



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 03/11/2020
Time: 02:45 PM
Location: 229
Committee: Senate Education

Department: Education

Person Testifying: Dr. Christina M. Kishimoto, Superintendent of Education

Title of Bill: HB 1529, HD2 RELATING TO STUDENT JOURNALISTS.

Purpose of Bill: Allows student journalists at public schools to exercise freedom of speech and freedom of the press in school-sponsored media. Takes effect on July 1, 2050. (HD2)

Department's Position:

The Department of Education (Department) strongly values student voice and encourages students to be fully engaged in their own learning, including civic engagement, while simultaneously maintaining vital safeguards that protect them. Respectfully, the Department provides comments on HB 1529, HD2.

Preparing our students to be global citizens requires them to master the ability to think critically, communicate effectively and take informed action. The following Board of Education (BOE) policies are pertinent to the proposed measure:

- BOE Policy 101-1, Student Code of Conduct, acknowledges the Student Bill of Rights and Responsibilities. This Bill of Rights addresses Freedom of Expression and Communication by stating, "students shall have the right to hear and express publicly, various points of view on subjects without fear of reprisal or penalty. However, students recognize the rights of others and the limitations imposed by the laws of libel, slander, obscenity and incitement to riot." More information can be found at:

<http://www.hawaiipublicschools.org/ConnectWithUs/Organization/Pages/Student-Bill.aspx>

- BOE Policy 101-9, School-Sponsored Student Publications, notes that "students of the public schools have the right of expression in official, school-sponsored, student publications." Further, "student publications are considered, in part, a laboratory for learning, as students are still in the process of learning the skills and processes of effective and responsible communication, and are considered to be still in need of guidance and supervision." "Student publications include, but are not limited to, various media including print media (books, newspapers, yearbooks, magazines, posters, etc.), audio and/or video productions, and publications disseminated through electronic media, and networks or broadcasts. A school

sponsored publication is one that is written and/or produced substantially by students under the auspices of the school, approved by a representative of the school administration, and made generally available throughout the school. Student editors and staff of school-sponsored student publications have the authority to determine the content of their publications subject to the limitations of this policy, other Board policies, and state and federal law..." More information can be found at:

<http://boe.hawaii.gov/policies/Board%20Policies/School-Sponsored%20Student%20Publications.pdf>

The Department strives to expand opportunities to promote student agency, while maintaining a balance between the intellectual and social development of students and their freedom of expression. The role of student advisors is to provide a space for thoughtful and safe exploration and expression of ideas for students. Placing the burden of determining the use of "prior restraint" on a student advisor is perilous as it is outside the scope of their primary responsibilities in the classroom. They may also lack the requisite training to address the legal question of "prior restraint." The primary role of Department student advisors is to serve as guides for our students in the development of their journalistic skills. They are not there to determine the legal parameters of school-sponsored media, which is what this measure proposes. We urge caution in expanding the scope of the Department's student advisors to include making determinations that ultimately amount to legal opinions. These legal conclusions are rendered by attorneys, not student advisors.

Finally, this proposed statutory provision does not protect the student advisors from lawsuits from a student journalist who challenges an advisor's legal conclusion to deny publication under section (d) of this bill. For example, if a student journalist disagrees with an advisor's decision to halt publication based on an alleged First Amendment violation, this bill provides no protection for student advisors, nor does it shield the state from liability for such an offense. While the Department would defer to the Attorney General on this matter, the Department urges caution in advancing this measure.

The Department appreciates the continued progress in the area of student journalism that continues to be made in other jurisdictions throughout the country. We will continue to review and gather feedback on this issue, while working with the BOE to further improve the journalistic opportunities and education for our students..

Thank you for this opportunity to provide testimony on HB 1529, HD2.

The Hawai'i State Department of Education is committed to delivering on our promises to students, providing an equitable, excellent, and innovative learning environment in every school to engage and elevate our communities. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at www.hawaiipublicschools.org.



All Hawaii News * P.O. Box 612 * Hilo, HI 96721 * www.allhawaiinews.com

March 7, 2020

Senate Education Committee

From: Nancy Cook Lauer, publisher, All Hawaii News

www.allhawaiinews.com nclauer@gmail.com 808.781.7945

In **STRONG SUPPORT** of HB 1529 HD2, Relating to Student Journalists

All Hawaii News, a state government and political news aggregate blog covering Hawaii since 2008, supports HB 1529 HD2 recognizing that journalists in public schools have the same First Amendment rights as other journalists in this great nation founded on the principles of free speech and a free press.

Now more than ever, a free press is vital to a strong democracy. Student journalists cover issues and events important to the student body and the community. They provide an independent voice that helps expose concerns in their schools and in their local communities. We must not hamper or extinguish their voices; instead we must nurture them and help create the next generation of strong journalists.

The bill, as amended, carries safeguards including: "Nothing in this section shall be construed to prevent a student media advisor from teaching professional standards of English and journalism to student journalists or determining grades and credit for such purposes." It also guards against libel and slander, invasion of privacy, obscenity and inciting violent acts.

Mahalo nui for considering HB 1529 HD2.



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SUBJECT: Support for HB 1529 HD2, Relating to Student Journalists

March 8, 2020

Dear Chair Kidani, Vice Chair Kim and Members of the Senate Education Committee,

What would have happened if Farrington High School's principal had told students Gerald Kato, Sandee Oshiro, or Mark Matsunaga that they could NOT print a story in The Governor because of content concerns? Would they have graduated to become outstanding journalists and educators or been frustrated by censorship and chosen another career?

