

# SENATE BILL REPORT

## SB 5946

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As of February 19, 2009

**Title:** An act relating to freedom of student press and speech.

**Brief Description:** Protecting freedom of student press and speech.

**Sponsors:** Senators McDermott, Murray, Keiser, Fairley, Kline and Marr.

**Brief History:**

**Committee Activity:** Judiciary: 2/18/09.

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### SENATE COMMITTEE ON JUDICIARY

**Staff:** Juliana Roe (786-7438)

**Background:** The courts have recognized that students retain their constitutional rights to freedom of expression in public schools. In the seminal 1969 case, *Tinker v. Des Moines Independent Community School District*, the Supreme Court stated that neither students nor teachers "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." The court also recognized the duty and authority of schools to prescribe and control conduct in schools. The court held that a school may not regulate student expression unless the expression would cause a material and substantial interference with the operation of the school or invade the rights of others.

In 1988 the Supreme Court addressed the issue of the extent to which a public high school could regulate expression in a high school newspaper. In *Hazelwood School District v. Kuhlmeier*, the court held that school-sponsored student expression that occurs in a nonpublic forum may be regulated as long as the regulations are "reasonably related to a legitimate pedagogical concern." In determining whether the newspaper at issue was a public or limited public forum, rather than a nonpublic forum, the court stated that public schools generally are not open to the public for free speech. Therefore, a school may be considered a public or limited public forum only if the school has opened its facilities, by practice or policy, for use by the general public or some segment of the public, such as student organizations.

The Supreme Court in *Hazelwood* expressly refrained from deciding whether this standard applies to school-sponsored expressive activities at the college and university level. The First and Sixth Circuit Court of Appeals have found that the *Hazelwood* standard does not apply to school-sponsored student expression at colleges and universities. However, in 2005,

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the Seventh Circuit Court of Appeals held, in *Hosty v. Governors State University*, that the analysis used in *Hazelwood* does apply to colleges and universities. Thus, *Hosty* provides that if the student expression occurs in a nonpublic forum, a college or university may exercise control over the content of the expression based on reasonable pedagogical concerns. Under *Hosty*, student media may be considered a public forum or limited public forum if the school, through its policies or practices, has recognized the medium as a designated public forum where students determine the editorial content of the medium.

Washington's four-year institutions currently have express policies providing editorial freedom for their student papers. The State Board for Community and Technical Colleges' regulations require each community college district to adopt rules relating to students' rights and responsibilities regarding freedom of expression and freedom of press. Some colleges have adopted regulations that expressly provide for freedom of expression in student publications. Others have more general rules that provide that students are free to express their views by orderly means, as long as they do not disrupt the operations of the college.

**Summary of Bill:** Public high school students have the right to exercise freedom of speech and of the press in school-sponsored media. However, students are not allowed to engage in expression that is obscene to minors; is libelous or slanderous; is an unwarranted invasion of privacy; constitutes an unwarranted invasion of privacy; violates the Federal Communications Act or any rule or regulation of the Federal Communications Commission; or incites students to create a clear and present danger of the following: (1) commission of unlawful acts on school premises; (2) violation of lawful school regulations; or (3) material and substantial disruption of the operation of the school.

Student editors of school-sponsored media in public institutions of higher education are responsible for determining the content of the media, subject to professional standards of English and journalism taught by the student media adviser. A student media adviser may not be terminated, transferred, removed, or otherwise disciplined for refusing to censor school-sponsored media. School-sponsored media at public institutions of higher education are public forums for expression by student journalists at the institution. Student media are not subject to prior review by school officials.

School-sponsored media is not the expression of school policy. Neither school officials nor the governing board of a public institution of higher education may be held responsible in a civil or criminal action for expression made or published by students in a school-sponsored media, unless they have interfered with or altered its content.

The only relief that a court may award pursuant to a civil cause of action commenced by a student is injunctive and declaratory relief. If attorneys fees are awarded in the civil cause of action, they must be reasonable fees.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: It is important to educate and trust students. This bill would give student journalists the same protections their parents had before 1988. People on the street have stronger legal protections than students in school. Washington will be the eighth state to pass this legislation if it is passed. Schools in states that have already passed this legislation are still surviving and thriving. The bill does not make students or parents more or less liable. It will not open the floodgates of litigation with school districts.

Students should be given the ability to learn from an advisor and be empowered with the rights and responsibilities entrusted to them in our constitution. The student advisor is there to provide journalism students advice, teach them sound journalistic principles, and advise them of the ramifications of what they author. Advisors do not have the final say as to what gets published. In many schools around the state, the building and district administrators have told student editors what they should and should not print. Many articles and newspapers have been confiscated and students harassed. All manner of censorship occurs around the state. These newspapers are not a liability. Football teams are more of a liability.

Students have been forced to produce underground newspapers because schools have stopped producing official school newspapers. Students want a voice at school, but would also benefit from journalistic advise and classes.

CON: With regard to high school students, it is important to provide them with support and instruction. However, students should establish a partnership with the administrators because the administrators are the individuals who will be forced to deal with any challenges that the school faces. Bad publishing choices can also lead to students being harassed by fellow classmates.

Student newspapers are school sponsored and funded by tax payer dollars. There is concern about what is being published with tax payer dollars.

**Persons Testifying:** PRO: Senator McDermott, prime sponsor; Mike Hiestand, Zenger Consulting; Dan Hardebeck, Journalism teacher and advisor; Colin Moyer, student; Bill Will, Washington Newspaper Publisher's Association.

CON: Jerry Bender, Association of Washington School Principals; Dan Steele, Washington State Directors' Association.