



**TESTIMONY IN SUPPORT OF AB 551 - FREEDOM OF THE PRESS IN SCHOOL-SPONSORED  
STUDENT MEDIA  
October 26, 2023**

The Student Press Law Center (SPLC) stands in strong support of this legislation. We regret that we cannot attend the hearing in person, but would be happy to answer any questions or concerns the committee may have regarding this legislation or other student press freedom matters - our contact information is below.

SPLC is an independent, non-partisan organization that supports, promotes and defends the press freedom and First Amendment rights of student journalists and their advisers. Our free legal hotline provides services to students and teachers across the country. As such, we see daily the significant need for such legislation, a version of which is now law in seventeen states.<sup>1</sup>

For nearly 35 years, Wisconsin's schools have wrestled with a U.S. Supreme Court decision, discredited by every journalism education organization in America, that teaches them self-doubt and the importance of public relations over truth, grants them less freedom than every other student on campus simply because they are journalists, and places advisers at risk of professional consequences for supporting their students' rights.

In *Hazelwood School District v. Kuhlmeier (1988)*, the Court ruled that K-12 student media censorship must be "reasonably related to legitimate pedagogical concerns." Unfortunately, what constitutes "legitimate pedagogical concerns" has never been clarified or widely understood.

In contrast, all student speech is held to the so-called "*Tinker Standard*," a precedent stemming from the U.S. Supreme Court's *Tinker v. Des Moines (1969)* ruling that student speech cannot be censored unless it violates state and federal laws (including those against libel and slander, as well as privacy and copyright laws) or materially or substantially disrupts the school environment. That is the standard this legislation seeks to restore for student media. (We note that higher education students generally retain full First Amendment rights, although adoption of this legislation would make that crystal clear.)

While a student journalist adhering to proper journalistic procedures is unlikely to stumble over the *Tinker Standard*, students are censored under *Hazelwood* for writing stories that administrators at another school would never contend violates any legitimate pedagogical standard. *Hazelwood* remains, three decades after the Court's ruling, an arbitrary and capricious standard that causes confusion among student journalists and school administrators alike. This legislation would resolve that confusion.

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<sup>1</sup> Arkansas, California, Colorado, Hawaii, Illinois, Iowa, Kansas, Maryland, Massachusetts, Nevada, New Jersey, North Dakota, Oregon, Rhode Island, Vermont, Washington and West Virginia.



Nationwide, SPLC has seen yearbooks censored because students wore MAGA shirts or the swim team wore bathing suits, newspapers censored for reporting on graffiti visible to all students, and administrators restricting pieces providing oversight into the administrators' own activities. Award-winning advisers have been reassigned or fired for refusing to infringe upon students from reporting on, among other things, the high cost of feminine hygiene products, a vigil for a current student, the improper withholding of documents relating to an administrator's resignation, and curriculum changes.

In 2014, for instance, Fon du Lac high school imposed a prior review policy following a the school paper's reporting on the impact on sexual assault survivors of rape jokes. The policy was then used to censor an illustration about the prior review policy, as well as multiple parts of the final issue that year. (The policy was changed after SPLC intervention.)

The result of *Hazelwood* censorship is not that students do not grapple with the issues that make adults nervous, it is simply that they do so disempowered by their administrators and informed by rumor and social media algorithms instead of rigorous fact-checking and journalistic ethics. Students learn that adults believe them incapable of the sort of discourse we expect them to engage in the moment they graduate.

We recognize there are instances in which administrators may need to exert authority to keep their students safe and the school day orderly. AB 551 protects that authority; school officials can step in, for example, when there are concerns about an unwarranted invasion of privacy, or the media will be demonstrably disruptive to the school environment - the "*Tinker* standard." AB 551 merely ensures that students are no longer censored for subjective or ambiguous reasons, enables student journalists to tell the truth without fear of reprisal, protects capable and supportive advisers, and allows Wisconsin's schools to fulfill their mission to produce the engaged thinkers ready to be our next generation of leaders.

Wisconsin will join the seventeen states that have already enacted similar student press freedom laws. The verdict is clear; these laws do not impact the safety of the school or keep administrators from intervening when necessary. In no state has there been an outbreak of unethical journalism. No school has had a libel lawsuit. (In fact, libel lawsuits against high school student journalism programs are exceedingly rare; to date, we are aware of no published libel lawsuit in the country holding a school district liable for work published by its student media.)

Thank you for your support of AB 551, and Wisconsin's student journalists.

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