I am Jay Hartwell, President of the Hawaii Publishers Association, whose members produce magazines, newspapers, printed and online content for the state of Hawai'i. The Association urges you to pass HB 1529 HD2.

For 51 years, the Newspaper in Education program and then the Hawaii Publishers have sponsored the annual Hawai'i High School Journalism Awards with support from the Honolulu Star-Advertiser.

We sponsor this competition, because we believe that high school journalism programs provide students with the best, hands-on opportunities to learn about research, fact-checking, and communication. We also believe that competing against other schools challenges student journalists to produce their best work.

Imagine what that competition would be like if the state's principals told their students they could not publish stories because of concerns about the content. How do you strive to be the best when you are not given a chance or know that you will NOT be given a chance?

How do I know this is a problem? For 20 years, I advised the student-led media programs at the University of Hawai'i at Mānoa, which included KTUH, Ka Leo, Hawai'i Review. UH sponsored an annual Journalism Day so high school students could learn what it takes to produce the best stories. At those journalism days, students and their advisers shared how some of their principals prevented them from publishing stories.

Today, I write to you as President of the Hawaii Publishers Association, which urges you to pass this bill. But I wasn't always a president. I wasn't always a UH student media adviser, or a reporter for the morning newspaper. Forty-nine years ago, I was student reporter and then editor for Kailua High School's Surfrider newspaper.

That experience eventually led to work at The Advertiser where many of the reporters were first inspired by their high school newspaper experiences at Farrington, McKinley, Kalani and Kaimuki.

What might have happened to me or Bart Asato, Vickie Ong, Vicki Viotti, Debra Yuen or Daryl Huff if our principals had said no, instead of yes?

Jay Hartwell
President



**TESTIMONY IN SUPPORT OF HB 1529 - RELATING TO STUDENT JOURNALISTS;
FREEDOM OF SPEECH AND THE PRESS
March 11, 2020**

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 legal hotline provides free services to student journalists and advisers. As such, we see daily the significant need for this legislation and urge your approval of HB 1529.

We do request that the committee make two amendments relating to subsection 3, lines (d)(3) and (d)(4). We agree that hate speech should not be a part of student journalism; indeed, hate speech would be a violation of journalistic ethics and school policy, and already prohibited by other parts of this bill. However, there is no legal definition of hate speech that we are aware of. Including a prohibition on hate speech when such speech has not been clearly defined, introduces subjectivity and uncertainty back into the legislation and allows for misinterpretation of a student's words. Further, because this section does not require that the student journalists intentionally engage in hate speech, this section may prevent student journalists from reporting accurately on noteworthy events where such speech is used. We believe the bill's prohibition on media that presents a "material and substantial disruption of the orderly operation of the public school" is sufficient to cover hate speech without confusion or subjectivity, and thus (d)(3) should be removed.

The prohibition in (d)(4) on media that "promotes illegal activities" is similarly concerning. Section (d)(6) already prohibits anything that "incites students to create a clear and present danger of the commission of an unlawful act," and so it is unclear to us what (d)(4) would cover except for the mere discussion of illegal acts or activities. For example, Hawaii law prohibits the sale of certain chemical sunscreens. Under this language, any article a student writes examining the use of reef-safe versus chemical sunscreens could be censored. So, too, could any discussion of students vaping on or off campus (including the health risks of doing so), drug use, reporting on graffiti, or any number of public health and safety issues. We ask for this line to be stricken from the final version of HB 1529.

Hawaii's students want to tell the stories that matter to them, their peers and their communities, but for more than a generation they have come of age under a U.S. Supreme Court decision, discredited by every journalist education organization in America, that guarantees them less freedom to tell these stories than that of every other student on campus.

While most student speech is evaluated under the legal precedent established in the 1969 *Tinker v. Des Moines* ruling, student journalists are held to a much higher standard. In 1988, the U.S. Supreme Court ruled in *Hazelwood School District v. Kuhlmeier* that a school may censor a student journalist when "reasonably related to legitimate pedagogical concerns." Unfortunately, the "pedagogical concerns" under which student media is censored are rarely articulable, often subjective and rooted in the discomfort of administrators and not the needs of students. Student journalists can be and are censored for virtually any reason.

Fourteen states¹ have adopted student press freedom laws like HB 1529. The verdict is clear; student press freedom laws do not impact the safety of the school or keep administrators from making the right decision. In no state has there been an outbreak of unethical journalism or lawsuits. Not a single school has had a libel lawsuit.

Nationwide, the SPLC has seen yearbooks censored because students wore MAGA shirts or the swim team wore bathing suits, journalists censored because their work spoke of graffiti visible to all students or of the drug use happening during school hours, and administrators cracking down on stories providing oversight into their own activities. Award-winning teachers have been reassigned or fired for refusing to censor their students. And students have begun to doubt their ability to tell the truth, and self-censor out of fear for themselves and their teachers.

There are instances in which administrators must exert authority to keep their students safe and the school day orderly. HB 1529 protects that authority; school officials can step in, for example, when there are concerns about the legality of the student media or the media will be demonstrably disruptive to the school environment - the same *Tinker* standard they apply for all other students. For more than a generation, the *Hazelwood* decision has saddled student journalists with less freedom of speech solely because they are journalists; HB 1529 simply restores equal expectations and rights to all students.

¹ Arkansas, California, Colorado, Illinois, Iowa, Kansas, Maryland, Massachusetts, Nevada, North Dakota, Oregon, Rhode Island, Vermont, Washington.

