aggravating black students, with one white elementary student going so far as to urinate on a black fourth grader.⁹¹ To ease racial tensions, the school banned Confederate symbols at the school.⁹² One student protested the ban by adorning himself with Confederate symbols on his hat, belt, and shirt.⁹³ The school suspended him and the student filed suit, starting the case *B.W.A. v. Farmington School District*.⁹⁴ In *B.W.A.*, the school argued that it satisfied the *Tinker* test due to the confederate flag's potential to disrupt the school environment.⁹⁵ In the context of the school's racial tension, administrators expected a racist symbol to aggravate the conflict and further interfere with the school's educational objectives. The 8th Circuit agreed, finding the school had reason to censor the confederate flag for the disruption it could cause under *Tinker's* first prong.⁹⁶

In ruling for the school in *B.W.A.*, the court used a somewhat nuanced reading of *Tinker* by weighing the disruption the flag *could* cause. A straightforward interpretation of *Tinker's* first prong would examine actual disruption caused by the speech. Under that view, if speech did not cause disruption then a school should not censor it. In contrast, the nuanced reading *forecasts* disruption. Rather than ask if the speech *did* disrupt, it asks if the school could reasonably *expect* it to disrupt. The *B.W.A.* court focused on the reasonableness of the school's *expectation* of disruption rather than actual disruption caused by the confederate flag.⁹⁷ Within the context of racial turmoil, the court found the school's expectation reasonable.⁹⁸

The distinction between actual and expected disruption became more pronounced in *Hardwick*. Candice Hardwick wore t-shirts with the confederate flag to her high school in South Carolina for three

years.⁹⁹ School administrators' responses included requiring her to change shirts, removing her from class, and suspending her.¹⁰⁰ In court, Hardwick argued that her shirts did not cause any actual disruption and therefore *Tinker* protected her speech.¹⁰¹ Addressing her argument, the court stated, "That the shirts never caused a disruption is not the issue."¹⁰² Instead of actual disruption the court asked "whether school officials could reasonably forecast a disruption."¹⁰³ The expectation was reasonable, the court found, due to a few racial conflicts more than two decades past. Passing on the actual disruption argument was not for lack of evidence. Candice had worn her confederate t-shirts for years at the school, generating plenty of opportunities to evaluate the shirts' disruptive effects.

B.W.A. and *Hardwick* reveal how forecasting disruption defers authority to schools. In *B.W.A.*, the high school was actively enshrouded with racial conflict such that it could reasonably expect the confederate flag to exacerbate the turmoil. In contrast, the *Hardwick* court cited racial conflicts that occurred more than twenty years prior to justify censoring the flag.¹⁰⁴ In addition, *Hardwick* relied only on forecasted disruption because it lacked evidence of actual disruption despite Candice wearing Confederate flag shirts for three years. Contrary to the *Hardwick* court's line that "prohibiting students from having the Confederate flag at school is not automatically constitutional,"¹⁰⁵ it seems nearly impossible for a school to overreach when censoring it. If a school need show only expected disruption, and the potential disruption of the confederate flag is a foregone conclusion, then schools have unbridled authority over confederate flag displays.

Discerning the Locus of Disruption

In *B.W.A.* and *Hardwick*, the students were publicly displaying the confederate flag. They adorned the symbol for all their peers to see, and the school forecasted a disruption from the overt exhibition. In contrast, another line of confederate flag cases address students privately displaying the flag. Yet, even when student speech has a severely limited reach, if that speech is the Confederate flag then courts tend to

rule in favor of the school's authority to censor it. By censoring these types of displays, schools empower disruptive listeners and further emphasize the difference between students and adults.

