Title: Anti-Gay Student Speech and the First Amendment: A Data-Based Examination of Court Reliance on Social Science Research and the Doctrinal Definition of Tinker’s Substantial Disruption Standard

This dissertation examines the challenges schools face in balancing the weighty considerations of protecting student speech and prevention of sexual orientation-based student harassment. In its seminal school law case, Tinker v. Des Moines Independent Community School District, the Supreme Court held that schools may suppress speech reasonably expected to cause a “substantial disruption” to the school environment. The standards have been criticized for their opaqueness, and whether in jest or in protest, adolescents, in particular, have found ways to push the constitutional boundaries of free speech set by school leaders and reviewing courts. As public speech regarding political issues pertaining to same sex relationships increases, it is reasonable to assume that these debates will continue in the nation’s democratic incubators, public schools.

Some judicial opinions have used social science research to inform decision-making in cases that turn on interpretation of the Tinker “substantial disruption” standard. Given that the question of whether speech is substantially disruptive or inspires a reasonable forecast of substantial disruption is exceedingly difficult for courts themselves to answer, the question emerges as to when and how information outside judicial wisdom is used to make such decisions. If courts do not rely on social science research, on what basis are they to define a Tinker “substantial disruption”? As Judge Posner observed in Zamecnik, “The cases have tended to rely on judicial intuition rather than on data, and the intuitions are sometimes out of date.”

Using traditional legal research and content analysis, this addresses two central questions:

1) What kind of speech constitutes an actual or foreseeable substantial disruption in cases concerning anti-gay speech?

2) To what extent does the doctrine rely on educational or other social science research in defining what leads to a “substantial disruption” as it relates to anti-gay speech in schools?