The reality of *Hazelwood* censorship is not that students do not grapple with the issues that make adults nervous, it is simply that they do so in secret, disempowered by their administrators and made wary of the sort of discourse we ask them to be capable of the moment they leave our schools and become our civic leaders. When students do push against censorship, it is often their advisers who pay a heavy professional price. HB 1529 will enable student journalists to tell the truth without fear of reprisal, will protect the advisers who support them, and will help Hawaii's schools fulfill their mission to produce the engaged thinkers ready to be our next generation of leaders.

As unchecked social media runs rampant, student journalists today want to ensure a thoughtful and thorough pursuit of the truths that matter to them and their peers. Yet as we lecture students in class on how to be civic-minded critical thinkers, thirty years of *Hazelwood* has bred curiosity and confidence out of our students. Today's new voices are tomorrow's media leaders and citizens; we can no longer afford to stifle them.

Thank you for your support of Hawaii's students. Please support HB 1529.



March 11, 2020

Sen. Michelle Kidani
Senate Education Committee
Honolulu, HI 96813

Re: House Bill 1529, HD2

Chairwoman Kidani and Committee Members:

The Hawaii Professional Chapter of the Society of Professional Journalists supports this bill.

It is important for student journalists to inform students, parents, teachers and many times the surrounding community about news in the school without fear of censorship.

Young people should be free to find out things so they can learn how to function in a democracy. Toe-ing the line as administrators want is not the way of teaching them about society.

Stepping on the civil rights of student journalists also is not the way to tell young people how they should learn about responsible, free expression and how to "do their jobs" in the community and society when they become adults.

This bill does not grant unfettered license to student journalists. It guards against libel and slander; hate speech; invasion of privacy; obscenity; and inciting violent acts.

I am sure you will agree that performing journalism under the threat of censorship or discipline could stifle the free flow of ideas.

Thank you for your time and attention,

Stirling Morita
President, Hawaii Professional Chapter of the Society of Professional Journalists

HB-1529-HD-2

Submitted on: 3/9/2020 2:01:06 PM

Testimony for EDU on 3/11/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Precious Yabut	Testifying for farrington high school	Support	No

Comments:

The new bill is very important because students will be able to participate even more for our community and have a voice.

March 6, 2020

Aloha, Senator Michelle N. Kidani, Chair; Senator Donna Mercado Kim, Vice Chair; and members of the Senate Committee on Education:

I am writing to express my **strong support** of HB1529 HD2 Related to Student Journalists.

I am a former Editor in Chief of Ka Leo O Hawaii (UH Manoa) and Ke Kalahea (UH Hilo), and former high school student journalist at Trojan Times (now Mililani Times) at Mililani High School.

We are in the midst of a period of American history where the role of journalists is both more important than ever, and yet under constant attack by both political and market forces. We need to be fostering the next generation of truth seekers, investigators, and storytellers to continue to function as a critical check on both government and corporate overreach, as well as to document the trials and triumphs of our local communities.

Students need to experience first-hand the rights and responsibilities that come with sustaining a free press. Prior restraint is unacceptable at all levels of journalism practice.

Certainly, freedom of the press and freedom of speech does not mean freedom from consequences. And student journalists need to have an objective and realistic understanding of the impact of the things they publish and broadcast. And that's where the experience and engagement of professional advisors are critical.

My tenure as editor of the then-daily Ka Leo ended after a newly implemented term limit by the UH Board of Publications. My student colleagues and I then launched an alternative campus paper. The dispute over distribution of this alternative newspaper on campus ended up at the center of a First Amendment fight between us and the UH administration – a dispute in which we ultimately prevailed. Yet the conflict was not without its consequences, and our publication dissolved months later.

This experience, as a student as well as a journalist, is exactly the sort of real-world challenges tomorrow's journalists will face. Let us not inhibit their growth, whether to protect them or to protect "us."

Mahalo for your consideration.

HB-1529-HD-2

Submitted on: 3/7/2020 4:55:46 PM

Testimony for EDU on 3/11/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nyler Acasio	Individual	Support	Yes

Comments:

My name is Nyler Acasio. I am a student journalist at McKinley High School. Let me tell you how we decide what to write about. First, we must determine if the topic is newsworthy. We use this system called TIPCUP which means, timeliness, impact, proximity, conflict, unusual, and prominence. What this system does is determine if an article idea is newsworthy to write about. Then we must decide if it should be an editorial or a reported piece. An editorial is an article with the journalist's opinion like he/she is writing a review or writing about a person or group. A reported piece is an article consisting of other people's opinions and facts. As we do our reporting and writing, we keep the code of ethics in mind. In a nutshell, it's basically four policies we follow. They are to seek truth and report it, minimize harm, act independently and be transparent. We also know we cannot libel anyone and that our work must be based on fact. We are not writing "whatever we want." We are writing about issues that matter to our community. This bill allows us to do this. Please support HB1529.

HB-1529-HD-2

Submitted on: 3/8/2020 2:41:30 PM

Testimony for EDU on 3/11/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl B.	Individual	Support	No

Comments:

I support. The BOE has what I consider a fair policy on issues that may be concerning. Let the students' voice be heard.

HB-1529-HD-2

Submitted on: 3/9/2020 10:38:59 AM

Testimony for EDU on 3/11/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
An Vo	Individual	Support	No

Comments:

I am a student journalist. Please support HB1529 HD2.

HB-1529-HD-2

Submitted on: 3/9/2020 10:39:13 AM

Testimony for EDU on 3/11/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kelly Cheng	Individual	Support	No

Comments:

I'm a student journalist. Please support HB1529 HD2.

The First Amendment matters to me.

HB-1529-HD-2

Submitted on: 3/9/2020 10:40:54 AM

Testimony for EDU on 3/11/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nickolas Castillo	Individual	Support	No

Comments:

I am a student journalist. Please support HB1529 HD2.