In 2000, the Tenth Circuit case *West v. Derby Unified School* addressed private displays of the Confederate flag.¹⁰⁶ Similar to *B.W.A.*, the high school in *West* was fraught with racial tensions.¹⁰⁷ Students were spray painting racist graffiti on school grounds and fighting over displays of the Confederate flag.¹⁰⁸ Within this atmosphere, the school suspended West when he drew a picture of the confederate flag on a piece of paper during class.¹⁰⁹ The only people to see West's drawing were three nearby students and the teacher.¹¹⁰ Despite privately displaying the Confederate flag, and thereby limiting its disruptive potential, the court upheld the school suspension.¹¹¹ The court reasoned in the same vein as *B.W.A.* and *Hardwick*, that the school could reasonably expect the speech to cause a disruption.¹¹²

A 1997 district court case, *Denno v. School Bd. of Volusia County*, also addressed a private display of the Confederate flag.¹¹³ Unlike *West*, this school was not combating racial violence when Denno showed a few friends a sixteen square inch Confederate.¹¹⁴ Before showing his friends, Denno kept the flag in his pocket and thereby limited its viewers and potential for disruption. Despite those circumstances, the school suspended him. Denno claimed the flag was "a symbol of Southern heritage,"¹¹⁵ but the court was unconvinced and ruled in the school's favor. Similar to the prior cases, it referenced the flag's disruptive potential to justify its decision.¹¹⁶

West and *Denno* reflect a broader trend of courts ignoring heckler's veto jurisprudence in student speech cases.¹¹⁷ The concept of the heckler's veto in first amendment jurisprudence is that a crowd's negative reaction to speech does not justify government censoring the speaker.¹¹⁸ Heckler's veto contrasts with the fighting words doctrine which removes first amendment protection for speech intended to incite violence.¹¹⁹ The distinction rests on who causes the turmoil. If a speaker intended to incite violence then it may lose protection under the fighting words doctrine, but if the listeners causes the problem then it falls under the heckler's veto. Heckler's veto seems to map on well to the facts of *West* and *Denno*. Considering the private display of the Confederate flag, the students are unlikely to be the proximate cause of a disruption. Any forecasted disruption would more likely have arisen from others learning of the display

than the display itself. Heckler's veto jurisprudence may have protected adults in similar facts, but the courts did not even consider it for students in schools. Not only can schools censor the Confederate flag by forecasting disruption, they can also censor it for potential disruption by listeners.

The Confederate Flag as Inherently Lewd or Indecent

As shown through the *Hardwick*, *B.W.A.*, *Denno*, and *West* cases, courts tend to use *Tinker* to uphold school authority to censor the Confederate flag. In addition to *Tinker*, some courts reach the same conclusion using *Fraser*. For example, in *Hardwick* the court ruled in favor of the school under both *Tinker* and *Fraser*. Under *Tinker*, the court thought the school could reasonably expect Candice Hardwick's confederate flag t-shirts to cause a disruption.¹²⁰ The court also upheld the school's ban on confederate t-shirts due to *Fraser*'s interpretation of school authority to "prohibit the use of vulgar and offensive terms."¹²¹ In other words, to the court, the Confederate flag was so patently offensive that it fell within *Fraser*'s category of lewd or indecent speech.

Hardwick was not the only Confederate flag case that relied on *Fraser*. In 2003 the Eleventh Circuit also used *Fraser* to uphold a school censoring the Confederate flag in *Scott v. School Board of Alachua County*.¹²² In *Scott* the court explained that even when student speech does not disrupt, schools must "inculcate habits and manners of civility."¹²³ It then situated the Confederate flag firmly in opposition to those habits and manners by referencing the history of racial prejudice associated with it.¹²⁴ The use of *Fraser* in *Hardwick* and *Scott* further empower school discretion to censor the confederate flag. Even in the absence of disruption, actual or expected, a school can still use *Fraser*'s lewd or indecent category to remove the flag.

Extended Legal Summary: Speech Rights to Confederate Flag Cases

America has not always revered free speech rights, especially for students. In 1919, Abrams lost in his case on propagating anti-war pamphlets. When America began to recognize free speech rights, it

interpreted those rights separately for adults and students. *Near* and *Stromberg* began to interpret robust protections for adults while *Gobitis* deferred to the school's authority over student speech. When courts interpreted free speech rights for students in *Barnette* and *Tinker*, schools could more easily censor their speech than could other government entities censor adult speech.

