



**TESTIMONY IN SUPPORT OF LB 1071**  
**Protect free speech rights of student journalists and student media advisers**

**02/21/24**

Thank you for considering LB 1071, restoring and protecting the press freedom of Nebraska's student journalists. The Student Press Law Center stands in support of this legislation with some reservations discussed below, but regrettably cannot attend the hearing in person. We would be happy to answer any questions or concerns the committee may have regarding this legislation or other student press freedom matters.

The Student Press Law Center (SPLC) is an independent, non-partisan organization that, since 1974, has helped students of all ages participate in civic life and learn essential skills, ethics and values through the vehicle of journalism. Our hotline provides free legal services to student journalists and advisers. As such, we see daily the significant need for such legislation.

For more than a generation, Nebraska's student journalists have come of age under a U.S. Supreme Court decision, discredited by every journalist education organization in America, that teaches them to doubt themselves and report what is safe instead of what is important to their communities, guarantees them less freedom of expression than every other student on campus, and places advisers at risk of professional consequences for trusting what their students are capable of and what they are trained to do.

While most students are held to the so-called "Tinker Standard," a legal precedent stemming from the U.S. Supreme Court's *Tinker v. Des Moines (1969)* ruling that student speech cannot be censored unless that speech 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, student journalists face a much different standard. In *Hazelwood School District v. Kuhlmeier (1988)*, the Court ruled that student media censorship must be "reasonably related to legitimate pedagogical concerns." Unfortunately, what constitutes "legitimate pedagogical concerns" has never been clarified or widely understood. While a student journalist adhering to proper journalistic procedures is unlikely to stumble over the "Tinker Standard," responsible students are often censored under *Hazelwood* for writing stories that administrators at another school would never contend violates any legitimate pedagogical standard. *Hazelwood* specifically allows school officials to censor student journalists simply by declaring an article, for example, "poorly written," "biased," "unsuitable" or — a line lifted directly from the Court's opinion — "inconsistent with the shared values of a civilized social order." *Hazelwood* remains, three decades after the Court's ruling, an arbitrary and capricious standard that causes confusion among student journalists and school administrators alike.



Nebraska is no stranger to this confusion. In 2021 at Westside High School, a [story covering censorship was itself censored](#) by school administrators for no clear reason, before being published almost a week later. Just over a year later, Northwest High School made national news for the censorship and [complete shutdown of their newspaper the \*Viking Saga\*](#) due to their coverage of LGBTQ+ issues in their Pride publication. And just in this past month, we worked with students in the [Omaha Public Schools district to dispel some confusion](#) surrounding student media law and this very bill.

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 recent months, students have reported blanket restrictions to any commenting on decisions by administration, reporting sudden disappearances of staff, or even discussing community events.

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. LB 1071 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 same "*Tinker* standard" they apply to all other students. LB 1071 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 Nebraska's schools to fulfill their mission to produce the engaged thinkers ready to be our next generation of leaders.

There are some concerns that while the students have control over the content in the paper, the school district would be responsible for any legal liability that results from said content. That is not the case. In fact, libel lawsuits against high school student journalism programs are exceedingly rare. To date, we are aware of only one published libel lawsuit in the country — a single lawsuit resulting in a mere \$3000 judgment — ever holding a school district liable for work published by its student media.



However, an amendment to the bill could clear up any liability concern. The bill currently states that no expression in the student publication is to be understood to be an expression of school district policy. While we understand this to mean that only the student is accountable for the published speech, an additional amendment that explicitly states that liability falls on the students, rather than the school, could strengthen any protection for the school. The language in our model bill states: "(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."

Nebraska 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 with similar laws has there been an outbreak of unethical journalism.

As to our concerns, first and foremost, when it comes to the list of always unprotected speech in schools, we take issue with the inclusion of "Departs from prevailing journalistic ethical standards;" While we agree that it is vital for student journalists to follow the same ethics and standards of professional journalists, ethical codes such as that created by the Society of Professional Journalists, which is probably the most-recognized ethical code for journalists, were never written to be enforceable outside of the newsroom. Their language is — and was meant to be — aspirational, not legal in tone. Indeed, as the former Executive Director of the Society of Professional Journalists Ira Perry has said, "The Society's Code is purely voluntary. While we encourage our members to follow its principles, we recognize that there are few situations that can be reduced to black and white statements of fact."

As Perry noted, ethical codes include lofty, aspirational language that was never intended to be externally binding. Terms like "fair" or "balanced" have no legal definition and are the same type of undefined language that have left student journalists at risk of indiscriminate censorship under the *Hazelwood* ruling. Ultimately, we recommend that this language be completely stricken from the unprotected speech category to prevent more vague language being used to justify the stifling of student expression. Instead, we urge you to include the language: "This subsection shall not be construed to prevent a student media adviser from teaching professional standards of English and journalism to student journalists."

The Nebraska public students who have joined in this effort before you should make it clear that student journalists in your state are prepared to rise to the challenge. They are able to develop their own content under the watchful supervision of trained professionals instead of getting their news from social media sources and potentially spreading misinformation. This issue affects student speakers across the political spectrum, and your efforts will universally imbue the next



generation of speakers and leaders with the tools necessary to partake in civic engagement and have the confidence to participate more fully in their communities.

Thank you for your support of LB 1071, and Nebraska's student journalists.

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