

## **New Voices for Idaho: A Survey and Recommendations for Other States**

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### **Executive Summary**

In 1988, the U.S. Supreme Court ruled public schools administrators have the right to prior review and censor school news media in the benchmark *Hazelwood v. Kuhlmeier* decision. In the 40 years following, teachers say they have become afraid of allowing students to publish/air stories on controversial topics. This fear reduces students' ability to learn critical thinking and communication skills. In addition, teachers have expressed fear of their administrations in terms of retribution should they dare to push for some stories. Rural, conservative states, like Idaho, are a prime place to perform a case study of the possible chilling effect this Supreme Court decision has had on schools and education.

Specifically: Would a conservative state such as Idaho benefit from enacting protections for high school journalism, known as New Voices legislation, which essentially reverses the Hazelwood decision? A 2016-17 survey of Idaho public school journalism teachers found “yes,” there would be direct benefits to enacting that protective legislation. These benefits include heightening the Common Core requirements of teaching/learning communication, collaboration, critical and creative thinking. Using the framework of the South Dakota and Maryland passed legislations would also give teachers the benefit of a better work environment where they do not have to be in fear of their employment for just doing their job as a journalism teacher.

The obvious cons to this proposal stems from concerns aired by school administrators, who often feel that it is in the best interests of the students, school, and local community to avoid controversial topics and possible controversy. However, the New Voices bill ensures the students would learn the responsibilities of a free press, from laws protecting both free speech and privacy to the ethical responsibilities associated with journalism. Teachers under the bill would be protected against retaliation by administrators and prohibited from using student media as a platform to push personal political agendas.

Looking at the Idaho survey, 76 percent of the respondents said *Hazelwood* does impact how and what they teach in journalism classes, including changing what stories they cover. Many said the administration has direct say in what the students can and cannot cover in the course of their journalistic endeavors. Sixty four percent of the respondents said *Hazelwood* diminishes the learning outcomes for their students and 72 percent said they have some form of fear of being reprimanded for their student's work. This makes for an unhealthy learning and work environment.

For these reasons and other enumerated in this report, Idaho should pass New Voices legislation to provide greater press freedom for students and protection for teachers. This legislation well serves the State of Idaho and the Common Core as expressed by the State Department of Education. While some administrators may not always appreciate student stories, the New Voices law does diminish existing protections for privacy, libel and other concerns and it does provide students with the ability to use their critical thinking and communication skills, as well as protect the teachers. This would certainly be a win-win for Idaho education as a whole.

## Introduction

Idaho is a deeply religious and conservative rural state, and although the US Census Bureau (2017) it is the fastest growing state, it was ranked 46<sup>th</sup> in the country by Education Week (Richert, 2015). In particular, the state received the low ranking due to the lack of funding for K-12 education and access to pre-school and kindergarten for younger students (Richert, 2015).

This begs the question: Would the high school journalism teachers of such a state support expanded protections for a student press based on a model of legislation known as “New Voices”? This is legislation to remove the onus of the 1988 Supreme Court decision, *Hazelwood v. Kuhlmeier*, limiting student speech under the First Amendment. Adopting the language of the New Voices legislation would allow states to provide additional protections to the advisers and members of K-12 journalism programs, encouraging a more robust student press.

A survey of Idaho high school journalism teachers indicates yes. In fact, the majority of teachers seem to almost plead for the ability to cover news in their districts, further enabling them to teach the 4 Cs of the state of Idaho’s Common Core: critical thinking, creative thinking, communication and collaboration (Idaho Common Core State Standards, 2016).

The 2017 study, conducted by two University of Idaho journalism professors, shows that the majority of teachers not only want the legislation, they are also afraid of their administrations impacting their ability to teach.