After *Tinker*, student speech rights went into decline. Three Supreme Court cases created three new categories of speech: lewd or indecent, school-sponsored, and pro-illegal drug use. The Court placed all three categories outside of *Tinker*'s reach and within an even lower standard of judicial review. For the Confederate flag, the decline was more pronounced. Schools could forecast disruption without evidence of actual disruption, they could silence the speaker for disruption from the listeners, and they could censor the Confederate flag as lewd or indecent despite any disruption whatsoever.

Student speech rights around the Confederate flag has returned to *Abrams*. Schools have complete effective authority to censor it. The move toward *Abrams* accompanies a move away from the marketplace of ideas. Justice Holmes' dissent in *Abrams* provided the marketplace of ideas as a prescription for objectionable speech. He advocated for allowing ideas to compete openly and freely instead of censoring opposition. Holmes believed that this competition would test ideas on their merit rather than the relative power of their speakers. With such broad authority over the Confederate flag, schools have favored the opposite approach. Instead of allowing students to disown the flag on its own merits, school wield their power to exclude it from the marketplace of ideas.

Part IV: Confederate Flag Disputes Today

Article 3 of the U.S. constitution limits judicial power to cases and controversies. Judges cannot interpret law in the abstract. Their interpretations must apply to a real dispute between parties. This standard also applies to this paper's discussion of the Confederate flag in public schools. The history of the Confederate flag's meaning and the line of cases that interpret free speech rights for students matter because of the modern disputes. Across the nation, students have been wearing, waving, and drawing Confederate flags in public schools. Although the medium of displaying the flag and the student's

rationale behind their speech changes from case to case, one aspect remains remarkably consistent. No matter the place, the medium, or the rationale, school administrators overwhelmingly censor the Confederate flag.

In 2017,¹²⁵ Randy Roscoe, a high school student in Pittsburgh Pennsylvania, decorated his truck with two Confederate flag license plates. One plate was a square Confederate flag and the other said “Redneck Nation” over a backdrop of the flag. The school revoked Randy’s parking privileges because he refused to remove the plates. In the month leading up to the revocation, the school had to send Randy home early due to other students heckling him about the flags. Moreover, at least one student reported Randy using racial slurs to describe people of color. In a public response to the incident, the school stated that student speech rights are “not unlimited, nor [are they] the same as an adult’s freedom of speech rights in other public settings.”

In another case, Mitchell Ballas,¹²⁶ a high school student in Missoula Montana in 2018, wore a large bright hooded sweater with the Confederate flag on the front, back, and sleeves. A few other students in Mitchell’s school also began to wear the Confederate flag and about thirty students complained about the display to school administrators. Mitchell defended himself by saying he wore the sweater to defend student speech rights and does not intend to communicate racism. His argument did not sway the school, and administrators suspended him. The intended message of the flag was aside the point for the principal, stating that “regardless of the intent of the students displaying the flag, the flag is a symbol in 2018 that is used to express racism and oppression, and that has no place in an educational environment.”

In a third case, a high school in Gibson County Tennessee turned away Texanna Edwards¹²⁷ from her 2012 senior prom because she wore a handmade Confederate flag dress. Texanna defended her dress not by reference to southern heritage or freedom of speech, but by claiming it was just her style and liked its aesthetic. Moreover, she criticized the school for censoring her dress while ignoring her peers that wear the Confederate flag on their shirts, hats, and belts. The school justified its response by explaining they were reasonable to predict an issue arising at the prom.