HB-1529-HD-2

Submitted on: 3/9/2020 10:40:56 AM

Testimony for EDU on 3/11/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Wynn	Individual	Support	No

Comments:

Im a student journalist. Please support HB1529 HD2

The first amendment matters to me.

HB-1529-HD-2

Submitted on: 3/9/2020 10:40:57 AM

Testimony for EDU on 3/11/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
chengHong He	Individual	Support	No

Comments:

I am a student journalist. Please support HB 1529 HD2.

The First Amendment matters to me.

Dear Chair Luke and Members of the House Finance Committee:

I write in support of HB1529 HD 1 Relating to Student Journalists.

I have been a working journalist in Hawaii and currently teach Journalism at the University of Hawai`i at Manoa. This bill proposes to extend the rights of freedom of speech and freedom of the press to student journalists in the public schools. As the Supreme Court of the United States famously said in the case of *Tinker v. Des Moines* (1969): "It can hardly be argued that either students or teacher shed their constitutional rights to freedom of speech at the schoolhouse gate." Unfortunately, in the years since the court made that declaration, federal laws and state laws and school administrators have threatened student journalists and publication advisers with censorship. The problems are well documented by the Student Press Law Center. This bill protects the rights and clarifies the responsibilities of all those involved in journalism in public schools, the students, advisers, and administrators. Now more than ever, we need young people engaged in the democratic process and need to respect their constitutional rights to freedom of speech and freedom of the press. Passage of this legislation lets students know that their voices matter and will be heard. There seems little in the way of financial implications in this bill, but what it conveys to students about the values of Freedom of Speech and of the Press is priceless. I support this bill and urge the committee to move it in its current form.

Sincerely,
Gerald Kato
Associate Professor
School of Communications
College of Social Sciences
University of Hawai`i at Manoa

HB-1529-HD-2

Submitted on: 3/9/2020 2:14:22 PM

Testimony for EDU on 3/11/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Betty Lokkon	Individual	Support	No

Comments:

I am Betty Lokkon, a student of a newswriting class in Farrington High School. This being, I am aware of the benefits this bill would have on me and my classmates, as well as many other newswriting classes around Hawaii.

This bill will give us students the legal right to practice the freedom of speech, something they learned in any newswriting class.

HB-1529-HD-2

Submitted on: 3/9/2020 2:32:22 PM

Testimony for EDU on 3/11/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Marryanne	Individual	Support	No

Comments:

I started news writing this quarter and I joined it because I thought it would be nice to write articles that would actually make students take their eyes off their phones and take time to read something. Hell yes I enjoy this class, I learn something new EVERYDAY in this class. I don't usually watch the news or read about it so this class keeps me updated on what goes on around the world. I also learn things I should've learned in English or Literature. I learn a lot. I've always believed everyone should have full rights to their own opinion. I agree with this Bill fully, I don't think anyone should put down articles or stories that students want to tell or share with the world. The only people that know what student think and what they want to know are students. Adults have a different mindset from us, so I think that our opinion should be voiced loud and clear without any complications or anyone saying what we think is wrong.

HB-1529-HD-2

Submitted on: 3/9/2020 2:47:24 PM

Testimony for EDU on 3/11/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Vickie Parker Kam	Individual	Support	No

Comments:

Aloha Chair Kidani and Vice Chair Mercado Kim - thank you for hearing testimony on HB1529 HD2. I am writing in strong support of this bill.

Student journalism is a critical step into civic engagement. If we stifle their fledgling reporting in school sponsored/related media forms we risk another generation that does not willingly participate in critical thinking. The first amendment should protect our student writers, however, this bill will send a clear message that as long as they adhere to journalistic standards they should be able to share their views.

Mahalo for listening - Vickie Kam

I was formerly the interim news director at KGMB-TV and initiated a program called News 101 in which Hawaii high school students in media-magnet schools would submit news stories which ran Fridays on KGMB's 6 p.m. and 10 p.m. newscasts. All subjects were allowed, and only I had the power of enforcement of normal rules against slander, unacceptable language or videos, and obscenity. Not the media advisor and not the principal.

Generally that worked fine. Then came an exception. Waiakea High School students offered a story about the high rate of teen pregnancies on the Big Island. The principal felt that shed a bad light on the county and denied them the okay to submit the story. As a result, I discontinued the News 101 association with Waiakea High. But of course that penalized the students more than the principal.

I support HB1529 as written. There is no reason not to extend constitutional rights to high school (and all school) journalists.

Thank you

HB-1529-HD-2

Submitted on: 3/9/2020 3:26:58 PM

Testimony for EDU on 3/11/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Justin Bigornia	Individual	Support	No

Comments:

Most censorship occurrences that I am aware of involve negative articles towards the school. Nothing too bad, but just articles that point out the flaws in the school. We would like for students to more write about the school and the truth about it. We can't be "The Eyes, Ears, and Voice of Farrington High School," if we can't even talk about the problem and issues. It's typically the positive articles that the principal promotes. I understand why that may be the topics you would want on the paper, but eventually people will start to notice the problems, even without our publishing about it. I very much support this bill to give the students the freedom that they deserve in the press. To write and publish against the system as the New York Times and the Washington Post once did with the Pentagon Papers.

HB-1529-HD-2

Submitted on: 3/9/2020 4:29:49 PM

Testimony for EDU on 3/11/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Cynthia Reves	Individual	Support	Yes

Comments:

My name is Cindy Reves and I advise the student-run newspaper at McKinley High School and I support HB1529 HD2 to protect the First Amendment rights of student journalists in Hawaii. I do have two changes I propose at the end of my testimony.

