# States CP/Federalism Supplement for Hazelwood

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## Notes

#### Use the States CP extensions and the Federalism DA from the Title I Neg and the States CP Answers in the Hazelwood Aff 2 file. This file has a 1nc States CP specific to Hazelwood and Federalism Answers and more States CP answers for the Hazelwood Aff.

## Neg - States CP

### 1nc

#### The 50 states and relevant territories of the United States of America should increase their regulation of elementary and or secondary education by implementing laws that prevent censorship of student publications in public schools.

#### State legislation solves free speech protections – Washington bill proves

Lee ’16-Seattle Times staff reporter (Jessica, “Student journalists in state may get more free-speech protection,” 2-16-16, <http://www.seattletimes.com/seattle-news/amid-national-push-state-lawmakers-consider-student-free-press-protections>)//JD

Student journalists at some Washington public high schools and colleges would have greater control over their media content under a bill that would ensure they’re not subject to unnecessary censorship by school authorities. [Senate Bill 6233](http://lawfilesext.leg.wa.gov/biennium/2015-16/Pdf/Bills/Senate%20Bills/6233.pdf), sponsored by Sen. Joe Fain, R-Auburn, follows a wave of efforts nationwide to clarify students’ rights to free speech in publications and broadcasts, regardless of whether students are participating in a class or if schools financially support the media. “In order for journalists to do what they need to, they need to be free of censors,” said Nick Fiorillo, 18, former editor-in-chief of Mountlake Terrace High School’s newspaper, The Hawkeye. “They need to be free of any attempts of the government to come in and tell them what they can and cannot print.” Washington would join fewer than a dozen other states that have enacted similar legislation meant to offset a 1988 U.S. Supreme Court ruling, Hazelwood School District v. Kuhlmeier. That ruling says administrators can control expression of their schools’ publications so long as the regulation is “reasonably related to a legitimate pedagogical concern.” The bill, modeled after legislation North Dakota enacted last year, gives students at public schools the ability to publish content without prior restraint, so long as it is not slanderous or libelous; unjustly invades privacy; violates federal or state law; or encourages students to break school rules or commit crime. Educators, such as student-media advisers, may review content but not censor it, unless it violates those standards. Private schools would not be affected. The legislation also protects advisers from retaliation for content and limits the extent to which schools can be held civilly or criminally liable for student media. Many public colleges and high schools in Washington already operate under similar guidelines. Before the 1988 case, school authorities were unable to regulate student expression that did not invade others’ rights or interfere with school operations after a 1969 ruling. Opponents say the measure goes too far in removing school officials’ editorial judgment. They say authorities should be allowed final say before publication, especially if the journalism program’s adviser lacks experience. “The school district is the publisher and therefore should have some control over what is published, just like a [professional] publisher would with their editors and reporters,” Jerry Bender, of the Association of Washington School Principals, said at a Jan. 21 public hearing. Washington state representatives considered the legislative change in 2007. Lawmakers in the Senate Early Learning and K-12 Education Committee on Feb. 2 approved the latest bill — which has both Republican and Democratic sponsors — and the proposal awaits a vote on the Senate floor. Rep. Matt Manweller, R-Ellensburg, is pushing for a broader legislative change in his chamber to declare college campuses public forums to strengthen free speech. The session ends March 10. Supporters of the bill say that in some cases officials abuse the Hazelwood ruling by trying to ensure the school is portrayed in a positive light. Or, they prevent student journalists from covering controversial issues due to their lack of experience, supporters say. Journalist Madison Lucas, 18, said at the public hearing that she was a victim of such censorship while she was an editor and writer at Puyallup High School’s newspaper before she graduated last year. She faced pushback over a story on a building sewage leak, she said, among other issues.“[The Hazelwood ruling] has evolved into a device for schools to suppress complaints by people who are dissatisfied with the level of education services they’re receiving, and to us, that’s exactly the kind of speech the public most needs to hear,” said Frank LoMonte, director of the Student Press Law Center. He is helping to coordinate the New Voices USA campaign, which is leading the push for legislative changes to clarify student journalists’ free-speech rights nationwide. North Dakota began the trend, and now advocates in 20 states are working to do the same, LoMonte said. “Our phone rings hundreds and hundreds of times a year from students who have been told you can’t publish something solely because it’ll make the school look bad,” he said.