Idaho is classified as a very conservative state. Established as a state in 1890, the state is politically overwhelmingly Republican with only eight Democrats holding legislative office and no Democrats currently hold either any statewide elected offices or state Congressional seats. The state is deeply religious, primarily Church of Jesus Christ of Latter Day Saints followed

closely by Roman Catholic, and the residents tend to agree following rules is important. Rural in nature, the primary products are dairy, wheat and potatoes although some forms of manufacturing (primarily tech companies) are gaining in the southern portion of the state (USCB, 2017). With an overall population of 1.56 million residents, Idaho is a relatively sparsely populated state, although 2017 Census Bureau statistics show the state is the fastest growing state in the country.

Individually, the average household income is \$49,174; the average age is 37.5 years and the average person is white (88.9 percent). While most people (90 percent) have a high school education, only 14.8 percent go on to earn a bachelor's degree or higher (USCB, 2017).

An evaluation of these statistics show there is a strong need for high school to provide as much of a broad, general education as possible emphasizing the 4 Cs of the Core, and teachers say journalism classes allows for that experience.

## **Background**

New Voices legislation originated and was unanimously passed in North Dakota in 2015, when a group of college students petitioned the legislature to pass the John Wall New Voices Act, a bill designed to eliminate the threat of prior restraint and censorship against high school journalists. New Voices is a “student-powered grassroots movement to give young people the legally protected right to gather information and share ideas about issues of public concern” (New Voices, 2018).

Under New Voices, using the 2016 Maryland law as a template, teachers would again be able to treat their newsrooms like a professional newsroom, with an unhindered ability to use free speech and free press rights while providing students an invaluable lesson in civics, communication and critical thinking. New Voices echoes exemptions existing within state law,

which continues to prohibit student journalists from engaging in libel/slander, an unwarranted invasion of privacy, committing clear and present danger in the commission of an unlawful act, and any violation of county board policies or the material and substantial disruption of the orderly operation of a public school (Maryland New Voices Act, 2016).

Groups working with New Voices prefer legislation where a school media adviser would be prohibited from using their position to “influence a student journalist to promote an official position of a county board or a public school” (Maryland New Voices Act, 2016). Using this language, it would also prohibit a school from engaging in any form of retaliation (including suspension, dismissal, discipline, reassignment, or transfer) for protecting a student who is engaging in journalistic activities. In addition, the legislation specifically protects student journalists, both high school and college/university, who are reporting and editing news (Maryland New Voices Act, 2016). Both bills would allow similar protections for post-secondary/higher education journalists who may also be impacted by *Hazelwood*.

This would be a dramatic departure of the current standard. In the *Hazelwood v. Kuhlmeier* (1988) case, the Supreme Court ruled that it was constitutional for the school principal to enact prior restraint against the student press by removing articles dealing with divorce and teen pregnancy prior to publication. Although the teen journalists sued, claiming that this was a violation of the Free Press clause of the First Amendment, the Supreme Court disagreed, citing the pedagogical need to apply closer oversight to student press (SPJ Education, 2014).

The Supreme Court made several distinctions about this case. First, the paper was sponsored by the school and, as such, the school had a legitimate interest in preventing the publication of articles that it deemed inappropriate and that might put the school in a poor light

(Hazelwood, 1988). Second, the Court conducted a classic forum analysis, and said the school's newspaper was not intended as a public forum in which everyone could share views; rather, it was a limited forum for journalism students to write articles pursuant to the requirements of their Journalism II class. In a limited public forum, the right to speech is not absolute, even on political or social issues. In this instance, the articles were therefore subject to "appropriate editing" by the school (Hazelwood, 1988). Finally, the Supreme Court drew a distinction between *Tinker v. DesMoines* (1969), where the Court affirmed the right of students to individual expression and the school's responsibility to "tolerate" it, and the school "affirmatively" promoting speech by distributing it via a school sponsored publication (Hazelwood, 1988).

This ruling, and others concerning First Amendment rights and student speech, only applies to public schools. As government entities, they are restrained by the wording of the First Amendment, "Congress shall make no law ..." (U.S. Const. amend. I). Private schools can make any policies they deem necessary regarding student speech. Some private schools are more expansive of student press rights- many are not. States have the power to grant more expansive free speech/press rights, as long as they do not take away the fundamental framework laid out by the First Amendment (and clarified by the Courts). According to the Society of Professional Journalists Education Committee (2014), "it is well-documented the Hazelwood censorship clause impedes an educator's ability to adequately instruct and train students in professional journalistic values and practices."