Laws just like this one already exist in 14 states and are being introduced in over a dozen more. This bill has educational value and is supported by the Journalism Education Association, the National Council of Teachers of English, and the Association for Education in Journalism and Mass Communication. It is supported by those whose ranks we are preparing our students to join, such as the American Society of News Editors and the Society of Professional Journalists. In fact, Civil Beat wrote an editorial in support of the bill. Finally, it has legal support from the American Bar Association.

As a journalism adviser, I teach my student journalists press law, news value, and journalistic ethics. I tell them about Tinker, where the Supreme Court said neither student nor teacher “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

McKinley’s student staff write about what they feel our community needs to know. When they need an adult’s advice, they come to me. Editors make the publication decisions. I tell them that the best defense against censorship is good journalism. At McKinley, I am lucky that my administrator understands all this and supports what I do with the student newspaper.

However, I also tell my students that, in 1988, the Supreme Court restricted the First Amendment rights of one group of students, student journalists. If McKinley gets a new administrator or outside pressure causes our current administrator to reconsider his position, current law allows him great latitude to censor them. Hawaii needs a law that protects the First Amendment rights of student journalists and allows them the real-world learning that comes from making the decisions that must be made to produce a student-run newspaper.

Many worry that this bill will put schools and/or student journalists in legal danger. There is no evidence of this, according to student press law experts.

What is true is that, without this bill, administrators are censoring the First Amendment rights of student journalists in Hawaii. While my students do not face censorship, in my role as president of the Hawaii Scholastic Journalism Association, I hear stories of Hawaii administrators whose actions show they do not trust student journalists and their advisers.

1. A high school administrator did not allow the student media to run an opinion piece about the n-word. Here are the last sentences of that piece: “The n-word should always be a huge social taboo because of its historical origin and usage; however, society is beyond the point of that. If certain individuals want to continue using the word, then the general public must learn how to comprehend its given context to react in an appropriate manner.” This is a nuanced reflection on an issue that matters.

2. A high school administrator didn’t want editorials published unless they were in Pro/Con format. Two that gave the adviser and staff the most difficulty: an editorial about how a student hates Thanksgiving and an editorial criticizing Trump’s cabinet picks.

3. A high school administrator asked the following questions during prior review with the adviser: “Why is this phrased this way? Why is this article about things that Trump has done called a ‘quick and dirty run down’? Some of these measures didn’t pass so why report on them? Why is this statistic phrased this way? Why is this the title of this article?”

4. In a high school that has prior review, the administrator held on to the paper so long that the student staff decided it was too late to send it to the printer, so they published that issue online only.

5. A college newspaper didn’t cover an issue for fear it would get their adviser in trouble.

6. A high school journalism adviser had been attending meetings which included discussion of student press rights legislation but stopped attending for fear of angering administration

7. A high school newspaper is required to produce a “community issue,” which is public relations, not journalism.

What is also true is that student journalists serve an important role in our democracy. If they see injustice at their school and do not report on it, who will? If the leaders in Hawaii truly value student voice and a free press, they have to raise the bar and allow Hawaii’s student journalists to really practice journalism. My student journalists at McKinley will do the hard work because they know a well-reported story won’t get killed simply because an administrator

doesn't like it. That's not how journalism works and that's not how our schools should work.

I urge you to support HB1529 HD2, with two changes. First, I urge you to reverse the amendment made by the House Finance committee, which added "hate speech" and speech that "promotes illegal activity" to the list of unprotected speech, as they weaken the bill. Please refer to the testimony submitted by the Student Press Law Center for a more detailed explanation. Second, I urge you to change the name of the bill from "Hawaii Student Free Expression Act" to "Hawaii Student Journalism Protection Act." This name better reflects the purpose of this bill.

Testimony of Frank D. LoMonte, attorney and media-law professor
House Bill 1529, the Hawaii Student Free Expression Act
Senate Committee on Education
Submitted for committee hearing of March 11, 2020

I thank the sponsors of House Bill 1529 for the invitation to share some information with the committee about the practice of student journalism and the legal climate in which student journalists and educators work. This testimony is drawn from my 20 years of experience as an attorney, including nine spent as executive director of the Student Press Law Center, a nonprofit legal-services organization serving the needs of student journalists and educators nationwide. I have studied and written about these laws for many years, including authoring two editions of a widely used textbook, "Law of the Student Press." In my role at the Student Press Law Center, I supervised a hotline receiving some 2,500 calls for legal assistance yearly from students nationwide, many hundreds of whom are experiencing restraints on their ability to gather and publish news. I have taught media law to undergraduates and law students since 2014 as an instructor with the University of Georgia and University of Florida, where I now teach full-time. (This testimony is submitted in my personal capacity and not on behalf of any institution.)

The legal protection that is afforded to student journalists today under federal law is widely recognized as inadequate for the effective teaching of journalistic values and practices. The Supreme Court's 1988 *Hazelwood* ruling has effectively removed all federal protection for the rights of students in journalistic media. After 32 years of experience under *Hazelwood*, every leading authority in the field of journalism education – both educators and professional practitioners alike – agrees that the right amount of press freedom in educational institutions cannot be "zero." The Society of Professional Journalists, the American Society of News Editors, the National Council of Teachers of English, the American Bar Association, the National Council for the Social Studies and many other such organizations have called on states to reform the *Hazelwood* standard, because young people are graduating unprepared to have educated conversations about the social and political issues that censorship restrains them from discussing.

