



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



Date: 06/30/2020
Time: 09:46 AM
Location: 016
Committee: Senate Judiciary

Department: Education

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

Title of Bill: HB 1529, HD2, SD1 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 7/1/2055. (SD1)

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 offers comments on HB 1529, HD2, SD1.

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.

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, SD1.

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.



June. 30, 2020

Chairman Karl Rhoads
Senate Judiciary Committee
Honolulu, HI

Re: House Bill 1529 HD2, SD1

Chairman Rhoads 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 and community without fear of censorship.

Young people should find out things to 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” the community and society when they become adults.

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

I am sure you will agree that we don't want students growing up to be unthinking automatons, and doing journalism under the threat of censorship or discipline is not the way to encourage the free flow of ideas.

Thank you for your time and attention,

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



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

June 28, 2020

Senate Judiciary 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, SD1, Relating to Student Journalists

All Hawaii News, a state government and political news aggregate blog covering Hawaii since 2008, supports HB 1529, HD2, SD1 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, SD1.



HPA Board of Directors

SUBJECT: Support for HB 1529 HD2 SD1, Relating to Student Journalists

President:

June 28, 2020

Jay Hartwell

Dear Senator Rhoads and Members of the Judiciary Committee,

Board of Directors:

Joe Bock
Nella Media Group

The Hawaii Publishers Association, whose members produce magazines, newspapers, printed and online content for the state of Hawai'i, has asked me to share the Association's support for approving HB 1529 HD2 SD1.

Amanda Canada
Trade Publishing

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. The public high schools participating this year included: Kaiser, Kalani, McKinley, Mililani, Moanalua, Waiakea and Waipahu. There also are programs at Campbell, Farrington, Waianae, among other schools that also have yearbooks and video creation teams.

Kent Coules
This Week Magazine

Faith Freitas
Journal Graphics

The Association 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. Our state needs these skills more than ever as we encounter more efforts to misinform, confuse, and agitate.

Tammy Mencil
Pacific Business News

HPA knows that competing against other schools challenges student journalists to produce their best work.

Scott Schumaker
PacificBasin
Communications

Imagine what that competition would be like if all of state's principals told their students they could not publish stories because the administrators were "concerned" about the content.

Executive Director:

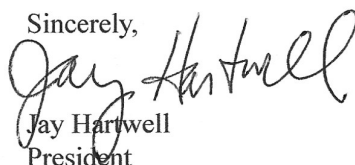
Sherry Goya
(808) 722-8487

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 we produce citizens who can help our state make the best choices if the students do not learn now how to research and explain the options?

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.

Please help us ensure the best future for Hawai'i by giving our public high school students the freedom to report today.

Sincerely,



Jay Hartwell
President

HB-1529-SD-1

Submitted on: 6/27/2020 10:39:24 AM

Testimony for JDC on 6/30/2020 9:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tiffany Edwards Hunt	Testifying for Ke Kalaheea, University of Hawaii Hilo	Support	No

Comments:

Aloha,

Mahalo nui loa for your continued conversations to ultimately approve this very important bill. I'm writing to you as the acting publications adviser at UH Hilo. I just want to sing the praises of student journalists and the students that I have the pleasure of working with at UH Hilo. I have seen them publish a newspaper amid a global pandemic and a lockdown. They showed a true commitment to seeking truth and covering campus life at all costs. My own students did this and there are students all across the state who did this, and I hope you will reward them with the passage of this bill. As we look on the national front and we see how our global pandemic has morphed into a social justice movement, we see how paramount that journalism is for our society. Journalism is the cornerstone of democracy, and the more experiential training our students have to ultimately do this great work is only going to serve us all in the end. I am hopeful that you will see this bill's importance, if you don't already. For those who have seen the merits of this bill from the onset, I offer you my sincerest mahalo and ALOHA. Please support this bill and pass it to become law asap.

Please feel free to reach out to me for questions and for any sort of clarity or assistance. I want to see this bill succeed for our students throughout the state.

Sincerely,

Tiffany Edwards Hunt

Puna, Hawai'i



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

June 28, 2020
Senate Committee on Judiciary
From: John Burnett, Immediate Past President, Big Island Press Club

In SUPPORT of HB 1529, HD2, SD1 relating to student journalists

The Big Island Press Club, Hawaii's oldest press club, is in support of House Bill 1529, HD2, guaranteeing student journalists in 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, but for more than a generation 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, often subjective and rooted in the discomfort of administrators and not 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.

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. It also guides against libel and slander, invasion of privacy and obscenity.

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.

