

STUDENT JOURNALIST PRESS FREEDOM RESTORATION ACT

Short title:

The title of your bill can do a lot of your messaging work for you. Sometimes it is helpful to name the bill after a prominent journalist or educator from your state, respected by both Republicans and Democrats. Former legislators with ties to journalism may also be a good choice.

Short title.

This act shall be known and may be cited as the “[person’s name, if applicable] Student Journalist Press Freedom Restoration Act”.

Preamble (sometimes called “Legislative Finding”):

A preamble is not necessary and does not on its own hold any legal weight, but it does help legislators know immediately the purpose of the bill without having to critique the language. More critically, it provides guidance to courts who may interpret the law as to what legislators were thinking about when they voted to approve. Adjust this section as needed to reflect exactly which students are covered.

Preamble.

(1) The legislature finds that:

- (a) freedom of expression through school-sponsored media is a fundamental principle in our democratic society granted by the First Amendment to the United States Constitution [and appropriate state constitutional citation];
- (b) a robust and free student press is critical to the development of informed and civic-minded adults;
- (c) Student journalists are denied the right to free expression guaranteed to other students, and their work censored when the speech of other students could not be infringed; and
- (d) Teachers who defend their students’ freedom of expression do so at great professional risk.

(2) It is the intent of the legislature to restore and protect freedom of expression through school-sponsored media for both public school students and students at public institutions of higher education in this state, and the jobs of the teachers who appropriately support these rights, in order to encourage students to become educated, informed and responsible members of society.

Definitions:

When defining “school-sponsored media,” think broadly. If you define media as only material produced by students in a class, for instance, you fail to protect

yearbooks or newspapers that are produced through a club or other extracurricular. If you define media only as publications written for the school, you fail to protect any video or audio journalism. You do not want to have to come back through the legislature to amend a law after realizing some student journalists are not covered.

When defining “students,” be specific. Each state uses different terms to refer to students of different ages: in your state’s education code, “secondary” schools refer to middle and high schools or just high schools, while grades 6-8 may be “middle school” or “intermediate school.” If you do not know the precise term, make sure your sponsor knows exactly the students who are trying to cover so their legislative drafting office can determine the appropriate wording.

NOTE: Some states prefer that your bill have two separate sections, one for secondary schools and one for colleges and universities. That is because there are often two different chapters of state law governing these schools, and New Voices legislation will need to appear in both of them. This is fine as long as the same language appears in both chapters.

Definitions.

As used in this section:

(1) “School-sponsored media” means any material that is prepared, substantially written, published or broadcast, in any media, by a student journalist at a public middle, or high school or college or university under the direction of a student media adviser and distributed or generally made available to members of the student body. School-sponsored media does not include media intended for distribution or transmission for classroom purposes only.

This legislation does not cover elementary school students. Some legislators hesitate to include middle schools; that may be acceptable, depending on the student media that is created in your state’s middle schools.

(2) “Student journalist” means a public or private middle or high school or college or university student who gathers, compiles, writes, edits, photographs, records, or prepares information for inclusion in school-sponsored media.

(3) “Student media advisor” means an individual employed, appointed, or designated by a public secondary school or higher education institution to supervise or provide instruction relating to school-sponsored media.

Student journalists’ freedom of expression:

Here you want to be as specific as possible as to what is prohibited. The categories of unprotected speech below stem from various Supreme Court

decisions and decades of other First Amendment law. This section restores student journalists' freedoms to the standard established by the U.S. Supreme Court in Tinker v. Des Moines Indep. Community School District, 393 U.S. 503 (1969). These should be the only categories you need. If others are proposed, think them through very carefully. If they are broad to the point where you cannot immediately identify all the situations it addresses (e.g. speech that "infringes on the rights of others"), this will create subjectivity in decisions as to what is protected and what is not, and allow administrators to censor speech for unclear reasons. If possible, contact SPLC before agreeing to any new language in this section to talk through the legal and practical impact of the changes.