These three examples follow the themes of the Confederate flag's social and judicial history. In the first case, by placing student speech below adult speech, the Pittsburgh principal was in line with Supreme Court trends dating back to the early 20th century. Randy may well have been openly racist at his school based on some student accounts, but his "Redneck Nation" license plate references a type of southern culture and sectionalism that have followed the flag for generations. Moreover, the Pittsburgh school referenced student hecklers as a cause to censor the flag in the same vein as the *West* and *Denno* cases. In the second case, the Montana school used a *Fraser*-like argument for censoring the flag. The school ignored the intent or disruptive impact, and instead focused on its innate inappropriateness in civil discourse. Further, Mitchell's statement was a political one. Like *Tinker*, Mitchell used his clothing to make a point about government policy. He wanted the flag to *generate* civil discussion on student speech rights. In that sense, contrary to the school's view, the flag was completely appropriate. In the third case, Texanna's use of the Confederate flag follows its historical use as a popular aesthetic to symbolize the south. Texanna was continuing in the line of advertisers applying it to household items and television producers putting it in popular shows. By forecasting disruption, Texanna's school spoke in the voice of *B.W.A.* and *Hardwick*. Just like in *Hardwick*, there was a history of Confederate flag symbols at Texanna's school. Her peers wore it regularly, but her school did not cite any actual disruption from that history when it censored her dress. In each of these modern disputes, the social and judicial history provides context. In a sense, these disagreements are reenactments of the same fundamental issue. Students want the power to display a non-racist symbol and schools want to ban racist images from their campuses. If Randy Roscoe intended the flag to intimidate students of color, then the school should censor him with all the power granted them by the courts. However, if Texanna Edwards liked the flag's aesthetic and southern symbolism then censorship seems an inappropriate response. Discerning the difference is difficult, but schools should add more nuance to their decision making instead of indiscriminate censorship of the flag.

Part V: Recommendations for Moving Forward

The social and legal history of the Confederate flag problematize its use in schools. Some instances of the flag, such as in *B.W.A.*, require little analysis as the students intended it as hate speech amongst a climate of intolerance. Yet, many other instances of its use by students do not lend themselves to such a simple analysis. The following three recommendations do not join a particular side in this debate. Instead, they suggest that schools and courts have overreached in censoring the Confederate flag. The flag is not always appropriate on school grounds, but schools should not censor it without engaging with the nuances of their particular situation and considering the best methods for including students in a discourse. Indiscriminate censorship of the flag, as is apparent from the legal history, achieves neither of those ends.

Recommendation 1: Stop Foregone Conclusions

Some schools and courts view the Confederate flag as innately disruptive to school and inappropriate in civil discourse. In *Hardwick* and *B.W.A.*, the school justified censoring the flag by its potential to disrupt. In *B.W.A.*, the ongoing racial turmoil provided reasonable evidence to anticipate disruption. However, Candice Hardwick was not participating in a race war and had been wearing the Confederate flag for years without incident. The school should not have censored Candice because it did not have reason to anticipate disruption. The evidence of anticipation included decades old racial disputes that had no direct connection to any student currently enrolled. Schools should proactively censor the Confederate flag in extreme cases such as *B.W.A.*, but those extreme cases provide ample evidence to support the prediction of disruption. Schools should not forecast disruption as a catchall justification anytime they wish to censor the flag.

Similarly, relying on *Fraser* effectively removes any limits to a school's authority to censor the flag. When schools and courts categorize the Confederate flag as innately lewd or inappropriate, they circumvent an analysis of the flag's actual or potential impact on the learning environment. In *Scott*, the court explicitly ignored disruptive impact, considered the flag anathema to civil discourse, and thereby ruled in favor of the school. This type of analysis roots itself in the racist associations of the flag but ignores its other historical meanings and the intended meaning of the student. When Mitchell Ballas wore

his Confederate flag hooded sweater, he was sparking a conversation on student speech rights, not pettifoggging a discussion with lewd or indecent imagery. Sometimes the flag is lewd or indecent, as may have been the case if Randy Roscoe had a history of overt racism when he drove to school with Confederate flag plates. The point is not that schools should never anticipate disruption or never treat the flag as inappropriate, but that they should not assume these factors.

