VIRGINIA LAW REVIEW ONLINE

VOLUME 105 DECEMBER 2019 175–197

FILL IN THE BLANK: COMPELLING STUDENT SPEECH ON RELIGION

*Manal Cheema**

INTRODUCTION

As part of her public high school's required social studies curriculum, Caleigh Wood's teacher presented her with a fill-in-the-blank assignment concerning a lesson the teacher gave that day on Islam.[1] The worksheet

* J.D. Candidate 2020, University of Virginia School of Law. I would like to thank members of the *Virginia Law Review* for the opportunity to discuss this important topic. I am grateful to Mika Carlin and Maggie Booz for their helpful critiques through the editing process. I am thankful for my family's support and encouragement, and KTB, AD, CJS, JAD, MES, and many more for their friendship and feedback. Errors are my own.

[1] Wood v. Arnold, 915 F.3d 308 (4th Cir. 2019), cert. denied, 2019 WL 5150487 (U.S. Oct. 15, 2019) (No. 18-1438). In a five-day unit called "The Muslim World," Wood's class explored the Middle Eastern empires, including the basic tenets of Islam that "contributed to the development of those empires." Id. Wood took issue with the fill-in-the-blank assignment as well as a comparative faith statement her teacher presented in a PowerPoint, which said,

summarized the growth and expansion of Islam, discussed its beliefs and practices, and compared it to Judaism and Christianity.[2] Wood had "to complete certain information comprising the 'Five Pillars' of Islam," including filling in portions of the *shahada*, a declaration of faith and a core belief of Islam.[3] On the worksheet, the statement read in full: "There is no god but Allah and Muhammad is the messenger of Allah."[4]

Wood asserted that the assignment "promot[ed] Islam," while her father instructed her that she was not required to "do anything that violated [her] Christian beliefs."[5] Wood sued, alleging the assignment violated the Establishment Clause by "impermissibly endors[ing] and advanc[ing] the Islamic religion."[6] Wood also alleged that completing the

"Most Muslim's [sic] faith is stronger than the average Christian." Id. (underlining in original). Although Wood raised an Establishment Clause claim on the basis of the comparative faith statement, this Essay will not discuss that claim. Id. at 313.

[2] Id. at 312.

[3] Id. at 312–13. Only by reciting the *shahada* with purpose, full comprehension, and firm conviction in Islam, may one convert to Islam. Shahadah: The Statement of Faith, BBC (Aug. 23, 2009), https://www.bbc.co.uk/religion/religions/islam/practices/shahadah.shtml#targetText=%22There%20is%20no%20God%20but,that%20Muhammad%20is%20his%20prophet [https://perma.cc/K7ET-AR9G]. There is no condition for having witnesses present when reciting the *shahada* to convert to Islam. However, it is always preferred for more than one witness to be present and more preferable if there is a larger gathering. If there are witnesses, one is usually an imam. To convert, or take the *shahada*, it is necessary to recite the *shahada* only once, but some assert that the individual should recite it two or three times. Compare Attiya Ahmad, Explanation is Not the Point: Domestic Work, Islamic *Dawa* and Becoming Muslim in Kuwait, 11 Asia Pac. J. Anthropology 293, 295 (2010) (suggesting two witnesses are required), and Conversion to Islam, Gov't. of Dubai, https://www.dc.gov.ae/PublicServices/ERequestDetails.aspx?lang=en&ServiceCode=6 [https://perma.cc/MY53-HY2U] (last visited Oct. 16, 2019) (requiring two witnesses), with Sheikh Ahmad Kutty, New Muslims: Does Making Shahadah Need Witnesses?, AboutIslam (Sept. 27, 2018), https://aboutislam.net/counseling/ask-the-scholar/muslim-creed/new-muslims-making-shahadah-need-witnesses/ [https://perma.cc/PCC6-YFSK] (emphasizing the person's conviction and noting that witnesses are not considered essential), and with Shahadah: The Statement of Faith, supra note 3 (declaring that individual must recite the *shahada* three times in front of witnesses to convert), and Shahada, Berkley Ctr. for Religion, Peace, & World Affairs, https://berkleycenter.georgetown.edu/essays/shahada [https://perma.cc/PU9S-URDB] (last visited Oct. 16, 2019) (declaring that "[a] single earnest public recitation of the Shahada in its original Arabic is all that is required to convert to Islam").

[4] *Wood,* 915 F.3d at 312–13 (underlining in original). The underlined text reflects the blanks Wood was required to fill. Id. at 313 n.1.

[5] Id. at 313 (alteration in original) (quoting Wood and her father). Wood's parents brought the suit on her behalf because Wood was a minor at the start of the lawsuit. When Wood turned eighteen, the complaint was amended to name her as a plaintiff. Id. at 313 n.2.

[6] Id. at 313 (alteration in original) (quoting Wood).

assignment would "depriv[e] [her] of her right to be free from government compelled speech."[7]

The U.S. Court of Appeals for the Fourth Circuit disagreed with Wood. It affirmed the U.S. District Court for the District of Maryland's summary judgment award in favor of the school officials, holding that "the challenged coursework materials . . . did not violate Wood's First Amendment rights, because they did not impermissibly endorse any religion and did not compel Wood to profess any belief."[8] The Fourth Circuit distinguished between reciting the *shahada*, which it suggested would constitute a devotional practice related to Islam, and filling in a worksheet.[9] Instead, Wood's teacher asked Wood "to write only two words of the *shahada* as an academic exercise."[10] The curriculum did not, contrary to Wood's claim, compel her "to confess by written word and deed her faith in Allah."[11]

While the Fourth Circuit reasoned that public school students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate"[12] under *Tinker v. Des Moines Independent Community School District*, First Amendment rights in school are "applied in light of the special characteristics of the school environment."[13] This is because "the educational process itself may sometimes require a state actor to force a student to speak when the student would rather refrain."[14] So, for instance, a school cannot force a student to profess beliefs with which she disagrees, but it may require a student to make arguments supporting those beliefs as part of her studies.[15] In making this point, it is evident that

[7] Id. (alteration in original) (quoting Wood).

[8] Id. at 312. For the District Court's ruling, see Wood v. Arnold, 321 F. Supp. 3d 565, 579 (D. Md. 2018).

[9] *Wood*, 915 F.3d at 319.

[10] Id.

[11] Id. at 318–19 (quoting Wood).

[12] Id. at 319 (quoting Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1969)).

[13] Id. (quoting *Tinker*, 393 U.S. at 506).

[14] C.N. v. Ridgewood Bd. of Educ., 430 F.3d 159, 187–90 (3d Cir. 2005) (holding that an anonymous survey administered to public school students and their parents did not violate their First Amendment rights).