### A2: State Court Rollback

#### Durable fiat prevents rollback – word “should” in the resolution means counterplan will happen in perpetuity – reciprocal with aff fiat

#### State courts will protect free speech legislation – California proves

**Beard, ‘8** - Principal Attorney with the Pacific Legal Foundation in Sacramento, California (Paul J., “California Court Broadens Student Speech Protections in Public Schools,” Engage, v9, iss1, Feb. 2008, p64-67, 20080313\_Smith.Case.Engage.9.1.pdf)//CT

For decades California has been a leader in protecting the free speech rights of students in public high schools. Last year, a state court issued a decision expanding California law’s already broad protection of even the most offensive and politically incorrect student speech. In Smith v. Novato Unified School District, the California Court of Appeal decided that two politically charged student articles in a school paper that angered students and parents (one on immigration and the other on “reverse racism”) were not unprotected incitement, as school offi cials argued, but rather protected speech that could not be restrained or punished.1 In doing so, the court adopted a narrow interpretation of “incitement” under California law that confers on student speech perhaps the greatest protection of any state in the country—and much greater protection than the First Amendment provides. Besides setting an important precedent for California students, Smith exemplifies federalism at work. While California law has become increasingly protective of student speech rights, the U.S. Supreme Court’s First Amendment jurisprudence has become decreasingly so. This article explores this and other issues raised in Smith.

#### Their evidence assumes states are restricting free speech – not protecting it, which means this evidence doesn’t apply to States CP that fiats protecting free speech

## Aff: A2 - Federalism

#### Use answers in the Title I aff for the uniqueness and impact defense. I have only put some specific link answers for Hazelwood here.

### Non-unique – Federal Control of Free Speech Now

#### Federal action critical to free speech – most state and local regulations already struck down

**Winkler, ‘9** – Professor of Law, UCLA School of Law (Adam, “Free Speech Federalism,” 108 Michigan Law Review 153, Available at: http://repository.law.umich.edu/mlr/vol108/iss2/1)//CT

Ever since the Supreme Court first held that the First Amendment's guarantee of free speech was incorporated to apply to the states, the Court has maintained that there is no formal distinction between laws burdening speech adopted at the federal, state, or local level. Regardless of their place in the federal system, all levels of government are formally treated to the same standards of review in speech doctrine.1 A content-based speech restriction, such as a campaign-finance law or a measure restricting indecent speech, is adjudicated under strict scrutiny regardless of whether it was enacted at the federal, state, or local level.2 A content-neutral speech restriction, such as a limitation on the time, place, or manner of speech, is adjudicated under a form of intermediate scrutiny no matter the governmental source.3 According to Fred Schauer, First Amendment doctrine is thus marked by "institutional blindness,' 4 with "the government" usually envisioned as a single, monolithic entity.5 The identity of the governmental institution behind a law restricting free speech rights may nonetheless be a significant, if hidden, factor in free speech cases. In this Article, I report the results of an empirical study of free speech decisions in the federal courts and reveal the ways in which the level of government behind a speech law-federal, state, or local-affects the degree of constitutional protection. This study shows that speech restrictions adopted by the federal government are far more likely to be upheld than speech restrictions adopted by other levels of government. Between 1990 and 2003, federal speech restrictions were upheld in 56% of federal court rulings, while only 24% of state speech restrictions were upheld. Even more striking is the fate of speech restrictions adopted by local governments; these were invalidated in almost every case, with only 3% surviving judicial review. In short, the level of government is a very good predictor of whether a speech restriction is likely to be upheld by the federal courts. This Article details these findings and considers potential explanations for, and implications of, this "free speech federalism."

#### Federal court regulation upheld now – several reasons:

#### a) Federal carrots and sticks – judicial promotion, backlash, Court stripping

**Winkler, ‘9** – Professor of Law, UCLA School of Law (Adam, “Free Speech Federalism,” 108 Michigan Law Review 153, Available at: http://repository.law.umich.edu/mlr/vol108/iss2/1)//CT