Recommendation 2: Protect Students from the Heckler's Veto

Schools should not empower disruptive listeners. When students' Confederate flag speech reaches a small audience and does not intend to instigate, any subsequent disruption from listeners should not justify censorship. The *Denno* and *West* cases are examples of schools violating this principle. In those cases, the surreptitious displays of the flag could not have reasonably caused any substantial disruption. The reach of the speech was too limited and the intent too benign to attribute potential disruption to the speaker. The forecasted disruption relied upon in those cases would have arisen from listeners, from hecklers. Similarly, with Randy Roscoe's license plates, if students at Randy's school were heckling him to the extent that the school sent him home for his own safety then the school should protect him from the hecklers. A negative reaction to speech, especially when that speech does not intend to disrupt and reaches a small audience, should not justify censorship. Instead, it should motivate the school to protect the student speaker.

Recommendation 3: The Marketplace of Ideas

"We are trying to use this as a teachable moment to help students understand how [the Confederate flag] is perceived by many people," said a Michigan Superintendent after censoring the flag.¹²⁸ Schools want students to understand the racist associations of the Confederate flag, and rightly so, but they should still consider the most appropriate method of teaching students its dark meaning. One method, the one currently favored by schools across the country and used by the Michigan Superintendent, is to censor it. However, this tact may strengthen the very racist ideologies that the schools hope to defeat. For example,

neo-Confederate white nationalist groups use the language of victimization and oppression for their own purposes. They claim southern heritage is under assault of ‘cultural genocide’ to inspire members toward action and advocate for racist causes.¹²⁹ Indiscriminate censorship of the Confederate flag lends legitimacy to their argument. To students still developing a sense of personal identity, censoring their speech, rather than engaging it, may cause students to adhere to the racist ideologies that schools try to delegitimize.

A better method embraces Justice Holmes’ marketplace of ideas. In the *Abrams* dissent, Justice Holmes explains:

But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment.¹³⁰

The marketplace of ideas engages students as sense-makers. It allows students to consider and debate a range of ideas. Within the marketplace, students would reject racism on its merits and by exposure better alternatives. In contrast, indiscriminate censorship of the Confederate flag is akin to what Paulo Freire negatively refers to as the banking model of education.¹³¹ In that model, teachers ‘deposit’ knowledge into passive students. The banking model is top-down and treat students as recipients of information rather than as sense-makers themselves. Similarly, indiscriminate censorship of the Confederate enforces this hierarchy of knowledge. Censorship does not allow students to question the meaning of the Confederate flag or to understand its history. By depositing knowledge instead of constructing it, censorship stops discussion before it starts. Unfortunately, the discussions censorship stops may be the very ones that some students need to turn them away from racist iconography.

Conclusion

The Confederate flag has caused controversy since its inception. The social and legal history of the flag should inform how schools respond to students that display it. Schools admirably want to remove racist symbols from their communities. The Confederate flag has long associations with racism from the Civil War to the Civil Rights era to today. Schools are right to classify the Confederate flag as racially problematic, but they are wrong not to engage students that draw from the flag's other meanings. Furthermore, instead of pushing schools to grapple with the nuances of student speech rights, courts grant schools almost absolute deference. Courts empower schools to censor student speech in ways they would never allow other government entities to censor adult speech. The Supreme Court has systematically weakened *Tinker's* defense of student speech rights, and lower courts have broadly interpreted Supreme Court decisions to affirm school authority over the Confederate flag. Within that atmosphere, students have effectively lost their ability to display the flag. Although some may praise that result as racial progress, the end does not justify the means. Refusing to engage the Confederate flag insulates students from merit-based challenges to the flag's symbolism. It can cause students to recede into communities that promote hatred and legitimize those groups by contributing to their narrative of oppression. Schools should address the negative associations of the flag with *more* discussion, not less. To foster those discussion, they must create Holmes' marketplace of ideas and invite all students to participate in intellectual commerce.

End Notes

¹ “Public School Battle Map,” <https://www.cato.org/education-fight-map> (accessed 11/25/18).