[15] Id. at 187 (citing Brown v. Li, 308 F.3d 939, 953 (9th Cir. 2002) (explaining how, for example, a college history professor could assign students to write papers defending Prohibition)); see also id. (citing Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 273 (1988) (holding that a school may "exercise[e] editorial control over the style and content of student speech in school-sponsored expressive activities" but in doing so it is restricted to legitimate pedagogical purposes)).

the Fourth Circuit relied on *West Virginia State Board of Education v. Barnette*, the seminal case concerning compelled speech in the school setting.[16]

In light of these principles, the Fourth Circuit in *Wood v. Arnold* cited *C.N. v. Ridgewood Board of Education* for the proposition that a student's right against compelled speech "has limited application in a classroom setting."[17] The Third Circuit in *Ridgewood* invoked the Supreme Court's decisions in both *Hazelwood School District v. Kuhlmeier* and *Barnette* when considering the compelled speech claim (though, notably, the Fourth Circuit did not explicitly cite the *Barnette* standard).[18] Under *Hazelwood,* schools may *restrict* speech "so long as their actions are reasonably related to legitimate pedagogical concerns"[19] and completing assignments does not require a student to adhere to the conveyed messages.[20] However, *Hazelwood* is silent on schools' ability to compel speech.

Though the Fourth Circuit rejected Wood's free speech claim, neither the Fourth Circuit in *Wood* nor the Third Circuit in *Ridgewood* attempted to clarify "[h]ow far a school may go in compelling speech for what it views as legitimate pedagogical purposes."[21] The Supreme Court has yet to answer that question or grant certiorari to cases seeking an answer.[22]

[16] W. Va. St. Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943) (holding that compelling public school students to salute the American flag violates the First Amendment).

[17] *Wood*, 915 F.3d at 319. The *Ridgewood* court asserted that the law "subjects compelled speech to different levels of scrutiny depending on whether the government is also compelling a certain viewpoint as part of the compelled speech." 430 F.3d at 188. However, *Ridgewood* is distinguishable from *Wood*, as the students in *Ridgewood* did not face punishment for "fail[ing] to complete the survey or to select particular answers." Id. at 189.

[18] *Ridgewood*, 430 F.3d at 178 (citing *Hazelwood*, 484 U.S. at 273, 276 (upholding the school's decision not to print two pages of a student newspaper)).

[19] *Hazelwood*, 484 U.S. at 273.

[20] C.N. ex rel. J.N. v. Ridgewood Bd. of Educ., 319 F. Supp. 2d 483, 493 (D.N.J. 2004).

[21] *Ridgewood*, 430 F.3d at 178. The *Ridgewood* court did not conduct a *Hazelwood* analysis "because the survey administered at Ridgewood was not chosen by New Jersey as a means of advancing education, but by a group of local organizations and district officials who deemed it convenient to use the local school district as the venue for administration." Id.

[22] See Corder v. Lewis Palmer Sch. Dist. No. 38, 566 F.3d 1219, 1222–23 (10th Cir. 2009), cert. denied, 558 U.S. 1048 (2009) (whether compelling a student to apologize for referring to Jesus in a school-sponsored speech violated the First Amendment); Eklund v. Byron Union Sch. Dist., No. C 02-3004 PJH, 2003 U.S. Dist. LEXIS 27152, at *2-13 (N.D. Cal. Dec. 5, 2003), aff'd, 154 F. App'x 648 (9th Cir. 2005), cert. denied, 549 U.S. 942 (2006) (whether a teacher reading aloud the Qu'ran and requiring students to recite from the text violated the First Amendment).

Wood itself was denied certiorari by the Court.[23] As litigants continue to turn to the Free Speech Clause to handle religious speech claims,[24] courts struggle with what standard to use for compelled speech claims involving religious curricula.[25] And, if they opt to use *Hazelwood*, they may struggle with how to apply it.

This Essay argues that courts should employ the *Hazelwood* standard, initially created for school *restrictions* on student speech, for *compelled* speech claims in the classroom, as opposed to the *Barnette* standard. Though *Barnette* is considered the seminal case on compelled speech in schools, the *Hazelwood* standard better reflects the nuances of the classroom, especially when it comes to religious curricula.

Part I of this Essay explains how courts apply the Free Speech Clause to the public school setting under *Tinker*, *Hazelwood*, and *Barnette*. Part I.A will show that *Hazelwood*, rather than *Tinker*, applies in the classroom setting and will explain the *Hazelwood* standard. Part I.B will detail how different circuit courts emphasize either *Hazelwood* or *Barnette* to assess claims of compelled student speech in the classroom and the consequential lack of clarity over which standard to use. In light of the Court's reasoning in *Barnette* and *Hazelwood* and circuit case law, the *Hazelwood* standard is the proper framework for evaluation of compelled speech in the classroom, but *Barnette* remains informative to the inquiry.

Part II proposes how the *Hazelwood* standard should be applied and the extent to which it permits a school to compel student speech in the academic setting. First, under the "reasonably related" prong of *Hazelwood*, which governs the mechanism by which a teacher may instruct on a topic, the exercise must be part of a mandatory education effort rather than compelled recitation. Second, when assessing the

[23] Wood v. Arnold, 915 F.3d 308 (4th Cir. 2019), cert. denied, 2019 WL 5150487 (U.S. Oct. 15, 2019) (No. 18-1438).

[24] See Steven G. Gey, When Is Religious Speech Not "Free Speech"?, 2000 U. Ill. L. Rev. 379, 380–81 (arguing that litigants strategically make free speech claims to protect or challenge religious speech); Leslie Kendrick & Micah Schwartzman, Comment, The Etiquette of Animus, 132 Harv. L. Rev. 133, 136 (2018) (noting that litigants in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), relied on free speech doctrine given the success of compelled speech claims compared to claims based in the Free Exercise Clause).

[25] See, e.g., Brinsdon v. McAllen Indep. Sch. Dist., 863 F.3d 338, 348, 350 (5th Cir. 2017) (calling *Barnette* "most factually analogous" but distinguishing it from the present case and noting uncertainty as to the "proper analysis of compelled recitation" cases); Axson-Flynn v. Johnson, 356 F.3d 1277 (10th Cir. 2004); Brown v. Li, 308 F.3d 939 (9th Cir. 2002); Settle v. Dickson Cty. Sch. Bd., 53 F.3d 152 (6th Cir. 1995).

school's "legitimate pedagogical goals," academic rather than inculcative goals must be the controlling reason for schools to introduce religion into the required curriculum. While the Court is highly deferential to teachers regarding curricula, it is the academic purpose that generates that deference. However, in this second step of the analysis, *Barnette* should be considered, as a teacher may not instruct as to compel a belief.

