

# **The Case for Washington State's Freedom of Expression Legislation**

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## **Now Is The Time.**

We are on the brink of a critical and exciting opportunity to ensure a sound future for our democracy. Now is the time to pass SB 6233 – bi-partisan legislation that will help nurture future generations of well-informed and engaged citizens throughout our state.

Republican Sen. Joe Fain of the 47th Legislative District is taking the lead and has introduced SB 6233 – an update of 2009's SB 5946 and originally 2007's HB 1307 – that would become the most clear and thoughtful state law in this country regarding freedom of expression rights for students in our public high schools and colleges. This legislation directly addresses much of the confusion, misunderstanding and misapplication of the 1988 *Hazelwood v. Kuhlmeier* Supreme Court ruling. Not only would SB 6233 clarify the rights of public school students, it would reaffirm their responsibilities and reasonable limitations with regard to libel, copyright, obscenity and privacy. Equally important, SB 6233 would protect taxpayers, school districts, school officials and educators from liability associated with free and responsible student expression.

## **Bi-Partisan Support.**

In addition to Sen. Joe Fain (R), co-sponsors (as of Jan. 14) include Senate Majority Whip Ann Rivers (Republican, 18th LD), Sen. Marko Liias (Democrat, 21st LD), Senate Democratic Floor Leader Christine Rolfe (Democrat, 23rd LD), Sen. Steve Litzow (Republican, 41st LD), Deputy Senate Minority Leader Andy Billig (Democrat, 3rd LD), Sen. Reuven Carlyle (Democrat, 36th LD) and Senate Democratic Caucus Vice Chair Mark Mullet (Democrat, 5th LD).

Freedom of expression is perhaps one of the most non-partisan values we have as Americans and Washingtonians. Certainly, we can build on this bi-partisan support to easily pass this legislation during this session. It's a wonderful win-win-win bill that will benefit all current and future students, educators, school officials and their respective communities.

## **A Necessity.**

Is this legislation really necessary?

*Absolutely.*

As a former president of the Washington Journalism Education Association and as a member of the Journalism Education Association's Scholastic Press Rights Commission, I hear from dozens of my colleagues and their students across the state each year who find themselves in conflict with school officials over legal or policy issues related to student expression. Likewise, I also hear from school officials and risk management personnel who want to protect the rights of students, but also have a legitimate obligation to protect the educational environment in their schools as well as preventing potential litigation against their districts. These types of conflicts and the hours lost addressing them would be eliminated by this law.

### **Protections for Educators.**

SB 6233 makes clear that educators like me - publication advisers - would no longer have to fear for our jobs merely because we choose to serve as educators and advisers rather than editors or censors of student expression and student media. Frankly, we cannot afford to lose any more wonderful educators because of this unnecessary dichotomy. SB 6233 would provide this important protection for educators.

### **Protection for Administrators and School Officials.**

For the first time ever, under this legislation all public school officials, board members and building administrators would no longer be held liable for action taken against student publications and broadcasts so long as they, too, conduct themselves in an educationally sound and lawful manner. SB 6233 would provide this important protection for public school principals, school boards and other school officials – and indirectly protect taxpayers in those districts from potential risk and liability.

The simple days of yearbooks and newspapers are long gone. Ask any school administrator about the every changing world of digital and social media and how technology has impacted their work. Try as they might, we cannot expect school officials to keep up with the rapid change in social media platforms, nor should they be expected to. For example, the student media I advise, the Hawkeye, not only prints a paper, it also has a website, a Facebook page, several Twitter accounts, an Instagram account, a YouTube page, a YouTube live streaming account, etc. etc. etc. all controlled and edited by the publication's student leaders. In the past three years, in fact, my students have produced more than 200 live streaming productions and put hundreds of hours of video and audio on the internet. How in the world – and maybe better yet, *why* in the world – would school officials assume the responsibility and liability by acting as de facto publishers of all those digital and social media outlets? It simply isn't practical, nor is it pedagogically sound. These are student media and the students who use these dynamic platforms should do so responsibly and be held accountable for their right to do so.

One side note on this important topic is that while there is a perception that school districts face serious liability issues related to student expression and student media, *there is no evidence to support that thinking*. The truth is that no public school system in the United State has ever been successfully sued for anything that any student media has published. While it's true that districts and student media entities have gone to court over matters of freedom of expression, SB 6233 would likely preempt many of those cases. Conversely, it is true that several districts and school officials have been successfully sued for infringing on the rights of students and student media. Again, SB 6233 would clarify these issues and preempt such legal action.