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ John M. Coski, *The Confederate Battle Flag: America’s Most Embattled Emblem* (Cambridge, MA: Harvard University Press, 2005), 23–24.

⁷ Ibid., 24.

⁸ Ibid., 23.

⁹ Ibid., 21, 24.

¹⁰ Ibid., 84.

¹¹ Ibid.

¹² Ibid., 136.

¹³ Ibid.

¹⁴ Ibid., 142.

¹⁵ Ibid.

¹⁶ Ibid., 143.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid., 144.

²⁰ Ibid., 147.

²¹ Ibid., 154.

²² Ibid., 145.

²³ Ibid., 155.

²⁴ Ibid., ch. 1.

²⁵ Ibid., 11.

²⁶ Ibid.

²⁷ Ibid., 14.

²⁸ Ibid., 21.

²⁹ Ibid.

³⁰ Ibid., 29.

³¹ Ibid., 31.

³² Ibid., 92.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid., 116.

³⁶ Ibid.

³⁷ Ibid., 95.

³⁸ Ibid., 109.

³⁹ Ibid.

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- ⁴⁰ Ibid., 168.
- ⁴¹ Ibid., 174.
- ⁴² “Public School Battle Map,” <https://www.cato.org/education-fight-map> (accessed 11/25/18).
- ⁴³ *Abrams v. United States*, 250 U.S. 616 (1919).
- ⁴⁴ Ibid.
- ⁴⁵ Ibid.
- ⁴⁶ Catherine J. Ross, *Lessons in Censorship* (Cambridge, MA: Harvard University Press, 2015), 14.
- ⁴⁷ *Abrams v. United States*, 250 U.S. 616, 628, 630 (1919) (Holmes, J., dissenting).
- ⁴⁸ *Near v. Minnesota*, 283 U.S. 697 (1931); *Stromberg v. California*, 283 U.S. 359 (1931).
- ⁴⁹ *Minersville Sch. Dist. v. Gobitis*, 310 U.S. 586 (1940).
- ⁵⁰ Ibid.
- ⁵¹ Ibid.
- ⁵² Catherine J. Ross, *Lessons in Censorship* (Cambridge, MA: Harvard University Press, 2015), 17.
- ⁵³ *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943).
- ⁵⁴ Ibid.
- ⁵⁵ *Minersville v. Gobitis*, 310 U.S. at 598.
- ⁵⁶ Catherine J. Ross, *Lessons in Censorship* (Cambridge, MA: Harvard University Press, 2015), 19.
- ⁵⁷ *West Virginia v. Barnette*, 319 U.S. at 641, 642.
- ⁵⁸ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. at 506 (1969).
- ⁵⁹ Ibid., 503.
- ⁶⁰ Ibid.
- ⁶¹ Catherine J. Ross, *Lessons in Censorship* (Cambridge, MA: Harvard University Press, 2015), 27.
- ⁶² *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. at 512.
- ⁶³ Ibid. at 508, 509.
- ⁶⁴ *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986).
- ⁶⁵ Ibid.
- ⁶⁶ Ibid.
- ⁶⁷ Catherine J. Ross, *Lessons in Censorship* (Cambridge, MA: Harvard University Press, 2015), 39.
- ⁶⁸ *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986).
- ⁶⁹ Ibid., at 682.
- ⁷⁰ Catherine J. Ross, *Lessons in Censorship* (Cambridge, MA: Harvard University Press, 2015), 41.
- ⁷¹ Ibid.
- ⁷² Ibid.
- ⁷³ *Hazelwood v. Kuhlmeier*, 484 U.S. 260 (1988).
- ⁷⁴ Ibid.
- ⁷⁵ Ibid.
- ⁷⁶ Ibid.
- ⁷⁷ Catherine J. Ross, *Lessons in Censorship* (Cambridge, MA: Harvard University Press, 2015), 48.
- ⁷⁸ *Hazelwood v. Kuhlmeier*, 484 U.S. 260, 271 (1988).
- ⁷⁹ Ibid.
- ⁸⁰ Ibid., at 273.
- ⁸¹ *Near v. Minnesota*, 283 U.S. 697 (1931).
- ⁸² *Morse v. Frederick*, 551 U.S. 393 (2007).
- ⁸³ Ibid.
- ⁸⁴ Ibid.
- ⁸⁵ Ibid.
- ⁸⁶ Ibid.
- ⁸⁷ Ibid., at 340.
- ⁸⁸ Ibid.
- ⁸⁹ *Hardwick v. Heyward*, 711 F.3d at 426, 436–437 (4th Cir. 2013).
- ⁹⁰ *B.W.A. v. Farmington R-7 Sch. Dist.*, 554 F.3d 734 (8th Cir. 2009).
- ⁹¹ Ibid.
- ⁹² Ibid.
- ⁹³ Ibid.
- ⁹⁴ Ibid.
- ⁹⁵ Ibid.