I. THE APPLICATION OF THE FREE SPEECH CLAUSE TO THE PUBLIC SCHOOL SETTING

Generally, a school district's actions to restrict or regulate speech implicate the First Amendment.[26] Three major principles govern a student's right to free expression. First, under *Tinker v. Des Moines Independent Community School District*, if independent student speech will substantially disrupt school activities or interfere with the rights of other students, the school may regulate it.[27] Second, schools can restrict student speech in an instructional setting under *Hazelwood* if reasonably related to legitimate pedagogical concerns.[28] Third, under *Barnette*, schools cannot inculcate certain beliefs through the compelled expression of orthodox values.[29]

Considering these three principles, this Part first explains that *Hazelwood*—not *Tinker*—governs speech in the classroom. Second, by comparing circuit decisions that utilize *Barnette*[30] and those that utilize *Hazelwood*,[31] this Part argues that *Hazelwood* should govern Wood's compelled speech claim.

[26] Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1969) (discussing the applicability of the First Amendment within "the schoolhouse gate").

[27] Id. at 508–09.

[28] Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 273 (1988).

[29] W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943).

[30] See Mozert v. Hawkins Cty. Pub. Schs., 765 F.2d 75, 76–77 (6th Cir. 1985) (whether having students read a book that was against their fundamentalist Christian beliefs constituted compulsion); *Brinsdon*, 863 F.3d at 348–51 (whether students were compelled to recite the Mexican Pledge of Allegiance).

[31] See *Axson-Flynn*, 356 F.3d at 1285–86. The court "conclude[d] that Axson-Flynn's speech . . . constitutes 'school-sponsored speech' and is thus governed by *Hazelwood*." Id. at 1285; see also id. at 1286–90 (describing the Sixth, Ninth, and Eleventh Circuits' reliance on *Hazelwood*); Corder v. Lewis Palmer Sch. Dist. No. 38, 566 F.3d 1219, 1233 (10th Cir. 2009) (holding that the school did not violate the First Amendment when it made a student apologize for speaking about her faith during her graduation address).

A. Hazelwood *Over* Tinker*: Student Speech in the Classroom*

Tinker is the seminal case regulating speech in schools.[32] However, it does not govern school-sponsored activities. Instead, *Hazelwood* governs the classroom and what happens inside it.[33] This Section explains the Court's reasoning in *Tinker* and *Hazelwood*. It then describes the *Hazelwood* standard, which the Court devised to reflect the needs of the classroom, and its limitations.

In *Tinker*, the Supreme Court considered the constitutionality of a school's decision to suspend students for passively wearing black armbands protesting the Vietnam War. The Court held that a school district can regulate student speech if necessary to avoid material and substantial disruption to classroom operations.[34] However, the Court implied that a school may limit otherwise protected speech as part of a "prescribed classroom exercise," when it asserted that a regulation restricting speech for anything but a classroom exercise would likely violate the First Amendment.[35] Because the Court characterized the student speech in *Tinker* as pure student expression, it distinguished between how student speech is regulated based on location—inside or outside the classroom—and context—in connection to or separate from classroom activities. As this Essay will establish, student speech is more circumscribed when inside the school and made with respect to classroom activities.

The Court refined the standard for restricting student speech in the school setting in *Hazelwood*, confining the applicability of *Tinker*. In *Hazelwood*, the Court distinguished school-sponsored speech, which "members of the public might reasonably perceive to bear the imprimatur of the school," from pure student speech.[36] The Court considered a principal's decision to excise two pages concerning teen pregnancy and divorce from a student-produced newspaper without informing the students and held the decision to be constitutional.[37]

The Court determined that the principal did not violate the First Amendment for two reasons: first, the speech occurred as part of the school's curriculum and, second, the principal censored it for a legitimate

[32] Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969).
[33] *Hazelwood*, 484 U.S. at 267–70.
[34] *Tinker*, 393 U.S. at 509.
[35] Id. at 513.
[36] *Hazelwood*, 484 U.S. at 270–71.
[37] Id. at 263–64.

pedagogical purpose.[38] First, the Court found that a school newspaper is akin to a classroom activity or exercise.[39] In doing so, it broadly defined a school's curriculum as activities that are "supervised by faculty members and designed to impart particular knowledge or skills to student participants and audiences" whether or not they occur in the classroom itself.[40] The newspaper counted as a classroom exercise because of its faculty supervision and use within a journalism class, even though members of the community could obtain the paper.[41]

Second, and more importantly, the Court rejected the applicability of *Tinker* and determined that a school may exercise authority to decide curriculum content.[42] In particular, the school may restrict student speech in school-sponsored activities if doing so is "reasonably related to legitimate pedagogical concerns."[43] The Court applied this standard to the principal's decision. In distinguishing *Hazelwood* from *Tinker*, the Court noted that the school may not be required to "affirmatively . . . promote particular student speech."[44]

The consequence of the Court's decision in *Hazelwood* is that while *Tinker* sets higher constitutional protections for student speech, *Hazelwood* lowers the bar for educators. Said differently, the Court will allow schools to curtail student speech when it comes to certain classroom activities. The *Hazelwood* standard appears to afford "wide latitude" to schools as courts tend to "defer[] to the expertise of school authorities in deciding what constitutes a valid pedagogical purpose."[45] After all, *Hazelwood* requires merely legitimate (as opposed to compelling) pedagogical purposes, and the purposes need be only reasonably related (as opposed to narrowly tailored). Strict scrutiny, which is typically applied in First Amendment cases and in *Tinker*, may seem preferable when it comes to school-mandated speech, especially when it relates to religious instruction. However, imposing a more stringent standard than

[38] Id. at 271–74.
[39] Id. at 271.
[40] Id.
[41] Id. at 262, 267–270.
[42] Id. at 272–73.
[43] Id. at 273.
[44] Id. at 270–73. To be precise, the Court noted that "[t]he question whether the First Amendment requires a school to tolerate particular student speech—the question that we addressed in *Tinker*—is different from the question whether the First Amendment requires a school affirmatively to promote particular student speech." Id. at 270–71.
[45] Samuel P. Jordan, Comment, Viewpoint Restrictions and School-Sponsored Student Speech: Avenues for Heightened Protection, 70 U. Chi. L. Rev. 1555, 1555 (2003).

Hazelwood may chill the speech of the school itself, as teachers would lose control over their curricula, and undermine the school's educational mission.[46] The Court noted this in *Hazelwood*[47] and likely developed the legitimate purposes standard with these concerns in mind.