This growing consensus has fueled a national movement known as "New Voices," to enact statutes that bring the governance of student media back to the sensible middle

ground that existed before *Hazelwood* was decided. Fourteen states now have laws comparable to HB 1529 protecting the ability of students to publish the lawful and non-disruptive editorial content of their choice. Pennsylvania and the District of Columbia offer the same level of protection by way of State Board of Education rule. One-third of all high-school students in America have the level of protection today that is contemplated in HB 1529, so there is nothing experimental or unproven about student press freedom laws. The combined experience of these jurisdictions covers more than 180 years, and in those 180 years, no “horribles” have materialized. There is not a single case available in any of the publicly available databases of court records dating back two centuries in which a school has been ordered to pay anyone a dollar for harmful material published by student journalists. And New Voices laws strengthen, not weaken, the liability protection for schools by clarifying that the speech of students is not the speech of their schools.

New Voices laws do not result in students prolifically suing their schools over censorship. A study published in the *Maine Law Review* in 2013 found only six documented instances in which a New Voices statute had ever been cited in a published court ruling (subsequent to 2013, there has been a seventh case, at a college in Illinois). It is our experience that New Voices statutes avoid, rather than cause, litigation because they clarify the boundaries of government authority and simplify resolving disputes. New Voices laws are advancing across the country with overwhelming bipartisan support because of the growing recognition that digital-age journalism can no longer be taught and practiced by 1980s-era standards.

Legislative reforms are timely because students at the high-school level regularly report being forbidden from publishing news and opinion about issues of social and political concern. In a March 2017 journal article (“Mixed Message Media: Girls’ Voices and Civic Engagement in Student Journalism”), University of Kansas researchers Peter Bobkowski and Genelle Belmas document their findings from a survey of 491 high-school journalism students across North Carolina. That survey found that 38 percent of students had been told that entire topics were off-limits for discussion in student journalistic publications, the most common being drug or alcohol abuse. The KU study further found that female students were significantly more likely than male students to report both direct censorship as well as “self-censorship” in anticipation of adverse reaction from authority

figures. More than half (53 percent) of female students said they had refrained from even attempting to write about an issue of importance to them, expecting to be censored.

Because this question has arisen in other states, I want to address the issue of how a state statute can “override” a U.S. Supreme Court decision. When the Supreme Court issues a ruling on the constitutional rights of individuals, the Court is setting a floor for states and not a ceiling. The *Hazelwood* ruling can be summarized as: “Students have the federally protected right to speak in ‘curricular’ student media unless the school can present a justification for censorship that is ‘reasonably related to legitimate pedagogical concerns.’” Nothing in *Hazelwood* precludes a state from offering state-protected rights that supplement federally protected rights. There is no “inconsistency” between the *Hazelwood* ruling and a state law like HB 1529 that gives students the benefit of additional state-protected press freedoms.

The legal standard contemplated by HB 1529 is identical to the level of free-speech protection that has long existed in all other phases of a public-school student’s life, under the Supreme Court’s 1969 *Tinker v. Des Moines* standard, with which schools are familiar and comfortable. House Bill 1529 does no more than instruct schools to treat journalism as they have treated all other aspects of student speech for more than 50 years.

This highlights an important point: New Voices statutes do not put the rights of student journalists on par with those of professionals at *The Wall Street Journal*. The Supreme Court has said that nothing short of leaking military battle plans during wartime might justify restraining the distribution of a professional newspaper. New Voices protection is much more limited. New Voices statutes simply restore the protection that existed before *Hazelwood* under the legal principles set forth by the Supreme Court in *Tinker*. *Tinker* is the standard that applies today to students’ baseball caps, T-shirts and all other personal communications. Anything that a school could lawfully stop a student from saying on a T-shirt (*e.g.*, gang symbols, threats, obscenity) can equally be withheld from student news media under HB 1529.

In summary, *Hazelwood* is a relic of a time when it might have been possible to keep students from learning about teenage pregnancy by tearing pages out of newspapers. Of course, that is not the world we live in today. Young people are bombarded with online gossip, rumor and fabrication. By welcoming the discussion of political and social issues

into the newsroom, those issues can be debated in a verified, supervised way – with fact-checking, with balance and with accountability, none of which exists if censorship pushes the discussion onto social media.

The American Bar Association endorsed the enactment of New Voices legislation in a resolution unanimously passed at its August 2017 national convention. I'll conclude with a portion from that resolution, which echoes the concern of civics-education experts everywhere that young people are graduating from school, and even college, unprepared for participatory citizenship:

“It is the consensus of every leading expert in journalism education that *Hazelwood* has fostered censorship for purposes of image control rather than education, and that *Hazelwood* has diminished the opportunity for students to make their voices heard. High-quality student journalism... gives marginalized students opportunities for recognition; it sheds light on ways in which schools are performing unsatisfactorily and could be improved; and it builds healthy news readership habits. Meaningful civic education requires that students feel safe and empowered to discuss issues of social and political concern in the responsible, accountable forum of journalistic media.”

Respectfully submitted,
Frank D. LoMonte, Esq.
Attorney and media-law professor
10000 SW 52nd Ave., #143X
Gainesville, FL 32608
(404) 545-1195 mobile
franksplc@gmail.com

HB-1529-HD-2

Submitted on: 3/10/2020 1:09:59 PM

Testimony for EDU on 3/11/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ryan Vanairsdale	Individual	Support	No

Comments:

As a student journalist, HB1529 is important to me. It guarantees that student journalists will not face unjust administrative censorship.