### **Educationally Sound.**

We have such an incredible opportunity here to establish what would be a landmark law that would serve as a model for other states to protect and further the responsible, meaningful and

educationally sound environment for teaching and learning journalism and promoting robust, responsible free expression in our state's public schools. In fact, Oregon and North Dakota recently enacted legislation that is largely modeled after an earlier draft of this bill. Eight other states and the District of Columbia have already enacted similar legislation.

It's true that we journalism educators are a finicky bunch. We don't want to teach **about** journalism, we want our students to **do** journalism. **Real journalism.** Sometimes this is messy and sometimes it's controversial and sometimes it's inspirational and sometimes it's frustrating and sometimes it's heartbreaking. But it's always educational and absolutely amazing. When such expression and student journalism is produced without the imprimatur of school authorities it becomes real journalism and matters even more to these student journalists who willingly pour their souls into this challenging work. As an educator and adviser, I can honestly tell you that this is the environment in which real learning takes place. Our role as journalism educators is to provide excellent information, a solid ethical and legal underpinning, skill development opportunities and an authentic environment in which students produce work. It certainly should not be our job to tell students what or how to think or what to publish.

Note, too, that SB 6233 is viewpoint neutral protecting student voices from across the political spectrum regardless of whether they're widely accepted or uniquely incisive. After all, we can all agree that in the marketplace of ideas, it's important that diverse opinions and perspectives can be shared regardless of whether they're considered conservative, moderate or progressive. Clearly, SB 6233 would help create a more authentic learning environment for all students and student journalists as well as support sound pedagogical practice.

### **Developing America's Citizens.**

Under SB 6233, all of our public high school and college student journalists would be acknowledged for how critical and important their work is to maintaining a viable, vibrant democracy in this state and in this country. Wenatchee World Managing Editor Gary Jasinek said it best in a column when he wrote that the *"relationship between school papers and school administrators is awkward at best. For journalists to fulfill their responsibilities, they need to operate without the restraint of the government they're obligated to cover. Yet if a school district is ultimately responsible for the content of a student newspaper, district administrators might want to see that content before publication, and might want to change or omit certain parts of it. When The Wenatchee World's publisher makes prepublication changes in content, it's editing. When government does it, it's censorship."* SB 6233 would clarify this tenuous, yet important relationship between the student press and school administrators – who are, after all, state government officials.

### **Equity Under the Law.**

I am one of the fortunate few advisers in this state whose students have never published under even the threat of prior review, let alone prior restraint. Since 1988, my students have established and maintained excellent, professional working relationships with five different principals, numerous assistant principals, dozens of district administrators and school board members. The

student staff and leaders of the newspaper and associated website I advise have learned so much by operating with this degree of responsibility and respect that I could never imagine teaching and advising in any other community. However, in the three sister high schools within our own district, under the same school board policies, none of the other publications publishes without the specter of prior review and/or prior restraint – if they publish at all. This is shameful and a real disservice to those equally capable students and their wonderful advisers.

Still, regardless of what you might hear from some who misunderstand this bill, SB 6233 does not grant students special privilege nor does it extend freedom of expression rights to students. In fact, these rights, essentially, would revert to the *Tinker v. Des Moines* standard established by the Supreme Court in 1969 – rights that every citizen regardless of age has in our state. Our students would be learning and producing work with all the rights and responsibilities they lawfully have under the First Amendment and the Washington State Constitution. Doesn't that seem fair? SB 6233 would level the playing field for all public high school and college students as well as student media publications in this state.

To be clear, the First Amendment in our Bill of Rights states: “*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the **freedom of speech**, or of the **press**; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*” Similarly, Article 1, Section 5 of the Washington State Constitution reads: “*Every person may **freely speak, write and publish** on all subjects, being responsible for the abuse of that right.*” More specifically, Section 2 of the Washington Administrative Code (WAC) 390-400-215 states: “*All students possess the constitutional right to **freedom of speech and press.***” SB 6233 would reaffirm these rights, specify student responsibilities, and clarify the limited liability and role of school officials. Clearly this is a win-win for all involved.

***I urge you to pass SB 6233 during the 2016 Washington state legislative session. I would be honored to address any questions or concerns you may have.***