Further, since *Hazelwood*, lower courts have expanded the decision's scope beyond its facts to curricula more generally. For example, the Tenth Circuit suggested that *Hazelwood* applies "in the context of a school's right to determine what to teach and how to teach it in its classrooms."[48] Likewise, the Sixth Circuit reasoned that "[w]here learning is the focus, as in the classroom, student speech may be even more circumscribed than in the school newspaper or other open forum."[49]

The only limitation to *Hazelwood*'s permission of "limit[ing] speech or grad[ing] speech in the classroom in the name of learning" is that the restriction cannot be "a pretext for punishing the student for her race, gender, economic class, religion or political persuasion."[50] As a result, the Ninth Circuit has reasoned that teachers may "require that a student comply with the terms of an academic assignment."[51] Even if the student disagrees with the assignment, "the First Amendment does not require an educator to change" it.[52] *Hazelwood* provides a manageable standard by which courts can scrutinize classroom exercises. Students should not be subject to a curriculum that does not advance legitimate pedagogical goals or modes of instruction that are not reasonably related to those goals.[53] That said, given their expertise and purpose as an educational facility,

[46] Alexis Zouhary, Note, The Elephant in the Classroom: A Proposed Framework for Applying Viewpoint Neutrality to Student Speech in the Secondary School Setting, 83 Notre Dame L. Rev. 2227, 2258 (2008); see also R. George Wright, School-Sponsored Speech and the Surprising Case for Viewpoint-Based Regulations, 31 S. Ill. U. L.J. 175, 212 (2007) (foreseeing "increased risks of litigation" with applying strict scrutiny to reasonably regulated school-sponsored speech).

[47] See *Hazelwood*, 484 U.S. at 271 (noting that, among other rights and responsibilities, "[e]ducators are entitled to exercise greater control over this second form of student expression to assure that participants learn whatever lessons the activity is designed to teach").

[48] Axson-Flynn v. Johnson, 356 F.3d 1277, 1284 (10th Cir. 2004).

[49] Settle v. Dickson Cty. Sch. Bd., 53 F.3d 152, 155 (6th Cir. 1995).

[50] Id.

[51] Brown v. Li, 308 F.3d 939, 949 (9th Cir. 2002). The plaintiff claimed his university violated the First Amendment when it denied approval of a portion of his graduate thesis. Id. at 947. The Ninth Circuit applied *Hazelwood* and upheld the thesis committee's decision as it "was reasonably related to a legitimate pedagogical objective: teaching Plaintiff the proper format for a scientific paper." Id. at 952.

[52] Id. at 949.

[53] See infra Part II (discussing the two prongs of *Hazelwood*).

schools and teachers should still retain some level of control over the curriculum. As long as the school's restriction on student speech is reasonably related to legitimate pedagogical purposes, the federal courts cannot—and should not—intervene.

B. In Cases of Compelled Student Speech: Use Hazelwood *Over* Barnette

Though it is clear that *Hazelwood* applies to restrictions on student speech related to school-sponsored activities, it remains unclear what standard applies when the school seeks to *compel* viewpoints or speech from students in these settings. Compulsion adds a complication to the analysis of student speech in the classroom. Some, for instance, argue the principles in *Barnette* derive a "more workable standard" for compelled speech claims.[54] That said, this Section will argue courts should use *Hazelwood* over *Barnette* for claims concerning student speech produced by religious curriculum. This Section proceeds in three parts. First, it describes how a court could theoretically use either case to assess compelled speech claims. Second, it introduces the facts and holdings in *Barnette*. Third, it analyzes how courts differ or appear not to settle on the appropriate standard for compelled speech claims in the classroom. It will then argue *Hazelwood* should control.

Nothing explicitly prevents *Hazelwood* from reaching compelled student speech, beyond the argument that the facts of *Hazelwood* did not touch on compulsion. Just as educators can restrict students from writing on certain topics, they can demand students produce writings on certain issues. Further, compelling student speech still avails *Hazelwood*'s purpose of "preserv[ing] an environment conducive to fulfilling the state's educational mandate."[55] In this context, it is precisely because of the state's mandate to educate that it is asking students to speak. Given the discretion teachers have in designing their curricula, and the fact that speech is occurring as part of a classroom exercise, the *Hazelwood* standard should control.

---

[54] See Brandon C. Pond, Note, To Speak or Not to Speak: Theoretical Difficulties of Analyzing Compelled Speech Claims Under a Restricted Speech Standard, 2010 BYU Educ. & L.J. 149, 159.

[55] James C. Farrell, Note, Johnny Can't Read or Write, but Just Watch Him Work: Assessing the Constitutionality of Mandatory High School Community Service Programs, 71 St. John's L. Rev. 795, 831 (1997).

Still, *Barnette*, which preceded *Tinker* and *Hazelwood*, complicates this analysis. Professor Joseph J. Martins describes *Barnette* as "explain[ing] the limits the compelled speech doctrine imposes upon state-mandated curriculum."[56] *Barnette* concerned the constitutionality of a school decision to expel two Jehovah's Witnesses for refusing to salute the flag during the Pledge of Allegiance.[57] The students claimed their religion forbade the worship of any "image" other than God.[58] The Supreme Court overturned the students' expulsions, ruling that the First Amendment prohibited any "[c]ompulsory unification of opinion."[59] Further, it struck down the statute requiring students to salute the flag, which it considered the same as requiring them "to declare a belief"[60] and "utter what is not in [their] mind[s]."[61]

The Court further justified its conclusion by observing that the school required students to salute the flag to promote "national unity" and not because doing so had "educational value."[62] The Court classified the compulsion as serving a social goal that did not merit deference to education officials.[63] In fact, the Court suggested its ruling encouraged democratic values rather than suppressed them.[64] It also confirmed that schools are "not at liberty to intentionally command patriotism through a mandatory pledge."[65] Thus, if public schools use their curricula to compel students to affirm an orthodoxy, strict scrutiny applies.[66]

Whether *Barnette* applies on its own in such cases is unclear, as the Supreme Court has not considered a compelled student speech case since *Barnette*. Further, *Barnette*'s ruling "was handed down more than twenty-

[56] Joseph J. Martins, The One Fixed Star in Higher Education: What Standard of Judicial Scrutiny Should Courts Apply to Compelled Curricular Speech in the Public University Classroom?, 20 U. Pa. J. Const. L. 85, 103 (2017).

[57] W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 629 (1943).

[58] Id.

[59] Id. at 641 (declaring that "[c]ompulsory unification of opinion achieves only the unanimity of the graveyard").

[60] Id. at 631.

[61] Id. at 634; see also Sheldon v. Fannin, 221 F. Supp. 766, 775 (D. Ariz. 1963) (issuing an injunction restraining an elementary school's board of trustees from expelling Jehovah's Witnesses who silently refused to stand for the National Anthem).

[62] *Barnette*, 319 U.S. at 631 n.12.

[63] Id. at 637 ("That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source . . . .").

[64] Id.

[65] Martins, supra note 56, at 105.

[66] Id. at 107.

five years before the Court first started to recognize that a lower standard of First Amendment protection may be afforded to public high school students in certain situations."[67] Thus, if a case concerning compelled speech in the classroom were to be heard now in the Supreme Court, it is unclear whether the Court would decide it under *Barnette* or *Hazelwood*. Circuits have been left on their own to answer that question, to varying results.