## **Methodology**

Currently, Idaho has 99 people actively employed as middle or high school journalism teachers or advisers. The state does not have a certificate in teaching journalism, so most of the teachers are English instructors, but the field also encompasses history teachers, librarians,

computer faculty and others. The researchers asked members of the Idaho Student Journalism Association (ISJA) to take the 16-question survey. Seventeen took the survey online and 8 took the survey in person during the ISJA meeting in October of 2017. This meant a total of 25 teachers/journalism advisers, or 25 percent of the total, participated in the survey. Two notes: the teachers filled out the form voluntarily, there were no prizes or incentives given to complete the survey, and a full version of the survey is attached in the Appendix.

Regarding New Voices legislation, the key questions of the survey were:

1. Does the Hazelwood decision impact how you teach journalism? If yes, please explain.
2. Does the Hazelwood decision restrict what content goes into your student media?
3. In your opinion, does the Hazelwood decision diminish learning outcomes for student media?
4. Would you be in favor of the Idaho Legislature passing New Voices legislation with mirrors the Maryland Act?
5. How could New Voices legislation benefit education in Idaho?
6. Are you currently afraid of being reprimanded by administration for the work your students might produce in their news stories?
7. Do you have written restrictions as to what cannot go into your student publications?
8. Who has final approval of student media work?

Researchers did a close read of the responses and compiled important sentiments to better understand the potential role that New Voices legislation could have in the state of Idaho.

## **Analysis**

Since a quarter of Idaho's high school journalism teachers responded to the survey, the authors are confident that the responses represent a good overview of the attitudes and concerns of advisers involved in the student press in the state.

The vast majority, 76 percent, said the Hazelwood decision does impact how they teach journalism. Generally, Hazelwood has directly changed what stories they cover and print, with administration taking a strong hand in curating student press content: "I send my admin. Our story ideas each month before reporters begin writing & some stories (take a knee) require a short leash to be published." Some teachers do not even bother with topics they know will be dismissed by administrators: "When stories arise I know the admin will not pass, I don't bother with it."

This has led to advisers trying to tailor content to administrative preference (not just mandates). One respondent said that Hazelwood "makes me consider every story in terms of what administrators might dislike. It narrows the scope of coverage." Student journalists learn from this behavior. Another respondent noted that "my students do skirt around issues like abortion or legalizing marijuana because they are nervous they will get in trouble." Additionally, the Hazelwood standard "leads to self-censorship & fear of retribution for covering controversial topics."

Answers like these explain why 68 percent of the respondents said the Hazelwood decision does restrict what content goes into their student media, while 24 percent said the decision does not impact content, and 8 percent said they didn't know. Sixty four percent of the respondents said the need to operate under the Hazelwood decision diminished the learning outcomes for their students while 20 percent said they did not think it diminished the learning outcomes and 12 percent said they did not know.



Obviously one of the issues with the current standard is that school administrators- from principals to school boards- take wildly fluctuating approaches to censoring student press content. For example, 56 percent of respondents said it was the administration who had final say over all press content, while 32 percent said it was the media adviser. Twelve percent said the student editor had the final word and 16 percent said “other,” which included the school’s technical staff. While some administrators respect the autonomy of student publications, the majority punish teachers for bringing forth controversial topics and articles.

Seventy two percent of teachers expressed some form of fear of being reprimanded by administrators for the students’ work: 41 percent said they are somewhat afraid, 17 percent said they are afraid and 17 percent said they are very afraid. Seventeen percent of the respondents said they are not afraid of their administrators reprimanding them and 8 percent said they were neutral on the subject.