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 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 necessary component in the learning process and a vital component in insuring succeeding generations the critical thinking skills required to be engaged citizens in a democracy, whether they choose journalism or another endeavor as adults.

I thank you for the opportunity to testify in wholehearted support of HB 1529, HD2, SD1

HB-1529-SD-1

Submitted on: 6/27/2020 3:47:29 PM

Testimony for JDC on 6/30/2020 9:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Shafkat Samin Anowar	Testifying for Photo Editor/Ka Leo O Hawai'i	Support	No

Comments:

I stand in support of the student free expression act. The world is run through collaboration and criticism. While a leader speaks in front of the podium, making a decision, it is the journalist's job to critic the decision and find out the flaws. Although print media is dying, It is hard to ignore the news nowadays. To produce good content, we need journalists with good work ethics. A person does not just reach to be a top journalist unless he/she is trained during his/her nurturing stage. That is why student journalism is necessary. This not only applies to journalism but all sorts of professions. Student journalism gives the opportunity to express and improve their voice as well as enhance their academic skills. For instance, the ability to develop arguments in journalism pieces is a crucial and useful skill in college and the workplace. In terms of a university, the college press plays a vital role in pointing out the struggles and bright moments of the students. Well, renowned media might not always put their focus on a college issue which their college press will. They might not get access to specific topics that a student journalist might be able to get. During any breaking news situation, I have had several experiences as a student photojournalist, where I was asked from the law enforcement authority, "what am I doing here?" pointing at my press badge "Do you guys just make one of these?" Whereas my argument would be, I have an equal right to be there along with the senior journalists as long as I am abiding by the law. Hence student journalists are equally crucial as full-time journalists. They might be less in experience, but as long as the drive is there, they should be counted.



**TESTIMONY IN SUPPORT OF HB 1529 - RELATING TO STUDENT JOURNALISTS;
FREEDOM OF SPEECH AND THE PRESS
June 30, 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 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 censorship under this section does not require that the student journalist 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 by a student journalist objectively and rigorously 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, civil disobedience, or any number of public health and safety issues. We ask for this line to be stricken from the final version of HB 1529.

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202-785-5450 splc.org

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.

The need for this legislation is even stronger now than it was when the legislature paused work three months ago. With schools closed and students struggling with distance learning, student journalists have worked tirelessly to keep their peers informed about COVID-19 and what their schools are doing to keep them safe and educated. They have broken news and separated fact from myth, closed communication gaps between administration and students, made students aware of available public services, and kept the school community cohesive by highlighting the stories of seniors, exchange students, athletes, service workers, entertainers and friends. For many students, the yearbook holds the only reminders of a pre-COVID school year. Student journalists have filled this role on their own, from home, with little ability for administrators to impose prior review or censorship. We should not ask them to return to a state of censorship and distrust by school administrators. 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.

HB-1529-SD-1

Submitted on: 6/26/2020 4:56:20 PM

Testimony for JDC on 6/30/2020 9:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tea™sha Martines-Melim	Individual	Support	No

Comments:

HAWAII SCHOLASTIC JOURNALISM ASSOCIATION

HSJA

My name is Cindy Reves and I am the adviser of McKinley High School's student newspaper, The Pinion, and the president of the Hawaii Scholastic Journalism Association and I support HB1529 HD2 SD1 to protect the First Amendment rights of student journalists in Hawaii.

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. It has legal support from the American Bar Association and the Student Press Law Center.

As a journalism adviser, I teach my student journalists press law, news value, and journalistic ethics. I tell them about the 1969 case of Tinker vs. Des Moines Independent Community School District, 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. Student 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 our student journalists. 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. Many also worry that student journalists are not mature enough for this responsibility. The work of my students, and student journalists throughout the country, proved the opposite. As our community lost physical contact due to the coronavirus pandemic, The Pinion staff continued to report remotely to cover our community during this unprecedented time.

What is true, however, 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 HSJA I hear stories of Hawaii administrators whose actions show they do not trust student journalists and their advisers.

- 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.
- 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.
- 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?”
- 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.
- A college newspaper didn’t cover an issue for fear it would get their adviser in trouble.
- 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
- 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 the student 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 SD1, but with two amendments. First, I urge you to remove the addition of “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 fact that this bill restores the First Amendment rights that the Hazelwood Supreme Court case took away from this one group of students.

HB-1529-SD-1

Submitted on: 6/27/2020 7:49:32 PM

Testimony for JDC on 6/30/2020 9:46:00 AM

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

Comments:

I am a student journalist from McKinley High School and I support HB1529 HD2 SD1.