The Fifth Circuit used *Barnette* explicitly in *Brinsdon v. McAllen Independent School District* to conclude that, where a compelled utterance by a student has no purpose but "to compel the speaker's affirmative belief," the First Amendment is not violated.[68] The court held the school did not unconstitutionally compel students to recite the Mexican Pledge of Allegiance in Spanish class because the exercise was not "seeking to force orthodoxy."[69] The court contrasted the facts with *Barnette*, which analyzed whether requiring a student to recite a pledge linked with an expectation to adhere to its words and meaning was unlawful compulsion.[70] However, in *Brinsdon*, the students were not actually required to pledge allegiance to Mexico.[71] In assessing case law across the Seventh,[72] Ninth,[73] and Tenth Circuits,[74] the Fifth Circuit observed:

> [I]t is clearly established that a school may compel some speech. Otherwise, a student who refuses to respond in class or do homework would not suffer any consequences. Students, moreover, generally do not have a right to reject curricular choices as these decisions are left to the sound discretion of instructors.[75]

[67] Nora Sullivan, Note, Insincere Apologies: The Tenth Circuit's Treatment of Compelled Speech in Public High Schools, 8 First Amend. L. Rev. 533, 548 (2010).

[68] Brinsdon v. McAllen Indep. Sch. Dist., 863 F.3d 338, 349–50 (5th Cir. 2017).

[69] Id. at 350.

[70] Id.

[71] Id. at 349.

[72] Hedges v. Wauconda Cmty. Unit Sch. Dist. No. 118, 9 F.3d 1295, 1302 (7th Cir. 1993) (holding it proper to "deny students the ability to express themselves by adopting the words of others").

[73] Brown v. Li, 308 F.3d 939, 953 (9th Cir. 2002) (discussing that a teacher can permissibly assign students to write opinions in the viewpoints of Justices Ginsburg and Scalia).

[74] Axson-Flynn v. Johnson, 356 F.3d 1277, 1291–93 (10th Cir. 2004) (allowing a teacher to require a student to recite lines from a play that are contrary to her religious beliefs).

[75] *Brinsdon*, 863 F.3d at 350.

Nowhere in *Brinsdon* did the Fifth Circuit consider *Hazelwood*; however, the court did refer to its reasoning. In determining that the students were not unconstitutionally compelled, the court noted that the pledge was "part of a cultural and educational exercise."[76] Further, the Fifth Circuit cited *Axson-Flynn v. Johnson*, which applied *Hazelwood* to compelled or school-mandated speech in the university setting.[77] Specifically, the Tenth Circuit held that an educational institution may compel students to engage in a classroom exercise "for legitimate pedagogical reasons."[78] Thus, while the *Brinsdon* court relied on *Barnette* rather than on *Hazelwood*, its citation to *Axson-Flynn* indicates that it did not foreclose reliance on *Hazelwood* in some capacity.

That said, by using *Hazelwood*, the Tenth Circuit effectively equated compelled speech and restricted speech in *Axson-Flynn*.[79] The Fifth Circuit's decision in *Brinsdon* did not make a similar conclusion, as it noted that *Axson-Flynn* was not "directly applicable" to the case of *Brinsdon*,[80] and emphasized *Barnette* more heavily in its analysis. The Tenth Circuit, on the other hand, more clearly prefers *Hazelwood* for compelled student speech cases, as demonstrated by its decisions in *Corder v. Lewis Palmer School District* and *Axson-Flynn*.[81]

Specifically, in *Axson-Flynn*, the Tenth Circuit found that the student's speech was school-mandated and explicitly evaluated it under *Hazelwood*.[82] The student argued that being forced "to say words she finds offensive constitute[d] compelled speech," violating her First Amendment rights.[83] In particular, the student, a member of the Church of Jesus Christ of Latter-day Saints, refused to swear or take God's name in vain during classroom acting exercises.[84] The Tenth Circuit emphasized the less-than-stringent standard of *Hazelwood* but also underscored the court's role in ensuring that the school's purported legitimate "pedagogical concerns" were not merely pretextual.[85] Though

[76] Id. at 349.
[77] Id. at 350 (citing *Axson-Flynn*, 356 F.3d at 1291–92).
[78] Id. (citing *Axson-Flynn*, 356 F.3d at 1291–92).
[79] Pond, supra note 54, at 155.
[80] *Brinsdon*, 863 F.3d at 350.
[81] Corder v. Lewis Palmer Sch. Dist. No. 38, 566 F.3d 1219, 1229 (10th Cir. 2009); Axson-Flynn v. Johnson, 356 F.3d 1277, 1285–86 (10th Cir. 2004).
[82] *Axson-Flynn*, 356 F.3d at 1285–86.
[83] Id. at 1290.
[84] Id. at 1280.
[85] Id. at 1292–93.

the school did not "explicitly threaten[]" the student "with expulsion," the court found that the school "attempted to compel [the student] to speak."[86] Still, the court gave "substantial deference" to the school's asserted goals[87] and remanded the case to the lower court to determine whether the school's interest was merely a "pretext for religious discrimination."[88]

In *Corder*, the Tenth Circuit returned to the *Hazelwood* standard for cases involving compelled student speech.[89] There, the valedictorian claimed the school unconstitutionally forced her to apologize for expressing her appreciation for Jesus Christ and urging the audience to learn more about the religious figure's sacrifice during her graduation address.[90] The school had an "unwritten policy of requiring students to submit their valedictory speeches for content review prior to presentation," but the speech the student provided to "the principal for review did not mention religion."[91] Had the school known the student would discuss her Christian faith in her address, it would have required the student to excise it.[92] In assessing the student's First Amendment challenge to the school's actions, the Tenth Circuit considered, first, whether the school could exercise editorial control over the speech, and, second, whether the school could compel the student's apology. For both questions, the court relied on *Hazelwood*.

To determine that the school could exercise editorial control over the speech, the Tenth Circuit made a threshold determination, finding that the graduation ceremony was a school-sponsored event.[93] Then, the court assessed that the school could permissibly review the student's speech as it was a "learning opportunity" and graduation "impart[s] lessons on discipline, courtesy, and respect for authority."[94] As for the compelled speech claim, the court concluded that a school may tell a student "what to say when she disregards the School District's policy regarding the school-sponsored speech, as long as the compulsion is related to a

[86] Id. at 1290.
[87] Id. (quoting Fleming v. Jefferson Cty. Sch. Dist. R-1, 298 F.3d 918, 925 (10th Cir. 2002)).
[88] Id. at 1293. The issue was not further litigated because the parties settled. Id.
[89] Corder v. Lewis Palmer Sch. Dist. No. 38, 566 F.3d 1219, 1230–32 (10th Cir. 2009).
[90] Id. at 1222–23, 1230.
[91] Id. at 1222.
[92] Id. at 1223. To receive her diploma, the principal required the student to include in her apology a sentence clarifying that she understood she would not have been allowed to discuss her religious views, "had [she] asked ahead of time." Id.
[93] Id. at 1229.
[94] Id.

legitimate pedagogical purpose."[95] Since the apology itself was school-sponsored speech, the court determined that the school "was free to compel [the student's] speech" if it met the *Hazelwood* standard.[96] The Tenth Circuit found that the "forced apology" was "reasonably related"[97] to the pedagogical goal of "learning."[98] Thus, according to the Tenth Circuit, a school does not violate a student's First Amendment rights if the speech is school-sponsored and the restriction or compulsion survives the *Hazelwood* analysis.[99]

In light of the Sixth and Tenth Circuit's decisions, courts may reasonably rely primarily on either *Barnette* or *Hazelwood* to assess compelled speech claims. Indeed, one possible way to summarize the scope of *Hazelwood* and *Barnette*—as influenced by subsequent case law—is that *Hazelwood* concerns the school promotion of student speech while *Barnette* concerns the student promotion of school speech. That said, courts should use *Hazelwood* as the framework for their analysis.