It is important to re-emphasize that in a rural state like Idaho, journalism advisers have very little training or support. Since there is no certificate for journalism, the majority of English teachers (with some coming from other disciplines), may have taken one undergraduate college course in journalism. Few have a deep understanding of journalistic protections. They are also operating under administrators with similar constraints. Even fewer principals understand what rights a student press has, and many are under immense pressure to avoid any public embarrassment from more controversial stories. This gets magnified in conservative, rural states, where the scope of *controversial* topics is fairly broad.

Of the responses, 76 percent of the teachers are in favor of passing New Voices legislation based on the Maryland law, while 8 percent said they were not in favor and 16 percent said they did not know. The idea of having concrete protections in place for both students and

teachers was very appealing to the majority of respondents. In responding to the benefits of a New Voices law being passed in Idaho, several respondents addressed the personal relief they would feel: “Protection for teachers will help them be better teachers by taking those chances journalists should be taking” and it would “Protect the teachers from administrators.”

Additionally, the teachers pointed out, rightly, that it would provide a more rigorous curriculum with better opportunities for students. Students would be able to write real news stories. One respondent said that “It would make high school journalism more like real-world journalism. It would maintain journalistic integrity but do more to encourage investigative reporting.” Another remarked that the newsroom would be more daring: “We wouldn’t be afraid to take risks.”

The New Voices legislation would also encourage students to use their critical and creative thinking skills as well as learning communication and collaboration skills. Instead of only focusing on factual/descriptive stories, the legislation would “allow for editorial and analytical pieces in addition to objective news.” Finally, it would lead to more well-rounded students, by supporting “students’ First Amendment and democratic rights, promotes good citizenship.”

### **Policy Options**

The Maryland version of the New Voices legislation extends protections beyond the original North Dakota law. Ambiguity in legal language is a landmine for loopholes, especially when granting extended rights to individuals. The Maryland law defines “school-sponsored media,” “student journalist,” and “student media adviser” so that there is no ambiguity in who these protections apply to (Maryland New Voices Act, 2016).

It is important to distill down the necessary policy goals of the Maryland law: 1. Student journalists will not be disciplined for creating and publishing journalistic content, 2. Student media advisers will not be “dismissed, suspended, disciplined reassigned, transferred, or otherwise retaliated against” for protecting student journalism, 3. Allows student media advisers to teach professional standards for English and journalism, 4. Prohibits student media advisers to influence student journalists to promote political positions (Maryland New Voices Act, 2016). Additionally, and perhaps more controversially, the Maryland law also requires that every “public institution of higher learning” will adopt a policy in line with the K-12 standard.

Idaho’s Common Core for writing clearly states: “The goal of the common core is to foster flexible, fluent and rhetorically agile writers well versed in the narrative, informative and argumentative modes” (Idaho Common Core State Standards, 2016). The fundamental elements of journalism provide that criteria, especially in terms of critical thinking, quality word choice, considering information quickly/analyzing and communicating it. Students learn to write not only news stories, but feature stories, editorials/opinion works and the additional confines of broadcast while also learning the more expansive properties of online writing. As a practice, journalists must be able to defend their work in addition to being able to listen to and report conflicting sides of an issue. This is perhaps one of the best ways teachers can educate students in the art of argument.

Offering genuine newsroom experiences can teach younger minds how to think quickly and accurately while instilling quality writing skills. If Idaho were to enact the Maryland law, it would provide teachers the protection that allows them the opportunity to teach without fear of reprisal by an administrator who might not like a particular topic a student might select, but it is

still a topic of importance to the school community. After all, many times these “unpopular story options” are already well known and student journalists can alleviate rumors by providing facts.

Responses from the Idaho teachers clearly shows the teachers want this law, primarily because many of them do work in fear for their jobs by what their students may do because an administrator might not like the topic. Teachers want to return to the standard before *Hazelwood*: The *Tinker* standard, in which the 1969 U.S. Supreme Court said freedom of speech does not end at the schoolyard gate.

The positives for this action include a better, broader educational experience for students and the removal of fear for the teachers. The Maryland law in particular would provide discrete protections to student journalists, as well as Idaho student media advisers, who expressed strong concerns about being disciplined for their role in student media.