Big Island Press Club

Since 1967, protecting the public's right to know

Big Island Press Club
P.O. Box 1920
Hilo, Hawaii 96721

CONTACT:
info@bigislandpressclub.org

March 10, 2020
Senate Education Committee
From: John Burnett, Immediate Past President, Big Island Press Club

In SUPPORT of HB 1529 HD 2 relating to student journalists in Hawaii public schools

Dear Chair Kidani, Vice Chair Kim, and Sens. Dela Cruz, Fevella and Kanuha:

The Big Island Press Club, Hawaii's oldest press club, is in support of House Bill 1529 guaranteeing student journalists in public school-sanctioned media the same freedoms of the press and speech enjoyed by professional journalists, as provided by the First Amendment of the United States Constitution, and without prior restraint or fear of reprisal by school administrators and faculty.

Hawaii's student journalists want to tell the stories that matter to them, their peers and their communities. For more than a generation, however, they have come of age under a U.S. Supreme Court decision, discredited by every journalistic education organization in America, that guarantees them less freedom to tell these stories than that of every other student on campus.

In 1988, the U.S. Supreme Court ruled in *Hazelwood School District v. Kuhlmeier* that a school may censor a student journalist when "reasonably related to legitimate pedagogical concerns." Unfortunately, the "pedagogical concerns" under which student media is censored are rarely articulable by those "concerned," often subjective and rooted in the discomfort of school administrators instead of the needs of students. Student journalists can be and often are censored for virtually any reason.

While most students are held to the "Tinker Standard," a legal precedent stemming from the 1969 *Tinker v. Des Moines* ruling that students' speech cannot be censored unless that speech materially or substantially disrupts the school environment, student journalists are held to a much higher standard solely because they are engaging in media.

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HB 1529 protects the legitimate authority of educators. School officials can step in, for example, when there are concerns about the legality of the student media or the media will be demonstrably disruptive to the school environment - the same Tinker standard they apply for all other students. It also guards against libel and slander, invasion of privacy and obscenity.

For 32 years, the Hazelwood decision has saddled student journalists with less freedom of speech than their peers solely because they are journalists. HB 1529 simply restores equal expectations and rights to all students.

Freedoms of speech and expression are vital in a free society, especially in this day and age when the free press is under attack by both political and commercial concerns that try to discredit accurate reporting as "fake news," and when demagoguery by our leaders is oftentimes cloaked as populism.

Allowing student journalists to go about their work without the threat of censorship and discipline is a necessity in promoting the free flow of ideas and information, a critical component in the learning process. The Big Island Press Club believes ensuring our student journalists the same freedoms of press and speech working professional journalists operate under on a daily basis vital to insure succeeding generations of Americans the critical thinking skills required to be active, engaged citizens in a democracy.

I thank you for the opportunity to testify in wholehearted support of House Bill 1529.

HB-1529-HD-2

Submitted on: 3/10/2020 5:32:00 PM

Testimony for EDU on 3/11/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Katrina Karl	Individual	Support	No

Comments:

My name is Katrina Karl and I am a Newswriting teacher. I support HB1529 because freedom of speech would set a foundation for realistic and relevant learning experiences for our student journalists.

If student journalists write under major constraints and fear of censorship by their administration, it is unlikely that their writing will fully capture their fellow students' and school communities' interests and concerns. If they go on to pursue careers in journalism, as many of my students are interested in doing, their experiences as student journalists will not adequately prepare them to discern and engage in best practices for handling controversial issues as professionals.

This bill reflects many of the same standards that guide professional journalists in their work. Journalism teachers and advisors should be entrusted to uphold these standards and act with sound judgment in guiding their students' decisions and actions.

LATE

HB-1529-HD-2

Submitted on: 3/11/2020 7:32:52 AM

Testimony for EDU on 3/11/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kawika Ke Koa Pegram	Individual	Support	Yes

Comments:

Aloha e Chair Kidani and Senate Education Committee members,

My name is Kawika Ke Koa Pegram. I am a senior at Waipahu High School and the Executive Director for the Hawai'i Youth Climate Coalition, a 501(c)4 non-profit organization.

I organize protests and other community events to mobilize my classmates to take action on the climate crisis. Whether it's on a busy highway or downstairs by the rotunda, you can probably find me with a bullhorn shouting with people.

The reason that I can stand around with a bullhorn and shout to the top of my lungs for our need for climate action is the first amendment within the state and federal constitution. I love that amendment because it not only protects me and my freedom to protest, but also my peers' freedom to the press.

Unfortunately, that freedom to the press is continually bogged down and limited by high schools all across America, and in Hawaii - whether it's prior-review or outright censorship.

And it is incredibly disappointing that we don't carry the same protections that I have to protest to the students who want to highlight important and crucial stories in their local communities. All because some person high-up is a little too scared for what stories students can report on.

We also have to consider the message this gives to the students. School administrators are essentially saying that "your voice matters... but only to the extent that I say it does."

Lastly, as we go into a world where the corporate media gets bigger and local newspapers shut down, it becomes ever-more important to highlight and bring-up the important stories in our communities. Student-run newspapers can fill that necessary gap, but only if they are given the freedom to do so.

I urge you to please pass HB1529. The necessary freedoms for which we base our democracy in should not be optionally enforced, but rather basic, codified law.

Mahalo nui loa,

Kawika Pogram

HB-1529-HD-2

Submitted on: 3/10/2020 8:41:09 PM

Testimony for EDU on 3/11/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
k	Testifying for napueo	Support	No

Comments:

As a new student journalist, journalism class has taught me so much. Learning the aspects of journalism, I've improved my; writing, speaking, researching and designing skills. These are all skills that will help me, be a better student in college and a best person in life. Journalism gave me the ability to soar, it opened a new path for me. Enduring all that journalism has to offer, I realized that I want to be a journalist. I discovered a new passion and a new way of speaking the truth. Being a journalist, I have the power to tell a story. I have the power, through my words encourage someone and asist someone in life. I have the power to be the watch dogs. But, I have to tell the story right.