When it comes to teaching religion in classes, the *Hazelwood* standard is more useful, but deferential, providing a mechanism by which to assess the validity of the assignment or restriction. In particular, judicial scrutiny under *Hazelwood* does not end when the Court finds no compulsion. Instead, the Court may inquire further into whether the school availed legitimate pedagogical goals and consider compulsion as part of that analysis. For example, if the Court only applied *Barnette* to *Wood*, the Court's analysis would cease when it determined that the *shahada* assignment did not "compel" Wood; the school did not ask her to ascribe to a belief of Islam. However, if the Court applied *Hazelwood*, it would be required to consider whether the school had a legitimate pedagogical goal for the *shahada* assignment and whether the assignment itself was reasonably related to that goal, beyond merely compulsion.

Still, the *Hazelwood* analysis goes further in that students must not be required to "affirm a belief in the subject of the readings" or determine another religion as equal to their own.[100] Educators must walk the thin line between classroom discussion of faith that is "consistent with

[95] Id. at 1231 (citing C.N. v. Ridgewood Bd. of Educ., 430 F.3d 159, 178 (3d Cir. 2005)).
[96] Id.
[97] Id.
[98] Id. at 1232.
[99] Id. at 1231–32.
[100] Martin H. Redish & Kevin Finnerty, What Did You Learn in School Today? Free Speech, Values Inculcation, and the Democratic-Educational Paradox, 88 Cornell L. Rev. 62, 81 n.77 (2002).

appropriate curricular standards" and that which appears to proselytize religion.[101] While school officials may seek to craft a curriculum that exposes students to "diverse traditions and cultural experiences," they must also "remain[] mindful of the expectations and rights of the children and their parents."[102]

The counterarguments to using *Hazelwood* primarily center on the facts on which the Court decided *Hazelwood* and its "deferential" approach. First, examining the facts of *Hazelwood* alone, the basis for equating compelled speech to restricted speech as the Tenth Circuit has done is not clear.[103] After all, *Hazelwood* concerned deleting text from a student newspaper, whereas *Axson-Flynn* concerned "compelling a student to speak as part of a course requirement,"[104] and *Corder* concerned compelling a student to apologize for her reference to Jesus. Thus, some may argue that the Court never intended *Hazelwood* to apply to situations of compelled speech.

Second, courts may avoid using *Hazelwood* for compelled speech claims because granting "substantial deference" to school officials means the decision to compel only needs to be reasonably related to pedagogical concerns.[105] As mentioned above, the Tenth Circuit only qualified the application of *Hazelwood* to compelled speech claims with a consideration of whether the action served as "a pretext for invidious discrimination."[106] A court may fear that a substantially deferential standard may fail to protect students' rights when it comes to religious curricula. A deferential standard may also subject students to uncomfortable classroom assignments.

Further, in light of *Barnette* and *Brinsdon*, a court may opt to analyze compelled or school-mandated speech cases only under *Barnette*, rather than *Hazelwood*.[107] Thus, as Brandon C. Pond asserts, if courts adopted

[101] Busch v. Marple Newtown Sch. Dist., 567 F.3d 89, 96 (3d Cir. 2009); see also Walz ex rel. Walz v. Egg Harbor Twp. Bd. of Educ., 342 F.3d 271, 280 (3d Cir. 2003) (noting that a school's restriction of religious expression during a classroom holiday party is "designed to prevent proselytizing speech that, if permitted, would be at cross-purposes with its educational goal").

[102] *Busch*, 567 F.3d at 98.

[103] This is putting aside the argument that compelling speech is similar to restricting students from speaking on any other topic than what the teacher permits.

[104] Pond, supra note 54, at 150.

[105] Id. at 157 (quoting Axson-Flynn v. Johnson, 356 F.3d 1277, 1290 (10th Cir. 2004)).

[106] Id.; see Axson-Flynn v. Johnson, 356 F.3d 1277, 1292–93 (10th Cir. 2004).

[107] See Pond, supra note 54, at 159 (suggesting that "school-mandated speech" should be evaluated under *Barnette* and not *Hazelwood*).

Barnette as the standard, they would "first decide whether the speech is in fact compelled, and if so, whether the compulsion 'invades the sphere of intellect and spirit' proscribed by the First Amendment."[108] Pond concedes that the standard-like language from *Barnette* in "the sphere of intellect and spirit protected by the First Amendment" is ambiguous.[109] Thus, Pond emphasizes that courts should primarily consider "whether the compulsion requires espousal of a particular idea."[110]

However, there are two major weaknesses in Pond's arguments. First, the courts must still allow schools to achieve their educational mandate. Second, despite Pond's beliefs, a classroom exercise may more easily pass the *Barnette* standard and *Hazelwood* may better protect students' rights rather than mere reliance on *Barnette*. In many instances, there is no direct constitutional threat from a school's curricular choices, as "[n]o student has a First Amendment right" to be or not to be taught certain topics.[111] It is constitutional to teach about religion, the role of religion in history, and the historical or literary values of religious texts.[112] While the Court scrutinizes the introduction of religion in schools, [113] public schools may still teach about religion as long as they do not promote or denigrate it.[114]

Standing alone, *Barnette* does not fully account for the intricacies of teaching religion in classrooms. School assignments inherently compel answers, and likely will survive *Barnette* scrutiny because it is seldom understood that the student wholeheartedly subscribes to what she utters in class even if she may have to espouse a particular view. *Hazelwood* appropriately grants teachers deference over their curricula, but that does not mean courts will abdicate their duty in scrutinizing whether teachers achieve their aims constitutionally, especially when it comes to religious curriculum. Thus, while *Barnette* serves to place an essential gloss on

[108] Id. (quoting W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943)).
[109] Id. at 159–60.
[110] Id. at 160.
[111] Redish & Finnerty, supra note 100, at 81.
[112] James E. Ryan, The Supreme Court and Public Schools, 86 Va. L. Rev. 1335, 1383–84 (2000); see Epperson v. Arkansas, 393 U.S. 97, 106 (1968) (permitting religious education "from a literary and historic viewpoint, presented objectively as part of a secular program"); Abington Sch. Dist. v. Schempp, 374 U.S. 203, 225 (1963) (permitting the study of religion within a secular program).
[113] Ryan, supra note 112, at 1411.
[114] Id. at 1408.

courts' consideration of compelled student speech claims, the *Hazelwood* standard should define the contours of the court's analysis.

