
Judiciary Committee

HB 1307

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

Brief Description: Regarding freedom of speech and press for high school and college students.

Sponsors: Representatives Upthegrove, Lantz, Williams, O'Brien, Sells, McCoy, Appleton, Darneille, Lovick, Dunshee, Takko, Pedersen, Simpson, Dickerson, Moeller, McIntire, Schual-Berke, Quall, Springer and Morrell.

Brief Summary of Bill

- Prohibits public high schools from censoring school-sponsored student media except in limited circumstances.
- Prohibits public colleges or universities from censoring or engaging in prior review of school-sponsored student media.
- Provides a cause of action for injunctive relief for a violation of the act.
- Immunizes public high schools, colleges and universities from liability for student expression.

Hearing Date: 1/26/07

Staff: Edie Adams (786-7180).

Background:

It has long been recognized that students retain constitutional rights to freedom of speech and freedom of expression in public schools. In the seminal 1969 case, *Tinker v. Des Moines Independent School District*, the Supreme Court stated that neither teachers nor students "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." The *Tinker* court also recognized the duty and authority of schools to prescribe and control conduct in the schools. The Court held that a school may not regulate student expression unless the

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expression would cause a material and substantial interference with the operation of the school or invade the rights of others.

Subsequent United States Supreme Court cases have reaffirmed the basic notion of *Tinker* that students retain constitutional rights of freedom of expression, while also recognizing that students' First Amendment rights are not automatically coextensive with those of adults and must be evaluated in light of the special characteristics of the school setting.

In 1988, the Supreme Court specifically 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 non-public 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 non-public 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 the 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 Circuit 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, the Seventh Circuit Court of Appeals held in *Hosty v. Governors State University* that the analysis in *Hazelwood* does apply to colleges and universities. Thus, *Hosty* provides that if the student expression occurs in a non-public forum, a college or university may exercise control over the content of the expression based on reasonable pedagogical concerns. However, if the student expression occurs in a public or limited public forum, the expression may only be regulated under very limited circumstances if there is a compelling interest and the regulation is narrowly tailored.

Under *Hosty*, a student newspaper or other type of school-sponsored media may be considered a public forum or limited public forum if the school, through its policies or practice, has recognized the medium as a designated public forum where students determine the editorial content of the medium.

Six states have adopted laws providing some form of protection to students' free speech rights: Arkansas, California, Colorado, Iowa, Kansas, and Massachusetts. Washington administrative rules generally state that public elementary and secondary students have the constitutional right to freedom of speech and press and that a school district may not limit these rights without good and sufficient cause.

Washington's four-year institutions 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 the 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 don't disrupt the operations of the college.

Summary of Bill:

Public high school students have the right to exercise freedom of speech and freedom of the press in school-sponsored media. However, students are not authorized to engage in expression that is obscene as to minors; is defamatory; is an invasion of privacy; or creates a clear and present danger of any of the following: (a) commission of unlawful acts on school property; (b) violation of lawful school regulations; or (c) material and substantial disruption of the operation of the school. Each school district that includes a high school must adopt a written student freedom of expression policy that complies with the act.

School-sponsored media at public institutions of higher education are designated public forums for expression by students at the institution. All student media at public institutions of higher education are protected from prior review by school administrators.

"School-sponsored media" means any matter that is prepared, substantially written, published, or broadcast by students, that is distributed or made available to the student body, and that is prepared under the direction of a student media advisor.

Student editors of school-sponsored media in public high schools, colleges, and universities are responsible for determining the content of the media, subject to professional standards of English and journalism taught by the student media adviser. A high school, college, or university may not discipline or terminate a student media advisor for refusing to censor school-sponsored media.

A student of a public high school, college, or university may sue for injunctive or declaratory relief if the school engages in censorship of school-sponsored media or prior review of college or university media. The court may award attorneys' fees to a prevailing party in such an action.

Student expression in school-sponsored media is not the expression of school policy and school officials may not be held civilly or criminally liable for the student expression unless they have interfered with or altered its content.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.