Regardless of the doctrinal equivalence between federal, state, and local speech restrictions, there are numerous reasons to suspect that the identity of the government actor could shape judicial outcomes in free speech cases and potentially other areas of individual rights. But many of these reasons point in the opposite direction from that suggested by Justice Harlan and his occasional brethren: federal laws should survive more often than state and local laws. First, federal courts might defer to federal lawmakers relative to state and local lawmakers. A growing literature in political science and law argues that judges often act strategically when exercising judicial review.' 9 In deciding cases, judges often anticipate the potential reaction of other governmental actors and shape their decisions in ways designed to minimize backlash-what has been termed a "separation of powers" game.'° In the federal government, Congress and the Executive have both carrots and sticks to encourage judicial compliance with their policies. Among the carrots are judicial promotion; numerous scholarly studies suggest that federal judges may shape their behavior to enhance their chances of being elevated to a higher court. 2 ‘Among the sticks are constitutional amendment, 22 intentional reshaping of the judiciary through a politicized nomination process, 23' court packing24 (or unpacking 25), impeachment,26 and budget 27 and 281 salary reduction. Congress can also adopt laws stripping the courts of jurisdiction over particular matters, as happened during Reconstruction 2 and has been threatened repeatedly since the Warren Court days. 3 According to William Eskridge and Philip Frickey, "there is a growing body of empirical evidence indicating that the Court bends its decisions to avoid overrides or other political discipline."'" In contrast to Congress and the Executive, state and local governments have relatively little ability to discipline federal courts for overly aggressive judicial review. Prior to the adoption of the Seventeenth Amendment, state officials had "institutional weapons" that "could be used to influence outcomes at the Supreme Court and other federal courts if those courts threatened the institutional interests of state legislatures."" For example, state legislators could appoint Senators who might threaten to vote against judicial nominees thought to be hostile to state interests. But once Senators were popularly elected rather than accountable to state legislatures, courts were "free to hold state laws unconstitutional without significant fear [of] ... retaliation."'33 Local lawmakers have even less ability than state lawmakers to discipline federal judges, with little more than the power to complain about judicial rulings. State interests are still presumably represented, at least in part, by popularly elected senators-even though the direct interests of the state legislature no longer impinge on the confirmation process. Local lawmakers don't even have that small remnant of influence on federal judicial nominees. William Landes and Richard Posner have recognized that federal courts tend to be reluctant to invalidate federal laws, yet such hesitation diminishes "as we move from regulation that is less local to regulation that is more local.' 34

#### b) Courts trust federal lawmakers with rights

**Winkler, ‘9** – Professor of Law, UCLA School of Law (Adam, “Free Speech Federalism,” 108 Michigan Law Review 153, Available at: http://repository.law.umich.edu/mlr/vol108/iss2/1)//CT

Even if federal judges do not fear discipline, they might still defer to federal lawmakers because they trust them more than state and local lawmakers when it comes to matters of fundamental rights. 3 The Supreme Court has given voice to a certain prejudice against state and local governments before. In West Virginia Board of Education v. Barnette, the famous flag salute case, the Court wrote that "small and local authority may feel less sense of responsibility to the Constitution, and agencies of publicity ,,36 may be less vigilant in calling it to account. In terms of individual rights, the state and local governments earned a reputation for being untrustworthy in the most important high-profile constitutional controversy of the twentieth century: the struggle for civil rights for racial minorities. Localism in particular has suffered from its association with an ideology of racial segregation. According to David Barron, there is a "deep-seated intuition that local governments are islands of private parochialism which are likely to frustrate the effective enforcement of federal constitutional rights.",3s By contrast, the modem constitutional tradition "asserts that rights-protecting institutions like the Court or the federal government are required to constrain local exercises of power that oppress minorities."' 9

#### c) Federal laws are higher quality – more publicized factions, resources

**Winkler, ‘9** – Professor of Law, UCLA School of Law (Adam, “Free Speech Federalism,” 108 Michigan Law Review 153, Available at: http://repository.law.umich.edu/mlr/vol108/iss2/1)//CT