II. WHEN CAN A TEACHER TEACH RELIGION, WHEN MUST A STUDENT LEARN RELIGION

Relying on *Hazelwood* gives space to clarify further how its prongs should be understood in determining whether an assignment that compels religious speech is constitutionally permissible. To be precise, a court should apply *Hazelwood* to compelled student speech cases concerning religious curriculum in the following manner. First, for a classroom exercise to be considered "reasonably related" to the school's educational goals, a court should find the assignment to be part of a mandatory education effort rather than a compelled recitation. Second, academic rather than inculcative goals must be the controlling pedagogical goal of schools when introducing religion in the required curriculum. It is here, in the second prong, that courts should bear *Barnette* in mind.

A. Compelled Recitation versus Mandatory Education Efforts

In the first prong of *Hazelwood*, the teaching mechanism or method that a teacher chooses to use must be "reasonably related" to achieving her legitimate pedagogical goal.[115] A school may have a legitimate pedagogical goal, but if the mechanism by which it carries out the purpose is impermissible, then the assignment or requirement imposed on students fails judicial scrutiny. At this step, a court should consider whether the exercise is a compelled recitation or a "mandatory education effort[]."[116] Compelled recitations, like the Pledge of Allegiance, usually violate the First Amendment, whereas mandatory education efforts, like classroom exercises designed to teach, are typically permitted under the First Amendment.[117]

Professor Seana Shiffrin finds mandatory education efforts less constitutionally troubling for two reasons. First, teachers foster students' "intellectual independence" when they address students as an audience rather than when they compel students to speak.[118] Second, teachers

[115] Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 273 (1988).

[116] Seana Valentine Shiffrin, Essay, What is Really Wrong with Compelled Association?, 99 Nw. U. L. Rev. 839, 883–84 (2005).

[117] Id.

[118] Id. at 884.

promote students' critical thinking when they "engage[] with the questions and doubts of [their] students."[119] As commentator Nora Sullivan expounds, assignments like research papers or exercises in which a student "advocate[s] a particular viewpoint in the course of a classroom debate" promote such desired critical thinking.[120] In contrast, she proposes that *Barnette* should apply in "cases involving compelled recitations."[121] Where mandatory education efforts are involved, "courts should allow a school's compelled speech requirement to stand in order to give teachers enough power to teach critical thinking skills."[122] There, the *Hazelwood* standard likely applies.

While Professor Shiffrin's distinction is helpful, her reasoning does not legitimize a fill-in-the-blank assignment like the one implicated in *Wood*. Due to the lenient nature of "reasonably related," a court may likely find many assignments permissible under the first prong of *Hazelwood*; however, they do not have to reflect Professor Shriffin's justifications. For example, students are not an audience that can engage critically with the instruction by merely filling out a worksheet, but that worksheet is likely permissible. Similarly, a multiple-choice assignment that required Wood to pick the *shahada* as a tenet of Islam from a list of options would likely not have given rise to a compelled speech claim. On the other hand, if Wood's teacher had the students recite the *shahada* aloud, that would likely fall in the compelled recitation category.

But it is critical to note what exactly "reasonably related" means. As the Tenth Circuit clarified, the mechanism does not need to be "necessary to the achievement of its goals" or "the most effective means of teaching,"[123] and it may still be reasonably related. If "reasonably related" were defined more stringently, it "would effectively give each student veto power over curricular requirements," which the court refused to permit.[124] Thus, exercises such as the *shahada* assignment are likely

[119] Id.

[120] Sullivan, supra note 67, at 559; see also Axson-Flynn v. Johnson, 356 F.3d 1277, 1290–91 (10th Cir. 2004) ("[S]chools also routinely require students to express a viewpoint that is not their own in order to teach the students to think critically . . . .").

[121] Sullivan, supra note 67, at 569.

[122] Id.

[123] *Axson-Flynn*, 356 F.3d at 1292 (emphasis omitted).

[124] Id.; see also Regents of the Univ. of Mich. v. Ewing, 474 U.S. 214, 225 (1985) ("[A court] may not override [a teacher's professional judgment] unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment."); Settle v. Dickson Cty. Sch. Bd., 53 F.3d 152, 155 (6th Cir. 1995) ("So long as the teacher limits speech or grades speech

mandatory education efforts that do not automatically raise constitutional concerns.

Still, characterizing a graded task as a mandatory education effort should not be construed as a rubber stamp of constitutionality. A court should not conclude its analysis of assignments like the fill-in-the-blank worksheet here. While a classroom exercise that is considered to be a mandatory education effort may be less constitutionally suspect than a compelled recitation, the purpose of the activity still must be assessed to determine whether the activity advances a "legitimate pedagogical goal."

B. Academic versus Inculcative Pedagogical Goals

In assessing the "legitimate pedagogical goals" of the school under *Hazelwood*, courts should consider the centrality of the academic versus inculcative goals of the school in sponsoring a classroom activity. Professor James Ryan observed that if an educator seeks to teach religion to promote "community values,"[125] such as pluralism, her curriculum will receive harsher judicial scrutiny than if academic reasons motivated her curricular choices.[126] In other words, while a school may promote certain values within a classroom exercise, the Court "has limited the ability of schools to inculcate values for their own sake."[127]

What the courts have considered a legitimate pedagogical purpose under *Hazelwood* appears to be broad. Courts have included behavioral and value-based concerns; as the Sixth Circuit declared, "the universe of legitimate pedagogical concerns is by no means confined to the academic."[128] As Samuel P. Jordan summarizes, "[o]nce speech is

in the classroom in the name of learning and not as a pretext for punishing the student for her race, gender, economic class, religion or political persuasion, the federal courts should not interfere.").

[125] Ryan, supra note 112, at 1351–52.

[126] See, e.g., Susan H. Bitensky, A Contemporary Proposal for Reconciling the Free Speech Clause with Curricular Values Inculcation in the Public Schools, 70 Notre Dame L. Rev. 769, 770–71 (1995) (noting that "teaching processes of reasoning about values while avoiding the transmission of any definite moral content . . . has generally been spared accusations of constitutional infirmity," unlike the choice to "inculcat[e] selected values").

[127] Ryan, supra note 112, at 1419–20; see Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 272–73 (1988); W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 645–46 (1943) (Murphy, J., concurring); id. at 631 n.12.

