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May 6, 2016

President John Housel  
Northwest Community College District  
231 West 6<sup>th</sup> Street  
Powell, WY 82435

Dear President Housel,

The Student Press Law Center is a nonprofit legal-assistance organization supporting the work of the student media nationwide. We have worked in the past with the student journalists of the *Northwest Trail*, who perennially face adversity in their relationship with Northwest College administrators. While some degree of friction between government officials and those covering them is unavoidable and arguably even healthy, the relationship has now deteriorated to the point that President Hicswa has recommended the outright elimination of the journalism department. Your immediate intervention is needed.

For years, the *Trail* has found itself at odds with an administration that seems to view legitimate journalism with hostility. Presumably you recall the termination of former adviser Ron Feemster in 2009, a decision that followed sensitive campus stories including pay equity, a marijuana bust, an expelled athlete's return, and censorship of political posters. After Feemster was fired but before his last day, the *Trail* broke the story of the Mormon recruiting letter incident. Its courage in the face of such administrative censorship earned it our 2010 College Media Award.

While the administrators have changed, the *Northwest Trail* has continued to cover important stories, and the administration has continued to react with contempt and progressively more convoluted attempts to silence the paper.

In particular, Vice President of Academic Affairs Gerald Giraud has consistently found fault with the newspaper's coverage. It is my understanding that two years ago, he objected to the newspaper characterizing a new college policy on relationships between students and instructors as being a response to an incident involving such a relationship. Earlier this academic year, Vice President Giraud objected to the *Trail* quoting a security officer's Facebook post bragging about disciplining resident assistants who violated the school's drinking policy. Vice President Giraud's position on the *Northwest Trail* is summed up well by his description of it in an e-mail he sent on April 13: "The 'Trail' is an internal scandal rag."<sup>1</sup>

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<sup>1</sup> I am not certain whether Vice President Giraud intended "internal" to modify the word "scandal" or the word "rag." The *Trail* is not internal. While produced by students, is distributed to 50 off-campus distribution sites. Copies are sent to 15 high schools, and hundreds more mailed out to alums and libraries. It does more to raise the profile and awareness of Northwest College than any other student activity. On the other hand, if Giraud's intended construction was that the *Trail* was a "rag" that reports on "internal scandals," query whether it might not be more effective to turn some of this censorious fervor toward reducing the frequency of internal scandals.

I would note for the benefit of the board that this “rag” won five regional Society of Professional Journalist (SPJ) awards last month and has two winners competing for national SPJ awards. It has been cited as the source of information later published in national news outlets. It is, for all practical purposes, the paper of record in Powell.

The attempt to eliminate this program comes only after the attempts to bully its present adviser out of the job have, so far, failed. Those attempts took the form of an intentional misreading of accreditation standards to decide that a journalism professor “must” have a Masters in Journalism. While the adviser, Rob Breeding (who already has a masters degree), is appealing that interpretation, he is also obtaining the necessary coursework to earn the journalism degree.<sup>2</sup> (I am sure President Hicswa will fill you in on Breeding’s appeal; I only raise it because the college’s selective application of *non-binding* accreditation standards to hasten the removal of a journalism adviser is part of the case that a federal court will consider if a First Amendment lawsuit becomes necessary.)

Student media produced outside the boundaries of a graded class assignment, such as the *Northwest Trail*, are recognized as “public forums” for the expression of student editors’ views.<sup>3</sup> In a public forum, the First Amendment disfavors any government restriction based on the content or viewpoint of a speaker, and any such restriction is presumed to be unconstitutional unless the government can carry a heavy burden of justifying it.

A public college, or those acting under the authority of a college or on its behalf, may not censor even indirectly through financial coercion. While direct censorship is the most obvious and most clearly illegal type – such as confiscating a newspaper to prevent it from being distributed – the First Amendment does not stop there. In the past, state and federal courts have recognized that retaliatory or punitive actions short of literal censorship could still violate the First Amendment. These include withholding a publication’s funding to punish editors for controversial editorial content, terminating advisers, or any other creative mechanism designed to achieve the same result.<sup>4</sup>

When government officials at a public university single out student media for elimination with no explanation offered, the inference of an impermissible motive arises. That motive is echoed in Vice President Giraud’s words and actions, in the attempt to disqualify the publication’s adviser, and now in President Hicswa latest attempt to eliminate the “problem child” student publication

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<sup>2</sup> Academics may not fully appreciate that journalism is quite a bit like law: while it’s great to have a degree in it, not every degree needs to be in law to be highly successful at it. While the study of political science, philosophy, or English literature may not be the most natural way to begin a legal career, it seems to have worked for Justices Kennedy, Breyer, and Thomas, respectively. Similarly, for many journalists who go on to cover specialized areas of news—in Breeding’s case, the environment—a specialized graduate degree is far more useful than further experience in the mechanics of journalism.

<sup>3</sup> See *Kincaid v. Gibson*, 236 F.3d 342 (6th Cir. 2001)(*en banc*) (college yearbook is a public forum in which student editors have the right to determine editorial content); *Lueth v. St. Clair Cty. Comm. Coll.*, 732 F. Supp. 410 (E.D. Mich. 1990) (newspaper produced by students at Michigan community college outside of class is a public forum entitled to full First Amendment protection).

<sup>4</sup> *Joyner v. Whiting*, 477 F.2d 456 (4th Cir. 1973) (retaliatory funding cut); *Moore v. Watson*, 838 F. Supp. 2d 735 (N.D. Ill. 2012), citing *Coppola v. Larson*, 2006 U.S. Dist. LEXIS 51205 (2006) (retaliatory adviser removal).

entirely. Having left this trail – indicating a desire to punish the *Northwest Trail* for refusing to be silenced – the administration has created a *prima facie* case for violation of the First Amendment that will be difficult for the University to dispel. (Although it is the stated position of the college administration that the *Northwest Trail* itself may be permitted to survive as an extracurricular activity, your administration knows – or, had it studied the matter with any degree of care, *should* know – that it is virtually impossible to sustain a high-quality student newspaper at a two-year college as a purely extracurricular activity in which participants neither receive any significant pay nor academic credit. There can be no mistaking that the elimination of journalism courses will end the production of anything approaching the reliably high-quality journalism for which the community depends on the *Northwest Trail*).

In 2008, the Student Press Law Center, through volunteer legal counsel in Georgia, filed a First Amendment lawsuit against Armstrong Atlantic State University on behalf of student editors at *The Inkwell*, the AASU student newspaper, based on a budget cut that disproportionately singled out the newspaper after members of the budget committee had complained about the newspaper's "negative" tone. The moment that the case was presented to the Attorney General's Office to defend, the defense attorney was horrified, called the newspaper's counsel, and settled the case with full restoration of the funding cut plus attorney fees. We have been down this road before, and we know where it ends.

In light of the situation, we hope the Board will reject President Hicswa's proposal to eliminate the journalism program. Without the *Northwest Trail*, the Board itself would have no knowledge of the "internal scandals" that the Vice President is so eager to paper over. Eliminating the *Trail* would leave the Board, and the community, without the strongest independent voice watching over their investment.

While it certainly appears that significant personnel changes are needed at Northwest College, the journalism program is not where the odor is emanating from. We hope that the board will call a "cease-fire" to President Hicswa's hasty and ill-considered "war on journalism," as no savings will be realized by diverting the money spent on educating future journalists to defend a First Amendment lawsuit.

Sincerely yours,



Frank D. LoMonte, Esq.  
Executive Director  
Student Press Law Center

CC: Vice President Larsen; Treasurer Fees; Trustees Danko, Spomer, Wurzel, Westerhold