HB-1529-SD-1

Submitted on: 6/28/2020 12:50:47 AM

Testimony for JDC on 6/30/2020 9:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan Ramos	Individual	Support	No

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole, and Members of the JDC,

I strongly support the initiative to protect student journalists' right to free speech and the larger goal of a free student press.

As a former news editor of the Kaiser High School student newspaper, I value the sense of freedom I was given and want to ensure that feeling and safety are extended to other students as well. During my time on that paper, one story that came up was a financial scandal involving school administrators, and I was lucky enough as a class treasurer to have further insight into the situation. My reporting could easily have been stifled if that's what admin wanted, but I was fortunate enough to have the support and guidance of my advisor and newsroom, as well as the lucky circumstances of an admin desperate for absolution. It offered us student journalists a rare experience for people our age to engage in such an exercise, and I want all future students to feel safe doing similar work even if they aren't as fortuitous in circumstance.

Mahalo,
Dylan Ramos
HD19, SD10 (Kaimuki)

June 28, 2020

Aloha, Senator Karl Rhoads, Chair; Senator Jarrett Keohokalole, Vice Chair; and members of the Senate Committee on Judiciary:

I am writing to express my **strong support** of HB1529 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-SD-1

Submitted on: 6/28/2020 3:34:57 PM

Testimony for JDC on 6/30/2020 9:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jessica Hanthorn	Individual	Support	No

Comments:

My name is Jessica Hanthorn. I am testifying in my capacity as a scholastic journalism adviser in Hawaii and a former newspaper journalist. I am writing in support of HB1529 HD 2 SD1 to restore First Amendment protection to scholastic journalists.

This year as an adviser, I saw my students recognize the importance of student journalism. When schools shut down, we moved our coverage to our web site and began writing stories about how the coronavirus was affecting our students. During this unprecedented time, we reported on:

- International students who had to get up in the middle of the night for distance learning.
- Whether graduation would be in person or virtual.
- Artists expressing themselves with new forms of pandemic-related art.
- Changes in PE classes due to online learning.

All of these stories mattered to the young people on our campus, and none of them were being told in traditional news outlets. We saw our readership skyrocket during this time as others recognized the importance of quality journalism and information.

A free press is vital to a democracy, and it is equally vital that students learn how to practice and understand journalism in the most realistic setting possible. Students in my class are taught press law, news value, and journalistic ethics. We have an editing process that involves multiple levels, and the students value my input as an adviser.

Student journalists make a difference on campus, and this bill would allow them to do their job. Please support it.

HB-1529-SD-1

Submitted on: 6/28/2020 4:41:07 PM

Testimony for JDC on 6/30/2020 9:46:00 AM

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 at Waipahu High School.

I am writing in support of 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 or related fields, as the majority of my graduating seniors are 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.

HB-1529-SD-1

Submitted on: 6/28/2020 6:17:54 PM

Testimony for JDC on 6/30/2020 9:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Chavonnie Ramos	Individual	Support	No

Comments:

Aloha Chairman Rhoads and committee members,

I'm testifying in support of HB1529 HD 2 SD1. My name is Chavonnie Ramos. I am testifying in my capacity as a recent journalism graduate from the University of Hawaii at Manoa. I was also the Editor in Chief of Ka Leo O Hawaii, the university's news organization.

I started my interest in journalism when I joined Waipahu High School's student newspaper. But what I noticed is that the administration often censored us and discouraged us to write certain stories. Back then, our newspaper had to get approved by the administration before we could publish and print it. In some cases, the administration took as long as weeks to get back to us, to the point where our newspaper content became irrelevant.

Civic engagement is vital to a functioning democracy. Young people who are civically engaged become adults who are civically engaged. Working on a school media outlet is a powerful civics lesson. However, under current federal law, school administrators can and do tread on the civil rights of student journalists through censorship. The Student Press Law Center receives thousands of requests for legal assistance per year from student journalists. Censorship sends the message that student voices don't matter. There may be some concern that giving too much control to young people, but this law does not protect unprotected speech. What it does is protect the rights and clarify the responsibilities of all those involved in journalism in public schools, the students, advisers, and administrators. Student voice matters. This bill is in direct support of Superintendent Kishimoto's High Impact Strategy of valuing student voice. I respectfully request that you support this legislation and accept this bill in its current form to ensure student voice is heard.

Mahalo for your time.