Another reason federal laws might survive more often than state or local laws stems from the supply side of constitutional adjudication: federal laws may be of higher quality than state laws, and state laws may be of higher quality than local laws. "Quality," as I use the term here, refers to the expected fit between the law and existing constitutional doctrine. A high quality law is one that, ex ante, would be predicted to have a strong likelihood of surviving judicial review because it corresponds to controlling precedent. A poor-quality law, by contrast, is one that a reasonable lawyer would predict will be invalidated based on the case law. To understand why the level of government might affect the constitutional quality of a law, we can return to our original and greatest constitutional theorist: James Madison. Madison in Federalist 10 focused on the problem of "faction"-groups of citizens united by a "common impulse of passion . . . adverse to the rights of other citizens' 40 who threatened core rights, such as speech.4 1 Although Madison believed that "the causes of faction cannot be removed,"42 he reasoned that the national government would better protect against their tyranny than state and local governments. According to Madison, "[tlhe smaller the society, the fewer probably will be the distinct parties and interests composing it," the more risk of "local prejudices and schemes of injustice," and "the more easily will they concert and execute their plans of oppression."43 In contrast, the national government would be sufficiently large that no faction could easily achieve dominance. 4 "Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens ....” Modem public-choice theory largely concurs with Madison's assessment. Lawmaking is often the product of bargains between politically influential interest groups and government officials. But because of differences in interest group pressures-akin to Madison's "factions" 46--one would expect, in the words of Jonathan Macey, federal law to be a "higher quality product than state law.' 47 Owing to the relatively large number of interests represented by both elected officials and lobbying groups, federal lawmaking tends to require compromise and moderation, 48 diluting the likelihood of any piece of legislation catering to a specific, potentially oppressive interest. 49 Such bargaining is especially hard for an interest that is out of the mainstream, as it must co-opt mainstream elements in order to be successful. At the state (and even more so, the local) level, by contrast, the range of represented interests tends to be smaller and the constituencies more homogenous 0 As a result, oppressive legislation is easier to achieve in a single state or municipality than at the national level.5 This is especially true for groups out of the national mainstream that nevertheless fit comfortably within the culture or demographics of a single state or locality. Moreover, where constituents are relatively homogenous, legislators can gain political capital by pursuing policies that run directly counter to prevailing national norms, even constitutional ones." That the federal courts are likely to overturn a law that mandates, say, prayer in school, may provide an additional reason for some local politicians to enact it. Their constituents may like that they are "standing up" to the federal courts and the erroneous decisions of the Supreme Court. Additionally, as one moves down the federalist hierarchy, we might expect more speech burdens to be adopted without the attention of the press and organized national interest groups. When a local public library considers denying access to one of its meeting rooms to a religious group, no organized interests are likely to even know about it much less lobby to stop it. The ACLU may not notice the local public library's decision, but it will know about every proposed federal law or federal agency regulation that burdens speech. There are also differences in the resources available to lawmakers at the different levels of government, which enhance the possibility of constitutionally unsound laws being adopted as we descend from the federal to the local. The federal government has comparatively greater resources behind its legislative processes to devote to ensuring the durability of its laws than do state and local governments. Federal lawmakers have large staffs, both individually and in committees, that vet legislation and that are often made up of skilled lawyers. Moreover, the wealthier, larger interest groups competing on the national stage can devote more resources to examining legislation and uncovering its flaws. State legislative staffs are smaller, less well funded, and have fewer skilled lawyers.53 At the local level the problem is even worse; city councils, policymakers in school boards and libraries, and other municipal-level officials often have little or no legal staffing whatsoever. 54

### Impact Turn - States oppressive

#### States cannot protect fundamental rights – federal regulatory authority key

**Winkler, ‘9** – Professor of Law, UCLA School of Law (Adam, “Free Speech Federalism,” 108 Michigan Law Review 153, Available at: http://repository.law.umich.edu/mlr/vol108/iss2/1)//CT

A proponent of devolution might nonetheless see in the free speech cases a cause for concern: the courts consistently invalidate local speech laws and usually reject state speech laws. Federal power is thus exercised to diminish state and local regulatory authority. If the variation in survival rates is due exclusively to judicial deference to federal lawmakers and hostility to state and local lawmakers, then the concern is well founded. Yet in light of the evidence that the quality of legislation in the free speech area is also likely a factor, then we should fear state and local authority being exercised in disregard of constitutional doctrine and in an oppressive manner. State and local governments either do not care enough about the constitutional quality of their lawmaking or receive insufficient legal counsel in formulating (and defending) policy. In either case, the trouble for devolution is the same: state and local governments do not adequately protect fundamental rights.

#### Devolution of speech rights causes oppression – small, homogenous groups more likely to institute oppression

**Winkler, ‘9** – Professor of Law, UCLA School of Law (Adam, “Free Speech Federalism,” 108 Michigan Law Review 153, Available at: http://repository.law.umich.edu/mlr/vol108/iss2/1)//CT