Student journalists' freedom of expression

(a) Except as provided in subsection (b) of this section, a student journalist has the right to exercise freedom of speech and of the press in school-sponsored media regardless of whether the media is supported financially by the school, uses the facilities of the school, or is produced in conjunction with a course or class in which the student is enrolled. Subject to subsection (b) of this section, a student journalist is responsible for determining the news, opinion, feature, and advertising content of school-sponsored media. Student media advisers may teach professional standards of English and journalism to student journalists, consistent with this subsection.

(b) This section does not authorize or protect expression by a student that:

(1) Is libelous or slanderous;

(2) Constitutes an unwarranted invasion of privacy;

(3) Is obscene;

(4) Violates federal or state law; or

(5) So incites students as to create a clear and present danger of the commission of an unlawful act, the violation of a lawful school district policy, or the material and substantial disruption of the orderly operation of the school. Administrators must base a forecast of material and substantial disruption on specific facts, including past experience in the school and current events influencing student behavior, and not on undifferentiated fear or apprehension.

Section (c) prohibits prior restraint of materials except the speech that is expressly prohibited under subsection (b). The section further ensures that school officials cannot withhold from a student the reason why such media was censored.

(c) There shall be no prior restraint of material prepared for official school publications except insofar as the material violates the standards of section (b). School officials shall have the burden of showing prior justification for their limitation of student journalist expression under this section and affording students a timely opportunity for appeal.

Section (d) ensures that school-sponsored media can reject ads such as those for vape pens and alcohol.

(d) Nothing in this section shall be construed as authorizing the publication of an advertisement in school-sponsored media that promotes the purchase of a product or service that is unlawful for purchase or use by minors.

Section (e) protects student journalists who publish material that is not expressly prohibited under the law, even if controversial.

(e) A student journalist may not be disciplined for acting in accordance with subsection (a) of this section.

Section (f) protects the student media advisor when they have refused to censor student language that is not expressly prohibited. If your state constitution also expressly protects free speech, add that section of the state constitution to section (f)(2).

(f) A student media adviser may not be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against for:

(1) Refusing to infringe on conduct that is protected by this section or the First Amendment to the United States Constitution [or relevant section of your state's constitution]; or

(2) Acting to protect a student journalist engaged in permissible conduct under subsection (a) of this section or the First Amendment to the United States Constitution [or appropriate section of the state constitution].

Section (g) ensures the rights of student journalists and the responsibilities of administrators are made clear and are uniform across the region. This section also ensures that students have the ability to appeal when their work is deemed censorable.

(g) Each school board subject to this chapter shall adopt a written policy for the exercise of the right of student journalists to freedom of speech and the press in school-sponsored media in accordance with this section.

- (1) The policy must include reasonable provisions for the time, place, and manner of distribution of student expression.
- (2) The policy must include a provision allowing for the timely appeal within the school district of decisions made pursuant to this section.

Section (h) is effectively a disclaimer that student media does not represent the views of the school or school district as a whole, and that schools and school districts cannot be sued for the content of student-produced media. NOTE: To date, no school district in a state with a New Voices law has been found liable for content published in student-produced media.

(h) No expression made by students in the exercise of free speech or free press rights shall be deemed to be an expression of school policy, and no school officials or school district shall be held responsible in any civil or criminal action for any expression made or published by students.

Section (i) allows students whose media is unlawfully censored to go to court to force publication or production of the censored work. The section also clarifies that students may not sue for financial payment, with the exception of attorney's fees.

(i) Any student, individually or through a parent or guardian, or student media advisor may institute proceedings for injunctive or declaratory relief in any court of competent jurisdiction to enforce the rights provided in this section. Nothing in this section shall be construed to create any private action on behalf of a student other than to seek injunctive relief allowing the publication of the speech in question. A court may award reasonable attorneys' fees to a plaintiff that substantially prevails.

SECTION 2. This act shall take effect upon passage.