Testimony of Frank D. LoMonte, attorney and media-law professor
House Bill 1529, the Hawaii Student Free Expression Act
Senate Committee on Judiciary
Submitted for committee hearing of June 30, 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 190 years, and in those 190 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. 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. There is no need for any significant retraining or readjustment, as HB 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 or other disruptive speech) 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,
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HB-1529-SD-1

Submitted on: 6/29/2020 8:52:22 AM

Testimony for JDC on 6/30/2020 9:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Sandy Matsui	Individual	Support	No

Comments:

I'm testifying in support of HB1529 SD1. My name is Sandra Matsui and I am testifying in my capacity as a faculty advisor for UH Student Media (including the Ka Leo News organization) at the University of Hawai'i, MÄ• noa. Under current federal law, school administrators may and unfortunately do tread on the civil rights of student journalists through censorship. The frequency at which this happens is reflected by thousands of requests from student journalists for legal assistance received by The Student Press Law Center, an independent, non-partisan 501c(3) which works to promote, support and defend the First Amendment and press freedom rights of high school and college journalists and their advisers. Censorship sends the message that student voices don't matter, which is not the message the people of Hawai'i want to perpetuate among our youth.

HB1529 HD1 protects the rights and clarifies the responsibilities of individuals involved in journalism including students, advisers, and administrators in public schools and colleges. This bill is in direct support of Superintendent Kishimoto's High Impact Strategy of valuing student voice. I respectfully request that you support this legislation and accept this bill in its current form to ensure the student voice is heard and does matter.

Thank you for your consideration and support.

HB-1529-SD-1

Submitted on: 6/28/2020 10:16:44 PM

Testimony for JDC on 6/30/2020 9:46:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Nyler Acasio	Individual	Support	No

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-SD-1

Submitted on: 6/29/2020 9:45:27 AM

Testimony for JDC on 6/30/2020 9:46:00 AM

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

Comments:

Dear Hawaii State Senator Karl Rhoads and the Judiciary Committee:

I am testifying in my capacity as an individual.

My name is Jennifer Howe. As a former yearbook, newspaper, and broadcast media adviser, I strongly believe there is a vital need to protect student journalists and bolster their First Amendment rights that are often directly or indirectly suppressed. I taught and advised for five years in the Hawaii Department of Education. I am asking that you support HB1529 HD2 SD1 that would protect students from those who abuse the U.S. Supreme Court’s 1988 Hazelwood decision to censor student publications.

Civic engagement is vital to a functioning democracy. Young people who are civically engaged become adults who are civically engaged. Working on a school newspaper, yearbook, or broadcast media staff is a powerful civics lesson. Student journalists have a unique role in their campus communities to inform students, faculty, administrators, parents and other stakeholders about the condition of their educational experience. Student journalists were faced with an unprecedented workflow when COVID-19 interrupted the fourth quarter of their learning, but that did not stop them from working on their school newspapers, completing final yearbook deadlines, and broadcasting news from home. We are already benefiting from these students’ commitment to journalism and sense of civic responsibility. The consumers of student media need uncensored journalism to inform them of their school’s achievements and its shortcomings. Unfortunately, some have used the Hazelwood decision as a means to protect their own images or the image of the school at the cost of losing free, honest and ethically reported journalism.

The Student Press Law Center receives thousands of requests for legal assistance per year from student journalists. Censorship sends the message that student voices don’t matter. There may be some concern about giving too much control to young people, but this law does not protect unprotected speech. What it does is protect the rights and clarify the responsibilities of all those involved in journalism in public schools: the students, advisers, and administrators.

Student voice matters. This bill is in direct support of Superintendent Kishimoto's High Impact Strategy of valuing student voice. Empowerment is another of the Hawaii DOE Promise Plan themes. The HIDOE defines this theme as the following: Students will develop their authentic voice as contributors to equity, excellence and innovation, by providing input on what they learn, how they learn, and where they learn. --MARKERS: Engagement, civic & policy voice; educational leadership; discovery; choice."

I respectfully request that you support the Hawaii Student Free Expression Act HB1529 HD2 SD1 and accept this bill in its current form to ensure student voice is heard.

This legislation is part of a nationwide movement called New Voices, which is focused on curing the Hazelwood decision at the state level by protecting students from censorship and prior review by administrators. New Voices is aimed at preventing abuses of power in the future.

To learn more about the New Voices movement, please visit <https://splc.org/new-voices/>.

I am asking that you look out for the bill and support it because it will end censorship and abuse of students' First Amendment press rights.

For more information about the New Voices of Hawaii movement, please contact the Hawaii Scholastic Journalism Association at hawaiisja@gmail.com.

Please consider following our efforts on Facebook @newvoiceshawaii for legislative updates as well.

Sincerely,

Jennifer Howe

Honolulu, HI 96822