Perhaps the most significant constitutional trend of the past two decades has been the so-called "federalism revolution." After half a century of centralizing constitutional authority in the federal government-and correspondingly diminishing the power of state and local governments-the Rehnquist Court and a cadre of legal scholars argued for reversing course. This states' rights revolution has centered primarily on Congress's power to regulate commerce and state immunity from federally imposed mandates."' 33 But it has also begun to touch questions of constitutional rights. Justice Clarence Thomas, for example, has called for reinterpreting the First Amendment's Establishment Clause to impose limits on only the federal government and not the states. 3 4 Several notable scholars have similarly called for greater state or local authority to regulate in matters of religious liberty.'35 Others have argued for devolution in matters of constitutional rights more generally. 116 The federalism effect in free speech cases casts in bold relief some dangers of devolution, especially in matters of fundamental rights. To the extent that federal speech laws are a higher quality product than state and local speech laws, we ought to be wary of giving state and local governments more leeway to burden fundamental rights. The justifications for devolution emphasize three arguments. First, devolution is thought to enhance democratic self-governance by making elected officials more responsive to the voters.'37 By placing authority in the hands of government officials closer to local communities-rather than in a distant Washington, D.C.-those communities are better able to effectuate policies and control their destinies. 13 Yet, in light of the poor track record of state and local governments in the area of free speech, one might reasonably question whether enhancing governmental responsiveness to relatively small, geographically compact communities is such a good thing. As Madison warned, in smaller jurisdictions there are fewer interests competing against one another and local prejudices can more easily dictate legal outcomes. 3 9 When small, cohesive groups in the electorate control lawmaking, oppression of outsiders and minorities becomes easier. At the federal level, the pressures of competing interest groups make such oppression more difficult to achieve. Modem-day public-choice theory tells us that elected officials are not simply public spirited; they respond to incentives. 40 Owing to structural features of the national government, these lawmakers are less likely than state and local officials to adopt poorly formed laws that exceed constitutional limits. Democratic self-government loses much of its appeal when it is employed to deny fundamental rights, such as the freedom of speech, to minority interests. One might even conclude that only by vigorous protection of speech rights-an essential element of self-government--can governmental processes be sufficiently worthy of our respect.14 1

### Impact Turn – States Hurt Free Speech

#### Decentralized power risks free speech – state will be rolled back

**Winkler, ‘9** – Professor of Law, UCLA School of Law (Adam, “Free Speech Federalism,” 108 Michigan Law Review 153, Available at: http://repository.law.umich.edu/mlr/vol108/iss2/1)//CT

A second and related justification for devolution focuses on the "checking" effect of state and local governmental authority. Under this view, a major threat to individual liberty is concentrated governmental power in the federal government. 42 There is a "danger of irresponsible power at the federal level in the interplay between federal bureaucracies, congressional committees, and interest groups.' 43 While the fear of concentrated power is legitimate, the free speech cases suggest there ought to be equal or greater concern for decentralized power. Because of structural features of lawmaking at the federal level, the legal output of the national government is the result of a process in which multiple groups exercise their voice. Consequently, that output tends to be moderate rather than radical, constitutionally strong rather than constitutionally weak. As we descend to the state and local level, governmental power is more easily exercised to injure the freedom of speech. If the First Amendment exists to keep open the channels of communication, especially for minorities, then the free speech cases suggest that state and local regulation often needs the correcting force of federal judicial review. Indeed, the history of individual rights in the twentieth century, especially the battle against race discrimination, indicates that state and local authority may be "the problem, not the solution."'" If anything, the free speech data suggest that the federal government-in the guise of the judiciary-is checking the excesses of state and local governments. One might nevertheless defend the qualitatively poor output of state and local governments if it is part of an effort to change existing doctrine. If they object to current doctrinal rules, one of the few ways they have of attempting to change them is to enact contradictory laws and try to defend them successfully in court. While I am skeptical that most, if any, of the poor quality free speech laws found in this study are conscientious efforts to change constitutional doctrine, if they were, then we might say that lawmakers are using their legislative authority to check the federal courts. Unfortunately for them, the federal courts have the last say.

#### Decentralization undermines the marketplace of ideas – lack of uniformity hurts fundamental rights

**Winkler, ‘9** – Professor of Law, UCLA School of Law (Adam, “Free Speech Federalism,” 108 Michigan Law Review 153, Available at: http://repository.law.umich.edu/mlr/vol108/iss2/1)//CT

The third argument for devolution is that it creates choice in the marketplace for governmental services and organizations.14 ' Here, devolution is valued for reasons akin to those used by Justice Harlan to justify relatively lenient judicial treatment of state obscenity laws: federal regulation homogenizes the law by requiring uniformity throughout the nation. To the extent our pluralistic society wishes more diversity, diminished federal power and augmented state and local authority may serve to create variation in legal regimes. People can then choose to move to the area that most resembles their preferences. 46 In one sense, the free speech cases support the premises of this argument: at lower levels of government, there is a range of unusual speech regimes that mobile citizens could choose from. People opposed to campaign-finance reform or to speech about violence can find jurisdictions with laws that match their desires. The problem is that choice and diversity are not necessarily values that should be encouraged when it comes to fundamental rights. 47 The right to free speech is supposed to be enjoyed equally by all citizens, regardless of their place of residence. In the traditional understanding of the First Amendment, the citizen choice that is valued is that which comes from unfettered debate in the marketplace of ideas. If state and local governments can restrict speech, the channels of dialogue are restricted and choice diminished, not enhanced.

