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To: Education, Health & Environmental Affairs Committee

From: Rebecca Snyder, Executive Director, MDDC Press Association

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**Re: Support SB 764**

The Maryland-Delaware-District of Columbia Press Association represents a diverse membership of news media organizations, from large metro dailies like the Washington Post and the Baltimore Sun, to hometown newspapers such as The Star Democrat and the Cumberland Times-News to small, weekly publications like the Bay Weekly and Howard County Times.

The Press Association supports SB 764 which would provide a commonsense, clear policy across the state that allows student journalists to exercise freedom of speech and freedom of the press in school-sponsored media. It specifically excludes speech that is libelous or slanderous, constitutes an unwarranted invasion of privacy, violates federal or state law or incites students to create a clear and present danger of the commission of an unlawful act, the violation of county school board policies, or the material and substantial disruption of the orderly operation of the public school. Further, this bill insulates school media advisors from retaliatory discipline for the editorial content of the school-sponsored media.

For the Press Association, this is a workforce development issue. The high school and college students of today will become the professional journalists of tomorrow. Our industry needs students who think critically, ask questions and are unafraid to pursue important stories.

Students need protection in Maryland because of the U.S. Supreme Court’s 1988 ruling in *Hazelwood School District v. Kuhlmeier*. The *Hazelwood* decision upset the balance between authority and individual liberty, transforming public schools into a “Constitution-free zone” where rights exist only in textbooks. Without a clarifying law on this issue, administrators rely on a patchwork of local standards that do not serve the education of students, the resources of administrators or fully protect the school system.

SB 764 addresses the silence in Maryland’s law on this issue by affirming student publications as educational tools to teach students about civics, engagement and first amendment freedoms. Further, it clarifies state policy, providing guidance and dispute resolution to administrators, while allowing each county to create its own guidance. It protects free speech by student journalists and teachers, while leaving intact a school’s protection against libel suits.

We ask for a favorable report on SB 764.

Censorship happens in student media

*SB 764 will provide a commonsense, clear policy across the state that allows student journalists to exercise freedom of speech and freedom of the press in school-sponsored media.*

**Removed “unflattering” article**

Robert Greenberger of Owings Mills High School reports his students published an op-ed in their online newspaper, the *Eagle's Eye*, this year by a student complaining about the deplorable condition of the rest rooms in his school and suggesting students be more responsible. He was ordered to remove the article by administration because "it cast the school in an unflattering light." He felt he had no choice but to do so.

**New principal orders gag order for school staff**

Jessica Nassau, a former journalism teacher at Rockville High School, noted that their student publications had a long history of independence and won multiple national awards. A new principal arrived in the Fall of 2013, and suddenly the climate of freedom students were used to changed.

One student filed a FOIA request for information on thefts in the school and wrote an article on the issue. He went on to win the Maryland-Delaware-D.C. Press Association High School Journalist of the Year Award. Another student had samples of the school drinking water tested by a lab, proving that the water contained an illegal level of lead. Senator Karen Montgomery brought the article to the Board of Education's attention, and a water flushing protocol was put in place to make the water safe. The article won Story of the Year from the Columbia Scholastic Press Association.

While these and other articles were printed, the principal created a difficult working environment for the teacher and her students. He placed a gag order on school staff in the spring of 2015, ordering them not to talk to student reporters. The following school year, all student publication staffs were condensed into one over-packed class making their work very difficult. The teacher was assigned a more difficult schedule.

The teacher did not feel she or her students could succeed in this environment. She left public education, taking a job teaching and advising in a private school where, ironically, she has experienced full press freedom for her students.

**Students self-censor**

Melanie Coates, publication adviser at Catonsville High School, reports that while her students have never experienced direct censorship, her students "don't feel like they are allowed to write about certain topics. They very much self-censor in reporting and writing, and they want to defer to my decisions." She also fears the consequences should they print something the administration doesn't like. "I pray that the sh\*t doesn't hit the fan each time they do cover something 'controversial' because I'm not sure what the outcome could be if I needed my administration or my school system to back me."

**Students avoid criticizing school policies**

Gary Clites, newsmagazine and broadcasting adviser at Northern High School in Owings, Maryland, reports that Calvert County requires all principals to prior review all student journalism. While no material has been directly censored, students self-censor all the time and feel they do not have any right to freedom of the press. Students avoid criticizing school policies and conditions or the community in any way and avoid any topic considered controversial.

*Other teachers report censorship issues, but refused to allow them to be shared for fear of repercussions toward them or their students should their stories become public.*

Myths about New Voices of Maryland

*Protecting student journalists from retaliation.*

*Students will commit libel and invade privacy if left to publish without tight administrative control.*

REALITY: Eight states (Arkansas, California, Colorado, Iowa, Kansas, Massachusetts, North Dakota and Oregon) have laws under which K-12 public-school students are given the ability to publish the lawful and non-disruptive editorial content of their choice. **There is no evidence of any greater incidence of libel, invasion of privacy or other injury** in those states. Combined, these states have 160-plus years of experience with student press freedom. By clarifying the bounds of school censorship authority, such statutes probably avoid more litigation than they enable.

*Administrators need to “edit” the paper to minimize the risk of the school district being sued.*

REALITY: There are **no published cases in which a school district was held responsible** for what students wrote in a student newspaper, magazine or yearbook. While there is the rare nuisance suit that quickly settles or is dismissed, people almost never file suits over the content of student newspapers: it’s nearly impossible to show that a person’s life was ruined by a story in a student publication, and the public understands that journalists-in-training are going to make errors.

*Administrators need to “edit” the paper because the school district is legally liable for everything in it.*

REALITY: Lawsuits are so rare that this legal principle has almost never been put to the test in the high-school context, in the handful of lawsuits against college publications, the courts have unanimously said that public colleges can’t be held financially liable for students’ editorial content if they are barred by law or regulation from censoring the content: no control, no liability. The only known case in which this issue has been adjudicated at the high school level – Sisley v. Seattle Public School District No. 1, a Washington state trial court ruling in a 2011 libel suit – agreed that **a public high school is not liable for what its students publish in a student-controlled newspaper**.

*Administrative control over student media is a widely approved practice.*

REALITY: Every authoritative group involved in journalism education and training has gone on record condemning the Hazelwood level of school control as educationally unsound. The Society of Professional Journalists, the Journalism Education Association, and the Association for Education in Journalism and Mass Communication have called for schools and colleges to cease reliance on Hazelwood. These are the largest membership organizations in the country representing, respectively, working professional journalists, high school journalism educators, and college journalism educators. The wording of the SPJ resolution exemplifies the organizations’ sentiments: “[I]t is well-documented the Hazelwood censorship clause **impedes an educator’s ability to adequately instruct and train students in professional journalistic values and practices**, including the right to question authority and investigate performances of governance.”

*This legislation gives students the same rights as full-time, professional journalists.*

REALITY: This legislation brings Maryland to the standard set by the Supreme Court in Tinker v. Des Moines Independent Community School District (1968). Under Tinker, the school may prevent or punish speech that threatens a “substantial disruption” of school activities – something more than just a strong exchange of differing opinions. Tinker is **very far from being an “anything goes” standard** – in fact, it is the standard that applies today to students’ T-shirts, hairstyles and other “non-curricular” forms of speech, to which schools have become accustomed over the last 48 years.