The cons to this legislation would be the removal of a certain power from administrators, one which quashes student creativity and originality, active censors their work, and creates a workplace of fear for teachers. Many administrators in Idaho do act *en loco parentis*, in lieu of the parent, but is censorship and prior restraint by school administrators really justifiable on this premise?

### **Recommendations**

Considering all the factors, Idaho should enact legislation mirroring the Maryland law, which not only provides quality constraints on students while allowing for a free press, it also provide protections for teachers. Specifically, the Idaho New Voices legislation should clearly define: school-sponsored media, student journalist, and student media adviser.

Key to enacting the Idaho Common Core, the Idaho New Voices legislation should also:

1. Protect student journalists,
2. Protect student-media advisers against various forms of

retaliation by administration, and 3. Clarify that student-media advisers can and should continue to teach professional standards for English and journalism. Although the final provision, blocking student-media advisers from influencing student media on certain political or policy decisions seems unnecessary and heavy-handed, it could be a positive addition if it placates concerns about the undue influence a student-media adviser has over student journalists.

Similarly, although the Maryland Act also mandates that similar protections be created for public colleges and universities, this is a more contentious issue, and should be considered carefully based on state politics. In Idaho, the Idaho State Board of Education serves as the Board of Trustees for public four-year universities and colleges (Idaho State Board, 2018). There is already significant amount of state oversight of the curriculum. Although the New Voices legislation is *more* protective of student journalists and media advisers, additional legislation mandating compliance may not be the best route. There are only eight public higher education institutions within the state, and traditionally student journalists have more protection in college settings, and student-media advisers play a less contentious/prominent role. Although the authors promote additional protections for all student press, the recommendation for the New Voices legislation to require provisions from higher-education institutions is tempered by the above acknowledgement.

Ultimately, the Maryland New Voices legislation serves the needs of the Idaho Common Core. Idaho students need better instruction in reading and writing. Journalism provides these skills, it forces the student to consider the information before them, analyze it and write a cogent article or opinion piece. The Revised Publisher's Criteria for the Common Core Standards in English Arts and Literacy (Grades 3-12), says "At the heart of these criteria are instructions for

shifting the focus of literacy instruction to center on careful examination of the text itself” (Idaho Common Core State Standards, 2016).

If students are taught, understand and practice good journalism, they are doing as the document states: clearly examining material/texts/information and writing from that data. This re-enforces critical thinking skills while also encouraging collaboration with others and communicating well. As the Society of Professional Journalists Education Committee said in their 2014 book: these skills translate beyond the newsroom and are helpful to people who want to become physicians, lawyers, engineers and a multitude of other professions.

Outside of Idaho, other states with similar demographics could benefit from gauging interest/need in New Voices legislation by distributing a similar survey. The New Voices website ([www.newvoicesus.com](http://www.newvoicesus.com)), the Student Press Law Center ([www.splc.org](http://www.splc.org)) and the Journalism Education Association ([www.jea.org](http://www.jea.org)) would be useful places to get the contact information for student-media advisers. Additional assistance can be found with state coordinators for New Voices (found at <https://newvoicesus.com/category/state-campaigns/>) and contact with cooperating journalism groups, such as the Society of Professional Journalists ([www.spj.org](http://www.spj.org)) and the International Society of Weekly Newspaper Editors ([www.isene.org](http://www.isene.org)), both of which are offering assistance to New Voices campaigns. With similar evidence from a survey, local proponents of a New Voices campaign could promote state-specific solutions in a way that reflects the needs of their communities.

## **Conclusion**

As of February, 2018 (the latest available numbers), 14 states have added New Voices legislation for student journalists and 5 have legislation pending (New Voices, 2018). At this writing, 16 states have active campaigns to change the law so student journalists and their

teachers are protected. Proponents explain the importance of this as two-fold: First, it helps schools meet the criteria of most common cores with communication, collaboration, creative and critical thinking. Second, and probably more important, it teaches students the responsibilities of a free press and the role of a free press in society. Even if the students do not go into journalism professionally, the skills they learn are lifetime skills which translate into any profession. By allowing students to cover issues within their communities without fear of retribution (especially important for the teachers) helps them understand the legal, moral and professional responsibilities encumbered by a free press.