## Aff: A2 – States CP

### Court Rollback

#### Federal action necessary – state and local laws are rolled back -- level of government is the most significant predictor of survivability for judicial review

**Winkler, ‘9** – Professor of Law, UCLA School of Law (Adam, “Free Speech Federalism,” 108 Michigan Law Review 153, Available at: http://repository.law.umich.edu/mlr/vol108/iss2/1)//CT

The model indicates that the level of government is a significant predictor of surviving judicial review, controlling for the substantive type of speech restriction. That a speech restriction is adopted by the federal government is highly correlated with the likelihood of surviving a legal challenge (p < .00 1). All else being equal, federal laws are far more likely to be upheld than state or local laws. 66 The model indicates that the level of government is a significant predictor of the likelihood that a speech restriction will be upheld.

#### This model is comprehensive

**Winkler, ‘9** – Professor of Law, UCLA School of Law (Adam, “Free Speech Federalism,” 108 Michigan Law Review 153, Available at: http://repository.law.umich.edu/mlr/vol108/iss2/1)//CT

To analyze the role of different levels of government in free speech cases, I first collected 55 and coded every published federal court decision that considered the constitutionality of a restriction on "core" free speech rights decided over a 14-year period. I choose the years 1990 through 2003 to secure a sufficient number of cases to derive robust results. I focus here on free speech cases where, under existing doctrine, the courts impose the most rigorous form of constitutional review, strict scrutiny. Courts use this test for speech restrictions that touch the heart of the First Amendment, namely, political speech and similar content-based restrictions on expression. I included only "final" district, circuit, and Supreme Court decisions; overturned or affirmed decisions were omitted to avoid double counting.56 These data have their limitations. First, only federal court decisions are included. State court rulings on free speech issues, whether stemming from the federal or state constitutions, are not included and they may come out differently. Second, the data are comprised only of free speech cases where the federal courts applied strict scrutiny. Although the courts apply strict scrutiny to the most important types of speech restrictions, not all speech restrictions are adjudicated under this standard57 and other speech restrictions may or may not follow the patterns uncovered in strict scrutiny cases. Third, I include only published decisions, which may or may not replicate the larger set of decided free speech cases. My research uncovered a total of 266 relevant free speech rulings. Of those, only a small fraction (7, or 3%) was comprised of Supreme Court rulings and the vast majority of decisions came from the circuit courts of appeals (106, or 40%) and the district courts (153, or 56%). The overall rate at which "core" free speech restrictions survived judicial review was 21%. Courts upheld 56 of 266 speech restrictions in the given period. Of the 266 rulings on the constitutionality of speech restrictions, the vast majority involved state and local laws. There were 227 rulings on state and local laws and 39 rulings on federal laws. 8 As Table 1 indicates, the federal courts upheld a much higher percentage of federal laws than state and local laws.

### A2: Federal regulation bad - States/Schools have expertise

#### State tailoring under guise of expertise undermines free speech – removes governments limits

**Winkler, ‘9** – Professor of Law, UCLA School of Law (Adam, “Free Speech Federalism,” 108 Michigan Law Review 153, Available at: http://repository.law.umich.edu/mlr/vol108/iss2/1)//CT

With both educational institutions and prisons, the political safeguards that come from an institutional context in which oppression is minimized and moderation encouraged are conspicuously absent. Institutional mission, expertise, or the hazardous environments in which those governmental actors operate are the wrong elements on which to base a determination to defer in matters of fundamental rights. Those factors are easily met by any number of governmental actors. Environmental agencies, health agencies, transportation agencies, and police and fire departments all have defined institutional missions, possess a degree of expertise in achieving those objectives, and operate in difficult environments with important consequences for the public good. Whether or not these institutions deserve unusual leeway to regulate in ways that impinge on fundamental rights should not turn on those common, easily satisfied criteria. If the courts are going to tailor rights, they should focus on the institutional and structural factors that make the legal output of a governmental entity relatively likely to satisfy existing constitutional standards. Otherwise, the courts are welcoming the deprivation of individual rights in order to protect the "rights" of governmental actors. That calculus turns fundamental rights, which are supposed to protect individuals and limit government, on their head.