[128] Poling v. Murphy, 872 F.2d 757, 762 (6th Cir. 1989). The Sixth Circuit held that the school did not violate the First Amendment by disqualifying a student for the student council presidency for "discourteous and rude remarks about" school officials "in the course of a speech delivered at a school-sponsored assembly." Id. at 758 (internal quotation marks

identified as school-sponsored, courts typically defer to a school's restriction of the speech if it can make a plausible argument that any pedagogical concern is implicated."[129] For example, in *Bethel School District No. 403 v. Fraser*, the Court affirmed that public schools serve the purpose of teaching fundamental values "essential to a democratic society," like religious and political tolerance.[130] Likewise, in *Mozert v. Hawkins County Board of Education*, the Sixth Circuit permitted a critical reading approach used by the school because it sought to teach civil tolerance of religion.[131]

Nevertheless, according to Professor Ryan, courts defer to schools in assignments that appear to teach values rather than pursue academic goals because values are inevitably taught in the course of education and teachers should retain some control over their curricula.[132] Partly motivating the limited First Amendment rights of students is the Supreme Court's characterization of the government as an "educator" such that education officials are afforded "greater leeway to bend constitutional rights" so that they may "achieve certain educational goals."[133] Academic goals afford more constitutional deference to schools, but inculcative goals afford some.[134] Still, cases like *Barnette* "place significant limitations on the ability of schools to inculcate students with dominant cultural values."[135] A teacher may seek to expose schoolchildren to Islam to promote pluralism, just as a teacher may require that students pledge allegiance to promote patriotism as in *Barnette*. However, if those are the teacher's goals—rather than academic goals—and it offends the student's religious beliefs, *Barnette* would inform the court's negative assessment of those classroom exercises.[136] As a result, courts should consider

omitted). It found that "[c]ivility is a legitimate pedological concern," as the concern need not be academic. Id. at 758, 762. However, the court did place importance on the fact that "the school officials made no attempt to compel [the student] to say anything he did not want to say." Id. at 763.

[129] Jordan, supra note 45, at 1570.

[130] 478 U.S. 675, 681 (1986).

[131] 827 F.2d 1058, 1068–69 (6th Cir. 1987).

[132] Ryan, supra note 112, at 1419.

[133] Id. at 1338.

[134] Id. at 1423.

[135] Id. at 1339 n.14.

[136] Professor Ryan clarifies that *Barnette* and *Tinker* demonstrate that "schools can try to socialize students outside of the context of academic exercises, via mandatory flag salutes"; however, "efforts at socialization must be justified as linked to the academic process itself; where that link does not exist (or is not seen by the Court), socialization is not privileged in the same way that academic activities are." Id. at 1354 n.78.

Barnette when assessing whether an assignment serves as a legitimate pedagogical goal under *Hazelwood*.

The factors considered by the Sixth Circuit in *Brinsdon v. McAllen Independent School District* further support Professor Ryan's distinction between inculcative and academic goals and the use of *Barnette* in assessing whether the assignment related to a legitimate educational goal. Specifically, despite the risk of academic penalty for noncompliance, the court found it essential that (1) there was "no direct evidence . . . of a purpose to foster Mexican nationalism," (2) "the pledge was educational," and (3) "the assignment was a singular event."[137] The Sixth Circuit's separate analysis of (1) and (2) indicates that while a school may pursue an inculcative goal to foster tolerance,[138] it cannot pursue an inculcative goal to foster a belief in a specific religion or ideology. Thus, even if Wood had to fill out the entire *shahada* or recite it aloud, if there was (1) no evidence of a purpose to foster a belief in Islam, (2) the recitation was educational, and (3) it was a singular event, the assignment would likely survive *Barnette*. However, if the teacher's purpose in giving the *shahada* assignment was not academic, Wood's compelled speech claim gains some merit. By focusing on the educational purpose of the classroom exercise, *Brinsdon* and decisions arising from the Ninth[139] and Seventh Circuits[140] affirm that the academic purpose must control the decision to engage in that exercise.

CONCLUSION

When faced with claims challenging school assignments on religion, courts should apply *Hazelwood*. Further, while *Barnette* is relevant, it should not control the analysis given how *Hazelwood* better addresses the nuances of the classroom and school assignments. In applying *Hazelwood*, courts should first determine whether the exercise is a compelled recitation or mandatory education effort under its "reasonably

[137] Brinsdon v. McAllen Indep. Sch. Dist., 863 F.3d 338, 349 (5th Cir. 2017).

[138] See, e.g., Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 681 (1986); Mozert v. Hawkins Cty. Bd. of Educ., 827 F.2d 1058, 1068 (6th Cir. 1987).

[139] Brown v. Li, 308 F.3d 939, 952 (9th Cir. 2002) (Although not a K-12 school case, the court importantly upheld the thesis committee's decision on an understanding it was pursuing an academic goal).

[140] Zykan v. Warsaw Cmty. Sch. Corp., 631 F.2d 1300, 1306 (7th Cir. 1980) (recognizing that a student may make a claim if it is shown that the school was substituting legitimate pedagogic choices with "rigid and exclusive indoctrination").

related" prong. Second, in considering the "legitimate pedagogical purpose" of the religion-focused assignment, courts should defer to the school where its purpose serves academic rather than inculcative goals.

Even when it comes to learning about religious views a student opposes, the state's interest in fulfilling its educational mandate dampens that student's right to free expression. Teaching about religion is constitutional and important to fostering a pluralist and tolerant society, but it is a delicate exercise. On the one hand, a teacher may convey the tenets of a faith improperly and abuse her discretion. On the other hand, the lesson may place a student in a double-bind where she has to balance her religious views and her desire to avoid academic sanction. We can postulate whether Wood's complaint came from a deep-seated dislike of Islam, whether the school should have also had students conduct a similar exercise for other faiths, or whether another form of the assignment could have mitigated constitutional concerns.[141]

Regardless, schools are treated differently under the First Amendment precisely because of their educational mandate; that is what distinguishes them from public fora. They may restrict student speech and compel students to speak on topics within their curricula. They may include religion within their curricula and determine to what extent and through which methods they discuss religion. However, to protect the judicial deference they receive and to respect student's expectations and rights, schools should ensure that their focus remains foremost academic.

[141] The Thomas More Law Center ("TMLC"), which filed the lawsuit on behalf of Ms. Wood, described its concerns in a press release. See Thomas More Law Center Asks Supreme Court to Decide How Far Schools Can Promote Islam and Disparage Christianity, Thomas More L. Ctr. (May 15, 2019), https://www.thomasmore.org/news/thomas-more-law-center-asks-supreme-court-to-decide-how-far-schools-can-promote-islam-and-disparage-christianity/ [https://perma.cc/3Q9C-H96D]; see also Chris Woodward, Schools Pushing the Envelope on Islamic Proselytization, OneNewsNow (Oct. 16, 2019), https://onenewsnow.com/legal-courts/2019/10/16/schools-pushing-the-envelope-on-islamic-proselytization [https://perma.cc/PZM5-JN5W] (quoting Richard Thompson, president and chief counsel of TMLC, for the propositions that schools are becoming "hotbeds of Islamic propaganda" and the Fourth Circuit's decision enforces a "double standard" regarding how Islam and Christianity are (or are not) taught in public schools).