Passage of a law mirroring the Maryland New Voices Act is especially important for faculty advisers. This law protects the teachers from retribution by administrators, punishment some Idaho teachers say they greatly fear. The teachers said in a survey this punishment can range from a verbal or written reprimand to reassignment or firing. Fear in a workplace makes for a difficult work environment, and it can greatly diminish teaching effectiveness.

The information provided in this report makes a strong case for the State of Idaho to join other conservative, rural states such as North Dakota, Kansas and Nevada to draft and pass New Voices Legislation for the protection of state students and teachers.

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## Appendix

### Survey Questions for High School Journalism Faculty

General statement about this survey:

Thank you for taking the 5 minutes it should take to complete this survey. This survey is looking at the opinions of high school journalism teachers about proposed Idaho legislation- New Voices legislation- which would eliminate the Hazelwood standard for Idaho students.

In 1988, the U.S. Supreme Court ruled in *Kuhlmeier v. Hazelwood* that principals have the right to censor student publications if they believe the content to be disruptive to the educational process. In 2015, the state of North Dakota was the first to increase protections for high school journalists and educators via state law. Specifically, the law authorizes: school sponsored media (any materials that is prepared, written, published or broadcast by student journalists at a public school) and prepared under the direction of a student media advisor to exercise the same freedom of speech and of the press that professional journalists enjoy. Exempt from these protections are materials which may be “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 board policies or the material and substantial disruption of the orderly operation of the public school”—in other words, general media-based legal concerns.

In 2016, three more states joined in the New Voices movement (led by the Student Press Law Center) to allow high school journalists more freedom of the press. In the 2016 Maryland law, a provision was added to include protection of media advisors from any retaliation by school administrations. The proposed Idaho law would mirror the Maryland law, resulting in better protection for all student journalists (college and secondary) as well as any journalism teachers.

1. Does the Hazelwood decision impact how you teach journalism? If yes, please explain.

- a. No
- b. Yes

If yes:

2. Does the Hazelwood decision restrict what content goes into your student media?

- a. No
- b. Yes
- c. I don't know

3. In your opinion, does the Hazelwood decision diminish learning outcomes for student media?

- a. No
- b. Yes
- c. I don't know

4. Would you be in favor of the Idaho Legislature passing New Voices Legislation which mirrors the Maryland act?

- a. No
- b. Yes
- c. I don't know

5. How could the New Voices Legislation benefit education in Idaho?

6. Are you currently afraid of being reprimanded by administration for the work your students might produce in their news stories?

- a. Not afraid
- b. Somewhat Afraid
- c. Neutral
- d. Afraid
- e. Very afraid

7. Do you have written restrictions as to what cannot go into your student publications?

- a. No
- b. Yes
- c. Not sure

8. Who has final approval of student media work?

- a. The student editor
- b. The advisor
- c. The school administration
- d. Other

Demographic questions:

9. How many years have you taught in high school?

10. How many years have you taught/advised high school journalism?

11. What type of student media is in your school (circle all that apply)?

- a. Newspaper
- b. Magazine
- c. Website
- d. TV station
- e. Radio station
- f. Podcast

12. Are you a teacher, an advisor or other?

- a. Teacher
- b. Adviser

c. Other (please specify)

13. Have you ever been a professional journalist?

- a. Yes
- b. No

14. How many college journalism classes did you take?

- a. None
- b. 1-3
- c. 4-6
- d. 7-9
- e. More than 10

15. Do you attend workshops to assist with your journalism knowledge?

- a. No
- b. Yes

16. If you attend workshops, how many have you attended during your time working with student media?

17. Are you interested in continuing education for journalism through workshops or online graduate classes?

- a. Yes
- b. No
- c. Not sure

Preference

- 1. Online graduate classes
- 2. Workshops

18. What is your gender?

- a. Female
- b. Male
- c. Prefer not to answer