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- ⁹⁶ *Ibid.*, 742.
- ⁹⁷ *Ibid.*, 741.
- ⁹⁸ *Ibid.*, 742.
- ⁹⁹ *Hardwick v. Heyward*, 711 F.3d at 426 (4th Cir. 2013).
- ¹⁰⁰ *Ibid.*
- ¹⁰¹ *Ibid.*, 439.
- ¹⁰² *Ibid.*, at 439.
- ¹⁰³ *Ibid.*
- ¹⁰⁴ *Ibid.*, 437.
- ¹⁰⁵ *Hardwick v. Heyward*, 711 F.3d at 426, 436–437 (4th Cir. 2013).
- ¹⁰⁶ *West v. Derby*, 23 F. Supp. 2d 1223 (D. Kan. 1998).
- ¹⁰⁷ *Ibid.*, 1362.
- ¹⁰⁸ *Ibid.*
- ¹⁰⁹ *Ibid.*, 1358.
- ¹¹⁰ *Ibid.*, 1228, 1229.
- ¹¹¹ *Ibid.*, 1236.
- ¹¹² *Ibid.*
- ¹¹³ *Denno v. School Bd. Of Volusha Cnty.*, 182 F.3d 780 (11th Cir. 1999).
- ¹¹⁴ *Ibid.*, 781.
- ¹¹⁵ *Ibid.*, 782–784
- ¹¹⁶ *Ibid.*, 780.
- ¹¹⁷ Catherine J. Ross, *Lessons in Censorship* (Cambridge, MA: Harvard University Press, 2015), 173.
- ¹¹⁸ *Ibid.*
- ¹¹⁹ *Ibid.*, 176.
- ¹²⁰ *Hardwick v. Heyward*, 711 F.3d at 441 (4th Cir. 2013).
- ¹²¹ *Ibid.*, at 435.
- ¹²² *Scott v. Sch. Bd. of Alachua Cnty.*, 324 F.3d 1246 (11th Cir. 2003).
- ¹²³ *Ibid.*, at 1248.
- ¹²⁴ *Ibid.*
- ¹²⁵ “Confederate License Plate Controversy Pits Student Against Pittsburgh Public Schools,” <https://www.wtae.com/article/confederate-license-flag-controversy-pits-student-against-pittsburgh-public-schools-1507174441/12784070> (accessed 11/25/18).
- ¹²⁶ “Big Sky High School Student Suspended for Repeatedly Wearing Confederate Flag Sweater,” https://missoulian.com/news/local/big-sky-high-school-student-suspended-for-repeatedly-wearing-confederate/article_c0c79368-735e-5a66-9baa-8d2db4670137.html (accessed 11/25/18).
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- ¹²⁹ “The League and Southern Identity,” <https://leagueofthesouth.com/890the-league-and-southern-identity/> (accessed 11/25/18).
- ¹³⁰ *Abrams v. United States*, 250 U.S. 616, 628, 630 (1919) (Holmes, J., dissenting).
- ¹³¹ Paulo Freire, *Pedagogy of the Oppressed* (New York, NY: Herder and Herder, 1972).