

SENATE BILL REPORT

ESHB 1307

As Reported By Senate Committee On:
Judiciary, March 30, 2007

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: House Committee on Judiciary (originally sponsored by 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 History: Passed House: 3/13/07, 58-37.

Committee Activity: Judiciary: 3/27/07, 3/30/07 [DPA].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators Kline, Chair; Tom, Vice Chair; Hargrove, Murray and Weinstein.

Staff: Juliana Roe (786-7405)

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 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 its facilities, by practice or policy, for use by the general public or some segment of the public, such as student organizations.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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, 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 non-public 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 no disrupt the operations of the college.

Summary of Engrossed Substitute 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; and 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 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.

School-sponsored media at public institutions of higher education are public forums for expression by students at the institution. Student media are not subject to prior review by school administrators.

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.

EFFECT OF CHANGES MADE BY RECOMMENDED STRIKING AMENDMENT(S) AS PASSED COMMITTEE (Judiciary): 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.

The section of the bill dealing with public high school student expression in school-sponsored media is removed, as is the reference to high school students in the intent section.

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: Under current law, students have some freedom of speech and press. This bill attempts to narrow and clarify areas involving the freedom of speech and press for students that are too broad and vague.

Six other states have passed nearly identical legislation. In those states, there has not been a decrease in the number of student newspapers or an increase of inappropriate conduct. This is because students take pride in their work.

Under this bill, the student is the responsible party. The school and its administrators will not be held accountable for student publications as long as they don't interfere with the content. There is nothing in the bill that prohibits prior review of publications in high schools. Students do not have free reign. But, the final publication decision remains with the students, not administrators.

There is a concern about the strength of our democracy. A poll was held which resulted in the following statement: students agreed that it is okay for the government to censor news. Is this really what we want?

This bill will improve education in the state of Washington. While it does not apply to private schools, some have already voluntarily embraced the standards that the bill proposes. This has been a positive experience at Charles Wright. Student editors decide what stories will be run. Students edit the stories and they are not submitted for prior review. This helps devise editorial policies. While administrators are present, they merely guide and provide suggestions. Students own their publications and are responsible for what they produce.

Students are responsible in the following manner: (1) the student author's name is on the article; (2) the student author answers to the readers; (3) the student author writes for peers; and (4) the student author is liable for the content of the material.

High school journalists still consider themselves journalists and want the same responsibility and respect as a professional journalist. While they may still be teenagers, they understand that they are playing a role in their high school and community.

Students are constantly reminded that they need tools to use in the "real world." Some of the material being censored in schools involves topics such as marijuana or birth control, that adults *and* students are already discussing. Why not allow students an avenue to discuss these issues by means of a publication?

A free press environment is the best environment in which a student should learn. Education is subsidizing students to learn valuable lessons about life and skills, such as reading, writing, and decision making. These can be furthered by a free press environment.

If administrators have concerns on how to supervise under these types of guidelines, training is offered every year by the Washington Journal Education Association. There are also

programs around the nation for advisors. Students should have voices and advisers are there to guide their voices, not stifle them.

This bill is based upon laws that are currently in existence. The *Hazelwood* case is the current law of the land. The language in that case is different from what is proposed in the bill. That case allows school officials to censor student publications. It says that school officials can censor material that is poorly written, biased, or prejudiced. Those standards give school officials a large amount of leeway. This bill would restore a meaningful balance. Students cannot do whatever they want under this bill. Rather, standards are clearly delineated in the bill that would not allow things such as libel or copyright infringement. *Hazelwood* does not do that.

This bill would allow for injunctive and declaratory relief.

CON: Who would manage the process described in the bill? What is the definition of an average student? What is school-sponsored media? Who defines what is obscene to minors? This bill needs work. *Hazelwood* and *Tinker* provide sufficient guides for administrators. Maybe the answer is to provide training to better understand the current law.

These are not student newspapers that we are talking about, but school newspapers. Schools are supervised by school districts and paid for by taxpayers. It is the administration's responsibility to protect the schools. The heart of the matter is common decency and civility that requires judgment.

In the real world, newspapers have editors and publishers. These figures in schools are the school board and administration. No workplace exists that would allow its employees to do whatever it likes. The administration is there for a purpose. We should not be tying their hands behind their backs.

This bill is poorly drafted. It is written to guarantee litigation. We should not create a special class of editors who can sue those supervising them just because they don't like what's happening. While this is well intended, it is more harmful than helpful. At what point is a supervisor interfering? Who decides this?

The rights in this bill already exist under current law. The only new provision is that school districts can be gouged for unreasonable attorney fees.

Persons Testifying: PRO: Representative Upthegrove, prime sponsor; Steve Matson, Journalism teacher at Charles Wright; Alexis Maxwell, Angela Denney, Kacie McKinney, students; Ryan Gardenier, Editor in Chief of the Green River Current; Jeff Nusser, Advisor at Emerald Ridge High School; Fern Valentine, Washington Journalism Education Association; Kathy Shrier, WJEA President; Mike Hiestand, Zenger Consulting.

CON: Jerry Bender, Association of Washington School Principles; Barbara Mertens, Washington Association of School Administrators; Don Austin, school attorney.