
SENATE BILL 5946

State of Washington 61st Legislature 2009 Regular Session

By Senators McDermott, Murray, Keiser, Fairley, Kline, and Marr

Read first time 02/09/09. Referred to Committee on Judiciary.

1 AN ACT Relating to freedom of student press and speech; adding a
2 new section to chapter 28A.600 RCW; adding a new section to chapter
3 28B.10 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that freedom of
6 expression and freedom of the press are fundamental principles in our
7 democratic society granted to every citizen of this state and the
8 nation by the First Amendment of the United States Constitution and by
9 Article I, section 5 of the state Constitution. These freedoms provide
10 all citizens, including students, with the right to engage in robust
11 and uninhibited discussion of issues. The legislature finds that court
12 decisions have not provided adequate protection for the free speech and
13 free press rights of students. The legislature intends to ensure free
14 speech and free press protections for both high school and college
15 students in the state in order to encourage students to become
16 educated, informed, and responsible members of society.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.600
18 RCW to read as follows:

1 (1) Except as provided in subsection (3) of this section, public
2 high school students have the right to exercise freedom of speech and
3 of the press in school-sponsored media, whether or not the media are
4 supported financially by the school or by use of school facilities, or
5 are produced in conjunction with a class.

6 (2) Student editors of school-sponsored media are responsible for
7 determining the news, opinion, feature, and advertising content of the
8 media subject to the limitations of subsection (3) of this section.
9 This subsection does not prevent a student media adviser from teaching
10 professional standards of English and journalism to the student
11 journalists. A student media adviser may not be terminated,
12 transferred, removed, or otherwise disciplined for refusing to suppress
13 the protected free expression rights of student journalists.

14 (3) Nothing in this section may be interpreted to authorize
15 expression by students that:

- 16 (a) Is obscene as to minors;
- 17 (b) Is libelous or slanderous;
- 18 (c) Constitutes an unwarranted invasion of privacy;
- 19 (d) Violates the federal communications act or any rule or
20 regulation of the federal communications commission; or
- 21 (e) So incites students as to create a clear and present danger of:
 - 22 (i) The commission of unlawful acts on school premises;
 - 23 (ii) The violation of lawful school regulations; or
 - 24 (iii) The material and substantial disruption of the orderly
25 operation of the school. A school official must base a forecast of
26 material and substantial disruption on specific facts, including past
27 experience in the school and current events influencing student
28 behavior, and not on undifferentiated fear or apprehension.

29 (4) Any student, individually or through his or her parent or
30 guardian, enrolled in a public high school may commence a civil action
31 to obtain appropriate injunctive and declaratory relief as determined
32 by a court for a violation of subsection (1) of this section. Upon a
33 motion, a court may award reasonable attorneys' fees to a prevailing
34 plaintiff in a civil action brought under this section.

35 (5) Expression made by students in school-sponsored media is not
36 the expression of school policy. Neither a school official nor the
37 governing board of the school or school district may be held
38 responsible in any civil or criminal action for any expression made or

1 published by students in school-sponsored media unless school officials
2 or the governing board have interfered with or altered the content of
3 the student expression.

4 (6) Each school district that includes a high school shall adopt
5 regulations in the form of a written student freedom of expression
6 policy in accordance with this section. The policy shall include
7 reasonable provisions for the time, place, and manner of student
8 expression.

9 (7) This section does not apply to correctional institution
10 education programs under chapter 28A.193 RCW or to residential
11 education programs under chapter 28A.190 RCW operating in department of
12 social and health services facilities for the confinement and
13 rehabilitation of juveniles committed by the courts.

14 (8) For the purposes of this section:

15 (a) "Obscene as to minors" means material that the average person,
16 applying community standards, finds as a whole appeals to a minor's
17 prurient interest in sex, and that depicts or describes in an offensive
18 way sexual conduct or sexual acts, and that lacks serious literary,
19 artistic, political, or scientific value.

20 (b) "School-sponsored media" means any matter that is prepared,
21 substantially written, published, or broadcast by student journalists,
22 that is distributed or generally made available, either free-of-charge
23 or for a fee, to members of the student body, and that is prepared
24 under the direction of a student media adviser. "School-sponsored
25 media" does not include media that is intended for distribution or
26 transmission solely in the classrooms in which they are produced.

27 (c) "Student journalist" means a student who gathers, compiles,
28 writes, edits, photographs, records, or prepares information for
29 dissemination in school-sponsored media.

30 (d) "Student media adviser" means a person who is employed,
31 appointed, or designated by the school to supervise, or provide
32 instruction relating to, school-sponsored media.

33 NEW SECTION. **Sec. 3.** A new section is added to chapter 28B.10 RCW
34 to read as follows:

35 (1) Students at public institutions of higher education have the
36 right to exercise freedom of speech and of the press in school-
37 sponsored media, whether or not the media are supported financially by

1 the school or by use of school facilities, or are produced in
2 conjunction with a class. All school-sponsored media produced
3 primarily by students at a public institution of higher education are
4 public forums for expression by the student journalists and student
5 editors at the particular institution. Student media, whether school-
6 sponsored or nonschool-sponsored, are not subject to mandatory prior
7 review by school officials.

8 (2) Student editors of school-sponsored media are responsible for
9 determining the news, opinion, feature, and advertising content of the
10 media. This subsection does not prevent a student media adviser from
11 teaching professional standards of English and journalism to the
12 student journalists. A student media adviser may not be terminated,
13 transferred, removed, or otherwise disciplined for refusing to suppress
14 the protected free expression rights of student journalists.

15 (3) Nothing in this section may be interpreted to authorize
16 expression by students that violates the federal communications act or
17 any rule or regulation of the federal communications commission.

18 (4) Any student enrolled in a public institution of higher
19 education may commence a civil action to obtain appropriate injunctive
20 and declaratory relief as determined by a court for a violation of
21 subsection (1) of this section by the public institution of higher
22 education. Upon a motion, a court may award reasonable attorneys' fees
23 to a prevailing plaintiff in a civil action brought under this section.

24 (5) Expression made by students in school-sponsored media is not
25 the expression of school policy. Neither a school official nor the
26 governing board of any public institution of higher education may be
27 held responsible in any civil or criminal action for any expression
28 made or published by students in school-sponsored media unless school
29 officials or the governing board have interfered with or altered the
30 content of the student expression.

31 (6) This section does not apply to educational programs operated by
32 institutions of higher education in adult correctional institutions or
33 in secure facilities operated by the department of social and health
34 services under chapter 71.09 RCW.

35 (7) For the purposes of this section:

36 (a) "School-sponsored media" means any matter that is prepared,
37 substantially written, published, or broadcast by student journalists,
38 that is distributed or generally made available, either free-of-charge

1 or for a fee, to members of the student body, and that is prepared
2 under the direction of a student media adviser. "School-sponsored
3 media" does not include media that is intended for distribution or
4 transmission solely in the classrooms in which they are produced.

5 (b) "Student journalist" means a student who gathers, compiles,
6 writes, edits, photographs, records, or prepares information for
7 dissemination in school-sponsored media.

8 (c) "Student media adviser" means a person who is employed,
9 appointed, or designated by the school to supervise, or provide
10 instruction relating to, school-sponsored media.

11 NEW SECTION. **Sec. 4.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

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