



**TESTIMONY IN SUPPORT OF SB 571 AND AB 551 - FREEDOM OF THE PRESS IN
SCHOOL-SPONSORED STUDENT MEDIA
12/5/23**

The Student Press Law Center (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,¹ and strongly support its passage. We do request small clarifying amendments be made to avoid inadvertently incentivizing some censorship of student media, and have detailed those concerns and included suggested language below.

In *Hazelwood School District v. Kuhlmeier (1988)*, the U.S. Supreme 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 other student speech is held to the so-called “*Tinker* Standard,” a precedent stemming from the 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.

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.

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.

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



In 2014, for instance, Fond du Lac high school imposed a prior review policy following the school paper's reporting on the impact of callous jokes about sexual assault survivors. 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.) This legislation will resolve the confusion and unwarranted censorship stemming from *Hazelwood* by providing appropriate and consistent guardrails for student media content, will protect school districts, and will ensure that Wisconsin's students can be the independent, civic-minded leaders Wisconsin schools encourage them to be.

As to our concerns: in three places, AB 551 now states that speech is not protected if it is "rejected by a student-editor or an all-student editorial board." This is a new exemption added by the Assembly that does not appear in any other state with this law.

To be clear: the legislation in its original form does not allow for students to sue solely because their editor rejected or edited a draft work. The bill requires that student journalists determine the content of student media, and that protects the decision of the student editor or editors. At no point in the 100-plus combined years of New Voices legal history has such legislation ever been construed to allow students to sue solely because of the editorial decisions made by other students. We do not believe this amendment was necessary for that reason.

We are concerned that making speech unprotected solely by virtue of it being rejected or edited by the student editor opens the door for bad actors to intimidate student editors into rejecting or editing draft works. Similar pressure is often placed on student media advisers, and is why this legislation protects them from retaliation.

Because of AB 551's current wording, censored students will have no recourse under the law because their speech - otherwise protected by law - was suppressed by a student editor at the coercion of an administrator rather than directly by the administrator.

In order to fix this loophole, we propose that the amendment language be stricken, and that instead, either:

- all lines stating "a student journalist is responsible for determining the news" et cetera be changed to "a student editor is responsible for determining the news" et cetera (similar language appears in several state laws similar to AB 551), or;
- A line be added to each section stating "This section shall not be construed to limit the ability of student editors to reject or edit any student-created material."

Further, we are concerned by inclusion of language exempting from the policy requirement any institution or school board that "demonstrates to the department that only pupils are involved in



making editorial or publication decisions." We believe that this section as written raises more questions than answers and will leave schools and districts inadvertently in violation of the law.

Censorship is often not policy; even schools whose internal policy is to promote the independence of their student media have grappled with cases of censorship. Yet a policy can be crucial to setting expectations and informing all students and administrators, particularly during periods of transition, as to the rights and responsibilities of all parties.

This amendment goes into no detail about how a district or institution is to certify to itself that their student media is free from interference, how that freedom is to be verified, how often that certification is to occur, or give student journalists crucial appeals processes when administrators violate the policies and the law. As such, we believe it will simply be used to circumvent the policy requirement at a detriment to all parties.

We understand that some in the University of Wisconsin System (U-W) are concerned that the law will conflict with their existing policy. We have looked at U-W's existing policy and are concerned that, while it holds for the freedom of the student press, it also requires the Chancellor or a designee to discuss with the student media "their legal responsibilities" and financial liabilities. Setting aside the fact that student journalists take classes in media law and ethics and are well-versed in their legal rights and responsibilities, this is a situation ripe for censorship pressure under the wrong administrator and misinterpretation by student journalists. If a school says that their student media are independent but a student disagrees, are they immediately in violation of the policy requirement of this law? Without a clear policy and procedure for students to appeal the rare censorship that does occur, students are left with no recourse but to go to court - a costly and time-consuming procedure for all involved.

We recommend that the amendment be replaced with:

"It is sufficient for a policy to state that decisions regarding the content of student media are made solely by students, and that at no point may any school official attempt to influence the content of school-sponsored student media."

With these small amendments, we urge swift passage of this legislation. Wisconsin will join the seventeen states that have already enacted similar student press freedom laws. The outcomes are abundantly 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 witnessed a successful libel lawsuit. (In fact, libel lawsuits initiated 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 SB 571 and AB 551, and Wisconsin's student journalists.

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