With that said, as a journalist for napueo, I was honored to witness the proclamation that stated that Honolulu celebrates, national scholastic journalism week. At that time, I was reminded about the power of journalist. Hearing from the govener's journalist and recieving the government's news letter, I was reminded of the importance of journalism and how it is used to better protect and inform our world today. With that said, I want to remind all, that journalist are the watch dogs. If we are censored and can't speak the truth, then what's the purpose of having a newspaper. If being censored means that someone has to hide the truth, then why is such act taking place? The code of ethics states that journalist need to be the voice to the voice less, how can we be the voice if someone is putting tape over our mouth, blocking us from saying the truth. If journalist are censored then why should journalist report. If journlist don't report, how will the infomation be crossed in such matter to the public. I want to be the voice to tell the truth, without being censored. I want my readers to hear all the facts. If you were a reader, would you want to be with held from information?

Senate Education Committee
re. HB1529 HD2
Lawrence H. Wayman
Farrington High School
March 11, 2020

Members of the Hawaii Senate Education Committee,

My name is Lawrence Wayman. I have been the Newswriting teacher and adviser for the school newspaper "The Governor" at Farrington High School for the last eleven years, and a high school Language Arts teacher since 1962. Thank you for this opportunity to express my support for Bill HB1529 HD2.

Farrington Students Have Some News for Their Adult Readers

In my experience as a Journalism teacher, I have learned that Farrington High School students bring perspectives to what is happening around us, of which adults are often unaware.

At a recent School Community Council (SCC) meeting, one of the community members and an alumnus of the school, asked that we put the newspaper, "The Governor" on line. He said, after reading our articles in the December issue, of which you have a copy, that he became aware of the news in a totally new way. He said that our newspaper helped him see how Kalihi's young people view and experience the world. He noted specifically an article on the Rail Project by Gyan Gervacio entitled "Rail in Dillingham Is Causing Issues with Community" (p. 13). Gyan identified various "Issues" that the neighborhood residents were having with the Project. His article provided evidence of concern by the residents over what the Project was doing to their neighborhood. A HART representative was in the audience to present a "rosy scenario" about the Project; however, after seeing the article, he put aside much of his speech and tried to allay the concerns of the community that Gyan had identified.

While working to publish a monthly school newspaper our students come to unrestrained understanding of what is news of the world and also news of their neighborhood. As in the case of the HART story, they learned that they can shape news in the world in appropriate ways. I am asking that you, in your capacity as policy makers, to support and encourage the Farrington students in publishing their original and uncensored work.

Our Students Tell the Truth

Our students are truth-tellers from the perspective of their own youthful experience and research, and although they write in an objective manner, as good reporters do, the authentic angles and points of view that they take in selecting their stories, make a difference in the quality of our public discourse. Their stories

do not need adult approval to validate their truthfulness. The students' own experience validates their truthfulness.

I have heard from numerous of my teaching colleagues, alumni, and parents how much they appreciate reading our school newspaper each month. The articles give them insight into what is of concern to our young people, often from perspectives different from what they receive from regular news sources. They do not fear what the students would say--from Donald Trump to a new Micronesian Club on campus, from an op ed on whether high school student athletes should be paid to the Kealohas' divorce settlement--their readers welcome their contributions as stake-holders for the truth.

When their voices are censored or restricted, either by administrative action or self-censored out of a fear of being reprimanded, our awareness of history diminishes. Censorship and restriction send the message that student voices don't matter...that children should be seen, but not heard.

This legislative proposal is designed to protect and clarify the rights and responsibilities of all who are involved in journalism in public schools--the students, advisers, and administrators. HB1529 HD2 is not an adversarial proposal, rather it affirms the mutual stake all members of the school community have in truthful reporting.

Student Voices Are Not a Threat

HB1529 HD2 supports students in their efforts to speak, write, discuss, investigate, and "opinionate" about their world. It provides Farrington's students with opportunities for authentic civil discourse about things that matter.

And as advisers, we help. Gyan's article and the other articles in the copies of the paper that you have, went through a rigorous process before their final publication. We help from generating an idea, to pitching a story, to first draft and edit, to second draft and edit, to more drafts and edits...often involving more interviews and research, to final layout and design, to printing and delivery. This happens every month. These articles are not simply off the top of the students' heads.

HB1529 HD2 is a good proposal for your consideration and passage.

Our students' need not only to be seen, but also heard. Your support will help.

Thank you for this opportunity to express my support for Bill HB1529 HD2.

LATE

HB-1529-HD-2

Submitted on: 3/11/2020 1:56:16 PM
Testimony for EDU on 3/11/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Howe	Individual	Support	No

Comments:

LATE

HB-1529-HD-2

Submitted on: 3/11/2020 4:40:08 PM
Testimony for EDU on 3/11/2020 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Aisha Heredia	Individual	Support	No

Comments:

Aloha,

I support HB12529 HD2 because our student journalist deserve the best education possible, and the best education possible will let them express their opinions with free speech while being protected as students.

Freedom of speech is one of our Bill of Rights, and should be protected in our Hawaii Public Schools. I feel this bill will help student journalists create honest stories, that have the potential to change injustices at their school or communities. If we do not protect our students, how can they feel open to share or publish stories that can be a catalyst for change? And how can our students learn what it is like to be a journalist without freedom of speech? I support HB1529 HD1 because it will enhance the learning opportunities of our student journalists.

Mahalo,
Aisha Heredia

Former STEM Teacher